

GLOBAL ART AND HERITAGE LAW SERIES

NIGERIA REPORT



Prepared for

COMMITTEE FOR
CULTURAL POLICY

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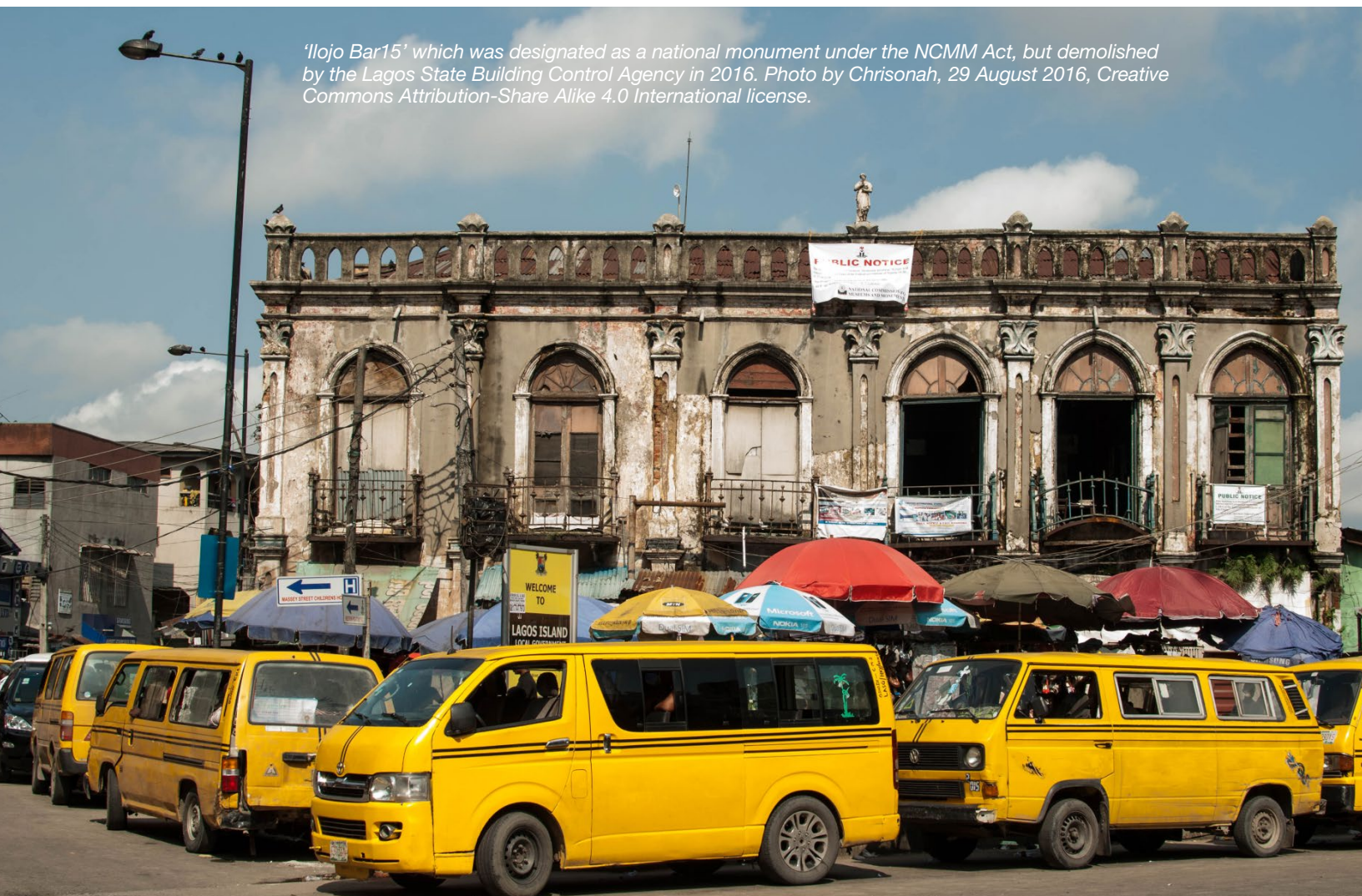
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‘Ilojo Bar15’ which was designated as a national monument under the NCMM Act, but demolished by the Lagos State Building Control Agency in 2016. Photo by Chironah, 29 August 2016, Creative Commons Attribution-Share Alike 4.0 International license.



EXECUTIVE SUMMARY

AN OVERVIEW OF NIGERIA'S CULTURAL PROPERTY

Nigerian law does not specifically provide a definition for the term 'Cultural Property', however, under the National Commission for Museums and Monuments Act ("NCMM Act"),¹ objects identifiable as Cultural Property appear under the term 'antiquity' as:

"(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 statue, 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 and in the case of any object or relic mentioned in paragraph (a) or (b) of this section includes for the purposes of this Act any land adjacent thereto which in the opinion of the Commission, a State Government or, as for the purpose of maintaining the same or the amenities thereof or for providing or facilitating access thereto, or for the exercise of proper control or management with respect thereto".

For the purpose of this Report, all references to the term 'Cultural Property' shall mean physical items that are part of the cultural heritage of Nigeria, that is, items such as historic buildings, works of art, archaeological sites, libraries and museums, as well as "antiquity" as defined under the NCMM Act.

Nigeria is a country of over 250 ethnic groups with each ethnic group having a diverse rich cultural heritage and artistic expression. Therefore, Nigeria's Cultural Property is more numerous than has been documented or accounted for. However, Nigeria is world famous for its Nok terracotta artifacts from Northern Nigeria. Nok terracotta artifacts have been said by experts to be the earliest attempt at portraiture. In addition to Nok terracotta artifact, Nigeria is famous for bronze heads from the former Benin Kingdom (now part of present-day south-western Nigeria); clay ceramic or terracotta heads and copper-alloy and bronze ornaments from the former Ife Kingdom, which is now located in present day Osun State in Nigeria and the Igbo-Ukwu bronze which is believed to be dated as far as the 9th century. The Igbo-Ukwu bronze was first discovered in 1939 in the present southeastern part of Nigeria.

THE EXPORTATION OF NIGERIA'S CULTURAL PROPERTY

Unfortunately, the preservation of Nigeria's Cultural Property has been a victim of inadequate funding, absence of up to date policies, legislation and a dearth of skilled manpower. Illicit trade and colonialism have also contributed to the loss of Nigeria's Cultural Property. Illicit trading of Nigeria's Cultural Property purportedly started as early as the 19th century during the colonial era in which tangible elements of the former Benin Kingdom were taken to museums in Europe. Notwithstanding that Nigeria has been an independent country since 1960, not much has changed with respect to the recovery of the various Cultural Properties which were carted away by the colonial masters. As such, the illicit trading of Nigeria's Cultural Property remains a problem.

