



THE HUMAN RIGHTS PERSPECTIVES TO THE RETURN OF CULTURAL HERITAGES: THE BENIN BRONZES

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ABSTRACT

This article, 'The human rights perspective to the return of cultural heritages: the Benin bronzes' stems from the 'punitive expedition' in 1897 by the British government in the Benin Kingdom in modern-day Edo State of Nigeria. This punitive expedition was immediately followed by the wanton destruction of the Benin kingdom and looting of her arts, religious symbols, spiritual artworks, shrines/gods and cultural heritages which were subsequently sold in Europe America and to the rest of the World. The punitive expedition paved the way for the effortless taking and looting of the famous cultural relics and artefacts of the kingdom today referred to as the Benin bronzes. This paper is focused on a brief and cursory journey into the Benin kingdom in Nigeria, examining the circumstances that led to the 1897 expedition and sacking of the kingdom. This paper aims to establish the human rights perspectives on the return of these precious cultural heritages and analyse the legal regime in place in Nigeria to protect the objects upon return. Findings reveal amongst others that the Presidential Gazette domiciled the ownership of the objects and their custody thereof in the Oba of Benin. A move which settled albeit temporarily who owns the objects in the face of conflicting arguments on ownership, that the objects termed Benin Bronzes are not mere objects for museum displays but a cultural heritage of a people, that the premeditated takings amount to human rights violation. This paper adopted the doctrinal method of research and examined the human rights perspective on the return of the Benin Bronzes to Nigeria. It is believed that the human rights perspective will contribute to a more inclusive approach towards restitution and return of the cultural objects, particularly, the Benin Bronzes while addressing the conflict between the competing cultural nationalism and the role of the affected communities.

Keywords: Human Rights Perspectives, Return of cultural heritages, Benin bronzes.

INTRODUCTION

The Kingdom of Benin, not to be confused with the Republic of Benin, is renowned worldwide for its art.¹ It was a well-established society before European incursion in what is now known as the Federal Republic of Nigeria.² The supreme leader governed this complex society, referred to as the Oba. The institution of the Oba 'appeared as a combination of profane functions and sacral

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¹ L Harding, 'The West-African Kingdom of Benin. In: Gehler, M., Rollinger, R. (eds) Empires to be remembered. Universal- und kulturhistorische Studien. Studies in Universal and Cultural History. Springer VS, Wiesbaden, (2022) https://doi.org/10.1007/978-3-658-34003-2_18.

² D Bondarenko, The Benin Kingdom (13th – 19th Centuries) as a Mega community. Social Evolution and History, (2015). 14. 46-76.



duties in one person’.³ The kingdom till this day is bound together because of the ‘reverence felt for the Oba of Benin’. In this well-structured and advanced society for its time, divinity, culture, and tradition formed an integral part of the fabric of the pre-colonial Benin Kingdom.

As a show of reverence for the Oba who doubled as the king and spiritual symbol whom they see as a ‘god-king’, artworks cast with bronzes were commissioned by each successive Oba to commemorate the divinity and sacred duty attached to the royal stool. In addition to the Oba, the administration of the kingdom was overseen by three groups of chiefs, the Uzama, the Palace Chiefs and the Town Chiefs.⁴ For context, the Uzama are the descendants of the elders who went to Ife, the ancestral home of the Benin to seek a prince to rule the Benin Kingdom.⁵ The highest-ranked chief is the Oliha in the traditional administration of the Kingdom. He ‘ensures the wellbeing of the entire Benin nation’. He is also the guardian of the shrine that protects the entire kingdom. The Ezomo acts as one of the two military commanders of the Oba.⁶ All of the Uzama ruled supreme in their various and respective villages. This power stratification and fair division ensured the smooth administration and innovation in arts, culture and commerce rivalling the most advanced societies in the era under discourse. It is deemed one of the best and most advanced civilisations the African continent has ever produced.⁷

The Benin Kingdom has been ruled by ‘an unbroken line’ of Oba’s (Kings). The kingdom grew in power and scope during its ‘involvement in European transatlantic trade from the 16th century, at first with the Portuguese traders, and later the British and French – central among them was slave trade’.⁸ This culture so advanced developed and crafted the arts and sculptures now famously referred to as the ‘Benin Bronzes’ which are a ‘group of sculptures, including elaborately decorated cast plaques, commemorative heads, animal and human figures, items of royal regalia,

³Ibid.

⁴ K Ezra Royal Art of Benin: The Perls Collection in the Metropolitan Museum of Art; (New York: Harry N. Abrams Inc. 1992).

⁵ The Uzama include Chiefs Oliha, Edohen, Ezomo, Ero, Eholo n’Ere, and Oloton; the Edaiken, or crown prince is also counted among the seven Uzama.

⁶Ibid.

⁷ H Dan, ‘The Brutish Museums: The Benin Bronzes, Colonial Violence and Cultural Restitution’, (London: Pluto Press 2020).

