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Return of Cultural Objects: Principles and Process

Nationaal Museum van Wereldculturen

7-3-2019

NMVW-Principles and Process for addressing claims for the Return of Cultural Objects

The Principles and Process for Addressing Claims for the Return of Cultural Objects sets out the process by which objects/collections can be claimed for return from the Nationaal Museum van Wereldculturen.

The Principles and Process expresses the overall mission of the museum to address the long, complex and entangled histories that have resulted in the collections the museum holds. It is part of a larger commitment made by Nationaal Museum van Wereldculturen (NMVW) to the role of collections in national public life, a commitment that includes researching and making publicly accessible its collection, addressing provenance issues arising from colonial appropriations, developing new ethical possibilities for collections, putting contemporary communities on an equal footing as national collections and engaging in dialogue with communities and nations of source, nationally and internationally, who have particular attachment to the collections.

These Principles and Process make clear NMVW's commitment to transparently address and evaluate claims for the return of cultural objects according to standards of respect, cooperation and timeliness. Nationaal Museum van Wereldculturen recognizes that claims can only be successful when made in a context which allows for consultation and open dialogue and clear communication by all parties. NMVW undertakes to provide guidance in regard to the process for claims being made and provide access to information held by the museum in regard to histories of collections so that claimants can be informed at all stages. NMVW do not view this process as adversarial though claimants and NMVW will be involved in processes of which require documentation, information and evidence for evaluation and assessment in order that just and fair solutions can be reached. NMVW believes that claims may be the result of an ongoing relationship between the museum and claimant parties as well as the beginning of one.

As custodian of the national collections the Nationaal Museum van Wereldculturen works within a national and international legal context. These accord an important role to cultural property and national heritage in the lives of individuals, communities and nations, and recognize the need to safeguard them in conditions of armed conflict as well as the necessity of preventing illicit trade and illegal seizure. The international context is guided by the UNESCO (1954; 1970) and UNIDROIT (1995) Conventions, as well as UN Declarations (2007), amongst others. The national context is legislated by the Heritage Act (Erfgoedwet) 2016. All national collections in the Netherlands are property of the Dutch State and therefore any decision to permanently transfer these out of the national collection requires assent of the Ministry and Minister for Education, Culture and Science. This is in keeping with articles 4.17 to 4.21 of The Heritage Act (Erfgoedwet) 2016. This requires that all objects alienated from the national collection must be measured against criteria of cultural-historical or scientific significance as Dutch cultural heritage.

To allow all parties to act with transparency and integrity, NMVW will appoint an independent Standing Advisory Committee, with an independent Chair to review and evaluate all claims and all parties's arguments. The Committee will ensure standards of documentation and research and to make definitive recommendations to the Ministry/Ministry, in keeping with its understanding of the issues, as well as the national and international frameworks that protect cultural property and heritage.

The Principles and Process for addressing claims for the Return of Cultural Objects has been adopted by the Nationaal Museum van Wereldculturen (NMVW), and is applicable only to the collections of which it is a custodian. It does not apply to any claims for the return of objects from other national collections. In addition it does not apply to those arising out of the World War II era in Europe. These are covered by the Dutch Restitution process/Dutch Restitution Committee and should be referred there.

The Principles and Process for the claims for Return of Cultural Objects is set out in the following way.

Sections 1-3 introduce the museum, its mission, the international and national context.

Section 4 identifies the criteria under which objects can be claimed including providing three broad categories: questions of legality (4.2), involuntary separation (4.3) and heritage value (4.4).

Section 5 identifies how the claim will be assessed by listing the considerations that will be taken into account. It therefore addresses the nature of information that should be provided and considered by all parties to make a claim in accordance with the criteria in section 4.

Section 6 identifies in broad terms the procedure for making a claim for those collections belonging to the Dutch State of which the NMVW are the custodian.

Section 7 identifies in broad terms the procedure for making a claim for those collections that do not belong to the Dutch State of which the NMVW are the custodian.

