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**IMPLEMENTATION OF THE CONVENTION ON THE PROTECTION OF THE  
WORLD CULTURAL AND NATURAL HERITAGE: ANALYSIS OF CHINA AND  
UGANDA**

By

Charlotte Kabaseke\*

**Abstract**

World heritage is fast being depleted especially in the face of urbanization and climate change and there is urgent need to preserve and protect it. International law provides for the preservation and protection of the different forms of heritage. States are therefore obligated to protect the different forms of heritage within their territories. The World Heritage Convention was enacted for the preservation and protection of world heritage but it has had some challenges, among them, implementation at domestic level. Whereas both China and Uganda have ratified the convention, they are both still facing implementation challenges. Employing the doctrinal and comparative legal methods, the paper seeks to examine the efficacy of the World Heritage Convention in preserving world heritage. The paper further seeks to comparatively examine the extent to which China and Uganda have domesticated and implemented the convention. A conclusion is drawn that China has performed much better than Uganda in domesticating as well as the preservation of the world heritage within its jurisdiction. Uganda as well as other countries facing similar challenges as Uganda has great lessons to learn from China. Recommendations are made on how Uganda can improve her own situation.

**Keywords:** World Heritage, Law, Preservation, China, Uganda

**1.0 Introduction**

The concept of heritage is wide with varied meaning based on the geographic location and different people appreciate heritage differently.<sup>1</sup> Heritage has historical, cultural, archaeological and scientific value.<sup>2</sup> In the face of rapid development, urbanization, armed conflict and climate change, the preservation of heritage is under serious threat.<sup>3</sup> There is

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<sup>1</sup> Boer B. & Gruber S., 'Heritage Discourses' in Jessup & Rubenstein (eds), *Environmental Discourses in Public and International Law* (Cambridge: CUP, 2012), pp. 375, 399.

<sup>2</sup> Taylor K., 'Cultural Heritage and Urbanisation in China', 2013 The China Story online Journal <<https://www.thechinastory.org/2013/08/cultural-heritage-and-urbanisation-in-china/>> accessed on 09 June, 2019.

<sup>3</sup> Ibid.

therefore a need to legally preserve and protect it.<sup>4</sup> International law provides for the preservation and protection of the different forms of heritage. Meanwhile, individual states are obligated to protect the different forms of heritage within their territories.<sup>5</sup> The 1972 Convention concerning the protection of the world cultural and natural heritage (World Heritage Convention) serves as the foremost international law treaty relating to the protection and preservation of cultural and natural heritage.<sup>6</sup> Although the Convention has been touted as being progressive in offering protection to cultural and natural heritage, it lacks an effective enforcement mechanism and consequently faces implementation challenges at the domestic level.<sup>7</sup>

At the domestic level, both China and Uganda have ratified the World Heritage Convention and have enacted enabling legislation to incorporate the provisions of the convention in their domestic law. However, these countries are facing challenges in enforcing the Convention in their jurisdictions. For instance, in China, the legislation has been criticised for being ‘backward and low levelled.’<sup>8</sup> It has also been observed that the local governments mandated by the domestic legislation to enforce the law in their various provinces have not been cooperative in enforcing the law.<sup>9</sup> In Uganda, the only law on heritage is dated and does not recognise intangible heritage.<sup>10</sup> The heritage law also has a weak and non-deterrent penal provision which requires a person found guilty of destroying a heritage monument or site to pay a fine of 2000 Uganda Shillings (less than a dollar).<sup>11</sup> This paper therefore seeks to examine efforts by both the Chinese and Ugandan governments in domesticating and

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<sup>4</sup> Ibid.

<sup>5</sup> Boer B. and Gruber S., ‘Heritage Discourses’ (note 1 above), pp. 375- 376.

<sup>6</sup> Gruber S., ‘Protecting China’s Cultural Heritage Sites in Times of Rapid Change: Current Developments, Practice and Law’, (2007), 10 (3) & (4) Asia Pacific Journal of Environmental Law, p. 253.

<sup>7</sup> Ibid p. 263.

<sup>8</sup> Yujun G., Zhihua D. & Xiobing Q., ‘China and International Law on Cultural Heritage, Consumer Protection and Food Security’ in Lingliang & Jiehan (eds), *Annual Report on China’s Practice in promoting the International Rule of Law* (Beijing: Social Sciences Academic Press, 2015), pp. 338-346 at 346.

<sup>9</sup> Articles 6, 7 and 8 of the Law of the People’s Republic of China on Intangible Cultural Heritage 2011; Zhengxin H., ‘Legal protection of cultural heritage in China: a challenge to keep history alive’ 2015 International Journal of Cultural Policy, pp. 1-19 at 15.

<sup>10</sup> Historical Monuments Act (1967) Cap. 46 Laws of Uganda 2000.

<sup>11</sup> S. 19 of the Historical Monuments Act (note 10 above).

implementing the World Heritage Convention in their jurisdictions. It examines the legislation, policies and state practices in the protection and preservation of cultural heritage in these countries. This paper uses the doctrinal and comparative legal methods to examine the World Heritage Convention and the national legal frameworks on the protection and preservation of cultural heritage in China and Uganda, and identify the normative and application weaknesses and gaps in order to offer recommendations. After the introduction follows a descriptive overview of the international and regional laws that govern the protection and preservation of cultural heritage. Section three comparatively examines the legal mechanisms for protecting cultural heritage in China and Uganda. Section four draws the sections together and concludes that although China has better legislation and implementation mechanisms than Uganda, the existing national legislation provides insufficient protection for cultural heritage in both countries. The paper therefore ends by making recommendations on how this situation can be improved.

## **2.0 The World Heritage Convention and the promotion, protection and preservation of cultural and natural heritage**

The World Heritage Convention has been applauded for having contributed a great deal to the protection of world heritage.<sup>12</sup> The World Heritage Convention,<sup>13</sup> in its preamble, provides for the protection and preservation of cultural and natural heritage.<sup>14</sup> It states that, ‘... a convention establishing an effective system of collective protection of the cultural and natural heritage of outstanding universal value, organized on a permanent basis and in accordance with modern scientific method...’<sup>15</sup> The preamble to the Convention further recognizes that ‘the deterioration or disappearance of cultural and natural heritage is harmful impoverishment of the heritage of the whole world’<sup>16</sup> and further that protection of heritage at national level is

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<sup>12</sup> Gruber S., ‘Protecting China’s Cultural Heritage Sites in Times of Rapid Change: Current Developments, Practice and Law’ (note 6 above), p. 260.

<sup>13</sup> World Heritage Convention, adopted on 16 November, 1972, by the General Conference of the United Nations Educational, Scientific and Cultural Organization, meeting in Paris from 17 October to 21 November 1972, at its seventeenth session (entered into force 17 December 1975).

