

Draft National Policy on the Repatriation and Restitution of Human Remains and Heritage Objects



arts & culture

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POLICY ON THE MANAGEMENT OF HUMAN REMAINS AND HERITAGE OBJECTS IN MUSEUMS**1. ACRONYMS AND DEFINITION OF TERMS:**

ACRRHR:	Advisory Committee on Repatriation and Restitution of Human Remains and Heritage Objects
DAC:	Department of Arts and Culture
DEA:	Department of Environmental Affairs
DH:	Department of Health
DHA:	Department of Home Affairs
DIRCO:	Department of International Relations and Cooperation
DMV:	Department of Military Veterans
DoJ & CD:	Department for Justice and Constitutional Development
DSD:	Department of Social Development
NIA:	National Intelligence Agency
NPA:	National Prosecutions Authority
PCLU:	Priority Crimes and Litigation Unit of the NPA
RRP:	Repatriation and Restitution Programme
SAHRA:	South African Heritage Resources Agency
SANDF:	South African National Defence Force
SAPS:	South African Police Services
SARS:	South African Revenue Services
TRC:	Truth and Reconciliation Commission

2. INTRODUCTION AND PROBLEM STATEMENT

The South African Government is constantly inundated with requests to repatriate and restitute human remains in South African museums as well as the remains of South Africans in other countries. In the absence of any policy document or guidelines and principles, these requests are being dealt with on an *ad hoc* basis. There is therefore no consistency in how these cases are dealt with. There

are also no criteria in terms of who should be repatriated and restituted and of who can claim these remains. In the case of heritage objects, the requests are not as frequent. However, there are numerous South African objects, including sacred and funerary objects, in South African museums as well as in museums and institutions abroad. Repatriation and restitution of these objects will need to be dealt with in a systematic manner, based on established policy guidelines and principles.

The repatriation and restitution of human remains and heritage objects is especially controversial and challenging. To find a balance between scientific interests, ethical considerations and interests of communities is open for a lot of controversy and it is doubtful that a solution will be found that will keep everybody happy. However, this issue can no longer be ignored. Concerns have been raised in both scientific and public arenas relating to issues of consent, respect for human dignity, scientific integrity, societal expectations and ethical standards.

Although there are a number of international precedents and policies to guide these processes, it is necessary for South Africa to take its own history and culture into account. It is therefore important that we develop a South African-orientated policy that will speak to our moral standards. Perhaps we can create a new precedent that will be adopted by other Sub-Saharan countries as well.

The purpose of this document is therefore to establish a concept of how these policy guidelines and principles on repatriation of human remains and restitution of heritage objects. The document provides some background information, it looks at the existing policy and legislative framework, provides ethical considerations as well as some recommendations to consider.

3. PURPOSE

The purpose of this policy is to:

- a. outline guidelines for the management of the processes of negotiating the repatriation of South African human and ancestral remains including associated secret sacred (heritage objects) and data with overseas countries, private entities or individuals;
- b. outline guidelines for the management of human remains and restitution of secret sacred objects in South African Museums;
- c. internationally, seek on behalf of the South African people, the voluntary and unconditional return of (ancestral) remains and associated notes and data;
- d. ensure that the e.g. exhumation processes are conducted in a coordinated, regulated manner within the framework of service provider's mandates and relevant legislation;
- e. provide clarity surrounding the roles of the other relevant government department, be it at national, provincial and local government whose services are required at specific phases of the exhumation process;
- f. provide clear delegations in respect of financial responsibility regarding specific services;

4. OBJECTIVES OF THE POLICY

The objective of the policy is to:

- a. provide an all-encompassing, inclusive framework within which repatriation of human remains and restitution of heritage objects must take place;
- b. where possible identify service providers in the exhumation process and clarify duties to ensure that service providers operate within the ambit of their particular mandates;
- c. coordinate the activities and responsibilities of all service providers;
- d. provide for the establishment of Reparation and Restitution Program to coordinate the repatriation and restitution process;
- e. provide for the establishment of an Advisory Committee to provide strategic advice on cultural and management issues that affect all or many different communities and / or families including the long-term care of ancestral remains and secret sacred objects with no identified community or family of origin;
- f. ensure that sound heritage principles are promoted, through various forms of memorialisation of exhumed mortal remains;
- g. ensure that the dignity of human remains is preserved throughout the repatriation process, in line with international best practice guidelines;
- h. ensure that communities and families involved are interacted with throughout the repatriation and restitution process;
- i. facilitate healing and closure for the communities and families involved through appropriate handing over of the remains and any other assistance identified by the Repatriation and Restitution Program;
- j. ensure that the repatriation and restitution, including identification and actual exhumation, is conducted in accordance with international best practices and all the relevant legislation; and
- k. regulate expenditure in respect of repatriation and restitution process.

