

PRACTICAL OPERATION OF THE 1995 UNIDROIT CONVENTION

NIGERIA

I. Information regarding the application of the UNIDROIT Convention (referring to the provisions of the Convention)

1. Ratification, approval, acceptance or accession

(a) Is your country a Party to the UNIDROIT Convention? **If so:**

Yes, Nigeria ratified the UNIDROIT Convention on 10th December, 2006 and entered into force on 1st June, 2007.

- Were implementing regulations required, and if so, in respect of which points?*

Yes, the implementing regulation involves fulfilling some statutory legal and political steps which includes legal vetting and approval by the Federal Ministry of Justice before a Council Memorandum is prepared by the Federal Ministry of Culture to the Federal Executive Council. It is after the Council considers and approves the Memo before Mr. President signs the instrument of ratification.

- Did ratification/accession pose any particular difficulties and if so, what were these difficulties, and how were they resolved?*

No there were no peculiar difficulties

- Did the use of the legal concepts employed in the Convention create any problems?*

No, not in any way

2. Definition

In order to benefit from the system set in place by the UNIDROIT Convention, "cultural objects" need not be designated by the State, as is on the contrary required under the 1970 UNESCO Convention.

- Which is the definition retained in your country's legislation?*

The definition of Cultural Object is designated under the National Commission for Museums and Monuments laws, ordinances and decrees issued in 1969, 1974 and 1979 consolidated in NCMM Act, chapter 242, Laws of Nigeria, 1990 and the National Archives Decree No 30 of 1992. Under the laws establishing these institutions who are in charge of the protection of Cultural property in Nigeria. Cultural Object is captured as antiquities , I quote inter alia Section 32 (a – c) i, ii "(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 statutes, 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...”

Under the National Archives Decree No 30 of 1992 describes certain cultural objects as “National Archives” and “Records” in Section 50 titled “Interpretation and Citation”

“...National Archives” means the public office established by virtue of Section 1 of this Decree”

“Records” means all papers, registers; printed matters; books; maps; plans; photographs, 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 obligations 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...”

3. Theft

(a) How many cultural objects are stolen in your country each year, and where do most of these thefts occur (percentage) (museums, places of worship, private homes, archaeological sites, ...)?

It is not easy to give percentages to where the thefts of Nigeria’s cultural property occur. What is certain is that there are five documented ways by which Nigeria has lost a large majority of her cultural treasures.

Nigeria has lost more than half of her cultural artefacts through the advent of foreign religions and governments. Cultural artefacts were obtained in many clandestine ways clothed in religious garb, or under the pretext of the abolition of the slave trade and its replacement by legitimate trade or the burning desire to help unearth Nigeria’s past through excavation. Five methods through which losses have been sustained can be identified. First, was the systematic imposition of foreign religions on the indigenous population and forbidding, on the pain of hell fire, the adoration of other gods based on the biblical injunction “thou shall serve no other god but me”, a development which has been succinctly described in the annals of West African History as the era of the “Bible and the Sword”. The ignorant population, as a result had either to destroy or leave to rot away objects of great generation. If not subjected to destruction or decay, they were removed by the same Europeans as curious to 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 through 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 the British Museum the following year. Another pair of door, the first by Olowe of Ise for the Palace of the Ogoga of Ikerre Ekiti

between 1900 – 1914 now on display at the Museum of Mankind, London. It was obtained under under doubtful circumstances by the British Museum in exchange for a rough wooden British throne after it has been used for exhibition at Wembley in the 1920s. Other examples are Osamasinmi Ram Head from Owo and a pair of Benin Ivory Leopards given as gift to the British Official and Queen Elizabeth II respectively.

A third way was through share plunder made possible by an army of occupation; the most eye – catching being the infamous sack of Benin in 1897. The British Force captured Benin on February 19, 1897 and 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 modeled 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. “Whereas the Dahlem in West Berlin can boast of 4,000 Benin pieces, and the British Museum, 2,500 and Pitt Rivers (Museum, Oxford University) 393 Objects , the Nigerian Museum posses only about 100 pieces.” In fact, it may now well be that the Metropolitan Museum of Art in New York has displaced Nigeria as the holder of the fourth largest collection Benin Art following the gift of the Perls collection to the Metropolitan Museum. In his forward to the exhibition catalogue of *Royal Art of Benin from the Perls Collection*, the Director of the Museum, Philippe de Montebello (1992: vii) gives us an idea of the Museum’s total collection, the Metropolitan Museum held about two dozen Benin Sculptures from the collection of Nelson A. Rockefeller, including the ivory pendant mask that is one of the museum’s prized possession: “with the recent gift of 163 objects from the collection of Mr. And Mrs. Klaus G. Perls, these fine but small holdings have been transformed into one of the leading collections of Benin art worldwide”.

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	N. of object
1	1969	Palace of Oloja of Ikoro - 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) Claims for restitution of stolen cultural property brought under the Convention

- *Has your country (or have any of its nationals) ever brought such a claim for restitution? What results were obtained (please enclose the relevant decision)?*

No, no formal claims for restitution have been made by the Federal Government of Nigeria except for appeals and moral suasion.

