



UNIVERSITÉ  
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FACULTÉ DE DROIT  
Centre du droit de l'art



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Ece Velioglu, Anne Laure Bandle, Alessandro Chechi, Marc-André Renold  
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## Case Three Nok and Sokoto Sculptures – Nigeria and France

*Nigeria/Nigéria – France – Musée du quai Branly – Louvre Museum –  
Archaeological object/objet archéologique – Post 1970 restitution  
claims/demandes de restitution post 1970 – Negotiation/négociation –  
Settlement agreement/accord transactionnel – Diplomatic channel/voie  
diplomatique – Illicit excavation/fouille illicite – Illicit  
exportation/exportation illicite – Ownership/propriété – Loan/prêt –  
Conditional restitution/restitution sous condition – Cultural  
cooperation/coopération culturelle*

*The French government bought three Nok and Sokoto sculptures from a  
private dealer in 1998. Soon after it obtained the consent of Nigeria on the  
acquisition, two of these sculptures were exhibited in the newly opened  
Pavillon des Sessions of the Louvre Museum. This agreement gave rise to  
strong criticism since Nok and Sokoto sculptures were subject to export  
restrictions in Nigeria and they were figuring on ICOM's Red List of African  
Archaeological Cultural Objects at Risk. Following the renegotiation  
between Nigeria and France, Nigeria's ownership was recognized and in  
return, the sculptures remained in France on a long-term loan.*

*I. Chronology; II. Dispute Resolution Process; III. Legal Issues; IV. Adopted  
Solution; V. Comment; VI. Sources.*

ART-LAW CENTRE – UNIVERSITY OF GENEVA

PLATFORM ARTHEMIS

[art-adr@unige.ch](mailto:art-adr@unige.ch) - <http://unige.ch/art-adr>

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## I. Chronology

### Post 1970 restitution claims

- **1998 - 1999:** The French government bought **two Nok and one Sokoto sculptures** (“sculptures”) from a dealer based in Brussels, Samir Borro, for the Musée du quai Branly (opened in 2006). It was decided by the parties that the sale would be completed once the French government obtained Nigeria’s consent on the acquisition of the sculptures (conditional sale).<sup>1</sup> Despite the personal lead of the French president Jacques Chirac, the Nigerian military government did not approve the sale.<sup>2</sup> This followed the Nigerian National Commission for Museums and Monuments (NCMM) which **claimed that the objects in question were illegally exported** from Nigeria in contravention of the National Commission for Museums and Monuments Act of 1979 and were thus Nigerian cultural property.<sup>3</sup>
- **February 2000:** The French government reached an **agreement** on the acquisition of the sculptures with the new civilian government of Nigeria who came to power in May 1999. In consequence, the objection of NCMM was overturned. The president of Nigeria, Olusegun Obasanjo, personally authorized the acquisition and in return the French government undertook to provide technical and educational assistance to Nigerian museums.<sup>4</sup> A formal agreement was signed by the Nigerian Minister of Culture and the director of the future Musée du quai Branly.
- **April 2000:** Two of the sculptures were placed on display in the Pavillon des Sessions, a wing of the Louvre museum.<sup>5</sup> The exhibition of Nok sculptures, a category of objects extremely vulnerable to looting, was criticised immediately by AFRICOM and the Nigerian Embassy in Paris.<sup>6</sup>
- **May 2000:** The International Council of Museums (ICOM) released the “**Red List of African Archaeological Cultural Objects at Risk**” which comprehends, among others, the category of “Nok terracotta from the Bauchi Plateau and the Katsina and Sokoto regions”.<sup>7</sup>

<sup>1</sup> Folarin Shyllon, “Negotiations for the Return of Nok Sculptures from France to Nigeria – An Unrighteous Conclusion,” *Art, Antiquity and Law* 8 (2003): 142

<sup>2</sup> *Ibid.*; Martin Bailey, “Chirac Intervenes in Illicit Art Trade,” *Art Newspaper* 104 (2000): 1.

<sup>3</sup> Bailey, “Chirac Intervenes in Illicit Art Trade,” 1. The Nigerian National Commission for Museums and Monuments Act of 1979 was adopted by the Decree no. 77 in 28 September 1979 and then integrated in the consolidated collection of the Laws of the Federation of Nigeria in 1990.

<sup>4</sup> Bailey, “Chirac Intervenes in Illicit Art Trade,” 9; Shyllon, “Negotiations for the Return of Nok Sculptures,” 143.

