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## Return of Benin Objects to Nigeria: Perceptions and the Law

**Abstract:** This research responds to the debates over who should own Benin objects returned to Nigeria and the news about the Oba of Benin commenting, prior to 2023, that the Benin objects to be returned to Nigeria should be returned to him and not the federal government. This article uncovers the perceptions of the members of the Igun community, many of whom are the descendants of the Igun guild that produced the Benin objects that were carted away from Benin Kingdom during the 1897 Expedition. Using a survey questionnaire and in-depth interviews, the article examines the perceptions of the Igun community about the Benin objects and the effect of the expedition on Benin art and heritage. The findings reveal that many believe the Benin objects should be returned to the Oba, who is the custodian of Benin culture and heritage. The respondents are also in agreement that the expedition, although brutal, nonetheless brought Benin art and heritage into the limelight. The article also carries out a critique of the Executive Order Notice No. 25, Order No. 1 of 2023, and concludes by stating that though the executive order is invalid, its invalidity is inconsequential with respect to the dictates of customary law, human rights law, and international law.

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**Keywords:** Benin objects, Igum community, return, cultural heritage, southwest Nigeria

*A work of art gains in beauty and truth, both for the uninitiated and for the scholar, when viewed in the natural and social setting in which it took shape; a nation suffers affliction at the spoliation of the works it has created; a nation needs to be alive on an imaginative level and return and restitution enables a nation to recover part of its memory and identity.<sup>1</sup>*

## Introduction

The issue of return of objects to conquered territories is not a new one. From ancient times it has been reiterated that cities should not be adorned by works of art taken from conquered territories.<sup>2</sup> Carting art objects away from territories where they were created causes irreparable loss of valuable information to mankind. This in turn impoverishes a nation of objects of her memory and identity, thus necessitating return and restitution.<sup>3</sup> The French revolution that enthroned Napoleon led to conquered territories, especially Belgium and Italy, losing objects of their identity. At the Congress of Vienna, the victors of 1815 compelled France to carry out one of the first large-scale restitutions recorded in history,<sup>4</sup> mainly for the reason that modern conquerors should view the objects as being inseparable from their countries of origin, as depicted in several 17th-century treaties.<sup>5</sup> However, at the same time that the Congress of Vienna was returning objects to European nations, those nations were simultaneously removing objects from their colonies around the world.

<sup>1</sup> A. M'Bow, *A Plea for the Return of an Irreplaceable Cultural Heritage to Those Who Created It*, "Museum International" 1979, Vol. 31(1), p. 58.

<sup>2</sup> Quoted by S. Séfériadès, *La question du rapatriement des marbres d'Elgin considérée plus spécialement au point de vue du droit des gens*, "Revue de droit international" 1932, Vol. 2. Adapted by L.-J. Rollet-Andriane, *Les précédents*, "Museum International" 1979, Vol. 31(1), p. 4.

<sup>3</sup> A.A. Adewumi, *Return and Restitution of Cultural Property in African States under the 1970 UNESCO and 1995 UNIDROIT Conventions*, PhD dissertation, Faculty of Law, University of Ibadan, 2015, <https://pgsds.ictp.it/xmlui/handle/123456789/152> [accessed: 17.09.2024].

<sup>4</sup> H. Wheaton, *Rights of War as between Enemies*, in: idem, *Elements of International Law*, Vol. 1, Brockhaus, Leipzig 1852, cited by L.-J. Rollet-Andriane, op. cit., p. 6.

<sup>5</sup> Seventeenth-century treaties such as the Treaty of Munstar in 1648 between Spain and the Netherlands (Art. LXIX); of the Isle des Faisans in 1659 between Spain and France (Art. LIX); of Nimwegen in 1678 between Spain and France (Art. XX); of Nimwegen in 1679 between Austria and France (Art. XIX); of Lunden in 1679 between Denmark and Sweden (Art. XII); of Ryswick in 1697 between the Netherlands and France (Arts. II and VI); of Utrecht in 1713 between the Netherlands and France (Art. VI); and between France and Savoy (Art. XII), etc., culled from A.A. Adewumi, *Return and Restitution...*

Instances of return of objects removed from conquered territories have taken place voluntarily, either under the notion of simple honesty<sup>6</sup> or under compulsion guided by the principle that scientific and artistic works cannot be displaced because they are predestined to meet the unending intellectual needs of the country of origin.<sup>7</sup> Current principles of international law protecting cultural property are fashioned after the post-First World War peace treaties,<sup>8</sup> which handled the issue as part of a post-war settlement between former enemies and favored countries demanding the return of the cultural property they had lost.<sup>9</sup>

Carting away art treasures of countries as war booty, especially from conquered territories, has become a major source of concern to the whole world today, as it constitutes the dispersion and spoliation of the world's cultural treasures, which also constitute precious symbols of national identity. Unfortunately, there were no laws in place in several of these conquered territories which made the act of carting away art treasures as war booty illegal. However, the United Nations Educational, Scientific and Cultural Organization (UNESCO) addressed the issue from the viewpoint of international cooperation and justice in the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property ("the 1970 UNESCO Convention").<sup>10</sup> The obligations under this Convention are three-fold: a) prevention of illicit trafficking; b) restitution of trafficked objects; and c) fostering international cooperation among Member States in recovering trafficked objects.<sup>11</sup> Though conventions are not retroactive, the 1970 UNESCO Convention's Article 15 made it possible

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<sup>6</sup> See R. Pankhurst, *Restitution of Cultural Property: The Case of Ethiopia*, "Museum" 1986, Vol. 149, pp. 58-59; J. Toman, *The Protection of Cultural Property in the Event of Armed Conflict*, UNESCO Publishing, Dartmouth 1996, p. 4.