5. SCOPE

At the various tiers, the South African Government has been facilitating on an *ad hoc* basis the return of military and other human remains and grave goods and objects to their communities and families of origin since the dawn of democracy. The South African Government acknowledges that repatriation and restitution requires a holistic approach. Accordingly, it seeks to work collaboratively with stakeholders, including South African Government agencies, South African museums, national, provincial, and local governments, and with overseas stakeholders.

This policy covers the repatriation of human remains and the restitution of heritage objects, including:

- Repatriation of human remains within South Africa;
- Repatriation of human remains located in other countries;
- Repatriation of the remains of military veterans located outside the borders of South Africa;

- Repatriation of human remains in South African museums;
- Repatriation and/or restitution of heritage objects (funerary objects, sacred objects, grave goods, etc).

6. THE STRUCTURE

A Repatriation and Restitution Office (RRO) to be established and located within SAHRA. SAHRA, in terms of the NHRA 1999 (NHRA Act 25 of 1999) should be the lead agency on policy implementation relating to repatriation of human remains and restitution of heritage objects from overseas and within South Africa.

7. FUNDING

All activities or duties shall be funded from the relevant government departments' budgets.

Funds could be provided through the RRO to provinces and organisations and agencies accredited by that Office to facilitate returns of both human remains and associated secret sacred (heritage objects) and data to relevant communities and families locally.

Internationally, the cost of repatriating human remains should be met directly by the South African Government National Treasury through funds to the Department of Arts and Culture for RRO at SAHRA

Funds can be used for:

- Inventory and provenance research;
- Community and / or family visits in South Africa by commissioned service providers;
- Consultants to assist communities and / or families in coordinating returns;
- Museum visits by community and / or family representatives to identify ancestral remains and secret sacred objects;
- Travel for community and / or family representatives to collect ancestral remains and secret sacred objectives. (in South Africa only);
- Travel for community and / or family representatives to collect ancestral remains from overseas; and
- Preparation, packaging, transportation and freight of ancestral remains and secret sacred objects for return.

In relation to overseas collections, the South African Government will work with communities and collecting institutions to identify the origins of ancestral remains; notify communities and / or families of ancestral remains; determine the community and / or family's wishes about storing ancestral remains; and arrange for repatriation where and when it is requested.

8. SUBJECT SPECIFIC DEFINITIONS

In line with the National Heritage Council's Position Paper on Repatriation of Heritage Resources (2011):

“Human remains refer to all forms of material or remains of anatomically modern humans including:

- *Osteological material (whole or part of skeletons, individual bones or fragments of bones, teeth)*
- *Soft tissue including organs, skin, hair, nail, etc. (preserved or waxed or dried/mummified)*
- *Slide preparations of human tissue*
- *Artefacts made wholly or largely from any of the above.*

Human remains exclude fossils and sub-fossils ... human remains are limited to

- *Human remains excavated as part of an archaeological project,*
- *Human remains in public collections and*
- *The remains of victims of conflict”*

In line with the National Heritage Resources Act of 1999, heritage objects are defined as:

“(1) An object or collection of objects, or a type of object or list of objects, whether specific or generic, that is part of the national estate and the export of which SAHRA deems it necessary to control, may be declared a heritage object, including—

(a) objects recovered from the soil or waters of South Africa, including archaeological and palaeontological objects, meteorites and rare geological specimens;

(b) visual art objects;

(c) military objects;

(d) numismatic objects

(e) objects of cultural and historical significance;

(f) objects to which oral traditions are attached and which are associated with living heritage;

(g) objects of scientific or technological interest;

(h) books, records, documents, photographic positives and negatives, graphic material, film or video or sound recordings, excluding those that are public records as defined in section 1(xiv) of the National Archives of South Africa Act, 1996 (Act No. 43 of 1996), or in a provincial law pertaining to records or archives; and

(i) any other prescribed category.

(2) For the purposes of this section, an object within a type of objects declared to be a heritage object is deemed to be a heritage object”

According to the Concise Oxford English Dictionary (2006), '**repatriate**' means to "*send ... back to their own country*";

'**restitution**' is defined as "*the restoration of something lost or stolen to its proper owner*".

For the purpose of this document therefore, **repatriation** means the return of human remains and heritage objects from another country to their country of origin.

Restitution is the return of human remains and heritage objects to their community of origin.

Ethical acquisition:

- (a) Taking custody of human remains that were discovered accidentally or in the course of archaeological work on private or public property.
- (b) Legitimate intervention at the request of a community in areas where burial places are at risk

Unethical acquisition:

- (a) Collecting human remains solely for the purpose of racial study.
- (b) Collecting without appropriate consent, human remains from recent graves of individuals who were known in life, or were from known communities.

