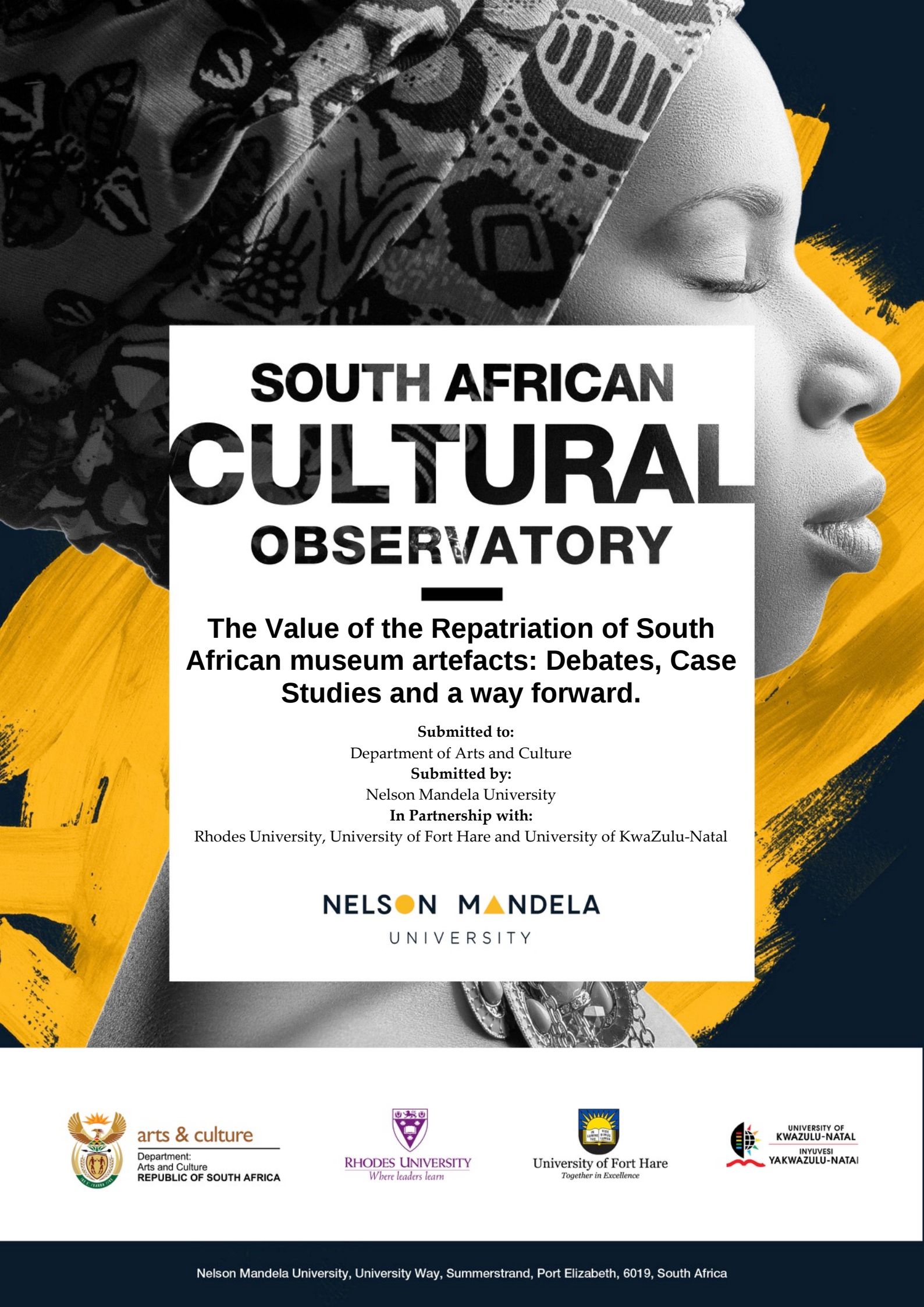




SOUTH AFRICAN CULTURAL OBSERVATORY

**The Value of the Repatriation of South
African museum artefacts: Debates, Case
Studies and a way forward.**

Submitted to:

Department of Arts and Culture

Submitted by:

Nelson Mandela University

In Partnership with:

Rhodes University, University of Fort Hare and University of KwaZulu-Natal

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Table of Contents

List of Figures and Tables.....	3
Executive Summary.....	4
1. Introduction	5
2. Goals and Methods	6
3. The Economic theory of the value of heritage and arguments for and against the cultural artefacts restoration debate	7
Debates about the repatriation of African cultural artefacts: A literature review	7
Theories of Value and cultural artefacts.....	9
A Framework for the Return of Cultural Property in South Africa: International Agreements and SA Regulation for the Protection of Cultural Heritage.....	14
South African examples of the protection of heritage artefacts	19
4. Selected Case studies of the repatriation of museum artefacts to sub-Saharan African countries	20
Repatriation Case Study 1: The Great Zimbabwe Bird.....	21
Repatriation Case Study 2: The Benin Bronzes	21
Repatriation Case Study 3: The Return of the Makonde Mask to Tanzania	22
Analysis and discussion	23
5. Restitution and Repatriation Options.....	24
6. The views of heritage professionals: Result of the survey and focus group discussion	27
6.1 Participant attributes	27
6.2 The attributes of cultural value.....	28
6.3 Arguments for repatriation.....	31
6.4 Arguments against repatriation	32
6.5 Repatriation Options.....	35
6.6 South African artefacts and repatriation experiences.....	37
7. The way forward for South Africa	40
7.1 Linking Arguments for Repatriation and Repatriation Types	40
7.2 A way forward	41
References	42

List of Figures and Tables

Figure 1: A conceptual framework for cultural value	11
Figure 2: Heritage Regulations and Conventions Relevant to South Africa.....	16
Figure 3: Bodies and Organisations regulating the protection of South African cultural heritage	17
Figure 4: Years of experience of online questionnaire respondents.....	28
Figure 5: Value of the artefact used as an example in the online questionnaire	29
Figure 6: Importance of cultural value attributes.....	30
Figure 7: Is the example cultural artefact a candidate for repatriation	31
Figure 8: Responses to the idea of the "universal museum".....	33
Figure 9: Responses to arguments against repatriation	34
Figure 10: Preferred repatriation options for Category 1 objects	36
Figure 11: Preferred repatriation options for Category 2 objects	36
Figure 12: Preferred repatriation options for Category 3 objects	37
Figure 13: Repatriation options considered by South African heritage professionals	38
Figure 14: Interest in advice on various repatriation options	39
Table 1: Components of the value of cultural heritage	11
Table 2: Classification of cultural, social and economic values	12
Table 3: Attributes of online questionnaire respondents.....	27
Table 4: Linking arguments for repatriation to repatriation types.....	40

Executive Summary

This report sets out the results of an investigation of the strategic policy and implementation problems relating to the repatriation of South African cultural artefacts from museums and galleries around the world. The investigation provides an overview of the salient academic literature and legal landscape as well as the outcome of an online survey and focus group discussion. This benefitted from the input of key informants drawn principally from the museum and cultural organization ecosystem in the Republic of South Africa.

The key arguments for retaining the global status quo in cultural artefact distribution centre on arguments that support or challenge the concept of the “universal museum”. These arguments are premised on providing global access and security to previously plundered cultural artefacts from other countries. How cultural values are formed and categorised are shown to underpin the legal, economic and moral arguments concerning repatriation. The report outlines the chronology and reach of an extensive body of international laws, conventions and treaties relating to disputes over the provenance and trade in plundered cultural artefacts. Other means of dispute resolution and various repatriation options are also critically assessed and considered via survey and focus group scrutiny.

The arguments for the repatriation of African cultural artefacts rest on three main pillars: Justice and moral rights of ownership; Social and cultural significance and value; and Economic values. In the first case, there are those who argue that the only way forward is the unconditional legal and physical return of the object. However, as the case studies and review of international laws and practices have shown, unconditional, or even legal, return is very seldom achieved, and can delay any kind of agreement for decades.

In the second case, the value of the object to the people of the country of origin is argued to be greater than to those in the foreign country. This is particularly the case with objects of important cultural or spiritual significance. Some objects of “national importance”, as defined by SAHRA, may be regarded as part of the cultural capital of the country and of great importance to the heritage and identity of its people. The main values sought in this case are the cultural, education and research activities and appreciation by people in the country of origin.

A less often used argument is the economic one – that the physical location of significant cultural artefacts contributes to the national and international prestige of museums, which attracts tourists and research grants. The main values sought in this case are financial (and possibly those related to research status).

A wider range of repatriation options (other than unconditional return) could be considered in the case of social and cultural or economic arguments for repatriation, especially if the object in question is interesting and important, but not a unique part of the national estate. Other repatriation options may include legal return with the payment of royalties to the country of origin; Permanent loan; Touring (if funds are shared); and Mutually Beneficial Repatriation Options (MBRAs).

The report concludes with a number of recommendations on the way forward. The first is to establish a database of significant cultural artefacts held outside of South Africa, perhaps based on a scoring system to determine the level of importance of such artefacts and the urgency of their repatriation. Another recommendation is that, for cases where legal arguments will be pursued, it is important that existing international conventions related to the protection of cultural heritage be ratified.

Key Findings

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- Arguments for the repatriation of cultural artefacts are based on a variety of values and are not simple;
- Identifying the objectives of repatriation can help to determine which repatriation options may be acceptable;
- There is no clear set of priorities for repatriation in South Africa, although there is a comprehensive, and generally agreed on, definition of what makes an artefact “of national significance”;
- An argument against repatriation was the perceived lack of resources in South African museums to properly curate and protect valuable cultural objects;
- South African museum professionals felt strongly that repatriation requests should take into account the context in which the artefact was obtained, as well as its cultural, historical, educational, and aesthetic values;
- As also recommended by the AU and AFRICOM, the digitization of SA museum archives is an important priority.

1. Introduction

Following the UN article 11 of the Declaration on the Rights of Indigenous Peoples (2007), there has been increasing pressure on Western museums to return artefacts obtained during colonial times to their originating African countries. The debates about the restitution of museum artefacts taken from African countries, mostly during the colonial era, have a long history. However, it was brought to high prominence again recently by the French president, Emmanuel Macron, who said, in an address to 800 students in Burkina Faso on 28th of November 2017: “I cannot accept that a large part of cultural heritage from several African countries is in France. There are historical explanations for that, but there are no valid justifications that are durable and unconditional”.

Some argue that, while the return of unique artefacts is important for cultural heritage, social justice, and stimulating cultural tourism to African countries, the display of African art and artefacts in international spaces is an important part of cultural diplomacy and “soft power”. Proponents of the idea of the “universal museum” also argue that objects from diverse locations displayed together offer more insight and meaning than confining them to the geographical location they came from. Others discount this view as being based on a particular Western philosophy of value, motivated in part by the desire to control the stream of economic benefits (from tourism and research) associated with large museums.

There is also increasing urgency in the debate: although larger art auction houses, like Christie’s and Sotheby’s are generally careful about the provenance of artefacts, there have been recent reports (2020) of the sale of African artefacts that may be subject to repatriation¹ requests. The sale may be motivated by the need for some private collectors to raise funds as a result of the Covid-19 crisis and economic downturn. The Christie’s “Arts of Africa, Oceania and North America” Auction included African art such as an Akan terracotta head (Ghana), Benin Bronzes, and an Urhobo figure (Nigeria). In total, the sale is expected to fetch between €30,000 to €900,000.

One of the flagship projects of the African Union Agenda 2063, is the establishment of *The Great African Museum*. The mandate of the museum will be: “Preserving and promoting African cultural heritage by creating awareness of Africa’s vast, dynamic and diverse cultural artefacts and Africa’s continuing influence on world cultures” (AU website, 2019). The AU Agenda 2063 Plan of Action has as one of its goals that “at least 30% of cultural patrimonies and treasures would have been repatriated and catalogued for future use in the envisaged African Museum of 2035”.

With reference to selected case studies and a broad range of other documents, this report reviews the arguments for and against the restoration of African cultural artefacts from Western museums, analysing ethical, social and economic implications.

In this research, cultural artefacts are described as any cultural object that has Aesthetic, Spiritual, Social, Historical, or Symbolic value. Since the focus is on museums, we have included objects that are, or could become, part of a museum collection. This could include fine art, sculpture, pottery, objects relating to traditional ceremonies, military history, household objects, jewellery, historical documents and photographs. Human remains are, for the most part, deliberately excluded, since they have other ethical and moral implications, and would not normally be displayed in a museum after repatriation. However, it is acknowledged that some cultural artefacts (such as funerary objects) and the context in which they were obtained (such as in times of war) are sometimes intimately related to repatriation debates about human remains.

¹ <https://qz.com/africa/1865162/africas-stolen-artifacts-up-for-sale-during-global-economic-crisis/>

By reviewing literature, laws and case studies, and through engagement with cultural heritage professionals, the report provides input that could guide South Africa's developing policy on the Regulations on the Restitution of Heritage Objects, which was Gazetted in August of 2018. It also provides a way forward for South Africa in terms of tracing objects that may be subject to repatriation, and ways in which this could be done.

2. Goals and Methods

The main goals of the research are to:

1. Analyse the arguments for and against "Universal museums" versus local or national museums, and their implications for the repatriation of cultural artefacts, many of which were obtained during colonial occupations in Africa.
2. Apply the theory of "Total Economic Value" (which includes, use value, non-use value and bequest value) to the case of museum artefacts, which can be described as having public good characteristics. In particular, "Economic" and "Intrinsic" values, and how they may be affected by the repatriation of museum artefacts will be discussed.
3. Discuss some case studies of African artefacts that have been the subject of repatriation debates, such as the Benin bronzes, and existing databases on the number and location of African cultural artefacts in foreign museums.
4. Explore ways in which repatriation could take place, such as through Mutually Beneficial Repatriation Agreements (MBRAs), Digital repatriation, and touring of artefacts, and the issue of reciprocity, not just repatriation.
5. Suggest a way forward for South Africa in terms of tracing artefacts held in foreign museums, and the development of a classification system of artefact repatriation priority.

Research methods are primarily through the collection and analysis of secondary data. Sources will include: academic articles, industry research reports, policy documents, international resolutions, articles from the media, case study analysis, and existing data on museum holdings of African artefacts.

