

SUMMARY REPORT

**HEARINGS OF THE ALL-PARTY PARLIAMENTARY GROUP
ON AFRIKAN REPARATIONS ON RESTITUTION OF STOLEN
AFRICAN ARTEFACTS AND ANCESTRAL REMAINS**



October 2023

The All-Party Parliamentary Group on Afrikan Reparations

The All-Party Parliamentary Group on Afrikan Reparations (APPG-AR) brings together parliamentarians, campaigners, communities and other stakeholders to examine issues of African reparations and the restitution of cultural artefacts and ancestral remains. APPG-AR explores policy proposals on reparations and development and how best to redress the legacies of African enslavement and colonialism.

AFFORD

The African Foundation for Development (AFFORD) is an international organisation established in 1994, with a mission 'to expand and enhance the contributions Africans in the diaspora make to African development'.

Our mission is achieved through programmes and projects within the following overlapping themes: enterprise and employment, diaspora remittances and investments, diaspora engagement and capacity and action research, policy and practice.

AFFORD acts as a co-secretariat for the APPG-Afrikan Reparations through its Return of the Icons programme which focuses on restitution of looted African artefacts and human remains to their country of heritage.

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Welcome and introduction

Dear Colleagues,

Welcome to the summary report of the hearings of the All-Party Parliamentary Group on Afrikan Reparations (APPG-AR) on restitution of stolen African artefacts and ancestral remains. Over two meetings between July 2022 and June 2023, the APPG-AR considered the key issues regarding provenance and mapping, and legal frameworks.

The first session of the APPG-AR on African restitution, held on 11 July 2022, examined issues of mapping and provenance: vital processes that need to be completed to begin the return of African artefacts and ancestral remains to their origin communities. The session explored the barriers to mapping and provenance that even the most sympathetic heritage institutions face. To date, the total number of African artefacts held in UK collections is unknown. Although it has been estimated the total number is likely to be in the hundreds of thousands, if not higher.

Currently, not all UK museums have catalogued the African artefacts in their collections. Consequently, there does not exist a comprehensive joined-up approach to the management, preservation, documentation and restitution of the controversial looted collections from the period of slavery and empire, held within UK public cultural heritage institutions. In this session, the APPG-AR brought together key scholars, researchers and communities working on African artefacts and issues of return in the UK and Europe, and museum professionals advocating alternatives to restitution, to discuss the present and future challenges facing the location, provenance research and documentation of African artefacts and ancestral remains. The recent scandal relating to the sale of classical Greek items from the British Museum reinforces the critical importance of a comprehensive joined-up approach to the management, documentation and restitution of looted collections.

The July session in the UK parliament happened in the midst of a series of changes within the restitution debates in Europe and the UK. In July 2022, we saw the historic return of Benin artefacts to the Nigerian government and the signing of the *Joint Declaration on the Return of Benin Bronzes* between Germany and Nigeria.

Summer 2022 saw the publication by the Arts Council England of *Restitution and Repatriation: A Practical Guide for Museums in England*. The release of this guidance was swiftly followed by the announcement by the Horniman Museum in London which handed back 72 Benin Bronzes to the Nigerian government following a decision by its board of trustees.

In Autumn 2022, the Charities Act came into force. Within the Charities Act 2022, a new provision will allow trustees of those institutions to seek authorisation from the Charity Commission for ex gratia transfers. Thus, giving national institutions leeway to dispose of objects on moral grounds. In October, in the House of Lords, Lord Vaizey of Didcot (Conservative) asked His Majesty's Government what plans it has to review the National Heritage Act 1983.

The APPG-AR session on mapping and provenance explored in its discussions and recommendations ways to address issues of funding, guidelines for restitution, de-centring provenance research, engagement with claimants and defining issues of consent.

Between this session and June 2023, the APPG-AR invited written submissions on the legal frameworks relating to the restitution of stolen African artefacts and ancestral remains.

A roundtable meeting was convened on 7 June 2023 by the APPG-AR and the APPG for Africa to consider these legal frameworks.

The APPG-AR makes recommendations to enable the restitution of stolen African artefacts and ancestral remains.

These include:

- provision of guidance on best practice and support to heritage institutions with processing of restitution claims.
- a national funding mechanism to support the costs of returns to claimants.
- a role for the Charity Commission in approving decisions on returns.
- a review by the Department of Culture, Media and Sport (DCMS) and the Arts Council England on the treatment and restitution of ancestral remains within heritage/museum settings in England.
- A hearing by CMS Committee on provenance research and restitution
- the proposal of new legislation that applies similar provisions of the 2009 Holocaust (Return of Cultural Objects) to stolen African artefacts and ancestral remains in UK collections.

The APPG-AR seeks to continue the work of the Honourable Bernie Grant MP (1944-2000) on the restitution of African artefacts and ancestral remains. We look forward to exploring new ways to progress the restitution dialogue.

Yours,

Bell Ribeiro-Addy, MP

Chair, All-Party Parliamentary Group on Afrikan Reparations

Report recommendations in full

- ❖ **The DCMS be tasked with exploring the establishment of a national resource to provide guidance on best practice and support to museums and heritage collections in England with the processing and the negotiation of restitution claims.**
- ❖ **A national funding mechanism should be established to support the costs of the return of artefacts and ancestral remains to claimants.**
- ❖ **Guidelines on the display of ancestral remains such as those in the British Museum should be further tightened and apply to remains older than the 1000 years that apply under the Human Tissue Act 2004.**
- ❖ **The requirement for approval by the Charity Commission for England and Wales of repatriation decisions should also be explored, particularly in the light of the Charities Act 2022, to ensure that this does not create additional restrictions or delays. The impact of the Charities Act 2022 on the British Museum Act and the National Heritage Act should also be explored.**
- ❖ **The DCMS be tasked to explore a simplified approach to export licensing for items that are being repatriated.**
- ❖ **The DCMS and Arts Council England conduct a review on the treatment and restitution of ancestral remains within heritage/museum settings in England.**
- ❖ **The CMS Committee should undertake an urgent and comprehensive hearing into provenance and restitution.**
- ❖ **Parliamentarians should consider proposing new legislation that applies similar provisions of the 2009 Holocaust (Return of Cultural Objects) to stolen African artefacts and ancestral remains in UK collections.**



Photo: The APPG-AR session on mapping and provenance in July 2022. (Top row, left to right) Errol Francis, CEO of independent arts and education charity Culture&, Professor Dan Hicks of the Pitt-Rivers Museum, Oxford University, and Johanna Zetterstrom-Sharp, formerly from the Horniman Museum and Museum Ethnographers Group. (Bottom row, left to right) Bell Ribeiro-Addy MP and Onyekachi Wambu, special projects director of AFFORD. Neil G.W. Curtis from Aberdeen University and Chao Tayiana Maina from African Digital Heritage were virtual participants.

APPG-AR Session on Mapping and Provenance | 11 July 2022

The first APPG-AR session on mapping and provenance explored the barriers heritage institutions and museums face in identifying and researching African artefacts and ancestral remains.

The majority of African artefacts and ancestral remains in the UK are not in national museums. African artefacts are largely held within the UK's regional, local and municipal museums. These museums are outside the scope of the 1963 British Museum Act, and the 1983 National Heritage Act and the 1985 National Heritage (Scotland) Act, the current legislation that governs the national museums in the UK. The Holocaust (return of cultural objects) Act, 2009, set the legal precedent of UK law being amended to recognise one specific historical episode of violence and taking of artefacts without consent (see section 2 below on Legal Frameworks).

This APPG-AR session took place before the publication of the Arts Council England guidance on *Restitution and Repatriation: A Practical Guide for Museums in England*¹ on 5 August 2022 and the announcement of the first museum directly funded by the UK government, the Horniman Museum, London, on 7 August 2022 to return Benin Bronzes², in recent times.

¹ <https://www.artscouncil.org.uk/publication/restitution-and-repatriation-practical-guide-museums-england>

² <https://www.horniman.ac.uk/story/horniman-to-return-ownership-of-benin-bronzes-to-nigeria/>

A number of cross-cutting themes were explored during the meeting by members and presenters:

1.1 Funding

1.2 Guidelines for restitution

1.3 De-centring provenance research

1.4 Engagement with claimants

1.5 Consent

1.6 Difference between Devolved Nations and Westminster government and the European governmental approaches to restitution

1.1 Funding

The majority of the presenters addressed the issue of heritage sector funding and the need for core government funding to address the paucity of provenance research on African artefacts and ancestral remains. Presenters noted that the lack of government funding to undertake mapping and provenance research was of particular concern for smaller, regional and local museums. They spoke of the need to move away from short-term project funding to more sustainable core funding to undertake mapping and provenance research activities.

