

## **Opinion no 82 of 9 January 2023 on the status of human remains in museum, scientific and private collections**

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# Request for an opinion

On 9 November 2020, Mr Guido Gryseels, director-general of the Royal Museum for Central Africa, Ms Alexandra De Poorter, director-general ad interim of the Royal Museums of Art and History, and Ms Patricia Supply, director-general ad interim of the Royal Belgian Institute of Natural Sciences, submitted to the Committee a request for an opinion on the status of human remains in museum and scientific collections as well as in private collections. The request read as follows:

*"Belgian federal scientific institutions (FSIs), universities and public and private entities house human remains of various geographical origins, periods and contexts. In Belgium, these collections were created from the middle of the 19th century.*

*Some of these human remains were discovered during archaeological excavations. Others were appropriated and/or acquired by, among others, museum staff, members of scientific societies, colonial officers and doctors. Some human remains were obtained through purchases or obtained from private collectors in the 19th and 20th centuries.*

*During the colonial period, many of these remains were 'collected' under problematic circumstances.*

*The current situation can be summarised as follows:*

- *In Belgium, there is no statute, let alone a legal statute, for human remains kept in museum, scientific and private collections.*

*Several questions therefore need to be asked in this regard:*

- *Are they ordinary collectibles or are they remains of identified or anonymous missing persons?*
- *What are the implications of this difference in law: can human remains be considered:*
  - *Appropriable (subject to property rights) or not (no ownership possible because they are human and sacred and not property)?*
  - *Appropriable to some extent, but extra-patrimonial (no monetary valuation)?*
  - *Appropriable (human remains can be qualified as commodities) and valorisable (a patrimonial value can be recognised), but not marketable (no legal circulation of these human remains, they cannot be traded)?*

- *Would the degree evolve according to the age of these human remains? Or to put it differently: Is there a statute of limitations regarding the age of these human remains before they can be considered as collectibles?*
- *Does the use of these remains in cultural goods (relics, trophies, etc.) affect their status?*
- *Returning to the question of the legal circulation of these remains: is their commercialisation lawful or not? Despite the practice of selling them online or in certain shops in Belgium, should we assume that these remains are in fact non-marketable and thus more clearly prohibit such sales?*

[...]

*With a view to developing a bioethical position at Belgian level regarding the status of human remains in public and private collections, we ask the Belgian Advisory Committee on Bioethics to assess the ethical aspects of these collections and regarding any requests for restitution/repatriation by descendants, community representatives and states of origin."*

This request for an opinion was declared admissible at the plenary meeting of the Advisory Committee on Bioethics on 8 February 2021 and was expanded with the following supplementary question posed on 9 November 2022 by Ms Patricia Supply, Director ad interim, of the Royal Belgian Institute of Natural Sciences:

*"We would like to know the Committee's position on prioritisation of restitution requests.*

*It is after all possible that the request for restitution may come from a government as well as from the family and/or community. In that case, which demand should be considered 'more legitimate' during the dialogue/process leading to the return of the human remains?*

*Due to the specific status of human remains and the ethical context of their collection, different interpretations are conceivable. The Committee's opinion is therefore important to assist institutions, legislators and the executive to set the priorities as ethically as possible, taking into account the historical, legal and legislative context.*

# 1. Introduction

The question submitted to the Committee concerns the status of human remains in museum, scientific and private collections.

First, an inventory is drawn up according to two classification methods or approaches, after which the question concerning the status to be assigned to human remains is dealt with globally.

This is followed by a discussion regarding the circumstances of their acquisition, the scientific studies of which they are the subject and the demand for their exhibition to the public.

The issue of the repatriation or restitution of human remains originating from parts of the world other than Europe, very often acquired during the colonial period, is the subject of specific reflection, taking into account post-colonial studies.

A separate reflection is also devoted to the trade in human remains.

Finally, the Committee formulates a series of recommendations related to the various questions raised in the opinion.

The recommendations formulated in relation to the public display of human remains and their non-commerciality apply to museum and scientific collections as well as to private collections.

# 2. Current situation

If we venture a definition, according to Professor Freddy Mortier, human remains should be understood to mean: *"the bodies, and parts of bodies, of once living people from the species Homo sapiens. This includes osteological material (whole or part skeletons, individual bones or fragments of bone and teeth), soft tissue including organs and skin, embryos and slide preparations of human tissue. Also included : any of the above that may have been modified in some way by human skill and/or physically bound-up with other non-human materials to form an artefact or artwork."*<sup>1</sup>

It now appears, however, that we need to go beyond the species Homo sapiens and consider the remains of other hominids and those preceding Homo sapiens as human remains. By way of example, we mention here on the one hand Lucy, belonging to the species Australopithecus,

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<sup>1</sup> F. Mortier, "Human remains and post-mortem rights" *Science Museums Group Human Remains Policy*, 2018.

which lived 3,200,000 years ago in present-day Ethiopia and was long regarded as the "grandmother" of humanity. On the other hand, we mention Toumai, discovered in the Djourab desert (Chad), who lived 7,000,000 years ago and who, according to a recent study<sup>2</sup>, had already acquired the ability to walk on two feet and can therefore be considered the "grandfather" of humanity.

As we can see, it is advisable to be very careful and consider any definition of human remains that establishes a boundary or a dividing line as precarious and always refutable.

Two methods of classification have been used within the context of this overview. The first emphasises the age and place of origin of the remains, the second their utilitarian or functional aspect.

Here too, it is important to be careful and remember that a classification is never neutral and always meets criteria and values that can be debated.

## 2.1. HOME classification

According to the classification prepared by the researchers of the HOME project<sup>3</sup>, human remains found in Belgian museums and scientific institutions can be classified according to age and place of origin as follows. This is an organisational classification established in the context of the overview of historical human remains preserved in Belgium. This classification is summarised below. The full version is attached as an appendix.

