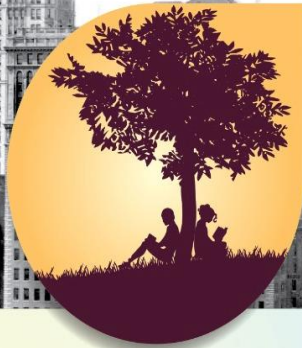


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- Entrenching Biodiversity Impact Assessment in Kenya as a Tool for Enhancing Sustainable Development Agenda Kariuki Muigua
- Role of Technology in Climate Change Disputes Resolution Kenneth W. Mutua
- Repatriating the Violation of Human Rights of Indigenous Communities in Africa: A Review of the African Commission on Human and Peoples' Rights v. Republic of Kenya Application No. 006/2012 (Reparations) Kirui Diana & Kibet Brian
- Putting Children First: Prioritising Minors in The Application of ADR in Criminal Cases in Kenya Aaron Okoth Onyango
- Exploring Heritage Impact Assessment in Kenya Kariuki Muigua
- Clarifying the Roles of the Director of Public Prosecutions and the Director of Criminal Investigations in Kenya: A Proposal for Legal Reform Michael Sang
- The Duty to Treat Versus the Right to Refuse Unsafe Work of Healthcare Workers in Kenya: Implications for Public Health Emergencies Naomi N. Njuguna
- Effectuating the Doctrine of Eminent Domain: Sustainable Principles for Compulsory Land Acquisition in Kenya Michael Otieno Okello
- Is Energy Law sufficiently an Academic Discipline? A Review of Selected Documents Elim Limlim
- Evaluation of a conflict in a learning environment: Does it always fetch a negative outcome? Md. Harun-Or-Rashid
- Book Review: Attaining Environmental Justice for Posterity, Volume 1 and Volume 2 Mwati Muriithi

Exploring Heritage Impact Assessment in Kenya

By: *Kariuki Muigua**

Abstract

The paper critically discusses the concept of Heritage Impact Assessment (HIA) in Kenya. It conceptualizes Heritage Impact Assessment and its role in the Sustainable Development Agenda. The paper further highlights the legal framework on HIA at both the global and national level. It discusses the extent to which HIA has been embraced in Kenya and challenges thereof. Finally, the paper suggests recommendations towards embracing heritage impact assessment for Sustainable Development in Kenya.

1.0 Introduction

World Heritage has been defined as the designation for places on Earth that are of outstanding universal value to humanity and as such, have been inscribed on the World Heritage List to be protected for future generations to appreciate and enjoy¹. The Convention Concerning the Protection of the World Cultural and Natural Heritage defines World Heritage to entail cultural and natural heritage². Cultural heritage includes monuments; architectural works; archeological sites; inscriptions, cave dwellings and buildings that are of outstanding value from the point of view of history, art and science³. Natural heritage on the other hand includes natural features consisting of physical and biological formations; geological and

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¹ United Nations Educational, Scientific and Cultural Organisation (UNESCO), 'World Heritage Conservation' available at <https://whc.unesco.org/en/faq/19> (accessed on 19/10/2022)

² UNESCO., 'The Convention Concerning the Protection of the World Cultural and Natural Heritage' available at <https://whc.unesco.org/archive/convention-en.pdf> (accessed on 19/10/2022)

³ Ibid

physiographical formations and natural sites of outstanding value from the point of view of science, conservation or natural beauty⁴. UNESCO lists World Heritage sites in Kenya to include Lake Turkana National Park; Mount Kenya National Park and Natural Forest; Lamu Old Town; Fort Jesus; the Sacred Mijikenda Kaya Forests and the Lake System in the Great Rift Valley among others⁵.

Conservation of World Heritage is a key component of sustainability. The Sustainable Development Goals seek to promote sustainable cities and communities among other goals⁶. Among the targets under this goal is strengthening efforts to protect and safeguard the world's cultural and natural heritage⁷. Conservation of World Heritage is thus a key component of the Sustainable Development agenda. Further, the Convention Concerning the Protection of the World Cultural and Natural Heritage recognizes the importance of world heritage and the need to preserve it as part of the world heritage of mankind as a whole⁸. It calls upon state parties to take measures towards protection and conservation of World Heritage and its transmission to future generations⁹.

