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Restitution of Looted African Artefacts and the Legacy of Folarin Olawale Shyllon: A Reflection

*Es Nwauche**

The Late Professor Folarin Olawale Shyllon¹ was steadfast in his scholarship and advocacy for the restitution of looted African Artefacts scattered in private collections and museums across Europe and America. He was not the only one engaged in this critical task. However, he was one of the very few who dedicated a lifetime of radical advocacy tempered by the realism of international law and politics. Late Professor Shyllon was convinced of a simple proposition of a fundamental moral obligation on all to return the property of other citizens and communities in our possession. In Africa, these properties were looted as part of the pillage and destruction of the colonial enterprise. Accordingly, it would have been strange that post-colonial Africa would not find it disconcerting and disingenuous that international law and politics would find all manners of strategies and devices to defeat or delay the realization of the most fundamental moral proposition that we return what is not ours in our possession. Nothing seemed to motivate Prof Shyllon as this proposition. A few years to his demise and after decades of scholarship and advocacy, he wrote that:

“ In 1897, a great tragedy befell the kingdom of Benin when a British punitive expedition looted the treasury of treasures in the royal palace and plundered artifacts including those of great spirituality to the Bini people. And although this is often glossed over or never mentioned the

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¹ Professor Folarin Shyllon died on January 17 at the age of 80.

so-called punitive expedition entailed "the death of untold numbers of its [Benin City] inhabitants". The Oba where he died. Benin kingdom is now part of Nigeria and, since Independence in 1960, Nigeria and also the Benin Royal Court have been anxious for the return of iconic and spiritual items among the plundered cultural objects. The efforts have until recently been unsuccessful... Various arguments have been used to dismiss the requests for return. They include the assertion that public international law at the time permitted such seizures and the contention that it is important to preserve the status of 'universal museums' in the various European countries where such treasures are held. These arguments ignore the concepts of what is right and wrong, and the need for ethics-based repatriation.²

Late Professor Shyllon was engaged in a profoundly personal and emotional scholarship for the restitution and reparation of looted African artefacts. He mirrored a kaleidoscope of raw emotions such as elation, excitement; disappointment; outrage; frustration; bewilderment at the strange and often disingenuous arguments, principles, and justifications through which Western countries, private collections, and museums continue to house and hold on to looted artefacts. There are many of his articles where these emotions are in full display, but for several reasons, his 2014 article published in *Art Law and Antiquity* and titled "Repatriation of Antiques to Sub-Saharan Africa: The Agony and Ecstasy"³ is outstanding. For example, this article captures the harrowing violent, and fatal context of the looting of artefacts:

" In 1897, the British invaded the Benin Kingdom in today's Nigeria and the palace of the Oba (King) where some tens of thousands of works of art in wood, ivory and bronze were kept, was looted and eventually burnt down."⁴

"The 1937 plunder of the Aksum Obelisk by Italian troops who dismantled it and took it to Italy as war booty is well known; less publicised in the public imagination is the pulling down and shipping to Rome of the Statue of the Lion of Judah"⁵

Prof Shyllon was unrelenting in his advocacy that African States use the limited functionalities of treaties to ensure the return of looted artefacts. In a 2000 article titled "The Recovery of Cultural Objects by African States through the UNESCO and UNIDROIT Conventions and the Role of Arbitration"⁶, he lamented the need for African States to take advantage of international instruments in retrieving looted artefacts. First, he reported on the paucity of African States who had become State Parties to the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. As at the time of writing of that article, only twenty (20) States had become State Parties of a Convention that had come into force in 1972. At present, there are Thirty-Four (34) African State parties to the UNESCO Convention of the One Hundred and Forty (140) State Parties in 2020. In the 2000 article, he urged African States to become State parties to, and take advantage of the UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects adopted in 1995, which also came into force on April 1 2019. As at the time of the 2000 article no African State was a state party. In 2012- when two African States- Nigeria and Gabon- had become UNIDROIT State Parties, he addressed the importance of the membership of African States in an article titled "Why African States must Embrace the 1995 UNIDROIT Convention"⁷ At present, other African States like Egypt South Africa Burkina Faso, have become State Parties to the UNIDROIT Convention which appeared a viable alternative to the tepid provisions of the 1970 UNESCO Convention⁸, that for long was shunned by European States⁹ whose museums and private collections were in

⁵ Ibid, p. 123.

⁶ [2000] (5) *Uniform Law Review* 219-240.

⁷ 2012 17(2) *Art Antiquity and Law* 135.

⁸ Article 7(b) of the 1970 UNESCO Convention required State Parties to prevent the import into their territory of cultural property stolen from another country and listed in an inventory from a time both countries of origin and host country of the artefact were State Parties to the Convention.