### A. Historical period

1. Human remains from Belgium: this includes all human remains collected in Belgium (e.g. from cemeteries).
2. Human remains from European countries: This includes all human remains collected in Europe (excluding Belgium). The list of European countries is available at Worldometers.<sup>4</sup>
3. Human remains from the colonial period and context:

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<sup>2</sup> Daver, G., Guy, F., Mackaye, H.T. *et al.* "Postcranial evidence of late Miocene hominin bipedalism in Chad." *Nature* 609, 94-100 (2022).

<sup>3</sup> *Human remains Origin(s) Multidisciplinary Evaluation (HOME)*:

"The objectives of HOME project are to evaluate the historical, scientific, legal and ethical background of the human remains housed by the Belgian FSIs, as well as those hosted in other public, academic and private collections in Belgium."

The full classification prepared by HOME is attached as an appendix.

<sup>4</sup> <https://www.worldometers.info/geography/7-continent/europe/>

- Democratic Republic of Congo, Rwanda and Burundi: This includes all human remains collected during the colonial period or in a colonial context (e.g. Congo Free State);
  - Non-European origin, but not from the former Belgian colonies: This includes all human remains collected in a colonial context (e.g. colonies of other European countries).
4. Human mummies: This category includes all natural<sup>5</sup> and anthropogenic<sup>6</sup> human mummies.
  5. Human remains as part of an artefact (including religious relics, skulls as trophies, etc.).

## **B. Prehistoric period**

1. Human fossils (*Homo sapiens sapiens*)
  - Belgium: This includes all human remains from the prehistoric periods (Upper Paleolithic, Mesolithic, Neolithic and Protohistory);
  - Democratic Republic of Congo, Rwanda and Burundi: This includes all human remains from the prehistoric periods according to local chronologies, but before the colonial period;
  - Rest of the world: This includes all human remains from the prehistoric periods according to local chronologies, but prior to the colonial period.
2. Fossil hominids: This includes all fossil hominid remains other than *Homo sapiens* (e.g. Neanderthals, early *Homo*).

Finally, there are human remains in private collections for which no inventory is available.

## **2.2. Classification of human remains used in the reply (dated 31.08.2016) to parliamentary question no. 6-1015**

"As a reminder, *several categories of human remains can be distinguished:*

*(a) remains from archaeological excavations that are no longer linked to any still existing biological and/or cultural context. When exhibited questions are primarily raised as to how the target audience will react;*

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<sup>5</sup> These mummies are the result of special environmental conditions such as extreme cold, soil acidity or drought. For example: Ötzi, a man discovered on 19/09/1991 at over 3,000 metres in the Alps, or the Tollund man discovered on 08/05/1950 in the Tollund Swamp in Denmark.

<sup>6</sup> These mummies are the result of human intervention. The Egyptian mummies are a classic example.



*(b) remains collected during ethnological expeditions. From a deontological point of view, this category is undoubtedly the most sensitive, because collections from this category originate from still existing cultural environments or milieus to which descendants can appeal;*  
*(c) collections of organs for research purposes. This category falls under medical ethics;*  
*(d) relics. The deontology of this category, which relates to religious practices, falls under respect for religious beliefs."*<sup>7</sup>

This classification is a reminder that a utilitarian or functional view of human remains, which regards them as objects of study, was dominant in the Western scientific world in the 19th century and in the first half of the 20th century. This pursuit of classification, which still exists, is now accompanied by an inclusive approach in which human remains are vectors of meaning for the living, insofar as they are the remnants of a history that the living perpetuate.

### 3. Status of human remains

Human remains raise a number of ethical questions regarding the status to be accorded to them.

Do they have a specific status ("sanctity" or dignity) that entitles them to special treatment (respect)?

Does this particular status differ according to the world's existing cultures (funerary customs and traditions)?

Does this particular status change with the effect of time?

#### 3.1. Do human remains have a specific status ("sanctity" or dignity) that entitles them to special treatment (respect)?

##### 3.1.1. From a bioethical point of view

In its report on the revision of the law on bioethics, the French National Assembly states that *"bioethics cannot be defined as only the ethics of the living. It also involves determining what the living may not do with the bodies of the dead, the remains that bear the memory of the deceased"*.<sup>8</sup>

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<sup>7</sup> <https://www.senate.be/www/?Mlval=/Vragen/SVPrint&LEG=6&NR=1015&LANG=nl>

<sup>8</sup> Information report No 2235 on "Révision des lois de bioéthique", Favoriser le progrès médical, respecter la dignité (rapporteur: Jean Léonetti), page 423, chapter 8 Le respect de l'identité et du corps de la personne décédée, 2010.

Human dignity, which along with decency and respect is at the core of Article 16-1-1 of the French Civil Code, is the essential value on which the *Comité consultatif national d'éthique pour les sciences de la vie et de la santé français (CCNE)* relies in order to protect human remains: *"The manner in which we look at Maori heads must take into account our growing concern regarding respect for the dignity of every human being, even after death."*<sup>9</sup>

In its opinion no 79 of 8 November 2021 on new forms of funeral arrangements, the Committee also refers to human dignity, but *"The Committee does not specify what respect for the dignity of the body of the deceased should imply in concrete terms. After all, there is no objective measure for this. Thus a utilitarian use of the human body, for example for science or for compost purposes, may be consistent with human dignity for some and not at all for others. For purposes of interpreting the respect for the dignity of the body of the deceased the Committee tries to take into account what a vast majority of people here would consider unworthy of respect ."*<sup>10</sup>

As the French *Comité consultatif national d'éthique pour les sciences de la vie et de la santé (CCNE)* reminds us in its Opinion 111, it is also appropriate to base ourselves on *"one of the pillars of ethical argument [which] is not to want for others what we want them to spare us. This 'golden rule' confronts everyone with the need to ask themselves whether they would accept the presence of the corpse of others in an exhibition if they did not want it for themselves or their loved ones."*<sup>11</sup>

According to sociologist and anthropologist, Gaëlle Clavandier, *"There are convincing indications [for a decade or so] - occurring in very heterogeneous fields and with different actors - that the principles of respect, decency and dignity owed to the deceased are gradually transferred to fragments, immature bodies or human remains, for which the identity of the person is missing. This 'body', in the general sense of the word, is then the only remaining link to the person, the only trace. [...] One of the concrete consequences of this evolution of sensitivities is that these human remains can be treated as 'deceased'. They can be treated as mortal remains, placed in contemporary cemeteries and be the object of a tribute by the community requesting their restitution or by the public community; and this implies a break with the practices that have been common until now."*<sup>12</sup>

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<sup>9</sup> Comité consultatif national d'éthique pour les sciences de la vie et de la santé français (CCNE), Opinion no 111 of 7 January 2010 on 'les problèmes éthiques posés par l'utilisation des cadavres à des fins de conservation ou d'exposition muséale', p. 11.