<sup>14</sup> Articles 1 and 2 of the World Heritage Convention (note 13 above).

<sup>15</sup> Preamble to the World Heritage Convention (note 13 above).

<sup>16</sup> Ibid.

insufficient because of limited recourses.<sup>17</sup> The Convention puts in place mechanisms like international cooperation and assistance to enable states to conserve heritage.<sup>18</sup> The Convention, in article 1 defines cultural heritage as ‘monuments, groups of buildings and sites of outstanding universal value from the point of view of history, art or science.’<sup>19</sup> Unlike other Conventions, the World Heritage Convention has been hailed for applying a different approach in using the term ‘cultural heritage’. Other Conventions use the term ‘cultural property.’<sup>20</sup> The definition of ‘cultural heritage’ has however been critiqued for only including immovable items, hence excluding the protection of movable cultural property from the ambit of the Convention’s protection.<sup>21</sup> It has however further been argued the lack of the use of the term ‘immovable’ in the definition implies that movable items are included within the ambit of the Convention’s protection.<sup>22</sup> Article 4 of the Convention provides that it is the duty of states parties to ‘ensure the identification, protection, conservation, presentation and transmission to future generations’ of world heritage, to the utmost of the state’s resources and where appropriate with some financial assistance...<sup>23</sup> This article by implication requires states parties to use the most of their resources to protect world heritage yet the convention in its preamble recognizes that heritage is being depleted as a result of lack of resources.<sup>24</sup> States parties could use this provision to avoid protection of cultural heritage by alleging that they lack resources.

Article 8 of the Convention establishes the World Heritage Committee through which the Convention operates. The committee evaluates the efforts of states to conserve heritage through state reporting, provision of financial support to states upon request and has put in place operational guidelines for the conservation of heritage.<sup>25</sup> The World Heritage

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<sup>17</sup> Ibid.

<sup>18</sup> Article 7 of the World Heritage Convention (note 13 above)

<sup>19</sup> Article 1 of the World Heritage Convention (note 13 above)

<sup>20</sup> Gruber S., ‘Protecting China’s Cultural Heritage Sites in Times of Rapid Change: Current Developments, Practice and Law’(note 6 above), p. 261.

<sup>21</sup> Ibid.

<sup>22</sup> Ibid.

<sup>23</sup> Article 4 of the World Heritage Convention (note 13 above).

<sup>24</sup> Preamble to the World Heritage Convention (note 13 above).

<sup>25</sup> Articles 8-26 of the World Heritage Convention (note 13 above).

Committee has however suffered political pressure from state parties concerning having items placed on the world heritage list which has led the body to bow to state pressure sometimes.<sup>26</sup> Gruber<sup>27</sup> gives an example of ‘the 34th session of the World Heritage Committee in Brasilia in 2010 where 21 properties were inscribed on the world heritage list, although International Union for Conservation of Nature (IUCN) and International Council on Monuments and Sites (ICOMOS) recommended the inscription of less than half of them in their reports to the World Heritage Committee following their evaluations of the properties.’<sup>28</sup> The Committee continues to face growing financial pressure especially with the growing increase of world sites which makes monitoring difficult.<sup>29</sup>

Article 3 and 4 of the Convention provide that states parties have a duty to ‘identify, conserve and protect’ different property of outstanding universal value to be included on the world heritage list.<sup>30</sup> The Operational Guidelines for the Implementation of the World Heritage Convention<sup>31</sup> as established by the World Heritage Committee, define the term ‘outstanding cultural value’ as, ‘cultural and/or natural significance which is so exceptional as to transcend national boundaries and to be of common importance for present and future generations of all humanity.’ For cultural or natural heritage to be of outstanding cultural value, it has to qualify as being of integrity and has to have authenticity<sup>32</sup> as regards its ‘design, material, workmanship and setting.’ This however gives room for the heritage item to be modified for purposes of preservation. For example, the buildings made of wood or which have had to be

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<sup>26</sup> Gruber S., ‘Convention Concerning the Protection of the World Cultural and Natural Heritage 1972’ in: Fitzmaurice and Tanzi & Papantoniou (eds), *Elgar Encyclopedia of Environmental Law: Multilateral Environmental Treaties* (Cheltenham: Edward Elgar Publishing, 2017), pp. 60-66 at 66.

<sup>27</sup> Gruber (note 26 above), pp. 64-66; World Heritage Committee, *Nominations to the World Heritage List*, UNESCO Doc WHC-10/34.COM/8B (Paris, 31 May, 2010).

<sup>28</sup> Gruber S., ‘Convention Concerning the Protection of the World Cultural and Natural Heritage 1972’ (note 26 above), pp. 64-66.

<sup>29</sup> *Ibid* p. 65.

<sup>30</sup> Articles 3 and 4 of the World Heritage Convention (note 13 above).

<sup>31</sup> Operational Guidelines for the Implementation of the World Heritage Convention 12 July, 2017, WHC.17/01 <<http://whc.unesco.org/en/guidelines/>> accessed on 11 June, 2018.

<sup>32</sup> Operational Guidelines (note 31 above), Para. 78.

completely replaced after being gutted by fire.<sup>33</sup> A case in point is the Forbidden City and Summer Palace in China.<sup>34</sup> Another case in point is tombs of Buganda Kings at Kasubi in Uganda which were gutted by fire<sup>35</sup> but are still on the world heritage list. States parties are at liberty to nominate heritage which meet the criteria to be added to the world heritage list. This, as explained by Gruber<sup>36</sup> is an indicator that the World Heritage Convention respects state sovereignty in accordance with article 6 of the Convention which provides that, ‘Whilst fully respecting the sovereignty of the States on whose territory the cultural and natural heritage mentioned in Articles 1 and 2 is situated..’ It is important to note that even if article 6 further provides that, ‘...without prejudice to property right provided by national legislation, the States Parties to this Convention recognize that such heritage constitutes a world heritage for whose protection it is the duty of the international community as a whole to co-operate...,’ Gruber<sup>37</sup> points out that the lack of an express obligation on state parties to nominate items for the world heritage list in the interest of state sovereignty could be interpreted as defeating the aims of the Convention.

The World Heritage Committee has a list of world heritage which is under threat of potential danger.<sup>38</sup> The Committee does not need the permission of states parties before including an item on that list but state parties which have items included on this list are obligated to ensure that the specific item that has been listed is protected from the looming danger.<sup>39</sup> Gruber however emphasizes that without the willingness of the respective state parties to cooperate, the purpose of this provision will be defeated.<sup>40</sup> Currently, China has no item of the list world

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<sup>33</sup> Gruber S., ‘Protecting China’s Cultural Heritage Sites in Times of Rapid Change: Current Developments, Practice and Law’ (note 6 above), p. 262.

<sup>34</sup> Ibid.

