

Report on the application of the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property

NIGERIA

I. Information on the implementation of the UNESCO Convention of 1970

1. Ratification of the Convention

Nigeria ratified the Convention in 2005.

2. Implementation in the national legal system and in the organization of services

(a) References of the principal national regulations adopted in order to implement the 1970 Convention.

A National Committee is in the process to be established to integrate all UNESCO/UNIDROIT standard setting instruments into the National Legislation and Domestic Laws.

(b) Definition of "cultural property" used by the national laws

The National Archives Decree No 30 of 1992 states a definition of cultural property inter alia in Section 32(a-c):

Cultural Object is

a) any object of archaeological interest or land in which any such object was discovered or is believed to exist; or

(b) any relic of early human settlement or colonization; or

(c) any work of art or craft work; including any statues, model, clay, figure, figure cast or rust metal, carving, house post, door, ancestral figure, religious mask, staff, drum, bolt, ornament, utensil, weapon, armour, regalia, manuscript or document if such work of art or craft work is of indigenous origin and

(i) was made or fashioned before the year 1918; or

(ii) is of historical, artistic or scientific interest and is or has been used at any time in the performance and for the purposes of any traditional ceremony".

The National Archives Decree No 30 of 1992 describes certain cultural objects as "National Archives" or as "Records" in Section 50 titled "Interpretation and Citation".

- "National Archives" refer to documents established by the public office pursuant to Section 1 of this Decree.
- "Records" refer to all papers, registers; printed matters; books; maps; plans; photographic, microfilms; cinematographic films, sounding recordings, or other documentary materials regardless of physical form or characteristics made or received by public or State offices, or by business houses or companies, private bodies or individuals in pursuance of their legal obligation or in connection with the transaction of their proper business, but does not include library or museum materials made or acquired solely for reference or exhibition purposes, extra copies of records kept only for convenience or reference or stocks of publications.

(c) Specialized units

Two specialized agencies were created: the National Commission for Museums and Monuments and the National Archives. Both agencies are under the authority of the Ministry of Culture and are co-ordinated by its UNESCO Division.

(d) Administrative coordination

The Ministry of Culture and the National Archives work with the Police and Custom authorities which have units that deal with cultural properties.

(e) Working meetings

There are plans to establish inter-ministerial committees to coordinate these activities and to improve the working relationship between the Ministry and the National Commission for Museums, the National Archives, the Police and the Customs.

3. Inventories and identification

(b) Definition of “cultural property” and “national treasures”

The 1990 National Commission for Museums and Monuments Act and the National Archives decree of 1992 are tied to the creation of two different institutions created to tackle some aspects of cultural property and so by implication, there is no single composite legislation/law that gives comprehensive meaning to cultural property. National Treasures are identified but the list is not exhaustive.

4. Archaeological excavations

(a) Basic principles of the regulations on archaeological excavations and on the monitoring of excavations in force

Under NCMM Act, Chapter 242, Laws of Nigeria, 1990:

- Section 19 (i) titled “Excavation and Discoveries”:

(1) No person shall by means of excavation or similar operations search for any antiquities unless authorized by permit issued by the Commission and with the consent of the State Government in whose territory the search is to be carried out.

(2) The commission shall before issuing a permit under this section satisfy itself that the applicant is competent by training and experience to carry out the operations for which the permit is required and may in its discretion require to be satisfied that he has the financial means or the finance or other support of an archaeological or scientific society or institutions of good repute

(3) A permit issued under this section

(a) may be made subject to such conditions as the Commission may think fit to impose;

(b) may at any time be revoked by the Commission without any reason being assigned;

(c) shall not be of itself any right to enter upon any land without the consent of the holder or occupier of the land or of any other person entitled to grant such consent.

(4) Notwithstanding the issue of a permit under this section, the person to whom the permit was issued and all persons engaged in any excavation or other operations to which the permit relates shall, if so required by any person duly authorised in writing by the Commission, suspend such operations until notified by the Commission that they may be resumed.

