

Guidance for Restitution and Return of items from university museums and collections

International Council of Museums University Museums and Collections

INTRODUCTION

The following guidance elaborates upon the principles expressed in the ICOM Code of Ethics for Museums concerning the return and restitution of objects for museum collections and on the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), with a specific focus on universities and their museum and collections, both those originating in the home country and those from elsewhere.

ETHICAL PRINCIPLE VI, ICOM Code of Ethics:

“Museums work in close collaboration with the communities from which their collections originate as well as those they serve.”

Museum collections reflect the cultural and natural heritage of the communities from which they have been derived. As such, they have a character beyond that of ordinary property, which may include strong affinities with national, regional, local, ethnic, religious or political identity. It is important therefore that museum policy is responsive to this situation¹.”

Relevant articles from the ICOM Code of Ethics:

6.1 Cooperation

Museums should promote the sharing of knowledge, documentation and collections with museums and cultural organisations in the countries and communities of origin. The possibility of developing partnerships with museums in countries or areas that have lost a significant part of their heritage should be explored.

6.2 Return of Cultural Property

Museums should be prepared to initiate dialogue for the return of cultural property to a country or people of origin. This should be undertaken in an impartial manner, based on scientific, professional and humanitarian principles as well as applicable local, national and international legislation, in preference to action at a governmental or political level.

6.3 Restitution of Cultural Property

When a country or people of origin seeks the restitution of an object or specimen that can be demonstrated to have been exported or otherwise transferred in violation of the principles of international and national conventions, and shown to be part of that country’s or people’s cultural or natural heritage, the museum concerned should, if legally free to do so, take prompt and responsible steps to cooperate in its return.

¹ ICOM Code of Ethics, Principle VI

Relevant articles from The United Nations Declaration on the Rights of Indigenous Peoples:²

Article 11.1 Indigenous peoples have the right to practise and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature.

11.2 States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, 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.

Article 12.1 Indigenous peoples have the right to manifest, practise, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains.

12.2 States shall seek to enable the access and/or repatriation of ceremonial objects and human remains in their possession through fair, transparent and effective mechanisms developed in conjunction with indigenous peoples concerned.

Article 31.1 Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.

31.2 In conjunction with indigenous peoples, States shall take effective measures to recognize and protect the exercise of these rights.

² The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) was adopted by the General Assembly on Thursday, 13 September 2007

GUIDANCE

This paper is conceived at a moment of intense debate and quickly shifting societal and professional positions regarding the return of cultural heritage from (predominantly Western) institutions to the peoples, communities, cultures, and countries of origin. This paper is meant first and foremost to inform and support universities regarding requests for the return of items³ from their museums and collections, while acknowledging that there are many stakeholders that need to be involved in these processes. In places where laws exist that regulate procedures for restitution, universities need to comply with those.

Collections in universities and their museums (from here onwards: university museums) are drawn from many places throughout the world. For generations, university museums have been collecting, organizing, displaying these collections and using them for research and teaching. Universities were at the centre of political power when European colonisers spread across the globe. Over centuries, massive displacements of cultural objects, scientific specimens and human remains affected peoples and places everywhere.

University museums aspire to be places where people are encouraged to encounter, research, enjoy and learn from a variety of human experiences and as such university museums can in themselves be appropriate homes for collections of all kinds. University museums have a duty to respectfully care for the collections they hold and to encourage access and understanding for as many people as possible.

Collections in university museums also represent the lives of many people and the many connections between universities and the wider world. As most other museums, university museums hold their collections in trust for past and future generations, with ongoing responsibilities associated with the items in the collections themselves, the express and implied wishes of the many collectors and donors, as well as of the many stakeholders involved.

University museums often have long and complex histories of acquisition, and items almost certainly exist in their collections which were acquired by their collectors/donors under unethical circumstances. It is only now becoming more widely recognised that the circumstances of acquisition of some of these items should be considered unacceptable, and that holding certain items should be reconsidered. Such items can include but are not restricted to:

- human remains
- items which are recognised to be culturally significant by their communities of origin
- items recognised as having ancestral and/or contemporary value by communities, including secular, ceremonial, and secret or sacred items

In general terms, unacceptable circumstances of acquisition of items refer to cultural, intellectual, religious and spiritual property taken without peoples free, prior and informed consent or in violation of their laws, traditions and customs including, but not restricted to:

³ University museums recognise that items in the collection may also be considered as ancestral remains and sacred items: the use of the term 'item' in this guidance does not diminish their importance.

- items acquired as the spoils of war
- items acquired through the desecration of graves or sacred sites
- items acquired without necessary permits and authority which were in place at the time of collecting
- items which have been subject to spoliation in Europe between 1933 and 1945
- data unjustifiably extracted for research purposes

Originating peoples and communities are best placed to understand what material is significant and important to them and what they wish to have returned. Secular material made and used in the past is often of great importance to peoples and retains significances in contemporary cultural worlds, as culture is not only embodied in sacred and ceremonial practice. University museums should welcome these interests as they contribute to knowledge and understanding of the collections.

To be able to adequately engage with originating communities and other stakeholders on issues of restitution and repatriation, university museums should establish procedures that regulate the process and create clear points of contact for parties for information and restitution requests. In the addendum, a draft for some elements of such a policy are suggested, based on recent examples of such policies in university museums.

As part of good collections practice, university museums should also commit to resourcing ongoing and collaborative research into the histories of their collections to establish the provenances of items and to share findings and approaches with originating communities, other relevant parties and the wider public.

It is strongly encouraged that university museums collaborate locally, nationally and internationally to share their knowledge and experiences, resources and best practices.

