

## ***Jamaica's Pre-Columbian Heritage: The Path to Protection***

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*Jamaica's archaeological heritage spans four main people groups, which includes Taíno, Spanish, African and British. The Taíno heritage of our nation is however arguably, the material cultural heritage that has attracted most attention both from archaeologists and that intent on illegal excavations. This paper looks at the implementation of the plan of action by Jamaican national authorities towards the protection of Jamaica's archaeological heritage through the ratification of international Conventions. It will also include the utility of intergovernmental committees, diplomacy and revision of national instruments toward the protection of Jamaica's archaeological heritage. Questions of the effective implementation of local and international instruments will be discussed with how this will allow Jamaica to address matters of accountability and looting while also seeking to encourage compliance by private collectors and national culture agencies.*

*Le patrimoine archéologique de la Jamaïque s'étend sur quatre principaux groupes de personnes, dont les Taíno, les Espagnols, les Africains et les Britanniques. Le patrimoine Taíno de notre nation est cependant sans doute le patrimoine culturel matériel qui a le plus attiré l'attention des archéologues et des fouilles illégales. Ce document examine la mise en œuvre du plan d'action par les autorités nationales jamaïcaines pour la protection du patrimoine archéologique de la Jamaïque par la ratification des conventions internationales. Il comprendra également l'utilité des comités intergouvernementaux, la diplomatie et la révision des instruments nationaux pour la protection du patrimoine archéologique de la Jamaïque. Les questions de la mise en œuvre efficace des instruments locaux et internationaux seront discutées avec la manière dont cela permettra à la Jamaïque d'aborder les questions de responsabilité et de pillage tout en cherchant également à encourager la conformité des collectionneurs privés et des agences culturelles nationales.*

*El patrimonio arqueológico de Jamaica abarca cuatro grupos principales de personas, que incluyen taínos, españoles, africanos y británicos. Sin embargo, podría decirse que la herencia taína de nuestra nación es el patrimonio cultural material que ha atraído la mayor atención tanto de los arqueólogos como de los que intentan realizar excavaciones ilegales. Este documento analiza la implementación del plan de acción de las autoridades nacionales de Jamaica para la protección del patrimonio arqueológico de Jamaica a través de la ratificación de convenciones internacionales. También incluirá la utilidad de los comités intergubernamentales, la diplomacia y la revisión de los instrumentos nacionales para la protección del patrimonio arqueológico de Jamaica. Se discutirán las cuestiones de la implementación efectiva de los instrumentos locales e internacionales y cómo esto permitirá a Jamaica abordar los asuntos de responsabilidad y saqueo al mismo tiempo que busca alentar el cumplimiento por parte de los coleccionistas privados y las agencias culturales nacionales.*

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### **Introduction**

In 1997, Chancery Hall, a pre-Columbian site in the Hills of St. Andrew, a parish near the island's capital of Kingston, was slated for housing development and lots were being prepared for sale. As the land was being prepared, interesting objects were being revealed and the Jamaica National Heritage Trust (JNHT) was called in to carry out an assessment. This request occurred in the middle

of the week, according to the recollection of the lead Archaeologist Selvenious Walters, now Technical Director of the Archaeology Division at the JNHT. After recognizing the extent and significance of the site, the JNHT were prepared to carry out test excavations. When the JNHT returned five days later, they came upon the horror of industrial machinery digging through the site in an effort to reveal artifacts of value. Many objects were taken and several

broken in the haste to get away (Selvenious Walters, personal communication, 2021).

This was my first experience at a recently looted site, as a young Conservation Officer at the JNHT. Sadly, Chancery Hall is not the only Jamaican archaeological site that has seen illegal disturbance over the years. In recent years, illegal excavations have been reported across varying areas of the island, this includes but is not limited to, the Sunken City of Port Royal, Canoe Valley, Manchester, Pimento Hill, St. Mary and White Marl, St. Catherine. There is also the concern that there are more sites throughout the island that have been looted that the national authorities may not be aware of. Further, there are some sites, such as historical brick buildings which have become an entrepreneurial activity for Jamaicans in the sale of bricks. The bricks which cost at last check JMS\$100 per brick encourage the systematic destruction of sites in and around the Kingston area. Sites across the length and breadth of Jamaica are destroyed all too often by many actions, some by natural forces, but many more by the action of man.