<sup>7</sup> J.K. Bluntschli, *Le droit international codifié*, Guillaumin, Paris 1870, Art. 650, No. 4. It is also interesting to note that in some cases those responsible for implementing the allied decisions of 1815 – which compelled France to effect one of the first large-scale restitution recorded in history – did not stop at merely returning the transferred items to their last owners: some manuscripts which Napoleon's armies had seized in Rome were restored not to the Pope, but to the Heidelberg Library, from whence they had been looted in 1622.

<sup>8</sup> A. Vrdoljak, *Enforcement of Restitution of Cultural Heritage through Peace Agreements*, in: F. Francioni, J. Gordley (eds.), *Enforcing International Cultural Heritage Law*, Oxford University Press, Oxford 2013, p. 38.

<sup>9</sup> T. Kono, S. Wrbka, *General Report*, in: T. Kono (ed.), *The Impact of Uniform Laws on the Protection of Cultural Heritage and the Preservation of Cultural Heritage in the 21st Century*, Martinus Nijhoff Publishers, Leiden-Boston 2010, p. 33, citing L.J. Harris, *From the Collector's Perspective: The Legality of Importing Pre-Columbian Art and Artifacts*, in: P.M Messenger (ed.), *The Ethics of Collecting Cultural Property: Whose Culture?* University of New Mexico Press, Albuquerque 1999, p. 155, citing J.A.R. Nafziger, *International Penal Aspects of Protecting Cultural Property*, "The International Lawyer" 1985, Vol. 19(3), p. 835; J. Warring, *Underground Debates: The Fundamental Differences of Opinion that Thwart UNESCO's Progress in Fighting the Illicit Trade in Cultural Property*, "Emory International Law Review" 2005, Vol. 19, p. 234.

<sup>10</sup> 14 November 1970, 823 UNTS 231.

<sup>11</sup> A.A. Adewumi, *The Achievement of Return and Restitution of Cultural Property in Africa: Roles of International Bodies*, "University of Ibadan Journal of Public and International Law" 2015, Vol. 5, pp. 63-81.

for countries to enter into agreements for the return of art treasures taken before the Convention came into force.<sup>12</sup>

The Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation (ICPRCP), established in 1978,<sup>13</sup> equally has the mandate of settling issues arising because of objects taken prior to the 1970 UNESCO Convention.<sup>14</sup> The agreement between Germany and Nigeria<sup>15</sup> for the return of objects taken before the coming into force of the 1970 UNESCO Convention is an example of international practice. Several other returns of objects taken in colonial times have and are still taking place worldwide, and Nigeria is not left behind.<sup>16</sup> This can be attributed to the moral pressure mounted in response to the historical injustices which have become an issue of discussion worldwide under the umbrella of “decolonizing heritage”. There have been several returns to Nigeria, and further returns are envisaged in the nearest future.<sup>17</sup> This research is undertaken in order to determine who should have custody of the returned Benin objects upon their arrival to Nigeria from the western world.<sup>18</sup> Should they be kept in the custody of the Nigerian government, or the Oba? Some of the returned artefacts, including a cockerel and the bronze head of one of the Benin monarchs, are presently being stored inside the palace of the first-class monarch, the Oba of Benin, Omo N’Oba N’Edo Uku Akpolokpolo, Oba Ewuare II; pending the completion of Benin royal museum which he initiated.<sup>19</sup>

<sup>12</sup> A.A. Adewumi, J.O.A. Akintayo, A. Jakubowski, *Article 15 of the 1970 UNESCO Convention - Agreements for Return or Restitution of Cultural Property Removed prior to 1972*, in: A.F. Vrdoljak, A. Jakubowski, A. Chechi (eds.), *The 1970 UNESCO and 1995 UNIDROIT Conventions on Stolen or Illegally Transferred Cultural Property. A Commentary. Part II*, Oxford University Press, Oxford 2024.

<sup>13</sup> UNESCO Doc. 20C/Resolution 4/7.6/5.

<sup>14</sup> A.A. Adewumi, *The Development of Partnership between UNESCO, Governmental and Non-Governmental Organisations in the Fight against Illicit Trafficking of Cultural Property*, “Nigerian Bar Journal” 2017, Vol. 10, pp. 1-10.

<sup>15</sup> C. Hickley, *And So It Begins: Germany and Nigeria Sign Pre-accord on Restitution of Benin Bronzes*, “The Art Newspaper”, 15 October 2021.

