



ECOWAS COMMISSION
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ECOWAS GUIDE ON THE RESTITUTION OF CULTURAL PROPERTIES

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Economic Community of West African States (ECOWAS)

**ECOWAS GUIDE ON THE RESTITUTION OF
CULTURAL PROPERTIES.**

March 2024

DISCLAIMER

This guide is an ECOWAS document, developed and validated by the lawyers and cultural heritage experts of the Member States, under the coordination of the Art and Culture Division. It is a guide for the formulation of restitution requests. The use of this open access document in whole or in part is not binding on ECOWAS. It is recommended that each Member State draw inspiration from it in the process of restitution of its cultural property.

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In particular, she would like to thank:

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LIST OF ABBREVIATIONS AND ACRONYMS

UNESCO: United Nations Educational, Scientific and Cultural Organization

UNIDROIT: International Institute for the Unification of Private Law

ECOWAS: Economic Community of West African States

AU: African Union

INTERPOL: The International Criminal Police Organization

ICCROM: The International Centre for the study of the Preservation and Restoration of Cultural Property

ICOM: The International Council of Museums

I. BACKGROUND

This Guide to Initiating Requests for the Return of Cultural Property to its Countries of Origin is part of the ECOWAS Action Plan 2019-2023 on the Return of Cultural Property to its Countries of Origin. The action plan was approved by the Assembly of Heads of State and Government in December 2019, with the objective of contributing to the return of cultural property from ECOWAS Member States to their countries of origin in order to reconstitute the regional cultural heritage. The vision of the Action Plan states that: "cultural heritage is reconstituted, enhanced and contributes to regional integration and sustainable development of ECOWAS Member States".

The 2019-2023 Action Plan is broken down into several major actions, some of which have begun to be implemented through a number of activities undertaken by ECOWAS:

- Popularization and dissemination of the Action Plan on the Return of Cultural Property;
- Meeting of the Director Generals of Cultural Heritage to take stock of the status of the ratification of texts related to the issue of restitution;
- The Commissioner's plea to Member States for the strengthening of the legal framework (UNESCO Convention of 1970 and UNIDROIT Convention of 1995);
- Establishment of a Regional Committee to monitor the Action Plan;
- Designation by the Heads of State of a Champion on restitution;
- Training on museum collections management standards;
- Organization of the Dakar International Symposium from 20-22 March 2023 on the restitution of African cultural property to its countries of origin;
- Training of lawyers from the Member States on procedures for the restitution of cultural property.

The training of lawyers, the latest action to date, held from 10 to 15 July 2023 in Accra, Ghana, had the objectives of (1) equipping lawyers in Member States with the tools to take steps on restitution issues; (2) to set up a bank of expertise in the field of the restitution of cultural property in the Member States; (3) to make available to States a protocol on the procedures, stages and tools of the process of restitution of cultural property. At the end of the training, the participants considered it necessary to develop a guide on the procedures for the restitution of cultural property to inspire and assist States in their requests for restitution. The suggestions made focus on institutional, political, legal, economic, technical, social, etc. to be completed in advance in order to submit and obtain applications for the restitution of cultural property.

II. PROTOCOL ON LEGAL FORMS AND REMEDIES FOR CLAIMING CULTURAL PROPERTY HELD SINCE THE COLONIAL PERIOD IN FOREIGN PUBLIC COLLECTIONS

1. *Making a formal request*

The official request comes from the Government of the State making the claim, says the requesting State; it is addressed to the Government of the State in whose institutions and museums the claimed collections are kept, says the requested State.

The application shall be signed by the President of the Republic, the Prime Minister or the Minister for Foreign Affairs of the requesting State. (depending on their specificities, each State will specify the recipients of the request).

The formal request must include the following:

- A history of dispossession, through a documented reminder of the context in which property was taken from the territories and communities of origin. These elements may be included and detailed in the annex to the application.
- An argument on the legitimacy of the requesting state to claim the property.
- A reminder of the national legislation ensuring the protection of cultural heritage as well as a description of the legal rules guaranteeing the conservation of returned property.
- A reminder of the United Nations General Assembly resolutions affirming, since 1973, the need to initiate processes for the restitution of property taken during the colonial period, in particular the latest resolution A/RES/76/16 of 6 December 2021 – *Return or restitution of cultural property to its country of origin*.
- A reminder of the international commitments made by the requesting State to confirm the State's willingness to place restitution in a sustainable perspective (ratifications of the 1970 UNESCO Convention and the 1995 UNIDROIT Convention).
- A reminder of the African Union Charters: the African Charter on Human and Peoples' Rights of 1981, the African Cultural Charter of 1976 and the Charter of the African Cultural Renaissance of 2006 (which entered into force on 27 May 2021), etc.
- A reminder of the ECOWAS Political Declaration and Common Position on the Return of Cultural Property to Africa, adopted on 22 December 2018.
- The list of claimed goods. This list must be accompanied by an inventory describing and documenting the interest of the claimed property to the requesting State.
- A proposal for a joint working agreement, by an *ad hoc* committee composed of experts appointed by the requesting State and the requested State.

2. Accompanying measures

- Establishment of a national commission to investigate and follow up on restitution claims.

The text establishing this national commission must set out, among other things:

- o Objectives and missions
- o Composition and functioning of the commission
- Stakeholder collaboration:
 - o the institutions of the Republic (Presidency, National Assembly/Senate, etc.)
 - o the ministerial departments in charge of Foreign Affairs, Culture, Tourism, Internal Security, Customs, Justice, Water and Forestry, etc.
 - o Civil society (in particular associations working in the field of heritage, youth organisations, etc.)
 - o the communities concerned;
- International organizations (technical assistance: UNESCO, UNIDROIT, INTERPOL, ICOM, ICCROM, etc.)

3. 3. Points of Vigilance

The concept of cultural property is not limited to objects alone; Depending on the case, it may include archives and other cultural expressions. It should be noted that human remains may also be involved, taking care to distinguish them from cultural property *in the strict sense* of the term...

- Do not set chronological limits on the history of dispossession that would deprive the requesting State of claiming property whose existence is revealed subsequently, in particular during the joint work of the *joint ad hoc* committee.
- Ensure that the transfer of ownership is carried out free of charge and without conditions or encumbrances.
- Have a condition report drawn up by a conservation-restoration professional at the time of the transfer of ownership.
- Determine the breakdown of the insurance costs of the returned property upon repatriation.
- To determine the apportionment of the costs relating to the transport of goods from the institution in the requested State to the place of reception in the requesting State.



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