Section 8 identifies the process following a successful claim.

The Principles and Process –document has a glossary to explain all the terms used in the document.

Appendix 1 defines the constitution and role of the Standing Advisory Committee

Appendix 2 provides an overview of the types of information required in the claim.

Addressing claims for the Return of Cultural Objects: Criteria and Process

This framework is applicable only to the collections of which Nationaal Museum van Wereldculturen (NMVW) is currently the custodian.

Any claims for the return of objects pertaining to World War II era in Europe are covered by the Dutch Restitution process and should be referred there. These do not fall under this framework.

PART I: National and International Context

1. Nationaal Museum van Wereldculturen mission

1.1 The Nationaal Museum van Wereldculturen (NMVW) is the Dutch national institution designated for the research, interpretation, preservation and public access to the ethnographic collections/world cultures in the possession of the Dutch State. As the national museum, with this remit, the NMVW is the custodian of a national collection.

1.2 The NMVW mission is that of providing an inspiring and open view of the world and working with institutions and individuals to contribute to inspiring world citizenship nationally and internationally. NMVW has a strong focus on promoting access to its collections, in situ and online, and recognizes that its collections are subject to a number of entanglements across the world, as cultural objects have emerged from a long and complex history of global relations.

1.3 These Principles and Process sets out the context, criteria and process that will be used by NMVW for evaluating claims for return of cultural objects of which Nationaal Museum van Wereldculturen is currently the custodian. Specifically it represents NMVW's commitment to transparently address and evaluate claims for the return of cultural objects according to standards of respect, transparency and timeliness.

1.4 These Principles and Process operates in tandem with the NMVW's ongoing programme of supporting and engaging in provenance research for the establishment of histories of cultural objects and collecting. It is consistent with NMVW's commitment to develop new ethical possibilities for collections, for example by means of collaboration, display, and research.

2. International Context

2.1 These Principles and Process for return of cultural objects operates within an international context and recognizes the intentions and importance underlying certain international instruments which specifically address issues of cultural property, restitution, repatriation and return. The citations here are not comprehensive but highlights those of especially significance to this framework.

2.2 **UNESCO 1954** (Netherlands signatory 8 March 2007, retroactive to 14 Jan 1959)
The UNESCO Convention for the Protection of Cultural Property in the Event of Armed Conflict represents the first international multilateral treaty with a universal vocation exclusively focused on the protection of cultural heritage in the event of armed conflict. The 1954 UNESCO Convention became legally binding in the Netherlands in 2007, with the adoption of the Cultural Property (Return from Occupied Territory) Act (also called Hague Convention). It has retroactive effect to 14 January 1959.

2.3 **UNESCO 1970** (Netherlands signatory 1 July 2009)
The UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property is a global convention designed to afford protection against illicit import, export and transfer of ownership of cultural property. It also provides for recovery and return of any such cultural property imported after the entry into force of the Convention. The 1970 Convention was implemented in the Netherlands in 2009 and has no

retroactive effect. This means that return procedures can only be started under the 1970 Convention in the Netherlands when cultural property has been illegally removed from a Member State after 1 July 2009. The Heritage Act (Erfgoedwet) 2016 currently enacts this obligation (article 6.1-6.15).

2.4 UNIDROIT 1995 (Netherlands signatory 28 June 1995)

The UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects establishes minimal legal rules for the restitution and return of cultural objects between Contracting States, with the objective of improving the preservation and protection of the cultural heritage. The Convention applies in respect of cultural objects that were stolen or illegally exported. The Netherlands is a signatory to the UNIDROIT Convention, but has not ratified it.

2.5 UN 2007 (Netherlands voted for adoption in 2007)

The 2007 UN Declaration on the Rights of Indigenous Peoples seeks to establish a framework for securing basic standards for the survival, dignity, well-being and rights of the world's indigenous communities noting that "States shall provide redress through effective mechanisms, which may include restitution [...] with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs".

