ETHIOPIA

Programme of participation in the activities of Member States for the preservation and presentation of the cultural and natural heritage

Legislation for the safeguarding of the cultural heritage of Ethiopia

by Eugeniusz Gasiorowski

Serial No.: FMR/CC/CH/81/119

Paris, 1981
ETHIOPIA

LEGISLATION FOR THE SAFEGUARDING OF THE CULTURAL HERITAGE OF ETHIOPIA

by Eugeniusz Gasiorowski

Report prepared for the Government of Ethiopia by the United Nations Educational, Scientific and Cultural Organization (Unesco)

UNESCO
## CONTENTS

<table>
<thead>
<tr>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Preface</td>
</tr>
<tr>
<td>I. INTRODUCTION</td>
</tr>
<tr>
<td>II. LEGISLATION FOR THE SAFEGUARDING OF THE ETHIOPIAN CULTURAL HERITAGE</td>
</tr>
<tr>
<td>The necessary basic laws</td>
</tr>
<tr>
<td>The appropriate use of the basic laws in ministerial circulars, etc.</td>
</tr>
<tr>
<td>The effectiveness of existing laws in the day-to-day execution of duties</td>
</tr>
<tr>
<td>III. ADVICE FOR THE MINISTRY OF CULTURE AND SPORTS</td>
</tr>
<tr>
<td>IV. PROPOSAL FOR THE NEW LEGISLATION</td>
</tr>
<tr>
<td>The object of protection</td>
</tr>
<tr>
<td>Determination of the age of the objects to be protected</td>
</tr>
<tr>
<td>Ownership of the cultural property</td>
</tr>
<tr>
<td>Export of cultural property</td>
</tr>
<tr>
<td>Field research</td>
</tr>
<tr>
<td>Regulations and descriptions</td>
</tr>
<tr>
<td>V. FINAL REMARKS</td>
</tr>
</tbody>
</table>

## APPENDICES

1. Proclamation No. 229 of 1966
   A Proclamation to Provide for the Protection and Preservation of Antiquities | 6 |
2. Order No. 45 of 1966
   An Order to Provide for the Creation of an Ethiopian Antiquities Administration | 8 |
3. Export of Antiquities Regulations of 1969 | 11 |
ILLUSTRATIONS

1, 2 - GONDAR. Debre Berhan Selassie Church, mural paintings - 12 -

3. - GONDAR. Fasiladas Palace - 12 -

4. - GONDAR. Art objects in the Fasiladas Palace - 13 -

5. - Fasiladas Bridge, near the Blue Nile Falls - 13 -

6. - Church at Debresina/Lake Tana - 13 -
Preface

At the request of the Government of Ethiopia, the Director-General of Unesco arranged, under the Organization's Participation Programme for 1979-1980, for a consultant mission to assist in the elaboration of a draft national law for the safeguarding of the Ethiopian cultural heritage.

The mission, entrusted to Mr. Eugeniusz Gasiorowski, was carried out from 5 May to 5 June 1980.
I. INTRODUCTION

1. We were received by Mr. Tesfaye Shewaye, Minister of Culture and Sports, and met by Mr. Tadesse Terfa, Head of the Centre for Research and Conservation of Cultural Heritage, and Mr. Mesfin, Head of the Inventory Section.

2. My collaborator on legal questions in the Ministry of Culture and Sports was Mr. Awal Adam, a lawyer.

3. In Addis Ababa, I visited the following institutions and spoke to their heads or scientific staff: National Museum, Institute of Ethiopian Studies of the University, Microfilm Manuscripts Department under the Ministry of Culture, the former Ethio-Swedish Institute of Building Technology (where many years' study on the history of architecture in Ethiopia had been conducted and an open-air collection of country houses), and the former French Institute of Archaeology, now incorporated into the Ministry of Culture.

4. An important element in my work was an 8-day visit to Bahar Dar and Gondar to inspect different types of monuments in the countryside and to examine the conditions and problems of their safeguarding. It was unfortunately not possible to see such important places as Axum, Lalibela and Harrar. In the two above-mentioned towns I had useful talks with the First Assistant Chief of the Province Administration (Gondar) and the Chief of the Branch Office of the Ministry of Culture and Sports at Bahar Dar on the safeguarding and use of the monuments there. I visited the complex of the royal castles and churches in Gondar which date from the 17th-18th centuries and some churches from the 14th-17th centuries around Lake Tana (Ura Kidanemereth, Kebran, Debresina).