<sup>5</sup> Alain Riding, “Chirac Exalts African Art, Legal and (Maybe) Illegal,” *The New York Times*, November 25, 2000, accessed November 6, 2012, <http://www.nytimes.com/2000/11/25/world/chirac-exalts-african-art-legal-and-maybe-illegal.html>; Bailey, “Chirac Intervenes in Illicit Art Trade,” 1; Shyllon, “Negotiations for the Return of Nok Sculptures,” 133; Vincent Noce, “Paris conforte l’archéo-traffic,” *Libération*, November 16, 2000, accessed November 6, 2012, <http://www.liberation.fr/culture/0101353741-paris-conforte-l-archeo-traffic>.

<sup>6</sup> Bailey, “Chirac Intervenes in Illicit Art Trade,” 1; Shyllon, “Negociation for the Return of Nok Sculpture”, 143-145.

<sup>7</sup> ICOM Red List of African Archaeological Cultural Objects at Risk, accessed November 6, 2012, <http://archives.icom.museum/redlist/afrique/redlistafrica.html>. This list was already known by the international community since it was drawn up at the Workshop on the Protection of the African Cultural Heritage (Amsterdam, 1997) organised by ICOM within the framework of its AFRICOM programme Shyllon, “Negociation for the Return of Nok Sculpture”, 141.

- **February 2002:** Following the continuing debates in the media and numerous condemnations at international level,<sup>8</sup> the governments of Nigeria and France **negotiated a new agreement** on the ownership of the sculptures. According to this second agreement, the French government recognized Nigeria's ownership and, in return the Nigerian government **loaned** the sculptures to France for a period of 25 years.<sup>9</sup>

## II. Dispute Resolution Process

### Negotiation – Settlement agreement – Diplomatic channel

- The French government was interested to buy the sculptures from a private dealer. It could have concluded the sale without consulting Nigerian authorities; however, it preferred to have their **approval** before displaying the sculptures in France.
- The **NCMM opposed** the acquisition and the military government of Nigeria followed its advice.
- When the new civilian government came to power in Nigeria, the French government raised the matter again. This time, **diplomacy triumphed** over the NCMM and Nigeria reached an **agreement** with France.
- Following the exhibition of the sculptures, the possibility that they might have an illicit provenance gave rise to great criticism. The two governments once again decided to settle the issue of ownership through negotiation and reached a **second agreement**.

## III. Legal Issues

### Illicit excavation – Illicit exportation – Ownership

- During the first stage of negotiation between Nigeria and France, the NCMM claimed that the sculptures were **illegally excavated and exported**, and that they would therefore belong to Nigeria.
  - o It is not known to us from whom and under which circumstances the private dealer in Brussels acquired the sculptures in the first place. However, the looting of archaeological sites in Africa has been a serious problem for decades. The terracotta

<sup>8</sup> For the excerpts in French of Professor Colin Renfrew's speech during the UNESCO conference marking the 30th anniversary of the 1970 UNESCO Convention, see Vincent Noce, "L'attitude de Chirac est déshonorante," *Libération*, November 16, 2000, accessed November 6, 2012, <http://www.liberation.fr/culture/0101353737-l-attitude-de-chirac-est-deshonorante>.

<sup>9</sup> ICOM Press Release, "Nigeria's Ownership of Nok and Sokoto Objects Recognised," 5 March 2002, accessed November 6, 2012, <http://archives.icom.museum/release.5march.html>; French Ministry of Culture and Communication Press Release, "Une convention entre la France et le Nigéria à propos des œuvres Nok et Sokoto du futur musée du quai Branly," 13 February 2002, accessed November 6, 2012, <http://www.culture.gouv.fr/culture/actualites/communiq/tasca2002/nok.htm>.