2.6 Washington Principles 1998

The Washington Conference Principles on Nazi Looted Art of 1998 provides non-binding principles to resolve questions of Nazi-confiscated art and recommends national processes for their implementation. The eleven principles advocate, amongst other things, the importance of institutionally based pro-active provenance research, the importance of transparency in terms of collections and archives to allow third party research, and the need for just and fair solutions to claims. In the Netherlands, an independent Dutch Restitution Committee was established in 2001.

3. Dutch National Context

3.1 These Principles and Process for return of cultural objects also operates in a national context, specifically The Heritage Act (Erfgoedwet) passed 1 January 2016.

3.2 The most important aim of the Heritage Act is to stop the fragmentation of Dutch cultural heritage through legislation and to promote a comprehensive protection regime for cultural heritage, with shared definitions, procedures, and protection measures for immovable, movable and intangible cultural heritage.

3.3 The Heritage Act (Erfgoedwet) is a national framework for the understanding of cultural heritage and cultural objects ("cultuurgoed", translated as both cultural property and cultural objects in English) which it defines according to the UNESCO Convention, namely that cultural heritage is a matter that has been designated by each state for religious or worldly reasons as important for archeology, prehistory, history, literature, art or science and is therefore essential for a nation's (here the Kingdom of the Netherlands) cultural heritage.

3.4 The Heritage Act (Erfgoedwet) identifies the Dutch State as the owner of the national collections. Any recommendation for return and thus permanent transfer of ownership (alienation) of cultural object(s) in the national collection out of the custodianship of NMVW will require the assent of the Dutch State through the Ministry and Minister (under articles 4.17-4.21 of the Heritage Act).

PART II: Criteria

4. Criteria for Claims for Return

4.1 Cultural objects that will be considered for return will comply with one (or more) of the following criteria.

4.2 It can be shown that the cultural object(s) was collected/acquired in contravention of the standards of legality at the time. This includes but is not limited to cases where the cultural object was:

- 4.2.1. Acquired from a possessor who acted in contravention of the standards of legality at that time and who did not have legal right to ownership of the cultural object(s);
- 4.2.2. Acquired from a possessor found since acquisition to have engaged in illegal practices relating to the ownership of cultural object(s).

4.3 It can be shown that the claimants were involuntarily separated from the cultural object(s). This includes, but is not limited to conditions where the cultural object(s) was:

- 4.3.1 Acquired without the consent of owners;
- 4.3.2 Acquired under conditions of duress that can be understood as forced sale;
- 4.3.3 Acquired from a possessor who was not culturally authorized to dispose of a particular cultural object(s), in that the customary/traditional context identifies the cultural object(s) as inalienable communal property.

4.4 It can be shown that the cultural object(s) is of such value (cultural, heritage or religious) to nations and/or communities of origin that continued retention in the collection of the NMVW can be tested in relation to analogous standards articulated by The Heritage Act (Erfgoedwet) 2016 for Dutch national heritage and culture. This includes a cultural object(s):

- 4.4.1 whose sacred purpose make them unsuited to public display and continued scientific research;
- 4.4.2 whose relative national historical significance outside the Netherlands or influence on continuous cultural wellbeing outside the Netherlands outweighs all benefits of retention by the national collection in the Netherlands.

PART III: Guidelines and Process

5. Guidelines for Claims for Return

5.1 The claim will first be assessed in terms of where it falls into scope in accordance with the criteria (article 4) above.

5.2 Questions of legality (4.2.), involuntary separation (4.3) and heritage value (4.4) will be evaluated through detailed and responsive provenance research which will aim to trace the full history of acquisition and ownership of the cultural object(s). Claims should include all known and documented aspects including questions of ownership and history of possession; the connection between the claimant and the cultural object(s); cultural and national context and any potential rights and claims by other potential applicants.