Museums should invite collaboration locally, nationally, and internationally by freely and honestly sharing their knowledge, thus enabling an open dialogue with the communities whose items they hold. They should acknowledge the value of dialogue with communities and colleagues across the world, as an opportunity to empower peoples, build networks and relationships and increase knowledge and understanding. Most fundamentally, this process contributes to healing some of the deep wounds caused by past actions and acknowledges the power of collections to make and remake relationships. It contributes to a future of new cultural practices, new knowledges and new ways of sharing and learning.

Addendum

Elements for a procedure for restitution and repatriation for university museums

This section contains some draft-elements that can be used to design a procedure, based on existing, recent examples of such policies in university museums.

Page | 5

1. University museums should develop a procedure that thoroughly defines the restitution process and addresses legal and ethical principles and professional responsibilities. This procedure should be approved by relevant governing bodies and published online, and regularly be updated.
2. University museums should engage in (collaborative) research into their collections to establish the provenances of items. Wherever possible, they proactively share their findings directly with communities of origin and/or relevant cultural and governmental organisations. When publishing findings online to lower barriers for finding and accessing information, it should be accepted that not all data, especially images, are suitable for online publication and access.
3. University museums seek stakeholder engagement with the collections they hold and requests for the restitution of items from the collections. University museums work with stakeholders in a respectful, open, transparent, fair, and timely manner. University museums should engage with stakeholders in repatriation processes and facilitate their decision making on what material should be requested for return and to whom and where. Throughout the consultation and repatriation process, university museums should act in confidence and with discretion and cultural sensitivity.
4. Recognizing the rights of Indigenous people to be self-determining with their cultural heritage, university museums should welcome restitution requests made by, and on behalf of individuals, groups and public bodies, in particular requests which enable the return of cultural heritage to living communities, such as requests by:
 - a) Descendants of creators or former custodians of items, or of individuals whose remains are in the care of a university museum.
 - b) Organisations and cultural centres representing Indigenous communities who were the original creators or custodians of items, or whose remains are in the care of a university museum.
 - c) Regional and national museums in a country of origin, when requests are being made on behalf of Indigenous communities/peoples (where the community of origin is known) and with the free, prior, and informed consent of the indigenous community/peoples.
 - d) Governmental agencies, when requests are being made on behalf of Indigenous communities/peoples (where the community of origin is known) and with the free, prior, and informed consent of the Indigenous community/peoples.

5. Restitution requests should be assessed in dialogue on a case-by-case basis for which university museums establish criteria in their restitution procedure. Weighing of the criteria and their importance may vary from case to case. Suggested criteria are:
 - a) Identity of the item: evidence relating to the identification of the item concerned to demonstrate that it is the right item that is requested.
 - b) History of possession and/or ownership of the item: evidence about the provenance of the item prior to its acquisition by the university museum and evidence relating to the university museum's title in the item and/or rights of possession. The use and treatment of the item since its acquisition by the university could also be described.
 - c) Connection between the item and the requesting party: evidence to demonstrate this connection. This may include evidence of the continuity of practices or group identity between the original possessors and those making the request. If a request is made on behalf of another person or group, evidence must also be presented to demonstrate that they have the right to be a representative.
 - d) Significance of the item to the requesting party and to the university museum: demonstrate the significance of the item to both. This may include issues such as the religious, cultural, historical or scientific importance of the item.
 - e) Consequences of return or retention by the university museum: reflecting on the likely future treatments and uses of the item if it is returned or if it is retained by the university museum. This may include information about aspects such as possible display, research, destruction, alteration or restrictions on access. Reflections on the possible broader implications of a decision to return or a decision not to return an item should also be made transparent. Suggestions about issues such as the creation of replicas, additions to the university museum's collections, the use of images and research opportunities can also be discussed.

6. University museums establish priority areas for restitution according to the nature of the collections they hold and the communities they serve, while remaining open to restitution requests for other areas. Priority areas may include:
 - a) Human remains, being the bodies, and parts of bodies, of once living people (homo sapiens), including bones, teeth, skin and other organs, body fluids, slide preparation of human tissue, DNA samples and other biological material and may include hair and nails.
 - b) Human remains also include 'artefactual' human remains (also referred to as modified human remains). These are any of the above which have been modified or incorporated into artefacts together with other materials.
 - c) Culturally significant items: items which are recognised to be culturally significant by their community of origin, or items recognised as having ancestral value by the community, including secular, ceremonial, and secret or sacred items.
 - d) Items that have been unethically acquired by collectors/donors/vendors: many university museums have long and complex histories of acquisition and hold items in the collection which were acquired by their collectors/donors under unethical circumstances.

A non-exhaustive list of justifiable claims made on this basis may include items:

 - acquired as the spoils of war.
 - acquired through the desecration of graves or sacred sites.
 - Items and data acquired unethically in the name of research (e.g. blood samples, photographs, biodata)

- acquired without necessary permits and authority which were in place at the time of collecting.
 - which have been subject to spoliation in Europe between 1933 and 1945.
7. The outcomes of a restitution process need to be determined in the consultative/collaborative processes outlined here and may vary but need to be led by the rights of Indigenous people to be self-determining with their cultural patrimony (UNDRIP). The unconditional transfer of ownership rights is but one of the potential outcomes. Legal contexts and governance systems vary widely globally and may forbid or limit restitution options. This should not prevent university museums to advocate or represent the need for change and to actively engage with communities of origin to establish in what way their interests can best be served, e.g. by providing or restricting access to items, by developing appropriate practices of care and/or through sharing items through loans, replica's and/or online publication.
 8. In accordance with good practice, university museums maintain a record of restitution claims, respecting all legislation relating to the protection of the rights and freedoms of individuals as well as the expressed wishes of communities of origin.

FINAL DRAFT