

Politics of the Dead: Repatriation right of African human remains outside Africa.

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• Abstract

The colonial era in Africa led to the exploitation of resources and cultural heritage, with human remains being forcibly taken and displayed in European museums, used for anthropological research, or traded. This desecration eroded the living population's sense of identity, culture, and access to the remains of their ancestors and heroes who fought for independence. As African nations gained independence in the mid-twentieth century, they began reclaiming their looted heritage through heritage restoration agreements.

Today, African nations are advocating for the fundamental right to repatriate human remains, cultural artifacts, and historical bone collections displayed in foreign countries. This research delves into the complex issues surrounding the acquisition of historical human remains and the motivations behind collecting them during colonial times, exploring the ethical, cultural, and political sensitivities associated with this process. It also investigates international laws, conventions, and ongoing initiatives that have facilitated the repatriation of human remains to their respective countries and ethnic communities of origin.

Keywords: Human Remains; repatriation; Biocultural Heritage; restitution; Decolonization.

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سياسة الموتى: الحق الإفريقي في إعادة البقايا الأدمية والرفات من الخارج

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• ملخص:

خلال العصور الاستعمارية، تعرضت غالبية الدول الإفريقية للاستغلال ونهب ثرواتها من تراث ثقافي ومقتنيات ووصل الأمر إلي التعدي علي الرفات الأدمي من عظام بشرية وجماجم وأسنان بهدف العرض في المتاحف الأوروبية أو القيام بالدراسات الأنثروبولوجية أو الإتجار، فيما يعد تجريدا لسكان الدول الإفريقية من إنسانيتهم.

يعد الحق في استرجاع الرفات البشرية والمجموعات العظمية التاريخية المعروضة في الخارج حق أصيل تناضل غالبية الدول الإفريقية من أجله لتوثيق تاريخها وتعزيز الوحدة الوطنية والهوية الثقافية بعد عقود من الاستعمار كما أنها خطوة هامة لتوثيق الأحداث التاريخية الهامة وتعزيز الذاكرة الوطنية.

يتعرض البحث لملاسات جمع المجموعات التاريخية من البقايا الأدمية من الدول محل الدراسة وماله من حساسيات أخلاقية وثقافية وسياسية وأسباب جمع هذه البقايا الأدمية في ذلك الوقت، كما يتعرض للقوانين الدولية والمواثيق والجهود التي تساهم، ولو جزئيا حتي الآن، في إعادة الرفات البشري إلي البلدان والجماعات الإثنية المعنية.

تمثل عملية الاسترجاع ضرورة ملحة للمجتمعات الإفريقية يشترك فيها أصحاب القرار والسياسيين ومنظمات المجتمع المدني والحقوقيون ومتخصصوا العلوم الإنسانية داخل القارة، وتتسبب في نقاشات واسعة وجدل كبير عن مستقبل المتاحف التي تملك بقايا أدمية إفريقية الأصل، وأحيانا عن تاريخ نشأتها.

الكلمات المفتاحية: البقايا الأدمية؛ استعادة التراث؛ المتاحف؛ الهوية الإفريقية.

I. Introduction

Aspiration No. 5 contained in the 2063 Agenda of the African Union, which is the Africa that we want, is to have “ An Africa with a strong cultural identity, common heritage, shared values and ethics”.(Our Aspirations for the Africa We Want | African Union.)⁽¹⁾.

The Charter calls on Member States to take steps to end the plunder and illicit trafficking of African cultural property and to ensure the return of such cultural property to their countries of origin. The Charter also calls on African countries to ratify the Convention for the Protection of Cultural Property in the Event of Armed Conflict and the Convention for the Protection of the Intangible Cultural Heritage.

Colonialism in Africa continues to reverberate through European and American institutions, preserving a significant repository of African cultural heritage, including ancestral human remains.

Restitution is the broader term for any object wrongfully or illicitly taken from its country of origin that may include antiquities, colonial appropriations, or works transferred during the Nazi-era. It is the restoration to its rightful owner of something that was unjustly taken (Thompson, 2003). Repatriation is used to refer to human remains and objects that are determined to be sacred, ceremonial, or cultural patrimony; and objects that were illegally exported from their country of origin

Restitution and repatriation may be driven by legal action or initiated voluntarily by an institution to uphold ethical standards. The return of human remains or objects to the rightful owner(s) can take several forms, such as an individual, family member, estate, Indigenous people, or a territory or country of origin. Criteria for restitution and repatriation should be addressed in institutions’ collection management policies