The cultural heritage of Jamaica is replete with examples of sites from pre-Columbian, European, African and finally the migrant groupings that settled the island. Many of these sites are at risk when considering looting and illegal excavation, with a greater focus on pre-Columbian sites. In light of these concerns, the Jamaican national authorities have moved purposefully toward actions that will provide greater protection for the island's heritage. This includes the revision of national legislation, incorporating strategies to address the attendant issues of looting, engaging international Conventions and raising awareness among frontline agencies that will enable the safeguarding of cultural heritage resources. This paper will look at the journey towards the protection of Jamaica's cultural heritage from activities of looting and illegal excavation with a focus on the ratification of the UNESCO Conventions associated with looting and illicit trafficking cultural heritage.

### **Jamaican Material Culture**

Several ethnic groups have occupied Jamaica, beginning with the pre-Columbian groups, the Ostionan Ostionoid by 650 AD and Meillacan Ostionoid by 877 AD, followed by the Taíno from about 1200 AD (Atkinson 2006; Reid 2009). The Europeans - Spanish and

English, followed in 1494 and 1655 respectively. Enslaved Africans were brought to the island by both the Spanish and English, later the British. Spanish settlers built the first town named *Sevilla la Nueva* (New Seville), on the north coast of the island, near a Taíno village Maíma at St. Ann's Bay. Through increasing European presence in the region, and with the aim of reducing the Spanish hold in the region, the English captured Jamaica and ended Spanish rule on the island in 1670 (Black 1970).

Cultural remains from these early inhabitants are reflected in varying objects of wood, stone and clay and sites with pictographs, petroglyphs and burials. The remains of European occupation are found throughout the island, with the British being one of the most researched followed by Jamaica's African heritage (Richards and Henriques 2011). Collections representing all the periods of occupation in Jamaica's history, are spread through national repositories that have responsibility for their care, protection and promotion. They consist of varying material types which include biological and cultural specimens and are representative of the archaeological, ethnographic, archival and artistic heritage of the island.

The interest in pre-Columbian artifacts, considered *curiosities* by former colonial powers has over centuries increased. Their additions to museums and exhibitions from as far back at the 18<sup>th</sup>-19<sup>th</sup> centuries have made them sources of interest that has manifested into items of monetary value, generating local and international markets, both licit and illicit (Atkinson 2021; Yates 2021).

### **National Authorities**

Jamaica's cultural management framework revolves around five agencies, which fall under the Ministry responsible for Culture. However, within the scope of this paper, the agencies that will be the point of focus will be the Jamaica National Heritage Trust (JNHT) and the Institute of Jamaica (IOJ).

The IOJ was established in 1879, by the Institute of Jamaica Act (Institute of Jamaica, 2021). Since then, the Act was amended four times including in 1978, 1985, 1995 and 2010 (Government of Jamaica 1978). IOJ was established on the collection of the Royal Society of Arts and Agriculture (Lewis 1967). Through Law No.72, 1958 the Jamaica National Trust Commission was constituted in

1958 (Jamaica National Heritage Trust 2011). Both entities were founded while Jamaica was still under colonial government, however, with independence and revised legislation; they gave rise to independent institutions.

Today, the mandate of the IOJ according to its website, (Institute of Jamaica 2021) is to 'Encourage Literature, Science and Art'. The entity functions according to its website, to:

- Establishing and managing museums and galleries for the collection, preservation and display of artefacts and art treasure
- Maintaining and displaying of artefacts and art treasures
- Documenting and disseminating information on the impact of the African presence in Jamaica and the wider Caribbean
- Developing the creative potential of children through the visual and performing Arts
- Compiling, publishing and distributing printed information of literacy, scientific and historical interest (Institute of Jamaica 2021).

The work of the IOJ is implemented through nine departments and museums, which are focused on natural and cultural heritage. The IOJ obtains collections in various ways which includes donations, bequests, purchases and policy direction. Richards and Henriques (2011) spoke to an often blurring of the roles between the IOJ and the JNHT in relation to museums, exhibitions and the responsibility for collections. In an effort to clarify blurred lines between the two entities, a policy was put in place, in what is referred to, as the Pereira Report (Special Advisory Committee 1997). The Policy saw the maintaining of the role of establishing museums by the IOJ, resulting in the transfer of museum-worthy artifacts from the archaeological collection of Port Royal which resided at the JNHT, to the IOJ's Museums Division. The IOJ Act states in Section 4.1(b), one of the functions of the entity is to establish museums.

