

PEARLS OF LAW

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The Repatriation of our Cultural Property

Okukor

Recently, the media has been awash with news about the possible repatriation of an exotic bronze bird referred to as "Okukor". The story began with Cambridge University Students protesting the display of the bronze piece in their dining hall which ended up in its removal. The cockerel was said to have been donated to Cambridge's Jesus College in 1930 by an army captain, George William Neville, who was a student of the college. It can be traced back to the nineteenth century Benin kingdom and it was taken away along with other pieces by the British after a punitive raid in 1897. The administration of the University is considering repatriating the bird after students voted for its return last month. According to them "the contemporary political culture surrounding colonialism and social justice... offers a perfect opportunity for the College to benefit from this gesture."

There are also cases of artefacts taken away from other African Countries such as Ghana and Egypt.

The Asante Golden Trophy

The Asante golden trophy head and swords described by Fagg as the largest gold work known from Ashanti or indeed from anywhere in Africa outside Egypt, were taken during Field Marshall Viscount Wolseley's punitive expedition of 1873-4 and later on auctioned for charity. Sir Richard Wallace bought the treasure at a charitable auction in London, the proceeds were given to the wives and families of soldiers killed or incapacitated during the 1873 Ashanti War.

Rosetta Stone

The Rosetta Stone, the slab of basalt with an inscription that was the key to deciphering Egyptian hieroglyphics, was taken out of Egypt in 1799 during French colonial rule and is now at the British Museum in London.

Elgin Marbles

The Elgin Marbles are a collection of inscriptions and architectural pieces that were part of the temple of Parthenon and other buildings which Thomas Bruce, 7th Earl of Elgin obtained in 1801 controversially. The Earl's agents removed about half of the sculpture from Parthenon as well as sculptures from the Propylaea and Erechtheum. After a public debate in parliament, the marbles were purchased by the British Government in 1816 and kept in the British Museum. Although there have been several talks between the British and the Greek government the marbles have not yet been returned to Greece.

The Argument

Repatriation of cultural property involves



considering the double issues of ownership and the complex laws surrounding repatriation of these items. This would require collaboration between states, museums, law enforcement agencies, art dealers. There are two schools of thought regarding ownership of cultural property, cultural internationalism and cultural nationalism. While proponents of the philosophy of cultural internationalism argue that every individual has an interest in the preservation and enjoyment of cultural property wherever it exists, cultural nationalists are of the opinion that a nation's cultural property should be in the custody of the nation in which it was created. This argument gained more recognition with the ratification of the 1970 UNESCO Convention.

International Conventions on the Protection of Cultural Property

Article 1 of the **UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property 1970** Defines cultural property as property which, on religious or secular grounds, is specifically designated by each State as being of importance for archaeology, prehistory, history, literature, art or science and which belongs to the following categories:

- Rare collections and specimens of fauna, flora, minerals and anatomy, and objects of palaeontological interest;
- property relating to history, including the history of science and technology and military and social history, to the life of national leaders, thinkers, scientists and artist and to events of national importance;
- products of archaeological excavations (including regular and clandestine) or of archaeological discoveries ;
- elements of artistic or historical monuments or archaeological sites which have been

dismembered;

(e) antiquities more than one hundred years old, such as inscriptions, coins and engraved seals;

(f) objects of ethnological interest;

(g) property of artistic interest, such as:

(i) pictures, paintings and drawings produced entirely by hand on any support and in any material (excluding industrial designs and manufactured articles decorated by hand);

(ii) original works of statuary art and sculpture in any material;

(iii) original engravings, prints and lithographs ;

(iv) original artistic assemblages and montages in any material;

(h) rare manuscripts and incunabula, old books, documents and publications of special interest (historical, artistic, scientific, literary, etc.) singly or in collections (i) postage, revenue and similar stamps, singly or in collections;

(j) archives, including sound, photographic and cinematographic archives;

(k) articles of furniture more than one hundred years old and old musical instruments.

Hague Convention of 1907 Hague Convention Respecting the Laws and Customs of War on Land

Article 56 enjoins states to protect property belonging to institutions of religious, charitable, educational, historic and artistic character from intentional damage.

The Hague Convention of 1954 Convention on the Protection of Cultural Property in the Event of Armed Conflict

This is the first international agreement with an exhaustive protection of cultural property, it became imperative following the extensive cultural looting and destruction of World War II. The Convention adumbrates principles for protecting cultural property including sites, monuments, and repositories of cultural objects during armed conflict and for preventing looting and smuggling of such objects from occupied territory.

