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## The Repatriation of Human Remains in France: 20 Years of (Mal)practice

**Abstract:** This article analyses three cases of repatriation of human remains by French public museums in order to critically examine the difficulties in the changing institutional practice. It critically assesses the statutory and administrative processes that have been used to repatriate human remains and identifies the difficulties that have been and are mostly still encountered. Firstly, it evaluates the public/private conundrum of ownership of human remains in French law, which explains why Parliament had to intervene to facilitate the repatriation of remains in public museum collections, whereas a private society could repatriate the skulls of chief Atai and his doctor to New Caledonia without legal difficulties. Secondly, it reviews the need for parliamentary intervention for the repatriation of the remains of Saartjie Baartman to South Africa and several Mokomokai to New Zealand. Finally, it criticizes the administrative deadlock that has prevented the development of a repatriation practice that could have been established after the successful repatriation of the remains of Vamaica Peru to Uruguay. Unfortunately, the process has remained

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opaque and ineffective, owing to a variety of factors; in particular the ambiguity regarding the role of the Commission scientifique nationale des collections, which is set to be abolished and whose role will be undertaken by the Haut conseil des Musées de France, and a lack of political, financial, and structural support from the Ministry of Culture. Until these shortcomings are addressed and clear criteria for repatriation are drawn up, it is unlikely that France will develop a coherent, transparent, and effective process for the repatriation of human remains.

**Keywords:** human remains, repatriation, France, Maori, Commission scientifique nationale des collections

## Introduction

The Sarr-Savoy report published in November 2018 brought forward the issue of the restitution and repatriation of cultural objects, including human remains that were collected during the violent era of colonization.<sup>1</sup> It also raised the question of how to reconstitute looted artefacts, to which this article contributes by critically assessing three cases of repatriation of human remains following different models: the repatriation of Saartjie Baartman’s remains to South Africa in 2002, the repatriation of several Mokomokai to New Zealand in 2010, and the rarely-mentioned case of Vamaica Peru, whose remains were repatriated to Uruguay in 2002 and which is the only case of repatriation by a national museum following an administrative process. In the last 20 years, France has repatriated two sets of remains (Saartjie Baartman’s and Vamaica Peru’s) and approximately 21 Mokomokai. This is a poor outcome when compared with the British Museum in London, which has now repatriated more than a hundred sets of remains.<sup>2</sup> Most recently the London National Army Museum repatriated the hair cut from the last Ethiopian emperor after he committed suicide in 1868 following the lost battle of Maqdla,<sup>3</sup>

<sup>1</sup> F. Sarr, B. Savoy, *The Restitution of African Cultural Heritage. Toward a New Relational Ethics*, November 2018, <http://restitutionreport2018.com> [accessed: 30.03.2020].

<sup>2</sup> K. Bayer, *60 Maori and Moriori Heads and Skulls Repatriated from UK and US*, “New Zealand Herald” 12 May 2016, [http://www.nzherald.co.nz/nz/news/article.cfm?c\\_id=1&objectid=11638270](http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=11638270) [accessed: 30.03.2020]; F. Harris, *Understanding Human Remains Repatriation: Practice Procedures at the British Museum and the Natural History Museum*, “Museum Management and Curatorship” 2015, Vol. 30, p. 138; Natural History Museum, *Museum Returns Remains to Torres Strait Islands*, 10 March 2011, <https://web.archive.org/web/20150628094224/http://www.nhm.ac.uk/about-us/news/2011/march/museum-returns-remains-to-torres-strait-islands95251.html> [accessed: 03.10.2020].

<sup>3</sup> M. Bailey, *London’s National Army Museum to Return Emperor’s Hair to Ethiopia*, “Art Newspaper”, 4 March 2019, <https://www.theartnewspaper.com/news/london-s-national-army-museum-to-return-emperor-s-hair-to-ethiopia> [accessed: 04.03.2019].

and the Pitts Museum in Oxford has reviewed its display of “tsantsas”.<sup>4</sup> German museums repatriated 45 remains to Australia in 2019.<sup>5</sup> Whereas a collaboration between France and Australia was announced in 2014, it has not yet been followed up on.<sup>6</sup>

The three cases mentioned above illustrate the problems of repatriation of human remains through legislative and administrative processes. This article critically assesses the different processes used to repatriate – statutory and administrative – to draw on the experience of repatriation of human remains and to identify the difficulties in changing minds and mentalities. It mainly draws on primary sources: parliamentary debates and parliamentary reports, which are not available in English. The term repatriation is preferred to return or restitution, as it refers to the process of giving back items, human remains, or cultural objects to indigenous communities or minorities. Return refers to the return of a cultural object to the country that it was illegally exported from, as used in the 1995 UNIDROIT Convention and the Directive 2014/60. Restitution refers to the loss following a theft or illegal dispossession of the original owner, State or individual, and is also used in the 1995 UNIDROIT Convention.<sup>7</sup>

There are numerous arguments both against and in favour of repatriation. The arguments against are mainly framed on the universalist approach of museums as protectors of artefacts and the universality of scientific knowledge derived from the study of human remains and other artefacts. Thus museums become the guardians of objects, samples, and remains from which data is extracted. A strong proponent of this position was John Merryman, who defined the terms cultural nationalists and cultural internationalists.<sup>8</sup> More recently, Tiffany Jenkins has drawn on Merryman’s position to argue that museums’ foundational purpose is “to extend our knowledge of past people and their lives” and therefore should keep their treasures, including human remains.<sup>9</sup>

<sup>4</sup> Idem, *Oxford Museum Rethinks Famed Display of Shrunken Heads*, “Art Newspaper”, 6 March 2019, <https://www.theartnewspaper.com/news/oxford-museum-rethinks-famed-display-of-shrunken-heads> [accessed: 11.03.2019].

<sup>5</sup> C. Hickley, *Germany Returns Indigenous Remains of 45 Ancestors to Australia in ‘Long Overdue Step’*, “Art Newspaper”, 29 November 2019, <https://www.theartnewspaper.com/news/germany-returns-indigenous-remains-of-45-ancestors-to-australia-in-long-overdue-step> [accessed: 09.12.2019].

<sup>6</sup> C. Garcia, *La France va collaborer avec l’Australie pour la restitution de restes humains aborigènes*, “Le Journal des Arts”, 20 November 2014, <https://www.lejournaldesarts.fr/patrimoine/la-france-va-collaborer-avec-laustralie-pour-la-restitution-de-restes-humains-aborigenes> [accessed: 10.05.2019].

<sup>7</sup> M. Cornu, M.-A. Renold, *New Developments in the Restitution of Cultural Property: Alternative Means of Dispute Resolution*, “International Journal of Cultural Property” 2010, Vol. 17(1); M. Cornu, J. Fromageau (eds.), *Dictionnaire compare du droit du patrimoine culturel*, CNRS, Paris 2012.

<sup>8</sup> J. Merryman, *Two Ways of Thinking about Cultural Property*, “American Journal of International Law” 1986, Vol. 80(4), p. 831.

<sup>9</sup> T. Jenkins, *Keeping their Marbles*, Oxford University Press, Oxford 2016.

While Bénédicte Savoy and Felwine Sarr's report is flawed in many respects, it has underlined the advantages of restitution of cultural objects, and the arguments advanced for the repatriation of human remains are even stronger and fall within four categories. First, repatriation addresses the wrongs of a scientific classification of races/the colonized as less advanced, less human, and less civilized, and which supported the narrative of the superiority of the European colonizer over the peoples living in these "newly found/discovered" lands, as illustrated by the cases of Saartjie Baartman and Vamaica Peru (further discussed below). These tenets are now disowned, but the remnants of these classifications are displayed in our museums. Secondly, repatriation contributes to the re-humanization of remains that are no longer exhibited objects, but rather traces of people who once lived.<sup>10</sup> This re-humanization also heals communities and exorcizes the past, sometimes in conjunction with the descendants of grave-robbers.<sup>11</sup> It gives an opportunity for closure to the traditional custodians and relatives of the deceased, and provides for the spiritual and cultural needs to properly bury the dead, whose spirit is not at rest.<sup>12</sup> Thirdly, it contributes to the safeguarding of cultural identity. The righting of a wrong and the repatriation of the remains of an Elder to its community mends the psychological and physical consequences of the loss.<sup>13</sup> It can lead to a cultural revival for the communities, better cohesion, and a sense that injustices have been resolved. This wrong is acutely felt in the case of human remains, which are a *sui generis* category of cultural heritage that is "spiritually alive".<sup>14</sup> Finally, it improves collaboration and discussion between museums and communities, encourages intercultural understanding, and obliges museums to communicate with indigenous communities, which can foster new exchanges, as was the case between France and New Zealand after the repatriation of the Mokomokai.<sup>15</sup>

<sup>10</sup> L.G. Reinius, *The Ritual Labor of Reconciliation: An Autoethnography of a Return of Human Remains*, "Museum Worlds" 2017, Vol. 5, p. 74; C. Rassool, *Re-storing the Skeletons of Empire: Return, Reburial and Rehumanisation in Southern Africa*, "Journal of Southern African Studies" 2015, Vol. 41, p. 653.

<sup>11</sup> L.G. Reinius, op. cit.

<sup>12</sup> C. Krmpotich, *Remembering and Repatriation: The Production of Kinship, Memory and Respect*, "Journal of Material Culture" 2010, Vol. 15, p. 157; C. Krmpotich, *Repatriation and the Generation of Material Culture*, "Mortality" 2011, Vol. 16, p. 145; K. Lambert-Pennington, *What Remains? Reconciling Repatriation, Aboriginal Culture, Representation and the Past*, "Oceania" 2007, Vol. 77(3), p. 313.

<sup>13</sup> L. Moudileno, *Returning Remains: Saartjie Baartman, or the "Hottentot Venus" as Transnational Postcolonial Icon*, "Forum for Modern Language Studies" 2009, Vol. 45, p. 200.

<sup>14</sup> F. Lenzerini, *The Tension between Communities' Cultural Rights and Global Interests: The Case of the Maori Mokomokai*, in: S. Borelli, F. Lenzerini (eds.), *Cultural Heritage, Cultural Rights, Cultural Diversity: New Developments in International Law*, Brill Nijhoff, Leiden 2012, p. 174.