<sup>35</sup> BBS news, ‘Uganda’s Kasubi royal tombs gutted by fire’ Wednesday, 17 March, 2010 <<http://news.bbc.co.uk/2/hi/africa/8571719.stm>> accessed on 11 June, 2018.

<sup>36</sup> Gruber S., ‘Protecting China’s Cultural Heritage Sites in Times of Rapid Change: Current Developments, Practice and Law’ (note 6 above), p. 262.

<sup>37</sup> Ibid.

<sup>38</sup> World Heritage Convention (note 13 above), article 11 (4); UNESCO, ‘List of world heritage in danger’ <<http://whc.unesco.org/en/danger/>> accessed on 11 June, 2018.

<sup>39</sup> Gruber S., ‘Protecting China’s Cultural Heritage Sites in Times of Rapid Change: Current Developments, Practice and Law’ (note 6 above), p. 264.

<sup>40</sup> Ibid.

heritage in danger but Uganda has one item, the tombs of Buganda Kings at Kasubi in Uganda currently under study.<sup>41</sup> The tombs which were gutted by fire on 16<sup>th</sup> March 2010 are still under threat of fire, road construction and have a poor management and tourism plan.<sup>42</sup> The Heritage Committee, having considered Uganda's State of Conservation report (2018) concluded that the tombs were still under threat. The Committee decided to retain them on the list of world heritage in danger. This is because there is no fire fighting equipment in place and no sufficient security to quickly act in case there is another fire outbreak.<sup>43</sup> Article 5 (b) of the Convention requires states 'to set up services for the protection of world heritage with appropriate staff possessing the means to discharge their functions.' This provision is good and in the interest of heritage protection and conservation but it does not define what amounts to appropriate staff. Countries would require a lot of funds in order to be able to hire staff with knowledge on world heritage. In some countries like Uganda, so much cultural value is attached to cultural heritage and staffs are traditionally selected.<sup>44</sup> Despite the mechanisms put in place by the World Heritage Convention to safeguard heritage around the world, the Convention has been criticised for not having a robust enforcement mechanism and leaving matters of enforcement to the state parties in a bid to respect state sovereignty.<sup>45</sup> At Regional level, Uganda is a party to the 1981 African Charter on Human and People's Rights (African Charter).<sup>46</sup> Article 17 (2) and (3) of the African Charter provides that 'every individual has a right to take part in the cultural life of his community' and that the state is under duty to protect traditional values recognised by the community. Further, article 22 provides that all people have the right to '...cultural development with due regard to their

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<sup>41</sup> UNESCO, 'List of world heritage in danger' (note 38 above).

<sup>42</sup> UNESCO, 'State of Conservation, Tombs of Buganda Kings at Kasubi (Uganda)' <<http://whc.unesco.org/en/soc/3781>> accessed on 11 June, 2018.

<sup>43</sup> Ibid.

<sup>44</sup> UNESCO, 'Tombs of Buganda Kings at Kasubi' 'WHC Nomination Documentation' p. 26 <<http://whc.unesco.org/en/list/1022>> accessed on 11 June, 2018.

<sup>45</sup> Gruber S., 'Protecting China's Cultural Heritage Sites in Times of Rapid Change: Current Developments, Practice and Law' (note 6 above), p. 263.

<sup>46</sup> African Charter of Human and People's Rights, adopted in Nairobi on 27 June, 1981 and entered into force on 21 October, 1986. <[https://au.int/sites/default/files/treaties/7770-treaty-0011\\_-\\_african\\_charter\\_on\\_human\\_and\\_peoples\\_rights\\_e.pdf](https://au.int/sites/default/files/treaties/7770-treaty-0011_-_african_charter_on_human_and_peoples_rights_e.pdf)> accessed on 18 June, 2018.



freedom and identity and in the equal enjoyment of the common heritage of mankind.’ In addition, article 29 (7) provides that every individual preserve and strengthen positive African cultural values in his relations with other members of the society.’ These provisions imply that states parties are under duty to ensure that their citizens enjoy their culture and their cultural heritage. Conversely, individuals should make effort to take part in cultural life and preserve culture, making public participation crucial in the preservation of cultural heritage. China on the other hand has entered into various bi-lateral agreements in the interest of the protection of cultural heritage. These include; ‘Agreement between the State Administration of Cultural Heritage of the People’s Republic of China and the Ministry of Culture of the Federal Republic of Burma on Promoting exchange and cooperation in the field of Cultural Heritage.’<sup>47</sup> By this agreement, Burma and China agreed to collaborate in the protection of Cultural property. China also signed an agreement with France. The Administrative Agreement between the Director General of State Administration of Cultural Heritage of the People’s Republic of China and the Minister of the Ministry of Culture and Public Information of France on the Exchange and Training Program in the Field of Cultural Heritage.’<sup>48</sup> This agreement facilitates collaboration between France and China in the protection of cultural property. Through this partnership, some gold artefacts that had been illegally smuggled out of China over 20 years ago were brought back to China.<sup>49</sup> This implies that China, unlike Uganda has a wider base at regional level through which to ensure the fulfilment of its obligations under the World Heritage Convention. Clearly, China has put more effort in the protection of heritage by entering into several bi-lateral agreements. Uganda on the other has not entered into any bi lateral agreements. It can therefore be concluded at this stage that China has taken more steps and is doing better than Uganda in its efforts to legally protect the world heritage in its jurisdiction. This section having analysed efforts to protect heritage at the international and regional levels, the next section

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<sup>47</sup> Cultural Heritage Agreement between China and Burma, Signed on 27 June, 2014 in China.

<sup>48</sup> Cultural Heritage Agreement between China and France, Signed on 21 October, 2014.

<sup>49</sup> Yujun G., Zhihua D. and Qiao Xiobing Q., ‘China and International Law on Cultural Heritage, Consumer Protection and Food Security’ (note 8 above), p. 344.

comparatively analyses the extent to which the international and regional provisions have been implemented at national level by China and Uganda.

### **3.0 Implementation of the World Heritage Convention at National Level: A Comparative analysis of China and Uganda's Legal Framework on Cultural Heritage**

#### **3.1 Introduction**

Despite the fact that it is the fourth largest country in the world in size and has the largest population in the world, China is a unitary state that is governed by one central government.<sup>50</sup> China's local governments at the provinces are still under the central government's control.<sup>51</sup> China has had temporary Constitutions since 1949<sup>52</sup> when the People's Republic of China came into being.<sup>53</sup> It was not until 1982 that China got a formal Constitution<sup>54</sup> which is hinged on the principles of 'socialism and people's democratic dictatorship,<sup>55</sup> leadership of the communist party and Marxism.'<sup>56</sup> China is a monist state and although no express provision exists under the Constitution, in practice, international law takes precedence over domestic law.<sup>57</sup> Provisions of the international treaties that China has acceded to, take precedence over the civil provisions of China's law, if the two provisions are different.<sup>58</sup> China ratified the World Heritage Convention on 12<sup>th</sup> December 1985. Similar to China,

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<sup>50</sup> Preamble to the Constitution of China, 1982 (as amended); Chung J. H., 'China's Local Governance in Perspective: Instruments of Central Government Control', (2015), 4 (1), *The China Journal*, <<https://www.journals.uchicago.edu/doi/full/10.1086/683210>> accessed on 16 June, 2018.