<sup>16</sup> Examples of returns are found in: H. Sherwood, *London Museum Returns Looted Benin City Artefacts to Nigeria*, “The Guardian”, 28 November 2022, <https://www.theguardian.com/culture/2022/nov/28/london-museum-returns-looted-benin-city-artefacts-to-nigeria> [accessed: 17.09.2024].

<sup>17</sup> An account of the returns already made and those to be made are listed in the article: K. Fitz Gibbon, *Where Will Benin Bronzes Go? Nigerian Government, Edo Museum or Oba?* “Cultural Property News”, 4 October 2022, <https://culturalpropertynews.org/where-will-benin-bronzes-go-nigerian-government-edo-museum-or-oba/> [accessed: 17.09.2024].

<sup>18</sup> B. Phillips, *Are Frictions in Nigeria Jeopardising the Return of the Benin Bronzes?* “APOLLO: The International Art Magazine”, 28 April 2022.

<sup>19</sup> B. Olaniyi, *EMOWAA Not Rival to Benin Royal Museum*, “The Nation Newspaper”, 5 April 2023, <https://thenationonlineng.net/emowaa-not-rival-to-benin-royal-museum/> [accessed: 17.09.2024].

## Aim

This research aims to determine how the occupants of the Igun community perceive the 1897 British expedition; and who – i.e. between the Oba of Benin and the Nigerian government – should be the custodian of the returned objects under Nigerian law.

## Objectives

The objectives of this study are to:

1. examine the perception of the Igun community about the British expedition and the value of the bronzes;
2. determine the opinion of members of the Igun community as to who should be the custodian of the objects upon return;
3. examine the relationship (if any) between the socio-demographic data of the participants and their opinion on where the objects should be returned to;
4. examine the relationship between the perception of the people and the position of the law on ownership and proper custody of heritage objects.

This article is divided into four sections, the first being this introduction. The research methodology is described in the second section. The findings and discussions concerning the objectives are laid out in the third section. The fourth section contains conclusions.

## Materials and Methodology

The study was carried out using a mixed method approach. Doctrinal research was combined with empirical study. Journal articles, books, international instruments, newspaper reports, and online sources were subjected to content analysis. The study adopted a cross sectional survey to analyze the information that was elicited through a semi-structured questionnaire accessed through online platform (Google form), and the relevant data collected electronically in March 2022. The questionnaire was administered at Igun Street in Benin City. The rationale for choosing the Igun community for the research is because the Igun community is a major stakeholder in determining the value and significance of the Benin objects that emanated from them. Participation was voluntary, and there was no financial inducement or coercion. The participants were assured of confidentiality of information, and they all signed written informed consent before proceeding to complete the questionnaire. The questionnaire was not solely directed to the bronze casters. Wood carvers, artists, traders, inhabitants of the community comprising young adults, adults, and the elderly were consulted. A quantitative data analysis was carried out for the primary data collected, using a statistical package for social sciences (SPSS) version 25. The results were presented by means of descriptive statistics, such as frequency tables and percentages. Pearson's Chi-square was used to discover and

assess the associations between the categorical data and a *p*-value of less than 0.05 adopted for statistically a significant relationship.

There were a total of 112 participants in the study. A summary of the respondents' characteristics is shown in Table 1 below.

**Table 1.** Sociodemographic characteristics of participants

DESCRIPTION	FREQUENCY N (TOTAL 112)	PERCENTAGE % (TOTAL 100)
<b>Age group (years)</b>		
20 and below	15	13.4
21-30	29	25.9
31-40	11	9.8
41-50	27	24.1
Above 50	30	26.8
<b>Gender</b>		
Female	34	30.4
Male	78	69.6
<b>Educational qualification</b>		
None	5	4.5
Primary	8	7.1
Secondary	36	32.1
Tertiary	63	56.3
<b>Religion</b>		
Christianity	90	80.4
Traditional	22	19.6
<b>Marital status</b>		
Single	57	50.9
Married	43	38.4
Widow/widower	7	6.3
Divorced/separated	5	4.5

As can be seen, participants above 50 years of age accounted for the largest age group (26.8%), while those between ages 31 and 40 constituted the fewest in terms of population (9.8%). There were more male respondents (69.6%) than females (30.4%), and a majority of the participants had a tertiary level of education (56.3%). A majority of the participants belonged to the Christian religion (80.4%), while 19.6% of them were traditional worshippers. There were more respondents that were single (50.9%) in the distribution by marital status.