<sup>15</sup> *Comptes rendus de la Commission de la Culture, de l'Éducation et de la Communication, Mme Catherine Morin-Desailly, présidente. Restitution des biens culturels - Audition de M. Michel Van Praët, professeur émérite du Musée national d'histoire naturelle, membre de la Commission scientifique nationale des collections*, 15 January 2020, <http://www.senat.fr/compte-rendu-commissions/20200113/cult.html> [accessed: 20.02.2020].

Repatriation is underpinned by several international instruments that have recognized the particular status of human remains and their close relationship with human rights, as well as the significance of culture and heritage for indigenous peoples who “have a right to have the objects that are essential for the preservation of their own cultural identity returned to them”.<sup>16</sup> These instruments have recognized a strong link between the preservation of the cultural identity of a community and their effective enjoyment of human rights, and include: the 1982 Mexico City Declaration on Cultural Policies; Article 1 of the 2003 UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage; and Paragraphs 7 and 5 of the preamble of the 2005 UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions.<sup>17</sup> Other instruments have recognized the interconnection between human rights and cultural identity, including Article 27 of the 1966 International Covenant on Civil and Political Rights; General Comment 23 of the Human Rights Committee; General Comment 11 of the Committee on the Rights of the Child; and General Comment 21 of the Committee on Economic, Social and Cultural Rights on Article 15 on the right to take part in cultural life of the 1966 International Covenant on Economic, Social and Cultural Rights. Finally, Article 12(2) of the United Nations Declaration on the Rights of Indigenous People requires States to provide positive measures to allow indigenous communities to lodge claims for the repatriation of cultural objects and human remains. It states that “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”<sup>18</sup>.

Soft law instruments have also recognized the importance of human remains in the management of museum collections. The ICOM Code of Practice provides that museums should cooperate to repatriate remains exported or transferred in violation of the principles of international and national conventions when the remains are part of the country’s or people’s cultural heritage (Article 6.3). This is particularly relevant for requests for the repatriation of human remains that were taken during colonization, more often than not without the consent of the family or the community. Such repatriation promotes dialogue between museums and communities and encourages museums to exhibit remains with decency and respect for the beliefs of different communities. The Vermillion Accord on Human Remains, adopted by the World Archaeological Congress in 1989 following a suggestion by the International Law Association’s Committee on Cultural Heritage Law, encourages archaeologists and scientists to consult with and to demonstrate the value of their research to indigenous communities prior to undertaking research on human

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<sup>16</sup> F. Lenzerini, *The Tension*, pp. 165, 171.

<sup>17</sup> H. Keeler, *Indigenous International Repatriation*, “Arizona State Law Journal” 2012, Vol. 44, p. 703.

<sup>18</sup> United Nations Declaration on the Rights of Indigenous People, A/RES/61/295, 13 September 2007.

remains.<sup>19</sup> The agreement has six provisions which emphasize the importance of respect and consent for research, display, and the future of the remains. The Tama-ki Makau-rau Accord on the Display of Human Remains and Sacred Objects, adopted in 2006,<sup>20</sup> endorses six principles for the display of human remains based on consent, respect, and dignity. Finally, the Mataatua Declaration on Cultural and Intellectual Property Rights of Indigenous Peoples, adopted in New Zealand in 1993, goes further as it clearly states that “[a]ll human remains and burial objects of indigenous peoples held by museums and other institutions must be returned to their traditional areas in a culturally appropriate manner”.<sup>21</sup>

Treating human remains and their communities of origin with dignity requires an open process, whereby the communities can request the repatriation of their Elders’ remains. Unfortunately this is far from being the case in France. In the last 20 years, there have been three cases of repatriation, and they have contributed to the creation of opacity and inequality of treatment between indigenous peoples (Maoris and others). Following a discussion of the conundrum of human remains’ ownership – as this is the crux of the legal argument advanced against the repatriation of human remains – each case is critically assessed.

### Ownership of Human Remains: A Public/Private Conundrum

During life the body, as the physical envelope of a person, is protected against unwanted interference; a living person has rights, including the right to consent to physical, medical, and surgical acts. In contrast, corpses are objects, not legal entities. Human remains are just that, remains of people who once lived, people who become remains of their bodies, body parts, soft tissues, or bones (osteological material). Rather than being subject of rights themselves, their remains become subjected to other peoples/institutions’ rights, including a right of ownership. Hence, the issue of repatriation is closely link to the question of ownership of human remains,<sup>22</sup> which subdivides into the distinction between the body of the living and the corpse of the deceased, and between civil law (private ownership) and public law (state/public museum ownership).

<sup>19</sup> World Archaeological Congress, *Codes of Ethics*, [https://web.archive.org/web/20071224200459/http://www.worldarchaeologicalcongress.org/site/about\\_ethi.php](https://web.archive.org/web/20071224200459/http://www.worldarchaeologicalcongress.org/site/about_ethi.php) [accessed: 04.10.2020]; R.M. Seidemann, *Bones of Contention: A Comparative Examination of Law Governing Human Remains from Archaeological Contexts in Formerly Colonial Countries*, “Louisiana Law Review” 2004, Vol. 64, p. 581.

<sup>20</sup> World Archaeological Congress, *Code of Ethics*, <https://worldarch.org/code-of-ethics/> [accessed: 30.03.2020].

<sup>21</sup> World Intellectual Property Organization, *Mataatua Declaration on Cultural and Intellectual Property Rights of Indigenous Peoples*, para. 2.12, [https://www.wipo.int/tk/en/databases/creative\\_heritage/indigenous/link0002.html](https://www.wipo.int/tk/en/databases/creative_heritage/indigenous/link0002.html) [accessed: 05.03.2020].

<sup>22</sup> C. Davies, *Property Rights in Human Remains and Artefacts and the Question of Repatriation*, “Newcastle Law Review” 2004, Vol. 8, p. 5.

Firstly, in civil law the body of a living person, its parts, and components (e.g. organs, blood, semen etc.) are extra-commercium, which means that they can be subjected to neither proprietary nor possessory rights regardless of the person's consent (Section 16-1 of the French Civil Code<sup>23</sup>). Hence, a contract whereby a 17-year-old had an Eiffel tower and a rose tattooed on her right bottom during a film production (and which was removed two weeks later) was deemed void. Leaving aside the issue of the validity of consent of a minor, the contract was void as it breached public order and the principle that there is no right to dispose of one's own body, including one's skin (*principe d'indisponibilité* now codified in Section 16-1 of the Civil Code).<sup>24</sup> Unlike the body of the living, there is no rule that says that a corpse cannot be owned; Section 16-1-1 of the Civil Code requires decency and respect when dealing with a corpse, but does not address the question of property rights.<sup>25</sup> Section 16-1-1 was applied in 2009 to ban the touring exhibition "Our Body" which presents plastinated bodies in natural positions, such as walking, playing, horse riding.<sup>26</sup> This exhibition has been shown with great success in New York, London, Berlin, and many other cities around the world. It was banned in France on the ground that the organizers could not show that the corpses had been legally acquired and that, when alive, the people had agreed to their bodies being exhibited in such manner after their death.<sup>27</sup> Conversely, if the organizers had successfully demonstrated that the people had consented to the exhibition, then the corpses would have been legally acquired. According to the Court of Appeal, individuals are able to decide that their body can be publicly exhibited after their death, whereas other and more "traditional" ways of disposing of one's body are strictly regulated. Indeed, the choice of living persons to dispose of their body after their death is limited to agreeing to organ donation, organizing their funerals, being either buried or cremated, and if the latter whether to dispose of the ashes or to keep them, so long as it is not in a private dwelling such as the family home.<sup>28</sup> Therefore, the decision of the Court of Appeal gives greater weight to the will of the living person to publicly display his/her body than the law does.

<sup>23</sup> "Le corps humain [...] ne (peut) faire l'objet d'un droit patrimonial". "The human body cannot be subjected to ownership rights" (own translation).

<sup>24</sup> Court of Cassation (France), First Civil Chamber, Case No. 70-12.490, Judgment of 23 February 1972, Bulletin civ. 1 n. 61 p. 54.

<sup>25</sup> "The respect due to the human body does not stop with death. Human remains, including ashes when the corpse was cremated, must be dealt with respect, dignity and decency" (own translation).

<sup>26</sup> Bodies are preserved by "polymer impregnation" or "plastination" which is a process that replaces the body's water and fat with reactive plastics. Our Body: The Universe Within, *Standard Process of Plastination*, <http://www.ourbodytheuniversewithin.com> [accessed: 04.10.2020].

<sup>27</sup> C. Frerking, H. Gill-Frerking, *Human Remains as Heritage: Categorisation, Legislation and Protection*, "Art Antiquity & Law" 2017, Vol. 22, p. 49.

<sup>28</sup> G. Loiseau, *Des cadavres mais des hommes*, note sous CA Paris 30 avril 2009, "Semaine Juridique", 15 June 2009, p. 23.

This however is the position for the remains of the recently dead, which contrasts with the position for the remains of the ancient dead. The legal status of ancient human remains is that of an object and not of a person, even though it is an object that should be treated with decency and respect. This, however, does not prevent their commodification and marketization, many objects made of body parts (shrunk tattooed heads, skulls, flutes made of femur), or indeed complete corpses (Egyptian mummies) can be found on the art market, legally or illegally.<sup>29</sup> This commodification of human remains is not new. In the Middle Ages, the remains of saints (fingers, toes, skulls, hair, nails...) were routinely sold and displayed in reliquaries in churches or in personal chapels, and many are still on display in churches or in museums such as the Cluny museum in Paris.