Presenters highlighted the need for an equitable distribution of funds for provenance research between local, regional and national museums and heritage collections. They also noted that the restitution process can bring significant costs to all parties, such as the time needed for discussions, the costs of provenance research and the costs of physical return. These should not exclusively be the responsibility of the claimant and/or the museum caring for the items, who can be extremely under-resourced, but should be seen as a national responsibility that deserves government support.

1.2 Guidance on restitution

Presenters highlighted the existence of orphaned collections³, or those where curatorial support is limited, within the UK as an area of concern. There was a differing emphasis between the presenters on the established role of restitution/return in existing professional museum practice. Some presenters asserted that restitution and return is a long-established activity within museum professional practice. The guidelines for museums are already in place to assist museums in the restitution process on a case-by-case basis. For these presenters, the emphasis of any updated UK restitution guidelines should be a shift from the current onus for the claimant to identify items within the collections that a community/individual or nation wishes to have returned; to shifting the onus onto the museum to identify artefacts that may be subject to a claim for restitution.

In developing this argument, some presenters cited the [Washington Principles](#)⁴ established in relation to Nazi looted art. They further identified within the Washington Principles framework a model for the establishment of new ethical guidelines for restitution in the UK. The Washington Principles encourage the holding institution or museum to initiate and undertake the necessary research to identify the owner or owners of artefacts and ancestral remains within their collections. Within the framework of the Washington Principles, it is the responsibility of the holding institution to provide evidence of how artefacts within their collections were acquired; the place of acquisition and original owners etc and tracing the original ownership of their colonial artefacts and ancestral remains.

³ A collection that has lost curatorial support or whose owner has abandoned it

⁴ <https://www.lootedartcommission.com/Washington-principles>

Other presenters spoke about the need for clearer guidance on the issue of restitution for UK museums. They spoke of the need for more guidance and support for smaller museums that did not have in-house expertise in the often complex and staff time-consuming restitution negotiations and procedures. There was general agreement between the presenters that museums need to commit to new levels of transparency on what is held within the collections they care for.

Presenters also highlighted the disparity between the legal framework for museums on ancestral remains and the legal framework within scientific and medical settings. The treatment of ancestral remains in the museum sector allows behaviours that ancestral communities may find distressing and/or disrespectful. The example cited within a presentation was the taking of selfies with ancestral remains. Within museums or a heritage setting it is permissible to take a selfie with ancestral remains. However, this behaviour is prohibited within a medical or scientific setting. The existence of such behaviours within heritage settings, potentially undermines trust between museums and claimant communities. The legal inconsistency between scientific/medical and heritage sectors and their respective treatment of ancestral remains and restitution, indicates a need for a policy overhaul in relation to the treatment of ancestral remains in the UK heritage sector.

1.3 De-centring provenance research

Most presenters spoke of the need to de-centre the research on African artefacts and ancestral remains. UK museums and research centres need to work with African-based expertise and communities as well as museum professionals and African-descendent communities in the UK. Some presenters were explicit on this point and evidenced this approach through the work of their institutions.

Work that was developed within *Rethinking relationships and building trust around African collections* included: [Horniman Museum and Gardens](#), Museum of Archaeology and Anthropology, Cambridge, [Pitt Rivers Museum](#) initiative (supported by the DCMS).

Other presenters addressed the need to diversify the workforce of UK museums as part of a strategy to develop more interdisciplinary and culturally nuanced research and methodologies for provenance research within the heritage sector. They also emphasised that a desire for the completion of provenance research projects by museums should not be seen as a reason for delaying discussions about restitution.

1.4 Engagement with claimants

Three key areas need to be addressed to develop a more transparent and equitable relationship with the claimants:

- i. **lack of an easily understood and simple restitution process.**
- ii. **absence of information on what is held within the collections.**
- iii. **historical lack of trust among the claimants and UK museums, due to previous dismissal and/or ignoring of restitution requests.**

The majority of presenters spoke to the issue of engaging with claimants and the need to conduct negotiations with respect, transparency and equity. The presenters spoke to the current situation within UK museums. Currently in the UK, there does not exist a comprehensive understanding of the numbers, location and ownership of the African artefacts and ancestral remains held within UK heritage collections and museums. Many museums lack the resources to undertake basic provenance research on African artefacts within their collections.

The heritage sector's historical lack of cataloguing, identifying and researching museum collections has informed the legacy of claimants' reluctance to initiate a restitution claim. Participants noted that the 'Reveal and Connect: African and Caribbean Collections in Scottish Museums' project⁵ funded by Museums Galleries Scotland will draw attention to the content of collections in Scottish museums and start to improve connections between Scottish museums and their counterparts in Africa, and with people of African descent living in Scotland. The project was developed to support museum activities that will result from the Scottish Government's 'Empire, Slavery and Scotland's Museums' project. Presenters also pointed to the historical lack of respect and dismissal of claimants' requests for information by museums and how this approach has engendered a lack of response from museums on returning artefacts when they are requested from claimants.

Other participants raised the lack of transparency in relation to Kenyan archival records held in The National Archives, UK, and the need for equitable access to the colonial archive. They cited the destruction of Kenyan archives, uncovered by the British historian Tony Badger in 2012⁶. Presentations highlighted how the destruction of Kenyan documentary heritage, and the migration of Kenyan official documents to the UK after the independence of Kenya in 1963, continues to have a profound effect on researchers seeking to examine Britain's and Kenya's colonial history. They also noted that contemporary researchers in the UK and those travelling to the UK to examine the colonial archives continue to face barriers in gaining access to the Kenyan colonial archive⁷. In addition, they pointed to the need for Kenyans to have equitable open access to the Kenyan colonial archival material held in the UK.

1.5 Understanding consent

Presenters explored the concept of consent in relationship to the acquisition, ownership and placement of African artefacts in UK museums. The landmark report *The Restitution of African Cultural Heritage: Toward a New Relational Ethics*, by Felwine Sarr and Bénédicte Savoy (2019), highlighted the differing ways African artefacts were removed from Africa: these included military campaigns, missionary interventions and seizures, archaeological expeditions, scientific expeditions and trade. The Sarr-Savoy Report authors noted that during the 19th Century: "We could multiply the number of examples...that prove that the acquisition of cultural objects and resources and their transfer to the capitals of Europe were in fact at the heart of – and not at the margins – of the colonial enterprise"⁸.

Concerns over contemporary museological professional practice in relation to restitution, are not only located within the lack of provenance research. Concerns were also expressed about the nature and academic narrowness of existing approaches to provenance research. Traditionally, museum researchers have focused on the biography of collectors, object biography and British colonial history. Standard provenance research methodology does not address the socio-economic and political context that enabled artefacts to be taken from colonial sites of locations, nor the importance of oral testimony and traditional practice being of equal value to academic research.

⁵ <https://www.nms.ac.uk/collections-research/collections-departments/global-arts-cultures-and-design/projects/reveal-and-connect/>

⁶ <https://www.theguardian.com/uk/2012/apr/18/britain-destroyed-records-colonial-crimes>

⁷ The Foreign and Commonwealth Office 'migrated archives' are colonial government records removed clandestinely from 37 former British colonies at independence. They were hidden from view, their very existence denied, for decades until finally deposited in the UK National Archives (TNA) in 2012-13 under the reference FCO 141. A few weeks ago, TNA withdrew the entire collection from public access. Coincidentally or not, the withdrawal immediately followed requests to film some parts of the records, which had been turned down. <https://commonwealth.sas.ac.uk/blog/recent-withdrawal-public-access-important-migrated-archives>

⁸ Sarr-Savoy, 2019, p.21 http://restitutionreport2018.com/sarr_savoy_en.pdf

During the course of researching the Horniman contribution to the ‘Rethinking relationships and building trust around African collections’⁹ project, researchers found the Kenyan land clearances, 1895 and 1963, adversely affected the Kipsigis and Talai clans¹⁰ and resulted in their collective and individual disposal of property as an act of economic necessity. These land clearances deprived clans of their land, property and livelihoods, meaning individuals and communities had to sell their personal belongings as a direct effect. Some of those items are to be found within UK museum and heritage collections. The socio-economic consequences of the Kenyan land clearances on the Kipsigis and Talai clans and individuals are not recorded in the catalogue records of the Horniman Museum’s Kenyan artefacts.¹¹

These examples provide evidence of the need to develop an expansive notion of consent and how it was acquired in relation to African artefacts. These interventions should be embedded within contemporary provenance research, contributing to nuanced discussions on the ownership and presence of African artefacts in UK museums and heritage collections. Furthermore, socio-economic-cultural context of an artefact should be part of provenance research methodologies. Such an approach would allow museums to begin the process of critically reflecting on concepts of the legal title and consent in relation to the presence of African artefacts and ancestral remains within museum collections.