In the 1990s, the exportation of Nigeria's Cultural Property to the western world was so high due to illegal trafficking, that the economic value of these artifacts decreased significantly. Notwithstanding that Nigeria has won some battles against the illicit trade of its Cultural Property, the country (the people of Edo State² in particular), continues to fight for the return of antiquities looted from the Benin Kingdom during the massacre of 1897³. The fight to retrieve illicitly trafficked Cultural Property in Nigeria has not been made easier by the fact that Nigeria never had an inventory of all its Cultural Property and all the objects that have been illicitly exported out of the country, over the years. As such, it is difficult to categorically determine how many objects of Cultural Property Nigeria is presently seeking

to retrieve. In spite of this, the National Commission of Museums and Monuments ("NCMM") continues to work with

¹ Cap N19, Laws of the Federation of Nigeria 2004.

² Edo State is located in southwestern Nigeria and was a significant part of the former Benin Kingdom.

³ On 4 January 1897, a fraction of Benin army killed a British officer, Consul Philips, alongside his men for his obstinacy to enter Benin when he was not welcomed. In retaliation, the British authorities sent about 1,200 troops to destroy Benin and punish its King. As a result, much of the country's stolen art, including the Benin Bronzes, were relocated to Britain. The Benin massacre and expedition of 1897 left the kingdom of Benin ransacked, devastated and deprived of valuable artifacts, artworks (which included the famous Queen Idia bronze head).

foreign countries and organizations such as the International Commission of Museums (“**ICOM**”) to retrieve some of the objects identified by foreign countries as being illicitly exported.

As it stands, the cultural heritage legislation and management in Nigeria is elementary. The shift in the government’s interest to agriculture and then to crude oil had a detrimental effect on the development of policies relating to Cultural Property. Instructively, the first set of cultural heritage legislation in Nigeria was drafted approximately 70 years ago. In 1972, Nigeria ratified the United Nations Educational, Scientific and Cultural Organization 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (the “**1970 Convention**”). The 1970 Convention was introduced to help countries such as Nigeria decrease the prevalence of the theft of their Cultural Property. However, till date, we are neither aware of any Nigerian Cultural Property policy linked to this Convention nor aware of any national laws that have effectively domesticated the 1970 Convention. The only ‘similarity’ we have identified is Section 32 of the NCMM Act (the legislation that protects both movable and immovable cultural heritage in Nigeria provides a definition of an “**antiquity**”) in line with that of the 1970 Convention. Notwithstanding this, according to the national report on the implementation of the Convention, Nigeria is in the process of establishing a national committee for the domestication of all United Nations Educational, Scientific and Cultural Organization (“**UNESCO**”) and International Institute for the Unification of Private Law (“**UNIDROIT**”) standard setting instruments into our national legislation/domestic laws⁴.

The NCMM which is the main body saddled with the responsibility of regulating the management of Cultural Property remains a marginal institution lacking adequate resources to effectively manage and preserve Nigeria’s Cultural Property. From our inquiries at the NCMM, we understand that though it is an institution that ought to play an active role in managing the country’s Cultural Property, the activities of NCMM are hampered by a lack of adequate funding of the sector.

In order to move forward and improve Nigeria’s Cultural Property management system, it appears that the government needs to direct more funding towards cultural institutions. Nigerians also need to be properly educated on the intricacies of Nigeria’s Cultural Property. Currently, the general Nigerian populace does not have a sufficient understanding of the financial and non-financial value that preserving a country’s Cultural Property brings to a nation.

THE RETURN OF NIGERIA’S CULTURAL PROPERTY AND THE BENIN DIALOGUE

Nigeria is taking more interest in the return of Nigeria’s Cultural Property. This shift in mindset has resulted in countries such as France, the United Kingdom as well as individuals making concerted efforts to return stolen and illegally imported Cultural Property to Nigeria.

Indicatively, in 2013, the French government returned to Nigeria five ancient Nok terracotta sculptures smuggled out of Nigeria in 2010⁵. In 2014, British retired medical consultant, Mark Walker, decided to give back two bronze sculptures to the Oba of Benin which he had taken from his grandfather, who participated in the 1897 expedition. The sculptures included a 19th century depiction of the head of the king and 16th century plaques of life in the royal palace. In September 2018, the Oba of Benin, Oba Ewuare II, renewed his call on the British Government to return to Benin Kingdom, all the artifacts stolen in 1897 when British forces invaded the former Benin Kingdom. This call was made by Oba Ewuare II when he received the Director of the British Museum, Hartwig Fischer, at his palace⁶.

THE BENIN DIALOGUE GROUP

The Benin Dialogue Group is a multi-lateral collaborative working group that brings together museum representatives from Austria, Germany, the Netherlands, Sweden, and the United Kingdom with key representatives from Nigeria. The main objective of the Benin Dialogue Group is to work together to establish a museum in Benin City, the capital of Edo State, which would house Benin works of art which would be loaned to the museum on a rotation basis from a consortium of European museums in collaboration with the Edo State Government and the Royal Court of Benin, with the support of the NCMM.

On 19 October 2018, the Benin Dialogue Group announced the agreement of major European museums to send contested cultural artifacts back to Nigeria on loan. The institutions (as listed below) will return items from the former Benin Kingdom within three years.