To solicit the views of South African cultural heritage practitioners, an online questionnaire and an expert focus group discussion was convened. Ethical clearance was granted by the Rhodes University Research Ethics Committee. The purpose of the engagements was two-fold:

- (i) To use the direct valuation method suggested by Throsby (2013) to find out which characteristics of museum artefacts were considered to be important when assessing the value of cultural heritage objects, with special reference to the urgency of their repatriation.
- (ii) To determine which repatriation options were considered acceptable or negotiable under various circumstances.

3. The Economic theory of the value of heritage and arguments for and against the cultural artefacts restoration debate

Debates about the repatriation of African cultural artefacts: A literature review

The debates about the restitution of museum artefacts taken from African countries, mostly during the colonial era, has a long history. However, it was brought to high prominence again recently by the French president, Emmanuel Macron's address (2017), which acknowledged what a large proportion of African heritage is outside the continent.

A follow-up report by Sarr and Savoy (2018) entitled, "The restitution of African Cultural Heritage. Towards a new relational ethics" was produced. Ethical arguments for the return of artefacts collected (often stolen, looted, or bought illegally) during colonial times, are the most frequently cited in the repatriation debate. There is growing recognition 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 the margins – of the colonial enterprise" (Sarr and Savoy, 2018:13).

Added to the ethical dimension is the sheer scale of the situation. Sarr and Savoy (2018) note that more than 90% of the cultural heritage artefacts of sub-Saharan Africa are found outside of Africa, which is what makes it a special case. While the cultures of other regions are also represented in Western museums, a significant portion of artefacts has remained in their country of origin.

Matthes (2017) identifies three main arguments against the repatriation of museum artefacts: Identification of who the artifact should be returned to; Uncertainty around the circumstances in which the artifact was obtained (very important for legal claims of repatriation); and the "universal museum" argument.

"If we cannot identify the individuals to whom reparations are legitimately owed, then we will not know to whom artworks and artefacts should be repatriated". This is what Matthes (2017) refers to as a metaphysical challenge, that is the difficulty of tracing the descendants, or inheritors, of particular cultural groups to which artefacts should be returned, especially if the artefacts are very old, and the people to whom they originally belonged have no clear decedents.

When Nigerians claim a Nok sculpture as part of their patrimony, they are claiming for a nation whose boundaries are less than a century old, the work of a civilization more than two millennia ago, created by a people that no longer exists, and whose descendants we know nothing about" (Appiah, 2006:119).

Despite the strong moral argument for repatriation of artefacts as a form of reparations for historical injustice, the question of who the reparations are due to is not always easy to establish.

Secondly, there is often uncertainty around the circumstances under which the artifact was obtained, so that even if it is generally agreed that artefacts obtained unjustly or illegally should be returned, establishing this may not be easy. Since the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (1970), there are stricter guidelines on the required provenance for legal cultural artifact acquisition. However, as Matthes (2017) points out, this does not assist with the very many artefacts in museum collections acquired before this date.

Finally, there is the argument of the "universal museum", that the "outstanding value of [some] objects and their consequent interest to all of humanity" and their preservation take precedence over

repatriation claims. That is, although repatriation claims may be legitimate, they are outweighed by other considerations. In this argument, cultural heritage is viewed as a global public good, and it is argued that the display and appreciation of artefacts from a diversity of cultures contributes to inter-cultural understanding, and to the value of the artefact itself. Yet, as Sarr and Savoy (2018:37) point out, the curation and display of African artefacts puts the power of “meaning making” into the hands of western museum officials, which “are ways of controlling representations of societies”, often imposing colonial categorisation onto African societies.

African scholars, like Dr Kwame Opoku (2018), point out that most of the peoples whose cultures universal museums claim to celebrate will never be able to see them. Opoku (2018) gives great credit to Macron for reinvigorating the debates about restitution, even though there are conditions that he does not agree with. Opoku argues that, especially in the case of African artefacts relating to political power (kings and queens), “there is no question of temporary or permanent restitution”. However, while Opoku argues fiercely for the unconditional return of the ownership of African artefacts, their physical location may be negotiated:

“It would be up to African States, in discussion with Western museums, to determine which artefacts are to be physically returned whilst those that should remain in the Western museums will be symbolically returned, with appropriate ceremonies and events”.

However, Opoku (2018) and other writers (Shyllon, 2013) point out that African countries themselves have perhaps not acted as quickly as they should have to pursue the repatriation of cultural artefacts that were expropriated, stolen or illegally exported. Talking about the period following Macron’s speech, Opoku states that, “Our countries have not taken the opportunity of preparing a list of national treasures which would also contribute to teaching the general public about national culture. It is almost as if nobody cared...”.

Matthes (2017) points out that, if museums embrace the idea that they provide global public goods, of value to everyone, then purely as a matter of distributive justice, they should be promoting global access to cultural artefacts through redistribution. As already discussed, western museums hold a disproportionate share of cultural artefacts. They argue that they do promote wide access through, for example, educational outreach and low or no ticket prices. However, much of the world’s population is *de facto* or *de jure*, prevented from travelling to these countries to access museum collections, and are thus deprived of the very global public good rights that museums claim to promote and protect.

Yet African countries have tried for more than 50 years to advocate for the return of cultural artefacts taken during colonial times, mostly without success. Shyllon (2015) studies some of the unsuccessful efforts to “retrieve cultural objects purloined in the age of imperialism in Africa”. Shyllon (2015:121) notes that, “African countries seeking the return of cultural objects must have the endurance of the long distance runner”. A large part of the reason for the failure of restitution rests on legal arguments relating to property rights, in particular that, after a certain time period (usually 50 years), artefacts become the property of their host nation and are inalienable.

Interestingly, there may be reasons why African curators themselves would not pursue repatriation of artefacts held in foreign museums. There seem to be three main arguments:

(i) Public museums in many African countries may not have the resources (in terms of curatorial skills and physical infrastructure) that are needed to preserve and curate these objects. Adeshokan (2020) writing about repatriation of Nigerian cultural heritage, also points to issues of capacity: “one of the major criticisms of demands for the returns of artworks back to African countries, especially Nigeria,

has been the general absence of museums and a proper maintenance culture". He reports that older museums are underfunded, and do not yet have the capacity to curate and properly preserve the artefacts.

(ii) Since the monetary value of these objects is greatest in western markets, some curators might be worried that, if returned, they would be deaccessioned and sold to private collections. An interesting feature of some African cultural artefacts is that their monetary value is greater in western markets than in African ones. Adeshokan (2020) interviewed a Nigerian art collector, who expressed the idea that the value ascribed to many African artefacts exists because of their location outside of Africa: "There is a working industry and infrastructure to support the works of art. The moment those works come back to our control, they will lose value just like the ones that are here. The conversation moving forward should be to claim ownership and then claim annual royalties to these works of art even as they remain where they are".

(iii) The focus of many new African museums is increasingly on contemporary art and cultural heritage. The lack of historical and contextual information about many of the artefacts taken from African countries makes it difficult to curate decolonised historical exhibitions of African culture. There is also less interest from the local public in historical artefacts than in contemporary art.

Theories of Value and cultural artefacts

Having reviewed some of the arguments for and against the idea of "universal museums", the public good nature of cultural artefacts has been revealed. Like other cultural heritage, artefacts can be seen to embody the cultural capital of the country or society that produced it, and (like other forms of capital) thus has both stock and flow values.

Goods with public good characteristics have long been recognised in economic theory as having different kinds of value. *Total Economic Value* (TEV) is made up of use value (which can be consumptive or non-consumptive), non-use (existence) value, option value and bequest value.

In the case of museum artefacts, the object is never used up, so use values are non-consumptive: One person viewing or researching the object does not diminish it or prevent others from "using" it. Even when people may feel strongly about repatriation of a particular cultural artefact, they may never actually go and visit it themselves. Extensive non-use values are also found in environmental goods – people may be willing to pay to preserve or protect an environmental asset without viewing it directly themselves. In this case, the value stems from the desire to know that the object exists, and perhaps to have the option of visiting it in the future. Bequest value is about wanting the artefact to be available for future generations, and speaks strongly to the idea of preserving cultural capital, and is linked sometimes to education value (Klamer, 2013).

Another useful valuation framework distinguishes between *intrinsic value* and *instrumental value*. Intrinsic values are those most often associated with the ethical or moral arguments for museum artefact repatriation. Intrinsic values are related to the unique symbolic, and aesthetic nature of the object itself, and are often based on an individual emotion and spiritual response to an artefact, and are related to artistic quality or excellence (Holden and Balta, 2012; Hutter and Schusterman, 2006).

Throsby (2001) first introduced the idea of "cultural capital" in economics, defined a way of "representing culture which enables both tangible and intangible manifestations of culture to be articulated as long-lasting stores of value and providers of benefits for both individuals and groups" (Throsby, 2001:44). Hutter and Schusterman (2006) suggest various types of intrinsic cultural value including: self-expression, communication, the expression of a moral or religious vision, entertainment, protest against (and a stimulator of debate about) societal norms and values, and

aesthetic values. Intrinsic values are often unique to a particular artefact, or type of artefact, and do not have close substitutes.

Instrumental values are those that occur as a result of the artefact being in a particular location, but may not be unique to the particular object. Instrumental values can be related to social or societal values, such as the role of cultural heritage in identity formation and building social cohesion. They may also be economic, or financial, in that they may be associated with job creation, economic impact, education (human capital), tourism and innovation (Bohm and Land, 2008). While important, a focus on instrumental values (which are not unique to any particular artefact) may not provide as strong an argument for repatriation as the public good benefits associated with intrinsic values (Snowball, 2008; 2011; Collins and Snowball, 2014).

Returning to the idea of artefacts as a form of capital stock which results in a flow of value, Brodie (2010) identifies a number of ways in which the physical location of important artefacts benefits the owner. For example, the ownership of important artefacts may attract visitors (tourists) to a country, providing income for the specific museum, but also for those providing related services, such as accommodation, food and drinks, guiding services, arts and crafts sales etc. Important collections also attract public and private funding for a museum, as do research and publications about the collection, which in turn build the reputation of both researchers who have access to the artefacts, and the museum itself. Brodie (2010) thus argues that, in addition to the ethical and legal arguments for the protection and restoration of cultural artefacts, economic arguments should not be overlooked, and could make repatriation arguments stronger.

Although instrumental values (particularly those associated with the economic sub-category) may be less important than intrinsic values, they are still used as arguments for the repatriation of museum artefacts. Brodie (2010:268) argues that the economic value of cultural artefacts has both public and private good aspects, which is partly why the valuation of such “goods” is complex. In considering trade in cultural artefacts, Brodie notes that, as with many goods that have positive externalities, the failure of the market price to capture public good values leads to market failure. “What distinguishes cultural property from ordinary property is its designated cultural value, so that the exclusion of economic value from legislative considerations is probably deliberate”.

Especially in developing, post-colonial African countries, intrinsic, social and economic values are important. In talking about post-colonial societies, Mulcahy (2017) argues that “Reclaiming the past by a newly independent people is a necessary element for regaining political sovereignty . . . a process of cultural nation building”. As such, cultural policies in these societies need to be linked to values such as: identity-building; inferring value into, and preserving, previously unvalued and neglected cultural heritage (a process sometimes referred to as ‘valorization’); and, especially important in South Africa, building social cohesion.

The idea that economic arguments for the value and repatriation of cultural artefacts is somehow less valid than the ethical and legal arguments is reflected also in the Charter of Principles for Museums and Cultural Tourism (2000). The Charter, promulgated by the International Council of Museums, affirmed that a museum is primarily a non-profit institution, and that preservation of cultural heritage should come before economic interests. However, cultural tourism can provide a sustainable way to fund cultural heritage preservation, if managed carefully (Brodie, 2010).

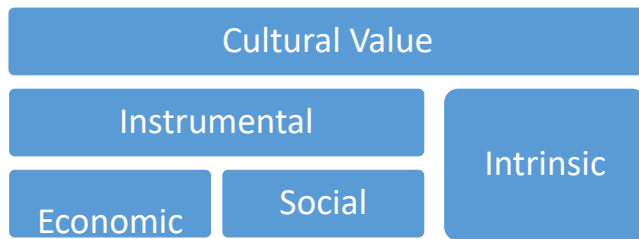


Figure 1: A conceptual framework for cultural value

A related question about value, is “value to who?”. The perceived value embedded in cultural artefacts is created, not by the value of the materials used to make it, but by the recognition and agreement that it has special value to individuals, specific cultural groups, and/or to society. Klammer (2013) maps the value of cultural heritage using four broad categories:

- *Cultural value*, usually determined by experts, and based on the artistic, historical, aesthetic and spiritual value inherent in the artefact;
- *Personal values*, related to the emotional response of individuals to a particular site or artefact;
- *Societal values*, related to “the historical consciousness of a community”, and fostering a common identity, or “shared story”; and
- *Social values*, which build relationships among people, through, for example, appreciation groups and societies that may form around particular heritage sites or objects.

Klammer (2013) argues that instrumental values are important because they are necessary to “to realise the cultural, societal, social and personal values”. In the case of cultural artefacts, for example, protection, curation and display all come with associated financial costs, which need to be offset by values on the benefit side of the equation. This is especially the case in developing country contexts, where public and private funding for arts and culture is limited.

Table 1: Components of the value of cultural heritage

Type of Value	Description
Aesthetic	Qualities of beauty, harmony, and other sensory perception (colour, smell, shape), as recognised by individuals and groups.
Spiritual	Provides people with a connection to their faith, has religious meanings or messages.
Social	Conveys shared values and beliefs that build a sense of community, or political or national identity, that builds social cohesion.
Historical	Age and historical associations that define identity and connections with the past.
Symbolic	Value through conveying meaning that helps individuals and communities to interpret cultural messages and narratives linked to cultural identity.
Authenticity	Value related to the object being “real”, original and unique, not fake, altered, or defaced.
Locational	Value that arises from the significance of the geographical location of the artefact in relation to other objects, cultural landscapes, or places of historical significance.

Sources: Adapted from Throsby (2001) and Throsby (2013), originally based on the Burra Charter.

Throsby (2013:457) points out that determining the “significance” of heritage may depend on fixed and unchanging intrinsic values, or contingent values that “arise from the relationship between the physical, social and cultural context in which a given item is placed”. He notes that the difficulties in

valuing heritage are that there is no one, generally accepted, or universal, typology of value, that value is a multifaceted concept made up of sub-categories, and that the sub-categories often have no common unit of account. In his theory of cultural capital (2001) Throsby suggests a number of value attributes or categories for determining cultural value in the case of heritage (Table 1).