⁸Ibid.



and personal ornaments.’⁹ They are royal and sacred ceremonial objects ‘imbued with a sense of spirituality and cultural importance’ to the people of Benin in modern-day Nigeria.¹⁰

These objects in their time of creation were so important to the people of this kingdom as they were revered as sacred and spiritual symbols. Some deified the Oba and others symbolized the rites of passage and spiritual awakening for the kingdom.¹¹ Most importantly, they were used as a way of archiving the history and culture of the Kingdom.¹² The sacking of this city ‘more than twelve decades ago, involved the looting of more than ten thousand royal and sacred objects.’¹³ Most Nigerian cultural heritages are still at large and in captivity around the world, the ‘best known looted heritage resources in captivity are the Benin objects, also known as the ‘Benin Corpus’’.¹⁴ These are objects known locally as royal works of art commissioned by the Oba for religious ceremonial purposes and a representation of the culture of the kingdom made in bronze, cast brass, ivory and sometimes fired clay. Some were made from bone and wood.¹⁵ This art provides an unbroken record of the artistic heritage.

The representation of the culture and history of the kingdom through its artwork exemplifies how advanced the ancient kingdom had attained. The ancients had successfully turned mud into a civilisation that was thriving not only in traditional wares but also in commerce as exemplified in their trading activities with the Portuguese and the British sailors in the 14th and 15th centuries. The lack of submission to the British colonisers by the Oba of Benin led to the destruction of the city in 1897. Some of these bronzes form part of the loot carted away by the invading British army in 1897 when the kingdom was sacked in what was termed by the British as ‘the punitive expedition’. These objects became known globally through the events of 1897, but

⁹ British Museum <https://www.britishmuseum.org/about-us/british-museum-story/contested-objects-collection/benin-bronzes> accessed on 11/2/2025

¹⁰Ibid.

¹¹ E Franklyn, Expressive Style of Benin Sculpture: *Nigerian Journal of the Humanities Faculty of Arts, University of Benin, Nigeria*, [2003] (10).

¹² N A Enahoro, Nigeria Debates the Fate of Returning Benin Bronzes, *Newsline Magazine Publication* (2024) accessible at [Nigeria Debates the Fate of Returning Benin Bronzes - New Lines Magazine.](#)

¹³Ibid.

¹⁴ Z Gundu, (2020), Looted Nigerian Heritage – An Interrogatory Discourse Around Repatriation in Contemporary *Journal of African Studies* [2020] (7) (1) 47 – 66.

¹⁵Ibid.



the history of Benin did not start in 1897.¹⁶ The Benin Bronzes continue to ‘reverberate’ and ‘resonate’ whenever and wherever they are presented in the world¹⁷ given their impressive nature and unique styling with attention to details involved in the making of these artwares in the 18th and 19th centuries. With the launch of a digital database interlinked with more than 100 museums worldwide, the full picture of what was lost comes into view for the world to see.¹⁸

Brass and bronze casing industries in Benin City are located within Igun Street. This is the home of the guild of Benin Bronze casters.¹⁹ This was declared as a cultural heritage site by United Nation Educational, Scientific and Cultural Organisation (UNESCO).²⁰ The skill of bronze making and casting within the Igun family has been a knowledge closely guarded from time immemorial for the service of the Oba of Benin who monopolised the same and regulated the art. Every child born into this family learns this art.²¹ Every work of art and bronze casting from this family was commissioned by the Oba for commemorating events and communicating symbolic religious and cultural activities within the royal palace and the kingdom generally. Through this symbiotic relationship between the Oba and the Igun family, royalty is paid by the Oba to the family while the family in turn ‘reciprocates loyalty to the Oba who is seen traditionally amongst the Benin (Bini) people as a god.’²²

LEGAL REGIME FOR THE PROTECTION OF ARTEFACTS IN NIGERIA

The National Commission for Museum and Artefacts Act Cap. N19 Laws of the Federation of Nigeria 2004 is the law that regulates museums and antiquities²³ in the Federal Republic of Nigeria.

¹⁶ J Spero and A Adeoye, *The Benin Bronzes and the Road to Restitution* Weekend Essays in Financial Times of 4 November [2022] The Benin Bronzes and the road to restitution (ft.com) accessed on 29/5/2024.

¹⁷ Ibid (n 11).

¹⁸ Ibid.

¹⁹ A Afolasade, *Perceptions and the Law on Ownership of Heritage Objects: A Case Study of the Benin Bronzes*. Paper presented at the Conference on Changing Approaches Towards Restitution and Return of Colonial Heritage: Tracing Experiences and Identifying Shared Decolonial Practices, held by the Leiden Law School and the Research Group Museums, Collection and Society, Wereldmuseum and University of Leiden, 23 – 24 May 2024.

²⁰ Ibid.

²¹ Ibid.

²² Ibid.

²³ NCMAA 2004, S. 32.



There is no specific legislation in Nigeria directed at the return of the Benin Bronzes yet. Presently, the only official government gazette on the Benin Bronzes is the Presidential Directive on the ownership of returned artefacts to the Oba of Benin.²⁴ The cultural heritage of a people represents the identity of that people which requires protection, preservation, and conservation.²⁵ The sustainability of cultural heritage rests on national governments and legislation. Identification of monuments for preservation purposes takes conscious and intentional planning in terms of policy and law.²⁶ Nigeria is also a signatory to international conventions for the protection of monuments and antiquities.²⁷ This law in Nigeria establishes a commission as a body corporate with perpetual succession. The commission is charged with the responsibility of administering National Museums, Antiquities and Monuments.