II. LEGISLATION FOR THE SAFEGUARDING OF THE ETHIOPIAN CULTURAL HERITAGE

The necessary basic laws

5. The only existing legislation is the imperial Proclamation No. 229 of 1966 but it has never been enforced. Some earlier royal or Italian regulations (e.g. for Eritrea) still exist but it was not possible to trace them. The Italian inventory work recorded in the publications by Monti della Corte: I castelli di Gondar (Rome 1938) and Lalibela (Rome 1940) seems to have been an initial effort to organize the safeguarding of ancient monuments in Ethiopia under the Italian occupation.

6. Proclamation No. 229 of 1966 (published in the Negarit Gazeta No. 7 of 29 January 1966) was, then, the first act of legislation which created the basis for safeguarding the cultural heritage by the State in Ethiopia.

7. The cultural property which had to be protected was defined as "antiquity"—which "shall mean any construction or any product of human activity, or any object of historical or archaeological interest, having its origin prior to 1850 E.C.*".

* - Ethiopian Calendar
8. The "antiquities" so defined, which until the date of the Proclamation were the property of "physical or juridical persons, including any Church and any other organization", were declared "to be property of the State" and had been administered by the Head of the Office of Archaeology who in addition to the day-to-day execution of duties also had to supervise all discoveries and restoration work, including the issue of permits for archaeological excavations.

9. In the execution of these functions the Administering Authority had to "register and supervise all historical objects which may exist in any Church" and make a "detailed list of antiquities" in the possession of private individuals, as well as supervise all transfer, sale and export of any "antiquities". It had also to issue regulations prescribing the basis and manner for the execution of the Proclamation and to stipulate penalties for infringements in accordance with the provisions of the Penal Code of 1957.

10. The Proclamation stated that it was a total law covering all "antiquities" prior to 1850 E.C. and binding all persons, though it is not clear if the property of the former Emperor and his family were included. Nor is it clear whether the Proclamation encompassed the antiquities kept by the museums, libraries or archives (for instance, the National Museum, National Library, University or State Archives). It did not, however, extend to the protection of nature, including the landscape and rare specimens of nature (living and inanimate) which it was perhaps intended to make the subject of a separate law.

The appropriate use of the basic laws in ministerial circulars, etc

11. In connection with the Proclamation No. 229 of 1966 there was issued "An Order to Provide for the Creation of an Ethiopian Antiquities Administration" (Order No. 45 of 1966 published in the Negarit Gazeta No. 17, 22 June 1966) (App. 2). Three years later the "Export of Antiquities Regulations, 1969" (App. 3) was issued. It was the only regulation published before the Revolution in 1974 and no documentation exists of any sale or export permits and no other lists or registers have been found in the archives of the Ministry of Culture and Sports which took over the archives of the imperial Authority. It would seem therefore that the Proclamation of 1966 in fact has not been executed.

The effectiveness of existing laws in the day-to-day execution of duties

12. The Proclamation No. 229 has not yet been abrogated and therefore it is still in operation. Nor was there issued after 1974 any detailed regulation which would be indispensable for the execution of such a law. Consequently the existing law is not effective and a new law is being prepared. The basis for this new law should still be the Proclamation of 1966.

III. ADVICE FOR THE MINISTRY OF CULTURE AND SPORTS

13. During my stay in Addis Ababa I had some discussions with Mr. Awal Adam regarding National Legislation for the Safeguarding of the Ethiopian Cultural Heritage and before my departure I set out my remarks on the Proclamation of 1966 in a letter dated 2.6.1980. Within the framework of these consultations I drew Mr. Awal Adam's attention to contemporary legislation on the protection of the cultural heritage and lent him for his information some recent Unesco publications, including abstracts of different national legislations with comments: The Protection of Cultural Property (1974) and La protection du patrimoine culturel mobilier (1979). I informed him also that the Unesco-ICOM Documentation Centre in Paris possessed copies of some legislative texts from other African countries.
IV. PROPOSAL FOR THE NEW LEGISLATION

14. Ethiopia has one of the richest collections of sites, monuments and art objects in the whole of Africa, ranging from prehistoric sites to the recent historic period, which underlines the importance of a comprehensive and effective legislation for the protection of her cultural heritage.