## Findings and Discussion

### Objective 1: Perception of the Igun community about the British expedition and the value of the bronzes

#### Benin expedition

Even before the 19th century, the renewed interest in the past encouraged colonial masters to collect art objects found in the colonies as a sign of the power and privilege they wielded as rulers.<sup>20</sup> By the beginning of the century, scientific interests began to further motivate the collecting of artefacts. Around this time the colonial masters became keenly interested in annexing the Benin kingdom to their possessions in West Africa.<sup>21</sup> To avenge the death of British unarmed men, a Benin punitive expedition was carried out by the colonial masters in 1897, aimed at punishing the King, who was deemed responsible for their deaths. The very rich Benin territory was also bedeviled by cruelty and brutality in form of slavery, cannibalism, and human sacrifices at that time.<sup>22</sup> The expedition not only caused the Benin kingdom to lose artefacts and objects, but also inflicted irreparable damage on the people with respect to their religious, emotional character, and social life. Cultural property at that time was a means of production and lifestyle.<sup>23</sup> As Lai Mohammed puts it: “These artefacts speak to who we are and speak to our history, our religion, our values and ethics”.<sup>24</sup> The Benin plaques carted away during the punitive expedition serve as a record of the way of life in the palace.

#### Igun community

Igun-Eronwon quarters – popularly known as Igun Street – is located off Sokponba Road, by the Ring Road in Benin City, Edo State. It is listed as a cultural heritage site by UNESCO. This is boldly highlighted at the central gateway to the street with the inscription “Home of the Guild of Benin Bronze Casters: World Heritage Site”. The community is located not too far from the National Museum in Benin City, which is less than a 10 minutes’ drive from the Palace. Brass and bronze casting industries in Benin City are located on Igun Street, which is the home guild of Benin bronze casters. Although the origin of bronze casting is not easy to establish, the craft has devolved from generation to generation. Before the Benin expedition, the Oba alone regulated the bronze casting guild. The expedition scattered

<sup>20</sup> Trust TV, *Creative Lounge: Benin Bronze Roundtable*, 30 May 2023, <https://youtu.be/qTRI7Z8gVt4> [accessed: 17.09.2024].

<sup>21</sup> *The Massacre near Benin*, “The New York Times”, 22 January 1897.

<sup>22</sup> *Ibidem*.

<sup>23</sup> A.A. Adewumi, *Return of Cultural Property to Countries of Origin and the Emerging Issues*, in: A. Olatunbosun (ed.), *Law and Policy Thoughts in Nigeria*, Faculty of Law, University of Ibadan, Ibadan 2018, pp. 301-323.

<sup>24</sup> H. Sherwood, *op. cit.*

the members of the guild, who spread out in the neighborhood and continued practicing their art, while some returned to the Benin kingdom.<sup>25</sup>

The family that has the sole traditional responsibility for casting bronzes is the Inneh family. Chief Inneh, being the head of the bronze casters, resides in the Igun community. Every child born into the Inneh family must go through the process of bronze casting. The artworks constituted signs of communication between the Oba and the people about events and situations. Every artwork has a story behind it. The indigenes of Igun only make bronzes on instruction from the palace. The Oba pays royalties, and the loyalty of the people has traditionally been to the Oba. The expedition thus left a lot of pain in the hearts of the people.<sup>26</sup>

During a visit to the Igun community, the secretary of the Igun community, Chief Inneh, gave a comprehensive account of the heritage of bronze casting, stating that:

In those days, bronze casting was originally done in the palace by the Oba's peasants. Bronze casting was for the purpose of decorating the palace, keeping heritage, and as a source of income to the carvers, who got paid by the Oba. The crafts were for the Oba in those days. After the invasion of Benin kingdom by the British soldiers, the whole tradition of bronze casting in the palace and everything was in essence affected due to the state of unrest among the Benin people as a result of the massacre. Some of the people that had the knowledge of bronze casting had to emigrate due to the war.

The invasion of the kingdom by the British people was both a loss and a gain to the Benin people. Though the war caused a lot of havoc, due to this our craft hit the limelight. It became known in other parts of the world and, as time went on and modernization came, the trade evolved. Some of the king's men passed this knowledge of bronze casting on to their children, who eventually used it as a good source of income for their families. Bronze casting now serves both specific and nonspecific purposes. This means that nowadays, anyone who wishes can use bronze works as a decoration in their homes. It also serves as a source of income for bronze casters and marketers. It is no longer limited to only the palace. Bronze casting can be carried out and used anywhere. However, a Benin man who sees these crafted works, whether at home or abroad, gets highlighted, or better still remembers his or her heritage. These objects are used to tell stories of past ancestors relating to the Benin empire, like the story of Queen Emotan, who sacrificed her life for her husband, King Ewuare. The sculpture of her head is found in museums.

Forrest<sup>27</sup> has divided the values inherent in cultural objects into three categories, namely: expressive value; historical or archaeological value; and economic

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<sup>25</sup> *Igun-Eronmwon Quarters or Igun Street*, <https://web.archive.org/web/20230129214806/http://www.callstonigeria.com/igun-eronmwon-quarters.html> [accessed: 17.09.2024].

<sup>26</sup> The information in this paragraph was volunteered by Mr. Lewis Inneh, a lawyer and one of the descendants of the bronze casters that created the bronzes carted away from the palace during the expedition. The information was received from him on 14 May 2024.

<sup>27</sup> C. Forrest, *International Law and the Protection of Cultural Heritage*, Routledge, London–New York 2010, pp. 3-13.

value. From the account above, it can be deduced that the bronzes not only have economic value, but also have artistic interest, historical interest, educational interest, scientific interest, ownership interest, emotive interest, and aesthetic interest attached to them, among others.