¹⁾ *Our Aspirations for the Africa We Want | African Union.* (n.d.). Retrieved October 22, 2023, from <https://au.int/en/agenda2063/aspirations>



Despite efforts to repatriate these remains, some reports suggest the volume of African heritage is overshadowed by foreign holdings (*The Sarr-Savoy Report & Restituting Colonial Artifacts - Center for Art Law*, 2018). The great public collections of African art are in New York (the Metropolitan Museum), Paris (the Musée de l'Homme and the Musée des Arts d'Afrique et d'Océanie), London (the British Museum), Berlin (the National Gallery), Zurich (the Rietberg Museum), Basel and Washington. The Tervuren Museum in Brussels, which has been collecting for longer than any other has, owns more than 400,000 African objects. The largest African museums have an average of 5,000 works (Mcfadden, 1996)

In recent years, there has been a growing awareness of the historical injustices and colonial legacy associated with the acquisition of African human remains, leading to increased attention to their repatriation. Euroamerican museums have assumed a pivotal role in this dialogue, given their substantial holdings of these remains acquired during the era of colonialism and scientific exploration (Fforde *et al.*, 2020).

Human remains may be repatriated home or restituted between two private parties, between states, or between a state and a private party. The conversation between individuals, heritage organizations, and countries that own cultural property and others who demand to have it returned to its original country or community is known as the "repatriation debate."

The article delves into the African right to repatriate human remains, its ethical implications, and the impact on indigenous communities and Euroamerican museums. It examines the legal frameworks and international conventions governing cultural property restitution, highlighting the challenges faced by African countries. The article emphasizes the importance of dialogue and collaboration between African nations and Euroamerican museums to find mutually beneficial solutions.

II. Historical Context of African Human Remains in Euroamerican Museums

Skeletal remains constitute a significant component of tangible archaeological artifacts and are commonly categorized as biofacts. The historical understanding of human history predominantly relies on inferences drawn from the examination of artifacts, ecofacts, documents, oral traditions, and other products of human cultural activities, often overlooking human skeletal remains. Bioarchaeology, as a sub-discipline of archaeology, focuses on the study of biological remains, encompassing human, plant, and animal specimens, within their cultural (archaeological) contexts to address physical anthropological inquiries.

In the latter part of the 19th century, the field of physical anthropology emerged in Europe, spearheaded by notable figures such as Paul Broca, a French surgeon, and Rudolf Virchow, a German physician and anatomist. Their contributions laid the foundation for the examination of human remains.

During this period, European collectors, including anthropologists and explorers, amassed a multitude of skulls and bones from various colonies and transported them out of Africa. These collections were initially intended for the study of human development but, regrettably, many of these human relics remained in storage for extended periods. At present, around 5,500 human remains from such collections are under the ownership of the Prussian Cultural Heritage Foundation, overseeing various museums, archives, and libraries in Germany. Collecting human remains might appear to be a peculiar passion (Rogan, 1997),

The acquisition of these collections, which include skulls, mummies, and other human remains, was a consequence of multiple encounters involving conflicts, Egyptian tomb raids, and the lamentable history of 'scientific' racism. A stark example of the latter occurred as late as 1958 when individuals from Congo were



exhibited as part of a World Fair event in Brussels, Belgium (*The Human Zoo of Tervuren (1897)*, n.d.)⁽¹⁾.

The primary motivation for museums and scientists to collect anthropological data on colonized populations, encompassing human remains, religious and cultural artifacts, physical feature molds, photographs, and voice recordings, was to substantiate scientific theories concerning race during the nineteenth century. These theories, including the notion of racial "degeneration," as proposed by Arthur de Gobineau, or the exploration of "wide differences" between Europeans and Africans, as advocated by Henry Ling Roth, were influential in shaping the 'salvage paradigm.' This paradigm, described by James Clifford, represents a prevailing anthropological and ethnographic approach to counter the vanishing indigeneity and authenticity of colonized populations during that era.

Eugenics, presented as a "science," advocated for the selective breeding of human populations, involving coercive sterilizations, in the pursuit of improving the gene pool. It was promoted by numerous secular intellectuals during the late nineteenth and early twentieth centuries under the guise of science, reason, and progress.