Some attributes of cultural artefacts can be described in an objective way, such as their age, physical condition, association with historical events and location. However, these do not generally describe the most important features of an artefact. Throsby (2013) suggests a method of “direct rating”, where scores are assigned to the various value categories and then combined (weighted or unweighted) to provide a quantitative assessment of overall “significance” or value. Weighting is decided by determining the relative importance of any particular attribute. Throsby (2013) notes that this valuation method is more suitable for heritage experts or professionals, who are used to making these kinds of implicit value judgements in their day to day work. The purpose of assigning value is also important, since rankings imply trade-offs between different kinds of artefacts, which not everyone might agree with. However, in a situation of limited resources (financial and social capital), such a ranking could be extremely useful in determining for which artefacts countries should seek most urgent repatriation.

Table 2: Classification of cultural, social and economic values

	Cultural and Social Values	Economic Values
Value classification type	Indirect use values Non-use values (Existence & Bequest)	Non-consumptive use values (direct and indirect)
Benefits	Aesthetic Spiritual Symbolic Authenticity Social Historical Locational	Stream of values from capital stock: Cultural tourism Public & Private Subsidy Research and Publications

Alternatives to restitution, such as travelling exhibitions, or permanent loans, attempt to share use values, without giving up legal ownership, and as discussed further later on this report, are regarded by some African scholars and curators as unacceptable.

In South Africa, for the international sale of certain kinds of heritage objects that have been in the country for more than 50 years, the seller is required to apply for a permit from the South African Heritage Resources Agency (SAHRA). If objects are deemed to be part of the “National Estate”, that is they are of national historical and cultural significance, then export permits may not be granted. This applies to objects in both public and private collections. As SAHRA² puts it:

“[Cultural objects] become meaningful when we know how and why they were made, who used them and how they may have influenced, or been influenced by individuals and communities. Irrespective of whether these heritage objects are in public or private ownership, they form part of what is defined as the National Estate”.

² <https://sahris.sahra.org.za/about/heritage-objects>

The National Estate is very broadly defined and includes intangible cultural heritage, natural landscapes, archaeological sites, graves of historical figures and historical settlements, as well as “objects of historical and cultural significance”.

An object is considered to be part of the National Estate if it has “special value” in terms of:

- “(a) its importance in the community, or pattern of South Africa’s history;
- (b) its possession of uncommon, rare or endangered aspects of South Africa’s natural or cultural heritage;
- (c) its potential to yield information that will contribute to an understanding of South Africa’s natural or cultural heritage;
- (d) its importance in demonstrating the principal characteristics of a particular class of South Africa’s natural or cultural places or objects;
- (e) its importance in exhibiting particular aesthetic characteristics valued by a community or cultural group;
- (f) its importance in demonstrating a high degree of creative or technical achievement at a particular period;
- (g) its strong or special association with a particular community or cultural group for social, cultural or spiritual reasons;
- (h) its strong or special association with the life or work of a person, group or organisation of importance in the history of South Africa; and
- (i) sites of significance relating to the history of slavery in South Africa” (Government Gazette, 1999: 14).

In terms of cultural objects for which an export permit is required (as Gazetted in the 1999 Act), there are two categories. One category is a list of specifically declared unique heritage objects which are individually listed; the second are Types of Heritage Objects which can include archaeological and paleontological objects, geological specimens; objects to which oral traditions are attached; decorative or fine arts, ethnographic objects and cultural objects; objects associated with leaders and/or historical events; military objects; historical books, records, documents, and photographs.

In 2019, an updated definition of Identified Type of Objects that are Protected and may not be exported without a permit was published (Government Gazette, no. 587, 2019). As before, the permit requirement applied to objects, of South African or international origin, that had been in the country for more than 50 years. Reasons for the refusal of export permits include objects with attributes whose loss “would significantly diminish the national heritage” such as an object that is:

- “-extraordinary, rare or unique in South Africa;
- the prototype, first production unit, first of a type, a variation of a type; an example of a type modified to suit South African conditions; an example of a type designed in South Africa;
- an example of a type wholly intended for use or suited to South Africa, regardless of origin; an example of a type, whether South African in origin or not, which is rare or scarce in South Africa’ or the last of a type or only example thereof;
- a heritage object of international significance;

-associated with, made or conceived by a particular person, whether famous or not, in the South African context;

-associated with an event, whether famous or not in the South African context”

(Government Gazette, no. 587, 2019: 21).

The additional emphasis is particularly on rarity, uniqueness, and scarcity, as well as international significance and associations with historical events or people. There is thus already an officially accepted South African definition of what makes a heritage object of national significance, and thus part of the “National Estate”. The attributes listed align well with those identified by Throsby (2001; 2013) shown in Table 1. Such attributes could be the starting point for defining South African objects in foreign museums which might be subject to repatriation requests.

SAHRA has a detailed online database and GIS (Geographical Information Systems) mapping facility that tracks heritage sites and objects. Of particular relevance for this research is the searchable list of heritage objects where export permits have been applied for³. Entries for each object include much information, such as the date of the application, a description of the object, location data, and the permit application decision (approved, pending, declined, under appeal).

The database also lists 256 stolen art and heritage objects⁴ including sculptures, paintings, coins, vases, and commemorative medals. Some are of South African origin, while other are of foreign origin. Given that the mandate of SAHRA includes repatriation, the SAHRIS database would be an ideal platform on which to host a developing list of cultural heritage objects held in foreign museums which may be subject to repatriation requests.

[A Framework for the Return of Cultural Property in South Africa: International Agreements and SA Regulation for the Protection of Cultural Heritage](#)

Various international agreements, conventions and mechanisms are available to assist a state in its quest for the return of its cultural property. Two conventions and a mechanism are important in this regard. The first convention is the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. South Africa is one of the 140 states that have ratified the treaty. Article 7 of the Convention recognises the obligation of States Parties to the Convention to take all appropriate steps, at the instance of a State Party of origin, to recover and return any imported cultural property stolen from a museum or a religious or secular public monument or similar institution in another State Party. A key requirement is that the illicit cultural property must be part of a national inventory.

The second Convention is the 1975 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects, concluded under the auspices of the International Institute for the Unification of Private Law (UNIDROIT). One key difference between the 1970 UNESCO Convention and the UNIDROIT Convention is the absence of a requirement of a state inventory to enjoy the benefit of the latter convention because of the wording of Article 3(7) of the UNIDROIT Convention that defines the ‘public collection’. That definition of ‘public collection’ includes a group of inventoried or otherwise identified cultural objects owned by a contracting state; its regional or local authority; religious institution or an institution that is established for essentially cultural, educational or scientific purpose. Shyllon (2012) argues that the phrase ‘otherwise identified cultural objects’ means other satisfactory evidence of the

³ <https://sahris.sahra.org.za/searchcases>

⁴ <https://sahris.sahra.org.za/object-stolenlist>

cultural property in addition to a national inventory. Secondly, Article 8(1) of the UNIDROIT Convention contemplates private and state claims before the courts or other competent authorities of the State where the cultural object is located. The 1970 UNESCO Convention, on the contrary, can only be activated by State Parties to the Convention. South Africa became a state party on the 9th of January 2018. Another advantage of the UNIDROIT Convention is the possibility of arbitration in terms of Article 8(2) of the Convention.

In 1973, the UN General Assembly Resolution 3187 on the “Restitution of works of art to countries victims of expropriation” was passed. This led to the establishment of the *UNESCO Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation* (ICPRCP) as a permanent intergovernmental body independent of the 1970 Convention. A key feature of the UNESCO 1970 Convention is its remit that includes cases occurring before the entry into force of the 1970 Convention. The ICPRCP is responsible for facilitating bilateral negotiations for the restitution or return of cultural property including mediation and conciliation.

Yet, despite these international conventions, repatriation cases based on legal grounds have often not been successful. One of the most hotly debated international cases is the request from Greece for the return of the Parthenon Marbles, which were sold to the UK during the time when Greece was occupied by Turkey. In 2015, South Africa took a recorded position on this debate⁵, saying that South Africa “would support the request by the Greek nation for the return of the Parthenon Marbles currently held in the British Museum, as well as requests by other countries that are in similar situations”.

Brodie (2010) notes that cultural property laws have been ineffective for a variety of reasons: poor subscription at the international level to resolutions and conventions; poor enforcement of existing laws, particularly those relating to the illegal export and sale of cultural artefacts; and a lack of funding for long-term advocacy and enforcement.

Writing about the Benin bronzes (further discussed in section 4), Adewumi (2015) comes to the conclusion that sentiment cannot be allowed to cloud international law, which seeks to protect both the interests of the state of origin, and “that of humankind in general”. While not disputing that the bronzes have become associated with modern Nigerian identity, Adewumi (2015:240) also points out that:

“They were also taken away before the Nigerian nation came into existence, and before any legislation defining and banning the export of antiquities came into existence in Nigeria...therefore the collections located in foreign museums should not, in our view, be regarded as illegal.”

Roehrenbeck (2010) comprehensively reviews the international protections (Conventions) established by treaty signatories which need not be enacted into national laws but are also not retrospective in their application and thus limiting their application in executing the return of some early plundered or looted items. The European Union regulations and directives pertaining to the export and return of cultural property to European countries which apply to member states are also set out therein.

⁵ <http://www.dirco.gov.za/docs/2015pq/pq360ncop.htm>

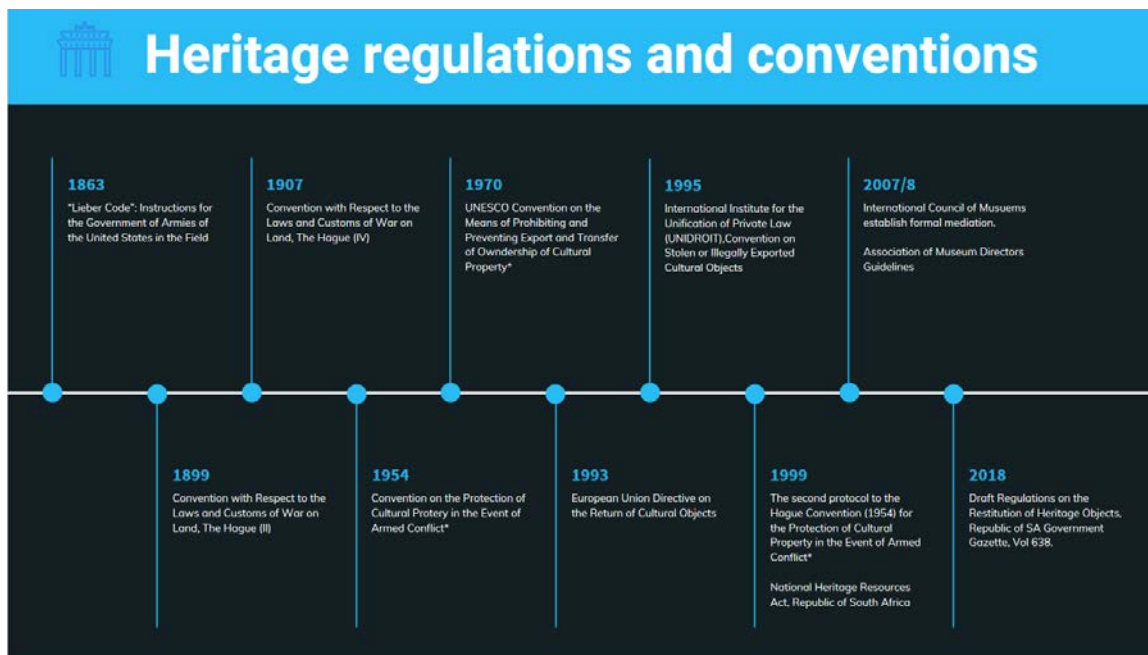


Figure 2: Heritage Regulations and Conventions Relevant to South Africa

Beyond Conventions, regulations and directives there is also a wide range of voluntary agreements by museum professional bodies operating in the domain of cultural property return such as the Association of Art Museum Directors, Association of American Museums and the International Council of Museums.

In South Africa, there are bodies and organisations that regulate and protect South African cultural heritage. The ultimate driver is the Department of Sport, Arts and Culture (DSAC), supported directly by ministers and officials, who are responsible for policy, legislation, co-ordination and oversight. They are supported by heritage sector structures, like the SAHRA Council, the National Archives Council and the Museums Council, who are responsible for implementation, as well as playing advisory and co-ordination roles. These bodies also play an implementation role as national heritage institutions. Provincial and local level institutions are also responsible for implementation (DAC, Review of Heritage Legislation, 2008).

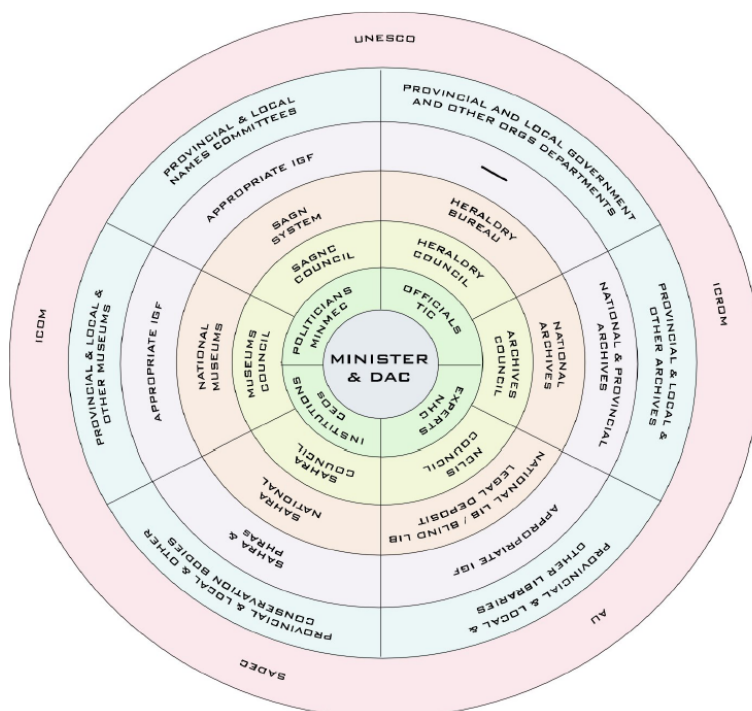


Figure 3: Bodies and Organisations regulating the protection of South African cultural heritage

(Source: Review of Heritage Legislation, 2008:30).