⁹ The United Kingdom ratified the 1970 Convention in 2002; Germany in 2007; Belgium and Netherlands in 2009.

possession of and exercised (questionable) property claims to these artefacts. Neither the 1970 UNESCO Convention nor the UNIDROIT Convention has been of much assistance to African States a fact that late Professor Shyllon acknowledged in many of his articles. For example, in "Restitution of Antiquities to Sub-Saharan Africa: The Booty and Captivity: A Study of Some of the Unsuccessful Efforts to Retrieve Cultural Objects Purloined in the Age of Imperialism in Africa"¹⁰ he chronicled unsuccessful attempts to retrieve 'Benin Bronzes'; 'Ife Bronzes and Terracottas'; and "Treasures of Maqdala". He also celebrated the return of Makonde Mask from Switzerland¹¹ as a righteous conclusion. He had almost a decade earlier criticized an arrangement whereby Nigeria allowed France to keep for 25 years (renewable) three (3) Nok objects that were illegally exported from Nigeria.¹²

There is little doubt of the acute awareness of the limp capacity of international law to assist African States in all the works of Prof Shyllon. That awareness is manifest in "The Rise of Negotiation (ADR) in Restitution Return and Repatriation of Cultural Property: Moral Pressure and Power Pressure"¹³ He believed in multilateral and bilateral negotiations towards the return of looted artefacts but urged African States to '...stop lending items from their museums to western museums'¹⁴ as a fitting response and bargaining chip to the '...contemptuous ignoring of the diplomatic and courteous demands for the return of African countries antiquities'.¹⁵ The consequences of the incapacity of international law and the reality of moral suasion is evident in Professor Shyllon's reports and scholarship about the Benin Dialogue Group (BDG) that the National Commission established for Museums and Monuments to 'start an open dialogue on the accessibility of art treasures of the Benin Kingdom to Benin People and other Nigerians'.¹⁶ A contentious point in the BDG deliberations was the proposal that European Museums would lend looted

¹⁰ [2015] (20) *Art Antiquity and Law* 369.

¹¹ See F Shyllon "The Return of Makonde Mask from Switzerland to Tanzania- A Righteous Conclusion" [2011] (16) *Art Antiquity and Law* 79.

¹² See F Shyllon "Negotiations for the Return of Nok Sculptures From France to Nigeria- An Unrighteous Conclusion" [2003] (8) *Art Antiquity and Law* 133.

¹³ [2017] (22) *Art Antiquity and Law* 130.

¹⁴ Ibid, p. 137

¹⁵ Ibid.

¹⁶ See F. Shyllon "BENIN DIALOGUE GROUP: Perhaps no Longer a Dialogue with the Deaf! University of Cambridge Students to the Rescue!" [2017] (22) *Art Antiquity and Law* 299.

Benin bronzes to Nigeria as part of the Benin Plan of Action adopted at the third meeting of the Benin Dialogue Group in Benin in February 2013 of '...creating an enabling environment for exchange, joint exhibition and loans in both directions.' The fourth meeting of the BDG convened by Cambridge University included discussions of '...long term loan of Benin Bronzes from a group of European Museums'¹⁷ which drew sharp rebukes from many including Dr Kwame Opoku¹⁸ who lamented that "We have the so-called Dialogue Group on Benin City proposing a strange scheme whereby some of the looted Benin artefacts would be displayed in Benin City, but ownership of the artefacts would be with Western museums. And, they find some Africans to approve of such a ridiculous and insulting proposal."¹⁹ Dr Opoku's criticism was roundly rejected by Prof Shyllon²⁰ in his report of the outcomes of the fifth meeting of the BDG held in Leiden in 2018 that rejected the idea of restitution as a matter of interest to the group.²¹ It was ill-advised for Prof Shyllon to highlight Dr Opoku's criticism in detail and strongly suggest that he accepted the loan of looted Benin Bronzes to the proposed Benin Museum as appropriate. For example, he argued that:

"Is it by refusing to take part in the activities of the Dialogue Group that the antiquities will return? The author Opoku, referred to above, has over the years published many strident articles calling for the return of African artefacts. Yet no Benin bronze or other looted or stolen African artefact has over this period returned to Africa. Therefore, the reproach to 'some Africans' engaging in a dialogue with Western museums is misguided. Is half a loaf not better than none at all? An 'all or nothing' approach to restitution has proven to be a road that leads nowhere. Be

¹⁷ Ibid, at p. 301.

¹⁸ See Kwame Opoku "Benin Dialogue Group Removes Restitution Of Benin Artefacts From Its Agenda" Available at <<https://modernghana.com/news/924239/benin-dialogue-group-removes-restitution-of-benin.html>> (Accessed October 5 2021).

¹⁹ Ibid.

²⁰ See F Shyllon "Benin Dialogue Group: Benin Royal Museum: Three Steps Forward, Six Steps Back" [2018] (23) *Art Antiquity and Law* 341.

²¹ The Leiden Statement stated that the return of the Benin Bronzes 'is not part of the business of the Benin Dialogue Group' and that 'questions of return as bilateral issues and are best addressed with individual museums'. Available at <http://docs.dpaq.de/14096-statement_from_the_benin_dialogue_19_october_2018_16.33.pdf> (Accessed October 6 2021).

that as it may, the dissembling on the issue of restitution in the Leiden Statement is unfortunate. It is a backward step that is quite unnecessary. The Dialogue Group started unambiguously with the twin objectives of restitution and lease.