(5) Any person who contravenes the provision of sub-section (1) or (4) of this section or fails to comply with any conditions of a permit granted to him under this section, shall be guilty of an offence and liable on conviction to a fine of N500 or to imprisonment for six months or to both such fine and imprisonment.

- Section 20:

(1) Any person who discover an object of archaeological interest in the course of operations mentioned in the Subsection (1) above shall, not later than 7 days thereafter, give notice thereof together with particulars of the place and the circumstances of the discovery to the Commission and to the Secretary to the local government where such discovery is made or to such other persons as may be prescribed.

(3) Any person who knowingly fails to comply with any of the foregoing provisions for this section shall be guilty of an offence and liable on conviction to a fine of N500 or to imprisonment for six months or both such fine and imprisonment.

(b) Illegal excavations

In a developing country like Nigeria, a lot of infrastructural development and construction activities are ongoing. Although there are regulations guiding the disclosure of cultural objects found during construction activities, the rules are often breached because the enforcement mechanism is weak; and this is because most people in the construction industry are ignorant of cultural objects. This problem started during the

colonial period. An association called The Art Rescuers of Nigeria which is composed by various Nigerian individuals scattered throughout the country, comprising about 100 art agents empowered by the National Commission for Museums, was formed to retrieve cultural objects in the different communities spread throughout Nigeria. Currently, the Government is trying to increase public awareness of cultural property's importance which witness its existence itself.

5. Monitoring of the export and import of cultural property

(a) Estimate of the scale of the illicit export or import of cultural property (statistics)

Nigeria has lost more than a half of its cultural artefacts through the advent of foreign religions and governments. There are five documented ways by which Nigeria has lost a large majority of its cultural treasures:

- The first method was the systematic imposition of foreign religions on the indigenous population and the prohibition of the adoration of other gods, a development which has been succinctly described in the annals of West African History as the era of the "Bible and the Sword". As a result, the ignorant population had to either destroy or leave to rot away objects of great generation. If not subjected to destruction or decay, they were removed by Europeans as curiosities for museums and private homes in the countries of origin of those missionaries. These objects eventually passed to museums in Europe as gifts or bequests.
- The second manner was gifts either as a mark of hospitality or in exchange for worthless things. Examples of such gifts include a finely worked quarts stool with a looped handle one of the first Ife works seen outside Africa, given as a gift to a colonial official by the Oni of Ife in 1895 and entered an European museum the following year.
- A third way was through plunder made possible by an army of occupation; the most important being the sack of Benin in 1897 during which, in the palace, apart from ivory carvings, a great number of metal castings were found. These works greatly astonished the members of the expedition who took all that they found. Museum and collectors of the fine arts eagerly bought these looted works which therefore got scattered round the world. The technical mastery of the castings and the richness of the ivory carvings were impressive. The method by which the casts were made is called *cire perdue*, or the "lost wax" process. A core of general shapes of the finished object is made in fine mud, and covered with a layer of wax which is modelled to the final shape desired. This is covered with successive layers of mud till sufficient strength is reached by molten bronze or other alloy of copper. When cool, the outer covering of mud is broken away to reveal the metal beneath. According to Biobaku (1972: 14), Nigeria holds the fourth largest collection. Biobaku, who was Chairman of the Antiquities Commission, lamented that the Government of Nigeria had to compete with other countries at auction rooms in Europe to buy back for £50,000 all but one of the Benin Bronzes now on display in the Benin gallery in the National Museum, Lagos. In opposition to other European museums that possess thousands Benin pieces, the Nigerian Museum possesses only about 100 Benin pieces.
- The fourth manner has been through research workers or foreign experts who had in the past and in recent times removed art pieces on the pretext to use them to study collections or to publicise Nigerian art around the world. Some of them, more often than not, find their way into the museum or public art sale-rooms abroad.
- The fifth manner, which in fact has assumed an alarming dimension and is mind-boggling, is through illicit trafficking resulting in incessant thefts in museums, grooves, palaces, shrines, etc. as well as the pillage and plunder of historical and archaeological sites. It is common knowledge that art dealers pay labourers to dig the soil in search of artefacts, particularly in Kaduna, Plateau, Zamfara, Katsina and Sokoto States in Nigeria. Eyewitnesses to the illegal mining revealed that the financiers of the diggers "usually come with some people who use machine to check the ages of the artefacts". (The Democrats, October 12, 1995). Yet, we know that artefacts buried in the ground have to be identified, recovered and preserved for the present and future generations. Indeed their illegal excavation and exportation constitute a serious threat to our cultural heritage. In addition, a vast majority of these objects are destroyed in the process of digging by the ignorant diggers. In the meantime, the illegal miners and art speculators are winning in the race to recover and preserve our invaluable artefacts. A few examples will suffice to draw attention to the danger facing the preservation of cultural property in Nigeria.