The Constitution of Kenya anchors the importance of protection and conservation of cultural and natural heritage. It acknowledges the important role the environment plays in sustaining our heritage and is determined to protect it for the benefit of future generations¹⁰. The Constitution further recognizes the role of culture as the foundation of the nation and mandates the state to promote and protect cultural heritage in the country¹¹.

⁴ Ibid

⁵ UNESCO., 'World Heritage List' available at <https://whc.unesco.org/en/list/> (accessed on 19/10/2022)

⁶ Sustainable Development Goal 11., available at <https://www.undp.org/sustainable-development-goals#sustainable-cities-and-communities> (accessed on 19/11/2022)

⁷ Ibid

⁸ UNESCO., 'The Convention Concerning the Protection of the World Cultural and Natural Heritage' Op Cit

⁹ Ibid, article 4

¹⁰ Constitution of Kenya, 2010, Preamble

¹¹ Ibid, Article 12

The conservation of world heritage is threatened by certain factors including modernization and urban growth¹². Further, cultural and natural heritage is threatened by traditional causes of decay and emerging social and economic conditions including developments and construction¹³. Consequently, the concept of Heritage Impact Assessment has emerged as a conservation tool to improve World Heritage in line with the Sustainable Development Goals¹⁴. It is aimed at promoting the protection and management of world heritage from adverse effects of developments and construction¹⁵.

The paper seeks to critically discuss the concept of Heritage Impact Assessment. The paper further discusses the extent to which heritage impact assessment has been embraced in Kenya and proposes interventions towards promoting heritage impact assessment for Sustainable Development in Kenya.

2.0 Framework for Heritage Impact Assessment

Heritage Impact Assessment is conducted within the framework of Environmental Impact Assessment (EIA). EIA is a tool for integrating environmental and social concerns in decision making processes¹⁶. Environmental impact assessment (EIA) is the process of identifying potential environmental effects of proposed development and the required mitigation measures¹⁷. EIA has also been defined as a procedure for

¹² Ashrafi. B et al., 'Heritage Impact Assessment, Beyond an Assessment Tool: A comparative analysis of urban development impact on visual integrity in four UNESCO World Heritage Properties' *Journal of Cultural Heritage* 47 (2021) 199–207

¹³ UNESCO., 'The Convention Concerning the Protection of the World Cultural and Natural Heritage' Op Cit

¹⁴ Ashrafi. B et al., 'A Conceptual Framework for Heritage Impact Assessment: A Review and Perspective' available at <http://publications.rwth-aachen.de/record/839877/files/839877.pdf> (accessed on 19/10/2022)

¹⁵ Ibid

¹⁶ Muigua. K., 'Environmental Impact Assessment (EIA) in Kenya' available at <http://kmco.co.ke/wp-content/uploads/2018/08/A-Paper-on-Environmental-impact-assessment.pdf> (accessed on 19/10/2022)

¹⁷ Mandelik. Y et al., 'Planning for Biodiversity: the Role of Ecological Impact Assessment' available at

evaluating the likely impact of a proposed activity on the environment¹⁸. Its object is to provide decision-makers with information about the possible effects of a project before authorizing it to proceed¹⁹. It is also aimed at identifying, predicting, evaluating and mitigating the biophysical, social and other relevant environmental effects of development proposals prior to major decisions being taken and commitments being made²⁰.

The concept of Heritage Impact Assessment has emerged in order to identify and evaluate the impacts of human activities on world heritage towards striking a balance between the protection of world heritage and promoting economic and social development²¹. It entails the requirement to undertake Environmental Impact Assessment at the project level or more strategic level in order to assist decision makers in identifying and preventing approval of developments that may destroy cultural and natural heritage²². Heritage Impact Assessment explores the damage or benefits that may accrue on cultural and natural heritage as a result of human activities such as economic development²³. HIA is anchored in the *Convention Concerning the Protection of the World Cultural and Natural Heritage*. The Convention requires state parties to adopt a general policy which aims to give the cultural and natural heritage a function in the life of the community and to *integrate the protection of that heritage into comprehensive planning programmes* (emphasis added)²⁴. It further requires state parties to *develop scientific and technical studies and research* and to work out such operating methods as

https://www.researchgate.net/publication/227495149_Planning_for_Biodiversity_the_Role_of_Ecological_Impact_Assessment (accessed on 19/10/2022)

