

**CONSERVATION OF MONUMENTS IN KENYA: A CASE FOR A LIVING
HERITAGE APPROACH IN HERITAGE LEGISLATION**

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DEDICATION

To my good friend Alan Donovan for all the work and effort that he's put in to collect and conserve African Heritage and all the petitioners who helped in saving the African Heritage House. To my friends and family too, God Bless You.

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I am very grateful to my supervisor Mr. Douglas Gichuki for his guidance and directions in this dissertation. I also acknowledge the conversations that I have had with many people in charting a course for this dissertation, in particular I wish to thank Nixon Maywa for his insights in the proposal stage for this study. I can't fail to mention the immense motivation from my Pioneer Law classmates in pursuing this research.

ABSTRACT

The World Heritage Committee in their Thirty First Session in New Zealand on July 2007, included a "Fifth C" to their World Heritage Convention strategic objectives, which is Community participation. The idea of community participation is the involvement of indigenous, traditional or local people presented as community groups, tribes, nongovernmental organizations, private enterprise or local authorities in the identification, management and conservation of cultural heritage.

Community participation is considered necessary since firstly, heritage protection without community involvement and commitment is an invitation to failure, secondly, coupling community to the conservation of heritage is consistent with international best practice, thirdly, conservation, capacity building, credibility, and communication are all intrinsically linked to the idea of community and fourthly, that heritage protection, should, wherever possible, reconcile the needs of the human communities, as humanity needs to be at the heart of conservation.

In Kenya, community participation in respect to conservation of monuments is sidelined or subsumed in the roles of the heritage authorities both in law and practice. Additionally, monuments are viewed as mere property lacking any cultural significance hence there is no community engagement in their conservation. This study seeks to investigate the effects of defining monuments as mere property without any cultural significance. This research further seeks to delineate the role of communities in conservation of monuments and recommends ways that we can understand monuments as part of our cultural heritage, involve communities in conservation of monuments in a bid to ensure that the monuments are protected for and by the people not from the people.

This research begins by setting out the definition of monuments as either cultural property or cultural heritage. It establishes that monuments are better described as cultural heritage since such a definition incorporates the cultural significance and values of monuments. Further, the study seeks to distinguish the various methods of conservation of monuments: a material based approach, a value based approach and a living heritage approach. The study indicates that the approach in the current legislation is a material based approach that focuses on the fabric or form of the monuments. In as much as the values of the

monuments are addressed, when community participation is minimal and the heritage authorities take charge of monuments conservation this results to a material based approach.

In a bid to ensure that conservation of monuments involves communities, the recommendation is that we need an amendment in the current legal framework to mirror the proviso under National Policy on Culture and Heritage (2009) that the government should involve the community in immovable heritage conservation. The National Heritage and Museums Act Cap216 (2006) does not incorporate community participation in the monuments conservation despite this principle being a national value under Article 10 (2) (a) of the Constitution of Kenya,(2010). Therefore, this research proposes inclusion of community participation in the heritage legal framework.

CONSERVATION OF MONUMENTS IN KENYA: A CASE FOR LIVING HERITAGE APPROACH IN HERITAGE LEGISLATION

CHAPTER 1

1.1 Introduction

Monuments and sites play a historical, cultural role in our lives and the future generations, but conservation of such monuments and sites on grounds of their cultural significance has been inadequate.¹ An example of such a monument is the Krapf Monument and Heritage Park where Johannes Ludwig Krapf, a missionary, explorer and scholar, was born on 11th January, 1810. Krapf was the first to introduce Christianity to Kenya and also informed people in Europe about Africa, her people, languages, geography and cultures. Additionally he was also the first white man to sight Mount Kenya and tell the world about it. Krapf is also remembered as a great linguist who produced the first Swahili dictionary.² To keep his contribution to the country the Krapf Memorial was unveiled in 1849 in Mkomani, Mombasa. However, over the years, the site has been forgotten and left to deteriorate. Besides the Krapf Memorial, the Wagalla Massacre monument suffers the same fate. The monument was taken down due to land rows.³ But some monuments have been well conserved, such as, Fort Jesus that is an architectural marvel in the coastal region of Kenya.⁴

1.2 The African Heritage House

As part of Kenya's objective to conserve built immovable structures of historical importance, 22 of such structures were gazetted on 23rd January, 2015⁵ as national monuments. An example of such a structure was the African Heritage House. These monuments were gazetted under the new constitutional dispensation of 2010 that provides for public participation.

¹ "Safeguard our heritage" Tuesday, March 25 2014, <http://www.businessdailyafrica.com/Opinion-and-Analysis/Safeguard-our-heritage/-/539548/2257416/-/8cldxxz/-/index.html> accessed on 19th February, 2015

² "Krapf Monument and Heritage Park" Thursday, August 19th 2010, http://www.standardmedia.co.ke/?articleID=2000016061&story_title=krapf-monument-and-heritage-park&pageNo=1 accessed on 19th February, 2015

³ KTN news Desk, February 10th, 2015 "Wagalla Massacre monument taken down due to land rows," <http://www.standardmedia.co.ke/ktn/video/watch/2000089062/wagalla-massacre-monument-taken-down-due-to-land-rows> accessed on 19th February, 2015

⁴ Tom Odhiambo, "When monuments, symbols are fortitudes of nationality" May 9th 2009, http://www.standardmedia.co.ke/article/1144013674/when-monuments-symbols-are-fortitudes-of-nationality?articleID=1144013674&story_title=when-monuments-symbols-are-fortitudes-of-nationality&pageNo=2 accessed on 19th February, 2015

⁵ Gazette Notice No.374:

The African Heritage House is a building that was designed by American Alan Donovan based on the indigenous architecture he encountered in his many trips through Africa. The prestigious *Architectural Digest*⁶ describes the house as “an architecture rising from the serene Kenyan plain like an outcropping of earth, a vision of usefulness informed by the African genius for decoration. Inside the house, every wall, floor and ceiling, is more proof, in textiles, wood, masonry, pottery, weaponry and art, of the irreducible modernity of African art and crafts.”⁷ Additionally, the house apart from housing an art collection spanning 50 years from all over Africa is a piece of art itself. The original inspiration for the house is the towering mud mosques of Djenne and Tombouctou in Mali which Donovan had seen when he first crossed the Sahara Desert in 1969 and saw the “lost” mud architectures of Africa, most of which had been washed away and have never been replaced.⁸

Consequently, under the National Museums and Heritage Act,⁹ the African Heritage house due to its historical significance, it now constitutes part of Kenya’s cultural heritage which is defined as; an open space¹⁰, a specified place or immovable structure¹¹, a specified site on which a buried monument or object of archeological or paleontological interest exists¹², a specified object or type of object which is considered to be of historical, cultural, or scientific significance¹³, a building and a specified area of land adjoining it¹⁴ and a geo-park¹⁵. The question then becomes how do we ensure community participation in the process of conserving the African Heritage House as well as other monuments?