15. On the assumption that the Proclamation of 1966 will form the basis for the new legislation I shall now explain the remarks made in my letter written before leaving Addis Ababa. The remarks are listed according to the articles of the Proclamation.

The object of protection

16. The definition of the term "antiquity" in art. 2a of the Proclamation should be more specific as in other countries' national legislations (e.g. works of architecture and town-planning, settlements, parks, decorative gardens, cemeteries, etc.); it should also take account of the artistic value and of ethnographic and palaeontological objects. Contemporary thinking tends to give a great deal of importance to the areas surrounding a monument, group of monuments and historic sites.

17. Ethiopia owns some historic places of great value such as Axum, Lalibela Gondar and Harrar which should be protected in their entirety. Similarly the whole region of Lake Tana with its unique churches and monasteries as well as ruins of the former royal castle in Old-Gorgora should be protected. This should be done in relation with protection of the landscape and nature, ideally in the form of a National Park. In this respect it should be noted that the term "historical landscape" is now recognized as an object of protection in many parts of the world. All the above-mentioned sites are covered by the Unesco/UNDP assisted Project ETH/74/014 - (see below) and the preparation of special laws for their protection would be necessary.

18. Moveable objects such as works of art: sculptures, paintings, artistic handicrafts etc., also need to be more specifically defined to avoid any misinterpretation, which seems to be the case at the moment.

Determination of the age of the objects to be protected

19. Determination of the age of a monument which is subject to protection should be formulated as: all objects more than 100 years old and specified contemporary objects having an important cultural and historical value.

20. Determination of the age "more than 100 years old" found in some legislations (e.g. Luxembourg, Norway, Sweden, Libya and the Philippines) has recently been reduced to 50 years (e.g. in the recent new Danish law) or even altogether abandoned (e.g. no age-criterion in Austria or Poland). This makes it possible to protect more contemporary objects which are of high quality or characteristic of some periods or regions. But the situation in Ethiopia is very different because all "antiquities" there were declared to be property of the State. It is proposed therefore to follow the 100-years' criterion which would automatically be updated with the passage of time, with a possibility of protecting specified contemporary objects.

* Unesco/UNDP assisted Project ETH/74/014 - Preservation and Presentation of Selected Sites and Monuments.
Ownership of the cultural property

21. The nationalization of all cultural heritage in Ethiopia was declared definitely by the Proclamation of 1966 and confirmed by the Revolution of 1974. In 1975, all rural and urban land was nationalized as well as all apartment and office buildings. Limited ownership in the form of small one-family houses has however been preserved. Because such houses can theoretically after some years reach the age-limit of 100 years and therefore become "antiquities" without having the right quality, it is necessary to make the criteria more precise. This also applies to movable objects. Very specific definitions are therefore needed for the sections relating to "State Ownership of Antiquities" and "Disposition of Antiquities" (Art. 3-7) in view of the legal consequences for the State, and juridical (e.g. Church) and private persons. The Proclamation No. 229 contained many vague passages and some contradictions (e.g. Art. 9d) which were not clarified by subsequent regulations.

22. The consequence of nationalizing all cultural property is that the State takes over all duties and responsibilities in safeguarding and protecting it, including all financial costs. Even the richest countries cannot afford to do this. Nationalization of all "antiquities" (lately practised in some countries of the so-called Third World) does not therefore automatically solve the difficult problem of effectively protecting the national cultural property. In default of the necessary resources it can even make it more difficult.

23. This problem is closely linked to the need for an inventory and a classified register of historical objects which are essential for distinguishing the real monuments and art objects from the mass of all objects over 100 years old. Such a classification must of course be based on exhaustive research.

Export of cultural property

24. This is the only point in the Proclamation of 1966 which was regulated by the "Export of Antiquities Regulations, 1969" but unfortunately we have no way of knowing how it worked. Today, the National Museum also issues export permits and control by Customs Officers at the airport is strict. But it seems necessary to formulate an up-to-date and exact definition of the export regulations and the authority exercised by the Export Board of the National Museum.