When human remains are privately owned, there is nothing that prevents their owners from choosing to relinquish their ownership title to repatriate them. This happened in 2014, when the skulls of chief Ataï and his doctor were returned to New Caledonia, a semi-independent territory within the French Republic. They were killed by the French army in 1878 during the colonization of the island by French troops, which had their heads severed and sent to Paris to be studied.<sup>30</sup> The Prime Minister had promised that they would be returned by the Museum of Natural History, when in fact they were not held by this institution. The skull and head belonged to the Société Anthropologique de Paris (a private institution), which owned them and had lent them to the Museum. The remains have now been repatriated by the Society.<sup>31</sup>

Secondly, the legal question of the ownership of human remains is further complicated by the division between private and public law. Legal rules for the protection of the integrity of a person are found in Section 16-1 and following of the Civil Code, and those governing human remains in Section 16-1-1 of the same code (which is private law); whereas human remains kept in accredited museums fall within the remit of public law. Human remains in museums are owned by the State and fall within the remit of the Cultural Heritage Code (CHC) as well as the rules applying to the *domaine public*, or public ownership laws. The conflict between private and public rules is illustrated by the case of Saartjie Baartman. During parliamentary debate discussing the repatriation of her remains, Roger-Gerard

<sup>29</sup> D. Huffer, D. Chappell, *The Mainly Nameless and Faceless Dead: An Exploratory Study of the Illicit Traffic in Archaeological and Ethnographic Human Remains*, "Crime, Law and Social Change" 2014, Vol. 62, p. 131; D. Huffer, S. Graham, *Fleshing Out the Bones: Studying the Human Remains Trade with Tensorflow and Inception*, "Journal of Computer Applications in Archaeology" 2018, Vol. 1, p. 55; L. White, *The Traffic in Heads: Bodies, Borders and the Articulation of Regional Histories*, "Journal of Southern African Studies" 1997, Vol. 23, p. 325.

<sup>30</sup> *Restitution des têtes maories*, Journal officiel de la République française. Assemblée nationale. Compte rendu intégral, 30 April 2010, p. 2595, <http://www.assemblee-nationale.fr/13/pdf/cr/2009-2010/20100172.pdf> [accessed: 11.07.2019].

<sup>31</sup> Groupe de travail sur la problématique des restes humains dans les collections publiques (GTPRH), *Les restes humains dans les collections publiques*, Office de coopération et d'information muséales, Dijon 2019, p. 7; P. Blanchard, D. Daeninckx, *Un chef revient parmi les siens*, "Le Monde", 10 August 2013.

Schwartzberg, then Secretary of State for Research, relied on the principle of Section 16-1 of the Civil Code to argue firstly that it applied to the State as well as private individuals, i.e. that no one, including the State, could own a human body and, secondly, that it applied to a person's body, whether (s)he was alive or dead. This meant that a statute to de-access Saartjie's remains was not needed since they were never within the State's ownership.<sup>32</sup> The Secretary of State also introduced an exception to this principle, i.e. the scientific interest in keeping the remains. In such a case, the remains should be kept in the collection. The fear of opening up a floodgate of claims for restitution of all skeletons found in faculties of medicines as well as museums explains this exception. However, the argument of the Secretary of State shows its limits, since he argued that human remains cannot be owned by the State as they are *extra commercium*, but that if they are of scientific interest they can be owned by a museum. For the restitution of its Mokomokai, the Rouen City Council argued, like Schwartzberg, that Section 16-1 of the Civil Code set a public policy principle that excluded any proprietary right in human remains, including one to the benefit of the State. Therefore, the Mokomokai could not "belong" to the Council and there was no need to comply with the de-accession procedure found in the CHC. The Administrative Tribunal in December 2007 did not follow this argument, and although it recognized that according to Section 16-1 the remains had to be kept in decent condition, even in a museum, the CHC applied to the Mokomokai (see below for a detailed discussion of this case).

Human remains that are owned by the State are part of the public domain. Therefore, the only option is to end the principle of *domanialité publique* through *déclassement* or de-accession. This process involves either a statute or an administrative decision. Normally, the delisting process is an administrative decision. However, this was found to be impossible for the repatriation of human remains but for one case: the repatriation of Vamaica Peru's remains to Uruguay. Acts were adopted to repatriate both Saartjie Baartman's remains as well as a series of Mokomokai to New Zealand. This contradiction, how an administrative decision was found to be impossible in one instance, while it sufficed in another, is further analysed in the following sections.

## The Case of Saartjie Baartman: An *Ad Hoc* Statute

Saartjie Baartman was born in South Africa in 1789 under the occupation of the Boers. Her mother was from a Bochimian tribe and her father from the Hottentots tribe. From her birth she was submitted to the oppression of the colonizer, her first name was in Dutch, Saartjie (Sarah), as was the tradition then; her surname was

<sup>32</sup> *Restitution de la «Vénus hottentote»*, Journal officiel de la République française. Assemblée nationale. Débats parlementaires, 21 February 2002, p. 1719, <http://www.assemblee-nationale.fr/11/cr/html/20020142.asp> [accessed: 29.03.2019]. Section 16-1-1 of the Civil Code had not yet been enacted.

Baartman (“bearded” in Dutch), which was given to her by Alexander Dunlop when he took her to London in 1810.<sup>33</sup> She was exhibited in a human zoo because of her race, her small stature, and her steatopygia (an accumulation of large amounts of fat on the buttocks). In 1814, she was sold to a Frenchman, who exhibited her in Paris under the name “Vénus hottentote”.<sup>34</sup> She died of pneumonia two years later and her body was transported to the Museum of Natural History at the request of two scientists, who moulded her entire body in plaster before dissecting it and extracting her skeleton, which was soon after exhibited in the Museum and from 1937 in the Musée de l’Homme. Her remains were used as evidence of the superiority of the white race; theories nowadays of course disavowed.<sup>35</sup> In 1994, the then President of France François Mitterrand promised Nelson Mandela (then President of South Africa) to repatriate Saartjie Baartman to her native country.<sup>36</sup> Unfortunately, the Musée de l’Homme did not follow up on this promise, and because of a strong opposition from museum curators delayed the decision to return her remains.<sup>37</sup> Finally, an MP, Nicolas About, introduced a private members’ bill in 2001, with one article authorizing the de-accession of her remains and their repatriation to South Africa to be buried. The statute was enacted on 4 May 2002<sup>38</sup> and her remains returned to South Africa shortly thereafter.<sup>39</sup>

Her repatriation was presented as an act of generosity by the French State rather than as repentance for colonization, the objectification of different races, and their display in human zoos. In parliamentary debates, MP Schwartzberg mentioned three important dates in French constitutional history: the Revolutions of 1789 and 1848 that enshrined the motto “Liberté, Égalité, Fraternité” (freedom, equality, brotherhood) and 1946 (the year of the constitution of the Fourth Republic after Nazi occupation and the Second World War), and he described France as a “democratic and free” State that recognized the liberation of South Africa from

<sup>33</sup> Ibidem, p. 1720.

<sup>34</sup> M. Upham, *From the Venus Sickness to the Hottentot Venus. Saartjie Baartman and the Three Men in Her Life: Alexander Dunlop, Hendrik Caesar and Jean Riaux*, “Quarterly Bulletin of the National Library of South Africa” 2007, Vol. 61, p. 9.

<sup>35</sup> P. Richert, *Rapport 177 sur la Proposition de loi autorisant la restitution par la France de la dépouille mortelle de Saartjie Baartman, dite «Vénus hottentote» à l’Afrique du Sud*, Sénat, Commission des affaires culturelles, 23 January 2002, p. 10.

<sup>36</sup> J. Le Garrec, *Rapport 3563 sur la proposition de loi adoptée par le Sénat relative à la restitution par la France de la dépouille mortelle de Saartjie Baartman à l’Afrique du Sud*, Assemblée nationale, Commission des affaires culturelles, 30 January 2002, p. 10.

<sup>37</sup> M. Cornu, *France*, in: T. Kono (ed.), *The Impact of Uniform Laws on the Protection of Cultural Heritage and the Preservation of Cultural Heritage in the 21st Century*, Martinus Nijhoff, Leiden 2010, p. 349.

<sup>38</sup> *Loi n° 2002-323 du 6 mars 2002 relative à la restitution par la France de la dépouille mortelle de Saartjie Baartman à l’Afrique du Sud* [Law No. 2002-323 of 6 March 2002 Relating to the Restitution of the Remains of Saartjie Baartman by France to South Africa], *Journal officiel de la République française*, 7 March 2002, p. 4265.

<sup>39</sup> *Saartjie Baartman Is Finally, Finally Home*, “New African” 2002, Vol. 408, p. 44.

Apartheid. Hence, by agreeing to repatriate Saartjie Baartman's remains the French Republic honoured the principles of liberty, equality, and fraternity between people. Lydie Moudelino's analysis is pertinent:

[T]he return of Baartman's remains comes to symbolize an act of true French Republican generosity, analogous to the abolition of slavery (as the reference to Schoelcher suggests), to the defence by Zola of Dreyfus (the French Jewish soldier falsely accused and convicted of treason in 1894), and even to the Revolution itself, all within a broader framework structured around a longer history of Enlightenment and the defence of Human Rights.<sup>40</sup>

This repatriation was a presidential project and a political act; not a general policy for the repatriation of human remains.<sup>41</sup> Repatriation cannot regularly happen through specific statutes like this because of the parliamentary time required and/or the number of remains in question. It also requires a political consensus that might not be present or might be thinner when it is not supported by foreign diplomacy. The next case examined is the repatriation of a set of remains from the same origin: the Maori Mokomokai.

## The Case of the Mokomokai: Objects from the Same Origin

In 2007, France was once again in the limelight for refusing to repatriate a Maori preserved tattooed head or Mokomokai or Toi Moko in the possession of the Museum of Rouen. The story unfolds as follows: a man named Drouet came into its possession in the 19th century under unknown circumstances at a time when trafficking was fierce as heads were collected by Europeans to exhibit in their *cabinets de curiosités*. Drouet bequeathed it to the museum of Rouen in 1875, where it was exhibited until 1996 when the museum closed for refurbishment. When it was "rediscovered" in the storeroom in 2007, Rouen City Council contacted the ambassador of New Zealand in Paris.<sup>42</sup> The official decision to repatriate the remains was taken by the City Council on 19 October 2007 and an agreement was signed with the Museum of Te Papa Tongarewa of Wellington to prepare for its reburial.<sup>43</sup> All was well, until the Government's local representative (*préfet*) applied for judicial review at the demand of

<sup>40</sup> L. Moudileno, op. cit., p. 207; *Restitution de la «Vénus hottentote»*, p. 1721: "Après avoir subi tant d'outrages, Saartjie Baartman va sortir enfin de la nuit de l'esclavage, du colonialisme et du racisme, pour retrouver la dignité de ses origines et la terre de son peuple, pour retrouver la justice et la paix, qui lui ont été si longtemps déniées. La France de 1789, de 1848 et de 1946 salue l'Afrique du Sud, libérée de l'apartheid. En rendant ce dernier hommage à Saartjie Baartman, elle rend hommage à la liberté, à l'égalité et à la fraternité des peuples".