<sup>10</sup> Belgian Advisory Committee on Bioethics, Opinion no 79 of 8 November 2021 on new forms of funeral arrangements, p. 21.

<sup>11</sup> CCNE, Opinion no 111, *op. cit.*, p. 5.

<sup>12</sup> G. Clavandier, " De nouvelles normes à l'égard des restes humains anciens : de la réification à la personnalisation? ", in *Revue Canadienne de Bioéthique*, Volume 2, no. 3, 2019, p. 84-85.

Consequently, *"the use of the term 'human remains' amounts to categorising these remains, which also has the immediate consequence of qualifying them as human beings, to be distinguished from all remains of any other kind; and, above all, to give them a sacred character to be distinguished from waste. Equated with bodies, these human remains become one with the person and his humanity. Is it conceivable then that the principle of human dignity would not apply to them? This is the question that those involved are asking themselves today."*<sup>13</sup>

By way of example, the sugar industry used the bones of the corpses of soldiers killed in the battle of Waterloo to "clarify and purify" sugar syrup by filtering it with a powder made from these bones. This would obviously cause a scandal today.

### 3.1.2. From a legal point of view

Article 16-1-1 of the French Civil Code provides as follows: *"Respect for the human body does not stop at death. The remains of deceased persons, including the ashes of those whose bodies have been cremated, should be treated with respect, dignity and decency."*

In contrast, the Belgian Civil Code does not contain a similar general provision.

Our legislation contains only scattered legal provisions on specific issues:

- Article 453 of the Belgian Criminal Code on the desecration of graves;<sup>14</sup>
- Article L1232-5, §1, of the Local Democracy and Decentralisation Code on cemetery supervision;<sup>15</sup>
- Article L1232-26, §1, of the Local Democracy and Decentralisation Code on the ashes of the deceased;<sup>16</sup>
- Article 24 of the Flemish Region Decree of 26.01.2004;<sup>17</sup>

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<sup>13</sup> *Ibidem*, p. 85.

<sup>14</sup>Article 453 of the Belgian Criminal Code states: *"A prison sentence of one month to one year and a fine of twenty-six euros to two hundred euros is imposed on those found guilty of desecrating a grave."* According to the Court of Cassation, this crime can exist as soon as the body is placed in the coffin (Cass. 29 June 1926).

Article 225-17 of the French Criminal Code, on the other hand, states the following: *"Any violation of the integrity of the corpse, in any manner whatsoever, is punishable by one year in prison and a fine of 15,000 euros. Violation and desecration, in any manner whatsoever, of tombs, graves, urns or monuments commemorating the deceased is punishable by one year in prison and a fine of 15,000 euros."*

<sup>15</sup> Decree Walloon Region *"Municipal cemeteries and crematoria are subject to the authority, maintenance of order and supervision of the municipal authorities, which ensure that there is no disorder, that no acts contrary to respect for the dead are carried out and that no re-excavation takes place without the authorisation of the mayor, in accordance with Article 133, second paragraph, of the new municipal law."*

<sup>16</sup> Decree Walloon Region *"[...] The ashes of the deceased shall be treated with respect and reverence and cannot be the subject of any commercial activity, except for those activities related to the scattering or burial of the ashes or their transfer to the place where the ashes will be kept [...]"*.

<sup>17</sup> *"The ashes of the deceased shall be treated with respect and reverence and cannot be the subject of any commercial activity, except those activities related to the scattering or burial of the ashes or their transfer to the place where the ashes will be kept."*

- The law of 20.07.1971 on cemeteries and funeral arrangements;<sup>18</sup>
- The law of 13.06.1986 regulating the removal of organs *post mortem* with a view to their transplantation for therapeutic purposes;<sup>19</sup>
- Law of 19.12.2008 regulating the acquisition and use of human body material *post mortem* for the purpose of medical application to humans or scientific research.<sup>20</sup>

There is no specific legislation in respect of autopsies, except for the autopsy of infants<sup>21</sup>. "*Autopsy is not considered as being in and of itself incompatible with respect for the deceased; however, it is required to have a legitimate [forensic or medical-scientific] purpose and to be performed in such a way that respect for the deceased and the feelings of the bereaved are not ignored*".<sup>22</sup>

There is, however, a Council of Europe recommendation on the harmonisation of rules on forensic autopsy.<sup>23</sup>

Exhumation in the context of a paternity investigation is also not specifically regulated, as it is in France.<sup>24</sup>

We mention the MEMOR project, which aims to create a database and an ethical framework for handling human remains in Flanders.<sup>25</sup>

These various provisions scattered across our legislation point to the desire to treat human remains with respect, dignity and decency.

### 3.1.3. From a cultural - anthropological point of view

"*Alexander the Great and his mule driver both died and the same thing happened to both. They were absorbed alike into the life force of the world, or dissolved alike into atoms.*"<sup>26</sup>, wrote

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<sup>18</sup> Law of 20.07.1971, amended by the law of 20.09.1998.

<sup>19</sup> Article 12 states the following: "*The removal (of organs, tissues and cells) and closure of the body should be done with respect for the corpse and concern for the feelings of the family.*" According to Article 12 of the Law of 19.12.2008, this provision also applies in the context of the *post mortem* removal of human body material regulated by the Law of 19.12.2008.