5.3 In addition to applying criteria above (article 4) the following considerations will be taken into account when reviewing the claim:

- 5.3.1 Standards of continued custodianship: the benefits of safeguarding cultural objects to ensure as far as possible they are used for cultural and heritage purposes when returned to the nations and/or communities of origin.
- 5.3.2 Cultural heritage and identity: the recognition that cultural objects may be indispensable to nations and/or communities in understanding and/or continuance of their origins, heritage, beliefs and culture.
- 5.3.3 Cultural continuity/genuine link: a demonstrable continuity/genuine link between the claimants and the cultural object(s) claimed, in terms of national heritage, persistence of beliefs, persistence of culture.
- 5.3.4 Just and fair solutions: this may include recommendations for models alternative to return that are acceptable to all parties – these might be exhibitions, loans, and sharing of information and knowledge on a number of platforms. This may include strategies for ongoing collaboration/relationship building.

5.4 Unavoidable gaps and ambiguities may exist through absences arising from the nature of museum documentation and recorded histories. In claims that cannot be documented according to the guidelines listed above, the principle of reasonable doubt (see glossary) may be applied.

5.5 In keeping with NMVW's role as a custodian of a national collection, a claim should identify national government or national (cultural) institutional support, or overtly state why this is not applicable. NMVW may wish to confirm said support.

6. Procedure for Claims for Return for Cultural Objects belonging to the Dutch State

6.1 For claims which pertain to the national collection, final assent for return of the cultural object(s) lies with the Minister. NMVW will process claims in a consistent manner (article 5) and all documentation and findings are submitted to a Standing Advisory Committee (hereafter Committee) for definitive recommendations, and then for final decision by the Minister.

6.2 Claims must be officially made in writing to the Director of NMVW.

6.3 Claims should set out the nature of the claim, inc. inventory numbers of cultural property requested, and all relevant evidence and argument for the claim.

6.4 Upon receipt of the claim, the Director will acknowledge the claim in writing and copy correspondence to the Ministry.

6.5 NMVW staff will then undertake research. NMVW do not consider this process adversarial but to be undertaken in consultation and may contact claimants during this process. Outside experts may be commissioned to provide further advice. NMVW will undertake to complete this process within six months, with a possible extension of six months.

6.6 Claims will be reviewed by NMVW in accordance with the standards of due diligence: namely the requirement that all reasonable endeavours are made to establish the context and facts of a case before deciding a course of action.

6.7 NMVW will then submit their research, findings and issue a provisional recommendation to the Committee for review and issuance of definitive recommendations. The Committee will complete this process in three months with possible extension of three months.

6.8 The Committee will issue a definitive recommendation in writing to the Ministry and Director of NMVW. The Minister will issue his/her decision. NMVW will inform the claimants of the Minister's decision within four weeks of receipt.

7. Procedure for Claims for Return for Cultural Objects belonging to owners other than the Dutch State

7.1 For claims which pertain to owners other than the Dutch State, NMVW will refer the claim to the owners within four weeks of receiving the claim.

7.2 Claims must be officially made in writing to the Director of NMVW.

7.3 Claims should set out the nature of the claim, inc. inventory numbers of cultural property requested, and all relevant evidence and argument for the claim.

7.4 Upon receipt of the claim, the Director will acknowledge the claim, refer the claim to the owners. NMVW intends to have them responding within six weeks of receiving correspondence, identifying their preferred course of action.

7.5 In the absence of response the NMVW may seek to investigate the claim in accordance with procedure used for cultural objects belonging to the Dutch State (article 6) and with national/local government sanction providing recommendation to the owner and informing claimant of state of claim.

8. Successful claims, further processes.

8.1 Each party will bear its own costs in relation the processing of the claim under these NMVW-principles and process. NMVW will provide professional support to successful claimants regarding facilitation of return. Depending on scale NMVW will work to a timetable of a year maximum for return.