This law established museums and other outlets and made recommendations for the establishment of museums and the preservation of antiquities. The law also empowers the commission to grant licenses and approval for the establishment of private museums.²⁸ For context, Section 3(2)(b) of the Act saddles the commission with the responsibility for heritage matters by providing that ‘the commission may by agreement of the owner of any antiquity undertake or make arrangements for the maintenance of any such antiquity on such terms and conditions as may be approved by the commission’. The commission also has powers to make ‘recommendations to any state government or other person or authority concerning the establishment and management of museums and the preservation of antiquities and monuments declared to be national antiquities and monuments.’²⁹ By these provisions of the law under review, it is safe to state that the artefacts if sent to Nigeria will be safe as there is a special commission established by law for the

²⁴ The gazette No. 57, Volume 110 dated March 28, 2023, and titled: “Notice of Presidential Declaration – on the Recognition of Ownership, and an order vesting custody and Management of Repatriated looted Benin Artefacts in the Oba of Benin kingdom.

²⁵ A A Adewunmi, An Appraisal of the National Commission for Museums and Monuments (NCMM) Act, 1979 in *Journal of Contemporary Legal and Allied Issues*, Department of Jurisprudence and Private Law, Faculty of Law, Obafemi Awolowo University, Ile-Ife, Nigeria (2014).

²⁶ *Ibid.*

²⁷ UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects 1995, Convention on the Protection of Underwater Cultural Heritage 2001, Convention for the Safeguarding of the Intangible Cultural Heritage 2003, Convention on the Protection and Promotion of the Diversity of Cultural Expressions 2005 amongst others

²⁸ NCMAA 2004, s 3.

²⁹ *Ibids* 3.



preservation and protection of the artefacts and cultural objects. Some of those objects will be declared national monuments and national antiquities. The law went further to provide punishment for the wilful destruction, alteration, removal, and excavation of any monument.³⁰ In a nutshell, the Federal Republic of Nigeria has in place a legal regime for the protection of the objects once they are within the shores of the country.

The National Commission for Museum and Monument Act provides in Part III the prohibition of the transfer of monuments and antiquities. Section 21 places a strict ban on the buying or selling of antiquities. Section 21 (1)(a) no person shall buy any antiquity unless he is an accredited agent, or (b) sell any antiquity to any person other than an accredited agent.³¹ Subsection (2) of Section 21 spells out a punishment for contravention of the Act as it relates to trading, buying, or selling antiquities and cultural objects.³² A fine of N2000³³ or an imprisonment of 3 years shall be imposed by the court.

Section 22 of the Act also empowers the police and customs services to search without warrant any person or property of any person reasonably suspected of buying antiquity while he is not an ‘accredited agent’.³⁴ Section 25 of the Act restricts the export of antiquity from Nigeria without a permit issued by the Museum Commission.

RECOGNITION OF THE OWNERSHIP OF BENIN BRONZES BY THE FEDERAL OF NIGERIA

The Federal Government issued a gazette recognising the ownership of the bronzes. The gazette No. 57, Volume 110 dated March 28, 2023, and titled: “Notice of Presidential Declaration – on the Recognition of Ownership, and an order vesting custody and Management of Repatriated looted Benin Artefacts in the Oba of Benin Kingdom” vested ownership, custody, and management

³⁰ Section 18 (1) of the Act prescribes punishment on conviction to a fine of N1, 000 or twice the value of such monument (whichever is higher) or to imprisonment for twelve months or to both such fine and imprisonment.

³¹ The act defines an ‘accredited agent’ under section 32 of the Act (interpretation section) to mean the Director General or any employee of the commission authorized in writing by the commission or any person or body in any state authorised in writing by the Minister to act for the commission in the state concerned.

³² Section 21 (2) prescribes punishment and fine of NGN2000 or term of imprisonment.

³³ The researcher submits that this option of fine is laughable as this translates into 2 euros. It is hereby proposed that the law should be reviewed in view of the discourse on the reparation of the Benin bronzes.

³⁴ Section 22. Provides for search without warrant by police or customs.



of the repatriated Benin Artifacts in the Oba Benin. This gazette as issued by the FGN settles for all time the dispute as to ownership, custody, and management of the repatriated loot.³⁵ The gazette ordered that ‘the ownership of artefacts looted from the ancient Palace of the Oba and other parts of Benin Kingdom be and is vested in the Oba.’”

It also ordered that “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 of the culture, heritage and tradition of the people of Benin Kingdom in Edo State of Nigeria.” ‘The repatriated artefacts may be kept within the palace of the Oba or such other locations within Benin City, or another place that the Oba and the FGN may consider secure and safe’. The Oba shall be ‘responsible for the management of all the places where the repatriated artefacts are domiciled or located’.³⁶ The gazette further provided that ‘the “Oba shall work jointly with any recognized national or international institution to ensure the preservation and security of the repatriated artefacts for the benefits of humanity, and repatriated artefacts shall not be taken out of the designated custody without the written consent and authorization of the Oba, and upon such return, the artefacts shall first be inspected and authenticated by the Oba before it is accepted and restored to its designated custody.’³⁷

A critical analysis of this gazette shows the intentional decision of the FGN to cede the ownership and protection of the repatriated arts/objects to the Oba of Benin. The gazette further exemplified the significant role the Oba of Benin plays in the cultural fabric and governance in the Federal Republic of Nigeria.”³⁸ Part of the policy adopted by the government is the blending of traditional rulers in the governance structure of the country through the creation of the traditional ruling council in each of the component states of the federation. It will be recalled as already stated in this paper that this gazette and proclamation by the President of Nigeria emboldened countries like

³⁵ It will be recalled that the Governor of Edo State challenged ownership of the objects and stating that they belong to Edo State and as such the state government should own and administer those objects.