⁴ http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/pdf/Rapport_Nigeria_Web_01.pdf

⁵ www.bbc.com/news/world-africa-21246767

⁶ www.allafrica.com/stories/201809100138.html

LIST OF INSTITUTIONS PARTICIPATING IN THE BENIN DIALOGUE GROUP

- i. Edo State Government, Nigeria
- ii. The Royal Court of Benin, Benin City, Nigeria
- iii. National Commission for Museums and Monuments, Abuja, Nigeria
- iv. Weltmuseum, Vienna, Austria
- v. Ethnologisches Museum, Staatliche Museen zu Berlin, Stiftung Preussischer Kulturbesitz, Berlin, Germany
- vi. Museum am Rothenbaum, Kulturen and Künste der Welt (MARKK), Hamburg, Germany
- vii. Staatliche Kunstsammlungen Dresden, Museum für Völkerkunde Dresden und GRASSI Museum für Völkerkunde zu Leipzig, Germany
- viii. Linden Museum, Stuttgart, Germany
- ix. Rautenstrauch-Joest Museum (Köln)
- x. Nationaal Museum van Wereldculturen, Leiden, the Netherlands
- xi. Statens museer v r v rldskulture/National Museums of World Culture, Sweden
- xii. British Museum, London, UK
- xiii. Museum of Archaeology and Anthropology, University of Cambridge, Cambridge, UK
- xiv. Pitt Rivers Museum, University of Oxford, Oxford, UK
- xv. National Museums of Scotland (Edinburgh)

In line with this development with regards to the return of Nigeria's Cultural Property, Nigeria, through the NCMM, intends on directing more funding towards securing places for storage, display and research access of cultural artifacts. To complement the NCMM's efforts, the Governor of Edo State, Mr. Godwin Obaseki and the Benin Monarch, Oba Ewuare II, have earmarked the sum of ₦500,000,000 (approximately US\$1,389,000) in the 2019 proposed budget for the development and construction of the Benin Royal Museum that will store and display the objects to be returned.

In conclusion, Nigeria's Cultural Property management system seems to have hit a breakthrough after almost two centuries of neglect. This sudden awakening may be attributed to a combination of the passion of the people in the arts and cultural sector and the renewed global interest in the repatriation of Cultural Property.



Oba Elegushi International Craft Market Source/Photographer: Oluwakemi Agbaje.

SECTION 1

NIGERIA'S CULTURAL INSTITUTIONS

Nigeria has several institutions established under different laws which exercise oversight and supervisory functions over different aspects of the regulation of Cultural Property in Nigeria. We discuss these institutions below:

- (a) **The NCMM:** The NCMM is a body established by the National Commission for Museums and Monuments Act, primarily responsible for the administration of national museums, antiquities and monuments. The NCMM was established to replace the Antiquities Commission and the Federal Department of Antiquities. The roles of the NCMM include (i) the establishment and maintenance of the National Museum and other related outlets; (ii) making recommendations to State Governments or authorities concerning the establishment, management of museums, the preservation of antiquities and monuments which are not declared to be national museums, antiquities or monuments; (iii) approving any museum, which is privately established and maintained, for the purposes of the NCMM Act, and at any time to withdraw such approval; (iv) managing the collection, documentation, conservation and presentation of Cultural Property to the public for the purposes of education, enlightenment and entertainment; and (v) conducting research in ethnography, archaeology and other related fields either alone or in alliance with university-based institutes or departments.
- (b) **The National Council for Arts and Culture (the "Council"):** The Council was established by the National Council for Arts and Culture Act⁷ and is vested with the responsibility of assisting the Federal Government of Nigeria in the planning, co-ordination and encouragement of arts, cultural activities and other related matters in Nigeria. In addition, the Council coordinates the development and promotion of living arts and culture of Nigeria at national and international fora. The functions of the Council include but are not limited to the promotion and fostering of the appreciation, revival and development of Nigerian arts and culture, assisting the NCMM in the creation, acquisition and preservation of artistic works, cultural monuments and depositories, and the organisation and promotion of exhibitions of visual, performing and literary art.
- (c) **The National Gallery of Art:** The National Gallery of Art was established by the National Gallery of Arts Act⁸ to serve as a repository for artistic creations and to promote research, education, and appreciation of art and works of art. The establishment was in fulfillment of a provision of Nigeria's cultural policy which recommended that a National Gallery of Art be established for the promotion and presentation of creative visual art in Nigeria.
- (d) **The National Archives of Nigeria ("the National Archives"):** The National Archives complement the NCMM's role in the management and administration of cultural property. The National Archives was established under the National Archive of Nigeria Act⁹ and entrusted with the permanent custody, care and control of all archives of the Federal Government of Nigeria and of such other archives or historical records as may be acquired from time to time. The National Archives is a parastatal of the Federal Ministry of Culture and Information and is responsible for the collection, preservation, documentation and presentation of Nigeria's contemporary plastic arts. The National Archives is also required to locate and assemble source materials of the country and preserve them permanently for research, to publish guides and historical materials for the benefit of the people, and to educate the citizenry on the importance of their documentary heritage.

⁷ Cap N25, Laws of the Federation of Nigeria, 2004.

⁸ Cap N41, Laws of the Federation of Nigeria, 2004.

⁹ Cap N6, Laws of Federation of Nigeria, 2004.



The Benin Bronze Head dates back as far as the 15th middle, 16th Century, Source/Photographer: Jastrow (2006)

SECTION 2

LAWS ON CULTURAL PROPERTY

Laws relating to Cultural Property in Nigeria are not contained in one single legislation. Rather, they are entrenched in various legislation. The key provisions of this legislation as it relates to Cultural Property in Nigeria have been highlighted below:

- (a) **The 1999 Constitution of the Federal Republic of Nigeria (as amended)** (the “**Constitution**”): The Constitution grants the Federal Government the exclusive power to enact legislation for the establishment and regulation of authorities that:
 - i. identify, collect, preserve or generally look after ancient and historical monuments, records and archaeological sites and remains declared by the National Assembly to be of national significance or national importance; and
 - ii. administer museums and libraries other than museums and libraries established by the Government of a state.
- (b) **The NCMM Act**: The NCMM Act established the NCMM and serves as the primary Nigerian legislation on Cultural Property. The NCMM Act, which was enacted in 1979 and became effective on the 28th of September 1979, repealed the Antiquities (Prohibited Transfers) Act and the Antiquities Act (as amended).
- (c) **The National Gallery of Art Act (“NGA Act”)**: The NGA Act established the National Gallery of Art which serves both as a repository for artistic creations and to promote research, education and appreciation of works of art. The NGA Act was enacted and became effective on 25th August 1993.
- (d) **The National Council for Arts and Culture Act (“NCAC Act”)**: The NCAC Act establishes the National Council for Arts and Culture which assists the Federal Government in planning, coordinating and encouraging arts and cultural activities in the country. The NCAC Act was enacted and became effective on 21st February 1975.
- (e) **The National Archives of Nigeria Act (“National Archive Act”)**: The National Archive Act became effective on 8th July 1992. The National Archives are responsible for maintaining public records such as all original constitutional instruments, treaties, laws, decrees and other legal enactments of the Federal Government.
- (f) **The Nigerian Customs Service Board Act¹⁰**: The Nigerian Customs Service Board Act established the Nigerian Customs Service Board which is the board in charge of the administration of the Customs and Excise Management Act.
- (g) **The Customs and Excise Management Act¹¹** : The Customs and Excise Management Act regulates the management and collection of customs and excise duties.
- (h) **The Criminal Code Act/The Penal Code Act/The Administration of Criminal Justice Law**: The Criminal Code Act provides for and governs criminal offenses and applicable offenses in Southern Nigerian States (with the exception of Lagos State) while the Penal Code Act governs the Northern Nigerian States and the Administration of Criminal Justice Law governs Lagos State.
- (i) **Conventions and International Treaties:**