For instance, the skulls obtained from the Herero and Nama people in Namibia were illegally acquired from sites such as Shark Island, Windhoek Concentration Camp, and Rehoboth, and employed as research samples for eugenicist purposes, specifically for racial classification and the validation of unfounded beliefs in the alleged physical inferiority and backwardness of Africans. This practice contributed to a surge in the demand for anthropological materials and initiated a rapacious "scramble for skulls" and skeletal specimens. Consequently, to this day, skeletal remains and collections are subjects of trade and exchange among research

¹⁾ *The Human Zoo of Tervuren (1897)*. (n.d.). Royal Museum for Central Africa - Tervuren - Belgium. Retrieved October 26, 2023, from https://www.africamuseum.be/en/discover/history_articles/the_human_zoo_of_tervuren_1897#:~:text=No%20fewer%20than%20267%20Congolese,seen%20in%20Western%20societies%20today.



institutions, public and medical museums, and various other entities.

III. Ethical and Legal Issues Surrounding the Repatriation

Anthropology used colonial spaces to invade colonized bodies in order to support its theories after physiognomy and phrenology developed in the late 18th and early 19th centuries. The observation and comparison of "primitive" bodies with European bodies, according to Joanna Sofaer, "were closely tied to notions of cultural evolution with understandings of national characteristics rooted in biological disparities." (Sofaer, 2006).

Diane Lewis's article "Anthropology and Colonialism" argues that anthropological work during the colonial era seized the bodies of colonized subjects for its own purposes. Anthropologists' estrangement, driven by their belief in objective scientific observation, allowed for appropriation of human difference. The seizure of a skull left visible traces of appropriation, such as inscriptions on the bone, which designate remains as 'property'. This deprivation stripped the individual of their name and categorization, altering their physical appearance (Lewis, 1973).

While mostly concerned with mapping the structures of power over people's right to live or fate to die, Achille Mbembe's necropolitics and Giorgio Agamben's thanatopolitics offer several avenues for the inscription of human remains as subjects of contemporary political debates in the postcolony. This intervention of the dead into the lives of the living compels one to accept that the memory of the dead can influence (geo)political relations, even when the remembrance of a violent past has not yet been acknowledged or genuinely addressed (Mbembe, 2003).

Guidelines for the handling of human remains discovered at archaeological sites have been issued by multiple nations. These principles cover topics including preserving the dignity of the dead, appreciating the need for stakeholder involvement and communication, dealing with display ethics, and dealing with different legal frameworks (Shyllon, 2000; Fforde, et al., 2002; Cassman, et al., 2006)



Most African countries that could benefit from becoming States Parties to the 1970 UNESCO Convention on Cultural Property are not. Since 1972, only twenty African States Parties have been formed from 53 UN member states. The focus was on objects expropriated during colonial times. This explains why the twelve States that sponsored the first United Nations General Assembly resolution on the subject of cultural property – “Restitution of works of art to countries victims of expropriation” (Resolution 3187 of 1973) – were all African (Shyllon, 2000).

The resolution criticized the widespread removal of art objects from one country to another, often due to colonial or foreign occupation, and emphasized the need for prompt restitution of such works without charge. This was a response to the 1978 "A Plea for the Return of an Irreplaceable Cultural Heritage to those who created it." (UNESCO Doc. SHC-76/Conf. 615.5, 3.)

Prior to the adoption of the UNIDROIT⁽¹⁾ (International Institute for the Unification of Private Law) Convention, there were (and are) four options available to any country that sought the return of its cultural property:

- Litigation in foreign courts
- UNESCO Convention
- UNESCO Intergovernmental Committee
- Bilateral agreement

In 2019, ECOWAS initiated the ECOWAS 2019/2023 Action Plan in relation to cultural heritage. The plan called for the return

¹⁾ The International Institute for the Unification of Private Law (UNIDROIT) is an independent intergovernmental organisation with its seat in Rome. Its purpose is to study the needs and methods for modernizing, harmonizing, and co-ordinating private and, in particular, commercial law between states and groups of states and to formulate uniform law instruments, principles, and rules to achieve those objectives.

of African cultural heritage to its countries of origin. The plan is a West African-specific initiative.⁽¹⁾

On 10 January 2022, the French Senate adopted a proposed law on the circulation and return of cultural objects owned by public collections (Sénat 2022)⁽²⁾. This could be viewed as a positive first step towards repatriation laws. Before returning to the Senate for final approval, the National Assembly must consider, vote on, and maybe alter this law. This will be a significant step in defining the function and status of human remains in museum collections, should the legislation be ultimately approved by the voters. African States have not ratified the Conventions for a number of reasons, including:

African lawyers have been largely unaware of the benefits of joining the Conventions for the return and restitution of cultural objects, resulting in a lack of interest in the complex issues involved. The Convention's arbitration option offers a practical and cost-effective solution for resolving cultural property disputes, whether between states, private parties, or between two parties (Shyllon, 2000).