- *Has your country (or have any of its nationals) ever been the subject of such a claim for restitution? What results were obtained (please enclose the relevant decision)?*

No

- (b) Did your country's courts **encounter any difficulties** in applying the concepts enshrined in the Convention when called upon to apply the UNIDROIT Convention? If so, which?

Not applicable

- (d) **Claims for restitution** of stolen cultural property **brought in accordance with other procedures**

- *Has your country (or have any of its nationals) ever brought such a claim for restitution? What was the procedure chosen? What results were obtained?*

No the country has not brought any case for restitution

- *Has your country (or have any of its nationals) ever been the subject of such a claim for restitution? What was the procedure chosen? What results were obtained?*

The outcome of efforts to recover through foreign courts various art treasures of Nigeria that had been illicitly exported has been somewhat mixed due to the complex issue of conflicts of law. In 1982, the government of Canada a Nok terracotta sculpture (Prott and O'Keefe 1989: 778 – 780; Greenfield 1996: 183 – 184) which had been illegally exported from Nigeria, R v. Heller (1983) 27 Alta. L.R. (2d) 346; appeal decision (1984) 51 A. R. 73. Nok culture flourished in Nigeria between 1,800 and 2,900 years old. The figures first appeared in the art world at an auction in Paris held in the summer of 1977. It formed part of a large collection of African antiquities owned by Alfred Muller, a collector, and was priced at 25,000 francs (equivalent to about two thousand and one hundred pounds). The figure was imported into Canada in 1981 by Isiaka Zango, one of the co – defendants, who reported to custom officials to have it authenticated. He advised them of its estimated worth, that being several thousand of dollars. After endeavouring to take it into the Glenbour Museum of Calgary, Zango and Heller, both American citizens and Kassam, a Canadian, were charged with having unlawfully imported cultural property 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. The judge in this case accepted that Heller and Zango (co – defendants) knew in 1980, before the import into Canada, that the object had been illegally exported from Nigeria. Was the Canadian statute intended to ban the import of cultural property illegally exported from Nigeria at any time, or only that illegally exported after the entry into force of the legislation?

Article 7(a) of the convention to which Canada and Nigeria are parties provides that the Convention only applies to cultural property "which has

been illegally exported after entry into force of this convention in the states concerned." Relying on this Article, the Court 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*, reported in Prott and O'Keefe (1989: 659 – 660) and in 73 *International Law Reports* 226, 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. (Folarin Shyllon: 254 – 256)

(e) A cultural object that has been unlawfully excavated (or lawfully excavated but unlawfully retained) shall be **considered stolen** when consistent with the law of the State where the excavation took place (Article 3(2)).

- Does your legislation provide for State ownership of such objects? Please specify

Yes

As it was stated earlier Nigerian has not formally instituted formal restitution proceedings

Under NCMM Act, Chapter 242, Laws of Nigeria, 1990, Section 19 (i) titled "Excavation and Discoveries"

Section 19 (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 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 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 provisions 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 discovers an object of archaeological interest in the course of operations permitted under section 19 of this Decree shall, not later than 7 days thereafter, give notice thereof the Commission

(2) Any person who discovers an object of archaeological interest otherwise than 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 of 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.

(f) Claims for restitution of some objects (Article 3(4)) shall not be subject to **time limitations** other than a period of three years, unless a Contracting State makes a declaration to the contrary (Article 3(5)).

- *Does your legislation provide for such a time limitation? If so, what is that limitation and to what type of property does it apply?*

No, there is no time limitation. It cannot be statute barred.

- *At the time of ratification/accession, did your country make such a declaration or did it envisage doing so?*

No, there was no declaration.

(g) The concept of “**due diligence**” on the part of the possessor of the cultural object and the criteria applied in determining such (Article 4(1) and 4(4).

- *Can you indicate any decisions handed down in your country as to the “diligence” exercised, or that should have been exercised, by a possessor (in particular in terms of the character of the parties), and as to the proof adduced?*

There are known cases of “due diligence”. The closest case of due diligence is when the French bought three sculptures from a Belgian dealer in 1998 for 2.5million Francs even though they were fully aware under the Nigerian law no antiquities may be exported from the country without the permission of the National Commission for Museums and Monuments and that the three objects were on the ICOM Red List of items that were prohibited for export from Nigeria. It took the intervention of ICOM to bring the matter to discussion and to the embarrassment of the French who had bought the pieces in 1999 for the planned Museum, Musee du Quai Branly. The French acknowledge the ownership of Nigeria and signed an agreement by which Nigeria loaned the pieces to France for a period of twenty - five years which was renewable.

- *Does your country operate a “reasonably accessible register of stolen cultural objects”? Please specify*

Yes, Nigeria operates a “reasonably accessible register of stolen cultural objects” which is updated regularly but is inexhaustible.

4. Illegal export

(a) The conventional mechanism is based on breach of **national legislation** prohibiting the export of (certain) cultural objects.