<sup>41</sup> C. Rassool, op. cit., p. 664.

<sup>42</sup> Museum of New Zealand Te Papa Tongarewa, *Repatriation*, <https://www.tepapa.govt.nz/about/repatriation> [accessed: 30.03.2020].

<sup>43</sup> C. Morin-Desailly, *Restitution de la tête maori de Rouen: enfin l'épilogue heureux d'une formidable aventure humaine*, Press release, 27.04.2011.

the Secretary of State for Culture.<sup>44</sup> In December 2007, the Administrative Tribunal of Rouen voided the Council’s decision and consequently the agreement with the Museum of Te Papa Tongarewa, on the grounds that the formal process for de-acquisition of an artefact from a public collection had not been complied with.<sup>45</sup> The City Council did not follow the process set up by a 2002 Statute: it did not apply for the Commission’s approval before agreeing to repatriate the Toi Moko; an approval that would not have been granted because the head had been bequeathed by Drouet in 1875. The Tribunal’s decision was confirmed by the Administrative Court of Appeal of Douai in July 2008.<sup>46</sup> The grounds for judicial review were that the City Council did not follow the due process to de-access an object that “belonged” to a public collection, not that the repatriation would damage the French cultural heritage.

Concomitantly to the judicial review process, the MP for Rouen, Catherine Morin-Desailly (who was also a city councillor), introduced a private member’s bill to allow for the de-acquisition of all Maori preserved tattooed heads held in accredited museums.<sup>47</sup> This bill, supported by the Government, was later amended to modify the de-acquisition process of all artefacts held in public museums. The statute was finally enacted on 18 May 2010, and de-accessed all Maori preserved and tattooed human heads kept in the collections of accredited museums, in order to repatriate them to their original communities, including the ones that had been bequeathed to the State.<sup>48</sup> Rouen’s Mokomokai was returned on 9 May 2011 to New Zealand, and others in 2012.<sup>49</sup>

<sup>44</sup> P. Richert, *Rapport 482 sur la Proposition de loi visant à autoriser la restitution par la France des têtes maories*, Sénat, Commission des affaires culturelles, 23 June 2009, p. 11.

<sup>45</sup> Administrative Tribunal of Rouen, Decision of 27 December 2007, “Panorama (Daloz)” 2008, p. 1444; for a translation see M. Bel, M. Berger, R.K. Paterson, *Administrative Tribunal of Rouen, Decision No. 702737, December 27, 2007 (Maori Head Case)*, “International Journal of Cultural Property” 2008, Vol. 15, p. 223. See below for more on the case of the Mokomokai: A. Breske, *Politics of Repatriation: Formalizing Indigenous Repatriation Policy*, “International Journal of Cultural Property” 2018, Vol. 25, p. 347; F. Lenzerini, *The Tension*, p. 177; idem, *Cultural Identity, Human Rights, and Repatriation of Cultural Heritage of Indigenous Peoples*, “The Brown Journal of World Affairs” 2016, Vol. 23, p. 127.

<sup>46</sup> Administrative Court of Appeal of Douai, Decision of 24 July 2008, “Actualité juridique de droit administratif” 2008, p. 1896; C. Saujot, *Inaliénabilité reconnue aux collections muséales : le recours à la procédure de déclassement doit être respectée*, “La Semaine Juridique” 2008, II 10181.

<sup>47</sup> The expression “accredited museum” is used to describe museums that have been labelled “Musée de France”. These museums can be public, private (but not for profit), national, or local, but fulfil the same criteria of quality regarding the display of their collections and their management. The management of a collection falls within the ambit of the CHC; however rules for private not-for-profit museums are less stringent than for public museums. M. Cornu, N. Mallet-Poujol, *Droit, œuvres d’art et musées, protection et valorisation des collections*, 2nd ed., CNRS éditions, Paris 2006, p. 279.

<sup>48</sup> *Loi n° 2010-501 du 18 mai 2010 visant à autoriser la restitution par la France des têtes maories à la Nouvelle-Zélande et relative à la gestion des collections* [Law No. 2010-501 of 18 May 2010 to Authorise the Return of Maori Heads to New Zealand by France and Relating to the Management of Collections], *Journal officiel de la République française*, 19 May 2010, p. 9210.

<sup>49</sup> Museum of New Zealand Te Papa Tongarewa, *International Repatriation*, <https://www.tepapa.govt.nz/international-repatriation> [accessed: 08.04.2019].

At the political level, the French Parliament was seen as doing the right thing, MPs adopted the bill with an overwhelming majority (457 for and 8 against<sup>50</sup>), and aimed to untarnish France's reputation after the initial refusal to repatriate the Mokomokai. The statute also had a memorial aspect, as MPs spoke of a duty to repatriate (*véritable devoir*),<sup>51</sup> to redress the wrongs of colonialism (many described at great length and in detail the trade of these heads in the 19th century), and of the need to comply with the principles of human dignity, ethics, and respect between cultures of living peoples.<sup>52</sup> However, the legal principle of inalienability was not questioned during the debate. While most MPs approved of the repatriation in the case of the Maori remains, they also repeated several times that this repatriation was an exceptional situation and that the integrity of public collections was not in question, the principle of inalienability was not diminished, and that the floodgate of restitution had not been opened.<sup>53</sup> Only one MP, Huguette Bello, discussed the possibility of repatriating human remains to other communities. She highlighted that de-accessioning only Maori remains discriminated against other indigenous communities and mentioned two set of remains that also deserved to be returned: the skull of chief Ataï from New Caledonia and the skull of King Toera from Madagascar, who was beheaded in 1897.<sup>54</sup> Since then, the skull of Ataï and his doctor were returned in 2013 by the Société Anthropologique de Paris (see above), whereas the remains of King Toera have not yet been identified despite research undertaken in the archives of the Museum of Natural History in 2008 and 2012.<sup>55</sup>

The adoption of specific statutes for the repatriation of specific sets of remains creates an inequality of treatment between the Maori indigenous communities and other indigenous peoples wishing to repatriate their ancestors' remains. This probably contributes to the lack of requests for repatriation.<sup>56</sup> Repatriation by statute also heightens the political process and becomes dependent on party politics, including the MPs' personal interests – such as those of Nicolas About and Catherine Morin-Desailly, the two MPs who introduced private members' bills for the repatriation of Saartjie Baartman and the Mokomokai of Rouen – as well as on

<sup>50</sup> *Restitution des têtes maories*, Journal officiel de la République française. Assemblée nationale. Compte rendu intégral, 4 May 2010, p. 2712, <http://www.assemblee-nationale.fr/13/pdf/cri/2009-2010/20100176.pdf> [accessed: 11.07.2019].

<sup>51</sup> *Restitution des têtes maories*, 30 April 2010, p. 2590 (M. Tabarot).

<sup>52</sup> *Ibidem*, p. 2591 (P. Folliot).

<sup>53</sup> *Restitution par la France des têtes maories*, Journal officiel de la République française. Sénat. Compte rendu intégral, 29 June 2009, p. 6427 (L. Duvernois), <http://www.senat.fr/seances/s200906/s20090629/s20090629.pdf> [accessed: 11.07.2019].

<sup>54</sup> *Restitution des têtes maories*, 30 April 2010, p. 2594 (H. Bello).

<sup>55</sup> *Question N° 35855 de Mme Huguette Bello*, 14<sup>ème</sup> législature, 2013, <http://questions.assemblee-nationale.fr/q14/14-35855QE.htm> [accessed: 04.03.2019].

<sup>56</sup> P. Richert, *Rapport 379 sur La gestion des collections des musées*, Sénat, Commission des affaires culturelles, 3 July 2003.

national lobbying by foreign States. This approach does not contribute to a transparent policy on repatriation. It seems to be, however, the preferred solution as in the short term this method will be used for the restitution of one sword to Senegal and of 26 objects from the treasure of Behanzin to Benin, which Stéphane Martin, then-Director of the Museum of Quai Branly-Jacques Chirac, had approved for restitution.<sup>57</sup> The best way forward would be to have clear de-accession criteria that could be used by museums to develop a coherent policy.

## The Case of Vamaica Peru: Administrative Deadlock or Future Possibilities?

Concomitantly to the much-publicized repatriation of the remains of Saartjie Baartman to South Africa in 2002, a quieter yet equally important decision was made for the repatriation of the remains of Vamaica Peru to Uruguay. The circumstances of the display and collection of these remains bear similarities to the case of Saartjie Baartman. Vamaica Peru and three members of his tribe, the Charruas, were taken prisoner following the war of independence. They had been bought to be exhibited and arrived in France in 1831/1832, and were slated to be “studied” by Georges Cuvier, who however passed away a few weeks before their arrival.<sup>58</sup> After Vamaica Peru’s death in 1833, his corpse was dissected and his remains were kept in the Museum of Natural History for 170 years.<sup>59</sup> The decision to repatriate his remains was made by the Museum with the approval of the Secretary of State for Research, following the legal framework in force at the time.

During the parliamentary debates on the repatriation of Saartjie Baartman’s remains and the Mokomokai, it was argued that de-accession was impossible, yet the repatriation of Vamaica Peru illustrates that the laws in place were adequate, albeit not used. Section L52 of the Code of State Property was then in force and applied to all museums’ artefacts, with the consequence that items of collections that belonged to public museums were non-transferrable (the principle of inalienability). This principle has its roots in the Middle Ages and has further evolved, in a complex set of rules around its core value now found in Section 3111-1 of the Public Bodies’ Property Code.<sup>60</sup> An exception, called delisting or *déclassement*, exists in order to

<sup>57</sup> *Comptes rendus de la Commission de la Culture, de l’Éducation et de la Communication, Mme Catherine Morin-Desailly, présidente. Restitution des biens culturels – Audition de M. Stéphane Martin, ancien président de l’établissement public du musée du Quai Branly – Jacques Chirac*, 19 February 2020, <http://www.senat.fr/compte-rendu-commissions/20200217/cult.html> [accessed: 02.03.2020].