Article 4 provides that state parties should respect cultural property. It states specifically that

1. *The High Contracting Parties undertake to respect cultural property situated within their own territory as well as within the territory of other High Contracting Parties by refraining from any use of the property and its immediate surroundings or of the appliances in use for its protection for purposes which are likely to expose it to destruction or damage in the event of armed conflict; and by refraining from any act of hostility, directed against such property.*

2. *The obligations mentioned in paragraph 1 of the present Article may be waived only in cases where military necessity imperatively requires such a waiver.*

3. *The High Contracting Parties further undertake to prohibit, prevent and, if necessary, put a stop to any form of theft, pillage or misappropriation of, and any acts of vandalism directed against, cultural property. They shall refrain from requisitioning movable cultural property situated in the territory of another High Contracting Party.*

4. *They shall refrain from any act directed by way of reprisals against cultural property.*

5. *No High Contracting Party may evade the obligations incumbent upon it under the present Article, in respect of another High Contracting Party, by reason of the fact that the latter has not applied the measures of safeguard referred to in Article 3.*

The First Protocol proscribes the illegal export of cultural objects from occupied territories and facilitates the return of these objects at the end of the occupation. The Second Protocol puts cultural property under military protection.

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

This convention seeks to prevent illegal trade in cultural property by preventing its export from source countries and import into other countries. Article 2 states the States Parties to this Convention recognize that the illicit import, export and transfer of ownership of cultural property is one of the main causes of the impoverishment of the cultural heritage of the countries of origin of such property and that international co-operation constitutes one of the most efficient means of protecting each country's cultural property against all the dangers resulting there from. 2. To this end, the States Parties undertake to oppose such practices with the means at their disposal, and particularly by removing their causes, putting a stop to current practices, and by helping to make the necessary reparations.

1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects

This was developed to address the setbacks of the 1970 UNESCO Convention. It allows individuals to initiate claims for the repatriation of stolen cultural property that has ended up in a foreign country

Conclusion

Going back to the issue of the repatriation of our artefacts, one can deeply understand the heightened campaign for their return and this can be easily achieved as Nigeria is signatory to key international conventions that protect cultural property such as the Convention for the Protection of Cultural Property in the Event of Armed Conflict, Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, and the Convention for the Safeguarding of the Intangible Cultural Heritage October 2003. Notwithstanding this cultural nationalism, it is more important that as a nation we show deeper appreciation for our cultural property, this should be expressed by maintaining monuments and objects of national significance and by creating a suitable environment for cultural tourism, upgrading our cultural infrastructure and reviewing the legal framework for the protection of cultural property.

THE EFFICACY OF THE CYBERCRIMES ACT 2015 CONTINUED FROM PAGE 13

Information Infrastructure" is not defined in the Act. However, S4 provides for "Audit and inspection of critical National Information Infrastructure" by the office of the National Security Adviser (NSA) through a presidential order made under S.3.

Section 3 also failed to define what the "Audit" should include or exclude as the case may be, except providing for "Designation of certain computer systems or networks as critical National Information Infrastructure". Perhaps the advantage is that by designating only certain computer systems as critical National Information Infrastructure, the list could be expanded or diminished easily, but the exercise may only be undertaken on the recommendation of the NSA. Unless the exercise is transparent enough some fundamental rights of some citizens may be infringed. Some of these rights

have been specifically guaranteed by s. 37 of the 1999 constitution even though the advent of terrorism has led to suggestions and bills that tend to whittle down those provisions.

If the proposed Electronic Communications Bill referred to above aimed at the "Interception, Development and Protection of Communications Networks and Facilities for Public Interest and Other Related Matters" was passed into law, security agencies would have been empowered to monitor and seize internet and mobile data – SMS, Emails, Phone calls (Contents/ transactions) of subscribers nationwide.

Now, let me briefly comment on the common grievances experienced by the average bank/financial institutions customer. Quite often they complain of unauthorised disbursement from their accounts and the

question becomes who bears the liability? This is one of the challenges of e-transaction which the Cybercrimes Act should have properly dealt with. Presently, the Act criminalises a few activities through the digital platform but the allocation of liability when such things happen is glaringly absent except that the Act prescribes mitigating the effort and burden of proving that the bank had not done enough to protect their customers. I doubt if limiting cardholders' liability is protective enough as have been adopted in some jurisdictions. Builders of websites and digital products patronised by financial institutions should be bound by Sale of Goods Act (SOGA) so that the product must be fit for the purpose; failing which they should bear the liability for customers' losses. Phishing and hacking are known threats to e-transactions. A corporate organisation of

substance, integrity and reputation should go for antivirus, antiphishing software and guard their domains appropriately with up-to-date security software. The result would be that in the absence of the cardholder's negligence or connivance, these corporate organisations holding out to be safe and certified should not only be safe but seen to be so. Otherwise liability should be pinned on them.

In the meantime, the enactment of two which are still before the 8th Assembly, the "Payment System Management Bill" and "Electronic Transactions Bill" could be the glimmer of hope in the horizon, these could address the potential problems arising from electronic transactions: To be or not to be? That is the question.

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