<sup>51</sup> *Ibid* p. 5.

<sup>52</sup> Ding Z., 'A Historical Look at China's Constitutional Framework', (1987), 12 *In The Times Journal*, p. 1 <<http://www.cpp.edu/~zding/publication/Chinese%20Constitution.doc>> accessed on 16 June, 2018.

<sup>53</sup> Farooq U., 'Brief History of Constitution of China - Constitutional Law Notes', 2014 <<http://www.studylecturenotes.com/constitutional-laws/brief-history-of-constitution-of-china-constitutional-law-notes>> accessed on 16 June, 2018.

<sup>54</sup> Ding Z., 'A Historical Look at China's Constitutional Framework' (note 52 above), p.1.

<sup>55</sup> Article 1 of the Constitution of China 1982 (as amended).

<sup>56</sup> Farooq U., 'Brief History of Constitution of China - Constitutional Law Notes' (note 53 above), p.45.

<sup>57</sup> Keyuan Z., 'International Law in the Chinese Domestic Context', (2010) 44 (3), *Valparaiso University Law Review*, pp. 935-956 at 936.

<sup>58</sup> General Principles of the Civil Law of the People's Republic of China, adopted at the Fourth Session of the Sixth National People's Congress on April 12, 1986 and promulgated by Order No. 37 of the President of the People's Republic of China on April 12, 1986) Article 142.

Uganda is a unitary state governed by a president who is elected every five years.<sup>59</sup> The Constitution of the Republic of Uganda was promulgated by the Constituent Assembly in 1995 after a history of political and constitutional instability.<sup>60</sup> Uganda is currently governed by the multiparty system with the National Resistance Movement Party (NRM) as the incumbent party in power.<sup>61</sup> Uganda is a dualist state and in order for an international or regional instrument to be applicable in Uganda, it has to be enabled by an Act of Parliament.<sup>62</sup> Uganda ratified the World Heritage Convention on 20<sup>th</sup> November 1987. China and Uganda are rich in natural and cultural, tangible and intangible as well as movable and immovable heritage.<sup>63</sup> China and Uganda have properties on the world heritage list.<sup>64</sup> China and Uganda have laws and policies for the protection, promotion and preservation of heritage.<sup>65</sup> For purposes of this section the main focus will be on the ‘The Law of the Peoples Republic of China on the Protection of Cultural Relics’ and the ‘Historical Monuments Act’ of Uganda. This is because they are directly enacted under the World Heritage Convention for purposes of tangible cultural heritage protection. The other Laws, Regulations and

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<sup>59</sup> Commonwealth Secretariat, ‘Uganda: Constitution and Politics’, 2018 <<http://www.commonwealthofnations.org/sectors-uganda/government/>> accessed on 16 June, 2018.

<sup>60</sup> Preamble para. 1 to the Constitution of the Republic of Uganda, 1995.

<sup>61</sup> S. 3 of the Political Parties and Organisations Act, 2005; Makara S., Rakner L. and Svåsand L., ‘Turnaround: The National Resistance Movement and the Reintroduction of a Multiparty System in Uganda’, (2009) 30 (2), *International Political Science Review*, pp.185 – 2004 at 190 and 198.

<sup>62</sup> Article 123 (2) of the Constitution of the Republic of Uganda, 1995; Sections 2 and 4 of the Ratification of Treaties Act Cap. 204, Laws of Uganda 2000.

<sup>63</sup> Bell J. S., ‘Introduction to the cultural heritage issue’, (2016) 48 (3), *Chinese Law and Government*, pp. 179 – 183 at 179; Gruber S., ‘Protecting China’s Cultural Heritage Sites in Times of Rapid Change: Current Developments, Practice and Law’, (2007) 10 (3) & (4), *Asia Pacific Journal of Environmental Law*, p. 253; Nsibambi F. S., ‘Reviewing Uganda’s Heritage Legislation to Suit Contemporary Dynamics’, (2011), *Legal Issues in Conservation*, P.1.

<sup>64</sup> China properties inscribed on the world heritage list (53) <<http://whc.unesco.org/en/statesparties/cn>>; Uganda properties inscribed on the world heritage list (3) <<http://whc.unesco.org/en/statesparties/ug>> accessed on 06 June, 2018.

<sup>65</sup> Law of the People’s Republic of China on the Protection of Cultural Relics 1982 (revised in 2002); Law of the People’s Republic of China on Intangible Cultural Heritage 2011; Constitution of the Republic of Uganda 1995; Historic Monuments Act 1967 (Uganda), Traditional Rulers (Restitution of Assets and Properties) Act 1993 (Uganda), Local Government Act 1997 (amended 2002) (Uganda), National Environment Management Act 1998 (Uganda), National Cultural Policy 2006 (Uganda).

policies that protect heritage in China and Uganda may just be mentioned for purposes of clarification.

### 3.2 China

China has very rich cultural heritage.<sup>66</sup> China's cultural heritage includes architectural designs, paintings, tombs, cultural practices, temples and palaces among others. Some of China's world heritage was destroyed during the Cultural Revolution and what was left is being threatened by destruction on top of the ordinary wear and tear.<sup>67</sup> In the era of rapid development, industrialization and urbanization, some of the cultural heritage is being razed in favour of modern buildings.<sup>68</sup> Article 22 (2) of China's Constitution provides that, 'the state protects places of scenic and historical interest, valuable cultural monuments, and treasures and other important items of China's historical and cultural heritage.'<sup>69</sup> A constitutional provision on cultural heritage protection implies that China is committed to cultural heritage protection. China enacted the Law of the People's Republic of China on the Protection of Cultural Relics (Cultural Relics Law).<sup>70</sup> Article 1 of this law provides that, 'this law is formulated in accordance with the Constitution in order to strengthen the protection of cultural relics, to inherit the outstanding historical and cultural heritage of the Chinese nation, to promote scientific research, to conduct education in patriotism and revolutionary traditions, and to build socialist spiritual civilization and material civilization.' This provision further strengthens China's commitment to cultural heritage protection. This Law provides for the management and protection of cultural heritage. Article 8 of the Cultural Relics Law places the responsibility of the protection of cultural relics with the administrative department of state council.<sup>71</sup> A body, State Administration of Cultural Heritage (SACH) oversees the protection of cultural

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<sup>66</sup> Huo Z., 'Legal protection of cultural heritage in China: a challenge to keep history alive', (2015) *International Journal of Cultural Policy*, pp. 1-19 at 15.