Field research

25. Art. 8 "Exploration for Antiquities" is clear and does not give cause to doubt. But it could be reworded to follow the legislations of countries having a long tradition in the field of archaeological excavations such as Egypt, Greece or Italy. Some countries also control ethnographic or palaeontological research.

Regulations and descriptions

26. The aim of any legislation should be to create real conditions for effectively protecting the cultural heritage. That means that there must be a real possibility to execute it. The Proclamation of 1966 foresaw the drafting of several regulations ("Authority to Issue Regulations" Art. 9), but according to Mr. Awal Adam none issued (except the one cited in chapter I, 2). This would tend to show that there was no real possibility of executing this Proclamation and this fact should be carefully analyzed when preparing any new proclamation.
V. FINAL REMARKS

27. In preparing a new Ethiopian law it would be useful to pattern it after other national legislations. The very useful Unesco publications of 1974 and 1979 (Chapter III) have already been mentioned, but they contain only abstracts of legislative texts or fragments of them concerning movable objects. It is necessary to examine the whole set of problems concerning the safeguarding of the cultural heritage, including the establishment of official bodies for the protection of cultural property and for the management of museums, the registration of monuments and even the use of immovable objects. It is not of course my intention to show a pattern to copy (that would not be proper) but to call attention to the complete catalogue of basic subjects that are important for an effective protection of cultural property.

28. The importance of compiling an inventory as a necessary basis for the national register of historic monuments has already been mentioned. This subject, together with the organization of the official bodies for protecting cultural property, is also closely linked to the need for trained manpower. The present situation in this field reminds one of a start from the point zero. Therefore its solution will be the key to the proper functioning of the protection of monuments in Ethiopia. The worst problem is the nearly complete lack of art historians. Young people trained for inventory work lack the basic education in this field. Because it is impossible to study Ethiopian art history anywhere else than in Ethiopia, the only solution would be to organize a Department for Ethiopian Art History at the University of Addis Ababa. A country such as Ethiopia with its rich cultural heritage needs many people with adequate training in this field. Otherwise, it will not be possible to organize the effective protection of cultural property even with the best legislation.
APPENDIX 1

- 6 -

Proclamation No. 229 of 1966
A Proclamation to Provide for
the Protection and Preservation of Antiquities

1. This Proclamation may be cited as the "Antiquities Proclamation, 1966"

2. In this Proclamation, unless the context otherwise requires:
   (a) "Antiquity" shall mean any construction or any product of human activity, or any object of historical or archaeological interest, having its origin prior to 1850 E.C.;
   (b) "Administering Authority" shall mean the head of the Office of Archaeology;
   (c) "person" shall mean any physical or juridical person, including any Church and any other organisation.

State Ownership of Antiquities

3. (a) All antiquities, whether movable or immovable, existing within Ethiopia on the date of coming into force of this Proclamation, are hereby declared to be the property of the State, to be administered in the manner hereinafter set forth. The Administering Authority shall, in consultation with the Ministry of Public Works and Communications, repair, reconstruct and restore said antiquities and shall administer, supervise, protect and preserve these antiquities at the time and in the manner herein specified.
   (b) The responsibility for the administration and possession and custody over all antiquities and, within the limits prescribed by this Proclamation for the taking of all necessary steps with respect to their discovery, protection, preservation and study, is hereby vested in the Administering Authority.

4. Any person who discovers, acquires, or is in possession of any antiquity on or after the date on which this Proclamation enters into force shall promptly notify the Administering Authority thereof.

Disposition of Antiquities

5. Any person who is in possession of any antiquity on the date on which this Proclamation enters into force may remain in possession of such antiquity until he is notified to transfer said antiquity to the Administering Authority in accordance with the provisions of Article 7 hereof, subject to his submitting to the Administering Authority a detailed list of antiquities in his possession.