<sup>20</sup> See Opinion no 54 of 10.12.2012 of the Belgian Advisory Committee on Bioethics on consent for the *post-mortem* removal of human body material for human medical applications or for scientific research purposes.

<sup>21</sup> Law of 26.03.2003 regulating "*the autopsy after the unexpected and medically unexplained death of a child of less than 18 months*".

<sup>22</sup> G. Genicot, *Droit médical et biomédical*, Larcier, 2016, p. 819.

<sup>23</sup> Council of Europe, Recommendation R (99) 3, Harmonisation of medico-legal autopsy rules, 02.02.1999

<sup>24</sup> Art. 16-10 and 16-11 of the French Civil Code. See Opinion no 38 of 13.11.2006 of the Belgian Advisory Committee on Bioethics on genetic testing to determine descent after death.

<sup>25</sup> <https://www.memor.be/>

<sup>26</sup> Marcus Aurelius, *Reflections*, VI, XXIV.

Marcus Aurelius in the second half of the second century. Death makes everyone equal. Human remains constantly remind us of this radical equality. The pomp of the funeral and the size of the funerary monument do not change his.

The oldest isolated graves discovered date back to the Middle Paleolithic period, about 100,000 years ago. The tragedy 'Antigone' also reminds us of the importance that the ancient Greeks attached to the obligation of the living to bury the dead under an unwritten, ancient law. The fact that symbolic resistance to those in power<sup>27</sup> is used in this context is certainly not insignificant.

In our secularised western societies, the dichotomy between the sacred (the domain of religion) and the secular has largely lost its relevance. In the context of this secularisation and of the laicisation of the sacred, the specific status to be accorded to human remains is based on and legitimized by the function of the dead in creating and maintaining social bonds in a historical human community rather than in a form of "fetishisation" of bones.

Particularly telling examples are the military cemeteries, the monuments to the dead of the two world wars and the ceremonies and rituals that perpetuate their memory and aim to remind us of the ultimate sacrifice men and women made to protect the homeland and our freedoms. Preserving these places, these monuments and this memory maintains an essential link with the past, strengthening the social cohesion within society.

It goes without saying that the importance of the presence of the dead in the social and historical fabric of nations also applies to the cohesion of families or institutions.

In general, it can be said that human remains deserve specific status because they contribute to the cohesion of human groups at different levels which implies the recognition that we share a history or histories, and that this history of humanity is perpetuated by the living. If human remains have a specific status, this is to the extent that the dead are vectors of significance to the living. This is what induced the philosopher Jacques Derrida to write: "*It is necessary to speak of the ghost, indeed to the ghost and with it, from the moment that no ethics, no politics, whether revolutionary or not, seems possible and thinkable and just that does not recognise in its principle the respect for those others who are no longer there or for those others who are not yet there, presently living, whether they are already dead or not yet born.*"<sup>28</sup>

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<sup>27</sup> *Dans la culture universelle, l'Antigone de Sophocle demeure le modèle inégalé, cent fois reproduit, jamais épuisé, de la résistance au pouvoir.* » : F. Ost, " L'Antigone de Sophocle : résistance, apories juridiques et paradoxes politiques ", dans *Raconter la loi. Aux sources de l'imaginaire juridique*, sous la direction de François Ost , Odile Jacob, " Hors collection ", 2004, pp. 161-203, <https://www.cairn.info/raconter-la-loi--9782738113719-page-161.htm>.

<sup>28</sup> J. Derrida, *Spectres de Marx*, Editions Galilée, 1993, p.15.

On this anthropological dimension, Thomas Laqueur writes: "*The history of the work of the dead is a history of how they dwell in us—individually an communally. It is a history of how we imagine them to be, how they give meaning to our lives, how they structure public space, politics, and times. It is a history of the imagination, a history of how we invest the dead—again [...]*".<sup>29</sup> He further states: "*I think that death is not and has never been a mystery; the mystery is our capacity as a species, as collectivities and as individuals, to make so very much of absence, and specifically of the poor, naked, inert dead body.*"<sup>30</sup>

### 3.2. Does this particular status differ according to the cultures existing in the world (funerary customs and traditions, ancestral ties)?

Without going into detailed ethnological considerations, it appears that various existing cultures differ, not in terms of respect for the deceased as such, but in the manner in which they show respect for the human body, and in the ritual that should accompany the burial.

The experts heard agreed that these cultural differences should be taken into account and that the western cultural prism should not predominate.

In some religious cultures, especially in sub-Saharan Africa, ancestor worship is essential: "*Ancestor worship presupposes that the dead have a real hold over the living. Indeed, the deceased ancestors are considered essential actors for the continuity of the group and should therefore be respected. In societies that value seniority, the ancestor represents the most accomplished figure of the senior authority figure (Kopytoff 1971). Ancestor worship is thus based on the idea that the living have incurred a debt that cannot be repaid to the ancestors who left them the tradition.*"<sup>31</sup> This ancestor worship must be taken into account when human (ancestral or otherwise) remains from the colonial period are involved.

One of the experts heard points out that in some oral cultural traditions of Australian Aborigines there is a very long memory of ancestors, up to ten generations distant, whose stories are known to the living.

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<sup>29</sup> Th. W. Laqueur, *Le travail des morts. Une histoire culturelle des dépouilles mortelles*, collection NRF Essais, Gallimard, 2018. p. 60.

<sup>30</sup> *Ibidem*. p. 87.

<sup>31</sup> J. Bonhomme, *Les morts ne sont pas morts*, in M. Cros & J. Bonhomme (éds.). *Déjouer la mort en Afrique. Or, orphelins, fantômes, trophées et fétiches*, L'Harmattan, 2008, pp. 159-168, <https://halshs.archives-ouvertes.fr/halshs-00801514/document>.

### 3.3. Does this particular status change with the effect of time?

Does the effect of time affect the specific status of human remains? Does it have a "desacralizing" effect? The experts heard differ in their opinion regarding this time effect.

