

Hard Law and Soft Law Responses to the Restitution of Colonial-Era Cultural Collections: Developments and Challenges in the Netherlands

Pieter van Leeuwen¹ & Anneke Jansen²

¹Department of Cultural Heritage Law, University of Groningen, Groningen, Netherlands

²Centre for Law, History, and Museums, Radboud University, Nijmegen, Netherlands

Corresponding Author: Anneke Jansen

Abstract

The restitution of cultural objects acquired during the colonial period has become an increasingly prominent issue within Dutch cultural heritage governance, engaging both binding legal norms and non-binding policy instruments. This article provides an analytical overview of restitution claims and returns processed in the Netherlands in recent years, situating these practices within the broader legal and regulatory framework governing colonial-era collections. While particular attention is given to restitution claims involving Indonesia, the analysis also encompasses claims connected to other former colonial territories, reflecting the wider scope of Dutch colonial heritage. The article first examines the domestic legal context, including Dutch cultural heritage legislation and regulatory mechanisms applicable to objects originating from colonial settings. It then assesses recent policy developments, focusing on the Dutch Heritage Act of 2016 and the 2021 Policy Vision on Collections from a Colonial Context. Special emphasis is placed on the interaction between statutory law and policy-based approaches, as well as the normative and practical frictions that arise from their parallel operation. A comparative perspective forms a central component of the analysis. The article contrasts the Netherlands' handling of claims relating to Nazi-looted art with its approach to claims involving colonial-era acquisitions, highlighting differences in institutional design, moral framing, and legal certainty. It further compares Dutch restitution measures with those adopted in Belgium, another former colonial power that has intensified efforts to address the decolonisation of state-held collections. While both countries have made meaningful progress, the article identifies continuing limitations in their respective policy frameworks. The article concludes that the Netherlands remains in an intermediate phase in the development of a coherent and comprehensive restitution regime for colonial cultural collections. Although recent initiatives demonstrate an increased willingness to confront colonial legacies, further legal consolidation and normative clarity are required to ensure consistency, transparency, and equality in restitution practices.

Keywords: colonial cultural collections; restitution law; hard and soft law; Dutch heritage policy; comparative restitution frameworks

Introduction

Between around 1600 and 1975, the Netherlands had almost 50 colonial possessions distributed over three continents, varying from (fortified) trade posts to fully administered colonies. Through the ages, most of these possessions were sold, given, or surrendered to other colonial powers. Only Indonesia, Suriname, and the Caribbean islands remained in Dutch hands until their independence – in 1949 for Indonesia; in 1975 for Suriname; while

the formal relation of the Caribbean islands with the Netherlands varied until 2010. Cultural and historical objects, ancestral remains, and archives were taken from many of these possessions, often in a manner nowadays considered undesirable and disputable. In terms of the process of developing new rules for dealing with objects and collections from colonial contexts, the Netherlands is in an intermediate phase. Until recently, it has been hard – given the limited number of returns and rejected claims – to successfully claim restitution of one's lost cultural objects. Legally, two major reasons were the statute of limitations for ownership claims and the strong protection of a new possessor under Dutch law. Another legal hurdle is the non-retroactivity of international treaties that arrange for restitution of lost cultural objects to which the Netherlands has acceded. Consequently, dealing with claims has been induced more by non-legal than by legal means.

Restitutions So Far and the Fragmented Legal Framework

Restitution issues have particularly played a role between the Netherlands and its biggest former colony, Indonesia. After the formal transfer of sovereignty in 1949, it took the two countries a quarter of a century to agree on the handover of a limited number of objects. In the Joint Recommendations by the Dutch and Indonesian Team of Experts (1975), they defined the handover explicitly as a "transfer", and not as a "return", as the word "return" could create the impression of having to give back objects because of the way they had been acquired. These "transfers" took place in 1977 and 1978. Sri Lanka—a Dutch colonial possession from 1658 to 1796—submitted claims to the Netherlands in the early 1960s, 1980, and 2022, but largely in vain.