Nigeria has ratified the following conventions relating to Cultural Property:

- i. The Convention for the Protection of Cultural Property in the event of Armed Conflict, 1954;
- ii. UNESCO Convention of the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property (1970);
- iii. The Convention for the Protection of the World Cultural and Natural Heritage 1972;
- iv. UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects 1995;
- v. Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict 1999;

¹⁰ Cap N100, Laws of the Federation of Nigeria, 2004

¹¹ Cap C45, Laws of the Federation of Nigeria, 2004

- vi. Convention on the Protection of the Underwater Cultural Heritage 2001;
- vii. Convention for the Safeguarding of the Intangible Cultural Heritage 2003;
- viii. Convention on the Protection and Promotion of the Diversity of Cultural Expressions 2005; and
- ix. Convention on the Protection and Promotion of the Diversity of Cultural Expressions 2007.

Notwithstanding the ratification of the conventions above, Nigeria is yet to enact any of these conventions into Nigerian law by the legislative arm of government. The process of enactment into law by the Nigerian legislative arm of government is necessary for any international convention to become enforceable in Nigeria.

(j) **Significant Agreements on Cultural Property Between Nigeria and Foreign Nations/Institutions**

- i. Nigeria is a signatory to the African Union's Cultural Charter for Africa, which it ratified in 2010. One of the main aims of the charter is to rehabilitate, restore, preserve and promote African Cultural Heritage. However, we are not aware that Nigeria has incorporated the charter into domestic laws. To be enforceable in Nigeria, the charter is required to be enacted as a domestic law;
- ii. The NCMM and two Nigerian Universities, namely, Ahmadu Bello University, Zaria, and the University of Jos signed a bilateral cooperation agreement with the University of Frankfurt, through which the University of Frankfurt provided resources for the study of Nok terracotta in Nigeria; and
- iii. Nigeria has signed bilateral cultural cooperation agreements with Portugal, Spain and Germany.



The Cathedral Church of Christ is an Anglican cathedral located in Lagos Island, Nigeria. The first stone for the foundation of the first cathedral building was laid on 29 March 1867 and was completed in 1869. The construction of the current building, however, commenced on 1 November 1924 and it was patterned after the designs by Architect Bagan Benjamin. The first stone of the current building was laid by the Prince of Wales on 21 April 1925 and the cathedral was completed in 1946. Source/Photographer: Oluwakemi Agbaje.

SECTION 3

ENFORCEMENT OF LAWS AND REGULATIONS GOVERNING CULTURAL PROPERTY**(a) Management of Cultural Property in Nigeria**

Historically, Cultural Property was managed by the Antiquities Commission and the Federal Department of Antiquities. However, in 1979, the Federal Government of Nigeria enacted the NCMM Act which repealed the Antiquities (Prohibited Transfers) Act and the Antiquities Act (as amended) under which the Antiquities Commission and the Federal Department of Antiquities had been established. The NCMM replaced these institutions.

A number of public institutions, as already discussed in Section 1 above, are charged with the responsibility of managing Nigeria's rich, diverse and huge cultural resources. These institutions help to galvanize archaeological, ethnographic and other activities of a cultural nature in the country. Administratively, Nigeria has government agencies under the supervision of the Federal Ministry of Information and Culture, covering the different aspects of protection, preservation and promotion of cultural diversity. The Federal Ministry of Information is involved in the creation, production, distribution/dissemination and management of Nigeria's diverse culture. Other institutionalized cultural resource management agencies in Nigeria are: (i) the Ministry of Culture and Tourism at the federal and state levels; (ii) the Council for Arts and Culture at national and state levels; and (iii) the Institute of African Studies in Nigerian Universities. In addition, the Nigerian Customs Service and the Nigerian Police play an active role in the enforcement of laws relating to Cultural Property in Nigeria, particularly to ensure that illicit trade of Cultural Property is checked as effectively as possible.

Cultural Property in Nigeria is also managed by various non-governmental agencies, guilds and associations such as the British Council, Goethe Institute and the Centre for Black and African Arts and Civilization. These bodies are given government recognition and assistance to a large extent. Internally, government policies are tilted towards the promotion of the people's culture. There is collaboration with the tourism, information and education sectors to actualize these policies.

It is germane to point out here that apart from the above-mentioned cultural resource management institutions and agencies, there are also non-institutionalized bodies that manage some of Nigeria's abstract cultural resources. These include community shrines' priests, heads of households, lineage heads, heads and traditional festival managers. Others are leaders of drama, dance groups and other custodians of the people's cultural heritage, prominent amongst whom include praise-singers, chroniclers and knowledgeable community heads and elders. Nigeria has taken certain important measures, particularly the enactment of relevant laws aimed at protecting and preserving Nigeria's cultural resources; however, these laws do not appear to be adequate. Also, Nigeria is a member country of some international cultural organizations and agencies who have put in place legislation and regulations in order to protect cultural treasures of member states.

(b) Describe how law enforcement and prosecutorial and penal systems are involved in violations of cultural property law.

The NCMM collaborates with law enforcement officers to prevent violations of cultural property law. Specifically, the NCMM organizes trainings which teach customs officers how to identify antiquities and enlightens them about the laws that exist in respect of preserving cultural property in Nigeria. In turn, customs officers then enforce these laws by apprehending people without the requisite export permits and seizing such property and handing it over to the NCMM.

The Federal Ministry of Information and Culture also works with the police and customs authorities who have units that deal with cultural properties. There is however a need to improve the working relationship between the Ministry, the NCMM, National Archives, the Police, and Customs. Perhaps an establishment of inter-ministerial committees to co-ordinate these activities would prove effective in this regard. Also, we note from inquiries at the NCMM that, in practice, the NCMM lacks adequate funding to ensure the enforcement of Cultural Property laws. Therefore, offenders are seldom prosecuted.