The Jamaica National Heritage Trust was established through the JNHT Act (1985). The Act enabled the functions of the JNHT in Section 4 (1) to address the promotion and preservation of designated/declared national heritage through research and development. In

carrying out actions of research, the JNHT regulates all archaeological excavations on the island, which includes those led by international researchers. A permit is required for entities outside of the JNHT intent on pursuing research. A JNHT member of staff is expected to be present on-site, not only to secure Jamaica's interests but also in some cases to build the capacity of the team. The JNHT as a repository obtains the largest percentage of its collections through archaeological explorations and more rarely through donations or bequest, although this is allowed as stated in Section 19 of the Act.

However, the IOJ and JNHT are not the only repositories of cultural heritage material on the island. It has proven to be a complex situation among national authorities, academic institutions such as the University of the West Indies, other tertiary institutions to a lesser degree and private collectors. Whereas it is possible to access public material under guidance of the respective officers at national repositories, and those repositories at academic institutions, private collectors are an entirely different matter.

It is important to note, that the repositories in private hands are not known, neither are the collectors themselves, the extent of the collections or the methods in which these artifacts have been obtained. What is sure from the rumors over time and the glimpses of objects on the passing of connected individuals is that the collections often represent what has never been seen before. These collections usually consist of whole, intact objects that have not had the benefit of research by national authorities, to allow the information to fill the knowledge gaps within the Jamaican historical timelines (Selvenious Walters, personal communication 2021).

The discovery of already disturbed sites is an activity that the JNHT is often faced with. The JNHT's response as reflected in **Figure 1** at White Marl is to carry out test pits in the disturbed area(s) to ensure that all remaining information from these sites has not been lost. Examples are Pimento Hill shown in **Figure 2** and White Marl (Jamaica's largest and most significant pre-Columbian site) where graves were desecrated, and sites disturbed.





**Figure 1: JNHT Team at looted section of White Marl site (© JNHT, used with permission).**



**Figure 2: Desecrated grave site discovered by the JNHT Team at Pimento Hill, St. Mary (© JNHT, used with permission).**



Unfortunately, these two sites are not the only examples that can be cited. Examples in the JNHT records include Round Hill, Clarendon, Falmouth, Trelawny, and Point, Hanover where archaeological and historic resources have been looted and sold (Atkinson Swaby 2021). Jamaican culture agencies often find themselves more reactive than proactive in this regard, due to limited resources and more importantly an enforcement arm. The extent of enforcement is vested in the single Legal Officer of the JNHT, who has not only archaeology related concerns to address, but also those associated with other divisions of the Trust.

In addressing this, a collaborative effort is necessary among all relevant entities to ensure enforcement. These key stakeholders include the Jamaica Constabulary Force (JCF) in particular the JCF's Counter-terrorism and Organised Crime Investigations Branch

(CTOC) and National Central Bureau of Jamaica (Kingston Interpol). Other stakeholders are the Jamaica Defence Force Coast Guard which aids in the protection of Jamaica's underwater cultural heritage. This was particularly helpful in March 2020, when a boat was docked over the 17<sup>th</sup> century underwater site of Port Royal. It was believed the boat's occupants were trying to loot the site and the JDF Coast Guard was called in to remove the vessel.

Other collaborations involve the Jamaica Customs Agency which has on several occasions called in the JNHT when objects seem suspicious. One such occasion was in 2012, when a passenger on an outbound flight was stopped with objects (Ann-Marie Howard-Brown, personal communication 2021). A sample of these objects is shown in **Figure 3**, which ranged from cannon balls to soda and wine bottles and other assorted artifacts.



**Figure 3: Confiscated objects stolen from Port Royal in November 2022 (© JNHT, used with permission).**

Another level of collaboration is with communities. The JNHT often interacts with communities in public awareness activities and to learn more about the history of an area. In some cases, communities “police” the heritage

sites around them or in other cases directed the JNHT to sites and/or objects. One example is the Aboukir *cemís* obtained by the JNHT in 1992. The objects were in the care of a Mr. Clayton, who was persuaded by the then

Technical Director of the Archaeology Division Dorrick Gray, to donate the *cemís* to the JNHT. The objects are now on display at the National Gallery of Jamaica (Saunders and Gray 2006).

### Jamaica's Removed Heritage

Through referenced Acts, the national cultural repositories were established and developed. However, many artifact collections obtained through excavations prior to these Acts and even after their establishment, have not resided in the island's institutions. Robert Howard indicates that early explorations in Clarendon in 1898 by R. C. MacCormack yielded a collection that was used to create the U.S National Museum, now known as the Smithsonian Institution National Museum of Natural History (Howard 1956; Atkinson Swaby 2021). There are also references to additions by J. Brennan and Gerritt S. Miller to this museum's collection in 1900 and 1931 respectively (Howard 1956).