IV. Efforts and Challenges in Repatriation

Many stories of skulls and bones stolen by colonial agents all over the world were indeed known, and passed on from one generation to another among communities aware of this macabre trade of human remains. Yet, it was only in 1954 that the British governor of Tanganyika effectively took action to fulfil this early demand for repatriation and returned Mkwawa to Uhehe.

¹⁾ ECOWAS Community of West African States

<https://www.ecowas.int/ecowascommittee-on-the-return-of-cultural-properties-to-their-countries-of-origin-to-meet-in-cotonou/> (accessed 12 September 2021).

²⁾ Sénat. 2022. "Circulation et retour des biens culturels appartenant aux collections publiques" [Circulation and return of cultural property belonging to public collections]. 10 January. http://www.senat.fr/espace_presse/actualites/202112/circulation_et_retour_des_biens_culturels_appartenant_aux_collections_publiques.html



Decades later, in 1990, the Native American Grave Protection and Repatriation Act (NAGPRA)⁽¹⁾ became the first legal-binding measure ensuring that Indigenous people of the United States would be legally supported in their claims for the return of their ancestors. From then on, repatriations have taken place, spearheaded by clear policies and institutional commitment in settler colonial spaces such as the U.S., Aotearoa New Zealand and Australia.

Some of the most famous repatriation cases are:

- the skull of Xhosa King Hintsa, murdered in 1837 by a British soldier, was claimed by Nicholas Gcaleka in 1996
- a Batlhaping man who was shamelessly stuffed and exhibited in a local museum in Spain was returned to Botswana in 2000 (see Segobye; Parsons);
- Sarah Baartman, a Khoikhoi woman exhibited in Britain and France whose body was dissected post-mortem and whose remains had been exhibited up until the 1980s, was repatriated to the Eastern Cape in 2002;
- the remains of Ovambo, Ovaherero, Damara and Nama people were returned by several German institutions to Namibia in 2011, 2014 and 2018, repatriations enmeshed in politics of working through genocide ;
- the head of Ahanta anticolonial leader King (Nana) Otumfuo Baidoo Bonsue II, beheaded by the Dutch in 1838, was

¹) The Native American Graves Protection and Repatriation Act was adopted by Congress in 1990. It is the founding legislation supporting repatriation and reburial of Indigenous human remains in the US



preserved in formaldehyde at Leiden University until it was repatriated in 2009 to present-day Ghana ;

- in 2015, President Robert Mugabe fervently expressed his wish to see the remains of freedom fighters from the first Chimurenga (1896-1897) being handed over to the Zimbabwean nation by Britain's Natural History Museum⁽¹⁾.
- some repatriations from European institutions have ended with burials (Batlhaping man, Sarah Baartman, King Otumfo Baidoo Bonsoe II, Troi and Klaas Pienaar, Dawid Stuurman) (remembering the Dismembered African Human Remains and Memory Cultures in and after Repatriation, 2019).
- The repatriation of 24 Algerian national heroes' skulls belonging to individuals who fought against French colonial rule, symbolized a painful chapter in Algeria's history.
- Belgium returned to the family of Patrice Lumumba a tooth from his remains in 2021.

V. Impacts of Repatriation on Euroamerican Museums

The call for the decolonization of museums has highlighted some resistance to repatriation (Batt, 2021). Decolonization projects in several museums have drawn attention to the problematic nature of human remains collections at many North American and European museums and have raised public awareness and community engagement in debates about the ethics and ownership of human remains (Wergin 2021).

Repatriation of human remains is a significant issue for museums, often considered marginal and political. It is now a major issue in the International Council of Museums (ICOM), discussed

¹⁾ Robert Mugabe tells Natural History Museum to return human skulls.
<https://www.theguardian.com/world/2015/aug/13/mugabe-demands-return-of-skulls-from-londons-natural-history-museum> . Retrieved May 5, 2019



internationally and integrated into the ICOM Code of Ethics (articles 6.2 and 6.3).

These collections include countless human remains taken from formerly colonized countries without the consent of the related communities by European travellers, collectors, and archaeologists (Walker, 2000; Fforde, 2013; Biers, 2019). As a result, many museums have faced repatriation claims and lawsuits (Thomas, 2001; Bruning, 2017).

The significance of these museums in retaining African human remains is rooted in their responsibility to address the ethical dilemmas related to the exhibition and possession of these cultural artefacts. Moreover, these institutions have the potential to contribute to the processes of healing and reconciliation between Africa and the European nations. A defining characteristic of colonialism was the collection of African cultural heritage without obtaining free, prior, and informed consent (Posner, 2007). It is crucial for these institutions to acknowledge the profound significance of these remains and work towards repatriation, restitution, and fostering a more inclusive understanding of history.