Funerary objects:

Items believed to have been intentionally placed with an individual at the time of death as part of a death rite or cultural ceremony.

Grave goods:

Any objects or specimens directly associated with gravesites, cemeteries, or human remains.

Spiritual repatriation:

9. LEGISLATIVE FRAMEWORKS:

9.1 NATIONAL LEGISLATION AND POLICIES

Heritage legislation makes no explicit provision for the repatriation of human remains. The National Heritage Resources Act, 1999 (Act No 25 of 1999) makes provision for the restitution of movable heritage resources which forms part of the national estate and is held by or curated in a publicly funded institution. Provisions for heritage objects are, however, clear. No heritage object may be exported from South Africa without a permit from the South African Heritage Resources Agency (SAHRA). Similarly, no object may be imported into South Africa other than through a customs port of entry, and the export permit or other permission issued in the country of origin. Section 41 of the Act provides guidelines on the process of restitution of heritage objects.

- 9.1.1 Although the Act's definition of "movable heritage" could be interpreted to include human remains, this interpretation is, at best, ethically questionable. Superficially, human remains could also be covered under the Act's definition of archaeological material, which includes

“material remains resulting from human activity which are in a state of disuse and are in or on land and which are older than a 100 years, including artefacts, human and hominid remains and artificial features and structures”. All archaeological objects are the property of the State and must be lodged with a museum or other public institution that has an acceptable collection policy. Accepting this definition poses an obvious dilemma as ethical and professional heritage standards dictates that human remains can not be owned by a person or an institution. Additionally, this definition only includes human remains found on archaeological sites. Some human remains in museum collections have never been interred and would therefore not fall within this category.

- 9.1.2 Section 36 of the National Heritage Resources Act makes provision for the protection and conservation of burial grounds and graves that are protected in terms of the Act and that are not the responsibility of any other authority. This includes graves of victims of conflict, as well as graves that are deemed of cultural significance. The Act also makes it illegal to destroy, damage, alter, exhume or remove from its original position or otherwise disturb any grave or burial ground older than 60 years and which is situated outside a formal cemetery, without a permit issued by SAHRA. Additionally, a permit will only be issued if the exhumation or removal is to be done by a qualified archaeologist or a person approved by SAHRA; with due respect for any human remains and the customs and beliefs of any person or community concerned; after arrangements have been made for the re-interment of any human remains.
- 9.1.3 Section 4(6) of the Cultural Institutions Act, 1998 (Act No 119 of 1998) specifies that a *“declared institution may not, without prior approval of the Minister, sell or otherwise alienate any specimen, collection or other movable property”*. Similar provisions are relevant to provincial museums in line with provincial museum ordinances. (NHC 2011).
- 9.1.4 SAHRA drafted *Guidelines to ethical and curatorial considerations for accredited repositories for archaeological or palaeontological material* (undated). The purpose of this document is to provide guidelines for approved repositories that curate material acquired in terms of permits for archaeological and palaeontological research and rescue work. The guidelines will ensure that material recovered is curated, stored and made available for research and that the best possible scientific standards are maintained. However, again, as SAHRA could only work within the ambit of the National Heritage Resources Act, human remains are covered under “material”, and the guidelines is only relevant to material recovered from archaeological or palaeontological excavations. Although the guidelines are explicit about upholding the integrity of the collections, the ethical dilemma is obvious as human remains are still held in repositories (museums, universities, etc.) and treated as objects.
- 9.1.5 SAHRA has also developed a *Draft Policy on Restitution* (undated). However, this policy is explicit in excluding human remains from its definition of heritage objects.
- 9.1.6 It is therefore clear that, although the guidelines in existing heritage legislation and policies are clear on heritage objects, there are no explicit guidelines or principles on human remains.
- 9.1.7 Other relevant national legislation and policies include:

- Graves and Dead Bodies Ordinance, 1925 (Ord. No 7 of 1925 – re-instituted by Proclamation 109 of June 1994);
- Exhumations Ordinance, 1980 (Ord. No 12 of 1980);
- Human Tissues Act, 1983 (Act No 65 of 1983);
- National Health Act, 2003 (Act No 61 of 2003);
- Military Veterans Act, 2011 (Act No. 18 of 2011);
- Military Veterans Burial Policy (Department of Military Veterans); and
- The Promotion of National Unity and Reconciliation Act, 1995 (Act No. 34 of 1995) Regulations on Exhumation, Reburial or Symbolic Burial of Deceased Victims;
- IZIKO SA Human Remains Policy (2005);
- SAMA Professional Standards and transformation Indicators (2006).