1.2 Background

Monuments are either termed as cultural heritage or cultural property. Cultural heritage is understood as that which consists of manifestations of human life which represent a particular view of life and witness the history and validity of that view¹⁶ while cultural property is defined as objects found at archeological sites, which provide insight into earlier

⁶ Architectural Digest, “*Under Kenyan Skies: Preserving Africa's Artistic Heritage Near Nairobi*,” November, 1996 Issue, <http://www.africanheritage.net/Kenyan-skies.htm> accessed on 22nd February, 2015

⁷ Architectural Digest, “*Under Kenyan Skies: Preserving Africa's Artistic Heritage Near Nairobi*,” November, 1996 Issue, <http://www.africanheritage.net/Kenyan-skies.htm> accessed on 22nd February, 2015

⁸ Interview with Alan Donovan the Owner of the house on 20th September, 2015

⁹ CAP 216 (2006).

¹⁰ Section 25 (1) (a), National Museums and Heritage Act Cap 216 (2006).

¹¹ Section 25 (1) (b), National Museums and Heritage Act Cap 216 (2006).

¹² Section 25 (1) (c), National Museums and Heritage Act Cap 216 (2006).

¹³ Section 25 (1) (d), National Museums and Heritage Act Cap 216 (2006).

¹⁴ Section 25 (1) (e), National Museums and Heritage Act Cap 216 (2006).

¹⁵ Section 25 (1) (f), National Museums and Heritage Act Cap 216 (2006).

¹⁶ Prott L. V and O’Keefe P. J, “‘Cultural Heritage’ or ‘Cultural Property’?” 308.

civilizations, and artworks produced by members of a culture and that are thought to embody or represent that culture in a distinctive way.¹⁷ In Kenya monuments are construed as cultural heritage¹⁸ however their treatment seems as if they are mere property. Monuments under whatever definition deserve to be conserved.

Conservation has been defined as to preserve or to keep.¹⁹ Under the Burra Charter²⁰, conservation means all the processes of looking after a place so as to retain its cultural significance. The aesthetic, historic, scientific or social value for past, present or future generations constitutes the cultural significance of a site, building or other work.²¹ Therefore, monuments are protected and conserved since they are valuable.²² Value is related to the recognition of particular qualities in something that we recognize as our heritage and thus worthy of conservation.²³ The values vary subject to local customs and traditions, as well as due to the impact of increasing globalization, which tends to contaminate authentic cultural traditions.²⁴

The different approaches used in the conservation of monuments are: material based approach, the value based approach and the living heritage approach. A material based approach is centered on the conservation of the thing itself. It is an expert-driven approach that places exclusive responsibility over the definition and conservation of heritage in the hands of heritage authorities.²⁵ In this approach, the aim of conservation is to preserve heritage, seen as belonging to the past, from human practices of the present that are considered to be harmful, and transmit it to the future generations.²⁶ A form of discontinuity is created between the monuments and the people, and between the past and the present hence the exploitation of heritage is sought exclusively in accordance with the interests of the heritage authorities. A value based approach is based on the premise that heritage is

¹⁷ Posner E, "The International Protection of Cultural Property: Some Skeptical Observations" (2006) 2.

¹⁸ Section 2 National Museums and Heritage Act Cap 216 of 2006

¹⁹ Petzet M, "Principles of preservation: An Introduction to the International Charters for Conservation and Restoration 40 Years after the Venice Charter" 9.

²⁰ The Australia ICOMOS Charter (the Burra Charter) for the Conservation of Places of Cultural Significance.

²¹ Article 1, The Australia ICOMOS Charter (the Burra Charter) for the Conservation of Places of Cultural Significance.

²² Jukilehto J, "What is modern conservation? Some thoughts about the evolution of modern conservation policies" (2013) 32

²³ Jukilehto J, "What is modern conservation? Some thoughts about the evolution of modern conservation policies" 32

²⁴ Jukilehto J, "What is modern conservation? Some thoughts about the evolution of modern conservation policies" 32

²⁵ Poullos I, *The past in the present: a living heritage approach*, Ubiquity London press, (2014), Meteora, Greece, 19.

²⁶ Poullos I, *The past in the present*, 20.

not self-evident, with intrinsic or inherent values, as in a material-based approach. The people and stakeholder groups ascribe subjective values to it and define heritage, and thus heritage is seen as an extrinsic and social process.²⁷ Therefore, the main aim of conservation is not the preservation of heritage itself, but the protection of the values imputed to it by the people and stakeholder groups.²⁸ The community is allowed to participate in this approach but its involvement is limited by the heritage authorities.²⁹

A living heritage approach recognizes communities as the true long-term custodians of their heritage sites,³⁰ empowers communities in the conservation and managing process, and benefiting from their traditional and established values, management systems and maintenance practices³¹ and links conservation to the sustainable development of the communities, by developing a process to manage change and by making heritage relevant to the needs of the contemporary communities.³²

The modern conservation paradigm embraces a living heritage approach³³ but it seems that we are still stuck a material based approach and value based approach whose limitations are immense. A living heritage approach is envisaged in the National Policy on Culture and Heritage (2009) with regard to Historical Sites, Monuments where it proposes,

“The Government will establish and fund institutions at different levels to ensure the conservation and promotion of Kenya’s immovable heritage and will further enact laws that provide the appropriate legislative and administrative framework for the protection of sites and monuments.

“The Government will encourage the participation of local communities in the planning and management of sites and monuments³⁴ .”

On one hand, this policy statement encapsulates the tenets of a living heritage approach in its fullest. On the other hand, notwithstanding the inclusion of public participation a national value in Article 10 (2) (a) of the Constitution of Kenya, 2010, the National

²⁷Poulios I, *The past in the present*, 21.

²⁸Poulios I, *The past in the present*, 21.

²⁹Poulios I, *The past in the present*, 21.

³⁰Poulios I, *The past in the present*, 28.

³¹Poulios I, *The past in the present*, 28.

³²Poulios I, *The past in the present*, 28.