8.2 Archival material will be copied and provided to successful claimants to accompany return of the cultural property.

9. Periodic review

9.1 These NMVW-principles and process will be periodically reviewed, and draw from precedent allowing it to be adapted and improved. Equally, national developments in state policies regarding return may have to be taken into account and could lead to alterations over time.

PART IV: Glossary and Definitions

Claimants:

every legal or natural person who makes a claim in writing to the Director of the NMVW requesting the return of one or more cultural objects. Claimants include can include 1) Individuals; 2) Governments/governmental actors; 3) Communities, polities or sub-State entities with nationally recognized political governance; 4) National (cultural) institutions.

Cultural object/cultural heritage/cultural property:

Cultural object and cultural heritage are used in preference to cultural property.

Cultural object a movable item forming part of cultural heritage.

Cultural heritage tangible and intangible resources inherited from the past, created in the course of time by people or arising from the interaction between man and the environment that people, irrespective of the ownership thereof, identify as a reflection and expression of continuously evolving values, beliefs, knowledge and traditions and that offer a frame of reference to them and to future generations.

Just and Fair Solutions aim to achieve a consistency of recommendations in response to varying circumstances and facts linked to specific cases, as advised and implemented by the Washington Principles of 1998.

Involuntary separation /involuntary disposal:

Involuntary separation is used in preference to involuntary disposal.

Involuntary disposal disposal is understood as transfer by gift or sale, involuntary disposal is understood to mean where consent was clearly constrained.

Involuntary separation transfer of objects where conditions of consent are not met including clear absence of owners/possessors due to persecution/conditions of coercion; disposal under conditions of constraint, of confiscation, misappropriation or other forces of coercion that are known and can be evidenced through archival, historical, art historical or social anthropological research.

Custodian/possessor/owners:

Custodian those who have the custody over a cultural object (but do not necessarily have legal ownership of it). In this framework **custodian** will only be used in regard to NMVW as an entity who legally holds the object for the owner, the Dutch State.

Possessor those who hold a cultural object in their possession and may transfer it but do not necessarily have legal ownership of it.

Owner those who have a legal title to a cultural object (but do not necessarily have it in their possession). Both natural and legal persons as well as communities can have ownership of a cultural object. Ownership is habitually determined in relationship to the national law of the country of origin of the cultural object.

Nations and/or communities of origin nations and/or communities who can demonstrate a genuine link/cultural continuity in cultural heritage terms to the cultural object(s) in question, such that the cultural object(s), or the category of objects in question has/have over time become of demonstrable value to the nation and/or community in question.

Minister/Ministry:

Minister

Minister of Education, Culture and Science, (Minister van Onderwijs, Wetenschap en Cultuur).

Ministry

Ministry of Education, Culture and Science (Ministerie van Onderwijs, Wetenschap en Cultuur (OCW)).

Party

Party

claimant(s) , NMVW or owner(s).

Return/restitution/repatriation:

All these terms refer to mechanisms for transfer of cultural objects. This framework uses the term **return** to cover meanings implied by the terms *restitution* (the transfer of stolen material in the strict sense) and *repatriation* (the transfer of material ascribed to a particular cultural patrimony).

Reasonable doubt

Reasonable doubt exists where there is no other explanation that can be concluded from the facts available and there exists no reasonable alternative to conclusions drawn.

Appendix I: Standing Advisory Committee

Standing Advisory Committee (definition and role)

The Standing Advisory Committee's (hereafter Committee) will work in accordance with the criteria, guidelines and procedures identified in the NMVW-principles and process.

Task:

At the request of the Director of NMVW, the Committee's task is to review all documentation relating to claim, created by all parties and confirm that this is of suitable standard for definitive recommendations to be made. The Committee will then issue definitive recommendations on claims for return of cultural objects in accordance with standards of objectivity, fairness and transparency. The Committee will aim for consistent decision making – namely to undertake this in accordance with standards of due diligence and with regard to just and fair solutions.