The principal South African legislation is the National Heritage Resources Act (1999), which established SAHRA and set out the principles for the management and protection of the “national estate”. SAHRA’s mandate includes a directive to, “co-ordinate and promote the management of heritage resources at national level”. This specifically includes introducing a system for the management of national heritage resources, as well as the control of the export of South African heritage objects. An additional role of SAHRA is to “investigate and advise the Council on—the repatriation of heritage resources which have been removed from South Africa and which SAHRA considers to be significant as part of the national estate” (Government Gazette, 1999:26). The elaboration of the National Estate including the updated “List of Types” of heritage objects that may not be exported without a permit (2019) are important steps in the use of the 1970 UNESCO Convention and the UNIDROIT Convention in the return of cultural property to South Africa.

The limited capacity of the organization has so far not enabled the construction of such a list of cases. An important restriction on SAHRA is that, if an export permit is denied, the owners may require the compulsory purchase of the object by SAHRA, or another party within South Africa, within 30 days. If this condition cannot be met, then the permit must be granted⁶.

Two emerging normative instruments - the Draft National Policy on the Repatriation and Restitution of Human Remains and Heritage Objects (Draft National Policy 2018) and the draft gazetted Regulations on the Restitution of Heritage Objects (Draft Regulations 2018) prepared in terms of s.41 of the National Heritage Resources Act 2019⁷ - are indications of a ‘new’ process of international and intra-national return and restitution of heritage objects. Although the Draft Regulations related to

⁶ <https://sahris.sahra.org.za/content/my-permit-export-heritage-object-was-denied-what-are-appeal-procedures>

⁷ S. 41 of the Act mandates regulations to establish ‘good faith’ in claims by communities for the restitution of movable heritage resource that is part of the national estate and held by or curated in a publicly funded institution.

human remains are not part of the focus of this report, the negotiations and mediation inherent in the draft regulations suggest South Africa's preferred means of return for cultural objects as well.

In 2014, the African Union commissioned a report on "The Establishment of the on-going Cooperation activities between European Union and Africa with regard to Cultural Goods" (AU, 2014). The report included a review of strategies in place to prevent illegal export and trade in cultural objects, as well as the return of illegally exported cultural objects. The challenges to the successful control of illegal trafficking in Africa were listed as, amongst other things: The abundance of undocumented artworks in Africa, and the growing interest of collectors and market value in western countries; corrupt public officials; permeable borders; and diplomats and officials who remove artefacts for study or on loan, but do not return them (AU, 2014:18). The report also found that there were low levels of awareness of the importance or significance of the protection of cultural objects in African countries, and that even where there were regulations mandating this, enforceability was low.

On repatriation, the AU report (2014:92) notes that "The process involved in the repatriation of cultural properties is generally strenuous, tedious, wearisome and protracted". Successful repatriation has occurred in one of four ways:

- Border Interdictions: Objects shown to have been illegally exported must be returned.
- Intergovernmental Initiatives and Interventions: related to the application of UNESCO Conventions and other international agreements.
- Diplomacy and litigations: While litigation has become more of a possibility, given the UNESCO and UNIDROIT conventions, the report notes that the legal route has challenges, especially with providing the necessary documentation, and that diplomatic routes have been more fruitful.
- Other ad hoc imperatives and methods: usually relating to bilateral agreements around specific projects related to such things as cultural education, and touring exhibitions.

The report makes a number of recommendations, mostly related to the protection of cultural artefacts still in African countries. However, of relevance to the repatriation debate, are recommendations that African museums create a digital inventory of their own collections, as well as those objects of national significance held outside the country, so that they can be better protected and managed. AFRICOM (African Council of Museums) strongly supports such digitization projects.

An example of such a project is The International Inventories Programme of the National Museums of Kenya, which is an "international research and database project investigating a collection of Kenyan objects held in cultural institutions across the globe"⁸. Although criticized by some writers (Kiunguyu, 2018⁹) as being developed only recently, the database could be seen as a possible template for other African countries, like South Africa, who do not currently have such a database. The Kenyan database currently has over 22,000 objects listed.

Another important recommendation of the AU report (2014:75) is that AU member states should individually ratify existing international conventions related to the protection of cultural heritage, as well as the Charter for African Cultural Renaissance (2006), which has provisions for cultural heritage protection.

⁸ <https://www.inventoriesprogramme.org/>

⁹ <https://thisisafrica.me/arts-and-culture/kenya-create-database-of-plundered-cultural-artefacts/>

South African examples of the protection of heritage artefacts



SAHRA does intervene in the case of South African heritage objects coming up for sale in international markets. For example, the Graham Beck Collection of African and Oceanic Headrests was auctioned in the US in November 2019. The auction included a Tsonga/Shangaan headrest from SA's Limpopo province (pictured) with an estimated value of \$30 000¹⁰. The headrests have symbolic and cultural value (as well as their original practical use) in that the designs signalled the wealth and status of their owners and as a way to communicate with the ancestors. However, the ability of SAHRA to intervene in the case was limited, because although the headrests had originally been made in South Africa, they were only bought by their most recent owners in 2005. SAHRA's jurisdiction only extends to artefacts which have been in South Africa for at least the previous 50 years.



However, SAHRA is successful in preventing the export of cultural artefacts that are deemed to be of national importance, as in the case of the Victor Kullberg, Longcase Regulator Clock. The private owner of the clock applied to SAHRA for an export permit, which was denied. The clock was made in London in 1880 and installed in the Natal Observatory in 1884. Connected to the post office, it was the timekeeper for Natal Province for 26 years, and for a short period, for the Union of South Africa. When the Observatory was closed in 1911, the clock was moved to the Observatory library, and when that was closed in 1961, it was sold to a private collector.

The export permit was thus declined on two grounds:

“[The clock] Is of outstanding significance by reason of its close association with South African history or culture, its aesthetic qualities, or its value in the study of the arts or sciences: The Victor Kullberg longcase regulator clock, whilst perhaps not a well-known piece of South African history, bears significance not only to the province of Kwazulu-Natal but also to South Africa as a whole.

[The clock] is of such a degree of national importance that its loss to South Africa would significantly diminish the national heritage: The regulator clock, as outlined above, is a unique piece of South African history. By virtue of its significance and its irreplaceable nature, its exportation from South Africa would serve to diminish an often-underplayed aspect of South African history and scientific endeavour” (SAHRA, 2019¹¹).

¹⁰ <https://www.property360.co.za/news/rare-tribal-headrests-for-us-auction-36060192>

¹¹ <https://sahris.sahra.org.za/node/520191>



In the contemporary fine art space, the Ifa Lethu Foundation “promotes partnerships and initiatives that focus on repatriation and preservation of our heritage”¹².

The Foundation was established in 2005 as a non-profit organisation with the specific mandate to repatriate township art produced in South Africa in the apartheid period (Maaba, 2009). Since there was little local market for such art during apartheid, many works were bought by diplomats, journalists and foreign tourists. The Foundation was provided with seed funding of R4 million by the national Department of Arts and Culture and start up project funding of R3 million by BHP Billiton and other funders.

In 2011, the Foundation reported to the Parliamentary Monitoring Group¹³ that in the previous three years it had repatriated 415 artworks, art objects and archival collections from 11 countries. The most important challenges it faced were funding continuity and “the absence of a legislative framework on repatriation”. In 2017/18, the Foundation hosted an exhibition of repatriated works (mostly donations from private foreign buyers) at Constitution Hill. The repatriated works were shown alongside works by contemporary South African artists. The title of the exhibition was “Looking back, Looking forward”¹⁴.

According to the Visual Art Network of South Africa (VANSA), Ifa Lethu “manages the largest heritage repatriation effort in South Africa, with collections having been repatriated from countries such as the United States of America, Canada, France, Australia, Spain, Holland, the United Kingdom and Germany”¹⁵.

4. Selected Case studies of the repatriation of museum artefacts to sub-Saharan African countries

This section provides examples and analysis of Case Studies of museum artefacts that originated in sub-Saharan African countries and that have been the subject of repatriation debates.

To our knowledge, there have been no high-profile repatriation cases in South Africa, other than the return of the body of Sarah Baartman, a Khoisan woman who was taken to France in the 1800s and displayed as an anthropological curiosity, dubbed “The Hottentot Venus”¹⁶. Her remains were eventually returned from France in 2002, and she was buried in the Eastern Cape (Shyllon, 2014). While this is an important case, as discussed earlier, the focus of this report is on the repatriation of cultural artefacts for the purpose of display in African museums. The repatriation of human remains is equally, if not more, important, but has different values, legislation, and ethical arguments associated with it. The selected case studies discussed here will thus focus on examples of the repatriation of cultural artefacts from foreign museums to sub-Saharan African nations.

¹² <https://ifalethu.org.za/>

¹³ <https://pmg.org.za/committee-meeting/12696/>

¹⁴ https://www.youtube.com/watch?v=T7AE_MO135g

¹⁵ <http://artmap.co.za/ifa+lethu+foundation/>

¹⁶ http://web.mit.edu/racescience/in_media/baartman/baartman_m&g_movement.htm

Repatriation Case Study 1: The Great Zimbabwe Bird



History and Significance

There were originally 8 carved soapstone birds found at Great Zimbabwe, excavated from 1889 onwards. The birds may be linked to Shona soapstone sculptures, recognised in modern times as a unique art form, in increasingly high demand by collectors and museums¹⁷. The Great Zimbabwe site gives its name to the country, and the iconic bird sculptures are found on the national flag, banknotes, and as modern reproductions in public spaces. Great Zimbabwe is designated as a UNESCO World Heritage site. The head of Zimbabwe's national museums, Godfrey Mahachi, said: "The birds are among the most symbolic cultural objects of our time. They connect the present with our past¹⁸."

Repatriation

Some of the birds were in the South African Museum in Cape Town until 1981, when four of them were unconditionally returned to Zimbabwe on its independence. One of the birds still remains in South Africa, bequeathed to the state as part of the estate of Cecil John Rhodes¹⁹.

The top half of one bird was excavated by a British archaeologist, and handed to local authorities. It is not clear how the lower half of the bird left the country, but it was sold to a museum in Berlin in 1907. It was sold to other German museums, taken to Russia during their occupation of the city, and eventually returned to Germany. Under pressure from the German Federal Government, it was officially returned to Zimbabwe in 2003, after spending more than 100 years outside the country. Shyllon (2014) documents the complex and lengthy repatriation process. Dewey (2006) claims that the lower half of the bird was, in fact, secretly handed over in 2000 under a memorandum of understanding in which the bird was being returned on permanent loan, and "thus technically avoided the subject of restitution". The return was therefore conditional, with the Prussian Cultural Heritage Foundation (who manage the museum in Berlin which held the fragment), retaining legal ownership. As Shyllon, 2014: 143) argues, "A permanent loan is used as a face saving formula. In this instance, it is being used as a sword instead of a shield".

Repatriation Case Study 2: The Benin Bronzes



History and Significance

Until the 19th century, the Kingdom of Benin was a major power in what is now northwest Nigeria. In 1897, the British invaded the country, and looted many valuable bronze, ivory and wooden artefacts from the royal palace. The bronze plaques that decorated the palace became particularly famous, as they showed complex scenes of court life. They were probably made between 1550 and 1650. The objects, thousands of them, were taken to London, and thereafter spread through the world in sales to museums and private collectors. The money was used to defray the costs of the war. Many of the artefacts were bought by the Germans, and according to Shyllon (2015), it was they who recognised and described the value of the bronzes, thus making them internationally famous.

¹⁷ <http://zimart.ca/collecting-shona-sculpture/>

¹⁸ <https://www.aljazeera.com/news/2020/03/zimbabwe-iconic-bird-statues-stolen-colonialism-200313193140085.html>

¹⁹ <https://africaglobalnews.com/great-zimbabwe-bird-one-still-remains/>

Repatriation debates and progress

Since 1968, when Nigeria opened the National Museum of Benin in Lagos, attempts have been made to have at least some of the objects returned from museums, private collections and embassies. Despite an ICOM resolution calling for the return of the objects, the only bronzes in the museum when it opened were purchased by the Nigerian government at auction. It later emerged that at least some of these items were sold at auction by the British Museum²⁰ themselves. At the time of writing in 2015, Shyllon (Professor, Faculty of Law, University of Ibadan, Nigeria) recorded less than 100 Benin artefacts in Nigeria.

The Benin Dialogue Group (BDG), founded in 2010, is a collaboration of museum directors and delegates from Austria, Germany, the Netherlands, Sweden, and the United Kingdom with representatives of the Edo State Government, the Royal Court of Benin, and the National Commission for Museums and Monuments, Nigeria. The aim of the BDG is to facilitate the permanent return and display of Benin artefacts in a new Royal Museum in Benin City, Nigeria, planned for 2023. In a 2019 press statement, the BDG reported that they had “shared knowledge regarding various initiatives across Europe that are currently seeking to address the questions of return and restitution”, but acknowledged that there were legal complexities that needed to be taken into consideration²¹. Kwame Opuku (2018), an African scholar and writer about repatriation, has been critical of some of the repatriation options proposed by the group, including that, while the artefacts would be displayed in the museum in Benin City, legal ownership would be retained by Western museums, which Opuku derides as being “ridiculous and insulting²²”. The BDG, although originally interested in repatriation through the transfer of legal ownership, now seems to be focused on other, less legally time consuming and complex options related to “sharing collections” on the basis of an “equal partnership”²³. This practical solution, focused on providing access, could include digital and printed publications of Benin artefacts, enhancing accessibility of the collections, waiving of reproduction fees, support for curatorial education, and the development of libraries and archives of the National Commission of Museums and Monuments of Nigeria (Shyllon, 2018). In a Joint Agreed Statement of the Cambridge meeting, the BDG emphasised that their work “does not imply that Nigerian partners have waived claims for the eventual return of works of art removed from the Royal Court of Benin, nor have the European museums excluded the possibility of such returns²⁴”.

Repatriation Case Study 3: The Return of the Makonde Mask to Tanzania



History and Significance

In 1984, a Makonde mask was stolen from the National Museum of Tanzania, Dar Es Salaam. The theft was reported to Interpol, ICOM and the Tanzanian police (Shyllon, 2013). These wooden masks are worn during initiation ceremonies for men and women, and represent the connection to past ancestors. They are worn when the newly initiated youths are welcomed back to their communities after a period of seclusion. They thus have strong cultural and religious significance²⁵.