³⁶ This Day Newspaper Breaking: FG Issues Gazette Recognising Ownership, Vesting Custody of Repatriated Looted Artefacts in Oba of Benin – THISDAYLIVE accessed on 18/5/2024.

³⁷ (n 36).

³⁸ Ibid.



Sweden to return objects on the 16th of May 2024 to the Oba of Benin without any conjecture.³⁹ It was celebrated as a welcomed development and a step in the right direction. This paper hopes that other European countries in possession of these objects can emulate Sweden and return their collections of the bronzes to the rightful owner – the Oba.

This gazette affirmed the position of customary law on ownership of communal land and cultural artefacts.⁴⁰ For context, Nigeria is a Presidential Democracy with a bicameral legislature. Executive powers of the state are vested in the President of the Federal Republic.⁴¹ The constitutionality and validity of this executive order are called into question in this paper. It is submitted that the executive order was made according to the provisions of the 1970 UNESCO CONVENTION on the means of prohibiting and preventing illicit import, export and transfer of ownership of cultural property, 1978 UNESCO Intergovernmental Committee for Promoting the Return of Cultural Property to its country of origin or its restitution in case of illicit appropriation and the 1995 International Institute on the Unification of Private Law (UNIDROIT) Convention on Stolen or Illegally Exported Cultural Objects. Nigeria is a member state and a signatory to these conventions.

However, the extant position of the law in Nigeria is that conventions and treaties that the federal government of Nigeria is a signatory to do not automatically assume the force of law within the country. Those conventions and treaties must first be legislated upon by the national assembly and passed into law in Nigeria before they assume the force of law. Regarding the conventions highlighted above, it is submitted that Nigeria has yet to domesticate those Conventions. As such the proclamation of the President of Nigeria according to the Conventions and treaties not having the force of law in Nigeria is to the extent of their invalidity null and void.⁴²

³⁹ The Guardian Newspaper <https://guardian.ng/news/nigeria/sweden-to-return-39-artefacts-to-benin/> accessed 18/5/2024.

⁴⁰ Ibid (n 20).

⁴¹ Section 5 (1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended): the executive powers of the Federation shall be vested in the President.

⁴² Nigerian Institute for Advanced Legal Studies, Policy Brief No. 1 June 10, 2021, National Practice on Domestication of Treaties in Nigeria (1960 – 2021): Which Method for African Continental Free Trade Area, AFCFTA?
<https://www.bing.com/ck/a?!&&p=a415e6f5619cb63bJmltdHM9MTcxODIzNjgwMCZpZ3VpZD0wODM1YmM2My1hM2U5LTU1NWYtMGQxZS1hODI3YTdlOTZiMTkmaW5zaWQ9NTE5OA&ptn=3&ver=2&hsh=3&fc>



For context, it is submitted that the executive order made pursuant to the declarations contained in the conventions mentioned above sought to settle the brewing political crisis and internal rancour between the Oba palace and the executive governor of Edo State Mr. Godwin Obaseki who is agitating that objects belong to the State and by extension the whole Edo people.⁴³ Section 12 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) provides: 2(1) ‘no treaty between the federation and any other country shall have the force of law except to the extent to which any such treaty has been enacted into law by the National Assembly.’ This provision of the constitution is the backdrop for the submission that the Executive Order issued by the President begs for validity from a legal standpoint as it is giving effect and seeks inspiration and validity from international conventions and treaties not having the force of law in Nigeria, for want of ratification.

However, the position expressed by the Executive Order, ‘is not far from the position of Nigerian Law’.⁴⁴ Customary Law (Native Law and Custom) is one of the sources of law in Nigeria. It has ‘long recognised communal ownership over land and cultural property having an ancestral connection to the people’.⁴⁵ Under Benin Native Law and Custom, the Oba is the ‘trustee’ of such property for and on behalf of the Benin people.⁴⁶ The duty rests on the Oba to ‘maintain and keep the transferred artefacts for the benefit of the community generally and can be held accountable if he fails to perform this duty’.⁴⁷

ILEGALITY OF THE TAKININGS

lid=0835bc63-a3e9-655f-0d1e-a827a7e96b19&psq=procedure+to+domesticate+treaty+in+nigeria&u=a1aHR0cHM6Ly9uaWFscy5lZHUubmcvd3AtY29udGVudC91cGxvYWRzLzlwMjEvMTEvTmF0aW9uYWxfUHJhY3RpY2VfT25fRG9tZXN0aWNhdGlvbI9PZl9UcmVhdGlhc19Jbl9OaWdlcmhlXzE5NjAtMjAyMS5wZGY&ntb=1 accessed on 13/6/2024.

⁴³Ibid (n 17).

⁴⁴Ibid (n 20).

⁴⁵Ibid.

⁴⁶Ibid.

⁴⁷ I O Smith, *Practical Approach to Law of Real Property in Nigeria*. Rev. Ed. (Lagos: Ecowatch Publications Ltd.2013) 64-135.



