File No: 19/62

16 April 2020

Expert Mechanism on the Rights of Indigenous Peoples

Office of the United Nations High Commissioner for Human Rights (OHCHR)

Palais des Nations

CH-1211 Geneva 10

SWITZERLAND

[expertmechanism@ohchr.org](mailto:expertmechanism@ohchr.org)

Dear Members of the Expert Mechanism on the Rights of Indigenous Peoples

**Call for submissions: Report on Repatriation of ceremonial objects and human remains under the UN Declaration on the Rights of Indigenous Peoples**

**INTRODUCTION**

The National Museum of Australia would like to state its support for actions that empower Indigenous Peoples to achieve the timely and respectful repatriation of their Ancestral human remains and ceremonial objects.

The National Museum of Australia (the Museum) is a major cultural institution charged with researching, collecting, preserving and exhibiting historical material of the Australian nation. The Museum focuses on the three interrelated areas of Aboriginal and Torres Strait Islander history and culture, Australia’s history and society since European settlement in 1788 and the interaction of people with the environment. Established in 1980, the Museum is a publicly funded institution governed as a statutory authority in the Commonwealth Arts portfolio. The Museum’s building on Acton Peninsula, Canberra opened in March 2001.

The National Museum of Australia has been returning Ancestral Remains and Secret/Sacred Ceremonial objects since its inception in 1980. The Museum has returned the Ancestral Remains of over 1200 Individuals and over 350 secret/sacred objects to Aboriginal and Torres Strait Islander communities across Australia. The Museum also holds Ancestral human remains and secret/sacred ceremonial objects at the request of Indigenous communities. The Museum has also returned Ancestral human remains to Indigenous Peoples in other countries.

An introduction to the Museum’s repatriation activities can be found at <https://www.nma.gov.au/about/repatriation> .

**POLICIES**

The repatriation of Ancestral human remains and ceremonial objects by the National Museum of Australia are guided by a corporate philosophy of repatriation. This philosophy is expressed through the Museum’s repatriation policies. These are the:

* **Australian Aboriginal and Torres Strait Islander ancestral human remains management and repatriation policy** <https://www.nma.gov.au/about/corporate/plans-policies/policies/aboriginal-torres-strait-islander-human-remains>
* **Australian Aboriginal and Torres Strait Islander secret/sacred, sensitive and private material policy** <https://www.nma.gov.au/about/corporate/plans-policies/policies/aboriginal-torres-strait-islander-secret-sacred-private-material>
* **Non-Australian indigenous human remains policy** <https://www.nma.gov.au/about/corporate/plans-policies/policies/non-australian-indigenous-human-remains>
* **Indigenous cultural rights and engagement policy** <https://www.nma.gov.au/about/corporate/plans-policies/policies/indigenous-cultural-rights-and-engagement>

**SPECIAL CONSIDERATIONS**

Amongst the many aspects of repatriation that the Expert Mechanism will address, there are three that the National Museum of Australia considers of special interest. These are the ‘Affiliation to Ancestral Remains’, ‘Affiliation to Sacred Ceremonial Objects’, and the ‘Context of Injustice’.

The Museum has noted a tendency amongst many institutions to impose very limiting criteria that Indigenous Peoples must satisfy in order to have their repatriation claims considered. The Museum considers many of these to be unreasonable.

‘Affiliation to Ancestral Remains’

Many commentators have focused heavily on the claimants proving direct biological descent from the Ancestral Remains under claim. This requirement neglects Indigenous cultural and historical processes of affiliation.

* The Museum therefore suggests that the Expert Mechanism focus on the recognition of cultural and historical processes in bestowing rights to Ancestral Human Remains.

‘Affiliation to Ceremonial Objects’

Many commentators have argued that claimants to sacred ceremonial objects should prove a continuing tradition of having the knowledge of, and performing the ceremonies for, the religious beliefs associated with those objects. This requirement neglects Indigenous cultural and historical processes of affiliation. Breaks or changes in traditional beliefs and practices, or the adoption of new beliefs, do not extinguish a claimant’s right to associate with their cultural and historical heritage.

* The Museum therefore suggests that the Expert Mechanism focus on the recognition of cultural and historical processes in bestowing rights to ceremonial objects.

‘Context of Injustice’

The concept of a ‘context of injustice’ is usually applied to mean human remains and objects collected through overt act of extreme violence, such as genocide or war-looting. The Museum advocates for an expansion of this concept, to include any Ancestral human remains of ceremonial objects collected under a colonial regime in which explicit inequities in the balance of power between Indigenous peoples and colonisers’ existed and can be demonstrated to have facilitated the acquisition in favour of the coloniser-collector. Under such a definition, a ‘context of injustice’, would begin from first occupation by a colonial power.

* The Museum therefore suggests that the Expert Mechanism include the ‘Context of Injustice’ as a criteria for the consideration of repatriation of Ancestral human remains and ceremonial objects.

**EXPERTISE**

The National Museum of Australia is internationally recognized for its work in repatriation and has considerable in-house expertise. I offer this expertise to the Expert Mechanism.

Museum repatriation workers have published widely in this area, and copies of publications can be made available upon request. The Museum also has a wide network of partner organisations that can also be called upon to contribute to the work of the Expert Mechanism.

Please do not hesitate to contact Assistant Director, Katherine McMahon on [katherine.mcmahon@nma.gov.au](mailto:katherine.mcmahon@nma.gov.au) should you require any further information.

I wish you every success in your deliberations on this very important issue.

Yours sincerely



Dr Mathew Trinca AM

Director

**Attachments**

Attachment 1: Australian Aboriginal and Torres Strait Islander ancestral human remains management and repatriation policy

Attachment 2: Australian Aboriginal and Torres Strait Islander secret/sacred, sensitive and private material policy

Attachment 3: Non-Australian indigenous human remains policy

Attachment 4: Indigenous cultural rights and engagement policy