## Objective 2: Opinion of members of the Igun community on who should be the custodian of the objects on return

**Table 2.** Perceptions and opinions about the bronze carvings

DESCRIPTION	FREQUENCY N (TOTAL 112)	PERCENTAGE % (TOTAL 100)
<b>The carvings were produced for the palace only</b>		
Yes	81	72.3
No	23	20.5
I don't know	8	7.1
<b>The bronze carvings were an independent trade</b>		
Yes	63	56.3
No	41	36.6
I don't know	8	7.1
<b>All the carvings carted away belonged to the Oba</b>		
Yes	94	83.9
No	8	7.1
I don't know	10	8.9
<b>Who should all the carvings carted away be returned to</b>		
To the Nigerian Government/museum	21	18.8
To Oba of Benin	83	74.1
To families of the carvers	6	5.4
Not be returned	1	0.9
I don't know	1	0.9

Table 2 enumerates the perceptions and opinions of the respondents. From the table, it can be deduced that 72.3% of the respondents have the perception that the bronze carvings were produced for the palaces and 56.3% had the perception that bronze carving was an independent trade. 83.9% of the respondents believe that the carvings belong to the Obas, and in evaluating their opinions on who the bronze carvings be returned to, it is noteworthy that only 18.8% opined that they should be returned to the Nigerian Government and kept in the museums, while 74.1% stated that they should be returned to the Oba, and 5.4% opined that the bronze carvings be returned to the families of the carvers.

**Objective 3: The relationship (if any) between the sociodemographic data of the participants and their opinion on where the objects should be returned to**

**Table 3.** Cross tabulation of sociodemography with opinions on where the carvings should be returned to

	Carvings should be returned to who?			Statistics test	p-value
	Nig. Gov. n (%) n=21	Oba n (%) n=83	Family n (%) n=6		
<b>Age group (years)</b>					
20 and below	3 (20.0)	9 (60.0)	3 (20.0)	$\chi^2 = 24.435$	0.080
21-30	9 (31.0)	15 (51.7)	3 (10.3)		
31-40	2 (18.2)	9 (81.8)	0 (0.0)		
41-50	4 (14.8)	28 (85.7)	0 (0.0)		
Above 50	3 (10.0)	27 (90.0)	0 (0.0)		
<b>Gender</b>					
Female	12 (35.3)	19 (55.9)	2 (5.9)	$\chi^2 = 12.070$	0.017*
Male	9 (11.5)	64 (82.1)	4 (5.1)		
<b>Educational qualification</b>					
None	0 (0.0)	5 (100.0)	0 (0.0)	$\chi^2 = 8.865$	0.714
Primary	0 (0.0)	7 (87.5)	1 (12.5)		
Secondary	6 (16.7)	28 (77.8)	1 (2.8)		
Tertiary	15 (23.8)	43 (68.3)	4 (6.3)		
<b>Religion</b>					
Christianity	20 (22.2)	63 (70.0)	6 (6.70)	$\chi^2 = 9.791$	0.044*
Traditional	1 (4.5)	20 (90.9)	0 (0.0)		
<b>Marital status</b>					
Single	8 (14.0)	47 (82.5)	1 (1.8)	$\chi^2 = 14.337$	0.28
Married	12 (27.9)	25 (58.1)	5 (11.6)		
Widow/widower	0 (0.0)	7 (100.0)	0 (0.0)		
Divorced/separated	1 (20.0)	4 (80.0)	0 (0.0)		

Nig. Gov. – Nigerian Government/museum; Oba – Oba of Benin; Family – family of carvers;  $\chi^2$  – Pearson’s Chi-square; \* – statistically significant value

A cross-tabular analysis of the sociodemographic characteristics of the participants with their opinions on who the carted away bronze carvings should be returned to, as depicted by Table 3, shows the following:

There were more respondents from ages 41 to above 50 years that opined that the carvings be returned to the Oba of Benin, but this depicted no statistical significance ( $\chi^2 = 24.435$ ,  $p$ -value 0.080). However, 82.1% of the males opined

that the bronze carvings be returned to the Oba, showing a statistical significance ( $\chi^2 = 12.070$ ,  $p$ -value 0.017).

There was no statistical significance between the education status or marital status of the respondents and their opinions on who should receive the carted away bronze carvings.

It should be noted however that the religion practiced by the participants is statistically significant, as 90.9% of those that were into the traditional practice opined that the carvings should be returned to the Oba ( $\chi^2 = 9.791$ ,  $p$ -value 0.044).

#### Objective 4: The relationship between the perception of the people and the position of the law on ownership and proper custody of heritage objects

As noted by scholars such as Phillip Iheanacho, the Director of the Edo Museum of West Africa in Nigeria,<sup>28</sup> the Benin expedition took place at a time when there was no law in place criminalizing the desecration of conquered territories by the victors of war in those territories. Palace objects were not objects capable of being stolen in those days. A Yoruba adage says *ole ti o gbe kakaki Oba, ni bo ni yoo ti fon?* – meaning where would a thief that steals the King’s trumpet blow it? So too, where would a thief that steals the Benin objects display them? The Benin objects represented history books, as the objects were made to keep record of events in the kingdom.