They are two sides of the same coin, and it is quite unhelpful to abandon restitution in the Leiden Statement. Still, the criticism of the Dialogue Group by Kwame Opoku leaves much to be desired. If the British Museum and the Ethnology Museum, Berlin were today to declare that they would release 100 pieces each of the Benin antiquities in their possession, is there a museum in Lagos, Abuja or Benin City that can adequately house them and ensure their safety and proper handling?²²

Prof Shyllon's frustration is palpable in the quoted phrase, and it is easy to conclude that he had abandoned the restitution of the looted Benin Bronzes. If one were to take a full measure of his works, a different conclusion would also be plausible. It is suggested that almost a half century of strong advocacy for the return of looted Benin Bronzes left him eager for even 'half a loaf'. It appears evident that Dr Opoku's reproach had some effect on him and a need to erase any doubt of his stand on restitution. In the last article, he published in the journal 'Art Antiquity and Law'²³ Professor Shyllon condemned the abandonment of the restitution of the Benin Bronzes in the Leiden Statement while noting that restitution was a prominent feature of the first meeting of the Benin Dialogue Group. The conclusion of this article is a reiteration of the fundamental moral obligation that we return what is not ours in our possession. He stated that "Restitution is the proper solution to the return of iconic cultural objects wrongfully acquired in colonial times and in war."²⁴

²² Note 20.

²³ See F. Shyllon 'Benin Bronzes: Something Grave Happened and Imperial Rule of Law is Sustaining it' [2019] (24) *Art Antiquity and Law* 274. My source is from <https://blog.uni-koeln.de/gssc-humboldt/en/benin--bronzes-something-grave-happened-and-imperial-rule-of-law-is-sustaining-it> (Last accessed October 6 2021).

²⁴ Ibid.

To end this reflection, I would like to adopt the deserved tribute paid to Prof Shyllon by UNESCO. Ernesto Ottone R., UNESCO Assistant Director-General for Culture declared that:

“Professor Folarin Olawale Shyllon’s lifelong commitment to the protection of cultural property was matched only by his humility and generosity. His writings will continue to inspire present and future generations...With his passing, UNESCO has lost a longtime friend and an outstanding intellectual and Professor of Law who enthusiastically supported the ideals of UNESCO, the UNESCO 1970 Convention and the 1995 UNIDROIT Convention.”²⁵

Be that as it may, it seems that the greatest official tribute to Folarin Olawale Shyllon is the increased and sustained return of looted African artefacts in Europe and America. The International Journal of Cultural Property of which he was an editor, allude to this fact in a tribute paid to him:

“When Folarin passed away, his dream of the return of African cultural objects seemed to becoming a reality following President Emmanuel Macron’s 2017 speech in Ouagadougou on the repatriation of African treasures in museums outside of Africa”²⁶

It is fitting to end by pointing to the recent but limited success of Prof Shyllon's scholarship and advocacy. First, Jesus College Cambridge on October 27 2021 returned a Benin bronze 'Okukor' to a delegation of the Oba of Benin.²⁷ Second, on the 29th of October, the University of

²⁵ Available at <<https://en.unesco.org/news/tribute-late-professor-folarin-olawale-shyllon-who-fought-over-50-years-against-illicit>> (Last accessed October 6 2021).

²⁶ “In Memoriam Folarin Shyllon (1940-2021)” [2021] (28) *International Journal of Cultural Property* 3.

²⁷ See Nadia Khomani 'Cambridge College to be the First in the UK to Return Looted Benin Bronze' (The Guardian, UK October 15 2021. Available at <<https://www.theguardian.com/education/2021/oct/15/cambridge-college-to-be-first-uk-return-looted-benin-bronze>> (Accessed October 22 2021); Kingdom of Benin 'okukor returns home after 124 years' Available at <<https://www.kingdomofbenin.com/oba-video/okukor-returns-home-after-124-years>> (Accessed November 10 2021).

Aberdeen returned a Benin Bronze to the Benin Kingdom.²⁸ Third, the Art Newspaper reports that the Smithsonian Institute's National Museum of African art has removed its Benin Bronzes from display to facilitate its return to the Kingdom of Benin.²⁹

²⁸ See Lithiumgist 'University of Aberdeen returns Bibib Bronze 124 years after it was stolen from Nigeria'. Available at <https://lithiumgist.com/ng/2021/10/29/university-of-aberdeen-returns-benin-bronze-124-years-after-it-was-stolen-from-nigeria> (Accessed November 10 2021).

²⁹ See Catherine Hickley 'Smithsonian Museum of African Art removes Benin Bronzes from display and plans to repatriate them' Available at <
<https://www.theartnewspaper.com/2021/11/05/smithsonian-museum-of-african-art-removes-benin-bronzes-from-display-and-plans-to-repatriate-them>> (Accessed November 10 2021).