



## TERMS OF REFERENCE

### RESEARCH PAPER ON THE DEVELOPMENT OF A LITIGATION STRATEGY FOR THE RESTITUTION AND REPATRIATION OF AFRICAN ARTWORKS

#### About the Pan African Lawyers Union (PALU)

The Pan African Lawyers Union (PALU) is the premier continental membership forum of and for individual African lawyers and lawyers' associations in Africa. It was founded in 2002 by African Bar leaders and eminent lawyers, to reflect the aspirations and concerns of the African people and to promote and defend their shared interests. Its membership comprises of the continents over five regional lawyers' associations (RLAs), over 54 national lawyers' associations (NLAs) and over 1,000 individual lawyers spread across Africa and in the Diaspora, working together to advance the law and the legal profession, rule of law, good governance, human and peoples' rights and socio-economic development of the African continent.

#### Background of the Project

Through its collaboration with the Open Society Foundation (OSF), PALU has conceptualized a research project on the development of a litigation strategy, for the restitution and restoration of African artwork.

The extent of appropriation of African cultural objects is not truly known. However, through the work of art historian Benedicte Savoy, and writer Felwine Sarr, it is estimated that about 90% of Africa's cultural heritage, currently lies outside the continent.<sup>1</sup> Through the research of other historians, researchers, and art collectors, it is now known that these artworks are scattered across the world- in Europe and North America- as public and private collections.

So far, the calls for the restitution and repatriation of these artworks, have largely been met with resistance. Governments, ministries of culture, museums, universities, and private collectors have long refused to recognize the immorality of the circumstances, under which Africa's cultural patrimony was removed from the continent.<sup>2</sup>

<sup>1</sup> "The Idea is not to empty museums': Authors of France's blockbuster restitution report say their work has been misrepresented", <https://news.artnet.com/art-world/restitution-report-critics-1446934> - accessed 27th Oct 2021.

<sup>2</sup> Why African cultural restitution matters, <https://www.dailymaverick.co.za/opinionista/2019-12-05-why-african-cultural-restitution-matters/> - accessed 27<sup>th</sup> Oct 2021.



In recent years, there have been an increasing number of requests for the return of African artworks and artefacts. Consequently, new initiatives and cooperation efforts have emerged. After the publication of the groundbreaking report by Felwine Sarr and Benedicte Savoy, advising President Emmanuel Macron to return the Benin Bronzes in the national collection, a portal opened, catalyzing other European nations to do the same.<sup>3</sup> Since the report was released in November 2018, the global movement for art restitution and repatriation has strengthened considerably. Official claims have been filed for the repatriation of historical artworks to Ethiopia, Senegal, Benin, Congo, Kenya, Nigeria and many other African countries. Notwithstanding, a lot of work needs to be done to turn hopes of cultural restitution and repatriation into reality.

As noted by OSF, restitution is a process that will unfold over an extended period. The current dynamic should produce a process that may unfold for the next twenty years. OSF, African governments, and African civil society need to prepare for a relatively long-term process. Thus, it is important to take advantage of this turning point in the discourse, to create and solidify strategies employable for a successful campaign for the restitution and repatriation of African artworks and artefacts.

Within the context, PALU in partnership with OSF, is launching a research project, into the development of a litigation strategy for the restitution and repatriation of African artworks and artefacts. The research would be carried out in three focus areas- Europe, North America, and Africa- simultaneously.

### Description of the Assignment

To this aim, PALU is looking for experienced, expert consultants to assist in the development of a litigation strategy for the restitution and repatriation of African artworks and artefacts.

The Consultant will be responsible for the research and writing of research paper which -

- i. Identifies and establishes the existing legal framework under both domestic and regional law, for the restitution and repatriation of African artworks and artefacts, in Europe, North America and Africa, respectively.