Prior to these objects being sent to the United States in the 1900s, are the objects that would have been sent to Britain in the period of British rule of the island. Jamaica's over 300-year occupation by Britain has resulted in the removal of moveable heritage resources from the island. These include 137 Taíno artifacts that are housed in the British Museum, an incomplete list according to communication in 1981 to the Jamaican government by the British High Commission. The British Museum's website indicates that there are 857 artifacts that are housed in its collection associated with Jamaica, to include significant collections of Taíno objects and natural specimens, described by Kay Dian Kriz as an "eclectic mix of artifacts, flora and fauna". Natural specimens collected by Sir Hans Sloane, physician to the Duke of Albemarle is also said to have been the foundation of the British Museum (Kriz 2000; Atkinson Swaby 2021; British Museum 2021a).

Other museums which contain objects removed from Jamaica during colonial times include the Museum für Völkerkunde, Berlin, Germany by Archaeologists Reichard and Bastian. These objects were taken from the parish of St. James among others in 1904. The Museum of the American Indian, also a part of the Smithsonian, obtained Jamaican artifacts from the work of Theodore de Booy in 1913

Collaborative efforts are the most effective methods in the work to reduce illicit trafficking, but there is much more that needs to be done to make these efforts impactful to the sector.

(Howard 1956) (**Figure 4**). In 1914, the American Museum of Natural History, now a part of the Smithsonian Institution received 1500 objects from G.C. Longley, who obtained the collection from St. Ann's Bay. Joanna Ostapkowicz's article in this volume provides a more detailed description of the amount and range of Jamaican cultural resources in overseas institutions.

The return of objects taken during colonization, that is, from former colonizers to former colonies, makes for intense, emotional dialogues that speak not only to cultural identity, but also to ownership. There is a continuing discourse currently playing out among these countries, organizations and institutions on the "how, when or why", in the return of cultural heritage. Some view the requests of these states as nationalist claims with no consideration for the cosmopolitan worldview of diversity that the world's great museums provide. While the requesting nation states view the cultural property as part of their national identity (Cuno 2014). There are several examples of countries and institutions in 2021 that have returned objects to former colonies. The most recent and highly publicized is the return of objects held by France and Scotland to Nigeria, namely the "Benin Bronzes".

The "Benin Bronzes" artifacts represented by thousands of elaborately decorated cast plaques, commemorative heads, animal and human figures, items of royal regalia, and personal ornaments, were looted by European soldiers in 1897 from the Kingdom of Benin (British Museum 2021b). They are scattered across several European and North American countries, institutions and private collections. However, in November 2021, France returned twenty-six of these objects to Nigeria, the country in which the territory of the Kingdom of Benin was subsumed. The University of Aberdeen and Cambridge University's Jesus College at Oxford are two examples of academic institutions in the United Kingdom, which also returned the single objects in their holdings (Corbet and Adamson 2021).



**Figure 4: Examples of objects obtained by de Booy from sites other than Retreat, Moneague, and Rio Bueno. (National Museum of the American Indian, Smithsonian Institution (A: ceramic vessel, 033290, Bratt’s Hill District; B: 033302, stone mortar, Brownstown; C: 033300, wooden pestle, Cedar Valley; D: 033297, ceramic adornos, Clarendon Parish) (see Curet and Galban 2019).**

However, the British Museum which has the largest collection of over 900 objects, have not indicated their intent towards restitution, (BBC 2021; British Museum 2021c, d, e; France24 website). Arguments by the British government are that the British Museum is an entity on its own, operating at arm’s length from the government, reporting only to Parliament (British Museum 2021d). The Museum is governed by the British Museum Act of 1963, which allows the trustees of the Museum to “sell, exchange, give away or otherwise dispose of” objects in the Museum’s collection only if one or more of the following conditions are satisfied as indicated in Section 5 of the Act (British Museum Act):

(a) The object is a duplicate of another such object, or

(b) The object appears to the Trustees to have been made not earlier than the year 1850, and substantially consists of printed matter of which a copy made by photography or a process akin to photography is held by the Trustees, or

(c) In the opinion of the Trustees the object is unfit to be retained in the collections of the Museum and can be disposed of without detriment to the interests of students.

The British government has indicated return of objects within the Museum must be addressed directly to the entity and not the government. This challenge has consistently been raised in international fora such as the recently held 22<sup>nd</sup> Session of the Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries

of Origin or its Restitution in case of Illicit Appropriation (ICPRCP), a committee of UNESCO. Several countries expressed their difficulty accepting this response from the British government.