³³Jukilehto J, “What is modern conservation? Some thoughts about the evolution of modern conservation policies” 29

³⁴“National Policy On Culture And Heritage” (2009)

Museums and Heritage Act³⁵ under Section 43 (1) provides that the National Museums of Kenya may enter into an agreement to conserve a monument without involving the community in such an arrangement hence it still employs aspects of a material based and a value based approach despite their limitations. Certainly, there is lack of community participation which as described by the World Heritage Committee in their Thirty First session is an invitation to failure in heritage protection, neglect of the human needs which should be at the heart of conservation and dissociation from conservation, capacity building, credibility and communication as pillars of heritage protection. Such a failure to embrace the cultural significance of monuments in the heritage management in Kenya has led to the current fate of the Krapf Memorial, the Wagalla Massacre monument and this could be an unfortunate fate of the African Heritage House.

1.3. Statement of Problem

This research seeks to bring to light the inadequacy of the current legal framework used in conservation of Monuments in terms of community participation in the process of conservation of monuments.

1.4. Justification of the Problem

The National Policy on Culture and Heritage of 2009 provides that the country needs to develop an appropriate legislative and administrative framework for the protection or conservation of sites and monuments. Further, the Culture and Heritage policy underscores community participation in the planning and management of sites and monuments. Therefore, it would be essential for the heritage conservation legal framework to provide for involvement of the communities in the conservation process.

1.5. Objective

This research is aimed at setting out that a heritage approach that incorporates community participation is a holistic approach in the process of conservation of monuments.

1.6. Research Question

Does the current legal framework allow for community participation in the process of conservation of monuments?

³⁵ Cap 216 (2006)

1.7. Objectives of the Study

- i. To propose broader approach in the conservation of monuments to include a community participation in the process.
- ii. To recommend a heritage oriented system in conservation of National Monuments.

1.9. Limitations of the Study

This paper limits its research to the legal framework on conservation of monuments in Kenya. This research will be limited to the case study of the African Heritage House.

1.2.1 Chapter Summary

In Chapter 2, I will endeavor to give a distinction between cultural property and cultural heritage as concepts used in construction of monuments. In chapter 3, I will seek to set out the reasons why monuments are conserved and the approaches that have been used in conservation of monuments. Further, under chapter 4, I endeavor to discuss the importance of incorporating in the heritage management framework the concepts of community participation, cultural significance and sustainability as the pillars of a heritage approach in conservation of monuments. Under Chapter 5, I will conclude my argument on the inadequacy of the current legal framework in the conservation of monuments and enumerate some recommendations that ought to inform community participation in the legal framework.

CHAPTER 2

Monuments are viewed as either cultural property or cultural heritage. Further, a monument can be looked at either from a fabric or material composition perspective or a value-laden approach that incorporates its cultural significance. This difference in perspective can be attributed to the difficulty in providing a universally accepted definition of the interests and values protected or basis for the conservation of monuments as either cultural property or cultural heritage.³⁶ Therefore I will begin by setting out what is cultural property and cultural heritage.

2.1. Cultural property

Cultural property refers to property that has some special relationship with a particular culture or nation state.³⁷ Cultural property definition includes objects found at archeological sites, which provide insight into earlier civilizations, and artworks produced by members of a culture and that are thought to embody or represent that culture in a distinctive way.³⁸

What is special about cultural property to be conserved? If it is special, does it have any value to demand for conservation? Cultural property is like any other form of property, it is valuable to the extent that people care about it, and are willing to pay to consume or enjoy it and thus there is no reason to regulate it, or to treat it as different from other forms of property.³⁹ Cultural property law and theory are often used as a way for groups to seek property law protections for their cultural heritage.⁴⁰ Therefore, conventional property frameworks cannot fully account for the interests and values necessary to adequately preserve heritage and if we accept that certain classes of human expression should be passed on to future generations, property-centric frameworks may result in some unwarranted consequences.⁴¹

2.1.1 Criticisms of cultural Property

This approach has some criticisms; firstly, heritage may take many forms which property is not suitable to cover such as material heritage, intangible heritage, and natural heritage and

³⁶Frigo M, "Cultural property v. cultural heritage: A "battle of concepts" in international law?" *IRRC Vol. 86 No 854*, (2004) 369.

³⁷ Posner E, "The International Protection of Cultural Property: Some Skeptical Observations" (2006) 2.

³⁸ Posner E, "The International Protection of Cultural Property," 2.

³⁹ Posner E, "The International Protection of Cultural Property," 2.

⁴⁰Fincham D, "The Distinctiveness of Property and Heritage" *Penn State Law Review Vol. 115:3*, (2011) 660.

⁴¹Fincham D, "The Distinctiveness of Property and Heritage" 646.

for some of these objects, the idea of heritage offers a powerful instrument to order our relationships with these objects and concepts.⁴² This is owing to the fact that heritage and property are two fundamentally different approaches to examining and ordering human expression.⁴³

Secondly, cultural property has two potentially conflicting elements, which are culture and property, the former is comprised of values derived from a group of people, while the latter carries with it the conflicting and value laden attachment society and legal thinkers attach to an individual rights-based legal principle.⁴⁴

Thirdly, the term cultural property has other connotations contributing to the commoditization of the cultural manifestations. This is evident from the tendency for many people to think of heritage items solely in terms of their commercial value.⁴⁵

The shortcomings of defining monuments as cultural property has led to the view that monuments are better understood and defined as cultural heritage. The concept of cultural property is has been rendered inadequate and inappropriate for the range of matters covered by the concept of the cultural heritage which includes, inter alia, the non-material cultural elements more recently deemed entitled to legal protection at the international level, which it does not cover.⁴⁶

2.2 Cultural Heritage

Cultural heritage is defined as that which consists of manifestations of human life which represent a particular view of life and witness the history and validity of that view.⁴⁷

Lyndel V. Prott and Patrick J. O'Keefe, ponder, "is it time for law and lawyers to recognize that the term cultural heritage is rightfully superseding that of cultural property?"⁴⁸ since, the concept of cultural heritage, if compared to that of cultural property, is broader in scope, as it expresses a form of inheritance to be kept in safekeeping and handed down to future generations.⁴⁹ The concept of cultural heritage entails the embracing cultural significance, community participation and sustainable development and thus it should form

⁴²Fincham D, "*The Distinctiveness of Property and Heritage*" 643.

⁴³Fincham D, "*The Distinctiveness of Property and Heritage*" 644.

⁴⁴Fincham D, "*The Distinctiveness of Property and Heritage*" 644.

⁴⁵Prott L.V and O'Keefe P. J, "'Cultural Heritage' or 'Cultural Property?'" 311.

⁴⁶Frigo M, "*Cultural property v. cultural heritage: A "battle of concepts" in international law?*" 369.

⁴⁷Prott L.V and O'Keefe P. J, "'Cultural Heritage' or 'Cultural Property?'" 308.

⁴⁸Prott L.V and O'Keefe P. J, "'Cultural Heritage' or 'Cultural Property?'" 307.