(c) Are there procedures for the recovery of cultural property (under treaties, or other agreements) that has been 'lost' to foreign nations? Analysis of enforcement/lack of enforcement: how does the law on paper match current and past practice?

Recovery of stolen Cultural Property in Nigeria is generally in accordance with international laws and treaties.

Specifically, UNESCO has in some instances worked with Nigeria to report cases of theft and call for the return of the same to Nigeria. Border interdiction has proven to be an effective means of recovering Cultural Property that has been ‘lost’ to foreign nations.

Nigeria is also a member of the ICOM, which plays an active role in fighting the illegal trade of cultural goods globally. In this capacity, ICOM has formulated a Red List which classifies the endangered categories of archaeological objects or works of art in order to prevent them being sold or illegally exported. Some Nigerian artifacts are featured on the list, which makes it easier for police and customs officials worldwide through Interpol and the World Customs Organization to spot such illegally trafficked goods and repatriate them to their country of origin. In practice, any museum or art dealer who, having seen the Red List, comes across any objects/artifacts that appear to be illicitly trafficked goods, are expected to notify the NCMM and repatriate the said goods to them.

In addition to the above, there have been efforts to recover Cultural Property that had been illicitly exported through foreign courts– the outcome of which has been somewhat mixed due to the complex issue of legal conflicts. In the case of *R v. Heller*¹², a Nok terracotta sculpture 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 thousands of Dollars. After endeavoring 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. Both Nigeria and Canada were parties to the 1970 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 Cultural Property Export and Import Act. Evidence was provided 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 Nok terracotta sculpture had therefore been illegally exported from Nigeria. However, the sculpture had been in a private collection in France since 1960. 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. Article 7(a) of the UNESCO 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.¹³

In the German case of *Allgemeine Versicherungsgesellschaft v. E. K.* BGHZ 59, 83, reported in *Prott and O’Keefe* (1989: 659 – 660), 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 was held to be contrary to public policy on the basis that it was in violation of a Nigerian prohibition on the export of cultural objects. The court considered the 1970 UNESCO Convention and found that this represented the emerging international public policy on the issue even though the Federal Republic of Germany was not a party to the Convention.¹⁴

There are clearly obstacles encountered in the course of securing the recovery of Cultural Property by the Nigerian government. The most obvious one is the lack of political will which stems from the lack of understanding of the importance of Cultural Property in the life of a nation. Secondly, Nigeria has not administratively followed the procedure for the restitution of its illicitly exported Cultural Property. This is reinforced by the unwillingness of importing countries to release these cultural objects to the Nigerian government despite their demand for the same. More than anything, there is need for the revisions of the whole legal system concerning Cultural Property in Nigeria.

(d) Can the classification of an object or a real estate property as a cultural property be extinguished? (Can something revert from being cultural property to not being cultural property? Who manages this?)

According to the provisions of the NCMM Act, any object that falls within the definition of ‘artefact’ is deemed to be a Cultural Property. However, for protection purposes, the NCMM Act provides the NCMM powers to serve notices regarding the need to make an artifact a national monument. There are no provisions for an equivalent

¹² (1983) 27 Alta. L.R. (2d) 346; appeal decision (1984) 51 A. R. 73

¹³ This narrative was sourced from the national report on the implementation of the 1970 Convention on the means of prohibiting and preventing the illicit import, export and transfer of ownership of cultural property, 2011 – 2015.

¹⁴ This narrative was sourced from the national report on the implementation of the 1970 Convention on the means of prohibiting and preventing the illicit import, export and transfer of ownership of cultural property, 2011 - 2015

power to extinguish such a classification.

In practice, however, we have seen the case of a demolition of a national monument. This is in the case of the 'Ilojo Bar¹⁵' which was designated as a national monument under the NCMM Act. The Lagos State Building Control Agency in 2016 demolished the Ilojo Bar on the basis that the building was no longer safe for human habitation. We understand based on our inquiries that this is currently being contested in court by the NCMM.

(e) What national agencies are responsible for enforcement of cultural property laws?

The NCMM and other agencies already discussed above carry out varying degrees of enforcement of Cultural Property laws as they relate to their functions under their respective enabling laws. In addition to this, the Nigerian Police Force, the Nigerian Customs Service, the Nigerian Immigration Service and the Nigerian Prison Service are also responsible for the enforcement of Cultural Property laws in Nigeria.

(f) What federal, state or local prosecutors prosecute, and which courts have jurisdiction over cultural property violations?

Cultural Property law violations are prosecuted by the police or an officer of the Customs, Immigration and Prisons Services Board. The NCMM Act provides that both the Magistrate Court and the State High Court of each state has jurisdiction over Cultural Property law violations.

(g) How many prosecutions are there each year for violation of Cultural Property laws, export laws and related offenses?

Nigeria does not have a centralized database of cases that have been instituted in the courts. As such, we do not have precise data on the number of prosecutions there are for violations of cultural property laws, export laws and related offenses each year.

(h) How many convictions are there each year for violation of Cultural Property laws, export laws and related offenses?

As mentioned in paragraph (g) above, we do not have precise data or statistics for convictions in respect of violation of cultural property laws, export laws and related offenses.

(i) Is there information available on the financial value of seizures of Cultural Property?

There is currently no official information available on the financial value of seizures of Cultural Property.

(j) Application of national law in relation to domestic transfer by inheritance and gift transfers?

The NCMM Act permits the NCMM to accept gift transfers of antiquities. However, such gift transfers must be consistent with the functions of the NCMM under the NCMM Act as well as in line with any such trusts and conditions specified by the person or organization making the gift. From our informal inquiries at the NCMM, we understand that the NCMM obtains a significant proportion of its Cultural Property through gift transfers or from people who have inherited the same.

(k) Application of national law in relation to domestic transfer by sale?

The NCMM Act expressly prohibits the transfer of Cultural Property by way of sale unless such a sale is to an accredited agent¹⁶. The NCMM Act defines an accredited agent as the Director-General of the NCMM or any employee of the NCMM authorized in writing by the NCMM or any person or body in any State of Nigeria authorized

¹⁵ The Ilojo Bar, also known as Olaiya House or Casa do Fernandez, was a Brazilian-style historic building located near Tinubu Square in Lagos Island, Lagos State. It was originally built as a bar and restaurant in 1855 by the Fernandez family who employed returning ex-slaves who had mastered the art of building while in South America. The Ilojo Bar was subsequently sold to Alfred Omolana Olaiya in 1933 and was declared a national monument in 1956 by the National Commission for Museums and Monuments.