¹⁸ Muigua. K., 'Environmental Impact Assessment (EIA) in Kenya' Op Cit

¹⁹ Ibid

²⁰ Ashrafi. B et al., 'A Conceptual Framework for Heritage Impact Assessment: A Review and Perspective' Op Cit

²¹ Ashrafi. B et al., 'Heritage Impact Assessment, Beyond an Assessment Tool: A comparative analysis of urban development impact on visual integrity in four UNESCO World Heritage Properties' Op Cit

²² Pereira Roders. A & Van Oers. R., 'Guidance on Heritage Impact Assessments: Learning from its application on World Heritage site management' *Journal of Cultural Heritage Management and Sustainable Development* Vol. 2 No. 2, 2012

²³ Ibid

²⁴ The Convention Concerning the Protection of the World Cultural and Natural Heritage' Article 5 (a)

will make the State capable of counteracting the dangers that threaten its cultural or natural heritage (emphasis added)²⁵. The Convention thus acknowledges the role of Heritage Impact Assessment as a planning tool towards conservation and protection of world heritage.

The process of Heritage Impact Assessment follows similar steps as the EIA process. The first phase of the HIA process entails understanding the potential impacts of development projects on world heritage as well as existing gaps that may negatively affect cultural and natural heritage²⁶. This involves screening of proposed projects, scoping and examination of different alternative stages in implementing projects towards mitigating their impact on world heritage²⁷. The second phase entails carrying out the assessment process in order to identify and predict threats emanating from proposed projects and their impact on world heritage²⁸. Mitigation measures ought to be proposed in order to minimize adverse impacts as well as enhancing positive effects of developments of cultural and natural heritage²⁹.

The third phase involves preparation of a Heritage Impact Assessment Report for critical and technical review³⁰. The report should capture all relevant information including the impact of the proposed development on cultural and natural heritage and the proposed mitigation measures towards mitigating the impacts³¹. The final phase involves decision making in relation to the project. The project may be disapproved if it may result in significant harm to world heritage or where the mitigation measures

²⁵ Ibid, article 5 (c)

²⁶ Ashrafi. B et al., 'A Conceptual Framework for Heritage Impact Assessment: A Review and Perspective' Op Cit

²⁷ International Association for Impact Assessment and UK (IEA) Institute for Environmental Assessment. Principles of Environmental Impact Assessment Best Practice. 1999. Available at

http://www.iaia.org/publicdocuments/specialpublications/Principles%20of%20IA_web.pdf (accessed on 19/10/2022).

²⁸ Ibid

²⁹ Ibid

³⁰ Ashrafi. B et al., 'A Conceptual Framework for Heritage Impact Assessment: A Review and Perspective' Op Cit

³¹ Ibid

proposed are not appropriate³². The project may also be approved and subsequently implemented. In this case, there is need for monitoring in order to ensure that the project adheres to the mitigation strategies set out in the HIA report³³.

3.0 Heritage Impact Assessment in Kenya

Kenya has in the recent past experienced rapid industrialization and growth in population which puts pressure on both cultural and natural heritage³⁴. These developments affect both the natural environment and heritage resources creating the need for heritage impact assessment within the EIA framework for sustainability. Protection of cultural and natural heritage in Kenya is recognized under the *Environmental Management and Co-Ordination Act* which creates the legal framework for environmental management and conservation in Kenya³⁵. EMCA provides for the formulation of national environment action plan which takes into account all monuments and protected areas under the National Museums and Heritage Act³⁶. EMCA thus envisions protection of cultural and natural heritage as a key process in environmental management³⁷.

Protection and conservation of natural and cultural heritage in Kenya is governed by the *National Museums and Heritage Act*³⁸. The Act recognizes the role of environmental impact assessment in the conservation and protection of natural and cultural heritage in Kenya. It requires the National

³² UNESCO. Convention Concerning the Protection of the World Cultural and Natural Heritage. In Proceedings of the General Conference at Its 17th Session, Paris, France, 17 October–21 November 1972. available at: <http://whc.unesco.org/archive/convention-en.pdf> (accessed on 19/10/2022)