⁴⁹Frigo M, "*Cultural property v. cultural heritage: A "battle of concepts" in international law?*" 369.

part of a country's legal framework. Indeed, legal frameworks that embody the notion of property have been rendered inadequate and inappropriate with regards to the conservation of cultural heritage.⁵⁰

The concept of the cultural heritage favored due to the following reasons; a) that the existing notion of property does not and should not try to, cover all that evidence of human life that we are trying to preserve; b) those things and traditions which express the way of life and thought of a particular society since they can be encompassed by the term heritage which also embodies the notion of inheritance and handing on; c) that property does not incorporate concepts of duty to preserve and protect.⁵¹

Cultural heritage is suitable in defining monuments since: firstly, it signifies the expression of culture or evidence of a way of life may be embodied in monuments or sites,⁵² secondly, the movable objects that represent artworks of every kind which are objects of historic importance,⁵³ and, thirdly, cultural heritage represents intangibles such as the ideas on which new skills, techniques, patterns of behavior, knowledge embodied in skills, oral history embodied in our culture or historic evolutions of a particular style of presentation.⁵⁴

Cultural heritage is founded on the principle that heritage is for the enjoyment of present and later generations. The enjoyment is not only of the physical protection but also the possibility of access for persons other than the owner.⁵⁵ Heritage creates a perception of something handed down needs to be cared for and cherished. It is considered as a cultural manifestations that was passed on to us from the past as legacy from our ancestors and hence we have a duty pass it on to our successors, augmented by the creations of the present.

Therefore, concept of cultural property is inadequate and inappropriate for the range of matters covered by the concept of the cultural heritage which includes, inter alia, the non-material cultural elements⁵⁶ such as cultural significance and values of the monument. Consequently, the concept of cultural heritage, if compared to that of cultural property, is broader in scope, as it expresses a form of inheritance to be kept in safekeeping and handed down to future generations.⁵⁷ This entails the embracing cultural significance, community participation and sustainable development.

⁵⁰Prott L. V and O'Keefe P. J, "*Cultural Heritage' or 'Cultural Property'?*" 311.

⁵¹Prott L. V and O'Keefe P. J, "*Cultural Heritage' or 'Cultural Property'?*" 319.

⁵²Prott L. V and O'Keefe P. J, "*Cultural Heritage' or 'Cultural Property'?*" 308.

⁵³Prott L. V and O'Keefe P. J, "*Cultural Heritage' or 'Cultural Property'?*" 308.

⁵⁴Prott L. V and O'Keefe P. J, "*Cultural Heritage' or 'Cultural Property'?*" 308.

⁵⁵Prott L. V and O'Keefe P. J, "*Cultural Heritage' or 'Cultural Property'?*" 309.

⁵⁶Frigo M, "*Cultural property v. cultural heritage: A 'battle of concepts' in international law?*" 369.

⁵⁷Frigo M, "*Cultural property v. cultural heritage: A 'battle of concepts' in international law?*" 369.

The conceptualization of monuments as cultural heritage has been adopted under Article 1 of the World Heritage Convention,⁵⁸ cultural heritage consists of “monuments: architectural works, works of monumental sculpture and painting, elements or structures of an archaeological nature, inscriptions, cave dwellings and combinations of features, which are of outstanding universal value from the point of view of history, art or science; Groups of buildings: groups of separate or connected buildings which, because of their architecture, their homogeneity or their place in the landscape, are of outstanding universal value from the point of view of history, art or science.”⁵⁹

In Kenya, under the National Museums and Heritage Act⁶⁰ Section 2 heritage means natural and cultural heritage and cultural heritage is constituted of, inter alia, monuments.⁶¹ A monuments under the National Museums and Heritage Act heritage may include; an open space⁶², a specified place or immovable structure⁶³, a specified site on which a buried monument or object of archeological or paleontological interest exists⁶⁴, a specified object or type of object which is considered to be of historical, cultural, or scientific significance⁶⁵, a building and a specified area of land adjoining it⁶⁶ and a geo-park.⁶⁷

Despite the fact that the heritage legislation conceptualizes monuments as cultural heritage they are treated as cultural property. A stellar exposition of this is the failure to involve the communities from the conservation of monuments. Monuments are protected from the people and not constitutive of a people part of life. Besides, monuments are seen as the property of the state or heritage authorities. In doing so, we attach property value to monuments as opposed to heritage.

⁵⁸ Convention concerning the Protection of the World Cultural and Natural Heritage, (1972)

⁵⁹ Article 1, Convention concerning the Protection of the World Cultural and Natural Heritage, (1972)

⁶⁰ CAP 216, (2006).

⁶¹ Section 2, National Museums and Heritage Act Cap 216, (2006).

⁶² Section 25 (1) (a), National Museums and Heritage Act Cap 216, (2006).

⁶³ Section 25 (1) (b), National Museums and Heritage Act Cap 216, (2006).

⁶⁴ Section 25 (1) (c), National Museums and Heritage Act Cap 216, (2006).

⁶⁵ Section 25 (1) (d), National Museums and Heritage Act Cap 216 (2006).

⁶⁶ Section 25 (1) (e), National Museums and Heritage Act Cap 216 (2006).

⁶⁷ Section 25 (1) (f), National Museums and Heritage Act Cap 216 (2006).

CHAPTER 3

3.1 Conservation of Monuments

In this chapter I will be discussing the concept of conservation of monuments and the approaches that have been used. This is in a bid to show that some approaches used in conservation of monuments either limit or encourage community participation.

One of the objectives of the National Museums and Heritage Act⁶⁸ is to consolidate the law relating to national museums and heritage and 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. In this research we are interested on the latter part: that is, identification, protection, conservation and management of the cultural heritage in Kenya.

The Act⁶⁹ does not expressly define what constitutes identification, protection and conservation. However, under the Nara Charter,⁷⁰ conservation means all efforts designed to understand cultural heritage, know its history and meaning, ensure its material safeguard and, as required, its presentation, restoration and enhancement.⁷¹ Conservation has been further defined to include the processes of: retention or reintroduction of a use; retention of associations and meanings; maintenance, preservation, restoration, reconstruction, adaptation and interpretation; and will commonly include a combination of more than one of these.⁷²

3.2 Importance of Conservation

Heritage, as defined in the Kenyan context to include monuments, is protected and conserved since in all its diversity it is valuable.⁷³ The values vary subject to local customs and traditions, as well as due to the impact of increasing globalization, which tends to contaminate authentic cultural traditions.⁷⁴ Further, values can be seen as the result of recognition and consequent association of qualities to things, a recognition that is, at the same time, the result of comparison with other things with similar qualities. Therefore, in terms of

⁶⁸ CAP 216, (2006).