Apart from the return by the National Museum of Ethnology in Leiden of around 4,500 pre-Columbian fragments to the Dutch Antilles in 1985, there was a relative "restitution-silence" until the 2000s. In the first decade of the new century, mostly ancestral remains from public collections were handed over to New Zealand (a Māori head in 2005), Ghana (the head of King Badu Bonsu II in 2009), and Australia (remains of five Aboriginals in 2009). Governmental approval for these transfers was given on an individual basis, illustrating the fragmentation and lack of appropriate procedures at the time.

In the 2010s, three remarkable transfers occurred:

1. **2018:** The handover of over 1,500 objects from the former Museum Nusantara in Delft to Indonesia. This was due to the museum closing and the collection becoming superfluous, rather than a specific claim.
2. **2020:** The transfer of the kris (dagger) of Prince Diponegoro to Indonesia. This was defined as the fulfillment of international agreements but handled as a special case separate from new policy.
3. **2019/2022:** Repatriation of Māori and Moriori remains to New Zealand (2019) and 5,000-year-old human remains to Malaysia (2022).

Dutch Laws on Colonial Possessions

Due to the long period of Dutch expansion, listing all measures is impossible. While concrete measures to minimize looting were rare, looting was relatively limited during the Dutch East India Company (VOC) and West India Company (WIC) eras compared to the later colonial administration period. Colonial administrators, military personnel, and others played roles in dispossession.

In the Dutch Indies, the Batavian Society of Arts and Sciences was set up in 1778 as a "watchdog" to protect heritage. From 1840 onwards, the administration issued laws regarding scientific trips, export of antiquities, and monument protection. However, these regulations mainly served the interests of the Dutch State rather than the colonized peoples, often ignoring existing local customary laws that did not allow for forced alienation of cultural property.

Laws and Regulations in the Netherlands

Heritage Act of 2016

The Heritage Act of 2016 combines fragmented legislation for cultural heritage management. It lists grounds on which objects belong to the Dutch National Collection and are inalienable without specific government approval. An object belongs to this collection if it is of "particular cultural-historical or scholarly significance and irreplaceable and indispensable." If a museum wishes to de-accession such an object, it must follow a public procedure involving an independent expert committee.

The Act contains no special provisions for colonial contexts. This caused friction during the Museum Nusantara de-accessioning, where the Act required 3,196 objects to be retained as part of the National Collection, upsetting Indonesian authorities who felt the Dutch were cherry-picking the best items. Eventually, Indonesia accepted 1,564 objects.

Policy Vision on Collections from a Colonial Context

In January 2021, the Minister for Education, Culture and Science issued a "Policy Vision" responding to the 2020 Advice by the Dutch Council for Culture. The policy acknowledges the structural inequality and violence of colonialism and aims to handle objects "carefully, in close cooperation with the country of origin, and generously," with the restoration of injustice as a starting point.

The Policy Vision distinguishes three categories of objects with separate regimes:

1. **Involuntary loss from a former Dutch colony:** Objects taken involuntarily from Indonesia, Suriname, or the Caribbean part of the Kingdom will be returned unconditionally if the country of origin wishes. This transcends the Heritage Act's ban on export.
2. **Special significance for the country of origin:** For government-owned objects where involuntary loss is not proven but the object has special cultural/historical importance, the decision to return is conditional. It requires a "balancing of interests" between the country of origin and the Dutch National Collection.
3. **Former colonies of other powers:** For objects from colonies of other powers (e.g., Nigeria, Sri Lanka), the Minister will make a "broader decision" where rectifying injustice is the starting point, even if the injustice was not caused by the Netherlands directly.

Ancestral remains are a special category where return is the "starting point" and given highest priority. An independent assessment advisory committee will be set up to evaluate requests, which must come from a State. The holder of the object is responsible for provenance research.

First Steps

Indonesia and Suriname have endorsed the Policy Vision. Indonesia has set up a repatriation committee. In 2022, Secretary of State Gunay Uslu visited Indonesia to

discuss restitution, resulting in Indonesia presenting a list of claims, including the "Java Man" fossils.