9.2 INTERNATIONAL CONVENTIONS, POLICIES AND GUIDELINES

9.2.1 The United Nations Declaration on the Rights of Indigenous Peoples, 2007 specifies that:

Article 8 (1) “Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture.”

Article 11(1): Indigenous peoples have the right to practise and revitalise their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies, visual and performing arts and literature.

Article 11(2): States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs.

Article 12 (1): Indigenous peoples have the right to manifest, practise, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to use and control of their ceremonial objects; and the right to the repatriation of their human remains.

Article 12 (2): States shall seek to enable the access and/or repatriation of ceremonial objects and human remains in their possession through fair, transparent and effective mechanisms developed in conjunction with indigenous peoples concerned.

9.2.2 Additionally, the following relevant international convention, policies and guidelines have been identified:

- ICOM Code of Ethics for Museums (2006);
- UNESCO Convention on the Means of Prohibiting and Preventing Illicit Import, Export and Transfer of Ownership of Cultural Property, 1970.
- UNESCO, Statutes of the Intergovernmental Committee for Promoting the Return of Cultural Property to its countries of Origin or its Restitution in the case of illicit Appropriation, 1978.

- UNESCO Information kit: Promote the return or the repatriation of cultural property, 2006.
- UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions, 2005.
- UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects, 1995.
- United Nations Declaration on the Rights of Indigenous Peoples, 2007.
- United Nations Draft resolution on the return or restitution of cultural property to the countries of origin, 2006.
- Protocol Additional to the Geneva Conventions of 12 August 1949, relating to the Protection of Victims of International Armed Conflicts (Protocol IV), 8 June 1977.
- World Archaeological Congress, Vermillion Accord on Human Remains, 1989.
- World Archaeological Congress, Tamaki Makau-rau Accord on the display of human remains and sacred objects, 2006.
- Vermillion Accord (1989): Respect for the mortal remains of the dead shall be accorded to all, irrespective of origin, race, religion, nationality, custom and tradition.
- Article 4 of the African (Banjul) Charter on Human and Peoples' Rights (1986).

10 IDENTIFIED GOVERNMENT DEPARTMENTS AND OTHER STAKEHOLDERS

The service providers identified and recorded in this policy do not constitute a closed list, as the services of other service providers shall be requested if and when necessary.

10.1 Advisory Committee

The DAC must establish a national Advisory Committee on the Repatriation and Restitution of Human Remains and Heritage Objects (ACRRHR) appointed by the Minister to guide the implementation and review of this policy. The role of the ACRRHR is to provide strategic advice on cultural and management issues that affect all or many different communities and / or families including the long-term care of ancestral remains and secret sacred objects with no identified community or family of origin. Principles of demographic equity and balanced representation will be taken into account in the composition of the Committee. ACRRHR should serve for a period of three years. Representatives who leave the ACRRHR before the end of this period may be replaced on the advice of the Minister. After the three-year period representatives may be re-appointed for a further term of three years.

The ACRRHR must consist of a team of specialist advisers, who can provide professional and independent advice on specific issues relating to a claim for repatriation. It also helps the RRP and museums to deal with claims for the return and repatriation of human remains from their collections.

The ACRRHR shall comprise of the following key Government Departments and Stakeholder institutions:

- (a) The DoJ and CD
- (b) The PCLU of the NPA
- (c) The SAPS
- (d) The DAC

- (e) The SAHRA
- (f) The Freedom Park Trust (Freedom Park)
- (g) The DMV

The Committee shall be co-chaired by the DAC along with DoJ and CD, the latter as the department mandated to monitor the implementation of the TRC recommendations and report to Cabinet and Parliament on an on-going basis.

The duties of the Committee shall be to –

- (a) coordinate, monitor and support activities carried out in respect of the repatriation and restitution process;
- (b) convene regular meetings between and with Committee members, as well as between the Committee and the *ad hoc service* providers, with a view to –
 - (i) facilitate dialogue between the various service providers;
 - (ii) provide the platform for problems to be discussed and solved.
- (c) intervene where necessary to ensure procedures and roles identified are adhered to;
- (d) identify problem areas and recommend solutions timely to ensure smooth running of the process;
- (e) monitor the implementation of said solutions;
- (f) make decisions in respect of matters in dispute;
- (g) receive progress report of service providers through the Repatriation and Restitution Program;
- (h) compile submissions to the Minister for Justice and Constitutional Development (the Minister) with view to obtain direction in respect of sensitive/problematic cases;
- (i) report to the Minister on an ongoing basis regarding progress on implementation of the policy; and
- (j) report to the respective Ministers of their or request, on specific matters related to the e.g. exhumation process.

10.2 The *ad hoc service providers*

The *ad hoc service providers* shall render the necessary services at the relevant phases of the repatriation process.