²⁰ <https://www.theguardian.com/uk/2002/mar/28/education.museums>

²¹ <https://www.tropenmuseum.nl/nl/press-statement-meeting-benin-dialogue-group-1>

²² <https://www.modernghana.com/news/924239/benin-dialogue-group-removes-restitution-of-benin.html>

²³ <https://www.volkenkunde.nl/en/about-volkenkunde/press/statement-benin-dialogue-group-0>

²⁴ <https://www.volkenkunde.nl/en/about-volkenkunde/press/statement-benin-dialogue-group-0>

²⁵ <https://www.imodara.com/discover/tanzania-makonde-muti-wa-lipito-head-of-the-lipiko-helmet-mask/>

Repatriation

In 1990, a researcher visiting the Barbier- Mueller museum in Geneva, recognized one of the Makonde Masks on display there as being the one stolen in 1984. He immediately reported it. The museum had bought the mask in Paris in 1985. Although they immediately began negotiations for its return to Tanzania, they only communicated the conditions that would need to be met for the transfer of ownership to take place in 2002. No compromise could be reached, and in 2006 Tanzania filed a request for the return of the mask with the UNESCO Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or Restitution in the case of Illicit Appropriation. Still, no progress occurred, partly because the museum pointed out that Intergovernmental Committee only has the power to deal with requests addressed to it by Member States or Associate Members of UNESCO, so could not intervene in this case. The Tanzanian government accused the museum of acting “in bad faith” in that they did not check the provenance of the artifact, which had been reported stolen to Interpol, before purchase. However, Swiss law at the time set the time limit for the return of articles acquired in this way to 5 years²⁶.

In 2009 Tanzania agreed to accept the conditions for the return demanded by the Barbier- Mueller museum in 2002. There is some uncertainty about what these conditions were. Bandle et al. (2013) say that the conditions included that the mask should be “properly looked after”, but Shyllon (2013) records that the *Daily News* of Tanzania reported one of the conditions as a payment for storage charges be made to the museum for the time that they had it in their collection. Finally, after 20 years, the mask was “donated” in a “mask giving ceremony” in Paris in 2010.

Analysis and discussion

What these case studies demonstrate is that, even when there appears to be the international will to return the ownership of artefacts to their country of origin, the legal and institutional requirements may be prohibitive. In writing about the “donation” of the Makhode mask, Kwame Opoku (2010) says, for example, that,

“Perhaps we should not worry too much about the formulation of the agreement in view of the concrete result achieved. We should congratulate the parties concerned and hope that the many other African artefacts which are alleged to have been illegitimately acquired will soon be subjects of agreement²⁷”.

The other way of getting around legislation, as seen in the case of the Great Zimbabwe bird, is the “permanent loan” of the artifact – a method also proposed by the Benin Dialogue Group in the case of returning the bronzes to Nigeria for display in their new museum. It is noteworthy that, even in the case where there was a clear record of an artifact being stolen, there were legal barriers to formal restitution or return. How much more complex are cases where no documented paper trail exists? Despite Opoku’s (2018) assertion that “permanent loans” are unacceptable, they may be the only way, in some cases, in which the physical return of artefacts can be achieved.

In the “Study on the Establishment of the on-going Cooperation activities between the European Union and Africa with regard to Cultural Goods” commissioned by the African Union (AU, 2014: 74-5), a similar point is made:

“The issue of power relations and diplomatic wellbeing of relations seems to favour the arbitration and negotiation approach. The use of ‘permanent loan to the Government of Zimbabwe’ is a crafty way of avoiding undiplomatic and embarrassing words like ‘repatriation of

²⁶ <https://plone.unige.ch/art-adr/cases-affaires/masque-makonde-tanzanie-et-musee-barbier-mueller>

²⁷ <https://www.modernghana.com/news/275929/barbier-mueller-museum-signs-agreement-with-tanzan.html>

stolen cultural goods' back to their original country. Probably, the dinosaur fossils from a site in northern Malawi will be easily returned if such an approach is utilized, away from public exhibition of aggression in the name of litigations".

5. Restitution and Repatriation Options

"Restitution" means literally that an item will be returned to its legal or legitimate owner (Sarr and Savoy, 2018). Thus the term itself acknowledges the illegal and illegitimate circumstances under which it was obtained. Restitution thus implies not only a change of ownership, but also has political and symbolic meanings. Bienkowski (2013) makes a more nuanced distinction between restitution and repatriation as follows: Restitution involves return to legitimate owners based on property rights. Repatriation involves return to a country or sub-state group, based on ethical considerations. There are a number of possible options to activate restitution or repatriation of museum artefacts, many of which are not mutually exclusive. Indeed, it may be that a sequential, staged or multiple option approach may prove appropriate or more successful for ultimately eliciting repatriation from a particular source (artefact holding) nation museum. That said, some of the options outlined below are not wholly in the typical remit of work, competence or domain of museum staff. This is because the option may require substantial central governmental inputs or diplomatic leadership, action, or active support. Each of the options described in turn have different associated benefits, costs, and potential shortcomings in meeting a declared set of repatriation objectives.

For some cultural artefacts, unconditional physical repatriation may be deemed the only possible acceptable means of return, in which case the appeal on ethical grounds requires a strong underpinning moral argument. To persuade individuals, museums, groups or nations to do something without the application of any associated enforceable rules or the distribution of any actual incentives or disincentives is undoubtedly challenging. Yet, there are many policy contexts such as environmental causes and human rights issues where a moral case for action in one country can be persuasively formed by citizens, pressure groups and/or the government of another country. Multiple (and perhaps coordinated) country actions could even potentially work to heighten the force of moral suasion. Over time they may elicit concessions or greater transparency of the issue in focus and eventually change the climate of concern, such that more interest-affecting subsequent actions (for example, consumer boycotts) become more publicly acceptable and garner wider support in the requesting and, possibly, the holding nation.

Activating moral suasion would take the form of campaigns and media communications and could involve some supporting underlying behavioural analysis to increase effectiveness. Government diplomatic bodies and/or pressure group campaigns would be central to driving such activity.

Continuing in the domain of central governmental level diplomatic and negotiation channels, "issue linkage" could also be considered. Poast (2013) describes this as the simultaneous discussion of two or more unrelated issues but considered for joint settlement. Essentially, issue linkage is largely a bargaining tactic intended to both increase the probability of states reaching a negotiated agreement and also motivate states to sustain commitment to the eventual outcome of an agreement. So in the museum context, some concessions on cultural artefacts might be invited to yield, for example, some period of favourable trade terms, or progress in some completing defence sector contracts.

There are several options for repatriation, other than unconditional legal and physical return, examples of which are extremely rare. Alternatives are Mutually Beneficial Repatriation Agreements (MBRAs), digital repatriation, and touring. While not addressing ownership issues, such alternatives do increase access (acknowledging the public good nature of the artefacts), and can be a solution to the sometimes extremely protracted process of legal return, as discussed in the case studies above.

Mutually Beneficial Repatriation Agreements (MBRAs)

Such agreements are negotiated outcomes devised to help address cultural property disputes. By such agreements, likely previously looted or illegally exported cultural artefacts may be returned to the requesting nation (museum) over an agreed timescale. In exchange, the requesting nation (museum) offers on an agreed long-term loan basis or cycle of loans, other works of equivalent importance and interest to the holding nation (museum) or indeed potentially at some point in the future, the repatriated work itself for a fixed agreed period of exhibition. In this way, mutual benefits arise from the agreement to both requesting and holding nations (museums). A constituent element of the mutual benefit might also involve dropping formal legal charges of illegal exporting of cultural artefacts, though this might be considered as helping incentivise the continuation of illegal exporting of such artefacts (Falkoff 2008). Essentially, they provide a means by which more serious reform of museum acquisition practices is avoided.

Essentially MBRAs are a means to help bypass typically large and extensive litigation costs when a source nation (or individual owner) signals an intention to reclaim what they believe to be improperly acquired cultural property that is currently in possession of a museum or other location. There are a number of high profile cases where such agreements have been considered by some commentators to have been helpful in resolving some tough international cultural property disputes. In some cases, this would involve allowing museums to avoid potential scandal from theft and smuggling. If this can be countenanced, then positive benefits may arise from the goodwill and future cooperation (reciprocity in activities) that an MBRA may help foster.

MBRA Case Study: The Euphronios Krater.



This case study draws extensively on the work of Nosiglia (2012) who undertook this investigation as part of his postgraduate studies at the University of Oregon, USA. He sets out the details of a settlement between Government authorities in Italy and the Metropolitan Museum of Art (MMA) in New York, USA. This essentially allowed the MMA to be exonerated of charges for receiving looted and illegally exported antiquities. Among the high profile looted items identified was the “Euphronios Krater”, nicknamed the “hotpot” by the then director of the MMA, Thomas Hoving. The Euphronios Krater has been described as one of

the most significant museum acquisitions in a generation when publicly introduced by the MMA in 1972.

The Euphronios Krater is a 6th century (dated circa 515 B.C.) red figured calyx krater, a vessel thought to be used for mixing wine and water. It was painted by the highly celebrated Greek vase artist, Euphronios. The potter was a student of Euphronios called Euxitheos and both were members of the ‘Pioneers’ group charting a new and distinctive approach to vase painting. Tomb raiders (or *tombarolis*) discovered the Krater in 1971. It was seemingly used as a burial offering in an Etruscan tomb located near Cerveteri, outside of Rome, Italy. When found it was in pieces but in such good condition that it was feasible for it to be successfully restored. The *tombarolis* sold it to Giacomo Medici, an antiquities ‘middle man’, who in turn sold it to an art dealer called Robert Hecht, who had it restored in Switzerland. Apparently, Hecht had contacted several institutions, including the MMA, offering the work for sale. He was confident that he could get Dietrich Von Bothmer, the MMA’s Greek and Roman curator, to get Hoving to ‘acquire’ the vase for the MMA’s collection.

From the outset, the acquisition was clouded in suspicions concerning its' hazy provenance. Though the MMA had documents purporting to indicate legitimate provenance for the Krater from the art dealer Robert Hecht, this did not assuage suspicions of looted origins over the next four decades. The eventual revelation that the Krater was indeed looted meant that the MMA had no alternative but to return the work requested by government authorities from Sicily, Italy. Philippe de Montebello, the then director of the MMA successfully forged an agreement with the Italian authorities that essentially provided a formal dismissal of their complicity in sustaining the fiction that the Krater had a legitimate provenance. The MMA released a statement asserting that they rejected any accusation that it had knowledge of the alleged illegal provenance claimed by Italian authorities, but had decided to transfer various requested items as part of an 'extra-legal agreement' between the MMA and the Italian authorities. Further, they made clear that this decision did not in any way comprise a formal acknowledgement by the MMA of any form of civil, administrative or criminal liability for the original acquisition (looting), or the subsequent illegal holding of the requested items.

The MBRA agreement also provided an explicit statement by the Italian authorities waiving their right to legal action against the MMA in connection with the looting of the Krater and other requested items.

Digital repatriation

This approach to addressing a desire or demand for the return of cultural artefacts critically hinges on the assumption that digitized images and descriptive text can serve as an effective substitute for the physical return of those artefacts. The assumption is capable of empirical verification through survey exercises but if the assumption is found not to hold there still remains some potential positive aspects to a digital repatriation exercise. It may, for example,

- help raise awareness of the cultural significance of the artefacts
- stimulate reinvigorated research effort that may highlight other related artefacts of interest
- garner additional public support for campaigns for the eventual physical return of the artefacts.

Yet if the communities from which the artefacts were originally plundered are not strongly digitally engaged, then this would form an obstacle to harnessing any linked benefits from digital repatriation. An additional obstacle is the potential cost of such endeavours, particularly if dealing with substantial collections of work. For example, Crouch (2010) describes the enormous technical complexities and extensive resources required to digitize all of the artefacts and photographs in the Smithsonian National Museum of the American Indian such that it could be available to the wider community and original American Indian owners via online scrutiny. Resta *et al* (2002) also set out a digital repatriation approach to connect with indigenous peoples in a country. In an explicitly international context and with a single artefact focus, Hess *et al* (2009) detail the three dimensional (3D) digital documentation of a Western Solomons Islands war canoe. This is presented as a highly significant cultural heritage object originating from the Melanesian Southwest Pacific. The war canoe forms part of the ethnographic collections of the British Museum. The digitization project was intended "...to deliver a holistic virtual 3D reconstruction and multimedia interactive delivery of the boat for digital repatriation to the source community". That said, no indication is made in the subsequent body of literature as to the actual use made of this digitization endeavour by that source community. It is an open empirical question but if the use were very low then it would be a legitimate question to ask who actually benefits from such 'digital repatriation' and if it was value for public money.

Touring of artefacts

Touring exhibitions of plundered artefacts may form part of reciprocal arrangements that stand alone or are linked to MBRAs. Like digital repatriation, this approach to addressing a desire or demand for the return of cultural artefacts critically hinges on the extent to which a time limited tour of the artefacts back in their source country would serve as an effective substitute for the permanent return of the artefacts in focus. Again, the veracity of this assumption is amenable to empirical verification through survey exercises and even if found not to hold there remain some potential positive aspects to the touring, as in the case of digital repatriation. There is also a potential concern that for reasons of distance to exhibition venue, price and limited awareness, any such tour of cultural artefacts may not engage with the specific historical communities from which the artefacts were sourced or plundered.

6. The views of heritage professionals: Result of the survey and focus group discussion

In order to test some of the theory relating to the cultural value and repatriation in a South African context, an online survey and a focus group discussion were run.

6.1 Participant attributes

A range of professionals working in the area were invited to participate, including museum curators or collection managers, those working in private or government institutions dealing with the sale, promotion or protection of African cultural objects, and researchers.

The online survey was open for three weeks, and 39 responses were received between the 5th and the 25th of August 2020. The first question (after obtaining the informed consent of participants to report their anonymous responses) was: In what capacity do you work with cultural objects or artefacts? Slightly more than half (51%) of respondents described themselves as museum curators or directors, or collection managers. There were also representatives from public institutions dealing with the promotion and protection of cultural artefacts (23%), researchers in the field (15%) and private institutions (5%).