Discussion

Dealing with colonial loot and Nazi-looted art works

In the Netherlands, Nazi-looted art and colonial loot are dealt with differently. For Nazi loot, the 1998 Washington Principles led to the creation of a restitution committee. Initially, this improved chances for claimants, but a 2007 policy adjustment that weighed museum interests against claimants led to criticism. In 2021, the government returned to a stricter assessment framework favoring restitution if involuntary loss is plausible. The author notes that the new assessment for Nazi loot parallels the new colonial policy, as both deal with "grey categories" where positive law conflicts with ethical norms.

The Dutch and Belgian approaches

Belgium filed a draft bill in 2022 creating a general legislative framework for restitution, which is new in Europe.

- **Scope:** Belgium's bill lifts the inalienability of objects from its specific former colonies (DR Congo, Rwanda, Burundi). The Netherlands' policy covers all colonial territories.
- **Cooperation:** Belgium seeks bilateral agreements and joint scientific committees with voting rights for experts from both states. The Netherlands utilizes an independent advisory committee that is mostly a Dutch affair.
- **Conditions:** Belgium seeks guarantees regarding care of returned objects. The Netherlands returns war booty to former Dutch colonies unconditionally but applies conditions for objects from other colonial powers.

Conclusions

The Netherlands is in an intermediate phase of developing rules for colonial collections. Progress has been made, comparable to other European powers, but the number of restituted objects remains small. The new Policy Vision awaits full parliamentary approval. While the Netherlands claims to respect sovereignty, the policy contains elements that perpetuate inequality, particularly regarding the capacity of former colonies to care for objects. The country has historically been more open to Nazi-confiscated art claimants than colonial claimants. Both the Netherlands and Belgium are at the start of the decolonization process, and the outcome will depend on the ability to work with former colonies on an equal footing.

References

- Ardiyansyah P., Object Repatriation and Knowledge Co-Production for Indonesia's Cultural Artefacts, 4 November 2021.
- Australian Government, Indigenous Remains to be Returned from Netherlands, 28 September 2009.
- Belgische Kamer van volksvertegenwoordigers, Wetsontwerp tot erkenning van de vervreemdbaarheid van goederen die verband houden met het koloniale verleden van de Belgische staat..., 25 April 2022.