³³ Ibid

³⁴ Kiriama. H et al., 'Cultural Heritage Impact Assessment in Africa: An Overview' available at https://www.researchgate.net/publication/306118471_Impact_assessment_and_heritage_management_in_Africa_An_Overview/link/5bd5299992851c6b27931ba6/download (accessed on 20/10/2022)

³⁵ Environmental Management and Co-Ordination Act, No. 8 of 1999, Government Printer, Nairobi

³⁶ Ibid, S 38

³⁷ Ibid

³⁸ National Museums and Heritage Act, No. 6 of 2006, Government Printer, Nairobi

Museums of Kenya to conduct environmental impact assessments within the framework of EMCA towards fulfilling its mandate which includes the protection, conservation and transmission of cultural and natural heritage in Kenya³⁹. Development projects whose implementation may affect heritage resources need to be subjected to Heritage Impact Assessment as envisioned under the National Museums and Heritage Act.

Heritage Impact Assessment has been undertaken in a number of projects in Kenya involving the National Museums of Kenya. Cultural Heritage Impact Assessment was conducted in relation to the optical fibre cable project at Fort Jesus Museum in Mombasa which is listed as a world heritage site by UNESCO⁴⁰. Subsequently, during implementation of the project mitigation measures were adopted in order to minimize impacts on both marine and terrestrial cultural resources⁴¹. A number of cultural materials were excavated and stored for prosperity as result of the Heritage Impact Assessment⁴². Heritage Impact Assessment was also conducted during the proposed construction of children's park at Mama Ngina Heritage Site in Mombasa⁴³. After the HIA, the project was halted after it emerged that it would result in adverse impacts on cultural heritage at the site⁴⁴. The HIA established that the site was a cemetery of an ancient Tuaca settlement, an ancient civilization in the island of Mombasa thus amounting to significant cultural heritage⁴⁵. Further, Heritage Impact Assessment was also conducted in relation to the Lamu Port South Sudan-Ethiopia Transport (LAPSSET) Corridor project in order to determine its impacts on the Lamu World Heritage Site⁴⁶. The HIA report revealed that the project may have adverse

³⁹ Ibid, S 5 (1) (n)

⁴⁰ Busolo. N., 'Archaeological Impact Assessment for the Optical Fibre Cable at Swahili Cultural Centre, Mombasa' National Museums of Kenya

⁴¹ Ibid

⁴² Kiriamia. H et al., 'Cultural Heritage Impact Assessment in Africa: An Overview' Op Cit

⁴³ Ibid

⁴⁴ Ibid

⁴⁵ Ibid

⁴⁶ UNESCO., 'World Heritage Committee on Lamu Old Town World Heritage Site: State of Conservation Report' available at

impacts on heritage resources linked to the Lamu World Heritage Site, ancient settlements along the Lamu coastline and islands and marine conservation in the area. Mitigation measures were recommended in order to reduce the direct and indirect impacts caused by the project.

Despite attempts to promote the protection and conservation of world heritage in Kenya, challenges still exist in striking a balance between development and conservation of heritage. In the course of development projects touching on world heritage, artefacts have been seized and sold and monuments destroyed due to the failure to fully appreciate the importance of world heritage⁴⁷. There is need to effectively implement Heritage Impact Assessment towards Sustainable Development in Kenya.

4.0 Way Forward: Exploring Heritage Impact Assessment for Sustainable Development in Kenya

Protection and conservation of cultural and natural heritage is a key component of the Sustainable Development agenda. Both the *Sustainable Development Goals* and the *Convention Concerning the Protection of the World Cultural and Natural Heritage* envisage the importance of world heritage and the need for its protection for the benefits of the present and future generations⁴⁸. Heritage Impact Assessment is an important tool in the protection and conservation of world cultural and natural heritage.

In order to effectively promote HIA, there is need for a more systematic and integrated approach in the EIA framework⁴⁹. Concerns involving cultural and natural heritage should be fully addressed within the EIA process in order to effectively identify and evaluate impacts of projects on world

<https://www.google.com/search?q=State+of+conservation+report+lamu+old+town&oq=State+of+conservation+report+lamu+old+town&aqs=chrome..69i57j33i160.12156j0j7&sourceid=chrome&ie=UTF-8> (accessed on 20/10/2022)

⁴⁷ Kiriamia. H et al., 'Cultural Heritage Impact Assessment in Africa: An Overview' Op Cit

⁴⁸ See Sustainable Development Goal 11 and article 4 of the Convention Concerning the Protection of the World Cultural and Natural Heritage

⁴⁹ Ashrafi. B et al., 'A Conceptual Framework for Heritage Impact Assessment: A Review and Perspective' Op Cit

heritage and the need to come up with effective mitigation measures⁵⁰. Further, there is need for involving an interdisciplinary team with sufficient knowledge in cultural and natural heritage in order to effectively conduct a comprehensive HIA. The HIA in relation to the LAPSSET project involved experts including those from UNESCO World Heritage Centre and local experts in cultural and natural heritage in order to effectively conduct the process⁵¹.