According to Gaëlle Clavandier: "*Two models are placed side by side. One is based on a relativistic reading grid that applies only to recent or identifiable human remains that would have special meaning because of their temporal and affective proximity. The other is defined by a holistic and universalistic reading grid for which the very nature of these remains, human in essence, would give them a special status.*"<sup>32</sup>

The Committee favours a holistic and universalist approach, considering human remains as remnants of a common history that the living continue.

Furthermore, it seems important to distinguish between human remains and graves. Graves are concessions, in most cases for a set period of time, and if they are not renewed or maintained, the human remains they contain are removed and placed in mass graves or ossuaries.

Should a distinction be made between the historical period and the prehistoric period (human fossils)?

The experts heard are not in favour of this distinction. Thus, according to one expert, the distinction between the two periods can be made with the appearance of the first graves around 100,000 years ago, corresponding to *Homo sapiens sapiens*<sup>33</sup> whose oldest discovered remains date from circa 200,000 years ago. Another expert believes that respect should extend beyond *Homo sapiens sapiens* and that, like Y.N. Harari believes, Lucy is our "grandmother".<sup>34</sup>

Therefore, distinguishing between the historical period and the prehistoric period (human fossils) does not seem useful or relevant. In this context, chronologies can always be revised. Nothing prevents museums or scientific institutions from making such distinctions, provided they are scientifically justified and explained to the public. Thus, distinguishing between *Homo sapiens sapiens* and all that precedes it may be justified, provided the choice is explained.

As a reminder, here are some key reference dates:

- 7,000,000 years: appearance of the first ancestors of the "human" genus;

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<sup>32</sup> G. Clavandier, *op. cit.*, p. 83.

<sup>33</sup> Subgroup of *Homo sapiens*, also called "modern man".

<sup>34</sup> Y.N. Harari, *Sapiens : Une brève histoire de l'humanité*, Albin Michel, 2015, p. 15.

- 3,500,000 years: beginning of bipedalism, proven by footprints discovered in Laetoli (Africa, Tanzania);
- 2,700,000 years: appearance of *Homo habilis* and the first manufactured tools;
- 1,800,000 years: first *Homo erectus* in Africa;
- 1,700,000 years: first known hominids outside Africa: *Homo georgicus*, in Georgia (Eurasia);
- 300,000 years: first Neanderthals;
- 200,000 years: Omo I and Omo II, the oldest known remains of *Homo sapiens sapiens*;
- 100,000 years: oldest known graves of *Homo sapiens sapiens*.

Nevertheless, it is advisable to be cautious and not lose sight of the fact that this chronology can always be revised.

## 4. Geographical origins of human remains in museum collections

### 4.1. Human remains from Belgium and Europe

These remains are of various origins:

Human remains found in archaeological excavations of cemeteries in Belgium (e.g. Gallo-Roman graves in Tongeren, Merovingian graves in Ciplu, graves of the monks of the Duinenabdij in Koksijde).

Numerous human remains (skeletons only) from tombs excavated in the XIX<sup>th</sup> century in south-eastern Spain by Belgian archaeologists. These tombs belong to the El Argar civilisation (early Bronze Age, late third millennium BC).

Human remains (skeletons) from ancient Greece and Rome.

Other remains originate from collections collected in medical faculties or in what were then called cabinets of curiosities.

Human remains of archaeological origin are, by definition, of a certain age and the circumstances of their acquisition, with few exceptions, are not problematic.

Human remains from medical faculties or cabinets of curiosities are more recent (XVIII<sup>th</sup> to XX<sup>th</sup> centuries) and the circumstances of their acquisition raise questions in a number of cases.



## 4.2. Human remains from another region of the world outside the colonial context

According to the inventory provided by the Royal Belgian Institute of Natural Sciences, these remains mainly originate from:

1. New Zealand: Maori heads;
2. South America: skulls and skeletons from Peru, e shrunken Jivaro heads;
3. Greenland: skulls and skeletons of the Inuit;
4. Ancient Egypt: mummies and skeletons.

The circumstances of their acquisition are likely to be problematic and should be examined on a case-by-case basis.

## 4.3. Human remains that directly or indirectly originate from the Belgian colonial period or context

Human remains from colonised countries are, for the most part, recent (XIX<sup>th</sup> and XX<sup>th</sup> centuries) and both the circumstances and purpose of their acquisition are problematic.

The circumstances of their acquisition relate to those of the violence and brutality inherent in colonisation: *"The unrelenting wielding by the colonisers of unseen brutalities that were unimaginable to those who had to endure them - incessant and increasingly severe brutalities in the most diverse forms, which were constantly readjusted and which eventually, in the wake of the colonial wars of conquest and 'pacification', culminated in an unquestionably long-lasting system of domination, coercion, exploitation and multiple transformations that were imposed profoundly and through unilateral violence at all levels."*<sup>35</sup>

Its aim is to draw up, on a supposedly scientific basis, a hierarchy of races in order to justify the domination of colonised peoples by western settlers: *"The first Belgian [physical] anthropological organisation, the Société d'Anthropologie de Bruxelles, was founded in 1882. While its initial studies on race focused on attempts to delineate the Walloon and Flemish 'races', its attention soon turned to the Congo colony. Although the anthropologists did not go there themselves, they urged the officers and soldiers involved in Leopold II's project to bring back human remains, such as skulls, to take measurements and establish a classification system for*

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<sup>35</sup> E. Mbokolo, *Brutalisation et brutalités coloniales : la formation de la société congolaise dans l'État indépendant du Congo et au Congo Belge* in *Rapport des experts* handed over on 26.10.2021 to the Special commission in charge of the investigation on Congo Free State (1885-1908) and the Belgian colonial past in Congo (1908-1960), Rwanda and Burundi (1919-1962), its impact and the consequences to be given to it, Belgian Chamber of Representatives, DOC 55 1462/002, p. 44.