1.6 Differences between the approaches of the UK Government, Scottish Government, Welsh Government and the Northern Ireland Executive, and comparisons with the approaches taken to restitution by other European nations

Presenters reflected on the differing approaches between the different governments in the UK. Presenters noted some had been willing to enter into a dialogue on the issues of restitution and the colonial legacies in their museum collections. The responses of the Scottish Government, Welsh Government and the Northern Ireland Executive, to date, have been more in line with the governmental responses of Western Europe, notably Germany, France and the Netherlands. The Scottish Government’s ‘Empire, Slavery and Scotland’s Museums’ project¹² is particularly important, making recommendations on how Scotland’s involvement in empire, colonialism, and historic slavery can be addressed using museum collections and museum spaces. The current Westminster government had largely been unresponsive to the restitution debate or has sought to place restitution as part of an antagonistic relationship between British institutions and communities with their roots outside the UK. Within the current Westminster government’s positioning, restitution debates have emerged as an attack on British culture and values, rather than debates seeking to expand knowledge on Britain’s shared histories and heritages.

⁹<https://www.horniman.ac.uk/project/rethinking-relationships/#:~:text=Rethinking%20Relationships%20and%20Building%20Trust%20around%20African%20Collections%20was%20a,the%20World%20Museum%20in%20Liverpool>.

¹⁰ See <https://www.theguardian.com/global-development/2021/aug/03/un-criticises-uk-for-failure-to-redress-colonial-era-land-grab-in-kenya> and report by the United Nations (2021) <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?glid=26395>

¹¹ The legal precedent was recognising sale of cultural artefacts due to inequitable conditions can be seen in the recent Tate Gallery action. After the 2009 Holocaust (Return of Cultural Objects) Act became legal statute, the Tate Gallery, without legal obligation, paid a six-figure sum as ‘conscience’ money to a Jewish family whose mother had sold an Old Master at a knock-down price to a reputable dealer because she was ‘struggling to survive in a hostile environment and faced the threat of starvation. The Tate Gallery had acquired the painting legitimately, and the mother had not been forced to sell it by the Nazis, but the circumstances and their anti-Jewish policies created the conditions that necessitated the sale. Cited in Geoffrey Robertson, *Who Owns History?: Elgin’s Loot and the Case for Returning Plundered Treasure* (London: Biteback, 2019) p.50-51

¹² <https://www.museumsgalleryscotland.org.uk/projects/empire-slavery-scotlands-museums/>



The Benin ivory mask is a miniature sculptural portrait in ivory of Idia, the first Iyoba of the 16th century Benin Empire, taking the form of a traditional African mask. The masks were looted by the British from the palace of the Oba of Benin in the Benin Expedition of 1897.

Overview of key legal frameworks for restitution, based on written submissions | November 2022 – June 2023

In addition to the expert witnesses who gave evidence at the APPG-AR hearing in July 2022, between November 2022 and June 2023 the APPG-AR requested written submissions from interested parties on the relevant legal frameworks in the UK (and elsewhere) that govern heritage collections and their ability to deaccession and return stolen artefacts and ancestral remains. Written submissions were received from: Dr Tristram Hunt, Director of the Victoria and Albert Museum; Geoffrey Robertson KC; Karen Sanig, a partner at Mishcon de Reya; and Lauren Bursey, consultant to Art Law/Mishcon de Reya; Rudyard de Ceres Esq, a partner in the corporate practice of Smith, Gambrell & Russell, based in New York, and Peter Murphy, an independent filmmaker and restitution historian.

These submissions are included in annexes below, but based on these we present here an overview of the key legal frameworks that are relevant to restitution of stolen African artefacts and ancestral remains in UK heritage institutions.

2.1 Restitution of stolen ancestral remains

Sangin and Robertson note that most institutions in the UK engage actively in the return of ancestral remains and are governed by the [Human Tissue Act 2004](#) that empowers them to actively consider requests to change the custody of ancestral body parts that are less than one thousand years old (Sangin 2022, Robertson 2023). However, this excludes many ‘mummies’ in UK Egyptology collections.

Models of good practice have been developed and implemented by UK institutions in terms of where, and to whom, ancestral remains are returned. However, not all cases of ancestral remains are clear-cut, such as those held by royal institutions. Nevertheless, in most cases the processes for deaccessioning and returning ancestral remains are better developed.

2.2 Restitution of stolen artefacts

Submissions noted the importance of legal frameworks in the UK that place legal obligations on trustees of national heritage collections in the UK on deaccessioning items, as well as the central role of interpretations in these laws. These include the following:

2.3 Key legal frameworks

Existing legislation and legal frameworks governing national heritage institutions provide the principal restrictions to restitution of stolen African artefacts from UK national collections. These include the [British Museum Act 1963](#), the [National Heritage Act 1983](#) (amended in 1997), the [Museums and Galleries Act 1992](#), and the [Charities Act 2022](#). These restrict national heritage institutions from deaccessioning items in their collections unless they are deemed unfit by the trustees of such institutions for retention and that their removal would not be detrimental to the interests of students.¹³

2.4 Independence of trustees

The introduction of the National Heritage Act 1983 (amended in 1997) established the Victoria and Albert Museum, the Science Museum, the Armouries and the Royal Botanic Gardens, Kew, as non-departmental public bodies to be governed by boards of trustees, and places conditions on the circumstances under which they may acquire or dispose of objects. As Sangin and Hunt note, this means that boards of such institutions are independent of direct government control (Sangin 2023, Hunt 2022). However, the act limits scope for deaccessioning items in national collections to duplicates, items that are ‘unsuitable for retention without detriment to interests of students and the wider public’, or items that are damaged or destroyed.

2.5 Precedent of the Holocaust (Return of Cultural Objects) Act 2009

The [Holocaust \(Return of Cultural Objects\) Act 2009](#) also provides a precedent for UK national museums and galleries to restore looted artefacts to other groups of owners. This act arose out of a legal test case brought by heirs of stolen items, and other such legal test cases, especially concerning return of sacred objects held in national UK collections such as the Ethiopian *t’abots*, may provide strong grounds for amending legislation or introducing new legislation for the return of such objects.

¹³ The term ‘unfit’ is understood broadly in this context, but mainly applies to forgeries and fakes (c.f Robertson 2019).

2.6 Charities Act 2022

The Charities Act 2022 proposed to amend the earlier Charities Act 2011. In particular, Section 106 of the 2022 act would allow trustees to make ex gratia transfers of 'low valued' property of their own accord, without the involvement of the Commission. The value threshold is dependent upon the gross income of the charity, to be detailed in a new section, 331A.

This authorisation, notably, would apply to trustees of charities established by legislation that would otherwise prohibit the disposal of property, namely national institutions. As many UK heritage institutions, including national collections, are registered charities, their boards of trustees could use the 2022 act to authorise deaccessioning of stolen artefacts (Sangin 2023). However, the government has delayed implementation of the specific sections on moral grounds until it "fully understands the implications for national museums and other charities" (ibid).

2.7 Need for affirmative duty

Moreover, the proposed 2022 act also places a requirement on the Charity Commission to approve any such transfers once recommended by a trustee. However, the proposed update to the 2011 act may give the trustees authority, but not the requirement, to deaccession and repatriate artefacts. This change would make deaccessioning and repatriation an issue for museum trustees, but it does not provide an affirmative duty for the trustees to return colonial looted objects. Therefore, creating such a duty, as is found in the Washington Principles, is necessary to ensure trustees are proactive, rather than just reactive, in returning stolen colonial artefacts (Sangin 2023).

2.8 International context

Museum policy and practice in the UK are also influenced by wider trends in the heritage and museological sectors. The landmark 2018 Sarr-Savoy Report in France has opened a global conversation around these issues, and many heritage institutions in Europe, the United States and Oceania have returned such collection items to the legal heirs of their original owners or local or national authorities in their countries of origin.

In the US context, Ceres demonstrates that legislation established to prevent sale of looted Jewish art and artefacts, such as the [Federal Holocaust Expropriated Art Recover Act](#), also known as the HEAR Act 2016, was instrumental to a decision by New York State Supreme Court Justice Charles A. Ramos to grant the return of artwork stolen by the Nazis to the heirs of its original owners (Ceres 2023). As Judge Ramos noted in his decision, Congress had enacted the HEAR Act with the "twin purposes" of (i) ensuring "that laws governing claims to Nazi-confiscated art and other property further United States policy..." and (ii) "ensuring that claims to artworks and other property stolen or misappropriated by the Nazis are not unfairly barred by statutes of limitations but are resolved in a just and fair manner". In this case, the HEAR Act thus applied to defeat the defence of laches (Ibid).

2.9 Importance of provenance

In addition, Ceres notes that this also underscores the importance of provenance research, quoting Alison Abbot, "Provenance research, most scholars argue, is the first step in rectifying past wrongs."¹⁴ With so many stolen African artefacts remaining uncatalogued in UK heritage collections, identifying what artefacts are in UK collections is therefore also a priority as well as an example of good practice.