¹⁶ Accredited Agents under the NCMM Act are defined as the Director General of the NCMM or any employee of the NCMM authorized in writing by the NCMM or any person or body in any state authorized in writing by the Minister charged with responsibility for antiquities, museums and national monuments; to act for the Commission in the State concerned.



Buying and selling in Mushin Oloosa market, Lagos-Nigeria, Author Omoeko Media, 19 November 2018, Creative Commons Attribution-Share Alike 4.0 International license.

in writing by the Minister charged with responsibility for antiquities, museums and national monuments¹⁷ to act for the NCMM in the State concerned.

(i) Is there a system of registration for legal trade in Cultural Property, such as a dealer's registry?

There is currently no such dealer registry. However, Section 23 of the NCMM Act provides for a registration regime for antiquities in the possession of any person. According to the Section 23, "(1) any person who has an antiquity in his possession or under his control either before or after the commencement of this Decree shall, if so demanded by an accredited agent, register the antiquity with the accredited agent who may call upon him in person between the hours of 8 a.m. and 6 p.m. any day, except on work-free days, for that purpose.

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

¹⁷ Currently, the Minister for Information and Culture.

(m) **Is there a system for the documentation of objects in a dealer's inventory?**

There is no dealer's registry as such, but please see our response in Section 3(l) above.

(n) **What is the penalty for violation of illicit possession of cultural property provisions? Do the laws allow seizure and forfeiture? Are these laws/regulations enforced? What happens to seized property?**

Any person who violates the provisions covering the possession of Cultural Property may be liable for fines and/or imprisonment. Such Cultural Property may also be seized by the relevant law enforcement officer, who may apply to the Magistrate for the forfeiture of the Cultural Property to the State. It is required that any antiquity forfeited to the State be kept in the custody of the Director-General of the NCMM and be disposed of in such a manner as the NCMM may direct.

(o) **Under the various laws or at different points in time, does a non-permitted transfer of private property result in a confiscation/seizure, and/or transfer of ownership to the state?**

Under Section 21 of the NCMM Act¹⁸, any person who carries out a non-permitted transfer of private property will be guilty of an offence and on conviction will be liable for a fine of ₦2,000 or five times the value of the antiquity, whichever is greater. In addition to this, the person may face imprisonment for 3 (three) years and the court imposing the fine shall make an order for the forfeiture of the antiquity connected with the offence to the State.

(p) **What other actions or treatment of the Cultural Property will trigger a transfer of ownership to the State under the law? Is there compensation?**

According to the NCMM Act, ownership of Cultural Property may transfer to the state in any of the following instances:

- i. Where NCMM considers that it may be expedient for any antiquity (other than a monument) to be preserved in a museum¹⁹.
- ii. Sale or purchase of any antiquity to or from a person who is not an accredited agent.
- iii. Non-registration of an antiquity by a person who is in possession or control of it when an accredited agent has called upon him in person for the registration.
- iv. In addition, the NCMM may by agreement with 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 NCMM.

Compensation is only applicable in cases where an 'antiquity' is declared to be a national monument. According to Section 17(1) of the NCMM Act, where an antiquity has been declared to be a national monument, the owner shall be entitled to compensation for the value at the date of such declaration and thereafter any estate, right, title and interest in and to such antiquity shall be extinguished.

¹⁸ Section 21 for the NCMM Act.

¹⁹ Section 12 (c) for the NCMM Act.

SECTION 4

OWNERSHIP OF CULTURAL PROPERTY**(a) Does the law recognize religious or other cultural institutional ownership of cultural property?**

The NCMM Act recognizes private ownership of Cultural Property including religious and other cultural institutional ownership of Cultural Property.

(b) Does the law recognize private ownership of cultural property?

Yes, the NCMM Act recognizes private ownership of Cultural Property.

(c) Is cultural property that is NOT state-owned subject to export restrictions?

All Cultural Property whether state-owned or otherwise is subject to export restrictions. Accordingly, no antiquity, be it state owned or privately owned shall be exported from Nigeria without a permit (an export/clearance permit) issued by the NCMM²⁰.

(d) Does the law clearly vest title to cultural property in the state from a certain date?

The NCMM Act does not vest title to Cultural Property in the state from a certain date.

(e) What constitutes “cultural property” subject to domestic laws? Have there been significant changes over time in what types of objects are considered cultural property under the law? Have there been significant changes over time in what types of objects are considered state-owned or an inalienable part of the national heritage?

Please refer to our comments under the Executive Summary on what constitutes Cultural Property under Nigerian laws.

There have been no significant changes over time in what types of objects are considered cultural property. However, under the repealed Antiquities Ordinance, no. 17 of 1953 and Antiquities Regulations, 1957, an antiquity was defined as *any object of archaeological interest²¹ or land on which such object is believed to exist, any relic of early European settlement or colonization, any work of art or craftwork, including any statute etc. that was made before the year 1918, is of historical artistic or scientific interest that is that has been used at any time in the performance, and for the purposes of, any traditional African ceremony.* The definition of an ‘antiquity’ under the NCMM Act is more expansive as it cites examples of the types of craft works or works of art that might fall within the ambit of the NCMM Act.

(f) If there is an illicit art and artifact market in the country, who are the participants? Is there a public marketplace, whether in galleries or in a bazaar? On higher social levels?

To the best of our knowledge and from the research carried out, there is not an illicit art and artifact market in the country. However, there are arts and crafts markets across the country, such as the Oba Elegushi International Craft Market and the Abuja Arts and Crafts Market, where cultural objects such artworks and sculptures are sold.

(g) Is transfer by sale permitted?

Transfer by sale is permitted. However, as already discussed above, such a sale may only be to an accredited agent.

²⁰ Sections 21 (1) and (2) of the NCMM Act.

²¹ An object of archaeological interest is defined as any fossil remains of man or animal, any site, trace or ruin of an ancient habitation, any cave or other biophysical shelter and any associated engraving and inscription, any stone object or implement believed to have been used by a man, any ancient structure, any antique tool and object which is of archaeological interest.