*different groups. The aim of the measurements was not so much to differentiate as to establish ranking. The size of the skull was thought to be related to mental abilities, and in the hierarchy of the time, the skulls of whites were always considered to be the most perfect. Alphonse Vangele, Camille Coquilhat and Emile Storms, among others, followed suit.*"<sup>36</sup>

This is particularly true of the skull of chief Lusinga Iwa Ng'ombe, currently in the collections of the Royal Belgian Institute of Natural Sciences. Decapitated on 4 December 1884 during a punitive expedition ordered by Lieutenant Emile Storms<sup>37</sup>, commander of the 4<sup>th</sup> expedition of the Association internationale Africaine<sup>38</sup>, Lusinga's skull was added to the collection of Storms, who wrote in his diary on 15 December 1884: "*I have taken Lusinga's head to include it in my collection.*"

One of the experts heard indicates that when a traditional chief was decapitated in this way, it was also a political gesture aimed at beheading his "chieftainship"<sup>39</sup> and to replace it with a new authority. The chief's fetishes, symbols of his authority and power, were also taken away by the coloniser. This was the case for Lusinga.

Emile Houzé, professor of physical anthropology at ULB and a supporter of craniology, concluded on examining Lusinga's skull that "*the frontotemporal crests are distinct and very pronounced: above the parietals, these crests curve inwards to join the sagittal suture. This is a simian feature*"<sup>40</sup>. Here we are clearly in the middle of a race theory.

An imposing wooden sculpture by Congolese artist Aimé Mpane, representing Lusinga's skull, currently stands in the main rotunda of the Royal Museum of Central Africa.

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<sup>36</sup> S. Van Beurden, *Impérialisme culturel et cultures de connaissances* in *Rapport des experts* handed over on 26.10.2021 to the Special commission in charge of the investigation on Congo Free State (1885-1908) and the Belgian colonial past in Congo (1908-1960), Rwanda and Burundi (1919-1962), its impact and the consequences to be given to it, Belgian Chamber of Representatives, DOC 55 1462/002, p. 282.

<sup>37</sup> His bust on the De Meeûs Square in Ixelles was removed on 30.06.2022.

<sup>38</sup> "*Born out of the work of the Conférence de géographie de Bruxelles (1876), the Association internationale africaine (AIA) is an international committee, presented as philanthropic, charged with spreading civilisation in Africa, suppressing the slave trade and collecting funds for this purpose. It is the first step in the spatial, political and economic occupation of several African territories. It is supported by national committees and led by an executive committee. Participants at the conference in Brussels propose the appointment of Leopold II as chairman of the international commission.*" Sources: H. Hasquin, *Dictionnaire d'histoire de Belgique. Les hommes, les institutions, les faits, le Congo belge et le Ruanda-Urundi*, HATIER, Namur, 2000, p. 30-31.

<sup>39</sup> '*Unité politique autonome comprenant un certain nombre de villages ou de communautés sous le contrôle permanent d'un chef suprême*', Robert L. Carneiro, '*The Chieftdom: Precursor of the state*', in G. D. Jones and R. R. Kautz, *The Transition to statehood in the New World*, Cambridge University Press, 1981, p. 45.

<sup>40</sup> Quoted by A. F. Roberts, *A Dance of Assassins: Performing Early Colonial Hegemony in the Congo*, Indiana University Press, 2013, p.148. (Sources: E. Houzé, 1886, p. 44.) See also M. Couttenier, "Et on ne peut s'empêcher de rire" : la physio-anthropologie en Belgique et au Congo (1882-1914) in *L'invention de la race: Des représentations scientifiques aux exhibitions populaires*, La Découverte, 2014.

## 5. Academic research

### 5.1. Field of research of science and human remains

In his attempt to answer the question "What can I know?", Kant tried to show in his *Critique of Pure Reason* that knowledge lies within the limits of sensory experience, relegating questions such as the existence of God or the immortality of the soul to the realm of metaphysics, i.e. beyond the reach of science. It is true that modern science is becoming increasingly central to our existence. Significant progress leads some to believe that everything will be comprehensible some day. Discourses or theories also thrive that falsely claim an aura of scholarship. To qualify as scientific, however, a statement must meet a set of epistemological criteria such as reproducibility, coherence, reliability, reputability or the possibility of experimental verification.<sup>41</sup> These criteria must be met regardless of the subject of the study.

In many cultures, there is a porous boundary between the world of the living and the world of the dead. Even rational minds, especially in the West, attach importance to funeral rites, respect for the dead,<sup>42</sup> and some even to relics, spirits or spiritualism. Science strives to define life<sup>43</sup> and unravel its mysteries, but the realm of the afterlife is beyond the reach of scientific enquiry because it cannot meet epistemological criteria. Moreover, ancient human remains are material witnesses that allow us to better understand the history of the human species. As such, they may be the subject of scientific research, particularly in the field of archaeoanthropology, palaeontology, archaeobiology or palaeopathology. This research certainly has legitimacy. But these remains represent more than just material matter, a special status is attributed to them in an almost universal way, and therefore they require an even more rigorous attitude from scientists. There should have no place for pseudosciences, such as phrenology or craniology of the past, which seek to justify the study of "human material" based on dubious ideological propositions intended to legitimise regimes of domination (see *supra* 4.3).

### 5.2. Usefulness and legitimacy of scientific research on human remains

The excesses of pseudoscience should not, however, negate the importance of the evolution of scientific or historical knowledge acquired as a result of the study of human remains. Research in palaeontology, palaeopathology, palaeogenetics, archaeoanthropology and archaeo-biology clearly demonstrates the value of scientific study of ancient human remains.

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<sup>41</sup> See A. Chalmers, *Qu'est-ce que la science? récents développements en philosophie des sciences : Popper, Kuhn, Lakatos, Feyerabend*, Paris, Librairie générale française, coll. "Le livre de poche" (no. 4126), 1990.

<sup>42</sup> See, for example, the concern about the recovered victims of the two world wars, or the efforts of the relatives of the occupants of the plane MH17 shot down in Ukraine to recover some bone remains.