<sup>67</sup> Huo Z., (note 66 above), p. 1; Gruber S. 'Protecting China's Cultural Heritage Sites in Times of Rapid Change: Current Developments, Practice and Law' (note 6 above) pp. 254 & 260.

<sup>68</sup> Huo Z., 'Legal protection of cultural heritage in China: a challenge to keep history alive' (note 66 above) p. 1.

<sup>69</sup> Article 22 of the Constitution of the Peoples' Republic of China 1982 as amended.

<sup>70</sup> Law of the People's Republic of China on the Protection of Cultural Relics (Cultural Relics Law) (1982) ( as revised in 2015).

<sup>71</sup> Article 8 of the Cultural Relics Law (China) (note 70 above).

heritage.<sup>72</sup> This arrangement is vital for accountability purposes. Article 5 vests ownership of cultural heritage in the state. This arrangement is good because it enables the government oversee the protection of cultural heritage. The arrangement of state ownership of heritage might however restrict public participation in management of cultural heritage. Whereas article 6 recognises private ownership of heritage items, private owners are expected to abide by the 'state laws and regulations' on protection of cultural relics. There is therefore need for these two legal provisions to be reconciled to ensure that the government does not suppress or override public participation while ensuring that there is no misuse of the cultural heritage site by private stake holders. The protection and management of cultural heritage<sup>73</sup> is also provided for, as well as mechanisms for the establishment of protected areas at national and provincial levels. Regional and Local Governments (LG's) are mandated to establish their own organizations for heritage management overseen by SACH.<sup>74</sup> This arrangement has been said to be problematic because even when overseen by the national body, LG's might have ideas that clash with those of the central government and there will be no uniformity across LG's.<sup>75</sup> It has also been pointed out that the heads of the LG's are not democratically elected, but are appointed by the Communist Party and whose evaluation since the economic reform is based on the GDP of their areas.<sup>76</sup> The LG leaders have been more interested in the economic growth of their regions, rather than conservation of world heritage in their LG's. A case in point is when the Beijing Municipal Government acted in favour of a state developer and demolished the home of a revered architect, Sicheng Liang, which had been listed by the SACH as a cultural heritage of state importance.<sup>77</sup> Article 12 provides for incentives to be given to whoever makes efforts to protect the cultural relics of China. This encourages the communities to value and protect cultural heritage. This practice may not be good because

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<sup>72</sup> Government of China, 'State Administration of Culture Heritage' 2014 State Council of the People's Republic of China' <[http://english.gov.cn/state\\_council/2014/10/06/content\\_281474992893400.htm](http://english.gov.cn/state_council/2014/10/06/content_281474992893400.htm)> accessed on 18 June, 2018.

<sup>73</sup> Articles 2, 5, 6, 7 and 8 of the Cultural Relics Law (China) (note 65).

<sup>74</sup> Article 8 of the Cultural Relics Law (China); Articles 6, 7 and 8 of the Law of the People's Republic of China on Intangible Cultural Heritage 2011.

<sup>75</sup> Huo Z., 'Legal protection of cultural heritage in China: a challenge to keep history alive'(note 66 above) p. 1.

<sup>76</sup> Ibid p. 14.

<sup>77</sup> Ibid.

people might not protect cultural heritage for its value but rather for the incentive. Whereas it is acknowledged that incentives may encourage more sensitization about heritage, people instead need to be objectively sensitized about the value of heritage and the value of protecting it. This is because placing emphasis on incentives may encourage a situation where the safety and quality of heritage is compromised in favour of the highest bidder in terms of monetary incentives. Part VII of the Act provides for the legal liabilities for the violation of any provision of the Act. Article 64 provides that any person that violates the provision of the Act is liable to criminal action and section 65 provides that whoever causes loss or damage to cultural relics is liable to civil action. Section 66 provides that whoever unlawfully causes removal or damage to cultural relics through construction is liable to pay a fine of 50,000 to 500,000 Renminbi (7765,25 dollars to 77647,50, US dollars) depending on the extent of damage caused. These provisions deter potential crimes against cultural relics. The Cultural Relics Law has been criticized for being a strategy to 're-establish the China Communist Party after the trauma caused by the cultural depression'<sup>78</sup> This is because by re-establishing cultural heritage through the law after a depression, the communist party hoped to gain an edge over other political parties, hence a political strategy. It can therefore be argued that heritage might not necessarily have been on the key agenda of the communist party but for purposes of gaining political ground, cultural heritage was given attention. Due the growing demand for art products, there is growth in illicit trade of cultural products, despite China's laws and harsh penalties against such acts.<sup>79</sup> This is an indicator that the law alone might not be enough to protect cultural heritage, but people need to be sensitized about the value of cultural heritage. One would also wonder how the products get sold if they are within secured places. It is possible that the people supposed to protect them are the ones who sell them off. This could be argued to be one of the obstacles to the poor enforcement and implementation of the heritage laws. China also enacted the Law of the People's Republic of China on Intangible Cultural Heritage 2011 which recognises intangible heritage in China and seeks to provide for 'identification, recording filing...and putting in place measures to save and

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<sup>78</sup> Bell J. S., 'Introduction to the Cultural Heritage Issue', (note 63 above) 2016, p. 179.

<sup>79</sup> Huo Z., 'Legal protection of cultural heritage in China: a challenge to keep history alive' (note 66), pp. 1-2.

protect intangible heritage which reflect the traditional culture of China.’<sup>80</sup> The intangible heritage should have authenticity, integrity and continuity.’<sup>81</sup> Chapter 5<sup>82</sup> is on legal liability for misuse and non-protection of intangible cultural heritage and provides for punishment in case anyone breaches the provisions of the Act. This act is a deterrence for potential offenders. China has a Ministry of Culture and Tourism which is in charge of cultural matters, including cultural heritage.<sup>83</sup> China has many other laws regulations and ordinances to protect and preserve cultural heritage and they include; Regulations of the People's Republic of China on the Protection of Cultural Relics Act (2017 second revision). Despite China’s rich cultural and natural heritage, the government of China has been criticized for not according the cultural and natural heritage the value due to them.<sup>84</sup> This has been attributed to the poor implementation of the legal provisions in respect of cultural and natural heritage protection. This has partly been attributed to financial challenges faced by China. In addition, China lacks cooperation from the different provinces as well as lack of experts required for purposes of restoration of the sites.<sup>85</sup>

### 3.3 Uganda

Similar to China, Uganda has rich ‘historic, natural and cultural heritage.’<sup>86</sup> As discussed in the Chinese context, Uganda is facing challenges in the protection of its heritage due to development and the threat of globalization.<sup>87</sup> Uganda’s Constitution of 1995, in its national objective and principle of state policy XXV provides for the preservation and promotion of the country’s heritage. However unlike China, this provision remains an objective, making it

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<sup>80</sup> Article 3 of the Law of the People's Republic of China on Intangible Cultural Heritage 2011 (note 65 above).