¹⁴ [Confronting the Colonial Legacies of Museum Collections](#), Alison Abbott, May 7, 2020

The importance of provenance research is also highlighted by Hunt (2022) and Sangin (2023), who argue that the Spoliations Advisory Committee, established in 2000 as an alternate forum for resolving claims of looted Nazi-era Jewish art and artefacts, was instrumental in the creation and implementation of the Holocaust (Return of Cultural Objects) Act 2009, amended in 2019. This law allows listed UK institutions which are restricted by law from deaccessioning collection items to transfer items claimed in relation to events that occurred during the Nazi era (1933-45). The transfer must have been recommended by the Spoliation Advisory Panel and approved by the Secretary of State.

Contributors of written submissions thus argue that, in addition to the introduction of new legislation akin to the Holocaust (Return of Cultural Objects) Act 2009 to cover stolen African items, similarly a Spoliations Advisory Committee for Stolen African Artefacts and Human Remains is needed to support and advise the trustees of UK heritage collections to restore such artefacts to their rightful owners.

2.10 Principal avenues for achieving restoration of stolen African artefacts and ancestral remains

As Robertson (2022) has argued, there are four principal avenues for advocates of restitution of stolen African artefacts and ancestral remains: a) interpretation of existing legislation; b) amendment of existing legislation, such as by use of procedural measures such as private members' bills (a path that was considered by the JustGhana group for the return of the Asantehene's royal regalia); c) taking legal test cases through the courts to challenge retention of specific objects by UK institutions; and d) introduction of new legislation.



A Kenyan Kamba stool in the Horniman Museum, London.

Roundtable meeting on restitution convened by APPG-AR and the APPG for Africa | 7 June 2023

The APPG-AR and the APPG for Africa convened a hybrid roundtable meeting on 7 June 2023, attended by experts who presented key issues relating to restitution and made recommendations for the UK heritage sector to better support restitution processes.

3.1 Context

2018 saw the publication of the Sarr-Savoy Report, *Restitution of African Cultural Heritage: Toward a New Relational Ethics*, reigniting the debates on the restitution of colonial artefacts to their communities of origin. The report, commissioned by French President Emmanuel Macron, highlighted the high percentage of African cultural heritage held outside the continent of Africa. Since publication we have witnessed a series of differing responses to the issues of restitution internationally and within the UK.

Germany has been in the forefront of positive responses with a commitment to return all looted artefacts and ancestral remains. In the UK, the debate in the House of Lords, the publication of Professor Dan Hick's *The Brutish Museum*, and briefing documents from AFFORD's Return of the Icons programme and the launch of the APPG on Afrikan Reparations, saw the development of significant movement on the issue.

In Summer 2022, the Arts Council England's *Restitution and Repatriation: A Practical Guide for Museums in England* was published. Summer 2022 also saw the first restitution of Benin Bronzes by a publicly funded English museum and a call by the director of the Victoria and Albert Museum for a

review of the 1983 National Heritage Act. Other proposed changes within the Charity Act 2022 anticipated giving national institutions leeway to dispose of objects on moral grounds.

The principal legislation affecting charities in England and Wales is the Charities Act 2011. Currently, under section 106, charity trustees have the ability to seek authorisation from the Charity Commission if they feel compelled by a moral obligation to make a transfer of charity property.

3.2 Introduction

The meeting focused on the issue of restitution of stolen colonial-era artefacts and the varying responses to restitution internationally and within the UK. The discussion, held under Chatham House rules, aimed to address the challenges and potential solutions surrounding the restitution of cultural heritage.

3.3 Speakers' discussion points

3.3.1 Case study: Nigeria

A case study of the return of materials from Nigeria based on a claim by Nigeria's National Commission for Museums and Monuments (NCMM) was presented. The process involved extensive consultation with various stakeholders and research to determine the status of objects. It was concluded that everything was looted and should be returned. Out of 72 items, six were returned, and the remaining 66 are on loan to the museum. This case study demonstrates an example of making progress in restitution of such artefacts.

Embassy representatives emphasised the need to close the chapter and move forward in a productive manner. They emphasised the importance of returning items, especially religious artefacts that hold little meaning outside their original context.

3.3.2 Legal Frameworks for Restitution: Section 106 of the Charity Act 2022

The legal aspects related to restitution and the complications these brought were evaluated by members and presenters. Two options were discussed: so-called 'light restitution', which involves long-term loans that maintain control over objects, and 'pure restitution', which entails using existing legislation on damaged objects to facilitate returns. This second route was criticised by speakers, who highlighted that recent changes in the Charity Act of 2022 restricted the ability of statutory charities to use Section 106 for restitution.

The significance of implementing Section 106 in the restitution debate and questions on the strategy for restitution were also discussed. The need for museums to provide catalogues and conduct audits of their collections to facilitate the restitution process was emphasised. Parallels with restitution efforts after Nazi looting were drawn, where organisations were required to conduct audits, suggesting a similar approach for colonial artefacts.

The need to be proactive rather than reactive in addressing restitution was stressed by speakers. It was emphasised that a majority of collections are not on display, and there is a lack of resources and funding for collaboration with communities and organisations to identify what is in these collections. Understanding the provenance of the items will certainly facilitate the restitution process.

The need for collaboration between academia and museums was discussed; this will potentially allow thorough research into items. Uncertainty about the next steps to find resources to facilitate this collaboration were expressed, indicating the need for further funding.

The discussion revolved around whether Article 106 could be effectively used for restitution. It was noted that the Charity Commission should take the lead, but there was concern that they lack the necessary expertise and resources. The British Museum Act and the National Heritage Act were highlighted as legal obstacles to restitution. The question of what would happen in the case of a new parliament following the election in 15 months was raised.

3.4 Questions

3.4.1 Loan mechanisms

There were questions as to how loans work in the case of 'light' restoration. It was concluded that loans are free, meaning no profit is gathered. This is dependent on the case, however the case study used interest free loans.

3.4.2 Safety of items once transferred

Schemes like 'The Digital Benin project' capture the Benin Bronzes digitally to ensure they hold no commercial value. Ownership is transferred through objects, paperwork and licensed pictures.

3.4.1 Legal frameworks on ancestral remains

The discussion touched upon the challenges of restitution of ancestral remains. It was noted that many ancestral remains are undocumented and stored without proper ownership. Returning ancestral remains is complicated due to the lack of documentation and identification.

3.5 Closing comments

The meeting concluded with the following closing comments:

- Political change may bring more flexibility in matters of restitution.
- Museums lack knowledge about their collections, highlighting the need for further research and audits.
- The argument that countries cannot take care of returned items is baseless if they are unaware of the items they possess.
- Further provenance research must be conducted.
- Potential funding must be acquired to audit and catalogue all items in museums.

Conclusion and recommendations

The two APPG-AR hearings and the policy roundtable organised by the APPG-AR in June 2023 provided an important platform for diverse voices and perspectives to contribute to the ongoing discourse on restitution.

In particular, they highlighted the need for proactive measures, collaboration between academia and museums and the allocation of resources to address the challenges associated with restitution. By supporting restitution efforts and implementing necessary changes to legislation and museum practices, the UK government can take significant steps towards rectifying historical injustices and fostering a more equitable and inclusive approach to cultural heritage.

The hearings and the roundtable further underscored the urgency of the issue, emphasising that the countries of origin must be given the opportunity to care for their own cultural heritage, which requires a comprehensive understanding of what items are in possession.

Based on this process, the following recommendations were made to enable the return of stolen African artefacts and ancestral remains to their rightful heirs and/or countries or regions of heritage:

i. Recommendation:

The DCMS be tasked with exploring the establishment of a national resource to provide guidance on best practice and support to museums and heritage collections in England with the processing and the negotiation of restitution claims.

ii. Recommendation:

A national funding mechanism should be established to support the costs of the return of artefacts and ancestral remains to claimants.

iii. Recommendation:

Guidelines on the display of ancestral remains such as those in the British Museum should be further tightened and apply to remains older than the 1000 years that apply under the Human Tissue Act 2004.

iv. Recommendation:

The requirement for approval by the Charity Commission for England and Wales of repatriation decisions should also be explored, particularly in the light of the Charities Act 2022, to ensure that this does not create additional restrictions or delays. The impact of the Charities Act 2022 on the British Museum Act and the National Heritage Act should also be explored.

v. Recommendation:

The DCMS be tasked to explore a simplified approach to export licensing for items that are being repatriated.

v. Recommendation:

The DCMS and Arts Council England conduct a review on the treatment and restitution of ancestral remains within heritage/museum settings in England.

vi. Recommendation:

The DCMS Select Committee should undertake an urgent and comprehensive hearing into provenance and restitution.

vii. Recommendation:

Parliamentarians should consider proposing new legislation that applies similar provisions of the 2009 Holocaust (Return of Cultural Objects) to stolen African artefacts and ancestral remains in UK collections.