6. No antiquity may be sold, bartered, transferred or exported as a gift or otherwise, except under a permit issued by the Administering Authority or a subordinate authority or office established pursuant to regulations issued in accordance with Article 10 hereof. Any person who sells, barters, transfers or exports or who assists in the sale, barter, transfer or export of any antiquity without said permit shall be punished as provided in Article 11 hereof.
7. The Administering Authority may from time to time, pursuant to regulations issued pursuant to Article 10 hereof:

(a) register and supervise all historical objects which may exist in any Church without, however, the right to require the transfer of possession of same;

(b) require the transfer and surrender of antiquities now in the possession of private individuals or those which may be discovered hereafter: provided, however, that no private person shall be required to make such transfer and surrender except in accordance and upon compliance with the requirements of Article 11 of Our Revised Constitution.

Exploration for Antiquities

9. No person shall carry on archaeological exploration activities within Ethiopia, whether on private or on Government lands, unless he holds a permit duly issued by the Administering Authority pursuant to regulations issued in accordance with Article 10 hereof.

Authority to Issue Regulations

10. The Administering Authority may issue regulations:

(a) prescribing the basis upon which archaeological exploration permits shall be issued, the time and manner of making applications therefor and fees chargeable with respect thereon;

(b) prescribing the manner in which archaeological exploration operations shall be carried out by persons to whom such permits have been issued;

(c) requiring persons in possession of certain types of antiquities to give notice of their possession thereof to said Administering Authority;

(d) prescribing the basis upon which permits to sell, barter, transfer and export antiquities from Ethiopia shall be issued, the time and manner of making applications therefor and the fees chargeable with respect thereto, and any subordinate authorities or offices empowered to issue such permits: and

(e) generally, for the better carrying out of the provisions of this Proclamation.

11. Any person who violates any of the provisions of this Proclamation or any regulation issued pursuant hereto shall be punished in accordance with the relevant provisions of the Penal Code of 1957.

12. Effective Date

This Proclamation shall enter into force on the date of its publication in the Negarit Gazeta.

Done at Addis Ababa this 29th day of January, 1966.

TSAAFE TAEZZAZ AKLILU HABTE WOLD
Prime Minister and Minister of Pen.
ORDER No. 45 of 1966

An Order to Provide for the Creation of an Ethiopian Antiquities Administration

WHEREAS, it is necessary to establish an Administration to be responsible for the discovery, protection, preservation and study of Ethiopian antiquities;

NOW, THEREFORE, in accordance with Article 27 of Our Revised Constitution and on the advice of Our Council of Ministers, We hereby order as follows:

1. Short Title

This Order may be cited as the "Ethiopian Antiquities Administration Order, 1966".

2. Establishment

There is hereby established the Ethiopian Antiquities Administration (hereinafter the "Administration") as an autonomous Public Authority of the Imperial Ethiopian Government.

3. Purposes and Objectives

The Administration shall have and shall pursue and discharge in accordance with the law the following purposes and objectives:

(1) the taking generally of all such measures as may be useful or necessary to promote or effect the discovery, protection, preservation and study of ancient monuments, written documents and other historic relics in Ethiopia;

(2) the promotion and facilitation of the custody, repair, reconstruction and restoration of Ethiopian antiquities;

(3) the maintenance of records concerning the discovery, location and possession of Ethiopian antiquities;

(4) the establishment of policies concerning the issuance of licences and permits for the barter, transfer or export of Ethiopian antiquities and the issuance of such licences and permits;

(5) the conduct, and the issuance of permits authorising the conduct by other persons, of archaeological exploration activities; and

(6) the encouragement of research and publicity concerning, and the stimulation of popular interest in, Ethiopian antiquities.

4. Corporate and Administrative Powers

The Administration shall have and may exercise, through its organs of management and subject to the restrictions imposed by law, all corporate and administrative powers necessary to the accomplishment of its purposes and objectives. In particular, and without limitation, the Administration shall have power to:
(1) enter into contracts in its own name;
(2) sue and be sued;
(3) acquire, own, possess, manage and dispose of movable and immovable property;
(4) borrow money and receive credits as authorised by law;
(5) solicit and receive grants and contributions;
(6) charge, collect, receive and retain fees for admission of Ministers, We hereby order as follows:
(7) administer in accordance with the law the funds received by it or placed at its disposal; and
(8) generally, do all such other lawful acts and things as may be necessary or incidental to the exercise of any of the powers enumerated above or otherwise conferred upon it by law.

