

Discussion of “Framework Principles”

21 February 2024

Minutes of the 2nd discussion with civil society initiatives

Participants:

- Representatives from civil society initiatives
- Representatives from the Federal Foreign Office
- Representatives from the Federal Government Commissioner for Culture and the Media
- Representatives from the Ministry of Science, Research and the Arts for Baden-Württemberg and the Hamburg Museum Department on behalf of the federal-Länder working group for “Dealing with collections from colonial contexts”
- Representatives from the German Contact Point for Collections from Colonial Contexts

Minutes

Agenda item 1: Next steps

What are the next steps for revising the Framework Principles?

- The Framework Principles from 2019 were agreed, from an administrative perspective, between the federal government, the Länder and the municipal umbrella organisations providing support; the Framework Principles are being revised by the participants from the Federal Foreign Office, the Federal Government Commissioner for Culture and the Media and the Länder together with the municipal umbrella organisations, but also in close exchange with the experts consulted.
- Three meetings have already taken place so far: two with museum directors on cultural property and human remains and one with civil society initiatives on cultural property. Two more meetings are planned with international experts.
- The civil society initiatives agree to the circulation of all minutes; the museum representatives and international experts are asked whether they also agree to this.
 - o The civil society initiatives request the publication of the minutes; representatives of the Federal Government Commissioner for Culture and the Media can see no reason why not, e.g. on the Contact Point's website.
 - o In the event of publication, the privacy of the participants must be ensured with regard to their names; all participants should decide whether and how they wish to be named (e.g. with their real name, initials only, organisation or anonymously).
- The final draft of the revised Framework Principles will be discussed in the federal-Länder working group.
- It remains to be ascertained whether the participants in this discussion will be provided with the final draft of the revised Framework Principles.

Agenda item 2: Understanding

What understanding should the Framework Principles be based on?

- Due to developments in Europe and the former colonies in respect of the handling of cultural property and human remains from colonial contexts, the Framework Principles are also to be developed further.
- The revision is not intended as a final document, but rather a further development of the Framework Principles from 2019.
- According to the civil society initiatives, the revision must always reflect the idea that both human remains and cultural property are a sensitive issue with regard to human and fundamental rights and that returns are a contemporary issue on account of colonial continuities (“restitution as a reparative process”); this was not sufficiently taken into account in the design of the Framework Principles from 2019.
- According to the initiatives, the formulation of the Framework Principles must reflect a move away from a paternalistic and reactive understanding (less a case of “we want”, and more a case of “we must” through an obligation to pursue proactive government action).
- According to the initiatives, the repatriation of cultural property and human remains must also take into account any omissions associated with Germany and how these can be rectified, for example by tackling German colonial history. The focus should not only be directed outwards, but also inwards in order to raise awareness of colonial ways of thinking.
- According to the initiatives, it is also necessary to consider the economic dimension of returns, in particular cultural property is always an economic asset, too, and closely linked to jobs; Ms Oola will provide the Federal Foreign Office with more details on this aspect.
- Representatives of the Federal Government Commissioner for Culture and the Media point out that returns are often the starting point for further (including economic) cooperation, e.g. a film project between Nigeria and the Filmakademie Baden-Württemberg in Ludwigsburg.

Agenda item 3: Experience

What is your experience of the requirements associated with the Framework Principles from 2019?

- Returns had already taken place before 2019, and civil society initiatives had the impression that fewer returns had taken place afterwards than before (with the exception of Benin bronzes); so it is fair to ask whether the Framework Principles were actually successful.
- When returns (e.g. in 2011 and 2014 of human remains from Namibia) were implemented, there was no or too little (especially financial) support from the state, and the organisation and financing of some delegation travel costs were arranged on a voluntary basis instead.
- According to the initiatives, a lot has happened in provenance research, especially in the context of human remains; however, this has not been transparent, as there has been no public participation.

Agenda item 4: Need for specific improvements

Where do you see a need for specific improvements?

- According to the civil society initiatives, transparency is crucial and the return of cultural property and human remains must not be carried out in secret, e.g. it must be made public why governments refuse returns and who has spoken to whom.
- Funding is also crucial, for example, travel by people from societies of origin must be financed by the state, as they usually have no funds of their own for travel; the Federal Government Commissioner for Culture and the Media has specific funds for the repatriation of cultural property (600 thousand) for the first time in 2024 and will soon report on how exactly they are to be used, suggestions from the initiatives are very much welcome.
- According to the initiatives, process-oriented work is important, and it is about the right way to return things; at the same time, it is incomprehensible, for example, why human remains that have already been identified are not returned promptly.
- The initiatives also feel that changes in terminology are necessary, e.g. “cultural property and human remains” instead of “collections”, as “collecting” is a euphemistic form of colonial language.
- According to the initiatives, it should also be borne in mind that there is a difference between return and repatriation; for example, ownership may already have been transferred to societies/countries of origin, but actual repatriation may only

take place later, depending on the wishes of societies/countries of origin (according to representatives of the Federal Government Commissioner for Culture and the Media, this is already common practice through the conclusion of corresponding loan agreements).