Table 3: Attributes of online questionnaire respondents

	N (39)	Percentage
Museum Curator, Collection manager, Directors	20	51%
Government institution dealing with the promotion and protection of cultural artefacts.	9	23%
Private institution dealing with the sale and promotion of cultural artefacts.	2	5%
Researcher (market or academic) in the field of art and cultural artefacts.	6	15%
University students	2	5%

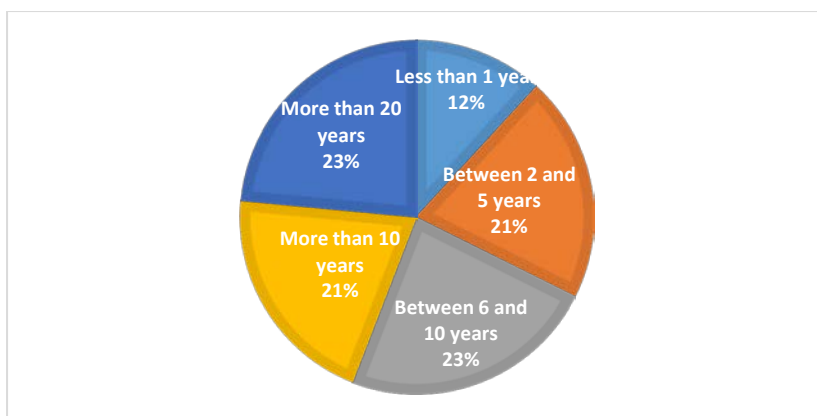


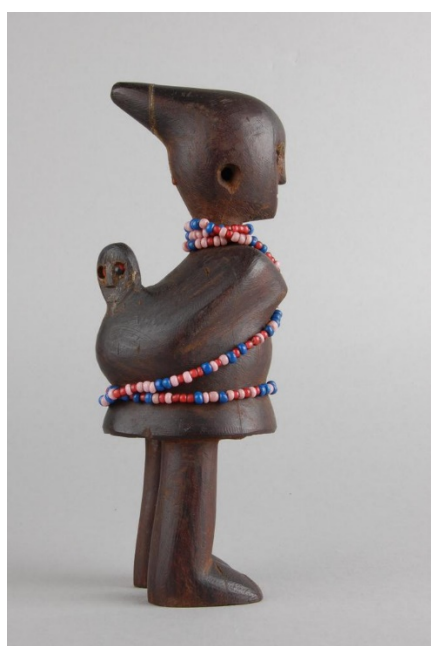
Figure 4: Years of experience of online questionnaire respondents

In terms of years of experience in the field, respondents represented many years of accumulated service, with 44% having worked in the area for ten years or more. All respondents were based in South Africa, except for one Zimbabwean museum curator.

Excluding the research team, and two students who requested observer status, there were 12 focus group participants, representing curators, museum directors, researchers, and public and private institutions. The focus group discussion was informal, structured loosely around the same questions as the online survey. It included the discussion of some online survey results. Broadly speaking (further discussed below), the focus group contributions were very similar to the results from the online questionnaire, providing a useful way of verifying, and expanding on, this data. For this reason, the results of both research methods are reported on together in the following sections.

6.2 The attributes of cultural value

In order to make the discussion of cultural value more concrete, a randomly chosen example of a South African cultural artefact currently held in the British Museum was chosen for discussion purposes. Below is the information given to respondents:



Description: Wooden figure of woman with child on back ornamented with cotton thread, resin? and coloured glass beads.

Production ethnic group: Zulu

Found/Acquired: South Africa: KwaZulu-Natal

Materials: wood, glass cotton resin (?)

Technique: beadwork

Dimensions: Height: 18.20 centimetres; Width: 5.50 centimetres; Depth: 7 centimetres

Location: Not on display

Acquisition name: Mrs R W Merrylees; Previous owner/ex-collection: Collected by Sir Theophilus Shepstone, whose secretary was Rider Haggard.

Acquisition date: 1939

Registration number: Af1939,36.4

Respondents were then asked, “On a scale from 1 to 10, where 1 is “Not very valuable” and 10 is “extremely valuable”, how valuable would you say the artifact is?”

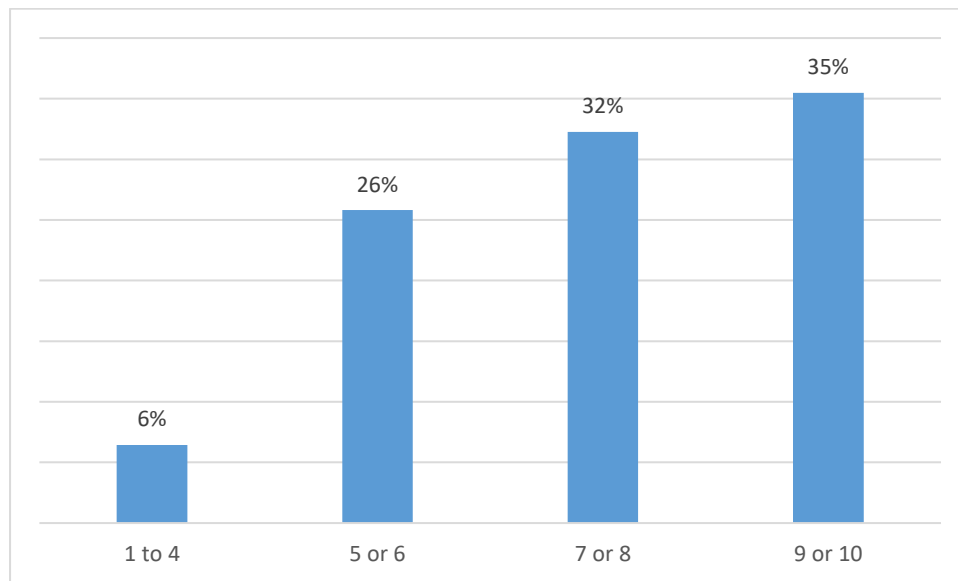


Figure 5: Value of the artefact used as an example in the online questionnaire

A follow-up open-ended question followed, “Considering this artifact, what are the things that make it more or less valuable, in your professional opinion?”

Attributes that made the object more valuable included its representation of Zulu culture and heritage (the traditional way in which women carried their children); its age and historical value; its rarity; and its potential educational or archival value. Some respondents also noted its aesthetic and artistic value, with one stating that “The sculptural artistry is very high in my opinion. The way the artist resolved the composition, very streamlined, yet expressive, yet practical. Beautiful finish.” Several respondents mentioned that its provenance, particularly the links to the collector, Shepstone, and his secretary Rider Haggard, made it a more interesting piece.

Attributes that made the object less valuable were mostly related to its lack of rarity or uniqueness, with some commenting that it was “of interest”, but not unusual, and that objects of a similar type were already in South African collections. Two respondents referred to its lack of authenticity, in the sense that such carvings were made to be sold, rather than for use by local people: “Carvings like this were made as curios to explain to outsiders (mostly those in the colonisers' metropolises) what traditional peoples 'looked like,' So this is a stereotypical image”.

Returning to the more theoretical discussion of the attributes that make up cultural value, and linking those to repatriation, the following question was asked: In deciding which artefacts should be the subject of repatriation, how important would the following characteristics of the object be? (Please respond on the 1 to 5 scale, where 1 means “not at all important, and 5 means “extremely important”).

Based on the literature review, and linked to the Gazetted description of objects of national cultural significance, the attributes were described as follows:

- Uniqueness or rarity: there are no other artefacts like this one.
- Historical significance: Age and historical associations.
- Fame, beauty or popular appeal.
- Authenticity: The object is original and unique, not fake, altered, or defaced.

- Symbolic meanings: The object conveys meaning and narratives linked to cultural identity.
- Monetary value: The object is worth a great deal of money if it should ever be sold.

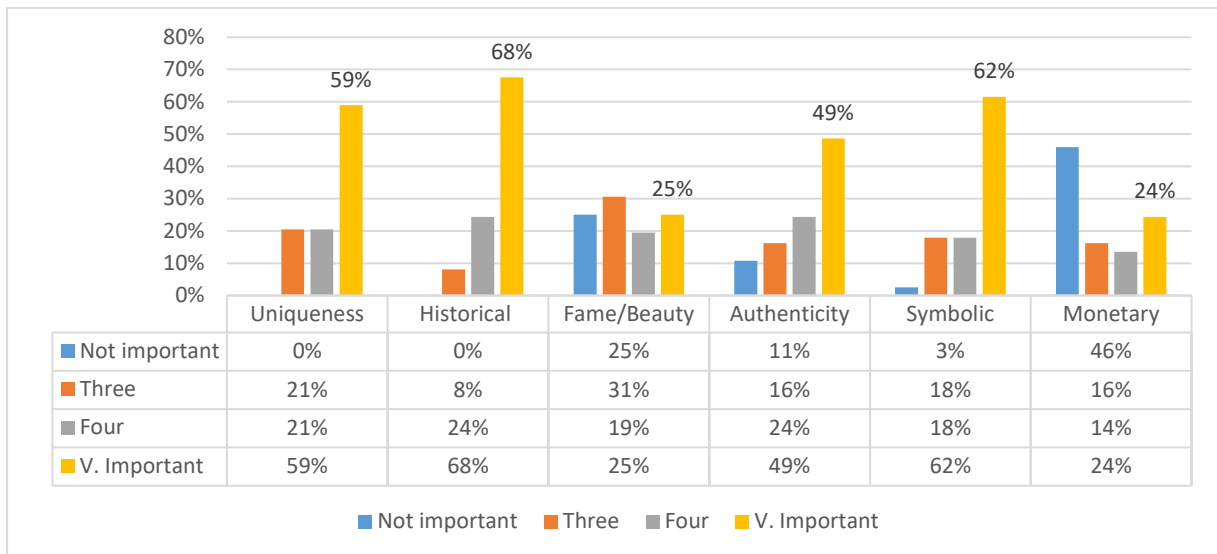


Figure 6: Importance of cultural value attributes

The most important attributes were very clearly historical value (68% rating it as very important), symbolic value (62% rating it as very important), and uniqueness or rarity (59% rating it as very important). Next most important was authenticity (49% rating it as very important), although some respondents noted that this was a contested and complex concept. Least important were attributes related to fame or beauty of the object, and its monetary value.

The categorical responses were followed by an open-ended question: Are there any other characteristics that you would consider important in determining if a cultural object should be repatriated?

About half of the respondents added attributes to the list. These were broadly in three groups: Those who wished to emphasise the importance of some objects to specific communities and histories (regardless of the other attributes); those who wanted to include the ethical and moral circumstances associated with the acquisition of the object; and those who mentioned the scientific or technical importance of the object (what it was made of, how it was made, if it represented a technical advance at the time), and how it might “fill a gap” in current collections.

The desire to include the circumstances in which the object was obtained as an attribute of cultural value and repatriation considerations became a strong theme for some respondents in both the online questionnaire and the focus group discussion, which became strongly apparent when arguments for and against repatriation were further explored. The distinction between the repatriation of human remains and cultural artefacts was also referred to:

“The human remains argument needs to be revisited... because there is a relationship between the object and the body when you talk about issues of repatriation and that argument cannot be left out.”

For example: “beads that were taken off a fallen African king or African queen... we now deal with the beads separately from the body from which the beads were taken. So we need to have a much more nuanced argument when talking about what that object means when it was taken through a colonial violent process” (Focus group discussant, 2020).

6.3 Arguments for repatriation

Following the questions relating to the value of the example artefact (the Zulu wooden sculpture), the next question was asked:

“The artefact was obtained during colonial times (1939) before the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (1970) put in place stricter guidelines on the required providence for legal cultural artifact acquisition. Would you consider this artifact a candidate for a repatriation request? Why or why not?”

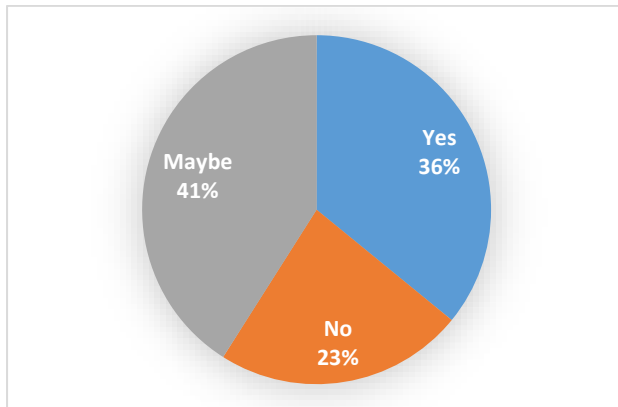


Figure 7: Is the example cultural artefact a candidate for repatriation

For those who felt that the object was not a candidate for repatriation (23% of respondents), reasons given for this were the object’s lack of uniqueness or rarity (that there are many examples already in South African collections); its lack of authenticity (produced for sale to "tourists"); its lack of historical significance ("The object does not tell a story"); and a lack of certainty that it would be properly "document and cared for" in South Africa.

Those who felt it might be a candidate for repatriation made up the largest group (41%). Many said that they would need more information about the specific significance, history and context of the acquisition: "It appears that the specimen is being well curated and cared for. The question is whether it was unethically obtained. If it was purchased or swapped, then the deal was an agreement between the relevant parties and is valid".

This group also said it depended on the presence of similar objects already in South African collections, as well as the value and significance that the particular community might place on the object (even if it was not of national significance).

36% of respondents said they would consider the object a candidate for a repatriation request. As found in other responses (and also in the "maybe" group), many of these respondents referred to the way in which the artefact was obtained, regardless of its other value characteristics. "We must demand all items that were stolen. This is our heritage." Some felt that, even it was legally bought, "it was transferred into British ownership under colonial pressures", and should thus be returned.

Other referred to its potential historical significance, also related to who collected it: "The link with Shepstone, whose 'native reserves policy' profoundly impacted on our country's history makes it a significant object". Some respondents also pointed to community significance and symbolism, even if the object was not of national importance, and making it accessible to people in the region where it

was produced. Linked to this were mentions of its potential research and educational value in a specific regional (KwaZulu-Natal province) context.

While no new categories of value were identified (other than those discussed in the literature review and in relation to what determines if something is part of the “national estate”), the results reveal the great importance of the context in which things were acquired. It also revealed two extreme positions, where repatriation decisions would not depend on the characteristics of the object itself: 1) The first is those who demand repatriation on the grounds that any object, however obtained, acquired during periods of colonial rule should be returned. Such objects are regarded as “stolen” and must be returned to the rightful owners as a matter of justice; 2) The second category were those who argued against repatriation of any object on the grounds that South Africa does not have the resources to properly curate and protect them.

A wider variety of cultural artefacts was discussed in the focus group, but very similar points of consideration emerged, relating to its historical and cultural value and uniqueness.

In relation to a Gerard Sekoto painting “Boy with a Candle” (1943) currently in the Smithsonian National Museum of African Art, focus group participants talked about the significance of the work in representing the art and history of the time - “something beautiful was coming out of the black townships”; “Truly unique and resonates with so much of our history.”