(h) **Are there private collections of Cultural Property? Are they well known? Are there private museums?**

Yes, there are some private collections of Cultural Property in Nigeria. Two of the largest well-known private collections are owned by Omooba Oluyemisi Shyllon and Professor Wole Soyinka respectively. Omooba Oluyemisi Shyllon is said to have the largest private collection in Africa with over 7,000 artworks of sculptures, paintings, other media , as well as over 55,000 photographic shots of Nigeria's fast disappearing cultural festivals valued in billions of Naira, collected over a period of about 40 years.



Sculpture at Osun Osogbo Grove, Osun State, Nigeria. The Grove is a UNESCO World Heritage Site. Photo by: Oluwatosinladeloye Wikimedia Commons, Creative Commons Attribution-Share Alike 4.0 International license.

(i) Are there private museums?

Yes, Nigeria has a few private museums, amongst such private museums is the Didi Museum which is the first private museum in Nigeria. In addition, Omooba Oluyemisi Shyllon is currently building a multibillion Naira museum to be called the Shyllon Museum, for the Pan-Atlantic University, Lagos – Nigeria. The Shyllon Museum will house about 1,000 pieces of artwork from Omooba Oluyemisi Shyllon's private collection. The official opening date for the Shyllon Museum is 1 October 2019. In addition to privately owned museums, there are several other museums owned by educational institutions in Nigeria as well as privately owned art galleries.

(j) Is there a social group that collects art or artifacts that is allowed to do so?

We are not aware of any privileged group that is 'allowed' to collect art or artifacts. However, Nigerian law does not restrict private citizens, religious and cultural institutions from owning arts and artifacts.

(k) Do national cultural property laws include community-owned artifacts, for example, objects used in religious rituals or ceremonies by a minority or majority religion?

Yes, the NCMM Act recognizes religious masks and objects that were made or fashioned before the year 1918; or are of historical, artistic or scientific interest and are or have been used at any time in the performance and for the purposes of any traditional ceremony²² as an antiquity.

(l) Is there a date-based division or a point at which such community records or property is held to belong to or be under the "protection" of the state government when it is over a certain age?

According to the NCMM Act, any object made or fashioned before the year 1918 is considered to be an antiquity. In addition, any relic of early human settlement or colonisation is also considered to be an antiquity.

(m) Does national cultural property legislation apply to the export of such minority individual or community property?

The NCMM Act restricts the exportation of Cultural Property. According to the NCMM Act, any property considered to be an antiquity shall not be exported without a permit issued by the NCMM. Consequently, if the minority individual or community property falls within the definition of an antiquity under the NCMM Act, it will require such a permit.

(n) Are objects of religious heritage included or excluded within state controls?

There are no specific provisions as to whether objects of religious heritage are included under or excluded from state control.

(o) Are objects of religious heritage belonging to individuals included or excluded within state controls? Family Bibles? Marriage documents? Letters or photographs?

There are no specific provisions as to whether objects of religious heritage are included under or excluded from state control.

²² Section 32 NCMM Act.

SECTION 5

EXPORTATION OF CULTURAL PROPERTY IN NIGERIA

- (a) **Is there a permitting system, or other mechanism, for the export of cultural property, and for what purposes (sale, exhibition, exchange)?**

Cultural Property may be exported with the grant of a permit by the NCMM. The NCMM Act does not differentiate between the export of Cultural Property for different purposes. Exportation of Cultural Property generally must be with a permit granted by the NCMM Act. According to the NCMM (Export Permits) Regulations, an application is to be made to the Chairman of the NCMM through the Director of Museums and Monuments at the Nigerian National Museum Lagos.

In addition to the aforementioned regulations, our inquiries at the NCMM revealed that the NCMM permits the export of Cultural Property for exhibitions in other countries. Such exhibitions would be in partnership with the Nigerian National Museum and the exhibitor would be granted an antiquity certificate which authorizes it to export the Cultural Property for that stated purpose and, on the condition that the cultural property will be returned to the Nigerian National Museum.

Also, the NCMM allows for the exchange of Cultural Property between different stations of the NCMM across Nigeria. From our inquiries at the NCMM, there are 44 stations across the country of which approximately 36 have museums/galleries.

- (b) **Does the state allow export to any other nation of Cultural Property that is restricted under a US law or MOU under the US Cultural Property Implementation Act?**

Exportation of Cultural Property in Nigeria is governed by the NCMM Act. Restrictions on exportation are not dependent on the whether or not such restrictions exist under US law.

- (c) **Does the state maintain an inventory of Cultural Property so that it is possible to establish the date of illicit removal or of export?**

From inquiries made at the NCMM, we were informed that the NCMM maintains a manual inventory database at the Library and Archives Unit of the NCMM. There is currently no electric database. Also, the NCMM logs the movement of its Cultural Property. For example, if an antiquity is exported to Europe for an exhibition, its movements are logged to track it. From this, it is possible to track the date of removal of Cultural Property that has been exported and removed.

- (d) **Does the state make its domestic laws available domestically or internationally so that an exporter (or a subsequent owner or holder) could reasonably know whether at the time of export (or later come to know) that the object was exported in violation of the law?**

Nigerian laws are available to the general public and an exporter could reasonably know whether at the time of export (or later come to know) that the object was exported in violation of the law.

- (e) **Please provide copies or examples of any export or import forms, or other documents that an individual or entity is required by law to complete in respect of cultural property, for example as part of any registration process.**

Based on inquiries made at the export permits unit at the NCMM, we understand that it is not possible to obtain copies of export or import forms for the record. To obtain the same, it is necessary to show that the purpose for obtaining the form is for exporting or importing Cultural Property. As such, the form is not available to the public unless it can be shown that the purpose for requesting the form is for exportation or importation of Cultural Property. The fee for obtaining such a form is 10% of the cost of the object in question.

- (f) **Does the state allow domestic trade in the same kinds of Cultural Property that it restricts export in?**

Nigerian laws do not prohibit domestic trade, provided that such trading is done in accordance with the provisions of the NCMM Act.

SECTION 6

ARCHAEOLOGICAL WORK

(a) Is there a system of registration for metal detectorists or private archaeological groups?

Nigerian law does not explicitly provide for registration of metal detectorists or private archaeological groups. However, the NCMM Act provides that any person who discovers an object of archaeological interest during the course of any excavation or any similar operations permitted under the NCMM Act, shall not later than 7 (seven) days after give notice to the NCMM. Such notice is required to be given together with the particulars of the place and the circumstances of the discovery. The NCMM Act is silent on whether persons who find objects of archaeological interests are allowed to keep their discoveries after notifying the NCMM.

(b) Is archaeological work within the country organized and managed by the government through a ministry of culture or by universities through archaeological departments, or both?