Most Nigerian cultural heritage in the form of artworks is scattered in museums and private collections in Europe and North America. It is argued that ‘most of these objects were stolen, plundered, pillaged, or collected through violence and stealth.’⁴⁸ This is the rationale for asserting that the takings were illegal and unjust both at the time of the taking and in the modern context as it was premeditated – to pay for the cost of executing the war. Early takings were done for several reasons including ‘war trophies’, ‘power’, ‘prestige’, and ‘out of fascination with foreign cultures or the natural world’.⁴⁹ In sum, most of the collections were driven by the quest for ‘rare and exotic objects in European societies.’ Carsten Stahn notes that collection and removal of cultural objects became an integral part of colonial strategies and not only ‘one of its consequences’.⁵⁰ This thirst for exotic objects from foreign lands motivated the various forms of ‘extractive colonial collecting’ some of which were violent like the circumstances surrounding the Benin Bronzes.

Other types of takings were subtler with little or no violence. The objectification of the takings ‘demonstrates that the takings were not only driven by curiosity or preservation of cultural heritage but shows the rivalry between the various colonisers’ claim to superiority and ownership of the objects.’⁵¹ ‘The very act of taking can be seen as a structural form of violence’, Carsten Stahn notes in his book.⁵² It was a complete trespass and violation of human rights which cannot be justified by any claim. That very act was against universal legal standards at the time.

Worthy of note is that colonial powers sought to justify these takings on various grounds. It is important to assert that the looting was borne out of the exploitative idea to finance the costs of the retaliatory expedition. The British government wanted to retaliate against what it tagged as an ambush on British soldiers in 1896, generally regarded as the ‘Benin massacre’ in the ‘British press.’⁵³ They trumpeted ‘legitimate reprisals, reparation, humanitarian motives, rescue, or

⁴⁸ Z Gundu (n 14).

⁴⁹ C Stahn, *Confronting Colonial Objects, Histories Legalities, and Access to Culture*, (United Kingdom: Oxford 2023).

⁵⁰ Ibid.

⁵¹ Ibid.

⁵² Ibid.

⁵³ E Ekpo, (1997) ‘The Dialectics of Definitions: “Massacre” and “Sack” in the History of the Punitive Expedition’ [1997] (30) *African Arts* 34-35.



preservation of the objects’ in a bid to make legitimate their taking of these objects.⁵⁴ The idea of taking just to compete with other colonial powers is a justification in the submissions in this paper that the takings were unlawful, cruel and a deliberate attempt to deprive the indigenous owners access to their culture and craftsmanship. The concept of ‘othering of cultures’ was also used to justify these takings in colonial era. Display of cultural objects showcased ‘racially motivated justifications’ for colonial rule and dominance.⁵⁵ This ‘messiah complex’ often adopted by the European colonizers concealed ‘historical complicity in cultural dispossession’ and ‘engagement with colonial wrong.’⁵⁶

It has been suggested that steps should be taken to legally recognize the illegality of the ‘most obvious colonial crimes against humanity, starting with those that happened in the late 19th and 20th centuries.’⁵⁷ Independent restitution panels would need to be established. This creates room for the participation of the communities involved whose objects were looted and/or taken during colonial domination. This would to an extent produce ‘a change in image of history and a change within the law itself.’⁵⁸ ‘Legal discourse should no longer only be used to deny claims, but, much more creatively, offer innovative remedies to address these wrongs in flexible and thought-provoking ways.’ ‘Only a form of legal inclusion can offer a sensible answer to the legal wrongs of the past and open new ways of living together on a planetary scale – in which basic legal concepts such as ‘ownership’ and ‘property’ may open and acquire different meanings.’⁵⁹

Museums are filled with cultural heritage from Africa and the global south. These objects were taken under the conditions of duress that were ever present under colonialism.⁶⁰ This extreme

⁵⁴ Article 6 of the General Act of the Berlin Conference on West Africa 1885 gave some legal foundation from the standpoint of the colonial powers and protection for these acquisitions. Colonial powers were given authority to ‘protect and favour all religious, scientific or charitable institutions and undertaking created’, support colonial rule, instruct ‘the natives’, and bring them the blessings of civilisation’.

⁵⁵ Ibid.

⁵⁶ Ibid.

⁵⁷ W Veraart, *Beyond Property. A Reflection on the Value of Restitution of Looted Cultural Objects*, (2019) <http://dx.doi.org/10.2139/ssrn.3524852>. Accessed on 31/05/2024.

⁵⁸ Ibid.

⁵⁹ Ibid.

⁶⁰ H Dan, *The Brutish Museums: The Benin Bronzes, Colonial Violence and Cultural Restitution*, (London: Pluto Press 2020) 220.



position is no longer in dispute as there was no fairness, equity, and balance at the time these objects were taken.