<sup>58</sup> P. Rivet, *Les derniers Charruas*, “Revista de la Sociedad «Amigos de la Arqueología»” 1930, p. 5.

<sup>59</sup> M. Van Praët, *Saartjie Baartman, Une restitution témoin d’un contexte muséal en évolution*, in: C. Blanckaert (ed.), *La Vénus hottentote: entre Barnum et Muséum*, Publications Scientifiques du Muséum National d’Histoire Naturelle, Paris 2013, p. 367.

<sup>60</sup> *Code général de la propriété des personnes publiques*, 21 April 2006: “Les biens des personnes publiques mentionnées à l’article L. 1, qui relèvent du domaine public, sont inaliénables et imprescriptibles”. See also

avoid a complete paralysis of the Administration. This process is twofold: firstly, the decision to dispose of an item must be taken by the same authority that transferred it to the public service and following the same procedure;<sup>61</sup> and secondly the item must be physically removed from the service. For example, old buildings that are too obsolete to be used as schools or hospitals, are usually sold, whereas damaged cars and used military equipment which cannot be disposed of are destroyed. In Vamaica Peru's case, the Secretary of State for Research (the relevant authority for the Museum) agreed that the remains had no scientific interest and, consequently, no public interest, and should be delisted (*déclassé*) from the Museum's collection.<sup>62</sup> Peru's remains were repatriated to Uruguay and were buried in the National Pantheon.

This process was amended in 2002 when a major reform on museum management recognized the legitimacy of de-accession and created the Commission scientifique nationale des collections ("the Commission"), whose mission was to oversee such a process. This reform recognized for the first time that collections were not static; that museums could not care for everything within their walls; that their aim was not only to preserve the past but also to invest for the future; and that de-accession was necessary to guarantee effective collection management.<sup>63</sup> The Act codified the principle of inalienability as it applies to museums (now in Section L.451-5(1) CHC). By means of an exception to this principle, Section L.454-1(2) allows curators to de-access artefacts held in public collections – whether purchased with public or private funds – with the approval of the Commission. However there are two exceptions to this exception. Firstly, works in private collections of accredited museums that were purchased with funding from the State, and secondly, works that were bequeathed or donated to a public collection cannot be de-accessed (Section L.451-7 CHC). The aim of the latter exception is to re-assure potential donors that their gifts will not be sold unless Parliament authorizes it. However, Parliament feared that curators would too easily get rid of their "old stuff" and in order to limit and control this new power, it created the Commission to oversee the process. The Commission created by the 2002 Act was set up by regulation the same year (Sections L.115-1 et seq. and R.451-3 CHC). Its structure and composition were modified in 2010. It decides on both accession and de-accession at the request of the director of a museum, and

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J. Rigaud, *Réflexion sur la possibilité pour les opérateurs publics d'aliéner des oeuvres de leurs collections*, Ministère de la Culture et de la Communication, 6 February 2008, p. 51, <https://www.vie-publique.fr/sites/default/files/rapport/pdf/084000071.pdf> [accessed: 17.05.2019].

<sup>61</sup> Section 2141-1 of the Public Bodies' Property Code. The French expression is "règle du parallélisme des formes".

<sup>62</sup> M. Van Praët, op. cit.

<sup>63</sup> J. Rigaud, op. cit., p. 51.

has met many times to discuss the former (acquisition by purchase, gift, or donation, Section L.451-1 CHC<sup>64</sup>) but up until 2010 had not taken a decision about the latter.<sup>65</sup>

This Commission is in deadlock and unable to function for several reasons: ambiguity regarding its role, as well as political, financial, and structural problems. As regards the former, Morin-Dessailly thought that the *raison d'être* of the Commission was to establish criteria for de-accession.<sup>66</sup> Its president, however, was of a different opinion and underlined that it did not have the authority to discuss criteria for the repatriation of human remains.<sup>67</sup> A special working group was set up to discuss the place of human remains in museum collections in general, but not their repatriation. The group published guidelines for the display of human remains in museums following the principles of decency, but nothing was said about repatriation.<sup>68</sup> Secondly, there was a lack of political leadership in nominating the different members of the Commission; Morin-Dessailly blames the government for this failure.<sup>69</sup> After the Commission's structure and composition were amended in 2010, the president (Jacques Sallois), along with representatives of both Parliament and local authorities, were nominated in 2013.<sup>70</sup> In addition, the Commission has not had a president since January 2018, when the five-year mandate of Sallois ended.<sup>71</sup> Thirdly, there was a lack of financial support for the work undertaken by the Commission, as mem-

<sup>64</sup> There are different commissions depending on the type and size of the museum and price of the object. For example, if the value of the object is less than a fixed threshold, the Louvre's director needs the approval of an in-house commission: *Décret n° 92-1338 du 22 décembre 1992 portant création de l'Établissement public du musée du Louvre* [Decree No. 92-1338 of 22 December 1992 Creating the Public Establishment of the Louvre Museum], *Journal officiel de la République française*, 23 December 1992, Section 4-1. For more details, see M. Cornu, N. Mallet-Poujol, *op. cit.*, p. 164.

<sup>65</sup> C. Le Moal, *Rapport 2447 sur la proposition de loi adoptée par le Sénat visant à autoriser la restitution par la France des têtes maories à la Nouvelle-Zélande et relative à la gestion des collections*, Assemblée nationale, Commission des affaires culturelles, 7 April 2010, p. 31; P. Richert, *Rapport 482*, p. 39.

<sup>66</sup> *Comptes rendus de la Commission de la Culture... Audition de M. Stéphane Martin*.

<sup>67</sup> *Rapport au Parlement de la Commission scientifique nationale des collections (CSNC). Annexes: 1re partie*, 11 February 2015, p. 20.

<sup>68</sup> *Ibidem*; GTPRH, *op. cit.*

<sup>69</sup> *Comptes rendus de la Commission de la Culture, de l'Éducation et de la Communication, Mme Catherine Morin-Dessailly, présidente. Restitution des biens culturels – Audition de M. Jacques Sallois, ancien président de la Commission scientifique nationale des collections*, 15 January 2020, <http://www.senat.fr/compte-rendu-commissions/20200113/cult.html> [accessed: 20.02.2020]; *Comptes rendus de la Commission de la Culture... Audition de M. Stéphane Martin*.

<sup>70</sup> *Comptes rendus de la Commission de la Culture, de l'Éducation et de la Communication, Mme Catherine Morin-Dessailly, présidente. Audition de M. Jacques Sallois, président de la commission scientifique nationale des collections (CNSC), sur le rapport de cette commission au Parlement*, 18 March 2015, <http://www.senat.fr/compte-rendu-commissions/20150316/cult.html#toc3> [accessed: 13.03.2020].

<sup>71</sup> *Comptes rendus de la Commission de la Culture, de l'Éducation et de la Communication, Mme Catherine Morin-Dessailly, présidente. Organismes extra-parlementaires – Communications*, 4 December 2019, <http://www.senat.fr/compte-rendu-commissions/20191202/cult.html> [accessed: 20.02.2020].

bers had to pay for their own travel,<sup>72</sup> which is in violation of Section R.115-3 CHC, which states that unpaid members should get their travel expenses reimbursed. Finally, there is a structural problem in the organization of the Commission, i.e. its large size. Section R.115-2 CHC sets up four colleges with 40 members in total (albeit with some members belonging to several colleges). The quorum to meet was half of its membership (20 members), which was rarely attained (Section R.115-4(3) CHC).<sup>73</sup> Even if the quorum was met to discuss potential de-accession requests, it was rare to reach the bar for approval, which requires two thirds of all members (26) of the Commission rather than of those present at the meeting (Section R.115-4(4) CHC). Despite these difficulties, the Commission decided on a handful of cases: two guns from the Army Museum; a few artefacts in decay from the Museum of Air and Space at the request of the Secretary of State for Defence; and some artefacts from the Manufacture of Sèvres;<sup>74</sup> and these decisions were agreed by post rather than in person.<sup>75</sup> The Commission also submitted a report to Parliament in 2015, in which it identified criteria to de-access objects within two collections only: the Manufacture of Sèvres and the Army Museum, but did not refer to human remains.<sup>76</sup> The way forward is uncertain. Michel Van Praët suggested the judiciary route to replace the Commission.<sup>77</sup> However judges, albeit independent, are not the best situated to decide on the criteria to de-access human remains or cultural objects.

The Government aimed to repeal the Commission for the reasons that its mission finished with the submission of the report in 2015, and that it only advised the Secretary of State for Culture and did not take the final decision regarding the de-accession of objects from museum collections.<sup>78</sup> However, both houses of Parliament were in conflict as the Senate wanted to preserve the Commission as a safeguard to de-accession,<sup>79</sup> whereas the National Assembly wanted its abrogation.<sup>80</sup> A consensus was found when both agreed to abolish the Commission while setting up limits to the de-accession process to preserve the coherence of collections. Chapter 5

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<sup>72</sup> Ibidem.

<sup>73</sup> *Comptes rendus de la Commission de la Culture... Audition de M. Jacques Sallois*, 15 January 2020.

<sup>74</sup> *Question N° 83570 de M. Thierry Lazaro*, 14ème legislature, 2016, <http://questions.assemblee-nationale.fr/q14/14-83570QE.htm> [accessed: 09.03.2019].

<sup>75</sup> *Comptes rendus de la Commission de la Culture... Audition de M. Jacques Sallois*, 15 January 2020.

<sup>76</sup> *Rapport au Parlement de la Commission scientifique nationale des collections*, p. 22.

<sup>77</sup> Ibidem.