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Annexes – written submissions to the APPG on African Restitution, Session Two: Legal Frameworks

Annex 1 – Written submission from Dr Tristram Hunt, Director of the Victoria and Albert Museum

Bell Ribeiro-Addy, MP
Joint Chair, APPG-AR
House of Commons
London
SWIA OAA

2nd November 2022

Dear Bell Ribeiro-Addy,

I submit the below considerations towards the APPG-AR session on legal frameworks, seeking to define the grounds for reconsidering the National Heritage Act (1983) in relation to the issue of restitution, and how the Charities Act and changes in the disposal of items on moral grounds will affect issues of restitution in the museums sector.

1. The 1983 National Heritage Act transferred the responsibility for the V&A (and three other institutions) from different government departments to newly established Boards of Trustees who became responsible for the collections.

The Act gave the Trustees full autonomy to shape the future of the collections by giving them the power to acquire any object 'which in their opinion is desirable to add to their collections'. By contrast, the Act significantly restricts their ability to deaccession items in the collections. The Trustees are only able to do so if a given item is: a duplicate of an item already in the collection; if it is damaged beyond repair; if it is 'unsuitable' for retention and its disposal would not be precluded by public interest (which means that no visitor or researcher could ever conceivably be interested in it); or if it is transferred to another UK institution. When the Act was created, the possibility was not considered that Trustees might want to deaccession items outside of these narrow criteria.

2. This issue was thrown into stark relief when, in the wake of the 1998 Washington Conference on Holocaust-Era Assets, Nazi-looted art was discovered in the collections of Britain's national museums. The 1983 Act (and similar pieces of legislation) meant that the V&A and other national museums were unable to retribute such objects. This was considered unacceptable and led to the 2009 Holocaust (Return of Cultural Objects) Act, which enabled restitution from national collections 'on grounds relating to events occurring during the Nazi era.' This Act enabled museums covered by the 1983 Act (and similar pieces of legislation) to deaccession items - if this was recommended by the Spoliation Advisory Panel, a government-appointed panel of independent experts, and if this recommendation was authorised by the Secretary of State.

3. The restrictions of the 1983 Act continue to apply to all other items in the collections. This has been highlighted, for instance, by the 'Maqdala Treasures'. In 1868, British forces seized a golden crown and chalice after they had defeated the Ethiopian ruler Tewodros II at Maqdala. The items were brought to Britain yet, during a debate in Parliament, William Gladstone stated that he regretted that these items had been brought to the UK. The items were to be stored only temporarily until they could be returned to Ethiopia. In the meantime, the government deposited the items at the South Kensington Museum (now the V&A). With the 1983 Act, they automatically became the property of the Museum.

When in 2008 the Ethiopian government asked for their restitution, the restrictions of the 1983 Act meant that the V&A could not honour the wishes expressed in 1871 in parliament. Within the existing legislation, the most the V&A could do in this situation was to propose to place these items on long-term loan to an Ethiopian institution.

4. While the discussions with the Ethiopian Embassy in London are ongoing, the V&A was able to agree a 'Renewable Cultural Partnership' with the Istanbul Archaeology Museum concerning an item which had been the subject of a longstanding Turkish restitution claim. In 1882, a British military consul removed the Head of Eros from the Sidamara Sarcophagus and gave it to the South Kensington Museum. The RCP revolved around a major joint conservation project. The object itself was returned on the basis of a long-term loan agreement.
5. The return of the Eros Head prompted a debate about the 1983 National Heritage Act in the House of Lords on 13 October 2022. At the end of the debate, Lord Kamall stated that 'the Government have no current plans to amend this Act'. In light of this, the V&A will continue to champion Renewable Cultural Partnerships with countries of origin.
6. In February, Parliament passed the Charities Act 2022, although it has not yet been implemented by the Secretary of State. It has been reported that certain sections of the Act enable Trustees of charities established by legislation, such as certain museums, to deaccession items from their collections on moral grounds — even in cases where the governing statute of the charity in question expressly prohibit this. When asked about the implications, Lord Kamall stated in the House of Lords debate on 13 October 2022 that the government will defer the commencement of the relevant sections 'until we fully understand the implications for national museums and other charities'.
7. When items carry a troubling Nazi-era provenance, Trustees have found it immensely helpful to refer the decision to the Spoliation Advisory Panel. This is equally advantageous for claimants, who can rest assured that their claim will receive a transparent and fair hearing by a panel of independent experts. This is also beneficial for the Secretary of State, who can be certain that the merits of each case have been rigorously tested from multiple perspectives. Because the

Panel's recommendations are publicly accessible, the public can clearly understand why the decision was taken to restitute or to retain a piece. The panel can also recommend alternative measures, such as the addition of a museum label that contextualises the item in the galleries.

8. Unrelated to restitution, 'The Reviewing Committee on the Export of Works of Art and Objects of Cultural Interest' is another body which considers cultural objects. It provides expert advice to the Secretary of State on whether the export of important cultural items should be permitted. The process is administered by Arts Council England. Like the Spoliation Advisory Panel, this Committee follows clear procedures. Decisions are the outcome of careful forensic deliberation which are subsequently published so that they can be scrutinised.
9. The model of the Spoliation Advisory Panel or the Review Committee could serve to inform the decision-making of Trustees and government for other groups of objects — should it become legally possible to do so.
10. In August 2022, Arts Council England published *Restitution and Repatriation: A Practical Guide for Museums in England*, which clearly sets out best practices for considering restitution claims. These procedures would readily serve as a crucial reference for any body that may be established to advise museums and government on restitution claims unrelated to Nazi spoliation.

Dr Tristram Hunt

Director, Victoria and Albert Museum

Biography

Dr Tristram Hunt is the Director of the Victoria and Albert – the world's leading museum of art, design and performance. Since taking up the post in 2017, Dr Hunt has championed design education in UK schools, encouraged debate around the history of the museum's global collections and overseen the transition to a multi-site museum, with the opening of V&A Dundee, the creation of Young V&A (formerly V&A Museum of Childhood) and the development of V&A East – a new museum and open access collections centre in Stratford, East London.

Prior to joining the V&A, Dr Hunt was a Member of Parliament for Stoke-on-Trent Central and Shadow Secretary of State for Education. He has a doctorate in Victorian history from Cambridge University, has worked as a senior lecturer in History at Queen Mary University of London, and is a Fellow of the Royal Historical Society. In addition to numerous radio and television programmes for the BBC and Channel 4, he is the author of several books, including *Ten Cities That Made an Empire* (2014), *The Lives of the Objects* (2019) telling the story of the V&A collection, and most recently *The Radical Potter: Josiah Wedgwood and the Transformation of Britain* (2021).

Annex 2 – Written submission from Karin Singer, partner at Mishcon de Reya solicitors and Lauren Bursey, consultant to Art Law/ Mishcon de Reya

Bell Ribeiro-Addy MP for Streatham,
Joint Chair of the APPG-AR
House of Commons London SW1A 0AA

8th November 2022

Dear Ms Ribeiro-Addy

RE: Evidentiary Submission on African Restitution to the All-Party Parliamentary Group African Reparations (APPG-AR)

At the request of AFFORD UK, we set out below our views.

1. One of the many repercussions of British colonialism was the expropriation of cultural artefacts, in particular from African nations. African intellectuals, politicians, and museum professionals have been calling for the restitution of these cultural objects since the 1960s, even earlier than the first demand in 1983 by Greece for the return of the Parthenon Marbles, held in the British Museum.
2. Like a number of European countries, the UK has a large collection of African cultural heritage objects in its museums, in particular the Benin Bronzes. Unlike other countries, the UK government has not made a policy decision to return these objects of African cultural heritage.¹⁵ Currently, national museums in the United States, France, and Germany have returned or agreed to return African artefacts. While a number of British university and regional museums have agreed to return artefacts, the British national museums have been restricted by the National Heritage Act 1983 (NHA) and the British Museum Act of 1963 (BMA).
3. The NHA was an effort to make the British national museums as autonomous as possible, separating them from the government departments to which they once belonged.¹⁶ British museums receive government funding, unlike in the United States, but they are not considered arms of the government, as in France. Rather, British museums are governed by their trustees, not the UK Government. The NHA works in concert with the BMA and the Museums and Galleries Act 1992 (MGA). The Acts specify that the museums may not dispose of any object they owns in their collections unless: a) the object is a duplicate; b) the object, in the Board of Trustee's [of that museum's] opinion, is "unsuitable for retention" in their collections and disposal would not be a detriment to the interests of students or members of the public or has become useless; c) the object is loaned or transferred to another national museum. In the case of the British Museum, the Trustees cannot deaccession an object if it was created before 1850. Notably, there are over 2,000 museums in the UK, but the NHA covers (and thus limits) only 3, not including the British Museum.