<sup>81</sup> Article 4 of the Law of the People's Republic of China on Intangible Cultural Heritage 2011(note 65 above).

<sup>82</sup> Article 64 and 65 of the Cultural Relics Law (China) (note 65 above).

<sup>83</sup> People’s Republic of China, ‘Ministry of culture and tourism of the People’s Republic of China’ <<http://en.cnta.gov.cn/>> accessed on 11 June, 2018.

<sup>84</sup> Gruber S., ‘Protecting China’s Cultural Heritage Sites in Times of Rapid Change: Current Developments, Practice and Law’ (note 6 above), p. 254.

<sup>85</sup> Ibid p. 254.

<sup>86</sup> Nsibambi F. S., ‘Reviewing Uganda’s Heritage Legislation to suit contemporary dynamics’ (note 63 above), p.1.

<sup>87</sup> Ibid.

non-binding. Article 37 of the Constitution of Uganda recognizes the right to culture and provides that, ‘Every person has a right as applicable to belong to, enjoy, practice, profess, maintain and promote any culture, cultural institution, language, tradition, creed or religion in community with others,’<sup>88</sup> This provision places an obligation on the government to protect the right to culture just as it would protect any other right. Protection of this right comes with the protection of cultural heritage, both tangible and intangible especially since it does not make any reference to any specific element of culture. The Historic Monuments Act of 1967 (The Act) is the only legislation in Uganda. The long title to the Act provides that, ‘.... directly provides for the protection and preservation of heritage. It recognizes ‘historical monuments and objects of archeological, paleontological, ethnographic and traditional interest.’<sup>89</sup> In providing for the protection and maintaining of sites, Section 1(1) states that, “the Minister may, by statutory instrument, declare any object of archaeological, paleontological, ethnographic, traditional or historical interest to be a preserved object for the purposes of this Act. The Act has been criticized for only recognizing immovable heritage and not movable heritage.<sup>90</sup> Further, the Act does not recognize intangible heritage, yet unlike China, Uganda does not have any other law specific to heritage or intangible heritage. The Baganda tombs have been recognized for their intangible heritage which is linked to spiritual beliefs,<sup>91</sup> yet this is not recognized under the law and it is not clear how this is handled even at the site itself.<sup>92</sup> Uganda however has a Culture Policy<sup>93</sup> which, in its article 2.2 provides that,

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<sup>88</sup> Article 37 of the Constitution of Uganda.

<sup>89</sup> Long title to the Historical Monuments Act, 1967 Chapter 46 Laws of Uganda 2000.

<sup>90</sup> Nsibambi F. S., ‘Reviewing Uganda’s Heritage Legislation to suit contemporary dynamics’ (note 63 above), p.3.

<sup>91</sup> UNESCO, ‘Tombs of Buganda Kings at Kasubi’ (note 44), P. 21 & 26; World Heritage Committee, ‘Imperial Tombs of the Ming and Qing Dynasties, state of administration of the Peoples Republic of China’ WHC Nomination Documentation, 2 December, 2000 p. 9 <<https://whc.unesco.org/uploads/nominations/1004ter.pdf>> accessed on 10 June, 2018.

<sup>92</sup> UNESCO Regional Office (East Africa), ‘Evaluation Mission 3 on the reconstruction of Muzibu – Azaala – Mpanga tombs of Buganda Kings at Kasubi, a world heritage site of Uganda’ p. 18 <<https://whc.unesco.org/document/141625>> accessed on 10 June, 2018.



‘the cultural heritage of Uganda includes artistic and cultural expressions. These are; language and literary arts, performing arts, visual arts and handicrafts, indigenous knowledge, cultural beliefs, traditions and values, cultural sites monuments and antiquities.’

Whereas this provision is progressive in its recognition of both tangible and intangible heritage, Uganda needs to take the step of transforming this policy into a legally binding law. Section 8 of the Act provides for the maintenance and inspection by the inspector of monuments but the Act is not being enforced even in the face of destruction of heritage sites. For example, when the Fort Lugard was destroyed and replaced with a mosque, the provisions were not invoked.<sup>94</sup> Section 19 of the Act provides that any one who destroys a cultural heritage or contravenes any provision of the Act is liable to pay a fine of 2000 Uganda shillings (less than 1 US dollar) or imprisonment not exceeding 6 months or both.<sup>95</sup> This provision is very weak compared to China’s penalties which are severe and hefty with offenders facing criminal charges and paid fines not less than 50,000 Renminbi (About 7,075.74 US dollars).<sup>96</sup> This can easily deter offenders. The Ugandan penal provision is an indicator that the law is very dated and needs amendment to fit the times and era, in which cultural heritage are in danger due to the already outlined factors.

Beside the weak law governing world heritage in Uganda, there are other challenges like ignorance about world heritage and its value as well as lack of political will.<sup>97</sup> Culture is viewed as backward by some people who prefer modernization.<sup>98</sup> There is also lack of funds to implement the few relevant and weak legal provisions that Uganda has.<sup>99</sup> The government of Uganda has also been blamed for neglecting its cultural heritage.<sup>100</sup> For example the fire

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<sup>93</sup> Government of Uganda, *Uganda National Culture Policy 2006* (Uganda: Ministry of Gender, Labour and Social Development, 2006), <[http://ocpa.irmo.hr/resources/policy/Uganda\\_Culture\\_Policy-en.pdf](http://ocpa.irmo.hr/resources/policy/Uganda_Culture_Policy-en.pdf)> accessed on 09 June, 2018.

<sup>94</sup> Nsibambi F. S., ‘Reviewing Uganda’s Heritage Legislation to suit contemporary dynamics’ (note 63 above) p.3.

<sup>95</sup> S. 19 of the Historical Monuments Act (Uganda) (note 65 above).

<sup>96</sup> Articles 64 and 65 of the Cultural Relics Law (China) (note 65 above).

<sup>97</sup> Nsibambi F. S., ‘Reviewing Uganda’s Heritage Legislation to suit contemporary dynamics’(note 63) p. 1.

<sup>98</sup> Ibid.

<sup>99</sup> Ibid.