This brings into sharp focus Jamaica's own request for the return of its objects from the British government, one that was recently made formal. The request is in relation to three *cemís* which were removed from a cave in Carpenter's Mountain, in the parish of Vere now known as Manchester in June 1792 by Isaac Alves



Rebello, Esq. The objects known as "Bird Man", "Boinayel" and the "Man with the Canopy" (Atkinson 2006) are now located in the British Museum.

Joanna Ostapkowicz provides details on the three wooden carvings and her analysis and research indicates that these objects were not only sacred and treasured by the Taíno (Figure 5), but also has great symbolism and meaning to Jamaican cultural heritage (Ostapkowicz 2015).



**Figure 5. Carpenter's Mountain *cemís*: left, plaster cast of Birdman; right, plaster cast of Boinayel (© Institute of Jamaica, used with permission).**

The requests for the return of these objects are thought to have begun from 1939, when plaster casts were presented to the island by the British Museum (Sherlock 1939). The collection was requested on loan in 1994 for an exhibition, but conditions expressed by the British Museum, proved too challenging for the National Gallery of Jamaica to meet (Ostapkowicz 2015). On this issue, the Minister responsible for Culture has on several occasions in the national media requested the return of the Carpenter's Mountain sculptures as well as the other 137 objects known to be housed in the Museum, which speaks to the intent of the Jamaican government on this issue (Jamaica Observer 2020; The Gleaner 2020).

### **International Instruments**

UNESCO's six cultural Conventions all address the safeguarding of the sub sectors of culture, whether tangible, intangible located terrestrially and underwater, cultural

expressions and protection in the context of peace time, war time and from illegal activity. Jamaica has ratified four of the six cultural Conventions. The two that have yet to be ratified are the Convention for the Protection of Cultural Property in the Event of Armed Conflict (1954) and Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (1970). Within the context of this paper, the instruments on illicit trafficking, return and restitution will be the focus.

### **1970 Convention**

The Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, 1970 (1970 Convention), is the Convention that was established in a time when many newly emerging states had gained their independence. These nations sought to prevent their national identity from being removed and in many cases to have it returned. The 1970



Convention is described by Janet Blake as highly “nationalist” as it speaks to the thrust of the instrument for States which are original owners of cultural property to retain same. This addresses issues of national identity, value and the importance of countries of origin (Blake 2015).

The Preamble of the 1970 Convention addresses the above by the following statements:

Considering that cultural property constitutes one of the basic elements of civilization and national culture, and that its true value can be appreciated only in relation to the fullest possible information regarding its origin, history and traditional setting,

Considering that it is incumbent upon every State to protect the cultural property existing within its territory against the dangers of theft, clandestine excavation, and illicit export...

Article 1 of the 1970 Convention further defines cultural property as meaning “property which, on religious or secular grounds, is specifically designated by each State as being of importance for archaeology, prehistory, history, literature, art or science...”

The Convention is governed by three principles namely - prevention, restitution and international cooperation. The principle of prevention focuses on implementing particular actions to prevent or limit the illicit trade of cultural property within their countries. Prevention takes into consideration issues of national legislation, inventories, supervision of archaeological excavations, supervision of archaeological excavations; national services for the protection of cultural heritage; national cooperation between law enforcement among others.

The principle of restitution addressed in Articles 7 and 13 of the Convention references objects which are inventoried and stolen from “a museum, public or religious monument, or a similar institution”. It indicates that the burden of proof is on requesting states. Article 13 details the use of national legislation to affect recovery. The third principle focuses on international cooperation, through diplomatic relations. Article 9 addresses the participation of member states in ‘concerted international operation’ for cultural property in danger of being stolen.

The JNHT Act (1985) addresses to some extent, aspects of these principles, but

there are some gaps. The Act does not have a clear definition of cultural property, instead it addresses the “concepts of national heritage” and “protected national heritage” referenced in Section 2 of the Act, which states:

“National monument” means -

(a) Any building, structure, object or, other “work of man or of nature or any part or remains thereof whether above or below the surface of the land or the floor of the sea within “the territorial waters of the Island...

“Protected national heritage” means-

(a) Any place name;  
 (b) Any species of animal or plant life;  
 (c) Any place or object (not declared by the Trust to be a national monument)

These two definitions can be used within the context of the 1970 Convention, but there may be challenges if clearer definitions of cultural property are required. This is particularly important as while the JNHT has published lists of sites that have been named national heritage or protected national heritage, sites are named, not artifacts, even though the Act is able to do so.