<sup>78</sup> *Projet de loi n° 307 d'accélération et de simplification de l'action publique*, 5 February 2020 [http://www.assemblee-nationale.fr/dyn/15/dossiers/acceleration\\_simplification\\_action\\_publique?e-tape=15-SN1-DEPOT](http://www.assemblee-nationale.fr/dyn/15/dossiers/acceleration_simplification_action_publique?e-tape=15-SN1-DEPOT) [accessed: 27.10.2020]

<sup>79</sup> *Projet de loi d'accélération et de simplification de l'action publique*, Sénat, 3 March 2020 <http://www.senat.fr/seances/s202003/s20200303/s20200303021.html#section2355> [accessed: 27.10.2020]

<sup>80</sup> *Projet de loi n° 484, modifié, par l'Assemblée nationale, d'accélération et de simplification de l'action publique* (6 October 2020) [http://www.assemblee-nationale.fr/dyn/15/textes/115t0484\\_texte-adoptee-seance#B3805787492](http://www.assemblee-nationale.fr/dyn/15/textes/115t0484_texte-adoptee-seance#B3805787492) [accessed: 27.10.2020]

of title I of the CHC is now entitled “Deaccession” (*déclassement*) rather than “Commission scientifique nationale des collections”.<sup>81</sup> The approval of the Commission is replaced by the approval of the Haut Conseil des musées de France for collections of accredited museums. This institution was created in 2002 at the same time as the Commission and was amended in 2018 to include representatives of the Senate and National Assembly. For collections not belonging to accredited museums, the required approval (*avis conforme*) is lowered to an opinion (*avis simple*) of the relevant secretary of state (for example Secretary of State for Defence for army museums or the Secretary of State for Education for university museums), and of the Secretary of State for Culture for collections that do not belong to the State (new article L.115-1 CHC).<sup>82</sup>

This situation leads to three observations. Firstly, curators are strongly opposed to de-accession and attached to the principle of inalienability, as the role of museums is to preserve the past for future generations and there is a fear of opening the floodgate.<sup>83</sup> Secondly, there are no guidelines on what can be de-accessed: fakes, duplicates, damaged artefacts, and/or human remains. The lack of engagement with this issue means that no criteria have been defined to identify objects that could be de-accessed. It was expected that the Commission would set those criteria in its de-accession practice, but that never happened and the report published in 2015 is rather scarce as it only deals with two museums that have many duplicates in their collections. Following the Sarr-Savoy report the situation is becoming urgent in light of the potential requests for repatriation and restitution of African cultural objects. Thirdly, the lack of clarity of the de-accession procedure for human remains creates an inequality of treatment between the Maoris and potential applicants wishing to request the repatriation of their ancestors’ remains. Indeed, MPs showed a lot of emotional reasons in taking their positions, either to oppose the de-accession (protecting the integrity of public collections, fearing opening the repatriation floodgate) or supporting it (redressing the wrongs of colonialism being the main reason), but they neither discussed potential criteria to identify other remains that could be repatriated nor were they aware (except for one) that de-accessioning only Mokomokai discriminated against other communities.

Repatriation takes time and needs to be carefully thought through in order to not create or cause a new wrong or grievance. The criteria for deciding which remains could be repatriated and which could not have been discussed within the Department for Culture, but are not yet publicly available. It is hoped that the guide-

<sup>81</sup> The Statute has recently been promulgated; see *Loi n° 2020-1525 du 7 décembre 2020 d'accélération et de simplification de l'action publique* [Law No. 2020-1525 of 7 December 2020 for the Improvement of Efficiency of Public Decision Making], *Journal officiel de la République française*, 8 December 2020.

<sup>82</sup> D. Gremillet, G. Kasbarian, *Rapport n° 66 fait au nom de la commission mixte paritaire* (21 October 2020) <http://www.senat.fr/rap/I20-066/I20-066.html> [accessed: 27.10.2020].

<sup>83</sup> J. Rigaud, *op. cit.*, p. 30.

lines have not adopted the four inadequate criteria put forward by the Museum of Rouen to allow for the repatriation of the Mokomokai: (1) the request originates from a sovereign country where the original community (*peuple*) still live in; (2) the remains have no scientific interest; (3) the remains will be buried and not exhibited or preserved in a museum; and (4) the death of the person was caused by a barbaric act or acts. These criteria were later considered reasonable by Valérie Fourneyron, MP,<sup>84</sup> even though during the parliamentary debates, they were amended as follows: 1) the request was made by a democratic State; 2) in the name of an indigenous group that still exists today; 3) the remains have no scientific interest; and 4) the principle of dignity justified the repatriation. This approach emphasizes sovereignty and could lead to the exclusion of families, minorities, and indigenous communities. The criterion of scientific interest can be disproportionate as a ground for refusal when it is not qualified as exceptional for the interest of humanity at large, and a balance must be found between those scientists for whom all human remains are of interest and should be kept in museums, and those who think that the pursuit of scientific knowledge is not a value above all others.<sup>85</sup> By contrast, remains of persons recently deceased cannot be studied without the prior consent of the living relatives unless two conditions are met: there is a scientific or pathological reason to study the corpse; and the remains are decently buried afterwards. It should not be otherwise for older remains, where consent can be gained from the communities of origin and whose remains can then be buried. It is the case that not all communities want the repatriation of their Elders' remains, since their spirit might not be embodied in them. Furthermore, the value of scientific research should be demonstrated to all, including the community of origin and the interest in research should be balanced against the interests of the community, particularly its religious interest, which is of paramount importance for the surviving community and the peace of the deceased whose remains are kept in a foreign place. Death-related practices are part of the cultural identity of a community, and the right to repatriation outweighs the general interest of humanity to have access and to preserve cultural heritage.<sup>86</sup> A dialogue between scientists and communities is critical, and in practice different communities might have different views as to the testing and the display of remains.<sup>87</sup> For example in a French case involving the remains of five

<sup>84</sup> *Restitution des têtes maories*, 30 April 2010, p. 2594.

<sup>85</sup> R.M. Seidemann, *Altered Meanings: The Department of the Interior's Rewriting of the Native American Graves Protection and Repatriation Act to Regulate Culturally Unidentifiable Human Remains*, "Temple Journal of Science, Technology & Environmental Law" 2009, Vol. 28, p. 1; R.A. Tsosie, *Privileging Claims to the Past: Ancient Human Remains and Contemporary Cultural Values*, "Arizona State Law Journal" 1999, Vol. 31, p. 583.

<sup>86</sup> F. Lenzerini, *The Tension...*

<sup>87</sup> L. Overholtzer, J.R. Argueta, *Letting Skeletons out of the Closet: The Ethics of Displaying Ancient Mexican Human Remains*, "International Journal of Heritage Studies" 2018, Vol. 24, p. 508; S. Pfeiffer, L. Lesage, *The Repatriation of Wendat Ancestors*, 2013, "Canadian Journal of Archaeology" 2014, Vol. 38, p. 5; R.M. Seidemann, *Altered Meanings*, pp. 1, 45.

Inuits, their repatriation was not sought, even after Inuit representatives visited the museum.<sup>88</sup> This shows that there is always the opportunity to find an alternative solution to the dichotomy of repatriation/no repatriation. The remains can stay in the museum, but the requesting group or individuals can exert a level of control over them. At the same time however, this might not be a cost-effective option for the museum, which would bear the financial burden of preserving and caring for the remains while not being able to exhibit them.

The way forward is to open the door but keep a guardian, the Haut conseil des musées de France, or as in the UK, where Section 47 of the Human Tissue Act 2004 allows for the repatriation of remains of persons, the Human Remains Advisory Panel that advises museums on the interpretation of criteria defined by the Department for Culture, Media and Sport.<sup>89</sup>

## Conclusion

The situation today is that there are no official documents to guide museum professionals on the criteria to assess a request for the repatriation of human remains. As a consequence, contrary to Article 12 of the UN Declaration on the Rights of Indigenous People, France does not have a fair, transparent, and effective mechanism to deal with such requests. It took eight years to repatriate the remains of Saartjie Baartman even though a promise had been made by the President himself to do so, and it took five years to repatriate the Mokomokai held in Rouen. A fair balance should be struck between the interests of museums to preserve and learn about the past, and those of communities to care for their Elders.

The main obstacle to repatriation is the proper identification of remains, which is a crucial step in order to repatriate the right remains to the right peoples. The Museum of Natural History is currently researching Algerian remains in order to repatriate them to Algeria.<sup>90</sup> Twenty-four were repatriated in July 2020.<sup>91</sup> Some skeletal remains were separated from their contexts when they were initially taken for sale or exhibition purposes; existing reports are inadequate and do not refer to the provenance, context, or original indigenous communities; and different museums might identify different indigenous communities as the rightful holder of

<sup>88</sup> *Comptes rendus de la Commission de la Culture... Audition de M. Michel Van Praët.*

<sup>89</sup> Department for Culture, Media and Sport, *Guidance for the Care of Human Remains in Museums*, October 2005, paras. 13 and 28.

<sup>90</sup> *Question N° 3325 de M. M'jid El Guerrab*, 15<sup>ème</sup> législature, 2018, <http://questions.assemblee-nationale.fr/q15/15-3325QE.htm> [accessed: 04.03.2019]; *Question N° 10652 de Mme Fadila Khattabi*, 15<sup>ème</sup> législature, 2018, <http://questions.assemblee-nationale.fr/q15/15-10652QE.htm> [accessed: 04.03.2019].

<sup>91</sup> T. Sardier, *Benjamin Stora : «La restitution de dépouilles à l'Algérie s'inscrit dans une accélération du travail mémoriel»*, "Libération", 9 July 2020, p. 6, [https://www.liberation.fr/debats/2020/07/09/benjamin-stora-la-restitution-de-depouilles-a-l-algerie-s-inscrit-dans-une-acceleration-du-travail-m\\_1793846](https://www.liberation.fr/debats/2020/07/09/benjamin-stora-la-restitution-de-depouilles-a-l-algerie-s-inscrit-dans-une-acceleration-du-travail-m_1793846) [accessed: 27.10.2020].

the remains.<sup>92</sup> Hence there could be a complete lack of information on the whereabouts of the remains, as is the case with King Toera's.