<sup>100</sup> Ibid.

that gutted the tombs of the Baganda kings was blamed on neglect by the government.<sup>101</sup> Unlike, China, Uganda lacks a specific ministry to promote cultural heritage. Cultural heritage is handled by the Ministry of Tourism, Wild Life and Antiquities, which has a department in charge of Museums and monuments.<sup>102</sup> This only takes care of specific tangible cultural heritage whereas matters concerning intangible cultural heritage are handled by the Ministry of Gender, Labour and Social Development.<sup>103</sup> This is an indicator that issues concerning cultural heritage are scattered and mixed up under different ministries which are in charge of many other things and cultural heritage may not be given the due attention it needs. Cultural heritage has a negligible budgetary allocation of only 0.003 percent per year.<sup>104</sup> Similar to China, cultural matters are decentralized at local government level.<sup>105</sup> This could be subject to abuse especially since Uganda lacks a specific government body in place to oversee the activities at local government level, and there are hardly any experts at local government level to properly handle cultural heritage affairs. There is a risk of cultural heritage not being given the due attention it deserves. Having analyzed the extent to which China and Uganda have incorporated international and regional legal provisions within their national laws, it is concluded that China has performed better than Uganda in the domestication of the international and regional legal provisions. The next section will review the extent to which these provisions have been enforced in China and Uganda.

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<sup>101</sup> Ibid.

<sup>102</sup> Government of Uganda, 'Ministry of Tourism, Wildlife and Antiquities' <<http://www.gou.go.ug/ministry/ministry-tourism-wildlife-and-antiquities>> Accessed on 09 June, 2018.

<sup>103</sup> Nyiracyiza J., 'Archeology Collections of the Uganda National Museum: Preservation and Commemoration of Our Cultural Heritage' (2009) 12 (1), Africa Diaspora Archaeology Newsletter, p. 6; Government of Uganda, 'Ministry of Gender, Labour and Social Development' <<http://www.gou.go.ug/ministry/ministry-gender-labour-and-social-development>> accessed on 09 June, 2018.

<sup>104</sup> Uganda Coalition on Economic, Social and Cultural Rights (UCESCR), 'The state of economic, social and cultural rights in Uganda and emerging issues' Joint Submission to the United Nations Universal Periodic Review (UPR) of Uganda Second Cycle Twenty Sixth Session of the UPR Human Rights Council 31 October - 11 November 2016, p. 11.

<sup>105</sup> Article 178 of the Constitution of Uganda 1995; Sections 8 (1)(1); 9 (f) (g) (h) and Schedule 5 of the Local Governments Act 1997 Cap 243, Laws of Uganda 2000 as amended.

#### **4.0 Management of China's Ming Tombs and Uganda's Tombs of the Buganda Kings (Buganda Tombs)**

China is home to the imperial tombs of the Ming and Qing Dynasties and Uganda is home to the tombs of Buganda Kings at Kasubi which are both cultural sites listed on the World Heritage List.<sup>106</sup> The Ming tombs belong to the state according to section 5 of the Cultural Relics Law of China<sup>107</sup> which provides for state ownership of all ancient tombs. This makes the tombs more protected within the ambit of the laws of China on cultural heritage as already outlined in Section 2 of this paper. Unlike China, the government of Uganda does not take over ownership of the cultural heritage which is privately owned but rather enters into maintenance and custody agreements with the owners of the property, if any.<sup>108</sup> The Buganda tombs are privately owned by the Buganda kingdom.<sup>109</sup> The central government only retains a supervisory and at times a partnership role.<sup>110</sup> For example, the Buganda Kingdom, in partnership with the Uganda government launched the 'Kabaka (King) heritage trail' which is aimed at encouraging the civil society who live around the tombs to get involved in maintenance of the site and in turn they can make products which they can sell to the tourists or do performances for the guests at a fee, part of which can be used to further maintain the heritage site.<sup>111</sup> This is an indicator that Uganda has encouraged public participation in the management of cultural heritage. This has not been without challenges, because civil society ideas sometimes clash with those of the government. State ownership is advantageous because it comes with an annual state budget allocation of 1 million Renminbi (about

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<sup>106</sup> UNESCO, 'World Heritage List' <<https://whc.unesco.org/en/list/>> accessed on 18<sup>th</sup> of June, 2018.

<sup>107</sup> Cultural Relics Law (China) (note 65 above).

<sup>108</sup> S. 1 (3) of the Historical Monuments Act' 1967 Laws of Uganda, 2000.

<sup>109</sup> S. 2 and Schedule to the Traditional Rulers (Restitution of Assets and Properties) Act 1993 Chapter 257, Laws of Uganda, 2000; Statute no. 7 Constitutional (Amendment) Statute 1993; Statute no.8 Traditional Rulers (Restitution of Assets and Properties) Statute 1993; Kamuhangire E., 'Formal legislation and traditional heritage management systems: A case of interdependence in Uganda' in Ngoro & Pwiti, *Legal Frameworks for the protection of immovable cultural heritage in Africa* (Italy: ICCROM, 2009), pp. 27 – 31 at 31; UNESCO, 'Tombs of Buganda Kings at Kasubi' p. 21 & 26.

<sup>110</sup> Kamuhangire E., (note 109 above).

<sup>111</sup> Kamuhangire E., (note 109 above); Government of Uganda, 'Report on the state of conservation of the tombs of Buganda Kings at Kasubi' 28 February, 2018 <<http://whc.unesco.org/en/list/1022/documents/>> accessed on 10 June, 2018, p. 4-5.

141,514.80 US dollars) for maintenance of the tombs.<sup>112</sup> The budget allocation for all cultural heritages in Uganda is 0.003 % of the annual budget, which is too little to carry out all the required affairs of all the cultural heritage nation-wide and later on maintenance work.<sup>113</sup> Funds for maintaining the site largely come from the visitors to the site and this is very little because staff salaries have to be paid and the funds left for maintenance are minimal.<sup>114</sup>

The Ming tombs are managed at provincial level and overseen by SACH,<sup>115</sup> and the staff in charge of the tombs includes professional staff who continue to be sent for professional training.<sup>116</sup> This is in accordance with Article 5 (b) of the World Heritage Convention which requires states parties to employ ‘appropriate staff and possessing the means to discharge their functions.’ The Buganda tombs on the other hand are managed by a newly appointed Buganda Heritage and Tourist Board which works together with the traditional managers of the tombs and the National Technical Committee which was mainly set up to oversee the reconstruction process since the tombs were gutted by fire, but whose advisory role will continue even after reconstruction.<sup>117</sup> The staff of the Buganda kingdom is generally local people that have wide knowledge and history about Buganda Kingdom and the tombs. They have no expertise on cultural heritage affairs and according to tradition, cannot take advice from anybody including expert or technical advice.<sup>118</sup> This is detrimental to the management of the heritage site because in order to maintain the site in this day and age of economic development and climate change, there is need for more than traditional knowledge in the maintenance of the tombs.