S/NO	Year	Where	No. Of Object
1	1969	Palace of Oloja of Ikoru – Ekiti	2
2	1970	Hebba Gungu Palace Shrine	1
3	1973	Owo Museum	19
4	1979	Benin Museum	3
5	1984	Lagos Museum	1
6	1986	Esie Museum	1
7	1987	Jos Museum	9
8	1988	Obo – Aiyegunle (Kwara State)	2
9	1989	Obafemi Awolowo University	8
10	1990	Ekene Utim, Akwa Ibom State	6
11	1993	Esie Museum	14
12	1993	University of Ibadan	137
13	1993	Ife Museum	10
14	1994	University of Ibadan	38
15	1994	Abeokuta Museum	26
16	1994	Ife Museum	35

As can be gleaned from the statistics above, treasure thieves have been pillaging Nigerian cultural objects. The period 1986-1996 witnessed the looting of 24 museums and communities and loss of a total of 382 artefacts. It must be emphasized that these reflect only cases reported to the National Commission for Museums and Monuments (NCMM) and the Police.

(b) Problem of the illicit export of cultural property

It is an endemic and perennial problem and the reasons are not farfetched:

- i. lack of enlightenment about the nature and importance of cultural objects in the general populace at large
- ii. Weak legal legislations which make punishment by fine peanuts and imprisonment of very little and generally weak punitive mechanism
- iii. Lack of modern security equipment in our museums
- iv. Poor remuneration for museum workers which makes theft of cultural objects a tempting option
- v. Lack of continuous capacity building programs for cultural workers
- vi. Lack of understanding of the importance of cultural objects by the political elite

(c) Main rules for monitoring the export and import of cultural property

Under the 1990 National Commission for Museums and Monuments Act, Paragraph 21 (1)

No person shall:

- a. buy any antiquity unless he is an accredited agent; or
- b. sell any antiquity to any person other than an accredited agent.

The Registration of Antiquities, Paragraph 23:

(1) Any person who has an antiquity in his possession or under his control either before or after the commencement of this Decree shall, if so demanded by an accredited agent, register the antiquity with the accredited agent who may call upon him in person between the hours of 8 a.m. and 6 p.m. any day, except on work-free days, for that purpose.

(2) Any antiquity not so registered by a person who is in possession or control of it when an accredited agent has called upon him in person for the registration thereof shall be liable to seizure by a police officer, but the antiquity shall not be forfeited except on the order of a magistrate.

The Clearance permit, paragraph 24:

(1) Where a person is in any doubt as to whether or not an object in his possession is an antiquity, he may apply in person, or in writing, attaching the object in his possession or a photograph of it, to the Director-General, or any person authorised in writing by the Director-General, for the determination of the matter.

(2) Where the Director-General or the person authorised in writing by him, is satisfied that the object in the possession of the applicant is not an antiquity, he may issue a permit (hereinafter called a "clearance permit") in respect of that object

(3) A clearance permit issued in respect of an object shall be conclusive proof that the object is not antiquity.

Restriction on export of antiquities on paragraph 25:

- (1) Subject to the provision of subsection (4) of this section and to any exceptions which may be prescribed, no antiquity shall be exported from Nigeria without a permit issued in that behalf by the Commission.
- (2) An application for a permit under this section shall be made in such manner as may be prescribed.
- (3) Before issuing a permit under this section shall not be required for the export of an antiquity the Commission may cause the antiquity to be inspected and to be sealed.
- (4) A permit under this section shall not be required for the export of an antiquity which has been lawfully imported into Nigeria, but if in any proceedings against any person in respect of a contravention of this section any question shall arise whether an antiquity has been lawfully imported into Nigeria the onus of proof thereof shall lie upon that person.