- sculptures of the Nok culture have in particular been the victim of intense looting.<sup>10</sup> This fact was also recognized by ICOM's list of endangered African cultural objects. In this context, it seems that the **provenance** of the sculptures is dubious.
- Under the National Commission for Museums and Monuments Act of 1979, it is prohibited to buy or sell antiquities within Nigeria (except for authorized persons) and to export antiquities from Nigeria without a permit issued by the NCMM.<sup>11</sup> To our knowledge of the facts, the French government did not possess a valid export permit.
  - Could Nigeria have successfully claimed the return of the sculptures from France at court? Under the 1970 UNESCO Convention,<sup>12</sup> it would not have been possible for two reasons. First, even if France is a party to the Convention since 1997, it did not adopt any implementing legislation.<sup>13</sup> Second, the Convention has a limited scope of application regarding illicit import: it covers only “cultural property stolen from a museum or a religious or secular public monument or similar institution (...) provided that such property is documented” (Article 7 (b) (i)). Therefore, it excludes illegally excavated and exported cultural properties like the sculptures in the present case. Nevertheless, Nigeria could have claimed the return of the sculptures in French courts on the grounds that its export regulations and/or ownership title were violated.<sup>14</sup>
- When negotiations were resumed, the French government admitted the illicit nature of the sculptures' provenance and recognized **Nigeria's ownership**. It also affirmed to have acted in **good faith** when acquiring the sculptures.<sup>15</sup> According to the French government, the loan of the sculptures represented a kind of compensation for the innocent purchaser as stipulated by the 1970 UNESCO Convention (Article 7 (b) (ii)). However, under the circumstances of the case, France's claim to good faith has very little credibility.

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<sup>10</sup> Nok sculptures are a distinctive style of terracotta that originated from the Bauchi plateau of central and northern Nigeria and date back to 1000 BC. Neil Brodie and Donna Yates, “Nok Terracottas,” Trafficking Culture, last modified August 21, 2012, accessed November 6, 2012, <http://traffickingculture.org/encyclopedia/case-studies/nok-terracottas/>.

<sup>11</sup> National Commission for Museums and Monuments Act of 1979, accessed November 6, 2012, [http://www.african-archaeology.net/heritage\\_laws/nigeria\\_28091979.html](http://www.african-archaeology.net/heritage_laws/nigeria_28091979.html).

<sup>12</sup> Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, 14 November 1970, in force 24 April 1972, 823 UNTS 231.

<sup>13</sup> In a later case involving also sculptures which belonged to the Nok culture and supposedly smuggled from Nigeria, the Court of Appeal in France rejected Nigeria's demand for restitution on the grounds that the 1970 UNESCO Convention was not directly enforceable (Court of Appeal, Paris, 5 April 2004, No. 2002/09897, confirmed by the Court of Cassation, 20 September 2006, No. 04-15599).

<sup>14</sup> However, practice shows that such claims may fail: national courts are often reluctant to recognize foreign export restrictions and it is difficult to prove ownership for States (especially for clandestinely excavated and illegally exported objects) due to the ambiguity of domestic legislations or to the lack of sufficient evidence on provenance.

<sup>15</sup> French Ministry of Culture and Communication, “Une convention entre la France et le Nigeria.”

#### IV. Adopted Solution

##### Loan – Conditional restitution – Cultural cooperation

- The **intergovernmental cooperation agreement between Nigeria and France** settled the question of ownership on the sculptures. The French government recognized **Nigeria's title** to the sculptures and in return, the Nigerian government decided to **loan** the sculptures to France for a period of 25 years, renewable upon agreement.
- The parties further agreed that they would establish a cooperation framework concerning museums.<sup>16</sup> It is not known if such cooperation has yet been settled.

#### V. Comment

- The present case is a very particular one since unlike the majority of the disputes on cultural property, the States concerned did not have any disagreement on the ownership of the sculptures. It was external actors such as scholars, practitioners, organizations and the media who protested against the acquisition made by France and Nigeria's subsequent approval. The case shows the indirect effect of the development of normative instruments on the protection of cultural heritage on an international level, which is to sensitize the public. The governments of Nigeria and France were led to reconsider and "correct" their unethical (if not illegal) agreement.
- The result of the second negotiation was also criticized by some experts because, despite the recognition of Nigeria's ownership, the sculptures were not sent back to Nigeria but remained on loan in France. Folarin Shyllon commented on this settlement that it was "an unrighteous conclusion" legitimizing and encouraging the illicit trade in African art.<sup>17</sup> ICOM did not comment on this issue. However, it recommended that the visitors should be informed of "the way in which they were discovered", referring clearly to illicit excavations.<sup>18</sup>

#### VI. Sources

##### a. Bibliography

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<sup>16</sup> French Ministry of Culture and Communication, "Une convention entre la France et le Nigéria."

<sup>17</sup> Shyllon, "Negotiations for the Return of Nok Sculptures", 148.

<sup>18</sup> ICOM, "Nigeria's Ownership of Nok and Sokoto Objects Recognised."

## b. Legislation

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## c. Documents

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