The *ad hoc service providers* are –

- (a) The DSD
- (b) The DH
- (c) The DHA
- (d) The National Treasury
- (e) The NIA
- (f) The (DIRCO in cases where human remains are in a foreign country)
- (g) The SANDF

11 AREAS OF RESPONSIBILITY OF THE SERVICE PROVIDERS

The relationship between the service providers should be one of efficient and close cooperation, with mutual respect for the distinct functions and operational independence of each profession.

Each service provider shall present a progress report in respect of its areas of responsibility to the Chairperson of the ACRRHR on a time schedule as determined by the Committee

11.1 The **DoJ and CD** shall:-

- (a) Ensure that reparations in the form of a once-off individual grant are paid from the President's Fund to the families, where applicable;
- (b) Liaise with the families of missing persons;
- (c) Monitor the progress on the implementation of the policy and report to the Minister; and
- (d) Report annually through the Minister to cabinet and Parliament on the implementation of the TRC recommendations.

11.2 The **PCLU of the NPA** shall manage and direct the investigation into the cases of missing persons and institute prosecutions, where appropriate in terms of its prosecution policy.

11.3 The **SAPS** shall:-

- (a) Under the management and direction of the PCLU –
 - (i) conduct investigations into the cases of missing persons;
 - (ii) conduct exhumations through the appropriate forensic specialists; and
 - (iii) facilitate forensic testing and identification of mortal remains by appropriate forensic specialists;
- (b) Following identification and the conclusion of further forensic testing for crime investigation purposes, prepare mortal remains for transfer to the DAC
- (c) Liaise with the DAC to facilitate the handing over of the remains to the families for reburial;
- (d) Facilitate the issuing of death certificates by the DHA;
- (e) In the instance that investigations reveal the location of burial sites of missing persons in a foreign country, follow the mandated course of action in conjunction with the NPA, the DIRCO and SAHRA; and
- (f) Ensure that all involved in the exhumation process respect the relevant legislation, professional ethics and best international practices that are applicable to the management, exhumation and identification of human remains.

11.4 The **DAC** shall organise and conduct the handover of the human remains to the families, which includes facilitating the provision of associated undertaker services.

11.5 The **SAHRA** shall:-

- (a) Receive and process applications and requests for exhumations;
- (b) Issue permits for exhumations in terms of their mandate;
- (c) Inspect the exhumed site with a view to memorialisation, in consultation with the DAC and the Freedom Park Trust;
- (d) Consider providing and erecting a memorial marker on the old and new burial sites in consultation with the DAC and the Freedom Park Trust;
- (e) Conserve the burial site(s); and

- (f) In instances of exhumations of human remains in a foreign country, the SAHRA shall follow the mandated course of action in conjunction with the NPA, DIRCO and the SAPS.

11.6 The **Freedom Park Trust** shall:-

- (a) Inspect the exhumed site with a view to memorialisation, in consultation with the SAHRA and DAC;
- (b) Provide an appropriate venue for handover of remains to the bereaved families;
- (c) Facilitate the handover ceremony in a dignified manner;
- (d) Consider providing and erecting a memorial marker on both the old and new burial sites in consultation with SAHRA and the DAC;
- (e) Ensure memorialisation of the missing person in keeping with the mandate of the Freedom Park Trust, where applicable;
- (f) Assist the Department of Social Development in providing grief or trauma counselling throughout the exhumation process; and
- (g) Make recommendations with regard to the conservation of artifacts/objects found during the exhumation process.

11.7 The **DSD** shall:-

- (a) Provide grief or trauma counselling services throughout the exhumation process, to the bereaved family of a missing person whose remains are to be exhumed;
- (b) Provide any other social benefits appropriate under the circumstances; and
- (c) Provide support and post-trauma counselling services to the bereaved family to ensure a complete healing process.

11.8 The **DHA** shall:-

- (a) Assist during the investigation process in respect of, e.g. the tracing of any movements of persons and the provision of ID photographs; and
- (b) Issue death certificates in respect of the exhumed human remains upon positive identification
- (c) Issue death certificate in respect of human remains returned from foreign countries.

11.9 The **DH** shall: -

- (a) Provide an environmental health practitioner to attend the exhumation, if necessary; and
- (b) Provide the necessary services and facilities in respect of exhumed human remains, if necessary.

11.10 The **DEA** shall provide permits for export of any organic material needed by families for cleansing purposes.

11.11 **Customs section under SARS** shall provide advice on the import and export of material.

11.12 The **National Treasury** shall receive and process the applications for Special Pension benefits by surviving spouse or , if there is no surviving spouse, the surviving dependant where applicable; on condition that these benefits are only payable in terms of the Special Pensions Act, 1996 (Act No. 69 of 1996).