Further, there is need to promote public participation in order to fully embrace HIA. Public participation plays an important role in the EIA process since it guarantees acceptability of development projects and prevents disputes between developers and local communities⁵². Public participation can play a central role conservation and protection of world heritage due to the sentimental value that communities may attach to cultural and natural heritage sites.⁵³ Communities may possess traditional indigenous knowledge concerning management of such sites⁵⁴. Thus, there is need to promote public participation and public sensitization in order to fully promote HIA.

Finally, there is need to effectively capture the framework of HIA in national legislation in order to guarantee its adoption⁵⁵. The Environmental Management and Co-ordination Act (EMCA) restricts the definition of

⁵⁰ Ibid

⁵¹ UNESCO., 'World Heritage Committee on Lamu Old Town World Heritage Site: State of Conservation Report' Op Cit

⁵² M. Hasan., 'Public participation in EIA: A comparative study of the projects run by government and non-governmental organizations.' *Environmental Impact Assessment Review* 72 (2018): 12-24.; Art.69(d) of The Constitution of Kenya, Government Printer 2010

⁵³ Siamak. S et al 'Managing world heritage site stakeholders: A grounded theory paradigm model approach." *Journal of Heritage Tourism* 14.4 (2019): 308-324.; See the case of Mohamed Ali Baadi and others v Attorney General & 11 others, Petition No. 22 of 2012, [2018] eKLR; See also the case of Save Lamu & 5 others v National Environmental Management Authority (NEMA) & another, Tribunal Appeal NET 196 of 2016, [2019] eKLR

⁵⁴ Ibid; See Art.69(c) of the Constitution of Kenya on protection of indigenous knowledge.

⁵⁵ Ashrafi. B et al., 'A Conceptual Framework for Heritage Impact Assessment: A Review and Perspective' Op Cit

environment to the natural and biophysical environments only comprising of air, land, fauna, flora and water⁵⁶. This definition does not capture cultural heritage. Further, the Environmental (Impact Assessment and Audit) Regulations, 2003 do not capture the concerns related to cultural and natural heritage. There may be need to capture cultural and natural heritage concerns in these legislations in order to fully promote HIA. Through these measures, HIA will be promoted in the quest towards Sustainable Development.

5.0 Conclusion

World heritage sites are of universal value to humanity for both present and future generations⁵⁷. Protection and conservation of cultural and natural heritage is a key component of the Sustainable Development agenda⁵⁸. However, the conservation of world heritage is threatened by certain factors including modernization and urban growth⁵⁹. Further, cultural and natural heritage is threatened by traditional causes of decay and emerging social and economic conditions including developments and construction⁶⁰. The concept of Heritage Impact Assessment has emerged as key tool in the conservation and protection of world cultural and natural heritage by ensuring that heritage concerns are captured in the EIA process as envisaged under the *Convention Concerning the Protection of the World Cultural and Natural Heritage*⁶¹. There is need to fully embrace and promote Heritage Impact Assessment for Sustainable Development in Kenya.

⁵⁶ EMCA, No.8 of 1999, S 2

⁵⁷ UNESCO, 'World Heritage' available at <https://whc.unesco.org/en/about/> (accessed on 20/10/2022)

⁵⁸ Ibid; See Art.10 (2)(d) of the Constitution of Kenya-Sustainable Development is a National Value and Principle of Governance.