Constitution:

The Standing Advisory Committee will be no more than 7 members, including Chair and Deputy Chair. The Chair should have experience or expertise of reviewing cases linked to cultural objects from a legal standpoint.

The Committee should include at least one member whose expertise lies with matters of colonial and imperial history as pertains to the Netherlands.

The Committee should include at least one member whose expertise lies with matters of archival and provenance research preferably in matters linked to non-western cultural object(s) in museum contexts.

The Committee should include at least one member whose expertise lies with matters of art history, material culture and museology preferably in regard to non-western cultural object(s)

It will be beneficial for the Committee to draw from the currently constituted committees in the Netherlands, including the Dutch Restitutie Commissie; the Berschermdwaardigheid Commissie (OCW); Ethics Commissie (Museum Vereniging). Any members above can have served, or indeed members of these committees may be in certain instances co-opted.

Recommendations:

Among other responses the Standing Committee may recommend that:

- The cultural object(s) should be returned;
- That the cultural object (s) should not be returned, but other solutions to access are important to promoting settlement and dialogue on the matter;
- That the cultural object(s) should not be returned, but consideration will be given to other provisions;
- The cultural object(s) should not be returned.

Issuing Definitive Recommendation:

Definitive recommendations will be issued by a Committee attended and discussed by at least three Committee members, attended by the Chair or Deputy Chair.

The Chair of the Committee will formerly issue the definitive recommendation in writing, signed and dated.

Confidentiality:

The Committee will undertake to keep confidential all matters linked to private individuals.

Liability:

The members of the Committee are not be liable for any actions or omissions with regard to disputes made by parties under this framework.

Appendix II: Overview of Information Required for Return

This is in addition to any correspondence. All claims can be made in English or Dutch.

1. Cultural Objects Claims/Collections Claimed

Brief description with object number(s).

2. Claimant Identification:

See glossary definition: identify whether individual; government/governmental actor; community of sub-state entity; national cultural institution.

3. Key contact person for claimant

- Name
- Address:
- Representative function:

4. Criterion/criteria for Claim:

Reason for cultural object being claimed by claimants: described the reason for the claim in regard to the criteria identified. This should identify whether the cultural objects are being claimed due to questions of legality (4.2), involuntary separation (4.3) and/or heritage value (4.4). The criteria themselves should guide the argument being made.

For example if a cultural object is being claimed in relation to 4.2, it would be important to identify how it is known that the item was taken in contravention of legal frameworks – using any known facts or circumstances, documentation to support this claim.

5. Case for claim:

- Statement of connection between claimant(s) and cultural objects.
 - demonstration of a genuine link/cultural continuity in cultural heritage terms to the cultural object(s) in question, such that the cultural object(s), or the category of objects in question has/have over time become of demonstrable value to the nation and/or community in question.
- Assessment of cultural significance of cultural object being claimed (for claimants).
- Statement of role of heritage/object within tradition, cultural, national life and thus significance, as well as evidence of significance. This can either apply to the 'category' of cultural object (eg: 'works by Rembrandt') or the object itself (eg: 'The Nightwatch').
 - it is understood that the idea of what 'evidence' is may be sensitive/differ in different contexts. It may be able to be provided in ways other than writing, archival evidence or existing text, eg: oral histories, testimonies. How claimants can effectively do this, can be discussed in consultation.
- Provenance. Statement of known and documented aspects of making, ownership and transfer in the history of possession of the object/s.
 - reference to archival documentation, testimony and evidence here important, they may be written or conveyed in other forms.
- Projected custodial responsibilities on return: identification of public/cultural role of return cultural object(s)
 - What are the intentions for the cultural objects once returned.
- Potential rights and claims by other potential applicants.
 - Are such/these cultural objects know to be contested, or difficult to allocate to specific claimants, are there likely contestations?

- Statements of support by national cultural institutions/national government form claims made by sub-national polities or individuals.
 - This is important in terms of national support, but claimants may be able to provide reasons why this is not appropriate as well.
- Reasons for lack of evidence.