<sup>3</sup> **Western Museums are finally reconsidering their African collections. We gathered 3 experts to explain why and what needs to happen next**, [https://news.artnet.com/art-world/benin-bronzes-roundtable-1976576?fbclid=IwAR376fafkhkw3m9hURyjweUCPCrHiCcnmVeU95CE\\_49zxXwXkGkZwm3gcNA#.YMdA1TyiFjQ.facebook](https://news.artnet.com/art-world/benin-bronzes-roundtable-1976576?fbclid=IwAR376fafkhkw3m9hURyjweUCPCrHiCcnmVeU95CE_49zxXwXkGkZwm3gcNA#.YMdA1TyiFjQ.facebook) – Accessed 27<sup>th</sup> Oct 2021



- ii. Identify and establish the domestic and regional legal institutions available as litigation avenues, in Europe North America and Africa, respectively.
- iii. Establish the possibility of seeking remedies identified under the African Union’s policy on transitional justice, including reconciliation, social cohesion, reparations-material, collective and moral, redistributive justice, memorialization and other elements of justice and accountability
- iv. Identify other outcomes (and remedies) of the litigation process, beyond restitution and repatriations.
- v. Identify the challenges of using litigation as an avenue and recommend possible solutions and/alternatives to these challenges.
- vi. Identify stakeholders and interested persons, to explore options for the possibility of developing a network/community of practice, for activists and litigators working on restitution and repatriation.
- vii. Identify a range of organic innovative tools that can be deployed, in implementing the solutions and strategies developed by the research.

#### **Project Management**

- i. Participate in an initial kick-off (inception) meeting, to meet with the PALU project team, discuss the project, validate critical objectives, agree on learning objectives, and develop a project plan to guide the project through completion.
- ii. Continuous updates to the PALU project team on the progress of the assignment.
- iii. PALU project team and the Consultants would validate the research.
- iv. Any identified issues for resolution, identified during the validation process will be implemented by the Consulting firm and approved and accepted by PALU.

#### **Experience**

The Consultant shall:

- i. have as its employees or at its service, qualified expertise, with an advanced degree in International Law or related disciplines, with previous experience in areas closely related to the tasks described in the ToR.
- ii. demonstrate a record of completing similar projects, including strategy development and research within their national and regional legal framework.
- iii. should have strong project management ability and excellent communication skills. Proficiency in more than one language will be considered as an asset, particularly French.



### General Requirements

Working closely with the PALU project team, the consultant must abide by the following general requirements.

- i. As PALU is always interested in delivering products of the highest quality, the Consultant is requested to present any suggestions or comments on how to improve the quality of the research, as well as the presentation of content.
- ii. PALU will own copyright for materials developed in the research project.

### Project work plan requirements

#### The immediate project work-plan requirements are as follows:

- i. Provide a primary point of contact for this project and, if different, a point of contact to respond to concerns and issues, as they arise.
- ii. Work may not start until the contract has been issued and signed.
- iii. Within ten business days of the start of the project, the Consultant should be prepared to hold a project status meeting to allow PALU to assess their initial progress and to make any corrections necessary to allow for further successful development.
- iv. The Consultant should designate a project representative to attend progress meetings with the PALU project team through the period covered by this TOR.
- v. The Consultant should meet all contractually obligated communication requirements as outlined in their contract with the PALU project team. Regular communications with the Contract Project Manager are included as part of this requirement.
- vi. The assignment should be completed within **three months** inclusive of a handover to the PALU project team.

Applications that meet the above requirements need to be submitted by e-mail to [secretariat@lawyersofafrica.org](mailto:secretariat@lawyersofafrica.org) not later than 18<sup>th</sup> February 2022, 17:00 EAT. The applications should include the following information: -

- i. The specific region the consultant seeks to research in.
- ii. A proposed methodology.
- iii. A detailed work plan with time frames.
- iv. Financial Proposal indicating the consultancy fees.



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- v. Detailed profile of the applicant with previous experience.
  - vi. Demonstration/summary of work completed in a similar assignment.
  - vii. References must be available on request.

Only short-listed candidates will be contacted. PALU is an equal opportunity employer that encourages applications from women and the global south and minorities.

All applications will be considered strictly confidential.