⁵⁹ Ashrafi. B et al., 'Heritage Impact Assessment, Beyond an Assessment Tool: A comparative analysis of urban development impact on visual integrity in four UNESCO World Heritage Properties' Op Cit

⁶⁰ UNESCO., 'The Convention Concerning the Protection of the World Cultural and Natural Heritage' Op Cit

⁶¹ Convention Concerning the Protection of the World Cultural and Natural Heritage, article 5 (a)

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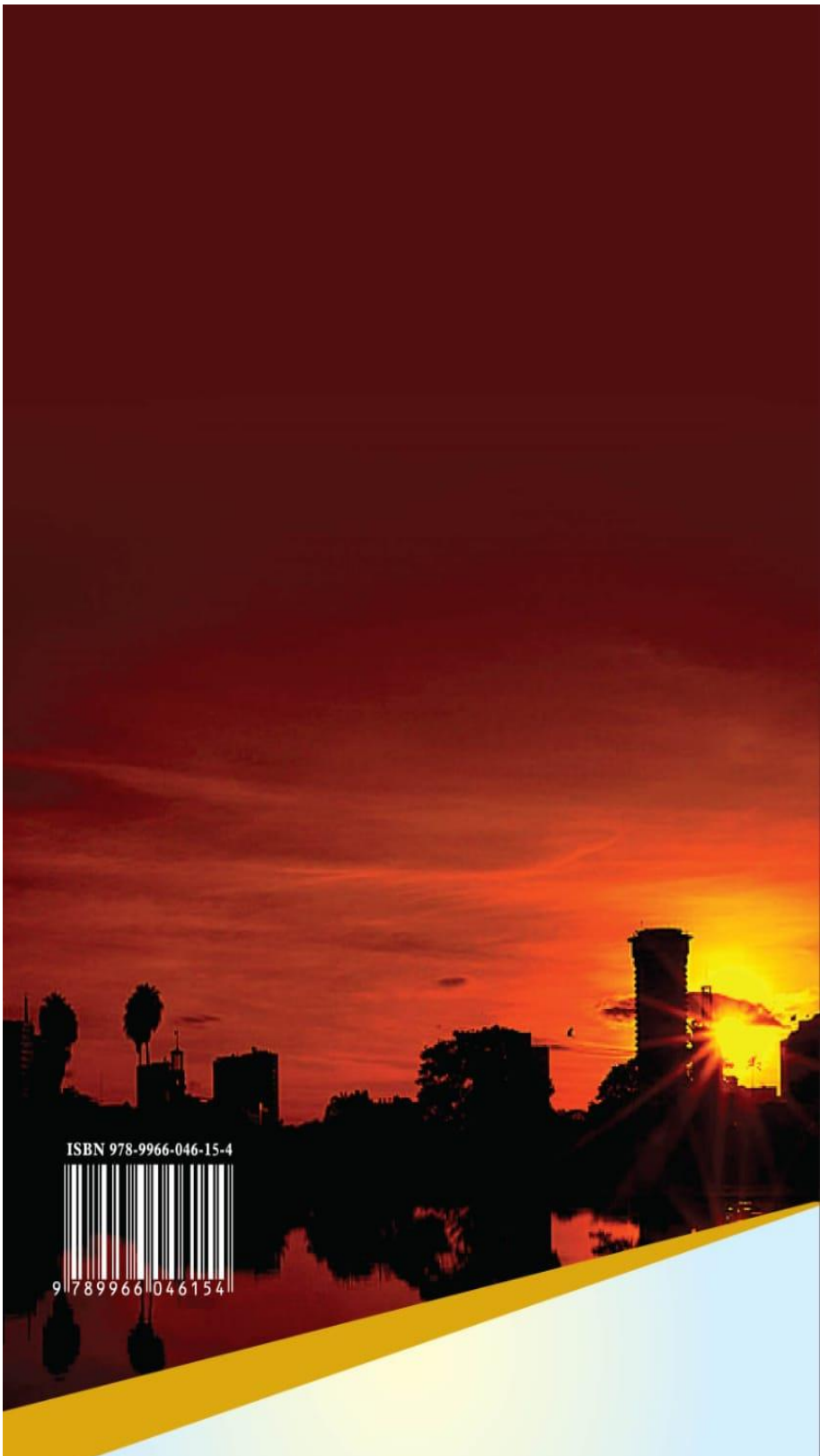
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UNESCO., ‘World Heritage List’ available at <https://whc.unesco.org/en/list/>

United Nations Educational, Scientific and Cultural Organisation (UNESCO), ‘World Heritage Conservation’ available at <https://whc.unesco.org/en/faq/19>



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