⁶⁹ CAP 216, (2006).

⁷⁰ The Nara Document on Authenticity was drafted by the 35 participants at the Nara Conference on Authenticity in Relation to the World Heritage Convention, held at Nara, Japan, from 1-6 November 1993

⁷¹ Appendix, The Nara Document On Authenticity (1993)

⁷² Article 14, The Burra Charter: The Australia ICOMOS Charter for Places of Cultural Significance 1999.

⁷³ Jukilehto J, "What is modern conservation? Some thoughts about the evolution of modern conservation policies" 32.

⁷⁴ Jukilehto J, "What is modern conservation? Some thoughts about the evolution of modern conservation policies" 32.

heritage, value is related to the recognition of particular qualities in something that we recognize as our heritage and thus worthy of conservation.⁷⁵ Often, values are seen in two categories: Intrinsic as values associated with the thing itself as an object worth for its own sake and instrumental value that is associated with the object as a means to obtain something else.⁷⁶ Thus conservation of monuments is grounded on the intrinsic and the instrumental value they possess.⁷⁷

3.3 Approaches to Conservation of Monuments

The conservation of historic buildings includes all measures that prevent further decay and preserve the historic fabric.⁷⁸ These measures can be structural engineering with appropriate auxiliary constructions, the replacement and completion of components insofar as this prevents their further deterioration and the occasionally advocated idea of letting the monuments perish in beauty.⁷⁹ A conservation plan must seek the correct path for each individual case.⁸⁰ Based on this, different approaches as used to restore, replace and let the monument to decay which are a material based approach, a value based approach and a living heritage approach.

3.3.1 Material Based Approach

A material-based approach is an expert-driven approach that places exclusive responsibility over the definition and conservation of heritage in the hands of heritage authorities mostly state appointed, manned by political officials and especially conservation professionals.⁸¹ Communities' views are not taken into account.⁸²

In this approach the significance of heritage is defined in archaeological or historic and aesthetic terms.⁸³ This is seen to be intrinsic or inherent in the fabric or thing.⁸⁴ The use of

⁷⁵Jukilehto J, "What is modern conservation? Some thoughts about the evolution of modern conservation policies" 32.

⁷⁶Jukilehto J, "What is modern conservation? Some thoughts about the evolution of modern conservation policies" 32.

⁷⁷Jukilehto J, "What is modern conservation? Some thoughts about the evolution of modern conservation policies" 32.

⁷⁸Petzet M, "Principles Of Preservation: An Introduction to the International Charters for Conservation and Restoration 40 Years after the Venice Charter" 9.

⁷⁹Petzet M, "Principles Of Preservation: An Introduction to the International Charters for Conservation and Restoration 40 Years after the Venice Charter" 9.

⁸⁰Petzet M, "Principles Of Preservation: An Introduction to the International Charters for Conservation and Restoration 40 Years after the Venice Charter" 9.

⁸¹Poulios I, *The past in the present*, 19.

⁸²Poulios I, *The past in the present*, 19.

⁸³Poulios I, *The past in the present*, 19.

⁸⁴Poulios I, *The past in the present*, 19.

heritage by communities is considerably limited to ensure its protection by conservation professionals whose aim of conservation is to preserve heritage, seen as belonging to the past, from human practices of the present that are considered to be harmful, and transmit it to the future generations.⁸⁵ A form of discontinuity is created between the monuments and the people, and between the past and the present hence the exploitation of heritage is sought exclusively in accordance with the interests of the heritage authorities.⁸⁶

3.3.1.1 Critique

This approach to conservation of monuments is insufficient since it gives exclusive power of the conservation professionals, who are seen as the experts under whom the conservation process and results are dependent on.⁸⁷ Furthermore, the approach does not embrace indigenous and non-Western communities associations with the sites, nor their management systems and maintenance practices which has led to the breaking of communities' associations with their sites and in the long term contribute to the harming of these sites.⁸⁸

3.3.2 The Value Based Approach

A values-based approach is based on the Burra Charter where a community is considered to be placed at the core of conservation.⁸⁹ In this approach heritage is not self-evident, with intrinsic or inherent values, as in a material-based approach; the people and stakeholder groups ascribe subjective values to heritage and define it. Heritage is seen as an extrinsic and social process.⁹⁰ Therefore, the main aim of conservation is not the preservation of heritage itself, but the protection of the values imputed to it by the people and stakeholder groups.⁹¹ It is executed by the people and stakeholder groups through their engagement in the course and throughout the conservation process, as well as in resolving conflicts that inevitably arise between them assuring subjectivity and equity of conflicting stakeholders and different values.⁹² This approach encourages and promotes communities participation in conservation as well as embracing the communities associations with sites, their management

⁸⁵Poulios I, *The past in the present*, 20.

⁸⁶Poulios I, *The past in the present*, 20.

⁸⁷Poulios I, *The past in the present*, 20.

⁸⁸Poulios I, *The past in the present*, 20.

⁸⁹Poulios I, *The past in the present*, 21.

⁹⁰Poulios I, *The past in the present*, 21.

⁹¹Poulios I, *The past in the present*, 21.

⁹²Poulios I, *The past in the present*, 21.

systems and maintenance practices.⁹³ Therefore, the aim of conservation remains the preservation of heritage, considered to belong to the past, from the people of the present, for the sake of the future generations and this is referred to as discontinuity.⁹⁴ Development potentials based on the exploitation of heritage are sought in an attempt to serve the interests of the various stakeholder groups but with an emphasis on the interests of the conservation professionals and under their control.⁹⁵

3.3.2.1 Critique

In this approach exclusive power rests with the conservation professionals in the conservation process but not as much as in a material-based approach.⁹⁶ Thus, first, under this approach there is a lot of focus on preservation of the tangible as opposed to the intangible heritage elements, and conservation continues to reflect mostly non-indigenous community views.⁹⁷ Secondly, values associated with the safeguarding of intangible heritage elements, such as user or social value, are also taken into account but their safeguarding is incorporated within and serves the preservation of tangible remains.⁹⁸ Thirdly, the traditional care of heritage by the communities is also recognized but only to the extent that it does not undermine modern scientific-based conservation principles and practices of conservation professionals.⁹⁹ Fourthly, heritage use by communities is generally accepted to the extent that it does not undermine heritage protection by conservation professionals. More flexible recommendations are adopted in conservation practice such as varied approaches allowing reconstruction depending on the nature and values of heritage yet it is mostly minimal interventions in the heritage fabric, with respect to the physical and material structure, that are allowed.¹⁰⁰

3.3.3 Living Heritage Approach

The term 'living heritage site' refers to a site with a local community, which is seen as a community of fixed boundaries living near or around a site and is supposed to be

⁹³Poulios I, *The past in the present*, 22.