11.13 The **DMV** shall:- in terms of the Military Veterans Act, 2011 (Act No.18 of 2011)

- (a) Honour and memorialise military veterans (who would have fallen in foreign countries); and
- (b) Provide burial support

11.14 The **NIA** shall provide access to the PCLU and the SAPS to any records that may assist in the investigation into the cases of missing persons.

11.15 The **DIRCO** shall make the necessary consular intervention in cases where burial sites are outside South Africa's borders.

11.16 The **SANDF** shall provide the necessary assistance and services in relevant cases, i.e. where a military burial is warranted.

12 SCIENTIFIC SIGNIFICANCE HUMAN REMAINS AND HERITAGE OBJECTS

Scientific study of human remains and heritage objects can provide important information about humanity's past that would not be possible by other means. The study of human remains can produce information that cannot be provided by other methods. Anatomical, anthropological and genetic studies can provide information on health and diseases, diet, social practices, population movement and human evolution. Similarly, studies of heritage objects can provide anthropological and historical information on belief systems, language, economic and political systems, to name but a few.

Human remains and heritage objects in museums and at universities, as well as newly discovered human remains and heritage objects could therefore be important for future research and our expansion of knowledge about the human past. To add value to these types of research, community knowledge need to be expanded about what can be learned from the human remains and heritage objects of past people as well as why this knowledge is important. Information sharing between communities and the scientific and museum community is therefore of the utmost importance.

When dealing with human remains and heritage objects, it is obvious that research ethics should by no means be compromised. This does not only include involving the descendent or related community in the research, but also in how the human remains and objects are treated by scientists and museum professionals. Policy approaches should be clear about the respectful treatment of the remains and objects by everyone concerned, as well as the appropriate long-term management, whether that involves curation or reburial (Pfeiffer 2003).

13 Management of Human Remains and Associated Heritage Objects (Archaeological and Anthropological) in South African Museums

Human remains must always be treated with utmost respect. All matters relating to human remains must be over-seen by appropriate staff and remains must only be handled by appropriate personnel. Steps must be taken proactively to bury the remains. Human remains must be isolated, deaccessioned and stored according to best practice until reburial is possible, with no access by the public.

13.1 Acquisition

The Department of Arts and Culture must identify or establish one or few museums repositories accredited with custodial responsibilities for human remains and heritage (i.e. archaeological and

anthropological materials) objects. Such museums should not actively acquire human remains as it is unlikely that these would have been collected in a legal manner and are accompanied by relevant documentation, but accept human remains in order to safeguard them.

In the event of the recovery of human skeletal remains during controlled archaeological excavation, subsequent procedures must follow those laid out in Section 36 of the National Heritage Resources Act. Museum staff will comply with the conditions of SAHRA and those resulting from agreements reached through appropriate consultative processes.

SAHRA or the South African Police Services may request accredited museums to excavate and / or hold human remains uncovered in the course of construction or any other activity. Such remains may become part of the accredited museum repositories.

13.2 Documentation

Existing collections should be documented as fully as possible to allow informed decisions to be made regarding management and burial as well as interpretation. Documentation should state whether the collection was the result of a controlled archaeological excavation, and if so, copies of the relevant field notes and reports should be on file. Documentation should state whether there are any restrictions or conditions of access to the collection. It must be determined whether there are descendant communities, communities with an interest or historical relationship with the remains.

13.3 Storage

Human remains must be deaccessioned. Where possible, human remains and the associated heritage objects should be housed separately from the general museum collection; and in a manner that shows respect for the dead, and accords with the wishes of the descendant community, where such wishes are known. Many graves have associated heritage objects, often referred to as grave goods. These have meaning in terms of their association with the human remains and this contextual information is important. These should therefore not be separate from the remains.

Human remains should be kept in suitably safe, secure, watertight premises, with stable, monitored environments, which are kept clean and regularly checked for pests (taking into consideration the existing established standards for archives and records management which should be used as reference).

Handling should be kept at a minimum, and where appropriate, direct contact with skin avoided through the use of conservative standards.

Access to human remains should be allowed only to authorised staff and visitors with specific permission under agreed supervisory arrangements.

13.4 Research access

Unless in exceptional cases, where pre-conditions exist that prohibit access to the remains, only *bona fide* researchers should be allowed access to the human remains for research purposes related to reburial. Such access must be guided by the Advisory Committee or a quorum of the Committee in the event that the entire committee cannot convene.

No research or access to unethically acquired human remains will be granted. The South African Government would seek the advice and guidance from the Advisory Committee on unethically acquired human remains.