In Nigeria, the NCMM is the body in charge of archeological work within the country. However, due to the capital-intensive nature of carrying out archaeological work, the majority of archaeological work within the country is organized by private archaeological groups.

Similarly, budgetary allocation at universities neglects archaeology and favors other disciplines. Notwithstanding this, both the Obafemi Awolowo University and the University of Ibadan through their departments of sociology and archeology and archeology and anthropology, respectively, have been pioneers in the area of archaeology.

(c) Who gives permissions for archaeological excavations and study to domestic archaeologists?

The NCMM grants permission for archaeological excavations and study to domestic archaeologists.

(d) Who grants permission for foreign archaeological excavations and what are the requirements for permits or criteria for qualifications? Is foreign archaeological work subject to review by the state before publication?

The NCMM grants permission for foreign archaeological excavations. In practice, the government does not carry out a significant amount of archaeological work. Private groups and individuals make up the majority of parties carrying out archaeological work.

(e) Are there requirements for archaeological excavation as part of private development and construction? Are these regulations enforced?

There are currently no regulations providing requirements for archaeological excavation as part of private development and construction.

(f) Are there domestic laws prohibiting unauthorized extraction of archaeological objects? Are such laws criminal or civil or both? How are they enforced?**(g) Yes, there are domestic laws prohibiting unauthorized extraction of archeological objects.**

According to section 19 of the NCMM Act, *“no person shall by means of excavation or similar operations search for any antiquities unless authorized by permit issued by the NCMM and with the consent of the Government of a State in whose territory the search is to be carried out”*.

The laws prohibiting the excavation of archaeological objects are criminal in nature; any person who carries out unauthorized extraction of archaeological objects shall be guilty of an offence and liable on conviction for a fine

of ₦500 or for imprisonment for six months or for both the said fine and imprisonment²³.

Notwithstanding the above stated provision of the NCMM Act, in practice, people such as village inhabitants carry out unauthorized excavations and sell archeological objects found during such illegal excavations to foreigners. From our informal inquiries at the NCMM, we were informed that the lack of funding from the Federal Government is the reason the regulations are not enforced as often as they ought to be. This lack of funding means that the relevant professionals: ethnographers and archaeologists, who should inspect and regulate such excavations, often lack the resources needed to carry out inspections frequently.

SECTION 7

FUTURE DEVELOPMENTS

- (a) **How would the researchers characterize trends in their state’s national policy on cultural heritage since UNESCO – and over the last 10-15 years? Changing, fixed? In what areas?**

Unfortunately, Nigeria’s cultural policy has been stagnant since 1988, and its national law on cultural heritage since 1979. However, following the uproar that followed the demolition of a national monument, Ilojo Bar, the NCMM is said to be in the works of drafting new laws that have been forwarded to the National Assembly. Due to the rampant illicit trade of Nigeria’s Cultural Property, stakeholders have been urged to review the outdated policy.

Additionally, earlier this year, UNESCO had a workshop with the Ministry of Information and Culture urging stakeholders to expedite the approval of the cultural policy owing to the fact that it is out of touch with current realities.

- (b) **Are there any draft laws, regulations or proposals in relation to cultural property, and will they have a significant impact on the current system?**

According to information gathered from inquiries made at the NCMM, the NCMM is in the process of drafting laws to be put forward to the Nigerian National Assembly. Following the destruction of the well renowned national monument Ilojo Bar, stakeholders got together to draft more up-to-date cultural property management laws.

- (c) **Are there broader economic or political initiatives that will have an effect on the trade in or ownership of cultural property? If so, what is the potential impact?**

Nigeria is a member of the Economic Community of West African States (“ECOWAS”), which is a member regional group that has a mandate to promote economic integration in all fields of activity of the constituent countries. ECOWAS carries out integrated economic activities that revolve around but are not limited to industry, transport, telecommunication, energy, agriculture, natural resources, commerce, monetary and financial issues, and social and cultural matters. As part of this agenda, ECOWAS adopted a resolution in June 2007 to introduce the transformational ECOWAS Vision 2020. The resolution aims to facilitate integration development across the West African region and create an environment in which the business community and the public will have a shared vision and work together to realize the development aspirations of the people.

In line with Article 49 of the ECOWAS Treaty on co-operation in social and cultural matters, ECOWAS works with member states to organize projects and initiatives that may influence the trade in or ownership of cultural property. For example, Customs experts from Member States of ECOWAS are working with the NCMM to support the implementation of a Supplementary Act on Mutual Administrative Assistance and Cooperation between Customs Administrations in the Region. This Supplementary Act aims to attain better interconnectivity of Customs’ computer systems which will improve the exchange of information, strengthen cooperation amongst operatives in the region and prevent the generation of illicit traffic flows.

Some of these ECOWAS initiatives with regard to Cultural Property include the Declaration of ECOWAS’ Minister of Culture on the Protection of Cultural Diversity, and a Protocol on Cultural Framework Agreement for the ECOWAS. To demonstrate this, in 2018, ECOWAS organized a workshop at the NCMM with a theme of “Safeguarding Nigeria’s Priceless Artefacts” The workshop’s focal point was strengthening the capacities of museum technicians and antiquity protection officers.

²³ Section 19 and 20 of the NCMM Act.

In addition to the above, the African Union's Model Law on the Protection of Cultural Property and Heritage in Africa, upon its full implementation, may also have an effect on the trade in or ownership of Cultural Property.

(d) **Does the country allow domestic trade in cultural property of other nations which have restrictive cultural property laws?**

Nigerian laws are silent on the trade in cultural property of other nations which have restrictive cultural property laws. However, the NCMM Act generally restricts trade in Cultural Property of all kinds. As already stated above, only an accredited agent is permitted to trade in Cultural Property.

(e) **Does Nigeria participate in international efforts to preserve cultural property in other nations? UNESCO projects? World Monuments Fund projects?**

Yes, Nigeria through the NCMM participates in international efforts to preserve cultural property in other nations. Nigeria has two internationally approved UNESCO World Heritage Sites, which are Sukur Cultural Landscape in Adamawa State and Osun Osogbo Sacred Grove in Osun State. The NCMM is a member of the ICOM and works with it to keep up with best museum practices.



Osun Sacred Grove Forest, Osogbo Main Gate. Photo by Vitus Emmanuel Nnaemeka Wikimedia Commons, Creative Commons Attribution-Share Alike 4.0 International license.