¹⁵ See the French Sarr-Savoy report: Felwine Sarr & Benedicte Savoy, *The Restitution of African Cultural Heritage. Toward a New Relational Ethics* (translated by Drew S. Burk, 2018), http://restitutionreport2018.com/sarr_savoy_en.pdf and President Macron's pledge to return 26 African artworks: *France's Macron Vows Return of African Art, Admitting 'Colonial Pillage'*, *Voices of America* (Oct. 6, 2021), <https://www.voanews.com/a/france-macron-vows-return-of-african-art-admitting-colonial-pillage/6263989.html>. See also Gareth Harris, 'The Benin Bronzes are returning home': *Germany and Nigeria sign historic restitution agreement*, *The Art Newspaper* (July 4, 2022), <https://www.theartnewspaper.com/2022/07/04/the-benin-bronzes-are-returning-home-germany-and-nigeria-sign-historic-restitution-agreement>.

¹⁶ For example, the Victoria and Albert Museum and the Science Museum were part of the Department of Education; the Royal Armouries were part of the Department of the Environment.

4. A short debate on the Heritage Act was held in the House of Lords at the Lords Grand Committee on October 13 of this year (2022). Lord Vaizey, current chairman of the Parthenon Project, a campaign to return to the Parthenon sculptures to the Parthenon, questioned whether the Act still works for today's purposes.
5. Several individuals working on the issue of restitution have advocated for a change to the current legislation. Changing legislation is often a long and complicated process, and unfortunately does not guarantee a practical solution, nor provide the impetus for the practical goal of repatriation of objects to their country of origin. We propose and consider other frameworks which would need to work in concert with current legislation. These include: (1) a spoliation advisory panel akin to the Nazi-looted panel, specifically for African artefacts; (2) whether trustees already have authority to repatriate, especially in light of the new Charities Act 2022; (3) the use of cultural diplomacy.

Spoliation Advisory Panel:

6. In the UK, a Spoliation Advisory Panel (SAP) was established in 2000 as an alternate forum for claims from persons dispossessed of their artworks by the Nazis, where the art is currently held in UK national collections, museums, or galleries "for the public benefit." Other countries (excluding the USA) have followed suit with similar models. To date, the Panel has returned 22 objects.
7. The work of the SAP was buoyed by the enactment of the Holocaust (Return of Cultural Objects) Act 2009, which was extended in 2019 by the Holocaust (Return of Cultural Objects) (Amendment) Act. The law allows listed UK institutions which are restricted by law from deaccessioning collection items to transfer items claimed in relation to events that occurred during the Nazi era (1933-45). The transfer must have been recommended by the Spoliation Advisory Panel and approved by the Secretary of State. The Trustees must then agree and authorise the deaccessioning of the object, per their authority under the Holocaust Act. Thus, legislation akin to the Holocaust Act is necessary to practically enact the recommendations of the panel, and to provide a framework for doing so.
8. The enactment of the Holocaust Act not only created a pipeline and authority by which tainted artworks could be deaccessioned by a museum's collection, it also created a known category of items which were presupposed to be problematic (objects related to the Nazi era). This categorization negates the need to justify why these objects should have special status as the starting point for any discussion. Carving out specific terms for colonial-looted objects would be an efficient approach to returning the objects, without necessitating a full overhaul of the current museums' legislation. The panel is an opportunity to engender goodwill among the African community, as panel members could include African cultural experts. We would, however, strongly urge that any such proactive legislation does not have a sunset clause like in the Holocaust Act, to avoid having to relitigate the same issues a decade later.

Changes to the Charities Act 2022 (CA)

9. Most museums in England and Wales operate as charities, and thus have been subject to the Charities Act 2011, which affects the duties and powers of museum trustees, whose powers are also governed by the NHA, BMA, and MGA. Under section 106 of the 2011 Act, charity trustees can seek authorisation from the Charity Commission if they feel compelled by a moral obligation to make a transfer of charity property, an action known as "ex gratia payment". A proposed change to the Act would allow trustees to make ex gratia transfers of "low valued" property, of their own accord, without the involvement of the Commission. The value threshold is dependent upon the gross income of the charity, to be detailed in a new section 331A. This authorisation, notably, would apply to trustees of charities established by legislation that would otherwise prohibit the disposal of property, namely national institutions.
10. However, following the announcement of these changes, the government has delayed implementation of the specific sections on moral grounds until it "fully understands the implications for national museums and other charities". The proposed update may give the Trustees authority, but not the requirement to actually deaccession and repatriate heritage. Nor can the Trustees be forced by a third party. While this change would make deaccessioning and repatriation an issue for museum trustees, it does not provide an affirmative duty for the trustees to return colonial looted objects. Such a duty, like the Washington Principles for Holocaust-era artwork, would seem to be a necessary step to ensuring that trustees are proactive, and not simply reactive in returning colonial artwork. Additionally, the proposed change is limited to a small number of objects which meet the "low value" threshold, so it will have limited effect.

Diplomatic Efforts

11. In other countries, many objects have been restituted through diplomatic efforts, with the decision to return cultural objects made at the executive level of government. In France, which like England requires a change in law to remove items from the national collection, President Macron promised the return of 27 items taken by French troops, following the publication of the Sarr-Savoy report which advocated for a "new relational ethic" between France and Africa. Championed by President Macron, a law was swiftly passed to allow these items to be returned. In Germany, the government recognized in 2017 that colonialism was one of three great injustices of the country. Therefore, the federal ministers of culture worked with the government of Nigeria on a "substantial" return, which resulted in a memorandum of understanding between the two countries. Over the summer, the Foundation of Prussian Cultural Heritage (SPK) and Nigeria's National Commission for Museums and Monuments signed an agreement transferring ownership from the Ethnological Museum collection in Berlin to Nigeria. By the end of this year, all 1001 objects in Germany will be transferred to Nigerian ownership.
12. In short, there are means for the UK to return items looted during the colonial from its museums to countries in Africa. All of these methods, however, depend upon

political will to either open the discussion on their return or to change the laws currently preventing this. Creating an affirmative duty on the part of museum trustees or any government officials would go a long way to acknowledging the past and a desire to right a wrong. This could be a time to capitalize on the great work of the Spoliation Advisory Panel.

Yours sincerely,

Karen Sanig (signed electronically)

Partner

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Karen Sanig, Partner, founder and head of Art Law, Mishcon de Reya solicitors.

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Karen is the head of Art Law, which she founded at Mishcons in 1995. She has advised on numerous cultural heritage matters including restitution and repatriation claims. Her clients in this regard have included foreign governments seeking the return of cultural heritage property, collectors caught up in Nazi looted Art claims, dealers, galleries, museums and auction houses facing issues relating to the ownership of cultural heritage artefacts. Karen is also a trustee of Camden Art Centre.

Lauren is a PhD candidate in international cultural heritage law at the London School of Economics and Political Science. She has written numerous articles on art law and contributed to the fifth edition of *Art Law: the Guide for Collectors, Investors, Dealers and Artists*. She is admitted to practice law in New York and Illinois.

Annex 3 – Written submission from Geoffrey Robertson KC

Written Submission to Bell Ribeiro-Addy MP, Chair of the Afrikan Reparations, African Restitution (APPG-AR): African Restitution Sessions, Session Two: Legal Frameworks

This written submission sets out the key legal frameworks that govern the presence and ownership of African artefacts and ancestral remains in the UK heritage collections. It places these in the context of best practice within the heritage sector in the UK and internationally, and sets out recommendations for action by government bodies (such as DCMS) as well as by UK heritage institutions:

1. Most institutions in the UK engage actively in the return of human remains, and are governed by the Human Tissue Act 2004 that empowers them to actively consider requests to change the custody of human body parts that are less than one thousand years old.^{17,18} Models of good practice have been developed and implemented by UK institutions in terms of where, and to whom, human remains are returned.¹⁹ However, not all cases of human remains are clear-cut, such as those held by royal institutions²⁰. In most cases, however, the processes for deaccessioning and returning human remains are better developed.
2. Existing legislation and legal frameworks governing national heritage institutions put in place the principal restrictions to restitution of stolen African artefacts. These include the British Museum Act 1963, the National Heritage Act 1983 (amended in 1997), the Museums and Galleries Act 1992, and the Charities Act 2022. These restrict national heritage institutions from deaccessioning items in their collections unless they are deemed unfit by the trustees of such institutions for retention and that their removal would not be detrimental to the interests of students. The term ‘unfit’ is understood broadly in this context, but mainly applies to forgeries and fakes.
3. The National Heritage Act 1983 (amended in 1997) established the Victoria and Albert Museum, the Science Museum, the Armouries and the Royal Botanic Gardens, Kew as non-departmental public bodies to be governed by boards of trustees, and places conditions on the circumstances under which they may acquire or dispose of objects. The act limits scope for deaccessioning items in national collections to duplicates, items that are ‘unsuitable for retention without detriment to interests of students and the wider public’, or items that are damaged or destroyed.
4. Further legal barriers to restitution of stolen African artefacts and human remains arise from the need to establish provenance of items, and to only return items to the legal heirs of the original owners, providing sufficient evidence of which may be challenging in some African countries.
5. As Geoffrey Robertson KC has persuasively argued, there are four principal avenues for advocates of restitution of stolen African artefacts and human remains: a) interpretation of

¹⁷ Note that this excludes perhaps the most famous forms of human remains taken from Africa in UK collections – Egyptian mummies.