5. Executive Board

(1) The Administration shall be under the general supervision of an Executive Board (hereinafter the "Board") which shall be comprised of the following members:
(a) His Imperian Highness the Crown Prince, who shall serve as Chairman of the Board; and
(b) not less than four (4) nor more than eight (8) other persons appointed by US to serve for a term of five (5) years, subject to reappointment.

(2) The Board shall be responsible generally for the formulation of the policies and programmes of the Administration.

(3) The Board shall meet at least once annually and on such other occasions as may be determined in accordance with such internal rules and procedures as it may establish. Half the members of the Board shall constitute a quorum. All decisions thereof shall be by majority vote. The Chairman shall have a casting vote.

6. Director of Antiquities

There shall be a Director of Antiquities who shall be the chief executive officer of the Administration and who shall be responsible for the conduct of all its activities and the discharge of its responsibilities in accordance with the general policies and programmes established by the Board.

7. Financial Arrangements

(1) There shall be established a fund which shall consist of:
(a) all grants, contributions and donations made to the Administration;
(b) such other revenues as may accrue to the Administration as a result of any of its activities, including admission fees to historic monuments; and
(c) an annual Government subsidy based on a budget prepared by the Director of Antiquities and approved by the Board.

(2) Such fund shall be deposited in the National Bank of Ethiopia or in other authorized banks in a separate account in the name of the Administration which shall be responsible for the lawful management and administration of the fund in pursuance of its purposes and discharge of its responsibilities.

(3) The Administration shall keep full and accurate accounts and records relating to its activities and shall within three (3) months after the end of each fiscal year prepare and submit a financial report to the Board, to the Auditor General and to the Minister of Finance.

8. Implementing Regulations

The Administration shall have power to issue regulations for the better carrying out of the provisions of this Order.

9. Effective Date

This Order shall enter into force on the date of its publication in the Negarit Gazeta.

Done at Addis Ababa this 22nd day of June, 1966.

TSAHAFE TAEZAZ AKLILJ HASTE WOLD

Prime Minister and Minister of Pen.
Export of Antiquities Regulations
Issued under the Ethiopian Antiquities Administration order of 1966 (No. 45 of 1966)

1. These Regulations are issued pursuant to authority vested in the Ethiopian Antiquities Administration by Article 3 (4) of the Ethiopian Antiquities Administration order, 1966 (No. 45 of 1966).

2. These Regulations may be cited as the "Export of Antiquities Regulations 1969."

3. In these Regulations, unless the context otherwise requires; "Antiquity" shall mean any product of human activity, or any object of historical or archaeological interest, having its origin prior to 1850 E.C.

4. With effect from the coming into force of these Regulations, no one shall be allowed to export from Ethiopia any antiquity without a special authorisation from the authority vested in the Ethiopian Antiquities Administration (National Museum) solely authorised to determine the date of the object.

5. Special authorisation under the form of an exports permit shall be granted by the authority vested in the Ethiopian Antiquities Administration (National Museum) on request by the interested person.

6. The interested person shall fill for this purpose a special declaration which will be made available to him at the Customs Administration or at the office of the Ethiopian Antiquities Administration (National Museum).

7. The special declaration shall be submitted to the approval of the Ethiopian Antiquities Administration (National Museum) and no export permit shall be granted unless the Ethiopian Antiquities Administration (National Museum) approves of it in writing on the special declaration.

8. Pursuant to Article 7 (b) of the Antiquities Proclamation, No. 229 of 1966, the Ethiopian Antiquities Administration (National Museum) shall be entitled to require the transfer and surrender of antiquities in accordance and upon compliance with the requirements of Article 44 of the Revised Constitution.

9. Any person who violates any of the provisions of these Regulations shall be punished in accordance with the relevant provisions of the Penal Code of 1957.

Done at Addis Ababa this day of 1969
Fig. 1, 2 - GONDAR
Debre Bastian Selassie Church, mural paintings

Fig. 3 - GONDAR
Fasiladas Palace
Fig. 4 - GONDAR
Art objects in the Fasiladas Palace

Fig. 5 - Fasiladas Bridge near the Blue Nile falls

Fig. 6 - Church at Debresina Lake Tana