(e) Obstacles encountered in securing the restitution of illicitly exported cultural property

The obstacles are manifold. The most obvious one is the lack of political will which stems from lack of understanding of the importance of cultural property in the life of a Nation. Secondly, Nigeria has not administratively followed the procedure for the restitution of its illicitly exported cultural property. This is reinforced by the unwillingness of importing countries to release these cultural objects. More than anything, the re-visioning of the whole legal system concerning cultural property in Nigeria is needed.

(f) Circumstances in securing the restitution of a stolen cultural object

The result of efforts to recover through foreign courts various art treasures of Nigeria that had been illicitly exported was somewhat mixed due to the complex issue of conflicts of law.

In 1982, the government of Canada held a Nok terracotta sculpture which had been illegally exported from Nigeria. The figure first appeared in the art world at an auction in Paris took place in the summer of 1977. The figure was imported into Canada in 1981 by one of the co-defendants, who reported to custom officials to have it authenticated. He advised them of its estimated worth, that being several thousands of dollars. The cultural property was unlawfully imported into Canada, contrary to the Cultural Property Export and Import Act 1975 in contravention of Section 37 of the Act, and thereby committing an offence against section 39(1) (b) of the Act. Both Nigeria and Canada were parties to the Convention at the date of the import into Canada, and Canada was acting at the request of the Nigerian Government as provided for in the Canadian Act. Evidences was brought that the sculpture was a Nigerian antiquity within the meaning of the current Nigerian legislation and that it had been illegal to export cultural antiquities from Nigeria without written permission since 1924. The figure had therefore been illegally exported from Nigeria. However, Canada did not become a party to the UNESCO Convention until 1978. Although the judge accepted that co-defendants knew in 1980, before the import into Canada, that the object had been illegally exported from Nigeria, the Court, relying on the Article 7 (a) of the 1970 Convention, held that the words "illegally exported" must be restricted to the time following Canada's entry as a party to the international convention. All three defendants were accordingly discharged.

In 1972, the German case of *Allgemeine Versicherungsgesellschaft v. E. K.* BGHZ 59, 83, was decided. The German Federal Supreme Court held that a prohibition in German Civil Code of contracts contrary to public policy included "international public policy." In that case, a Nigerian company had entered into an insurance contract with a German company covering the transport by sea of three cases of African Masks and statues from Port Harcourt, Nigeria to Hamburg. The Plaintiff was seeking damages for the loss of six Bronze statues. However, the contract which was in violation of a Nigerian prohibition on the export of cultural objects was held to be contrary to public policy. The court considered the 1970 UNESCO Convention and found that this represented the emerging international public policy on the issue. Therefore, even though the Federal Republic of Germany was not a party to the Convention, the German court held that was unenforceable in Germany since "the export of cultural property contrary to a prohibition of the country of origin for the reason merits, in the interest of maintaining proper standards for the international trade in cultural objects, no protection from civil law." Furthermore, the court held that the disregard, which was both customary and tolerated in earlier times, of the desire of other nations to keep their cultural treasures could not be regarded as the contemporary standard for public policy as to the enforcement of contracts.

6. System for trade-in, acquisition, ownership and transfer of cultural property

(d) Existing legal system concerning ownership of cultural property:

The principle of inalienability applied to cultural items in national collections and objects originating in heritage sites in the 1990 NCMM Act Part II, paragraph 12 Titled "Declaration of Antiquities as National Monuments, etc. 12 :

- (1) For the purpose of the discharge of its functions under this Decree, the Commission may
 - (a) for the purpose of discovering antiquities in any area, carry out excavation with the knowledge of the State Government concerned;
 - (b) by agreement with the owner of any antiquity (other than a monument) undertake its maintenance or any other measures which the Commission would have power to undertake if such antiquity were a national monument;
 - (c) if the Commission considers it expedient that any antiquity (other than a monument) should be preserved in a museum, and with the knowledge of the State Government concerned, arrange for the purchase or loan of the antiquity and its removal to a national or other approved museum;
 - (d) enter upon any land where archaeological excavations or other operations are being carried on, and inspect same.
- (2) The power conferred on the Commission under this section may be exercised on its behalf by any person or authority authorised either generally or specially by the Commission in that behalf.