⁹⁴Poulios I, *The past in the present*, 23.

⁹⁵Poulios I, *The past in the present*, 23.

⁹⁶Poulios I, *The past in the present*, 23.

⁹⁷Poulios I, *The past in the present*, 23.

⁹⁸Poulios I, *The past in the present*, 23.

⁹⁹Poulios I, *The past in the present*, 23.

¹⁰⁰Poulios I, *The past in the present*, 23.

differentiated from those communities using a site at a national or international level.¹⁰¹ In a living heritage approach, it seeks to address the issue of discontinuity where the aim of conservation remains the preservation of heritage, considered to belong to the past, from the people of the present, for the sake of the future generations. Instead a monument is conserved by the people and for the people.

3.3.3.1 Living Heritage Site

A living heritage site may be seen as a heritage site that maintains its original function, as continually reflected in the process of its spatial definition and arrangement, in response to the changing circumstances in society at local, national and international level.¹⁰² The key concept in the definition of a living heritage site is that of continuity, which is seen as follows:

- a) Continuity of the function of a site, seen as the core/root of a living heritage site. Thus, the concept of continuity, as applied in the case of a living heritage site, may be called 'functional continuity'.¹⁰³
- b) Continuity of the process of maintenance and further definition and arrangement of the social as well as physical space of a site, in accordance with the continuity of the function of a site.¹⁰⁴
- c) Continuity of the physical presence of a site's community in a site, linked to the continuity of the function and of the space of a site.¹⁰⁵

Changes in the function, the space, and the community's presence, in response to the changing circumstances in society at local, national, and international level, are seen as an inseparable element of continuity and an essential requirement for the survival and continuation of a living heritage site over the course of time to present.¹⁰⁶ Under a living heritage approach a community is defined in various ways which are:

- a) A site with a local community- An endeavor to define a local community is ambiguous and problematic due to globalization and an increasing mobility of people, the membership of a local community may range from a small group of people to the entire living

¹⁰¹Poulios I, *The past in the present*, 25.

¹⁰²Poulios I, "Moving Beyond a Values-Based Approach to Heritage Conservation" Conservation and management of architectural sites, Vol. 12 No. 2, (2010) 175.

¹⁰³Poulios I, "Moving Beyond a Values-Based Approach to Heritage Conservation" 175.

¹⁰⁴Poulios I, "Moving Beyond a Values-Based Approach to Heritage Conservation" 175.

¹⁰⁵Poulios I, "Moving Beyond a Values-Based Approach to Heritage Conservation" 175.

¹⁰⁶Poulios I, "Moving Beyond a Values-Based Approach to Heritage Conservation" 175.

world thus blurring the boundaries between local, national and international.¹⁰⁷ It is important to note that heritage authorities may take advantage of in an attempt to further concentrate on the protection of the material of a site.¹⁰⁸

b) A site with a dwelling community- A living heritage site is also perceived as a site with a dwelling community where a specific community has fixed boundaries living permanently in a site and, thus, differentiated from other communities using a site at other international, national and even local levels.¹⁰⁹

c) A site with a changing or evolving community- This is where the community using a Living heritage site in a different context to the original one, in response to the changing conditions, requirements and values of the society.¹¹⁰

d) A site whose community has claimed a special association with it- A community that a special strong social, spiritual or other cultural association with a living heritage site. A community's claimed special association with a site can be problematic, given that it may be proved historically fake or remain questionable in terms of its historic validity. In any case, a community's claim to a special association with a site is in most instances accompanied by rights over the use, the management and even the ownership of the site, something that acts against the interests as well as the power of the heritage authorities.¹¹¹

e) A site that has not suffered from modernization-A living heritage site is also regarded as one that has not suffered from modernisation, urbanisation and globalization.¹¹² This understanding of a living heritage site is assumed to focus on the 'traditional' that is under assault by, and should thus be protected from, contemporary influences.¹¹³

The key principles of the living heritage approach are: a) recognising communities as the true long-term custodians of their heritage sites¹¹⁴ b) empowering communities in the conservation and managing process, and benefiting from their traditional (and established) values, management systems and maintenance practices¹¹⁵ and c) linking conservation to the

¹⁰⁷Poulios I, *The past in the present*, 25.

¹⁰⁸Poulios I, *The past in the present*, 25.

¹⁰⁹Poulios I, *The past in the present*, 27.

¹¹⁰Poulios I, *The past in the present*, 27.

¹¹¹Poulios I, *The past in the present*, 27.

¹¹²Poulios I, *The past in the present*, 27.

¹¹³Poulios I, *The past in the present*, 27.

¹¹⁴Poulios I, *The past in the present*, 28.

¹¹⁵Poulios I, *The past in the present*, 28.

sustainable development of the communities, by developing a process to manage change and by making heritage relevant to the needs of the contemporary communities.¹¹⁶

3.3.3.2 Critique

The challenge for a living heritage approach is the concept of continuity. Continuity which is much more than the association of a local or a dwelling community, is the association of the original and not an evolving community, is a historically valid and not a claimed association, and can embrace contemporary changes such as modernisation.¹¹⁷ A living heritage approach has also succeeded in embracing indigenous/non-Western communities and cultures but there are cases in which continuity may not necessarily be physically linked to an actual site.¹¹⁸

Despite the criticisms a living heritage approach is favored since it allows for community participation in the identification, management and conservation of monuments. The monument is protected by the people and for the people. The human beings needs and rights are at the core in conservation of cultural heritage. Under the living heritage approach, the mandates of heritage authorities are well spelt out as is also the mandate of the community. In doing so heritage protection and preservation reconcile the needs of human communities by having them at the heart of conservation

¹¹⁶Poulios I, *The past in the present*, 28.

¹¹⁷Poulios I, *The past in the present*, 28.

¹¹⁸Poulios I, *The past in the present*, 28.

CHAPTER 4

The conservation of a monument as cultural heritage from a living heritage approach requires a legal framework. In the legal framework the heritage authorities mandate is set out and the role of communities as well. In this section, I will examine whether the legal framework as is allows for community participation in the conservation of monuments.