Some of the takings were termed by colonial countries as ‘gifts’ from the indigenous population. This categorization may ‘cover up the violent acquisition’⁶¹ of these objects by the ‘colonial masters’ as they are often referred to in Nigeria. A simple visit to any of the museums where the objects forming the body of thousands of objects looted from Benin invokes a memory which is a ‘memory of loss through extraction’.⁶² The culture and heritage of a thriving indigenous population were decimated and distributed all over the world. In the words of Dan Hicks, ‘the immense loss involved in the British cultural atrocity at Benin City is coming into view for white museum staff in Europe and North America in the 2020s, but in truth it has always been hyper-visible for some museum visitors, and for so many more unable or unwilling ever to step their foot inside an anthropological, ‘ethnological’, ‘ethnographic’, ‘*Völkerkunde*’, or newly rebranded ‘world culture’ museum.’⁶³ The knowledge of the existence and location of these artefacts becomes key to the struggle and agitation for return. Professor Bénédicte Savoy shows in her book ‘*Africa’s Struggle for Its Art*’, the first major attempt by African nations in the 1970s to get back their heritage, the argument as to the location and existence of the objects was framed much more mendaciously. Savoy referenced Germany’s UNESCO commission position on the list of the objects in Germany thus: the lists “would only encourage covetousness” among African nations.’ “Lists of our collections must be avoided in writing without fail. This is an extremely important principle.”⁶⁴ This is but one example of the policy framework of the colonizing countries towards the objects and artefacts carted away from colonial territories. This establishes the institutionalization of holding back all that was either stolen, looted, gifted, or traded legally and illegally during colonisation.

The cultural reverence back in Nigeria is marked by the violence attendant to the taking of objects from the indigenous communities in Nigeria. The Benin expedition of 1897 is a classic

⁶¹ (nn 51, 60).

⁶²(n 61).

⁶³Ibid.

⁶⁴Ibid.



example of the destruction of an entire civilisation and the pillaging of their arts and antiquities. This from a natives' perspective signifies the identity of a people and not just mere artworks for museums to expose and design. As Dan Hicks puts it a 'theory of taking requires us to talk not just about the life histories of objects, but also about killing of people, of objects, of culture: the 'death histories' of objects.'⁶⁵ Another author that captures this idea, is Bernadette Atuahene in her article titled 'Dignity taking and Dignity Restoration'. Therein she advocated that 'When this larger harm called dignity taking has occurred, mere reparations are not enough'⁶⁶. This paper is in complete agreement with these submissions.

CULTURAL HERITAGE

The Benin bronzes are not just ordinary artwork, they are embedded with the history of the people, the artworks tell the stories of events that have happened, it showcases and preserve each clan's deity, spiritual rituals and sacrifices, hence, the idea of reparation/compensation for these looted objects cannot be encouraged, rather restitution of these objects is honest approach to appeasing the Benin Kingdom. Thus, these objects should be seen as a cultural heritage of the people and a cultural heritage interplay should be woven into the fabric of the discourse of reparation. 'The objects should be seen as a witness of history' which is irreplaceable.⁶⁷

Seeing these objects as witnesses of cultural history is the beginning of an answer to the question of 'the value of restitution' of looted cultural objects. This is a contrast to 'alternative solutions' for instance offering compensation or justifying the reproduction of the replica of the objects.⁶⁸ Being deprived of these cultural objects 'directly affects and hurts those affected by it in their possibilities of being human.'⁶⁹ Veraart Wouter submits further in his paper that 'if one cannot awaken the dead, the restitution of the cultural object may reconnect the living heirs (descendants) with a history which otherwise may be irretrievably lost.'⁷⁰

⁶⁵ B Atuahene, 'The Progression of the Dignity Taking and Dignity Restoration Framework (September 2, 2021), <https://ssrn.com/abstract=3916422> accessed 28/6/2024. P. 2.

⁶⁶ (n 65).

⁶⁷ Ibid.

⁶⁸ Ibid.

⁶⁹ Ibid.

⁷⁰ Ibid.



This submission is agreed with from the perspective of the Benin Bronzes. This is a history of a people yanked off from the pages of history and lost in the desolate world of museums and private collections. Restitution offers an opportunity for the modern-day people of Benin and the Oba to reconnect with the descendants of the great and ancient kingdom. This reconnection has been seen repeatedly in recent times and most recently on 17/05/2024 when Sweden returned 39 objects to the Oba of Benin under the request made by the Monarch and on the strength of a gazette issued by the President of Nigeria in 2023.⁷¹ Reflecting on the current predicament of the Benin situation, Professor Folarin Shylon remarked: ‘the refusal to return such cultural objects is tantamount to keeping a people’s heritage in captivity. And there is no doubt that the colonial powers knew the import and the devastating effect of the removal of irreplaceable cultural heritage.’⁷²

Veraart Wouter re-echoes the position stated above by Professor Folarin. To him, the concept of ‘captivity’ of the Benin objects means that they are ‘cultural prisoners of war’ – held in captivity in many Western museum collections. ‘The fact that their present guards are also captivated by them, is one of the main obstacles in the long quest for restitution.’⁷³ This position is understandable from the perspective that the objects were spoils of war. Folarin’s remark hints at the ‘fact that in contexts of genocide or crimes against humanity, there is always a narrow link between the physical destruction of a people and the looting of its cultural objects.’⁷⁴

The communities and kingdoms owning these objects should be directly involved in the negotiations for the return. Aiko Obobaifo, an oral historian of Benin Culture who participated in the Digital Benin Project by correctly identifying the Edo names of the artefacts found in Nigerian museums states that the ‘objects began as a way for the kingdom to record its spiritual thought,

⁷¹<https://guardian.ng/news/nigeria/sweden-to-return-39-artefacts-to-benin/>

⁷² S Folarin, ‘Unraveling History. Return of African Cultural Objects Repatriated and Looted in Colonial Times’, in: James Nafziger and Ann Nicgorski (eds.), *Cultural Heritage Issues. The Legacy of Conquest, Colonization and Commerce*, (The Hague: Martinus Nijhoff 2009) 163.