The NCMM 1990 Act, paragraph 19 titled Excavations and Discoveries:

- (1) No person shall by means of excavation or similar operations search for any antiquities unless authorised by permit issued by the Commission and with the consent of the State Government in whose territory the search is to be carried out.
- (2) The Commission shall before issuing a permit under this section satisfy itself that the applicant is competent by training and experience to carry out the operations for which the permit was required and may in its discretion require to be satisfied that he has the financial means or the financial or other support of an archaeological or scientific society or institution of good repute.
- (3) A permit issued under this section:
 - (a) may be made subject to such conditions as the Commission may think fit to impose;
 - (b) may at any time be revoked by the Commission without any reason being assigned;
 - (c) shall not itself confer any right to enter upon any land without the consent of the holder or occupier of the land or of any other person entitled to grant such consent.
- (4) Notwithstanding the issue of a permit under this section, the person to whom the permit was issued and all persons engaged in any excavation or other operations to which the permit relates shall, if so required by any person duly authorised in writing by the Commission, suspend such operations until notified by the Commission that they may be resumed.
- (5) Any person who contravenes the provisions of subsection (1) or (4) of this section or fails to comply with any conditions of a permit granted to him under this section, shall be guilty of an offence and liable on conviction to a fine of N500 or to imprisonment for six months or to both such fine and imprisonment.

(e) Special rules on the transfer of title deeds with respect to cultural property

There is a ban on buying and selling of antiquities. Under the 1990 convention for Museums and Monuments Act, Paragraph 21 (1), no person shall:

- a. buy any antiquity unless he is an accredited agent; or
- b. sell any antiquity to any person other than an accredited agent.

7. Bilateral agreements

(a) Bilateral agreements concluded with other countries on the import, export and return of cultural property

No bilateral agreements have been concluded for now. However, Nigeria initiated discussions and exchanged proposals with two countries, namely Peru and China; and negotiations are on-going.

II. Code of ethics, awareness raising and education

1. Ethical standards

(a) Application of the UNESCO International Code of Ethics for Dealers in Cultural Property and the ICOM for museums

Most of the core professionals in the Ministry of Culture and National Commission for Museum and Monument are aware of the UNESCO International Code of Ethics for Dealers in Cultural Property and that of ICOM red list.

2. Awareness raising and education

(b) Dissemination of the “One hundred missing objects” series and the ICOM Red Lists

The “One hundred missing objects” series and the ICOM Red Lists are known by professionals.

III. Cooperation with other international and regional agencies

Police

(a) State of national cooperation with INTERPOL. Specialized police services to whom the heritage officials can call on for enquiries, legal proceedings and punitive measures

A National Office of International Criminal Police Organization was created. It is situated in the office of the Inspector General of Police, D Department, First Headquarter Annex, Alagbon Close, Ikoyi, Lagos, Nigeria.

(d) Punishment of fraud and theft related to cultural property via criminal law provisions. Specialized judges in this field

Criminal law provision allows for the punishment of fraud and theft related to cultural property, but the fines are very poor and the penalty and fines needs to be reviewed upwardly.

There are no specialized judges in this field.

IV. Other legislative, legal and administrative measures taken by the State

1. Accession to the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects

The UNIDROIT Convention has been ratified by Nigeria on the 10 December 2005.

2. Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation

Nigeria has attended the meeting of the Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation over the years. At the 16th session, Nigeria was vice-chairman of the Committee and provided the rapporteur, Prof. Folarin Shyllon. Nigeria also attended the 17th session has vice chairman of the Committee. Nigeria will also the attending the 18th session which will take place on the 22 June 2012.