- In principle, the civil society initiatives would be interested in more European/international cooperation or at least an international approach to the issue by comparing national regulations for handling cultural property and human remains from colonial contexts (see the African Union's declaration on repatriations).

Agenda item 5: Return criteria for cultural property

What criteria should be considered when deciding whether cultural property should be returned?

- According to the civil society initiatives, it must be recognised that cultural property from colonial contexts generally originates from violent circumstances, i.e. only in exceptional cases can it be assumed that such cultural property does not meet the criteria of the Framework Principles (see Art. 11, 12 UNDRIP).
- The legal practice of societies of origin must be taken into account and existing structures in countries of origin must be accepted.

Agenda item 6: Provenance research

What requirements should the Framework Principles stipulate in terms of provenance research?

- According to the civil society initiatives, provenance research is based on an incorrect understanding of how tasks are allocated, as initial research has so far often been carried out by societies of origin, and institutions only take over the process at the end; provenance research must be proactive, which also means proactively passing on findings to societies/countries of origin and offering restitution.
- Provenance research must publish the results of its research transparently. The civil society initiatives have made the experience that available information is not passed on to the initiatives, even when requested.

- Where provenance is clarified, swift returns are an important sign of the efforts made by the institutions and governing bodies.

Agenda item 7: Inclusion of societies of origin

How should societies of origin become involved?

- According to the civil society initiatives, the involvement of societies of origin and families through decision-making powers must be ensured at an early stage; consideration must also be given to how the diaspora can participate in the processes.
- Due to often complex coordination processes between societies, countries and families of origin, sufficient time must be allowed to ensure involvement; they must be equally involved; especially in the case of human remains, there must be roundtable discussions between societies/countries of origin and families.

Agenda item 8: Restitution legislation

Is there a need for restitution legislation for cultural property and human remains from colonial contexts?

- The non-binding policy paper for the Framework Principles does indeed allow for justice on a case-by-case basis. According to the civil society initiatives, however, restitution legislation must be passed in order to do justice to the human and fundamental rights dimension of returns. According to the initiatives, this also follows from international guidelines and is the basis for decolonisation.
- According to the initiatives, such legislation would facilitate the sustainability, control, transparency and consistency of processes. In particular, the following aspects should be regulated:
 - o The legislation must guarantee both individual and collective rights.
 - o It must guarantee access to justice through participation rights, access to information and a guarantee of legal protection (see Art. 15 ICESCR, Art. 2 ILO Convention 169, Art. 11, 12, 18 UNDRIP).

- The legislation must recognise the right to one's own origin and cultural identity (Art. 1, 2 of the Basic Law for the Federal Republic of Germany in conjunction with Art. 15 ICESCR).
- The preservation of human remains must be shown due respect for the repose of the dead (Art. 1, 2 of the Basic Law for the Federal Republic of Germany).

Agenda item 9: Committee

Is there a need for an advisory committee on the handling of cultural property and human remains from colonial contexts?

- The civil society initiatives are in favour of setting up an advisory committee (at least until corresponding legislation is passed); this advisory committee should make recommendations with the involvement of countries, societies and families of origin, but also serve as a link between the civil society initiatives and institutions. The following should be taken into account:
 - The specific way this committee is organised may take various forms (e.g. higher federal authority, court of arbitration, see *paper*, Memorandum on the Advisory Commission), as long as constitutional procedures are guaranteed.
 - There is a need not only in cases of unclear provenance, but more generally for the handling of cultural property and human remains from colonial contexts.
 - The committee must also act as a point of contact for complaints, but should also be available where there is no disagreement between claimants and an institution, i.e. it has a general advisory role, not necessarily limited to dispute resolution.
 - The committee should be interdisciplinary, i.e. composed not only of people from the field of cultural studies/cultural policy, but also from other civil society contexts. It is possible to have a core team, supplemented by interchangeable advisory members in individual cases; it would be a question of those with an advisory role identifying themselves as such.
- It is true that societies of origin and countries of origin do not always share the same views, which leads to differences. However, this can be discussed in the

negotiation process if everyone is involved and, in particular, if there is a (state-funded) local dialogue with societies/countries of origin and families.