The Act does address the issue of the illegal removal of cultural property in Section 17, which is in alignment with Article 8 of the 1970 Convention. The section prohibits the removal of anything declared a national monument and protected national heritage to a place outside Jamaica. Regarding Article 5(b) which addresses the keeping of a list of important cultural property, the JNHT Act in sections 4 (d), 4(2), 12(2) and 12(3) states as a function of the JNHT:

The recording of any precious objects or works of art to be preserved...

To keep a register which shall be open to the public for inspection...

Publish in the Gazette each year, a list of all national monuments declared in the island at the time of publication...

and the JNHT shall cause to be placed on a conspicuous part of each national monument an identifying mark.’

However, there are challenges that even though these minimum standards are met by the JNHT Act in some aspects of the 1970 Convention, others are not met. These include

the fact that the legislation does not speak to illicit trafficking specifically and how this issue is to be addressed. This includes specific references to export certificates, importation into the island of cultural property, obligations in relation to antique dealers.

The Attorney General's Chambers, which is the national entity responsible for providing legal advice and representation for all Ministries and Departments of Government (Attorney General's Chambers 2017), has identified some gaps in the JNHT Act. The Act has been amended to take into consideration aligning the definition of cultural property to the Convention, provision for a robust heritage protection register; inclusion of express provisions related to the applicability of the law to private collections; stipulations for legal transfer of cultural objects and prohibiting illegal import and export of cultural objects; and treating with underwater cultural heritage, world heritage and disaster risk management among other amendments.

### **UNIDROIT Convention**

UNESCO in recognizing that there were gaps in relation to the return and restitution of cultural property, commissioned the International Institute for the Unification of Law (UNIDROIT) to address issues of private law and the return and restitution provisions. The UNIDROIT Convention addresses the minimum standards developed for the return and restitution of cultural objects (UNESCO 2021a, b), in particular return for illegal export and restitution for theft. Both Conventions are meant to work together as they are at once compatible and complementary. UNESCO Information Notes indicate that both Conventions should be ratified together as this optimizes the fight against illicit trafficking at the national level (UNESCO Information Note 16 June 2005).

The first major area of complementarity is the definition of cultural property, which is found in Article 1 of the 1970 Convention and Article 2 of the UNIDROIT Convention. Other areas of compatibility include their lack of retroactivity, the Conventions only come into force when ratified, they cannot be used otherwise (UNESCO Information Note, 16 June 2005). Both Conventions also protect the injured party in the event of theft of cultural property.

However, there are differences between the two Conventions, one major one being the fact that the 1970 Convention only addresses inventoried objects, while the UNIDROIT Convention addresses cultural property known and unknown (Prot 1996). This is particularly important in the context of clandestine excavations, where objects taken are not inventoried. Further, while the 1970 Convention addresses concepts of "just compensation" and "*innocent purchaser*" it does not speak to what these actually mean. The UNIDROIT Convention provides a solution that addresses compensation and time stipulations; the conditions of due diligence and "good faith purchaser" referenced in Articles 3, 4 and 5 of the UNIDROIT Convention (UNESCO 2021b; UNIDROIT 2021). The UNIDROIT Convention allows for the facilitation of claims in national courts by both individuals and States, while the UNESCO Convention only engages States. Also, the 1970 Convention requires national legislation to be enforced, while the UNIDROIT Convention is self-executing, meaning that once ratified, the Convention becomes judicially enforceable (Legal Information Institute).

In considering the Conventions in relation to the current JNHT Act, it is important to note that the Act does not protect what is unknown. The JNHT Act protects only what is in an inventory, particularly what is named "protected national heritage" and "national monument", and as previously indicated there are no cultural objects that are declared/designated under the Act. The practice is that sites are declared or designated and the associated artifacts, as a part of the site, are incorporated. Therefore, any unknown site along with the associated artifacts has no protection unless the site becomes known and is declared or designated under the JNHT Act. This is similar to the 1970 Convention that protects only objects which are known and/or inventoried. The 1970 Convention does not take into consideration archaeological objects or sites which are unknown. This is where the 1995 UNIDROIT would be beneficial for Jamaica as its self-implementing feature would enable immediate effectiveness once it enters into force. Therefore, protection would be in place for unknown sites and associated objects, archaeological or otherwise.

Jamaica's intent is to not only to ratify the 1970 Convention, but also the UNIDROIT

Convention. This is important as the Conventions are meant to work together and also current significant political will and public interest necessitates a sustained push toward ratification of both Conventions. Additionally, Jamaica would benefit from ratification of these international instruments to enable greater weighting regarding Jamaica's position in restitution efforts with Britain.