The repatriation of human remains is a sensitive issue for both museums and those making the request, because it often is a reminder of past atrocities. There must be safeguards in place to preserve a balance between museums' interests and communities' interest. France has not yet found this balance. Repatriation by statute is limited, political, opaque, and uncertain. French museums and the Commission should face the reality of de-accession in order to guarantee the protection of national collections and to facilitate the repatriation of human remains in a transparent, equal, and fair way. De-accession criteria for human remains should take into consideration the interests of the claimant (whether the community or the genealogical descendants) as well as the religious and social impact of a refusal to repatriate. One should recall that when body snatching was not uncommon in England two centuries ago, "popular consensus of opinion demanded redress for the wrong which had been done to the dead, to their mourners and to the community".<sup>93</sup> Today, many overseas communities demand redress for the wrong done to their dead and they should be heard.

## References

- Administrative Court of Appeal of Douai, Decision of 24 July 2008, "Actualité juridique de droit administratif" 2008.
- Administrative Tribunal of Rouen, Decision of 27 December 2007, "Panorama (Dalloz)" 2008.
- Bailey M., *London's National Army Museum to Return Emperor's Hair to Ethiopia*, "Art Newspaper", 4 March 2019, <https://www.theartnewspaper.com/news/london-s-national-army-museum-to-return-emperor-s-hair-to-ethiopia> [accessed: 04.03.2019].
- Bailey M., *Oxford Museum Rethinks Famed Display of Shrunken Heads*, "Art Newspaper", 6 March 2019, <https://www.theartnewspaper.com/news/oxford-museum-rethinks-famed-display-of-shrunken-heads> [accessed: 11.03.2019].
- Bayer K., *60 Maori and Moriori Heads and Skulls Repatriated from UK and US*, "New Zealand Herald" 12 May 2016, [http://www.nzherald.co.nz/nz/news/article.cfm?c\\_id=1&objectid=11638270](http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=11638270) [accessed: 30.03.2020].
- Bel M., Berger M., Paterson R.K., *Administrative Tribunal of Rouen, Decision No. 702737, December 27, 2007 (Maori Head Case)*, "International Journal of Cultural Property" 2008, Vol. 15.
- Blanchard P., Daeninckx D., *Un chef revient parmi les siens*, "Le Monde", 10 August 2013.

<sup>92</sup> M.F. Brown, M. Bruchac, *NAGPRA from the Middle Distance, Legal Puzzles and Unintended Consequences*, in: J.H. Merryman (ed.), *Imperialism, Art and Restitution*, Cambridge University Press, Cambridge 2006, p. 199.

<sup>93</sup> R. Richardson, *Death, Dissection and the Destitute*, 2nd ed., University of Chicago Press, Chicago 2000, p. 85.

- Breske A., *Politics of Repatriation: Formalizing Indigenous Repatriation Policy*, "International Journal of Cultural Property" 2018, Vol. 25.
- Brown M.F., Bruchac M., *NAGPRA from the Middle Distance, Legal Puzzles and Unintended Consequences*, in: J.H. Merryman (ed.), *Imperialism, Art and Restitution*, Cambridge University Press, Cambridge 2006.
- Code civil* [French Civil Code], 15 March 1803, as amended.
- Code général de la propriété des personnes publiques* [Public Bodies' Property Code], 21 April 2006.
- Comptes rendus de la Commission de la Culture, de l'Education et de la Communication*, Mme Catherine Morin-Desailly, présidente. *Restitution des biens culturels – Audition de M. Michel Van Praët, professeur émérite du Museum national d'histoire naturelle, membre de la Commission scientifique nationale des collections*, 15 January 2020, <http://www.senat.fr/compte-rendu-commissions/20200113/cult.html> [accessed: 20.02.2020].
- Comptes rendus de la Commission de la Culture, de l'Education et de la Communication*, Mme Catherine Morin-Desailly, présidente. *Restitution des biens culturels – Audition de M. Stéphane Martin, ancien président de l'établissement public du musée du Quai Branly – Jacques Chirac*, 19 February 2020, <http://www.senat.fr/compte-rendu-commissions/20200217/cult.html> [accessed: 02.03.2020].
- Comptes rendus de la Commission de la Culture, de l'Education et de la Communication*, Mme Catherine Morin-Desailly, présidente. *Restitution des biens culturels – Audition de M. Jacques Sallois, ancien président de la Commission scientifique nationale des collections*, 15 January 2020, <http://www.senat.fr/compte-rendu-commissions/20200113/cult.html> [accessed: 20.02.2020].
- Comptes rendus de la Commission de la Culture, de l'Education et de la Communication*, Mme Catherine Morin-Desailly, présidente. *Audition de M. Jacques Sallois, président de la commission scientifique nationale des collections (CNSC), sur le rapport de cette commission au Parlement*, 18 March 2015, <http://www.senat.fr/compte-rendu-commissions/20150316/cult.html#toc3> [accessed: 13.03.2020].
- Comptes rendus de la Commission de la Culture, de l'Education et de la Communication*, Mme Catherine Morin-Desailly, présidente. *Organismes extra-parlementaires – Communications*, 4 December 2019, <http://www.senat.fr/compte-rendu-commissions/20191202/cult.html> [accessed: 20.02.2020].
- Cornu M., *France*, in: T. Kono (ed.), *The Impact of Uniform Laws on the Protection of Cultural Heritage and the Preservation of Cultural Heritage in the 21st Century*, Martinus Nijhoff, Leiden 2010.
- Cornu M., Fromageau J. (eds.), *Dictionnaire compare du droit du patrimoine culturel*, CNRS, Paris 2012.
- Cornu M., Mallet-Poujol N., *Droit, œuvres d'art et musées, protection et valorisation des collections*, 2nd ed., CNRS éditions, Paris 2006.
- Cornu M., Renold M.-A., *New Developments in the Restitution of Cultural Property: Alternative Means of Dispute Resolution*, "International Journal of Cultural Property" 2010, Vol. 17(1).
- Court of Cassation (France), First Civil Chamber, Case No. 70-12.490, Judgment of 23 February 1972, Bulletin civ. 1 n. 61 p. 54.
- Davies C., *Property Rights in Human Remains and Artefacts and the Question of Repatriation*, "Newcastle Law Review" 2004, Vol. 8.

- Décret n° 92-1338 du 22 décembre 1992 portant création de l'Établissement public du musée du Louvre [Decree No. 92-1338 of 22 December 1992 Creating the Public Establishment of the Louvre Museum], *Journal officiel de la République française*, 23 December 1992.
- Department for Culture, Media and Sport, *Guidance for the Care of Human Remains in Museums*, October 2005.
- Frerking C., Gill-Frerking H., *Human Remains as Heritage: Categorisation, Legislation and Protection*, "Art Antiquity & Law" 2017, Vol. 22.
- Garcia C., *La France va collaborer avec l'Australie pour la restitution de restes humains aborigènes*, "Le Journal des Arts", 20 November 2014, <https://www.lejournaldesarts.fr/patrimoine/la-france-va-collaborer-avec-laustralie-pour-la-restitution-de-restes-humains-aborigenes> [accessed: 10.05.2019].
- Gremillet D., Kasbarian G., *Rapport n° 66 fait au nom de la commission mixte paritaire (21 October 2020)* <http://www.senat.fr/rap/120-066/120-066.html> [accessed: 27.10.2020].
- Groupe de travail sur la problématique des restes humains dans les collections publiques (GTPRH), *Les restes humains dans les collections publiques*, Office de coopération et d'information muséales, Dijon 2019.
- Harris F., *Understanding Human Remains Repatriation: Practice Procedures at the British Museum and the Natural History Museum*, "Museum Management and Curatorship" 2015, Vol. 30.
- Hickley C., *Germany Returns Indigenous Remains of 45 Ancestors to Australia in 'Long Overdue Step'*, "Art Newspaper", 29 November 2019, <https://www.theartnewspaper.com/news/germany-returns-indigenous-remains-of-45-ancestors-to-australia-in-long-overdue-step> [accessed: 09.12.2019].
- Huffer D., Chappell D., *The Mainly Nameless and Faceless Dead: An Exploratory Study of the Illicit Traffic in Archaeological and Ethnographic Human Remains*, "Crime, Law and Social Change" 2014, Vol. 62.
- Huffer D., Graham S., *Fleshing Out the Bones: Studying the Human Remains Trade with Tensorflow and Inception*, "Journal of Computer Applications in Archaeology" 2018, Vol. 1.
- Jenkins T., *Keeping their Marbles*, Oxford University Press, Oxford 2016.
- Keeler H., *Indigenous International Repatriation*, "Arizona State Law Journal" 2012, Vol. 44.
- Krmpotich C., *Remembering and Repatriation: The Production of Kinship, Memory and Respect*, "Journal of Material Culture" 2010, Vol. 15.
- Krmpotich C., *Repatriation and the Generation of Material Culture*, "Mortality" 2011, Vol. 16.
- Lambert-Pennington K., *What Remains? Reconciling Repatriation, Aboriginal Culture, Representation and the Past*, "Oceania" 2007, Vol. 77(3).
- Le Garrec J., *Rapport 3563 sur la proposition de loi adoptée par le Sénat relative à la restitution par la France de la dépouille mortelle de Saartjie Baartman à l'Afrique du Sud*, Assemblée nationale, Commission des affaires culturelles, 30 January 2002.
- Le Moal C., *Rapport 2447 sur la proposition de loi adoptée par le Sénat visant à autoriser la restitution par la France des têtes maories à la Nouvelle-Zélande et relative à la gestion des collections*, Assemblée nationale, Commission des affaires culturelles, 7 April 2010.
- Lenzerini F., *Cultural Identity, Human Rights, and Repatriation of Cultural Heritage of Indigenous Peoples*, "The Brown Journal of World Affairs" 2016, Vol. 23.