¹⁸ See also, inter alia, DCMS (2005), Guidance for the Care of Human Remains in Museums, available at:

<https://www.britishmuseum.org/sites/default/files/2019-11/DCMS-Guidance-for-the-care-of-human-remains-inmuseum.pdf> ; and Giesen, M. (Ed.). (2013). Curating Human Remains: Caring for the Dead in the United Kingdom. Woodbridge, Suffolk; Rochester, NY.

¹⁹ Examples include the partnership between the Manchester Museum, part of The University of Manchester, the Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS) and local communities in Australia and New Zealand. Manchester Museum has been returning human remains since 2003. Similarly, The Pitt Rivers Museum in Oxford and Oxford University, amongst others, have experience of returning human remains successfully and appropriately, by working in close partnership with communities of origin.

²⁰ In the case of the remains of the Ethiopian Prince Alemayehu held in Windsor Castle these are buried with the remains of other individuals, and this is a reason cited by Windsor Castle for not agreeing to return requests, as this would entail disturbance of other human remains buried there. The Ethiopian government has stated that it will continue to press their claim for the return of his body with the UK government.

existing legislation; b) amendment of existing legislation, such as by use of procedural measures such as private members' bills (a path being considered by the JustGhana group for the return of the Asantehene's royal regalia); c) taking legal test cases through the courts to challenge retention of specific objects by UK institutions; and d) introduction of new legislation.

6. As an example of the former, the test of whether an object is 'unfit' to be retained in national collections can be interpreted less narrowly to enable collection items to be deaccessioned. An example of the latter is the Holocaust (Return of Cultural Objects) Act 2009, which sets a precedent for UK national museums and galleries to restore looted artefacts to other groups of owners.
7. This act arose out of a legal test case brought by heirs of stolen items. Other such legal test cases, especially concerning return of sacred objects held in national UK collections such as the Ethiopian *t'abots*, may provide strong grounds for amending legislation or introducing new legislation for the return of such objects.
8. Calls for restitution of stolen African artefacts and human remains also need to be placed in the wider context of current best practice in the heritage sector in the UK and internationally. The moral arguments for restitution of such items are largely unanswerable, and the landmark 2018 Sarr-Savoy report in France has opened a global conversation around these issues. Many heritage institutions in Europe, the United States, and Oceania have returned such collection items to the legal heirs of their original owners or local or national authorities in their countries of origin. Similarly, many sub national and regional collections in the UK have returned such items.
9. Specific recommendations for the UK government (principally DCMS) and national heritage institutions in the UK include the following:
 - **DCMS should amend existing legislation** (principally the British Museum Act 1963, the National Heritage Act 1983 (amended in 1997), the Museums and Galleries Act 1992, and the Charities Act 2022 to enable Boards of national heritage institutions to deaccession stolen African artefacts and return these to the legal heirs of their original owners, or where these are absent the national or local authorities of the countries of their original owners.
 - Boards of national collections should show **greater flexibility in interpreting** the restrictions currently in place to enable stolen artefacts and human remains to be deaccessioned.
 - African governments, the African diaspora in the UK, and other advocates of restitution of stolen African artefacts and human remains **should launch legal test cases** for return of items, in particular sacred objects such as the Ethiopian *t'abots* held in the British Library and other institutions.
 - **Parliamentarians should amend existing or propose new legislation**, modelled on the Holocaust (Return of Cultural Objects) Act 2009, to extend the provision of this act to stolen African artefacts and human remains.

Submitted by:

Geoffrey Robertson KC

May 2023

Annex 4 – Written submission from Rudyard W Ceres Esq, Partner in the Corporate Practice of Smith, Gambrell & Russell

Potential Legal and Non-Legal Considerations Relating to the Restitution of African Art

Date: June 16, 2023

To: Bell Ribeiro-Addy, Member of Parliament,

Joint Chair of the All-Party Parliamentary Group – Afrikan Reparations

From: Rudyard W. Ceres, Esq.

1. New York Courts can aid in the restitution discussion, from a strictly legal, more particularly, litigation perspective.
2. In *Reif v Nagy*, a decision of the Appellate Division of the Supreme Court of New York on 22 October 2019, the Appeals Court up-held a decision of the Commercial Division of New York State Supreme Court dated April 4, 2018, which ordered the return of two (2) pieces of alleged Nazi-looted art to the relatives of their original Jewish owner, Fritz Grunbaum. By a decision dated May 24, 2022, the Court of Appeals of the State of New York denied any further appeal.
3. In April 4, 2018 decision, New York State Supreme Court Justice, Charles A. Ramos, granted Grunbaum's relatives summary judgement, holding that the transfer of the items was not voluntary and thus was tantamount to theft.
4. Judge Ramos held that in "New York, a thief cannot pass good title," and he concluded that no subsequent transfer of title in the works were valid. Once that issue was determined, the only other issue at bar related to whether the statute of limitations/the doctrine of laches would bar the action.
5. By the time of the *Reif* decision, the Federal Holocaust Expropriated Art Recovery Act, also known as the HEAR Act 2016, had come into effect. As Judge Ramos noted in his decision, Congress had enacted the HEAR Act with the "twin purposes" of (i) ensuring "that laws governing claims to Nazi-confiscated art and other property further United States policy..." and (ii) "ensuring that claims to artworks and other property stolen or misappropriated by the Nazis are not unfairly barred by statutes of limitations but are resolved in a just and fair manner." And, accordingly, the HEAR Act applied to defeat the defense of laches.
6. Further, Judge Ramos highlighted the importance of being "mindful of the difficulty of tracing artwork provenance due to the atrocities of the Holocaust era."
7. Thus, in the context of stolen/looted art connected with the Holocaust, in New York State (one of the pre-eminent art Cities in the world), we have a decision which clearly states that good title will never pass from theft. The acts of the Nazi's during the Holocaust, in connection with looted/stolen art and artifacts, in my opinion, is analogous to the looting and sacking of African art and artifacts.
8. Thus, if we were only to consider the history of one of the "Punitive Expeditions" as described by Dan Hicks in his book the "Brutish Museums", more particularly, the sacking of the Benin Palace in 1897 by the British forces, there is no question that all those items were stolen. In many cases which are distinguishable from *Reif* there might a question about

whether or not a legal transfer/sale took place by the original owners. However, there can be no such confusion with the items removed from the Benin Palace in 1897, which have come to be known, collectively, as the “Benin Bronzes”.

9. Similarly, there is an argument (at least under New York law) that justice and fairness should prevail to prevent the application of laches or statute of limitations barring the return of items to their original owners.
10. Accordingly, if there was, for example, a US. “owner” of Benin Bronzes in New York, there would be an opportunity to bring an action in this State on behalf of a Nigerian claimant, for example, the National Commission for Museums and Monuments. In fact, in or around 2012, Robert Owen Lehman loaned or gifted over 30 Benin Bronzes to the Museum of Fine Arts in Boston; and, the Metropolitan Museum in New York currently houses over 100 Benin Bronzes; to name two potential institutions.
11. Although, to date, the conversation around the restitution of African art has largely revolved around the Benin Bronzes; in today’s post-George Floyd/Black Lives Matters movements, museums and private collections have taken restitution decisions grounded, ostensibly, from an “ethical return policy” as opposed to one that might be grounded in law or statute, such as the HEAR Act. In part, this is due to the extensive cataloguing/recording of all the items that were stolen from the Benin Palace, both pictorially and in writing, by the British looters.
12. This cataloguing raises a much more pertinent issue in the wider, non-Benin Bronzes, restitution debate. Provenance!
13. As Alison Abbot states in her article, “Provenance research, most scholars argue, is the first step in rectifying past wrongs.” *Confronting the Colonial Legacies of Museum Collections*, Alison Abbott, May 7, 2020. Benedicte Savoy, the art historian and member of the board of international experts with the Humboldt Forum until 2017 when she resigned, cited the failure of that committee to prioritize provenance research, as one of the main reasons for her resignation.
14. In April 2022, I gave a speech in New York concerning the issue of restitution to the Counsellor General of the African Union, during which the representative from Egypt indicated that if one does not know what was taken, how can one ask for the item to be returned? You don’t know, what you don’t know!
15. In his book, Hicks posits that there are probably close to seventy thousand (70,000) items in storage or in vaults of European museums which are yet to be catalogued; which does not even take into account the items in private collections. Further, by some accounts it is suggested that over ten thousand (10,000) Benin Bronzes were looted from the Benin Palace alone. Hence, the current “ethical return policy” of the Benin Bronzes, is not really addressing a much larger issue.
16. In the 1990s, online databases and digitized records made tracking and sharing information about Jewish art’s provenance or history of ownership widely accessible. In November 2022 “Digital Benin” was launched with the same principle in mind. This new digital catalogue has been described as the first “comprehensive database of the Benin bronzes” and the thought is that the catalogue could accelerate the restitution of such artefacts from institutions and collections worldwide. However, what of non-Benin Bronzes? Museums need to open up their vaults and storage facilities to provenance researchers, lawyers and claimants, so that comprehensive record-keeping can be commenced.