<sup>43</sup> In this connection, it should be noted that no scientific definition of life has been definitively established.

Let's take four examples:

#### A. Lucy

The scientific analyses conducted on Lucy, a fossilised skeleton of a humanoid of the *Australopithecus* group discovered in Ethiopia in 1974, estimated to be 3.2 million years old, have revolutionised studies on the origin of humans. They demonstrated that Lucy was able to move on her two hind limbs and that bipedalism consequently arose much earlier than previously assumed and preceded the process of brain volume increase. Lucy's brain volume is about 400 cm<sup>3</sup>. The study of Lucy's anterior limbs showed that she also retained arboreal skills. She measured about 1.10 metres tall, weighed up to 30 kg and must have been about 20 years old at the time of her death. Her fossilised remains are kept out of sight at the Ethiopian National Museum in Addis-Abeba, where a replica of her skeleton is on display.

#### B. Denisovans

In 2008, a team of palaeontologists and archaeologists discovered a human pinky finger about 41,000 years old in the Denisova cave in south western Siberia. In 2010, the team of palaeogeneticists led by Professor Svante Pääbo, winner of the 2022 Nobel Prize in medicine, succeeded in sequencing the mitochondrial DNA of the discovered phalanx. This showed that this DNA was neither from a *Homo sapiens* nor a Neanderthal but from another human genus: the Denisovian or Denisova hominin. The phalanx found would be that of a young woman.

#### C. Ötzi

The scientific analyses conducted on Ötzi, who was discovered in the Italian Alps in 1991, have provided a number of data about him: He was a man aged about 45, 1.60 metres tall, weighing about 50 kg, with brown eyes and dark hair and he died about 5,300 years ago. The tests also revealed that he had arthritis in his neck and in a hip, gallstones, hardened arteries, tooth decay, contaminated lungs, high levels of arsenic and that his left toe was probably frozen. It is also known that his last meal was dried ibex meat, showing that he was familiar with the drying technique.

These studies also show that he made long journeys in the mountains and that he died a violent death. Investigators have also counted numerous tattoos on his body that have not revealed all their secrets yet. Modern imaging techniques made it possible to reconstruct his body in such a way that we get an idea of what he looked like. Finally, a new study of his DNA revealed that he would have had direct descendants in the Tyrol region. His remains are kept in a cold room

at the archaeological museum in Bolzano and are displayed behind glass to the public without any special ethical safeguards .

#### D. Man from Tollund

Scientific analyses of the Tollund Man, discovered in 1950 in a peat bog in Denmark, have provided the following insights: The man was about 35 years old, 1.61 metres tall and he died about 2,400 years ago. These analyses revealed no signs of obvious disease. It is also known that his last meal consisted of barley porridge, flax, seeds of wild grass and a small amount of fish. He died by hanging as part of a ritual sacrifice. The remains of the Man of Tollund are displayed at the Silkeborg Museum in Jutland exhibited behind glass without any special ethical safeguards. Only the head is original, the other body parts have been degraded and reconstructed.

Incidentally, it is important to note that science can contribute to improving respect for human remains. It is precisely thanks to the development of science, that progress has been made in studying them using increasingly less invasive techniques and increasingly effective conservation methods.

And finally, using a scientific methodology, scrupulously executed is, in some contexts, even a moral duty out of respect for the deceased. This is the case, for example, in forensic medicine, where establishing the cause of death is necessary to identify a guilty party and do justice to the person killed.

### 5.3. Scientific research and values

In acquiring knowledge, science theoretically aims to conform to an ideal of axiological neutrality<sup>44</sup>. The desired axiological neutrality, as an epistemological requirement, is based on the distinction to be made between objective fact and subjective value.<sup>45</sup> But since a researcher is also subject to the human condition, this in itself generates possible subjective influences (e.g. in relation to his methods of observation, the non-neutrality of his language, etc.). He is also immersed in a context situated in time and space (within a culture, a way of thinking). This can result in his study becoming biased without him always being aware of it. The possible moments at which these value judgements come into play are numerous: motivation of the research, choice of a method, interpretation of the results, determination of the threshold of

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<sup>44</sup> Axiological neutrality is a concept proposed by the sociologist Max Weber; it implies that scientists adopt an attitude that detaches them from any value judgement in their approach

<sup>45</sup> "C'est l'idéal de neutralité axiologique, qui présente l'objectivité comme un détachement", in F. Claveau, J. Prud'homme, dir., *Experts, Sciences et société*, Presses de l'université de Montreal, 2018, p. 240

acceptability of a hypothesis, etc. This permeability is not in itself problematic; indeed, it is required when so-called "epistemic" values are involved, such as truth, reliability or coherence<sup>46</sup>. However, some contemporary authors<sup>47</sup> go further. They argue that the ideal of axiological neutrality in science needs to be put into perspective: it would be desirable at certain points in the research process, such as determining the research questions, the choice of the method and the use of the results, if account were taken of social and moral values.<sup>48</sup>

Experience has shown that the values invoked when investigating human remains are not always ethically acceptable. Indeed, there is no denying that in studies carried out on these remains, the science has been used as an alibi to support objectionable propositions, such as those about an alleged racial hierarchy. Studies have also been conducted in inhumane conditions. Such misuse amounts to an instrumentalization of science for unacceptable purposes. This, of course, must be condemned.

In the history of science, and of medicine in particular, it is not uncommon that advances have been made by breaking the rules of conduct when dealing with bodies.<sup>49</sup> Such transgressions were possible on individuals in vulnerable situations. This was the case in the colonial context. Nowadays, it is unthinkable that the informed consent of individuals, or their relatives in the case of bodies of deceased people, and the ethical rules on medical experiments could be ignored.

According to the Committee, it is therefore essential to apply an ethical perspective to all research involving human remains. This vision can, however, express itself in different ways, depending on the specific discipline of the researcher. The hearings revealed, for example, that doctors consider human remains, even old, anonymous or severely degraded ones, as patients who must be treated with dignity and respect. Archaeologists and palaeontologists, on the other hand, consider them more as precious witnesses of the past. But whatever professional group (each with its own deontology) the researcher belongs to, he should not treat human remains as mere objects, but rather with the respect they deserve.