### **Other instruments**

The Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in case of Illicit Appropriation (ICPRCP), a permanent committee of UNESCO, was established in 1978 for the restitution or return of lost cultural property, whether as a result of foreign or colonial occupation or following illicit traffic before the entry into force, of the 1970 Convention (UNESCO 2021a). The Committee through facilitating bilateral negotiations offers its services to mediate between States in conflict over the return or restitution of cultural property when the provisions of the 1970 UNESCO Convention are not applicable.

The 22<sup>nd</sup> Session of the ICPRCP meeting reports on examples of recent cases of return to include the Netherlands returning to Nigeria in November 2020 a 600-year-old terracotta head taken from the city of Ile-Ife in south-western Nigeria was formally returned to the Federal Republic of Nigeria, following an interception by the Dutch customs. The painting *Vaso di Fiori* by Jan van Huysum, taken during World War II, was returned to the Uffizi Gallery by the German Minister of Foreign Affairs on July 19, 2019 after periods of negotiation (22<sup>nd</sup> Session of the ICPRCP 2021).

However, due to the sensitivity of this subject matter, negotiations can often be extended over decades. One such example is the Parthenon Marbles that has been a longstanding repatriation claim submitted to the Committee's attention in 1984 by Greece to the United Kingdom (22<sup>nd</sup> Session of the ICPRCP 2021). This claim is in relation to the removal of the frieze by Thomas Bruce, Lord Elgin in the early 19<sup>th</sup> Century. The objects were sold to the British Museum, after a Parliamentary Select Committee in 1816 declared Lord Elgin's activities legal.

Both States claim ownership. Greece because "The Marbles were stolen in the 19<sup>th</sup> Century" as stated by Kyriakos Mitsotakis, Prime Minister of Greece, and reported by the *Daily Mail*. The United Kingdom claims the objects were obtained legally and is a part of the global heritage of mankind, described as "... huge public benefit as part of the Museum's worldwide collection" (British Museum 2021e).

The ICPRCP at its 22<sup>nd</sup> Session decided that the issue should be dealt with in keeping with the statutes of the Committee and in point 5 confirmed the legitimacy of Greece's claim and recognized in point 7 "... the case has an intergovernmental character and, therefore, the obligation to return the Parthenon Sculptures lies squarely on the United Kingdom Government" (ICPRCP 22<sup>nd</sup> Session meeting documents, September 2021). This resolved the issue of dealing directly with the British Museum as a body separate from government, as the United Kingdom has consistently reiterated.

Awaiting the return of cultural property for thirty-seven years is painful at best and while decisions are made by the ICPRCP, they are by no means legally binding. The British Museum has consistently described cultural property as "contested objects" maintained that these objects are a part of the global collection of the museum. However, this is not very comforting to those for whom the collection is not just the representative of a time in history, but a part of their national identity in particularly their own heritage.

It is concerning that while some States find it possible in this ever-changing global cultural climate, to return cultural property for the benefit of former colonies, now independent states, others do not. Again, we see the issues of who actually "owns" these cultural resources coming to the fore.

### **Public vs. Private Repositories**

In considering public and private repositories in Jamaica, the first major question is who owns what. There is no clear understanding of who all the main players are, as it relates to private collectors in Jamaica. Whereas information within public repositories is generally accessible, and the main players in relation to collections are well known between the JNHT and the IOJ and others such as the



National Archives and the National Library of Jamaica, this is not so, for private collections.

Other considerations are the “how” and “where” of these collections - the provenance of these objects and the method in which they were obtained. This issue of “how” and “where” of private collections is in this author’s thinking, why many private collectors seem to be “underground”. Also, as the capacity and awareness of the JNHT has increased, there is a further recognition that questions would be raised regarding provenance that would prove difficult to answer. The glaring issue is that collectors engaged in clandestine excavations are robbing the Jamaican people, preventing the filling of necessary gaps and therefore keeping Jamaicans in ignorance about their heritage and by extension their national identity (Selvenious Walters, personal communication, 2021). Further, due to high and low connections, private collectors continue trading. These individuals are often wealthy, highly placed, unidentifiable, seemingly untouchable and unreachable (Lesley-Gail Atkinson Swaby personal communication, 2021). Yates (2021) describes them as “white collar actors”, who are willing to purchase cultural objects in any circumstances.