In China, the Ming tombs have a buffer zone surrounding it for purposes of its protection as

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<sup>112</sup> World Heritage Committee, ‘Imperial Tombs of the Ming and Qing Dynasties, state of administration of the Peoples Republic of China’ WHC Nomination Documentation, 2 December, 2000 p. 18 & 22 <<https://whc.unesco.org/uploads/nominations/1004ter.pdf>> accessed on 10 June, 2018.

<sup>113</sup> UCESCR, ‘The State of Economic, Social and Cultural Rights in Uganda (note 104 above), p. 11.

<sup>114</sup> UNESCO, ‘Tombs of Buganda Kings at Kasubi’, (note 44 above), p. 26.

<sup>115</sup> Cultural Relics Law (China) (notes 65).

<sup>116</sup> World Heritage Committee, ‘Imperial Tombs of the Ming and Qing Dynasties’, (note 112 above), pp. 22, 23, 28.

<sup>117</sup> Government of Uganda, ‘Report on the state of conservation of the tombs of Buganda Kings at Kasubi’ 28<sup>th</sup> February 2018 <<http://whc.unesco.org/en/list/1022/documents/>> accessed on 10 June, 2018, pp. 4-5.

<sup>118</sup> UNESCO, ‘Tombs of Buganda Kings at Kasubi’, (note 44 above), p. 21 & 26.

well as the cultural items there in.<sup>119</sup> The buffer zone also protects the tombs from encroachment and construction around the heritage site especially in the face of rapid economic development in China.<sup>120</sup> The Buganda tombs lack a buffer zone, which makes it susceptible to intruders and yet the outer fence around it is weak and made out of reeds which usually get eaten by termites. The inner fence of the tombs is in an even worse state because the parts of the reeds are usually taken by the women around the tombs for use as firewood.<sup>121</sup> The lack of a buffer zone makes the tombs vulnerable in the face of urban development especially with several constructions going on around the tombs and with the possibility of road construction and widening.<sup>122</sup> At the time of the nomination of this site, a buffer zone was being considered but it still was not going to prevent construction but would instead limit the height of buildings as well as specific activities. This is because the tombs are located in Kasubi, a busy city suburb in Kampala and is largely a residential area.<sup>123</sup> It should be noted that both heritage sites face some similar protection and maintenance challenges such as ‘development pressures’ especially with the ongoing rapid economic and urban development in both China and Uganda. People and corporations are inclined to use every available space to construct modern structures, either for business or residential purposes leading to some reported encroachments on the heritage sites’ land.<sup>124</sup> Environmental pressures are another challenge for these sites. In the face of climate change, there are a lot of weather changes like heavy rains (floods) causing mould and weakening of buildings. Specifically for the Buganda tombs made up of only traditional materials like wood and elephant grass, there is a lot of decay and termite infestation.<sup>125</sup> Both sites suffer natural disasters like fires, encroachers on buffer zones and too many tourist visitors who

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<sup>119</sup> World Heritage Committee, ‘Imperial Tombs of the Ming and Qing Dynasties’, (note 112), p. 22.

<sup>120</sup> Ibid p. 21.

<sup>121</sup> UNESCO Regional Office (East Africa), ‘Evaluation Mission 3 on the reconstruction of Muzibu – Azaala – Mpanga tombs of Buganda Kings at Kasubi’, (note 92 above), p. 18.

<sup>122</sup> Ibid.

<sup>123</sup> UNESCO, ‘Tombs of Buganda Kings at Kasubi’, (note 44), p. 21.

<sup>124</sup> UNESCO (note 123 above), p. 29; World Heritage Committee, ‘Imperial Tombs of the Ming and Qing Dynasties’, (note 112 above), p. 24.

<sup>125</sup> Ibid.

might sometimes destroy the environment around the sites requiring more maintenance.<sup>126</sup> Although both China and Uganda have taken steps in the preservation and protection of the heritage items in their jurisdictions, China has taken more significant steps than Uganda, as outlined in this section.

## **5.0 Conclusion and Recommendations**

This essay set out to analyse the efficacy of the World Heritage Convention and how it cascades into effectively offering protection of cultural and natural cultural heritage at national level in China and Uganda. International law can only be said to have achieved its purpose if it is effectively enforced at national level. The World Heritage Convention has good provisions which guarantee the protection and preservation of cultural heritage. The Convention however lacks an enforcement mechanism and it operates through World Heritage Committee and the operational guidelines for the implementation of the World Heritage Convention. The convention has faced implementation challenges at domestic level. The essay confirmed that in the face of rapid economic development, urbanisation and climate change, preservation and protection of world heritage becomes increasingly difficult and striking a balance between issues like human rights and sustainable development, even worse.<sup>127</sup> Uganda and China are both facing challenges with implementation of the World Heritage Convention. China has enforced the Heritage Convention better than Uganda at domestic level. It should however be noted that although on the face of it, China seems to have better heritage laws and institutions than Uganda, Uganda's constitutional recognition of culture as a stand alone right with state obligation to protect it places Uganda at a better edge than China which only offers ordinary legal protection of cultural heritage. China's laws, are numerous and comprehensive (including the Cultural Relics Law currently under study), unlike Uganda which has only one law that caters for tangible cultural heritage and has an extremely weak penal provision that is not able to deter crime against heritage sites. This is an indicator that Uganda 's law is very dated as it was enacted 50 years ago and hence needs

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<sup>126</sup> Ibid.

<sup>127</sup> Gruber S., 'Protecting China's Cultural Heritage Sites in Times of Rapid Change: Current Developments, Practice and Law' (note 6) p. 66.

to be urgently repealed and replaced or at least amended. China is also doing much better than Uganda in the maintenance of their tombs. China's state ownership of the tombs is a best practice that Uganda needs to consider because funds are availed from government for the smooth running and maintenance of the tombs.

Buganda kingdom which relies on levies from tourist who are not very many and the allocated budgetary allocation from the government cannot be relied upon because it is too little. Ming tombs are inevitably in much better shape than the Buganda tombs which were worsened by the fire that gutted them in 2010. Uganda needs to put in place better laws that put in place proper measures for the maintenance of the tombs or take over the ownership of the tombs again rather than have them privately owned by the kingdom. What China needs to learn from Uganda however, is the community involvement in conservation of cultural heritage and specifically cultural heritage and particularly Ming tombs. China also needs to learn from Uganda and consider incorporating the right to culture into its Constitution because this makes the duty to protect cultural heritage more binding on the government. China's legislation has also been criticised as being low levelled.<sup>128</sup> Even if China's legal provisions are numerous and progressive, the enforcement is very weak and the provisions have not been enforced or acted upon.<sup>129</sup> There is also the need for continued monitoring for both sites by the responsible government bodies to ensure continued compliance with the world heritage law.

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<sup>128</sup> Yujun G., Zhihua D. and Qiao Xiobing Q., 'China and International Law on Cultural Heritage, Consumer Protection and Food Security' (note 8), p. 346.