4.1 Heritage Legal Framework in Kenya

Notably, legislation, both national and international, is increasingly concerned, not with isolated objects, museum pieces such as were collected for chambers of curiosities in the eighteenth century, but with identifying and preserving what is representative of culture.¹¹⁹ Since there has been no unified system of property law applying to all aspects of cultural manifestations be it movable or immovable objects and intangible things.¹²⁰ Instead what exists are various notions of property law applying to particular aspects of the cultural heritage where those aspects happen to coincide with property rights in respect of other matters.¹²¹ Therefore, what is needed is a coherent system of law applying to all cultural manifestations; a system of law which will take account of the peculiar nature and requirements of those manifestations arising from the need to protect them.¹²² It follows that the inadequacy of the legal and institutional frameworks in addressing the emerging needs of cultural heritage protection is the main cause of the fragility of the current mechanisms of heritage preservation.¹²³

4.2. Community Participation

Under the National Museums and Heritage Act,¹²⁴ fragility is evident in the proviso that National Museums may enter into a written agreement with the owner of a monument and any other person or persons for the protection or preservation of the monument.¹²⁵ The written agreement is for the maintenance of the monument,¹²⁶ the custody of the monument and the

¹¹⁹Prott L. V and O'Keefe P.J, "Cultural Heritage' or 'Cultural Property'?" 312.

¹²⁰Prott L. V and O'Keefe P.J, "Cultural Heritage' or 'Cultural Property'?" 312.

¹²¹Prott L. V and O'Keefe P.J, "Cultural Heritage' or 'Cultural Property'?" 312.

¹²²Prott L. V and O'Keefe P.J, "Cultural Heritage' or 'Cultural Property'?" 312.

¹²³ Sharjah Statement: "Conservation of Cultural Heritage in Times of Crisis in the Arab World" December 2014, Sharjah, UAE

¹²⁴ CAP 216, (2006)

¹²⁵Section 40 (1), National Museums and Heritage Act Cap 216 (2006).

¹²⁶Section 40 (2) (a), National Museums and Heritage Act Cap 216 (2006).

duties of any person who may be employed,¹²⁷ the occupation or use of the monument by the owner or otherwise,¹²⁸ the restriction of the right of the owner or occupier to build or to do other acts or things on or near the site of the monument,¹²⁹ the facilities of access to be permitted to the public or to any portion of the public and to persons deputed by the owner or the National Museum to inspect or maintain the monument,¹³⁰ the payment of any expenses incurred by the owner or by the National Museums in connection with maintenance of the monument,¹³¹ the removal of the monument or any part to a place of safe custody,¹³² the duration of the agreement, with provision for earlier termination thereof by any party,¹³³ the procedure relating to the settlement of any dispute arising out of the agreement,¹³⁴ and any other matter connected with the protection or preservation of the monument which is a proper subject of agreement between the owner and the National Museum.¹³⁵ The terms of this agreement may be altered from time to time with the consent of all parties.¹³⁶

The agreement between the National Museums of Kenya and an person for the conservation of monument is negotiated and entered into without public participation as set out in Article 10 (2) (a).¹³⁷ This is a material based approach where the heritage authority decides the manner under which the monument is conserved without public participation. It could also be due to the perception of the monument a property owned by the government and protected from the people. Therefore, leads to the breaking up of continuity as a precept of a heritage approach and hence fail to be sustainable despite sustainability being a enshrined under Article 10 (2)(d) of the Constitution¹³⁸ as a national value.

The solution to community participation challenge could have been captured in the National Policy on Culture and Heritage of 2009 with regard to Historical Sites, Monuments in the proposition that,

“The Government will establish and fund institutions at different levels to ensure the conservation and promotion of Kenya’s immovable heritage and will further enact laws that

¹²⁷Section 40 (2) (b), National Museums and Heritage Act Cap 216 (2006).

¹²⁸Section 40 (2) (c), National Museums and Heritage Act Cap 216 (2006).

¹²⁹Section 40 (2) (d), National Museums and Heritage Act Cap 216 (2006).

¹³⁰Section 40 (2) (e), National Museums and Heritage Act Cap 216 (2006).

¹³¹Section 40 (2) (g), National Museums and Heritage Act Cap 216 (2006).

¹³²Section 40 (2) (h), National Museums and Heritage Act Cap 216 (2006).

¹³³Section 40 (2) (i), National Museums and Heritage Act Cap 216 (2006).

¹³⁴Section 40 (2) (j), National Museums and Heritage Act Cap 216 (2006).

¹³⁵Section 40 (2) (k), National Museums and Heritage Act Cap 216 (2006).

¹³⁶Section 40 (3), National Museums and Heritage Act Cap 216 (2006).

¹³⁷Constitution of Kenya (2010)

¹³⁸Constitution of Kenya (2010)

provide the appropriate legislative and administrative framework for the protection of sites and monuments.

“The Government will encourage the participation of local communities in the planning and management of sites and monuments.”¹³⁹

The inclusion of community participation in the policy document partially addresses the issue at hand since this informs the amendments that would be possibly done in the current National Museums and Heritage Act. This Act rightfully categorizes monument as cultural heritage but it forgets to reinforce this by providing for community participation. To ensure that the people are the heart of conservation we need to not only have community participation in the constitution and the policy document but also include this essential principle in statute. If legislation aims at preserving immovable heritage, then it ought to capture the values attached to that heritage.¹⁴⁰ Unfortunately, most if not all heritage legislation in Africa is silent when it comes to defining values it seeks to protect.¹⁴¹ Most heritage laws in Kenya express a personal perspective as legislation as regards to monuments which give meaning to individuals only opposed to an all embracing view and as a result irrelevant definitions are provided in our but they are not comprehended by society at large because society does not allow respect attributes of heritage that individuals ascribe to it.¹⁴² The solution to this is involving the community to define values for the law to have the effect of protecting the heritage.¹⁴³ since a harmonious relationship between legislation and practice as the sine qua non for the existence and the continued survival of immovable cultural heritage.

Further, in the formulation laws for the preservation and protection of monuments the people should be at the center not periphery¹⁴⁴ since all persons have a right to culture. Under Article 44 (1) the people of Kenya have inherent right to participate in cultural life. This right is also coined in the Universal Declaration of Human Rights Article 27, *“everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.”*

¹³⁹“National Policy On Culture And Heritage” (2009)

¹⁴⁰Munjeri D, *“Legislation and practices: implications and the way forward,”* Report on Conservation of immovable cultural heritage in sub-saharan Africa, ICCROM Conservation Studies (2009) 3.

¹⁴¹Munjeri D, *“Legislation and practices: implications and the way forward,”* 3.

¹⁴²Munjeri D, *“Legislation and practices: implications and the way forward,”* 3.

¹⁴³Munjeri D, *“Legislation and practices: implications and the way forward,”* 3.

¹⁴⁴Munjeri D, *“Legislation and Practices: the implications and the way forward”* 4.