⁷³Ibid.

⁷⁴ H Hannes, And Others, ‘Die Restitution der Beute- und Raubkunst im Kollisionsund Völkerrecht, Berlin: De Gruyter 2005, 226-227. Quoted in Veraart, Wouter, (2019). Beyond Property. A Reflection on the Value of Restitution of Looted Cultural Objects (December 2, 2019). SSRN: <https://ssrn.com/abstract=3524852> or <http://dx.doi.org/10.2139/ssrn.3524852>. Accessed on 31/05/2024.



activity and sacrifice in durable materials.’⁷⁵ He states further that ‘when the British invaded the kingdom in 1897, the invasion severed the link between the Benin people and their religion and opened the door for the British to introduce Christianity.’ ‘The artefacts represented our life, culture and religion, and were yanked off our memory.’⁷⁶ The looting not only scattered a ‘living culture’ into the ‘deadening embrace of museums and private collections’ but was so thorough that it made the culture ‘wither at home too.’⁷⁷

This deprived the Bini (as it is called locally) people of their own history and religious practices. ‘Knowledge was part of what was actively destroyed.’⁷⁸ The bronzes are stolen objects by the British invading armies – their original meanings are embedded in the cultural and religious practices of the Benin people. The continuous display of these objects as mere artefacts or works of art ‘denatures’ and ‘trivializes’ them while ‘truncating their significance.’⁷⁹ In line with this cultural heritage phenomenon, French President Emmanuel Macron announced in a speech in 2017 that within 5 years, “the conditions to be met for the temporary or permanent restitution of African heritage to Africa”. “I cannot accept that a large part of cultural heritage from several African countries is in France”.⁸⁰ Given the foregoing analysis, it is submitted that the artefacts and bronzes were taken illegally. This illegal taking has robbed an entire generation of their cultural heritage.

HUMAN RIGHTS PERSPECTIVES TO THE RETURN OF THE BENIN BRONZES

It is important to emphasize the fact that, several prevailing strategies have relegated the legal basis of moral principles associated with the Benin Bronzes. Moral settings are crucial to address the confines of law as regards past injustices, fashioned by the intricacies of ‘colonial masters. One fact is that ‘cultural colonial objects are neither purely moral, nor purely legal question, but at the ‘intersection of three different angles:’ justice, ethics, and human rights’.⁸¹ These three elements

⁷⁵Ibid (n 17)

⁷⁶Ibid.

⁷⁷Ibid.

⁷⁸Ibid.

⁷⁹ W Paul, Display, Restitution and World Art History: The Case of the ‘Benin Bronzes’, Visual Culture in Britain (2012), (13:1, 115-137), DOI: 10.1080/14714787.2012.641854.

⁸⁰Ibid.

⁸¹ S Tullio, ‘Diviser c’est détruire: Ethical Principles and Legal Rules in the Field of Return of Cultural Property’ 94 Rivista di Diritto Internazionale [2011] 341, 392.



must be well-thought-out, that is, ‘justice, morality, and human rights’.⁸² The ‘assessment of cultural colonial takings, such as the Benin bronzes, is not only governed by ethics, but also by norms and legal requirements in relation to return’. They ‘provide an important legal foundation for ethical instruments and contest the idea that return is merely an act of comity, rather than something due.’⁸³

Carsten Stahn has identified three significant ‘legal approaches to assess the legality of takings or the return of cultural objects: a) past wrongdoing (tort model), b) an ongoing structural relationship to wrong (unjust enrichment model), and c) rights of access to culture (human rights model)’.⁸⁴ The very ‘first approach grounds responsibility in human agency, such as the removal of cultural objects. The second approach ties to responsibility to implication in structural types of injustice. While the third approach derives responsibilities from the link between communities and cultural objects.’⁸⁵ Carsten Stahn further opined that the collective emphasis on both, ‘past wrongdoing or involuntary loss of objects, and contemporary relations towards objects, geared at righting the future, counters the classical objection that modern-day responsibility would blame’⁸⁶ ‘people living today’ for the past mistake.⁸⁷

This paper is of the view that British government owes responsibility to the former colonized subjects particularly the Benin Kingdom to return those objects without further arguments or conditions attached. It is important to note that regardless of the provisions of the Hague Conventions of 1899 and 1907, to the ‘extent the laws of war should apply concerning noncivilized entities,’ the ‘protection of cultural property was governed by double standards.’ Again, the British colonial encounters were not a ‘law-free zone’ either.⁸⁸ The Researcher therefore maintains that there are some ‘cultural takings’ that breached the natural ‘principles of justice

⁸²Ibid.

⁸³ Independent Group of Experts, ‘Ethical Principles for the Management and Restitution of Colonial Collections in Belgium’, June 2021 (Belgian Ethical Principles).

⁸⁴ Ibid, C. Stahn, ‘Beyond to Return Or Not To Return – The Benin Bronzes as Game Changer?.

⁸⁵ (n 84).