- Lenzerini F., *The Tension between Communities' Cultural Rights and Global Interests: The Case of the Maori Mokomokai*, in: S. Borelli, F. Lenzerini (eds.), *Cultural Heritage, Cultural Rights, Cultural Diversity: New Developments in International Law*, Brill Nijhoff, Leiden 2012.
- Loi n° 2002-323 du 6 mars 2002 relative à la restitution par la France de la dépouille mortelle de Saartjie Baartman à l'Afrique du Sud [Law No. 2002-323 of 6 March 2002 Relating to the Restitution of the Remains of Saartjie Baartman by France to South Africa], Journal officiel de la République française, 7 March 2002.
- Loi n° 2010-501 du 18 mai 2010 visant à autoriser la restitution par la France des têtes maories à la Nouvelle-Zélande et relative à la gestion des collections [Law No. 2010-501 of 18 May 2010 to Authorise the Return of Maori Heads to New Zealand by France and Relating to the Management of Collections], Journal officiel de la République française, 19 May 2010.
- Loi n° 2020-1525 du 7 décembre 2020 d'accélération et de simplification de l'action publique [Law No. 2020-1525 of 7 December 2020 for the Improvement of Efficiency of Public Decision Making], Journal officiel de la République française, 8 December 2020.
- Loiseau G., *Des cadavres mais des hommes*, note sous CA Paris 30 avril 2009, "Semaine Juridique", 15 June 2009.
- Merryman J., *Two Ways of Thinking about Cultural Property*, "American Journal of International Law" 1986, Vol. 80(4).
- Morin-Desailly C., *Restitution de la tête maori de Rouen: enfin l'épilogue heureux d'une formidable aventure humaine*, Press release, 27.04.2011.
- Moudileno L., *Returning Remains: Saartjie Baartman, or the "Hottentot Venus" as Transnational Postcolonial Icon*, "Forum for Modern Language Studies" 2009, Vol. 45.
- Museum of New Zealand Te Papa Tongarewa, *International Repatriation*, <https://www.tepapa.govt.nz/international-repatriation> [accessed: 08.04.2019].
- Museum of New Zealand Te Papa Tongarewa, *Repatriation*, <https://www.tepapa.govt.nz/about/repatriation> [accessed: 30.03.2020].
- Natural History Museum, *Museum Returns Remains to Torres Strait Islands*, 10 March 2011, <https://web.archive.org/web/20150628094224/http://www.nhm.ac.uk/about-us/news/2011/march/museum-returns-remains-to-torres-strait-islands95251.html> [accessed: 03.10.2020].
- Our Body: The Universe Within, *Standard Process of Plastination*, <http://www.ourbodytheuniversewithin.com> [accessed: 04.10.2020].
- Overholtzer L., Argueta J.R., *Letting Skeletons out of the Closet: The Ethics of Displaying Ancient Mexican Human Remains*, "International Journal of Heritage Studies" 2018, Vol. 24.
- Pfeiffer S., Lesage L., *The Repatriation of Wendat Ancestors*, 2013, "Canadian Journal of Archaeology" 2014, Vol. 38.
- Projet de loi n° 307 d'accélération et de simplification de l'action publique, 5 February 2020 [http://www.assemblee-nationale.fr/dyn/15/dossiers/acceleration\\_simplification\\_action\\_publique?etape=15-SN1-DEPOT](http://www.assemblee-nationale.fr/dyn/15/dossiers/acceleration_simplification_action_publique?etape=15-SN1-DEPOT) [accessed: 27.10.2020].
- Projet de loi accélération et simplification de l'action publique, Sénat, 3 March 2020 <http://www.senat.fr/seances/s202003/s20200303/s20200303021.html#section2355> [accessed: 27.10.2020].
- Projet de loi n° 484, modifié, par l'Assemblée nationale, d'accélération et de simplification de l'action publique (6 October 2020) [http://www.assemblee-nationale.fr/dyn/15/textes/l15t0484\\_texte-adopte-seance#B3805787492](http://www.assemblee-nationale.fr/dyn/15/textes/l15t0484_texte-adopte-seance#B3805787492) [accessed: 27.10.2020].

- Question N° 10652 de Mme Fadila Khattabi, 15ème législature, 2018, <http://questions.assemblee-nationale.fr/q15/15-10652QE.htm> [accessed: 04.03.2019].
- Question N° 3325 de M. M'jid El Guerrab, 15ème législature, 2018, <http://questions.assemblee-nationale.fr/q15/15-3325QE.htm> [accessed: 04.03.2019].
- Question N° 35855 de Mme Huguette Bello, 14ème législature, 2013, <http://questions.assemblee-nationale.fr/q14/14-35855QE.htm> [accessed: 04.03.2019].
- Question N° 83570 de M. Thierry Lazaro, 14ème législature, 2016, <http://questions.assemblee-nationale.fr/q14/14-83570QE.htm> [accessed: 09.03.2019].
- Rapport au Parlement de la Commission scientifique nationale des collections (CSNC). Annexes: 1re partie, 11 February 2015.
- Rassool C., *Re-storing the Skeletons of Empire: Return, Reburial and Rehumanisation in Southern Africa*, "Journal of Southern African Studies" 2015, Vol. 41.
- Reinius L.G., *The Ritual Labor of Reconciliation: An Autoethnography of a Return of Human Remains*, "Museum Worlds" 2017, Vol. 5.
- Restitution de la «Vénus hottentote», Journal officiel de la République française. Assemblée nationale. Débats parlementaires, 21 February 2002, <http://www.assemblee-nationale.fr/11/cri/html/20020142.asp> [accessed: 29.03.2019].
- Restitution des têtes maories, Journal officiel de la République française. Assemblée nationale. Compte rendu intégral, 30 April 2010, <http://www.assemblee-nationale.fr/13/pdf/cri/2009-2010/20100172.pdf> [accessed: 11.07.2019].
- Restitution des têtes maories, Journal officiel de la République française. Assemblée nationale. Compte rendu intégral, 4 May 2010, <http://www.assemblee-nationale.fr/13/pdf/cri/2009-2010/20100176.pdf> [accessed: 11.07.2019].
- Restitution par la France des têtes maories, Journal officiel de la République française. Sénat. Compte rendu intégral, 29 June 2009, <http://www.senat.fr/seances/s200906/s20090629/s20090629.pdf> [accessed: 11.07.2019].
- Richardson R., *Death, Dissection and the Destitute*, 2nd ed., University of Chicago Press, Chicago 2000.
- Richert P., *Rapport 177 sur la proposition de loi autorisant la restitution par la France de la dépouille mortelle de Saartjie Baartman, dite «Vénus hottentote» à l'Afrique du Sud*, Sénat, Commission des affaires culturelles, 23 January 2002.
- Richert P., *Rapport 379 sur La gestion des collections des musées*, Sénat, Commission des affaires culturelles, 3 July 2003.
- Richert P., *Rapport 482 sur la Proposition de loi visant à autoriser la restitution par la France des têtes maories*, Sénat, Commission des affaires culturelles, 23 June 2009.
- Rigaud J., *Réflexion sur la possibilité pour les opérateurs publics d'aliéner des oeuvres de leurs collections*, Ministère de la Culture et de la Communication, 6 February 2008, <https://www.vie-publique.fr/sites/default/files/rapport/pdf/084000071.pdf> [accessed: 17.05.2019].
- Rivet P., *Les derniers Charruas*, "Revista de la Sociedad «Amigos de la Arqueología»" 1930.
- Saartjie Baartman Is Finally, Finally Home, "New African" 2002, Vol. 408.
- Sardier T., *Benjamin Stora : «La restitution de dépouilles à l'Algérie s'inscrit dans une accélération du travail mémoriel»*, "Libération", 9 July 2020, [https://www.liberation.fr/debats/2020/07/09/benjamin-stora-la-restitution-de-depouilles-a-l-algerie-s-in-scrit-dans-une-acceleration-du-travail-m\\_1793846](https://www.liberation.fr/debats/2020/07/09/benjamin-stora-la-restitution-de-depouilles-a-l-algerie-s-in-scrit-dans-une-acceleration-du-travail-m_1793846) [accessed: 27.10.2020].

- Sarr F., Savoy B., *The Restitution of African Cultural Heritage. Toward a New Relational Ethics*, November 2018, <http://restitutionreport2018.com> [accessed: 30.03.2020].
- Saujot C., *Inaliénabilité reconnue aux collections muséales : le recours à la procédure de déclassé-ment doit être respectée*, "La Semaine Juridique" 2008.
- Seidemann R.M., *Altered Meanings: The Department of the Interior's Rewriting of the Native American Graves Protection and Repatriation Act to Regulate Culturally Unidentifiable Human Remains*, "Temple Journal of Science, Technology & Environmental Law" 2009, Vol. 28.
- Seidemann R.M., *Bones of Contention: A Comparative Examination of Law Governing Human Remains from Archaeological Contexts in Formerly Colonial Countries*, "Louisiana Law Review" 2004, Vol. 64.
- Tsosie R.A., *Privileging Claims to the Past: Ancient Human Remains and Contemporary Cultural Values*, "Arizona State Law Journal" 1999, Vol. 31.
- United Nations Declaration on the Rights of Indigenous People, A/RES/61/295, 13 September 2007.
- Upham M., *From the Venus Sickness to the Hottentot Venus. Saartjie Baartman and the Three Men in Her Life: Alexander Dunlop, Hendrik Caesar and Jean Riaux*, "Quarterly Bulletin of the National Library of South Africa" 2007, Vol. 61.
- Van Praët M., *Saartjie Baartman, Une restitution témoin d'un contexte muséal en évolution*, in: C. Blanckaert (ed.), *La Vénus hottentote: entre Barnum et Muséum*, Publications Scientifiques du Muséum National d'Histoire Naturelle, Paris 2013.
- White L., *The Traffic in Heads: Bodies, Borders and the Articulation of Regional Histories*, "Journal of Southern African Studies" 1997, Vol. 23.
- World Archaeological Congress, *Code of Ethics*, <https://worldarch.org/code-of-ethics/> [accessed: 30.03.2020].
- World Archaeological Congress, *Codes of Ethics*, [https://web.archive.org/web/20071224200459/http://www.worldarchaeologicalcongress.org/site/about\\_ethi.php](https://web.archive.org/web/20071224200459/http://www.worldarchaeologicalcongress.org/site/about_ethi.php) [accessed: 04.10.2020].
- World Intellectual Property Organization, *Mataatua Declaration on Cultural and Intellectual Property Rights of Indigenous Peoples*, [https://www.wipo.int/tk/en/databases/creative\\_heritage/indigenous/link0002.html](https://www.wipo.int/tk/en/databases/creative_heritage/indigenous/link0002.html) [accessed: 05.03.2020].