Moreover, the right to take part in cultural life is the most explicit right in this regard, which is included in the Universal Declaration of Human Rights (Article 27)¹ and the International Covenant on Economic, Social and Cultural Rights (Article 15(1))². Taking part in cultural life requires access to cultural life: without access to culture one is not able to participate in cultural life. The Cultural Charter of Africa adds flesh into the international instruments by providing in Article 2 (a), “access of all citizens to education and to culture.” Additionally, the European court of Justice pointed out in *Kozacıoğlu v. Turkey*¹⁴⁵ that the conservation of the cultural heritage and, where appropriate, its sustainable use, have as their aim, in addition to the maintenance of a certain quality of life, the preservation of the historical, cultural and artistic roots of a region and its inhabitants.¹⁴⁶ The preservation of historic resources has been determined by the courts to be a legitimate governmental objective in the case of *Penn. Cent. Transp. Co. v. New York City*, 438 U.S. 104, 57 L.Ed.2d 631 (1978).¹⁴⁷

4.3. Cultural Significance

Cultural significance means aesthetic, historic, scientific, social or spiritual value for past, present or future generations. It is embodied in the place itself, its fabric, setting, use, associations, meanings, records, related places and related objects. Places may have a range of values for different individuals or groups. The term cultural significance is synonymous with heritage significance and cultural heritage value. Cultural significance may change as a result of the continuing history of the place.

This concept of cultural significance enshrines cultural diversity and democracy in addition to espousing the human right to identity and right to cultural heritage.¹⁴⁸ Consequently, if we incorporate cultural significance in the heritage management legal framework we are reflecting the values of all the different segments of the society whereby heritage becomes for the people and by the people.¹⁴⁹ This values ought to be reflected in the law and as such these will be achieved: The interrelationship of intangible/ tangible, and movable/immovable heritage and there will be move beyond monuments by taking a broader

¹⁴⁵ [GC], no. 2334/03, (2009)

¹⁴⁶ [GC], no. 2334/03, (2009)

¹⁴⁷ COON J.A, “*Legal Aspects of Municipal Historic Preservation*” Local Government Technical Series (2011)

¹⁴⁸ Madiba P, “*The New Heritage Protection For SouthAfrica*” Report on Conservation of immovable cultural heritage in sub-saharan Africa, ICCROM Conservation Studies (2009)

¹⁴⁹ Munjeri D, “*Legislation and practices: implications and the way forward,*” 4.

view of cultural heritage and its relevance in a variety of contexts.¹⁵⁰ If the sites or monuments were not integrated into the country's economic fabric there would be less chance that such heritage would be sustainably maintained much less developed and well managed.¹⁵¹ As such conservation and preservation work would be enriched if it could be based on and promote a peoples relationship with cultural heritage.¹⁵²

In the living heritage approach increased attention has been given to heritage in its widest dimension, involving local communities in the conservation and management, respecting human rights, and taking into account the social and economic factors. This implies that heritage cannot be seen or preserved in isolation nor can it be the sole responsibility of the authority.¹⁵³ It is grounded upon this key principles which are: a) recognising communities as the true long-term custodians of their heritage sites;¹⁵⁴ b) empowering communities in the conservation and managing process, and benefiting from their traditional and established values, management systems and maintenance practices;¹⁵⁵ and c) linking conservation to the sustainable development of the communities, by developing a process to manage change and by making heritage relevant to the needs of the contemporary communities.¹⁵⁶ These principles ought to be set out in the heritage legislation in National Museums and Heritage Act, this is not the case. There is not even a mention of community or participation in the Act. The Act is thus inadequate to tackle monuments conservation as cultural heritage.

¹⁵⁰ Fundamental Concepts arrived at in the Framework of the Africa 2009 Programme, the 3rd Regional Thematic Seminar: Legal Frameworks for the Protection of immovable Cultural Heritage. (2002) Mutare, Zimbabwe. In the seminar there were 13 countries represented, Kenya among them. One of the main objective of the seminar were to, "evaluate the current state of legal frameworks for immovable cultural heritage conservation in Sub-Saharan Africa."

¹⁵¹ Munjeri D, "*The National Heritage Trust Draft Ammendment Bill 2002 of The Republic of Mauritius*" Report on Conservation of immovable cultural heritage in sub-saharan Africa, ICCROM Conservation Studies (2009).

¹⁵² Bluestone D, "*Challenges for Heritage Conservation and the Role of Research on Values*," The Getty Conservation Institute report on Values and Heritage Conservation, (2000).

¹⁵³ Jukilehto J, "*What is modern conservation? Some thoughts about the evolution of modern conservation policies*" 29.

¹⁵⁴ Poullos I, *The past in the present*, 28.

¹⁵⁵ Poullos I, *The past in the present*, 28.

¹⁵⁶ Poullos I, *The past in the present*, 28.

CHAPTER 5

5.1 Conclusion

The African Heritage House as a National Monument will be faced with the challenge of being perceived as cultural property due to its architectural significance as opposed cultural heritage with cultural significance. If the monuments are construed and comprehended as a cultural property a material based approach seems to be the imperative method in its conservation. In this approach the heritage professionals are only concerned with the material fabric of the monuments. The monuments are conserved and protected from human interference. If a monument is viewed as a cultural heritage, a value based approach is used where the heritage professional will conserve a monument due to the inherent values it possess or the extrinsic value the community attaches to the monument. This approach in as much as it gives the community some role in the conservation of the monument the heritage professionals still maintain much say in the conservation of the monuments.

Due to the inefficiency of the values approach a living heritage approach ought to be employed. This is an approach where the monument is conserved due to the values and the cultural significance it has. In this approach, the people are at the centre of the conservation process in that the monument is conserved to ensure that the community interactions to the monument is maintained.

Therefore, the African Heritage House as a National Monument requires a living heritage approach in the conservation. The approach engages the community in conservation, allows the use of the indigenous practices in the conservation process, it is also sustainable way of conserving the monument and this should be entrenched in the national legislation. This ensures that a holistic approach is used in monuments conservation.

5.2 Recommendations

- a.) Inclusion of cultural significance in the National Museums and Heritage Act- this will go a long way in understanding of monuments to be more than merely property but cultural heritage and hence it is recommended that a living heritage approach to be used in the conservation of the monument.
- b.) Inclusion of community participation in the conservation process of national monuments- this is one of the key tenets of a living heritage approach to conservation of monuments. This calls for more engagement of the community in the conservation of monuments through appointment in the monument management team.

- c.) Upholding the right to culture of all people- this is the foundation of a peoples engagement with culture and its various expressions such a monuments.
- d.) Use of a bottom up approach in the conservation of monuments in Kenya- this is involving the community in the conservation of monuments. It includes advocating for the use of indigenous methods in the conservation of monuments. This also ensure that there is sustainability and continuity in the conservation of monuments.

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