Requests to undertake destructive sampling or to export specimens and / or materials for analysis will require prior permission of the CEO of the accredited museum repository, in consultation with the Advisory Committee, before an application for a permit is made to SAHRA. All decisions will be guided by the National Heritage Resources Act.

Outcomes of any agreed research where the South African government had a hand in funding should be made available to the South African public, but also to the relevant community/ies and or family/ies through reports or in any form as requested by the community or family.

13.5 Movement

When human remains are moved or relocated, due care must be taken to ensure that they are not exposed to view, and are protected from damage or loss and are handled with respect and dignity at all times.

13.6 Display and media

Human remains should not be displayed or exhibited or used in public programmes, or photographed, filmed or used in any other way for commercial gain. Associated artefacts may be displayed, under suitable circumstances, after consultation with descendant communities, if any and with the guidance and approval of the Advisory Committee.

14 Request processes and procedures for repatriation and restitution:

14.1 Claims to national museums and institutions:

It is unquestionable that human remains had in the past, and continue to have, a key role in museum research and practice, and have the potential to make major contributions to the furtherance of knowledge. It is equally clear that some were obtained in ways that would now be deemed unacceptable and that some individuals and communities wish to see the return of those remains or to gain some control over their future.

The following processes should apply where claims for the return of human remains are concerned:

- Claims can be made by a genealogical descendant;
- Claim can be made by a source community which displays a cultural continuity with the remains in question, and;
- the claim can be made through a national government, national agency, or equivalent, and where, after taking any relevant independent advice on questions which the museum with the guidance of the Advisory Committee and through the Repatriation and Restitution Program, formulates as needing an answer to help it make a decision, it is in its view likely that the cultural and religious significance of the human remains to the community making the claim outweighs any other public benefit;
- Claims should be made through the Repatriation and Restitution Program located at SAHRA;
- For any claim to be considered, the claimant would have to establish a sound evidential base for a prima facie claim;
- The RRP and host museums commit themselves to consideration of and consultation on all other claims and requests which may fall outside the above mentioned narrow definitions.

14.2 Procedures for making a claim:

The Repatriation and Restitution Program must be open and transparent with regard to approaches from claimants wishing to see the return of human remains to communities and / or families of origin, and should ensure throughout the process that its actions are consultative and that negotiations are as equitable as possible.

Requests should be submitted in writing to the Head Repatriation and Restitution Program. The requests should include as much information as possible about the human remains being claimed or sought, the individual or community submitting claim, the reasons for making the claim, and the evidence that substantiates the claim.

14.3 Criteria to be considered:

14.3.1 Status of claimants

(a) Genealogical descendants: Under normal circumstances the wishes of claimants will be seriously considered if they can demonstrate a direct and close genealogical link to the human remains being claimed. However, claimants should do everything that they can to ensure that they are the only possible claimants, and, if they are not, that there is agreement over who has the right to make the claim.

There may be exceptional cases where remains would not be returned to genealogical descendants, for example if the remains are deemed to constitute evidence in a criminal investigation. However, it is expected that in the majority of cases human remains would be returned to demonstrated genealogical descendants.

In practice, individuals who died more than 100 years ago may have many descendants from more than one community, such that genealogical descent alone may not be a sufficient criterion.

(b) Community of origin: Where a claim is submitted by a cultural community the Repatriation and Restitution Program (RRP) and the museum involved will seek to consult to verify that claimants have the authority to submit a claim for the return of the human remains; or where there is more than one group of claimants that they are fully supported by the other claimants. In particular, the RRP will normally seek advice of the national Advisory Committee, relevant provincial and / or local government and relevant national government in the case of foreign national claims as to the authority of those submitting the claim, and so will ask claimants to make their claim through their relevant agencies.

For a group to be recognised and their claim for human remains to be considered the RRP would expect claimants to be able to demonstrate a continuity of belief, location, and customs between themselves and those of the community from which the remains originate.

(c) The country of origin: in some cases a nation may make a claim for remains, either on behalf of a particular community or for all of its nationals. The RRP will only normally consider claims made through a national government where the community from which the human remains originated has been clearly identified and where it is clear that the community wishes to see the human remains returned.

The RRP and the host museum will provide all the information that the latter has regarding the relevant human remains to assist a national government in identifying the appropriate community.

14.3.2 The cultural and spiritual significance of the human remains

It would be expected, but not regarded as essential, that the claimant group should demonstrate that the human remains and their treatment have a particular cultural or spiritual significance to their community. Examples might include the fact that the human remains were removed outside the laws and normal practices of the community at the time, or that e.g. the correct 'laying to rest' of remains was not followed. Demonstration of a very strong cultural or spiritual significance of the human remains, whose continued holding by the custodial museum perpetuates a strong feeling or grief among claimants, will be duly considered by the RRP and the relevant museum when making a decision.