17. Also, in August 2022, New York State's Governor Hochul signed three (3) Holocaust bills, one of which is considered a state education law, not aimed at restitution, but rather requiring museums to label artwork which was plundered under the Nazi regime. This bill is believed to be the first of its kind in any country.
18. The legislation will require the museums which displays art stolen during the Nazi era to "prominently place a placard acknowledging such information along with the display."
19. This could be another way for museums which house looted or stolen art to, at the very least, acknowledge the history of the item, whilst at the same time providing an educational component.
20. Finally, the art world itself must be held accountable, specifically, concerning provenance. On May 9, 2023, the District Attorney of Manhattan, issued the following press release:

"Manhattan District Attorney Alvin L. Bragg, Jr., announced today the return of two 7th-century stone carvings from a funerary platform, collectively valued at nearly \$3.5 million, to the people of China. In the early 1990s, thieves used saws to cut the antiquities from a tomb in China and smuggled the pieces out of the country. From 1998 until this Office's seizure in 2023, the antiquities were loaned to the Metropolitan Museum of Art by Shelby White, a private collector based in Manhattan. Earlier this year, the Office concluded a criminal investigation into antiquities purchased by White, resulting in the seizure of 89 antiquities from 10 different countries and collectively valued at nearly \$69 million."

21. Mrs. White is currently a Trustee Emeriti and an advisory board member of the New York Metropolitan Museum of Art.

Rudyard Ceres

Biography

Rudyard Ceres is a partner in the corporate practice of Smith, Gambrell & Russell, LLP. Mr Ceres was a partner at Freeborn & Peters, which combined with SGR in 2023. Mr Ceres focuses his practice on domestic and international small- and medium size enterprises and owner/operated businesses. He is a trusted business and legal advisor for his clients across all stages of a business' life cycle from inception, development, capital raising, strategic partnering, joint venturing, all the way to an appropriate exit.

Mr Cere's dual UK and US qualifications, coupled with his extensive experience over the past 25 years, allows him to work closely with private equity, hedge funds, family offices and high-net-worth clients, to identify, manage and mitigate their legal and business risks globally. Further, Mr Ceres has represented foreign governments in attracting foreign direct investments from a business first lens, with a focus on the Sub-Saharan Africa and Caribbean regions. Accordingly, he is adept at analysing and assessing macro-economic and political issues as they might impact his client's business interests in the international trade context.

As such, he is adept at handling international trade issues, including import regulations, export controls, economic sanctions, international arbitration, anti-bribery and regulatory compliance. He has also worked as a liaison for his clients in the United Nations. Prior to joining Freeborn (now SGR), Mr Ceres was a partner at Dunnington Bartholow and Miller LLP, where he led the UK/Commonwealth desk and Africa desk practice areas and was responsible for maintaining and expanding the firm's international relationships through the Cicero League of International Lawyers.

Annex 5: Submission to Bell Ribeiro-Addy, MP Joint Chair of the APPG-AR: Session Two: Legal Frameworks from Peter Murphy

Summary: The British Museum Act 1963 and the National Heritage Act 1983 severely limit the discretion of Trustees of National Museums to respond to requests for restitution. DCMS Select Committee Inquiries in 2000 and 2003 reviewed the legislation, recommending significant changes; in 2009 a Private Members Bill facilitated restitution of looted Nazi-era artworks. The context has greatly altered and suggests the need for a new Inquiry to recommend primary legislation that will provide major UK institutions with the flexibility they require to respond to global shifts in the recognition and resolution of restitution claims arising from colonial-era looting.

1. The Legal Context

1.1 [The British Museum Act 1963](#) and the [National Heritage Act 1983](#) severely limit Trustees of those major national institutions owned and operated by the state, including the British Museum and the Victoria and Albert Museum, from making decisions on requests for restitution. The Acts prevent disposing of holdings except in very limited circumstances. For example: Section 5 of the British Museum Act 1963 restricts this to ‘duplicates’, recent printed material and objects ‘unfit to be retained’.

1.2 Various interpretations have been made around defining a ‘duplicate’ or deciding if an object is ‘unfit’ but the overall effect is for the institutions to reject restitution requests on the basis that they are prohibited by law, while the government asserts that restitution issues are a matter for the independent Trustees.

2. The DCMS Select Committee Inquiries

2.1 The Department for Digital, Culture, Media and Sport (DCMS) has convened two Select Committee Inquiries into The Return of Cultural Property in recent decades making recommendations about how the law should operate.

2.2 The 1999 Inquiry was primarily to investigate the illicit trade in cultural objects, linked to organised crime. However, Bernie Grant (Labour MP for Tottenham) urged that the scope should include looted African cultural property and he coordinated written evidence from Prince Edun Akenzua on [‘The Case of Benin’](#).

2.3 The [‘Seventh Report’](#) of the Committee acknowledged evidence that: *‘most requests for repatriation of items from museum collections in the United Kingdom are associated with artefacts taken in past centuries, particularly during the colonial era’*. The report specifically mentioned the Benin Bronzes and the Maqdala treasures but ultimately did not recommend an overall amendment to the British Museum Act 1963 to allow for restitution, but suggested there could be some exceptional cases.

2.4 Claims for human remains were recognised as a special case and the report recommended that DCMS should consult on legislation. It also looked separately at spoliation (the act of taking goods or property from somewhere by violent means), defined narrowly as transfer of property during the Nazi era, 1933-45. The Committee considered the circumstances of Nazi looting to be so unprecedented that it justified special treatment and was supportive of measures being taken:

2.5 *The Department for Culture, Media and Sport has now established a Spoliation Advisory Panel to consider and advise on claims for cultural objects lost during the Nazi era and now held by museums in the United Kingdom.*

2.6 As well as purely legal arguments over ownership the Committee agreed that ‘non-legal obligations’ should be taken into account, *‘such as the moral strength of the claimant’s case’*.

2.7 Three years later, in the [‘First Report’](#), another DCMS Select Committee examined progress made since 2000. It noted that the Government had agreed there might be a case for legislation to

permit disposals from the collections of national museums and galleries in specific and defined circumstances.

2.8 Neither report resulted in government bringing forward changes to primary legislation. This eventually came via a Private Members Bill, introduced by Andrew Dismore (Labour MP for Hendon), which received cross-party support and became law as the Holocaust (Return of Cultural Objects) Act 2009. Three conditions were necessary for any return: recommendation by the Spoliation Advisory Panel, acceptance by the institution and approval by the Secretary of State.

3. The current context

3.1 The global situation has changed considerably in the past few years. While demands for restitution of looted African heritage have never gone away, they were given greater prominence by President Emmanuel Macron's commission of the [Sarr-Savoy Report](#) in 2018 and subsequent commitments to restitution. Following this, German museums have transferred legal ownership of more than 1100 objects to Nigeria. The Smithsonian in the US has also committed to restitution. In the UK, Cambridge and Aberdeen Universities have already returned artefacts from their collections as have the Horniman Museum in London and the Kelvingrove in Scotland. Recently [Tristram Hunt, Director of the V&A](#), expressed a desire to see the restrictive [National Heritage Act 1983](#) amended in 2023

3.2 The latest session of the [UNESCO Intergovernmental Committee for Promoting the Return of Cultural Property](#), which facilitates bilateral negotiations between countries, was highly critical of the UK government over its position on restitution of the Parthenon Marbles. Having been effectively [isolated by all other parties](#) the UK government has finally agreed to formal talks with Greece and [recent media reports](#) indicate that a substantive deal could be close to being agreed.

3.3 The global recognition of the moral case for restitution of looted cultural heritage demands a fresh response from the UK government.

4. Recommendations

4.1 There is anticipation that the new [Charities Act 2022](#) may provide flexibility for national museums to respond to restitution, although government spokespeople have denied this. A more thorough and principled approach will be for the CMS Committee to establish a new inquiry into the Return of Cultural Property to review the current situation, take evidence and recommend primary legislation to remove the prohibition on collection disposals. This will finally provide national museum directors and trustees with the autonomy and accountability to fully manage their collections, including requests for restitution.

Peter Murphy

December 2022

Biography

Peter Murphy is a filmmaker who has been involved in the debates around restitution of looted African heritage, particularly the Benin Bronzes, since the 1990s.

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Front page picture: Asante gold pectoral disc (1850-74), V & A Museum