Another artefact discussed was A letter signed by Steve Biko from 1973, addressed to the Magistrate of East London, requesting leave to travel in order to visit his wife. The letter was auctioned online in Britain in 2017 by an unknown seller. In relation to its value, a focus group participant stated:

“The Biko letter is something which cannot be reproduced. The maker has died and became part of the violent dialogue of the apartheid era which is still being researched and addressed.”

Despite the value of these unique artefacts in a South African context, focus group discussants did recognize that there was value in having them as part of the collections of international museums:

“In the context of artworks, you want some of these paintings to be in the international collections because that is one of the goals of most visual artists that are working, is for their works to be collected by these institutions.”

In this case, there may be arguments against repatriation, and it is to these that we now turn.

6.4 Arguments against repatriation

Returning to broader, conceptual issues related to repatriation, some of the arguments against repatriation were explored in the online questionnaire, starting with the idea of the “universal museum”:

“UNESCO (1982) says that some parts of world heritage value “Cannot be confined to one nation or one people, but is there to be shared by every man, woman and child”. Foreign museums that have African cultural artefacts in their collections argue that some cultural heritage objects are so important to humanity that it is justified to keep them, even if obtained during colonial times or times of war, in order to promote or protect this value. How would you respond to this argument? Why did you choose this option?”

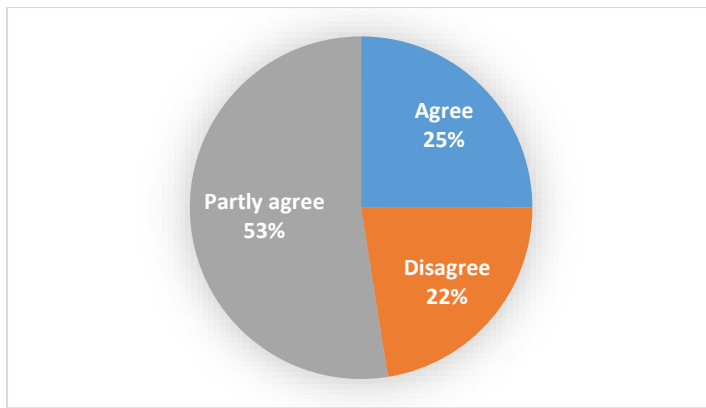


Figure 8: Responses to the idea of the "universal museum"

The most frequently cited reason for those who agreed with the idea of the “universal museum” and that some objects should not be repatriated (25% of respondents) was the perceived inability of South African museums to effectively protect and preserve the artefacts once they were returned. South African museums were described as “grossly under-funded” and “incompetent in managing valuable cultural resources” and being “in a downward spiral”. While it was sometimes pointed out that there are exceptions (both in terms of museums themselves, as well as in some dedicated and component staff), respondents in this group expressed worries about collections being “looted, stolen, misplaced, misfiled” and being subject to “looting, theft, neglect and consequent destruction”.

Another interesting group in this category spoke to the increased value and prestige of objects in a particular class, if objects representative of the class were part of the collections of international museums. As one curator put it: “Our museum has worked hard to position traditional attire and adornment as art in order to liberate these traditional art forms from being considered only valuable as objects of anthropological study. Like contemporary South African art, it would be prestigious if we had representations of these art forms in Art and design collections around the world”. Linked to such responses were others who mentioned the large number of people who have access to artefacts in universal museums.

On a more negative note, some respondents cited the lack of interest by local communities, South Africans in general, and curators in displaying and visiting exhibitions of historical African artefacts.

“There are critical questions related to the conditions into which artefacts might be returned; whether African institutions have either the capacity or inclination to look after them; and whether the local communities to which they are returned have any interest in engaging in 'reconfigured' post-colonial displays of these artefacts”.

For those who disagreed with the universal museum argument, the most common reasons related to the false claims of “universality”, especially in relation to the fact that most Africans lack the resources to travel to such museums. Others felt that the display of such artefacts represented an ongoing power dynamic in that they were seen as “war trophies”. In terms of value, some respondents felt that African countries could use the artefacts more effectively to “tell their own stories” and that the objects would have more value and meaning to people in the country of origin.

For the group who partly agreed with the idea of universal museums, there was acknowledgement of the value of “sharing knowledge” and reaching larger audiences. However, this was tempered with concerns about ensuring the accessibility of objects for both research and general public viewing, and careful protection and curation of the object (in particular, that its context and significance should be

understood). There were also those who felt that artefacts that had been unethically obtained (“looted” or “stolen”) should be returned. Members of this group also indicated that repatriation could be a time-consuming process, involving changing legislation in some cases, and that could cause conflict. Even those who felt strongly that objects should be returned were open to various options, such as legal return, or long loan. The importance of the object itself was also a factor:

“I feel that South African heritage objects in foreign institutions can be of large benefit to South Africa. However, it is important that objects be examined on a case by case basis. Some objects may be too significant to South Africa and should be returned”.

To further explore concerns about repatriation, respondents were given the following information:

Some African curators and collectors (from Nigeria) have publically stated that they would not support the physical repatriation of cultural artefacts from foreign museums (even if ownership was legally transferred back to the African country) because:

- (i) The focus of many African museums has shifted to more contemporary works, rather than historical artefacts, and audiences and curators are not very interested in heritage works.
- (ii) Some museums in Africa may not have the resources to properly curate and preserve the artefact;
- (iii) The artefact is more valuable (in monetary terms) in foreign locations than in Africa.
- (iv) There is a concern that, after repatriation, the artefact may be sold back into western art markets to raise funds for other uses.

Please tell us what you think about these concerns, given your experience in the sector?

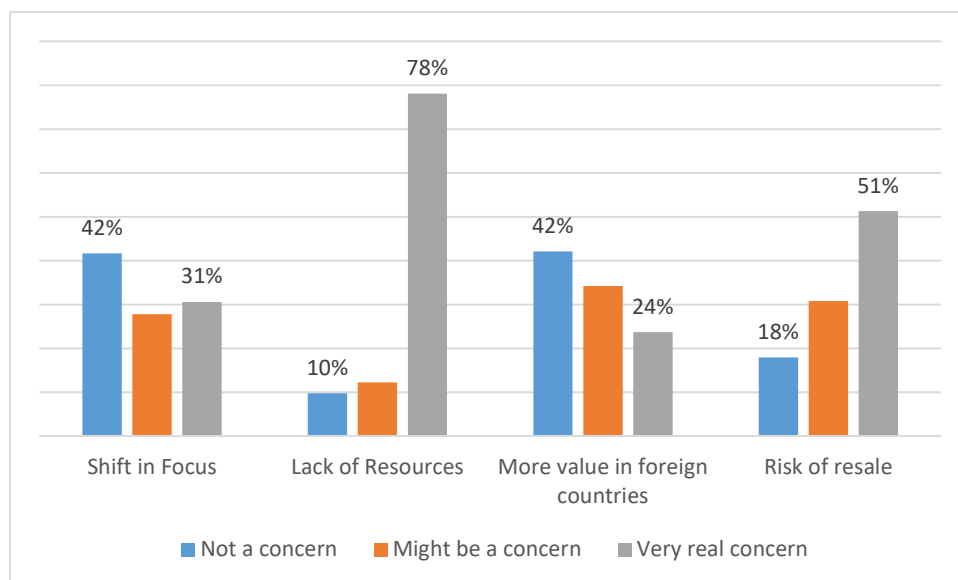


Figure 9: Responses to arguments against repatriation

As shown, the greatest concern about repatriation was the lack of resources to properly curate and protect returned artefacts (78% of respondents indicated that this was “a very real concern”), followed by the risk of having them sold back into foreign markets (51%), given their greater monetary value in these contexts. Smaller groups were worried about a lack of interest in heritage, or that the artefact is more valuable in the foreign location (42% indicated that this was “not a concern”). When shown

these results, focus group participants generally also agreed with them, particularly those related to concerns about the lack of resources of museums:

“One of the biggest problems with our national and municipal museum groups and collections is that they simply don’t have the funding to be able to put those artworks on display because of the insurance. I think something that would go a long way to support those institutions to actually be able to make better use of their existing collections, and therefore bring that message to the public, is for the government to actually underwrite the insurance of those collections, which is a policy that is certainly held throughout Europe, the UK and I think quite a number of American institutions as well” (Focus group participant, 2020).

6.5 Repatriation Options

To explore which repatriation options were most preferred, respondents to the online questionnaire and the focus group were given the information below, which briefly summarises the various repatriation options uncovered through the literature review. Acknowledging that the repatriation options would depend on the nature of the artefact in question, three categories of objects were also described, ranging from unique objects of national significance (Category 1) to objects of interest, but not unique or nationally significant (Category 3).

There are various ways in which repatriation can occur:

- (a)** Arranging a fixed time period for a touring exhibition of the object(s) to the country of origin, while the foreign museum retains legal ownership.
- (b)** Arranging a digital (online) exhibition of the object(s) accessible in the country of origin, while the original object remains in the foreign museum.
- (c)** Mutually beneficial repatriation agreement (MBRA): The foreign museum holding a specific artifact agrees to return it to the country of origin in exchange for the country of origin providing other artefacts of equivalent value on a long-term loan basis to the foreign museum.
- (d)** The legal ownership and intellectual property rights are returned to the country of origin, but the artifact itself remains in the foreign museum on a long-term loan basis.
- (e)** Arranging the unconditional legal and physical return of the object(s) to the country of origin.

If one could describe the importance of cultural heritage objects in three broad categories

Category 1: A unique object of national significance, that could be argued to be part of the national estate.

Category 2: An object of cultural, aesthetic and historical importance, but not deemed to be unique.

Category 3: An object of cultural, aesthetic or historical interest, but not unique or particularly important.

Following this information, respondents were asked: On a scale from 1 to 5, where 1 means “not acceptable at all” and 5 means “most acceptable or preferred”, please rank the acceptability of each of the repatriation options for Category 1, 2 and 3 objects.

Results presented below show the percentage of respondents for each category of objects who rated particular repatriation options as “unacceptable” (1 or 2); “acceptable” (3) or “most preferred” (4 or 5).

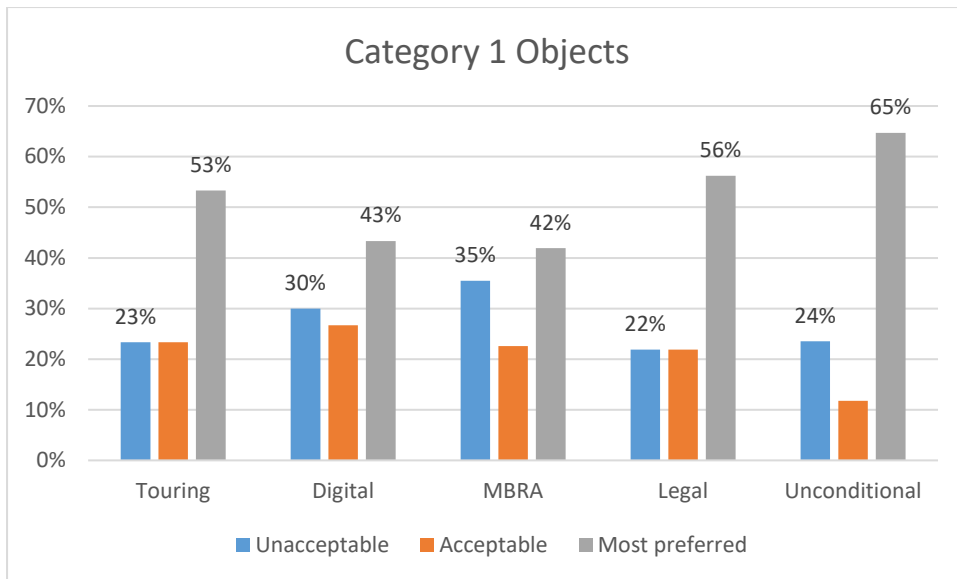


Figure 10: Preferred repatriation options for Category 1 objects

For category 1 objects (unique artefacts of national importance), the option most frequently chosen as most preferred was, unsurprisingly, unconditional legal and physical return (65%), followed by legal, if not physical, return (56%). This result clearly speaks to the importance of ownership of such objects reverting to the country of origin as a matter of preserving and owning their cultural capital. The small group of respondents who regarded these options as “unacceptable” (22% in the case of legal return, and 24% in the case of unconditional return) were those who had misgivings about the ability of the country to properly protect and curate objects.

A surprisingly high percentage (53%) also indicated that touring would be an acceptable option, speaking to the importance of enabling access to the artefacts by local populations. Smaller groups were positive about options such as digital repatriation (43%) and mutually beneficial repatriation agreements (MBRAs).

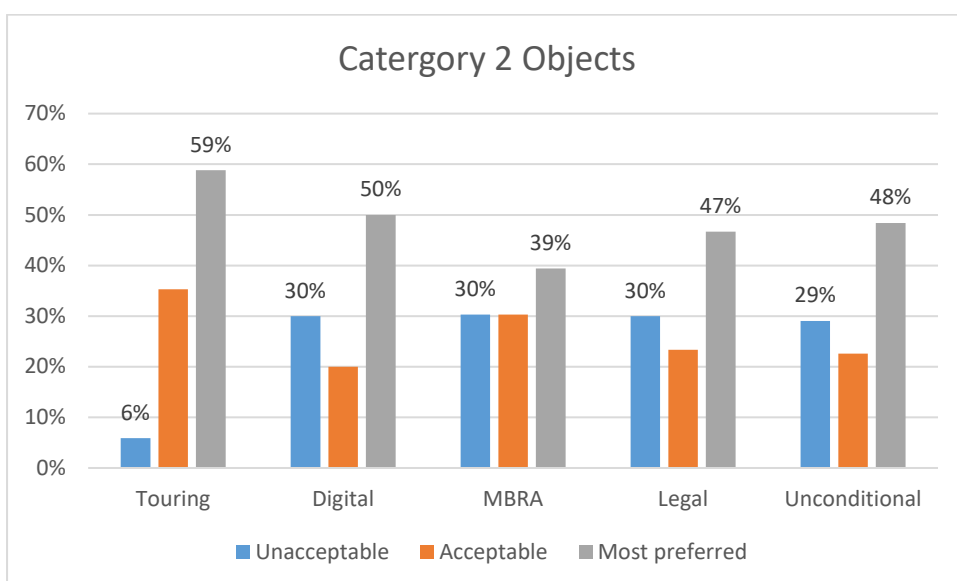


Figure 11: Preferred repatriation options for Category 2 objects

For category 2 objects (important, but not unique), the focus shifts to access, rather than permanent return and ownership. In this category, the largest groups of respondents chose touring (59%) and digital repatriation (50%) as most preferred. About half of the respondents still indicated that legal and unconditional return were their most preferred options.