14.3.3 The age of the human remains

Archaeological and historical studies have shown that in the vast majority of cases it is very difficult to demonstrate clear genealogical, cultural or ethnical continuity far into the past. For these reasons the RRP and the museum should accept the view of that it is unlikely that a claim will be successful if the human remains being claimed are more than 300 years old, and highly unlikely if the human remains being claimed are more than 500 years old.

14.3.4 How the human remains were originally acquired

It is not normally the case that there is evidence that the deceased gave consent for their remains to be transferred to a museum or collection. However, if there is evidence one way or the other then it would strengthen or weaken the claim for return accordingly.

14.3.5 The potential public benefit of the human remains

As noted, human remains have the potential through teaching, research, and display to inform humanity about cultural differences, including approaches to death, burial practices and belief systems in addition to advancing research in the fields of history of disease, changing epidemiological patterns, forensics and genetics.

When considering a claim the RRP and the museum will assess the research potential and public benefit of the human remains in question. This assessment will include a review of the research on the human remains (if any) that has taken place in the past and an assessment of the potential contribution that the human remains can make in the future based on the current understanding of the research field.

14.3.6 Unethically collected Human remains:

It is acknowledged that some museums may have in their collections, human remains that were collected under unethical conditions in the past. Every effort to identify descendant communities must be made. Where direct descendant communities can be identified, such communities should be notified and allowed access to information on record.

In accordance with the provisions of Section 41 of the NHRA, Act 25 of 1999, in the event that a descendant community wishes to claim restitution, the museum in consultation with the Advisory

Committee, must enter into a process of negotiation with the claimants regarding the future of the remains.

With regard to unethically collected human remains that cannot be associated with any descendant community, the Advisory Committee and the CEO of the accredited museum repository will recommend the appropriate action after an agreed period of time has elapsed.

14.3.7 Re-interment

Reinterment must be seen as a process rather than an event. In preparation for reinterment, an audit must be conducted at each museum to establish an inventory of human remains and any associated information. Where remains have gone missing, an investigation must be conducted to clarify and recommend actions to resolve the matter. A fitting location for the reinterment must be identified in consultation with the Advisory Committee and communities who have a historical relationship with the remains. The remains shall be laid to rest during an appropriate ceremony.

14.3.8 Spiritual repatriation

After fruitless search of human remains, after every effort to locate remains by digging out old graves, exhumation of bodies, provision of archaeologists reports, usage of the best available technologies, etc. have been unsuccessful, communities and families can consider the option of spiritual repatriation in line with customs that determine when a person dies in a foreign space, their spirit is returned to their place of birth.

Should communities and families opt not to have the remains of their deceased loved one brought back home to their place of birth, such communities and families may also opt to conduct spiritual repatriation.

The communities and or the families in consultation with the relevant authorities will determine whether to use e.g. a coffin or other forms to repatriate the spirit the spirit of their deceased loved one.

15 Claims to International Governments and Institutions

In order to maximise the effectiveness of the repatriation program, South Africa's overseas missions and the DIRCO will assist the Repatriation and Restitution Programme to facilitate and support claimants to negotiate the return of ancestral remains.

The South African Head of Mission retains the ultimate responsibility for the conduct of relations in the country/ies or accreditation. Thus representations to host governments will normally be made by senior Mission staff or the Head of a Mission.

The Repatriation and Restitution Office in liaison with overseas mission will agree on the most effective arrangements for international negotiation and communities and / or families. Depending on the status of negotiation, it may be effective for the Repatriation and Restitution Office to deal directly with an institution, while keeping the South African mission, and the community/ies and or family/ies, fully informed.

16. Protocols

In managing its responsibilities for repatriation and restitution, the South African Government recognises the following protocols and encourages all stakeholders involved in repatriation and restitution of human remains and secret sacred objects to do the same:

(i) Cultural Protocols

- Communities and families have a responsibility to their ancestors to bring them back home to country according to their customs, traditions and laws. The determination of who is involved in negotiations and consultations is made by the communities and families themselves;
- Communities and families should have access to and copies of all relevant documentation concerning their ancestral remains;
- Remains should be returned expeditiously and in accordance with the protocols of communities and / or families;
- Remains should be treated with respect and dignity at all times by all involved.

(ii) Community and or family consultation

- Communities and families are the rightful custodians of their ancestral remains and are the rightful owners of associated grave goods and should be consulted prior to any such property being returned.
- Communities and families should determine when and how repatriation should be undertaken.
- A coordinated approach between all levels of government to facilitate the return of human remains to communities and families is undertaken.

17 Review

This Policy will be evaluated in practice, reviews and modifications will be made as and when required following due process.