So how does one access these collections, which are thought to be the best representatives of Jamaican heritage? One suggestion as Dr. Atkinson Swaby indicates, is to build relationships with private collectors, to enable trust to be built, where there is no fear on either side (Atkinson Swaby 2021). In the case of the collectors, fear that their collections may be taken from them, and in the case of national authorities, that these collections may never surface, or will be removed from the shores of Jamaica, thus preventing any opportunity for research. There is some history of national culture authorities, working with private collectors to include objects in exhibitions (Atkinson Swaby 2021). Also, in participating in collector’s shows, facilitating small exhibitions in a bid to raise awareness among collectors of the loss of information being perpetuated by the inaccessibility to collections.

Another recommendation emanated from a regional workshop hosted by the Ministry responsible for Culture in March 2020. In considering the JNHT Act, a grandfather clause is instituted for private collectors to allow them to freely engage

national authorities with their collections. The grandfather clause would allow the new legislation to apply to future cases of looting, but allow all past cases to be waived for prosecution. This may prove to be the way forward, as this would incentivize private collectors that are “underground” to surface. This has been given consideration, however, with provisions that collections are allowed to be inventoried, opportunities for research are provided and objects that are deemed critical to Jamaica prevented from leaving the island. (Kadene Campbell, personal communication, 2021).

### Conclusion

The path toward becoming a signatory of the 1970 Convention and the revision of national legislation has been a long one for Jamaica. The intention is that signing on to these Conventions will align Jamaica towards stronger efforts that will see greater safeguarding of cultural property. Ratification is also meant to provide Jamaica with a stronger weighting in presenting its own claims for the return of cultural property and enabling being a part of the global network that can provide support in safeguarding cultural heritage from theft, illicit trafficking and looting.

In 2018, a strategic push was facilitated within the particular context of reparations from the British government. As such, a multi-agency national workshop with the support of the Secretariat of the 1970 Convention, the UNESCO Cluster Office of the Caribbean and Barbados was held to introduce the Conventions to agencies that would be on the front line in relation to this challenge. These included in addition to culture agencies, the Customs Department, Jamaica Constabulary Force –Interpol National Central Bureau for Jamaica and Organized Crime agencies, Trade Board and the Attorney General’s Chambers. Information obtained from this first major engagement has led to increased capacity among these agencies and the culture agencies as well. Following this, meetings were held with all the legal officers of the above entities to enable greater input in the revision of the JNHT Act in 2018, with specific dialogue being facilitated with Customs. Treating with national legislation is addressed in the 1970 Convention.

Challenges in relation to private collectors remain. As many collections continue to be unknown along with their

collectors, we find that the knowledge gaps that we seek to fill remain empty. Therefore, a regional workshop was held in March 2020, in collaboration with UNESCO and UNIDROIT that included wider discussions of the issues in Jamaica and the rest of the Caribbean. This workshop allowed for greater discussions on the issue of illicit trafficking, perspectives of private collectors and next steps in the region with a focus on legislation, routes for illicit trafficking and capacity building for frontline agencies. In the battle to limit the antiquities trade in Jamaica, regulations are needed that Jamaica does not lose any more to the art market that is thriving within its shores.

Capacity building is necessary among non-culture agencies to understand how to treat with borders that are porous in relation to cultural heritage. As such, a national workshop was held with the World Customs Agency and INTERPOL in June 2021 to show how these agencies are advancing the fight against illicit trafficking of cultural property. These meetings and workshops have led to a greater understanding on the value of cultural heritage and the need to safeguard not only Jamaica's patrimony, but also that of other countries. Next steps will include additional training components to help non-culture agencies in identifying cultural property and what legal transfer of cultural property would look like.

Jamaica's revision process for the main national underpinning legislation is far advanced. Through the meetings and

workshops significant input was placed in the amendments that addressed issues to limit the loss of Jamaica's cultural resources. As the amendments are already on the legislative agenda, the next step in this regard will see the revised Act submitted to Cabinet urgently. The revised legislation has incorporated significantly increased fines that may be a deterrent to prevent or limit clandestine excavations. This, along with prison sentences is hoped to slow down these activities and protect tangible cultural resources in a more fulsome way.

Return of objects in international hands will continue to be pursued, in particular those in the British Museum. This action has been elevated to the Ministry responsible for Foreign Affairs and will continue through diplomatic channels. In regard to other collections, dialogue has already begun for their return.

Ratification of the related Conventions is an indicative move that shows Jamaica's seriousness about the safeguarding of its cultural heritage from all threats including that of loss through looting and illicit trafficking. Currently, we are on a continuum, some things are already done, others are being addressed and some are slated for the future. This thrust is anchored through the Ministry responsible for Culture and its agencies, but it is not just the responsibility of national entities. It must become an action of the Jamaican people, with the recognition and understanding that lost heritage impacts us all.

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