- Besluit Herstel Rechtsverkeer van den 20 okt. 1944 [Decree on the Restoration of Legal Order of 20 October 1944], Staatsblad no. E 100.
- Burgerlijk Wetboek [Dutch Civil Code].
- Campfens E., Bridging the Gap between Ethics and Law: The Dutch Framework for Nazi-Looted Art, "Art, Antiquity & Law" 2020, Vol. 25(1).
- Campfens E., Cross-Border Claims to Cultural Objects: Property or Heritage?, Eleven, Den Haag 2021.
- Convention for the Protection of Cultural Property in the Event of Armed Conflict, 14 May 1954, 249 UNTS 240.
- Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, 14 November 1970, 823 UNTS 231.
- Djojonegoro W., The Evolution of the National Museum, in: R.S. Sitowati, J.M. Miksic (eds.), Icons of Art. The Collections of the National Museum of Indonesia, National Museum, Jakarta 2006.
- Dutch Heritage Act 2016.
- Erfgoed Delft, Herbestemmingsproject Museum Nusantara, 14 June 2018.
- Gemeente Delft, Voorgenomen besluit Gemeente Delft tot vervreemding van de collectie van voormalig museum Nusantara te Delft, Staatscourant, nr. 61063, 11 November 2016.
- Het Koninklijk Besluit bezettingsmaatregelen van den 17 sept. 1944 [The Royal Decree on Occupation Measures of 17 September 1944], Staatscourant no. E 93.
- Minister van Binnenlandse Zaken en Koninkrijkrelaties, De Toekomst van het Koninkrijk, brief aan de Voorzitter van de Tweede Kamer der Staten-Generaal, 21 July 2011.
- Minister van Onderwijs, Cultuur en Wetenschap, Tegoeden Tweede Wereldoorlog, brief aan de Voorzitter van de Tweede Kamer der Staten-Generaal, 12 March 2021.
- Ministerie van Onderwijs, Cultuur en Wetenschap, Beleidsvisie collecties uit een koloniale context, 29 January 2021.
- Ministerie van Onderwijs, Cultuur en Wetenschap, Implementatie beleidsvisie collecties uit een koloniale context, 15 July 2022.
- Ministerie van Onderwijs, Cultuur en Wetenschap, Lilian Gonçalves - Ho Kang You voorzitter commissie teruggave koloniale collecties, 15 July 2022.
- Ministerie van Onderwijs, Cultuur en Wetenschap, Staatssecretaris Uslu leidt culturele missie naar Indonesië, 9 September 2022.
- Ministerie van Onderwijs, Cultuur en Wetenschap, Vervreemding en overdracht van kris uit de Rijkscollectie, 4 March 2020.
- Ministerie van Onderwijs, Cultuur en Wetenschap, Voorgenomen besluit tot vervreemding van archeologische menselijke resten, Staatscourant, nr. 31520, 21 November 2022.
- Mooren J., Stutje K., van Vree F., Clues. Research into Provenance History and Significance of Cultural Objects and Collections Acquired in Colonial Situations, 2022.
- Museum Vrolijk, Menselijke resten Maori terug in Nieuw-Zeeland, 25 April 2019.
- Nationaal Archief, 2.02.05.02 Inventaris van de archieven van de Raad van Ministers [Ministerraad], 1823–1996.
- Nationaal Archief, 2.05.330 Inventaris van het code-archief periode 1975–1984 van het Ministerie van Buitenlandse Zaken.

- Oost T.I., From “Leader to Pariah”? On the Dutch Restitutions Committee..., "International Journal of Cultural Property" 2021, Vol. 28(1).
- Pennock H., Vermaat S., Windhausen M. (eds.), *Traces of Slavery and Colonial History in the Art Collection*, 2020.
- Pressing Matter: Ownership, Value and the Question of Colonial Heritage in Museums*. Raad voor Cultuur, *Advies over de omgang met koloniale collecties*, Raad voor Cultuur, Den Haag 2020.
- Raad voor Cultuur, *Striving for Justice*, 7 December 2020.
- Raven-Hart R., *The Dutch Wars in Kandy 1764–1766*, Government Publications Bureau, Colombo 1964.
- Russell P., *Restitution of Nazi-Looted Art, “Paradigm”*, April 2022.
- Sudarmadi T., *Between Colonial Legacies and Grassroots Movements. Exploring Cultural Heritage Practice in the Ngadha and Manggarai Region of Flores*, PhD thesis, 2014.
- van Beurden J., *Herplaatsing Collectie voormalig Museum Nusantara Delft...*, Delft-Leiden 2019.
- van Beurden J., *Inconvenient Heritage: Colonial Collections and Restitution in the Netherlands and Belgium*, Amsterdam University Press, Amsterdam 2022.
- van Beurden J., *The Return of Cultural and Historical Treasures: The Case of the Netherlands*, KIT Publishers, Amsterdam 2012.
- van Beurden J., *Treasures in Trusted Hands: Negotiating the Future of Colonial Cultural Objects*, Sidestone Press, Leiden 2017.
- van Nuland M., *Indonesië eist Java-mens en andere topstukken terug van Nederland, “Trouw”*, 18 October 2022.
- Veraart W., *Two Rounds of Postwar Restitution and Dignity Restoration in the Netherlands and France*, "Law & Social Inquiry" 2016, Vol. 41(4).
- Washington Principles on Nazi-Confiscated Art*, 3 December 1998.
- Waterkant, *Gesprek met Nederlandse delegatie over teruggave koloniale kunstcollectie*, 20 April 2022.