- *Does your country have such legislation and if so, what type of object does it cover (please specify any references, where applicable)?*

The national legislation prohibits the export of certain cultural objects NCM Act, Chapter 242, Laws of Nigeria, 1990 Section 25 (i) provides that “no antiquities shall be exported from Nigeria without permit issued...”.

In the same Act, Paragraph 32 (a – c), (i), (ii) Certain Cultural objects are described as “antiquities”

“(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 statutes, 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...”

There is also the National Archives Decree No 30 of 1992 which describes certain cultural objects such as “archives” and “records”. Thus

"...National Archives" means the public office established by virtue of Section 1 of this Decree"

"Records" means all papers, registers; printed matters; books; maps; plans; photographs, 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 obligations 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..."

(b) Article 17 of the Convention requires Contracting States to provide the Depositary with **written information** in one of the official languages of the Convention (English and French) **concerning the legislation regulating the export** of its cultural objects, and to update that information from time to time.

- *Did your country provide the Italian Government (the Depositary of the Convention) with the text of your country's relevant legislation or a summary thereof, within six months of ratification or accession, and has that information been updated since that time?*

No, but it will be done now

(c) Requests for the return of illegally exported cultural objects **brought under the Convention**

- *Has your country (or have any of its nationals) ever brought such a request for the return of an illegally exported cultural object? What results were obtained (please enclose the relevant decision)?*

No official requests have been initiated under the UNIDROIT Convention

(d) Did your country's courts **encounter any difficulties** in applying the concepts enshrined in the Convention (for example, "significantly impairs" an interest, "significant cultural importance") when called upon to apply the UNIDROIT Convention – Article 5(3))?

We do have any difficulty in this respect

II. Other legal, judicial and administrative measures taken by States – impact of Convention

1. More favourable rules

(a) The purpose of the Convention is to establish "**common, minimal legal rules** for the restitution and return of cultural objects between Contracting States" (Preamble) and it does not "prevent a Contracting State from applying any rules more favourable" to such restitution or return (Article 9(1)).

- *Does your country apply any other, or more favourable, rules in this field and if so, which?*

Yes, under the NCMM Act of 1990 "any Police Officer may at any time search without warrant any person of the property of any person he reasonably suspects". Also, any officer of the Department of Custom and Excise may at any time search without warrant anything intended to be exported from Nigeria if he reasonably suspects and he may seize the things under NCMM Act of 1990.

The NCMM Act gave special powers to the Commission under Section 12 (c), I quote inter alia "...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, arrange for the purchase or loan of the antiquity and its removal to a national or other approved museum". Nigeria has initiated bilateral agreements with Peru and China on the retrieval of cultural objects.

2. Bilateral or multilateral agreements

(a) The Convention "initiates a process that will **enhance international cultural cooperation**" (Preamble) and offers the opportunity to States of entering into **"agreements** with one or more Contracting States, **with a view to improving the application of this Convention in their mutual relations**" (Article 13(2)).

- *Has your country entered into such agreements, or is it planning to do so ? Please specify.*

No, because the bilateral agreements with Peru and China is still being negotiated.

(b) States not Parties to the UNIDROIT Convention

- *Has your State become a Party to another international instrument for the protection of the cultural heritage since the UNIDROIT Convention was adopted? Please specify.*

Yes,

1. UNESCO Convention on the Protection of the Underwater Cultural Heritage, 3rd November, 2001

2. Convention for the Safeguarding of the Intangible Cultural Heritage, Paris, 17th October, 2003

3. Convention on the Protection and Promotion of the Diversity of Cultural Expressions, 21st October, 2005

4. African Union inspired African Renaissance Cultural Chapter, 24th January, 2010

3. Impact of the UNIDROIT Convention

(a) Has the adoption of the UNIDROIT Convention resulted in any **practical changes** in the way your country protects its cultural property (whether you are a Contracting State or not)?

- *For example, has the Convention had a positive impact on the fight against illegal trafficking of cultural objects? Has its adoption affected the extent of trafficking in your country or of the transit of such objects through your territory?*

Yes, it has increased awareness about the fight against illicit trafficking in cultural objects. Nigeria is also widening the legal berth of Nigeria's laws because a National Committee is about to be established for the domestication of this international cultural property conventions including UNIDROIT Convention into our domestic laws.

(b) If your country is not a Party to the UNIDROIT Convention but is a Party to the 1970 UNESCO Convention: does the implementing legislation for the latter instrument contain **rules inspired by the UNIDROIT Convention** and, if so, which?

Not applicable

(c) Since the Convention was first adopted, **non-binding instruments** have been developed relating to **"due diligence"**, such as "codes" for art dealers and auctioneers in the United Kingdom, or UNESCO's International Code of Ethics for Dealers in Cultural Property.

- *Does your country have such an instrument? Please specify*

Yes, 11 NCMM Act of 1990 recognizes the role of Art agents under Section 32 where "accredited agents" or any employee of the Commission can be authorised by the Director – General to act for the State.

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