Insofar as regards foreign museums and the Nigerian state, the ownership of Benin objects carted away during the expeditions has been said to depend on the collection under discussion at any given point in time.<sup>29</sup>

Due to the emerging idea of decolonizing heritage and atoning for crimes committed by the colonial powers, several returns are being made to conquered territories.<sup>30</sup> These returns are negotiated within the framework of international law, an example of which is Article 15 of the 1970 UNESCO Convention which allows States Parties to enter into agreements for the return or restitution of cultural property removed prior to the coming into force of the Convention.<sup>31</sup>

Though Nigeria has been negotiating the returns of cultural objects removed from its various communities during colonialism,<sup>32</sup> negotiations concerning the Be-

<sup>28</sup> P. Iheanacho, *Benin Bronzes: Whose Restitution Is This Anyway?* “The Art Newspaper” 2023, Vol. 21(207).

<sup>29</sup> See A.A. Adewumi, *Possessing Possession: Who Owns Benin Artefacts?* “Art, Antiquity and Law” 2015, Vol. 20(3), pp. 229-242.

<sup>30</sup> In the 1970s the Netherlands returned objects, but so did Belgium to DR Congo, Australia to Papua New Guinea, and Denmark to Iceland and Greenland. In 2010, Germany, France, UK institutions, and the Netherlands did several returns.

<sup>31</sup> A.A. Adewumi, J.O.A. Akintayo, A. Jakubowski, op. cit.

<sup>32</sup> A. Folasade-Koyi, *Nigeria Expecting 1,130 Stolen Artefacts from Germany - Minister*, “The Sun”, 15 February 2023, <https://thesun.ng/nigeria-expecting-1130-stolen-artefacts-from-germany-minister/> [accessed: 17.09.2024].

nin objects have been slowed down by the dispute between the Edo State Government and the Oba of Benin over who is the rightful owner, and therefore the rightful custodian, of the objects about to be returned. The preceding section has already demonstrated the view – widely held among members of the Igun community – that the Benin objects should be returned to the Oba, and not to the State Government.

In order to prevent any escalation between the Oba and the Governor, President Muhammadu Buhari issued an Order on 23 March 2023 affirming that ownership vests in the Oba, who should take custody of the objects upon return. The constitutionality of this Order is considered below.

## Executive orders and cultural ownership in Nigeria

The Order which issued from the President purportedly gives legal recognition to the ownership by the Oba of Benin of all cultural objects looted from Benin City, vesting in him the right to keep any repatriated artefacts under his custody.<sup>33</sup> The key aspects of the Order are reproduced below for emphasis:

- (a) ownership of the artefacts looted from the ancient Palace of the Oba and other parts of Benin kingdom be and is vested in the Oba,
- (b) custody of the repatriated artefacts, shall, from wherever and whenever they are brought into Nigeria, be handed over to the Oba as the original owner and custodian [...],
- (c) repatriated artefacts may be kept within the Palace of the Oba or such other locations within Benin City, or any other place that the Oba and the Federal Government of Nigeria may consider secure and safe,
- (d) the Oba shall be responsible for the management of all places where the repatriated artefacts are domiciled or located,
- (e) the Oba shall work jointly with any recognized national or international institution to ensure the preservation and security of the repatriated artefacts for the benefit of humanity, and
- (f) repatriated artefacts shall not be taken out of the designated custody without the written consent and authorization of the Oba [...].<sup>34</sup>

Clearly, the scope of this Order is very broad. It does not seem to be limited to just the artefacts carried away during the 1897 Benin expedition. Rather, all artefacts looted from the palace and other parts of Benin kingdom, at whatever time, seem to be accommodated within its broad compass.<sup>35</sup> The unprecedented nature of this Order in Nigeria raises questions as to its constitutional validity and legal implications, in particular as regards the ownership of cultural objects generally.

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<sup>33</sup> *Nigerian Federal Government Order issued on March 23, 2023 – Notice No. 25, Order No. 1 of 2023, Federal Republic of Nigeria Official Gazette, No. 57, Vol. 110, 28 March 2023, pp. A245-247.*

<sup>34</sup> *Ibidem.*

<sup>35</sup> See item (a) of the Order.