⁸⁶ (n 85)

⁸⁷ J Tiffany, *Keeping their Marbles: How the Treasures of the Past Ended Up in Museums – And Why They Should Stay here* (Oxford: Oxford University Press, 2016) 90.

⁸⁸ E Caroline, ‘The “Moral Effect” of Legalized Lawlessness’ (2018) 44 *Historical Reflections* 78-90, 84



which guide the public conscience’, even in the absence of express general legal prohibitions.⁸⁹ The rationale behind this argument is the fact that ‘protection of cultural objects was not only governed by treaty protections and ‘hard’ customary rules of the laws of war but informed by natural law, minimum standards of behaviour and military ethics.’

It is therefore submitted that the Benin bronzes looted in 1897 by British colonial masters ‘violated minimum standards of protection and ‘principles of justice which guide the public conscience’ previously in line with the standards of behaviour at the time’.⁹⁰ The Benin cultural looting ‘contravened local customs and practices prohibiting looting for personal gains or absconding with stolen objects from the enemy.’ It ‘conflicted with expected standards of behaviour under minimum principles of humanity, principles of cultural protection and integrity asserted among ‘civilized’ nations,’⁹¹ worthy of note is the fact that as of 1897 there were Protectorate Agreements which naturally involved responsibilities for both, ‘colonial powers and local leaders’, in this case, Britain and the Oba. Flowing from the above, one can safely assert that the brutal looting of the Benin Kingdom and the ‘spoliation of the Benin bronzes’ is a violation of Britain’s general protective duty under the protectorate agreement.’⁹²

Undoubtedly, ‘pre-colonial African customs reflect ‘principles’ presently embedded in modern rules of international humanitarian law. These principles are often part of ‘a genuine ethics of war which was taught to any young nobleman for his future calling as a warrior’.⁹³ Analysing these African customs shows that they protect certain places during wartime, such as sacred places, for instance, shrines, trees, and ceremonial spaces) and their surroundings.⁹⁴ This goes to show again that the British punitive expeditions were a violation of military discipline and control, discordant with ‘an innate sense of decency’ or civilizational identity.⁹⁵ These are clear examples of violations

⁸⁹ R Geoffrey, *Who Owns history?* (London: Biteback, 2019) 170.

⁹⁰*Ibid.*

⁹¹*Ibid.*

⁹²*Ibid.* (n 84).

⁹³ D Yolande, ‘African Traditions and Humanitarian Law’ (1976) 185 *International Review of the RedCross* 387-401, 400.

⁹⁴*Ibid.*

⁹⁵*Ibid.* (n 86).



of human rights, which should be remedied for future relationships free from resentment from the colonized subjects.

CONCLUSION

This paper concludes by stating that the objects termed Benin Bronzes are not mere objects for museum displays but a cultural heritage of a people, that the continued retention of the objects despite repeated calls for return amount to human rights violation. The paper further articulates that it is necessary to return the cultural artefacts to their places of origin which is a way of returning the dignity and culture already violated in the past. Recognizing the cultural rights within human rights law and the expansion of the rights of Indigenous people of Benin City will aid good relationships devoid of resentment or past pain, it is to right the past wrong.

Thus, the idea of reparation/compensation will not remedy the wrongs, the idea of a partial return or returning with certain conditions to be fulfilled by the Benin Kingdom or Nigerian government is a mere mockery of the entire process. The actual restitution/return of the bronzes/ cultural heritages for the Indigenous people to have access to their cultural properties, as enshrined under Article 15 of the International Covenant on Economic, Social and Cultural Rights, 'right of access to and enjoyment of cultural heritage, which follows from the right to culture' is advocated herein.

This submission is also in line with the 2005 Council of Europe Framework Convention on the Value of Cultural Heritage for Society (Faro Convention) and the United Nations Declaration on the Rights of Indigenous Peoples, article 11 comprises the responsibility of nations to offer 'redress' to Indigenous peoples 'concerning their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs'. It is important to conclude with the assertion that despite the opinion conversed above, which advocates for the actual return of the Benin cultural Heritages, as opposed to other modern forms of reparation, what is most important is finding new pathways in ensuring that the consent of the Indigenous communities are sought and obtained in relation to the looted objects.

RECOMMENDATIONS



Given the above submissions and conclusions, the following recommendations are hereby proffered:

1. The actual restitution/return of the bronzes/ cultural heritages for the Indigenous people to have access to their cultural properties, as enshrined under Article 15 of the International Covenant on Economic, Social and Cultural Rights, ‘right of access to and enjoyment of cultural heritage, which follows from the right to culture’ is highly recommended.
2. The negotiation relating to the restitution of stolen cultural heritage should involve the Indigenous community in line with the World Intellectual Property Organisation guidelines. The communities should adopt WIPO guidelines on acquiring their intellectual property rights for the protection and preservation of their heritage.
3. There should be a public-private partnership (PPP) in Nigeria for the development and protection of the UNESCO Cultural Heritage site called ‘*IgunStreet*’ where the bronzes have been made till date for close to a thousand years and for the actualisation of the Edo Museum of West African Art.
4. The federal government of Nigeria should adopt a thematic legislation for the protection of the returned objects. The government should make concerted efforts to domesticate all the international treaties on the protection of cultural heritage which Nigeria is signatory.