VI. Impacts of Repatriation on African Communities

European museums, cultural institutions, and universities are systematically collecting and displaying human remains from African communities, which are seen as labels and code numbers. These remains represent the violent colonization and exploitation endured by African people, perpetuating their erasure of identities and narratives.

Colonial-racist objectification led to the erasure of an individual's names and places of belonging, as well as the labelling of remains according to precepts that were never their own. Ancestors were denied their names and places of belonging, and their kinship and subjectivity were replaced by objectifying discourse. The inscriptions on bones, made by third parties in the dialectics between Eurocentrism and the particularistic study of people of color, remain visible as tokens of dispossession,

designating remains as 'property'. This deprivation physically altered the individual's body, reinforcing their "otherness" and presiding over their community.

The absence of a totality reminds as in the grave of Songea Mbano, show that the head is still missing, waiting a proper burial after returning back his skull, such socio-cultural issues about the reunion of the body showing that the dead and their partial absence are embedded in necropolitics of the past, and thanatopolitics of the present (Mbembe, 2003).

Cultural particularities in burial rites and practices also challenge the alleged universality of conceptions of mourning and remembrance emanating from memory studies. The skull of Mkwawa is, for instance, openly exhibited to the public in the Mkwawa Memorial Museum in Kalenga, and buttresses a stronghold of cultural memory in Tanzania.

The memory of colonialism and racism is crucial in discussions about reparation and apologies. Colonial human remains serve as a reminder of atrocities committed during colonial times, making it essential to address this issue in reparations and apologies. Acknowledging and properly dealing with these remains can help heal past wounds and work towards a more just future. The political lives of dead bodies play a significant role in nationhood construction and transformation narratives. State commemorative practices reinforce state power and ideology, while grassroots memory practices foster critical consciousness and mobilize communities towards transformative action (Verdery, 1999).

The remnants of the colonial project remain in the guise of paternalism in the arguments for non-return of cultural heritage put forward by museums. Museums argue that the objects are better protected where they are in Western museums rather than in the source countries (Roehrenbeck, 2010).

International repatriation activities involve nations, museums, and individuals, causing sociocultural and political debates. African NGOs like Berlin Postkolonial, No Amnesty on Genocide, and Fahari Yetu support recovery efforts for cultural artifacts and human remains from colonial times, sparking ethical discussions.



- Conclusion

The primary goal, restitution, requires an enormous amount of work at all legislative, social, and political levels, and numerous efforts must be pooled to achieve it. There are still numerous historical collections of human remains that need to be repatriated. Up until now, no inventory, even a preliminary one, has been made of the collections of human remains found in museums outside Africa.

It is vital to note that "human remains are not just another artefact; they have potency, charged with political, evidentiary and emotional meanings..." (Cassman et al, 2006) should be bound within legal and ethical frameworks.

Western museums start repatriating human remains to their origins, but there is still much work to be done to address historical injustice. Challenges include determining the exact origins and navigating complex legal and ethical considerations. Raising awareness about repatriation is crucial, as it raises questions about cultural heritage preservation and indigenous community rights. Alternative solutions like digital repatriation or virtual exhibitions can help address these issues. The return of human remains should serve as a step towards healing and reconciliation, allowing descendants to reclaim their cultural heritage

- Recommendations

- Human remains should never be treated as property or used for profit. Instead, they should be treated with dignity and respect, acknowledging their inherent value as part of our shared human history. Establishing ethical guidelines and legal frameworks for the proper handling and repatriation of human remains is crucial, taking into account the cultural and spiritual beliefs of the communities they belong to. This fosters a more inclusive and compassionate approach to the treatment of human remains, promoting a greater understanding and appreciation of our collective heritage.

- Enforcing regulations, guidelines, and conventions is vital for the restitution of cultural heritage, especially human remains. By respecting the cultural and spiritual beliefs of communities, we can restore dignity and give a voice to those who have been silenced for too long. Ensuring the repatriation of human remains signifies a commitment to redressing past imbalances and forging a more equitable future.
- Involving local communities in the repatriation process ensures that their cultural and spiritual beliefs are respected and the process is sensitive and inclusive. Uniting all parties involved in the repatriation process under a single African banner can amplify their voices and exert stronger pressure for change. Collaboration with African museums is essential for repatriation from museums outside of Africa.



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