It should be noted that Nigeria is a presidential democracy with separation of powers between the legislative, executive, and judicial branches of government.<sup>36</sup> By virtue of this separation of powers – which was modelled after that of the United States – the President, as the Chief Executive, is vested with all the executive powers of the Federation, which extend to “the execution and maintenance of [the] Constitution, all laws made by the National Assembly, and to all matters with respect to which the National Assembly has, for the time being, power to make law”.<sup>37</sup> This provision suggests that the President wields unlimited power, which is contrary to democratic principles of limited government. Thus, to limit the power of the President, the exercise of the powers conferred on him was made subject to the provisions of the Constitution and any law made by the National Assembly.<sup>38</sup>

The use of executive orders in the exercise of the above executive powers has become a norm during Buhari’s administration.<sup>39</sup> Though Nigerian constitutional jurisprudence in relation to executive orders is still in its infancy,<sup>40</sup> scholars have indicated that as a general rule executive orders are only valid when the president derives his power from the constitution, or a law made by the National Assembly.<sup>41</sup> This power may be express or implied, such as the law-modification powers of the President under Section 315 of the Constitution. But such an order must not be contrary to the Constitution or an Act of the National Assembly.<sup>42</sup> In *A.G. Abia State & Ors v. A.G. of the Federation*<sup>43</sup> the court reiterated this point when it held that “it is trite that this [executive order] cannot override the legislative function of the National Assembly”. It is constitutionally “subject to the constitutional powers of the legislature and judiciary”<sup>44</sup> and must be exercised in furtherance of the intent and purpose of the Constitution as a whole.

As seen above, the Order under discussion seeks to settle the dispute between the Governor and the Oba by declaring a right in favor of the latter. This is a core function of the courts, and is not therefore within the purview of the executive powers conferred on the President. Additionally, even though the international conventions seem to defer to each country’s internal arrangement on matters of ownership,<sup>45</sup> Section 12 of the 1999 Constitution preemptively prohibits enforcing

<sup>36</sup> For more on separation of powers in Nigeria, see Sections 4-6 of the 1999 Constitution of the Federal Republic of Nigeria (as amended).

<sup>37</sup> Section 5(1)(b) of the Constitution.

<sup>38</sup> Section 5(1)(a) of the Constitution.

<sup>39</sup> E.O. Okebukola, A.A. Kana, *Executive Orders in Nigeria as Valid Legislative Instruments and Administrative Tools*, “Nnamdi Azikiwe University Journal of International Law and Jurisprudence” 2012, Vol. 3, pp. 59-68.

<sup>40</sup> *Ibidem*.

<sup>41</sup> *Ibidem*.

<sup>42</sup> *Ibidem*.

<sup>43</sup> *A.G. Abia State & Ors v. A.G. of the Federation* (2022) LPELR-57010(SC).

<sup>44</sup> *Ibidem*.

<sup>45</sup> See below.

a treaty that has not been enacted into law by the National Assembly. Thus, even if the Order was meant to give effect to some contracted international obligation, it is emasculated by this constitutional provision.

Despite the obvious invalidity of the Order however, the position expressed by it is not far from the position of Nigerian law. Customary law, one of the sources of Nigerian law, has long recognized communal ownership over lands and cultural property having ancestral connections to the people, with the Oba as the trustee of such property.<sup>46</sup> Therefore, all Benin artefacts belong to the Oba of Benin, not as his personal property but as a trustee – though not in the English, technical sense – to hold in trust for members of the community. The Oba has a duty to keep and maintain the transferred artefacts for the benefit of the community generally, and can be held accountable if he fails to perform this duty.<sup>47</sup>

This position is consistent with the concept of ownership at the international level. Human rights law is so far advanced in its protection of core human values that we talk of a right to cultural identity.<sup>48</sup> The preamble of the African Charter on Human and Peoples' Rights<sup>49</sup> declares that the people's rights with which it is concerned cannot be considered in isolation from the contexts of the historical traditions and values of African civilization. Article 17 of the African Charter provides that a child should be educated about and participate in the cultural life of the community. Article 18 provides, further, that the state is the protector and promoter of values recognized by members of the communities. This places the state under an obligation to protect communal values, including the ownership rights of the community over its cultural objects. Article 22 on the right to economic, social, and cultural development also emphasized this point in connection with freedom and identity.

Since the preservation of cultural identity is a core of human dignity, the Oba of Benin's statement that the bronzes should be returned to his palace is not out of place, but rather in line with the dictates of human rights. The reason why it appears as though the Nigerian Government is vested with ownership of the Benin objects is the approach taken by the heritage conventions which deal with states, rather than entities within a state.<sup>50</sup> However, the duties imposed on the state to protect heritage within its borders is not an express conferment of ownership rights. Rather, this approach is necessitated by the nature of international law, which deals pri-

<sup>46</sup> See I.O. Smith, *Practical Approach to Law of Real Property in Nigeria*, rev. ed., Ecowatch Publications, Lagos 2013, pp. 64-135.

<sup>47</sup> This is contrary to the opinions expressed by writers such as Kate Fitz Gibbon, *op. cit.*

<sup>48</sup> E. Kamenka, *Human Rights: People's Rights*, in: J. Crawford (ed.), *The Rights of Peoples*, Clarendon Press, Oxford 1988, pp. 127-140.

<sup>49</sup> African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act 1983, Cap. A9, LFN 2004; see also A.A. Adewumi, A.I. Olatunbosun, *Child's Rights without Cultural Identity: A Mirage*, "Justice Journal" 2015, Vol. 7, pp. 116-137.