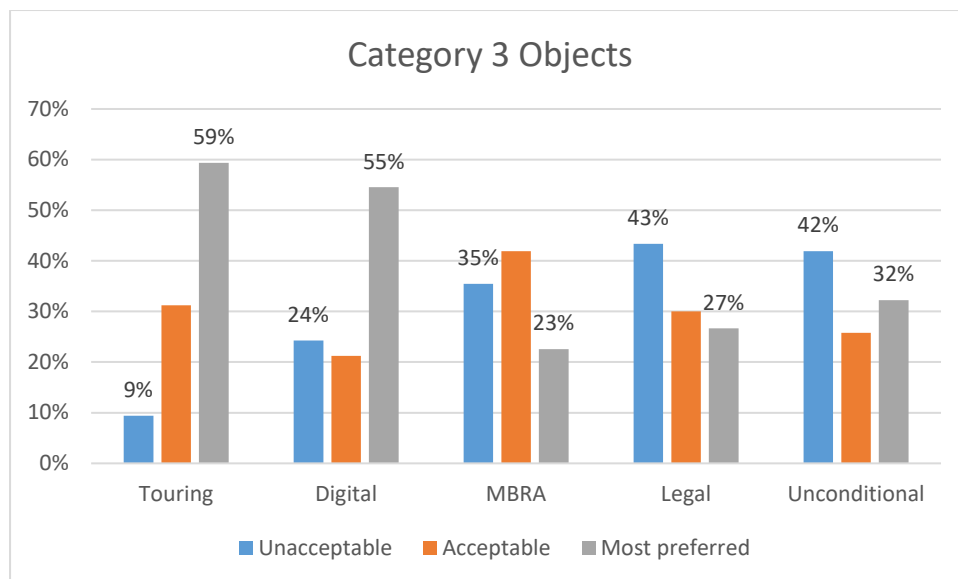


Figure 12: Preferred repatriation options for Category 3 objects

For category 3 artefacts (of interest, but not unique or of national importance), the focus shifts further towards access (touring, 59%; and digital repatriation, 55%), and quite significantly away from ownership (legal, 27%; unconditional 32%). This is also indicated in a marked increase in those who would find legal or unconditional repatriation unacceptable.

The focus group participants were shown these results, and agreed that they could be regarded as reasonable, although there was a small group who felt that the only acceptable option was unconditional return: “I don't think that there should be conditions for return of cultural artefacts” (Focus Group Participant, 2020).

From a repatriation point of view, what these results indicate is that, especially for category 2 and 3 objects, there is more of a focus on access through touring, or through digital archives, than on ownership. Even for Category 1 objects, there was a surprisingly high willingness to consider options other than unconditional repatriation, even amongst those who thought repatriation should take place. This opens the way for potential negotiation with foreign institutions.

6.6 South African artefacts and repatriation experiences

The question was asked: To your knowledge, are there any South African cultural heritage objects in foreign museums that should be returned? Most (62%) of respondents to the online survey did not know of any South African artefacts that could be subject to repatriation requests. For most of those who did think there were such objects, they were non-specific, including such responses, relating to cultural objects collected during colonial times, “traditional attire”, human remains and grave goods. The only specifically mentioned objects were the Cullinan Diamond (now in the UK), “Xhosa beads that are currently at the Smithsonian Institution in Washington DC in the USA”, and the Beauchamp-Proctor Military Medals bought by Lord Ashton from David Mitchell”.

The lack of specific knowledge about South African artefacts that might be subject to repatriation was also reflected in the relatively small group of heritage professionals who had any experience of

repatriation as part of their professional work. More than half of the respondents to the online questionnaire had had no experience of such repatriation deals at all. The next largest group (about a third) had been involved in touring exhibitions, and about 15% had been involved in digital repatriation projects. Only one person each mentioned being involved in unconditional return and MBRAs.

A follow-up question was posed: Which of these options have you (or your institution) actively considered, but not taken through to completion?

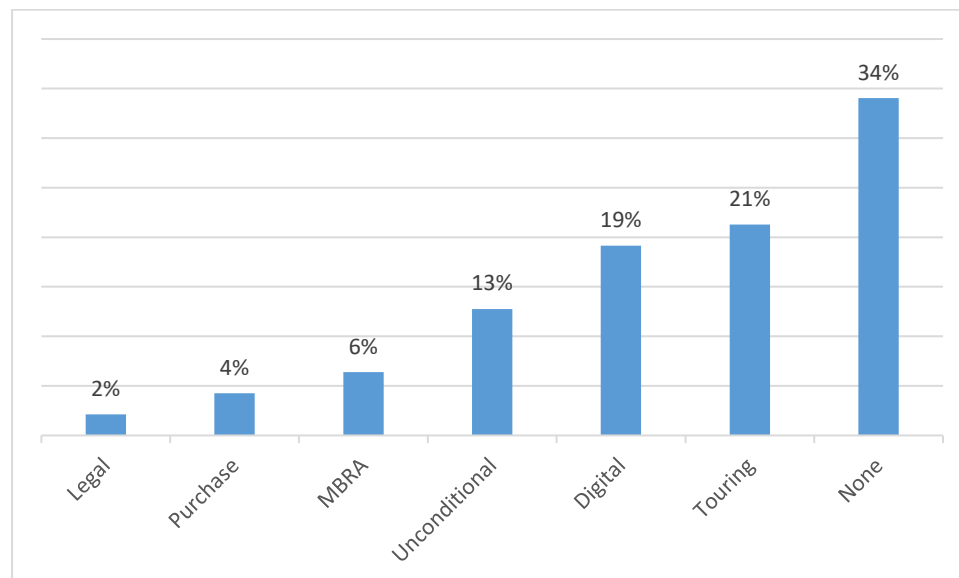


Figure 13: Repatriation options considered by South African heritage professionals

About a third of respondents had not considered any repatriation options. The next largest groups were touring (21%) and digital repatriation (19%). A new category supplied by respondents was the purchase of South African artefacts from foreign dealers, for which funding needed to be raised. In both the focus group and the open-ended questions of the online questionnaire, a small number of respondents mentioned that South Africa itself may be the holder of artefacts that were subject to repatriation requests from other countries. In both cases, the Great Zimbabwe bird (discussed earlier as a case study) that is currently in South Africa, was raised.

Only two people gave reasons for uncompleted or unsuccessful repatriation attempts. In one case, the respondent reports raising the matter informally with a foreign government (in their position as the director of a South African museum), but that the matter was not followed up when it did not meet with initial enthusiasm. In another case, reference was made to “David and Goliath”, but it is unclear if this refers to a specific case, or to the difference in power between African countries and countries with African artefact holdings in their museums.

Finally, respondents to the online questionnaire were asked: Would you or your institution be interested in receiving specialist advice and support in order to pursue any of these repatriation options?

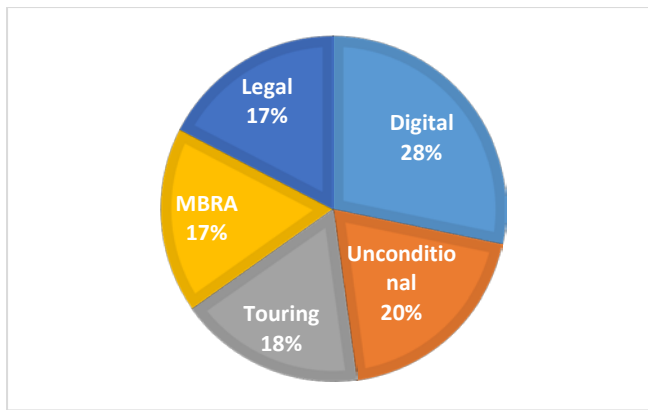


Figure 14: Interest in advice on various repatriation options

For 48% of respondents, repatriation was not considered part of their work, and while they may be interested in the debates, they were not directly involved. For the rest of respondents, the largest proportion would be interested in receiving more information about digital repatriation options (28%), followed by unconditional return (20%), with smaller groups being interested in the other options.

Focus group participants were asked about their knowledge of any list of South African artefacts that might be subject to repatriation requests, and whether a useful first step in taking things forward might be the construction of such a list or database.

While the suggestion of a database seemed to receive general approval as a first step, concerns were raised about who would determine what artefacts should be included.

“Who contributes to that list needs to be inclusive of people and communities outside of museums, artworks etc. It has to be driven by public and academic interest value.”

“What is the will? What is the drive? Who is pushing for the repatriation?” (Focus Group Participants, 2020).

It was pointed out that different categories of objects, as discussed in the focus group, required different kinds of knowledge and expertise to determine their value, and also that such decisions would always ultimately be subject to value judgements. The importance of considering the context in which they were acquired was also raised again.

Finally, the focus group participants were very aware of the practical difficulties of repatriation related to both legal issues and resources required:

“What is the policy and legislative environment? What is the incentive for an institution in Europe or in America who has an object of national significance that we want back? If there are no policy instruments or no legal instruments to compel these institutions to do anything, then it becomes difficult because it has these huge funding and resource implications because those institutions without those objects would face funding challenges because then their main attractions are not there anymore. So we need not just national but international instruments within the ambit of UNESCO and others.”

7. The way forward for South Africa

7.1 Linking Arguments for Repatriation and Repatriation Types

The arguments for the repatriation of African cultural artefacts rest on three main pillars:

- Justice and moral rights of ownership
- Social and cultural significance and value
- Economic values

In the first case, there are those who would argue that the only way forward is the unconditional legal and physical return of the object, or at least the legal return (in the sense that the ownership of the object is acknowledged as the African country, even if it physically remains in the foreign museum). The review of case studies, as well as engagements with heritage professionals as part of this research revealed that there is a group who regard all heritage objects acquired during colonial times as “looted” or “stolen” and demand their return regardless of the significance of the object, or the conditions under which it was obtained. Unfortunately, as the case studies and review of international laws and practices have shown, unconditional, or even legal, return is very seldom achieved, and can delay any kind of agreement for decades.

Table 4: Linking arguments for repatriation to repatriation types

Arguments for repatriation	Main Value sought	Potential Repatriation Options
Justice and moral rights of ownership	Acknowledgement of ownership; Redress for past injustice.	Unconditional or Legal Return
Social and cultural significance and value	Intrinsic and Social value through access to enable appreciation, education and research	Unconditional return; Permanent Loan; Digital Repatriation; Touring, MBRAs
Economic values	Financial value (through tourism) and reputation (increasing grants)	Unconditional return; Legal return; Permanent Loan; Touring; MBRAs

In the second case, the value of the object to the people of the country of origin is argued to be greater than to those in the foreign country. This is particularly the case with objects of important cultural or spiritual significance (such as religious or funerary goods), or related to kings and queens. Some objects of “national importance” may be regarded as part of the cultural capital of the country and of great importance to the heritage and identity of its people (as in the case of the Great Zimbabwe Birds). Arguments about the cultural significance and meaning of an artefact are directly linked to access – while “universal museums” argue that they are open to all, they are *de facto* not accessible to the vast majority of African people, or researchers. The main values sought in this case are the cultural, education and research activities and appreciation by people in the country of origin. Repatriation options that could enable these values include Unconditional return, but also Permanent Loan, Digital Repatriation, MBRAs, and Touring (which provides at least temporary access).

A less often used argument is the economic one – that the physical location of significant cultural artefacts contributes to the national and international prestige of museums, which attracts tourists and research grants. The main values sought in this case are financial (and possibly those related to research status). Repatriation options (other than unconditional return), may include legal return with

the payment of royalties to the country of origin; Permanent Loan; Touring (if funds are shared); and MBRAs.

As indicated in the results of the online questionnaire and focus group with heritage professionals, the type and cultural significance of the object is also important in determining which kinds of repatriation options are acceptable. For objects of national significance, for example, issues of ownership are dominant, leading to unconditional and legal return being most preferred. For objects that are interesting and significant, but not unique, access is most important, opening the field of possible repatriation types that would be regarded as acceptable.

As noted in both the AU report (2014) and South African policy, negotiated returns are regarded as preferable to taking a legal route. As demonstrated in the case studies, repatriation options that do not require legal return, even if the object is physically returned, tend to be more fruitful. It is acknowledged, however, that such repatriation options do not satisfy the moral and ethical arguments for the return of heritage objects from former colonial powers or those taken during times of war.

7.2 A way forward

Recommendation 1: At present, there is no list of significant South African cultural artefacts held outside the country. A potential starting point is thus to start such a database, as has been done in the case of the Kenyan online International Inventories Programme. SAHRA has a detailed online database and GIS (Geographical Information Systems) mapping facility that tracks heritage sites and objects within South Africa. With the additional resources, this platform could be extended to include international holdings. Private institutions and NGOs (like the Ifa Lethu Foundation) could also be invited to contribute.

Recommendation 2: A challenge with recommendation 1 is deciding what to include in the database, or (if a broad approach is taken to the database), which artefacts should be subject to repatriation requests. South Africa already has a comprehensive description of the attributes of an artefact regarded as part of the “national estate”, and there was a relatively high level of agreement amongst heritage professionals on what these attributes were, and how important they were (see section 6 of this report). It is recommended that engagements like this be used to develop a scoring system that could be used to divide artefacts into categories (similar to those proposed in section 6.5), via a series of expert panels, to help to answer the question of what should be repatriated.

Recommendation 3: An important recommendation of the AU report (2014:75) is that AU member states should individually ratify existing international conventions related to the protection of cultural heritage, as well as the Charter for African Cultural Renaissance (2006), which has provisions for cultural heritage protection. Especially for those wishing to pursue the legal route, having such documentation in place will be important, as demonstrated in the case study of the Makonde Mask.

Recommendation 4: One of the most frequently cited arguments against repatriation (by foreign museums, but also by heritage professionals themselves), was the lack of resources to properly curate and protect the artefacts that may be returned. This refers to both the financial capital needed, as well as the human capital (skills and experience). As recommended by the African Council of Museums (AFRICOM) as well as the AU report (2014), the digitization of South African museum archives will be an important step in both demonstrating the ability to curate valuable collections and in ensuring the proper curation of any repatriated items. A reprioritization of resources for training and equipment would be needed for this project.

Recommendation 5: Repatriation requests and negotiations are complex, and cut across the remit of various private sector and government departments. To take the project forward effectively, the

establishment of an inter-ministerial task team to drive cooperation towards the repatriation of artefacts of national significance held in foreign collections is recommended.

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