<sup>50</sup> The 1954 UNESCO Convention and its Protocols, the 1970 UNESCO Convention, and the 1995 UNIDROIT Convention specifically.

marily with state conduct, with the obligations contracted under individual treaties binding on the States Parties, and not as constituting a specific agency, authority, or area within the state.<sup>51</sup> Therefore, although conventions have treated states as owners of cultural property,<sup>52</sup> the determination of such ownership is in actual fact left to their national laws, which must make provisions for the possession, transfer, and custody of any repatriated artefacts and cultural property generally.

Even in the jurisprudential underpinnings of cultural heritage protection the historical school of jurisprudence postulates that a nation's customary law is its living law,<sup>53</sup> because the formation of any system of law almost invariably follows people's customs and habits as they evolve and change over time.<sup>54</sup> Also, as correctly suggested by the nationalist approach,<sup>55</sup> cultural objects should be kept in the proximity of their cultural environment, where knowledge of their value serves as a catalyst for their preservation. Experience has shown that cultural sites and objects declared so far in Nigeria to be of national importance fall into disrepair due to government's neglect and lack of enthusiasm with respect to their continuous maintenance.<sup>56</sup> This point supports the agitation of the Oba about the Edo Governor's desire to be the custodian of the bronzes upon return, as this could lead to a situation where the bronzes would be under the supervision and care of persons who are not Benins but originate from other parts of the Edo State, thereby creating a situation where the returned objects would not get the proper care they would receive if kept in the custody of those that understand their value and significance.

Also, keeping the bronzes in museums around Nigeria may not achieve the purpose of fostering cultural identity and dignity as would certainly be the case if they were kept in the Oba's palace where they originally belonged as part of the customs and traditions of the Benin people. Several accounts of lootings of art objects across Nigeria go a long way in undercutting the ideology of the nationalist approach to cultural heritage preservation. Issues of safety and integrity have been raised in the wake of lootings which have taken place even in Western museums.<sup>57</sup>

<sup>51</sup> A.A. Adewumi, *Benin Objects: Return of Stolen Objects or Restitution of Objects of Cultural Value?* "International Review of Law and Jurisprudence" 2019, Vol. 1(2), pp. 177-182.

<sup>52</sup> P. Gerstenblith, *Schultz and Barakat: Universal Recognition of National Ownership of Antiquities*, "Art, Antiquity and Law" 2009, Vol. 14(1), p. 21; A.A. Adewumi, *Curbing the Illicit Traffic in African Antiquities through Legislation*, "Art, Antiquity and Law" 2016, Vol. 21(1), pp. 43-56.

<sup>53</sup> R.W.M. Dias, *Jurisprudence*, 5th ed., Lexis Nexis, 2013, pp. 375-394.

<sup>54</sup> Friedrich Karl von Savigny was the founder of the historical school of law during the years 1779-1861.

<sup>55</sup> J.H. Merryman, *Two Ways of Thinking about Cultural Property*, "The American Journal of International Law" 1986, Vol. 80(4), pp. 831-853.

<sup>56</sup> See A. Obayemi, *Ancient Cultures for the Living: Nigerian Monuments and Antiquities Today*, Institute of African Studies, University of Ibadan, Ibadan 1991, p. 18, cited by F. Shyllon, *The Destruction and Neglect of Historical Monuments in Nigeria*, "Art, Antiquity and Law" 1998, Vol. 3(2), p. 181.

<sup>57</sup> See A. Al-Ansi et al., *Stolen History: Community Concern towards Looting of Cultural Heritage and Its Tourism Implications*, "Tourism Management" 2021, Vol. 87, <https://doi.org/10.1016/j.tourman.2021.104349> [accessed: 17.09.2024].

The statistical results presented in the previous section indicate the level of importance of the Benin objects to the members of the Igun community, and thus it can be expected that they would have additional protection in that atmosphere and mood of reverence.

## Conclusions and Recommendations

In conclusion, the research findings show that the Executive Order is in line with the aspirations of the Benin people. Its constitutionality, though open to question, has been shown to be inconsequential since customary law has lent support for idea of communal ownership of cultural property in Nigeria. However, due to the unwritten nature of Nigerian customary law there is a need for the enactment of laws on the ownership, transfer, preservation, custody, and documentation of artefacts repatriated or already domiciled in Nigeria, as the existing legislation is long overdue for a review. This will help the Nigerian state to better preserve its historical artefacts and help the international community in repatriating the allegedly stolen artefacts in their possession.

The stance of the Western countries toward ownership and possession of cultural property acquired from source countries seems to be that they do not want to relinquish all the rights they have in the heritage objects so acquired. Pertinent issues may arise as to what will happen to existing agreements already transferring legal ownership to the Nigerian Government, but containing clauses that allow the Western museums to display the artefacts on short-term or long-term loans. In those cases it seems to make little difference whether the legal ownership is with the Oba or the Nigerian Government, since the idea behind the negotiations is sharing, and mutually beneficial agreements could be reached by involving all parties in the negotiation process. It is worth bearing in mind that, as argued above, the deep connection felt by the Oba and his people toward the artefacts provides further assurance of their safety upon return. Given the nonchalant attitude of the Nigerian Government toward the heritage of the country, placing the artefacts under the sole control of the Nigerian Government may not be the best way to secure them and properly preserve their importance.

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