As with clinical research, research on human remains is not necessarily contrary to their symbolic value and the respect due to them, as long as it meets well-defined conditions and the fundamental principles of bioethics.

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<sup>46</sup> F. Claveau, J. Prud'homme, dir., op. cit., p. 242

<sup>47</sup> Not only contemporary: the relevance of non-epistemic value judgements was formulated as early as 1953 by R. Rudner, "The Scientist Qua Scientist Makes Value Judgements", *Philosophy of Science*, vol. 20, no. 1, 1953, p. 1-6.

<sup>48</sup> F. Claveau, J. Prud'homme, dir., op. cit., p. 244

<sup>49</sup> For example, the first dissections by Vesalius, the first vaccines, the first organ transplants, etc.

We think primarily of the prior consent of the deceased ('bodies donated to science' via a prior declaration), of his or her relatives or, if identifiable, of his or her descendants. Does this mean that the absence of relatives or descendants and the age of the human remains permits any kind of investigation? First, the other conditions for scientific studies must be assessed. They are listed below:

- treating human remains with the utmost respect;
- the use of techniques that are as minimally invasive as possible, respecting the integrity of body parts as much as possible (sampling of the fragments as small as possible, use of medical imaging techniques, etc.);
- a precise and validated research objective;
- a rigorous scientific method;
- submitting it for ethical opinion if necessary (cf. clinical trials);
- be aware of the possible biases and potential implications of the research;
- if there are no descendants, preservation of human remains in dignified conditions.

## 6. Exhibition

The exhibition of human remains is a subject under debate. Several museums, such as the Royal Museum for Central Africa (RMCA) and the Museum aan de Stroom (MAS) in Antwerp, no longer exhibit human remains, and others are considering doing the same. In France, the Musée de l'Homme has decided not to exhibit any more human remains, except the skull of Descartes.

### 6.1. Criterion of the age

Should a distinction be made between the historical period and the prehistoric period (human fossils)? For this, we refer to section 3.3.

### 6.2. Human remains acquired in the context of colonisation or colonial enterprises

Human remains from colonised countries are mostly recent (XVth to XXth centuries) and both the circumstances and purpose of their acquisition are problematic. They were collected in a context of violence and with the aim of establishing a hierarchy of races in order to justify the coloniser's domination ("scientific" racism).

In the light of these elements, their continued display in our museums cannot be justified, even if the ethical principles described in section 6.4 are complied with, as this would amount to relativising or downplaying the intrinsic violence of colonisation.

### 6.3. Relics and human remains that are displayed in a religious context

Human remains displayed as relics, permanently or periodically, in religious settings generally do not pose an ethical problem as to their origin.

They are usually displayed with due respect and in a context of piety and modesty.

### 6.4. Ethical principles concerning exhibition

The experts heard believe that public display of human remains can only take place in a scientific context, that educational explanations should be provided and that certain conditions (in terms of light, atmosphere, etc.) must be met.

One of the expert heard was of the opinion that mummies should not be stripped of their wrappings and that bodies in good state of preservation should not be displayed naked, even if they were discovered in that state.

This expert also recommends not fragmenting bodies, not mixing fragments of different bodies and, as far as possible, applying this manner of handling also to the places where the remains are kept (drawers, boxes, etc.).

Another expert points out that pilot projects are under way in some Australian museums, showing how scientific examination of human remains is compatible with respectful handling according to the tradition of the members of the communities associated with those remains.

## 7. Restitution-repatriation

The issue of restitution-repatriation mainly concerns human remains from the colonial period or from a colonial context, whereby both the circumstances (punitive operations, extortion, disdain for ancestor worship) and the objectives (the physical anthropology of the time aimed at establishing the existence of races and justifying a hierarchy between them) of their acquisition are problematic.

The use of one term or the other is not insignificant.

According to the Sarr et Savoie report, "restitution" literally means "*returning property to its rightful owner. This term reminds us that the appropriation and enjoyment of the restituted property is based on a morally reprehensible act (theft, plundering, robbery, cheating, forced consent, etc.) that makes the claimed property illegitimate and unjust, and a source of discontent. Consequently, restitution aims to restore the right of use and enjoyment, as well as*



*all the prerogatives attached to ownership (usus, fructus and abusus) to the rightful owner of the property. Implicit in the act of restitution is the recognition of the illegality of the property hitherto claimed, regardless of its duration. Consequently, the act of restitution attempts to put things in their proper place. To speak openly about restitution is to speak about justice, rebalancing, acknowledging, restoring and repairing, but above all: it paves the way for establishing new cultural relations based on a reconsidered relational ethic.*"<sup>50</sup> The Committee fully agrees with the powerful definition given to the term restitution.

One of the experts interviewed believes that there should be no talk of restitution<sup>51</sup>, but rather repatriation and that the repatriated human remains should be buried, as was the case for Saartjie Baartman in South Africa or for Patrice Lumumba very recently in the Democratic Republic of Congo. We emphasise that the term repatriation evokes the return to the country of one's ancestors and refers to the need to belong to an identity and connect with a national narrative.

The Committee suggests using the term "restitution-repatriation", which covers both concepts and emphasises the importance of each. The Committee believes that restitution should be accompanied by repatriation when requested by the authorities of the country of origin.

During one of the hearings, an expert pointed out that the issue of repatriation-restitution of human/ancestral remains and funerary objects from the colonial period is still very much alive in African communities thanks to the vivid memory of what Georges Balandier has called "*the colonial situation*", which he defines as "*the domination imposed by a foreign minority, racially (or ethnically) and culturally distinct, in the name of a dogmatically asserted racial (or ethnic) and cultural superiority, on a materially inferior indigenous majority; [... ...] the need to maintain domination, resorting not only to 'violence' but also to a system of pseudo-justifications and stereotypical behaviour, etc.*"<sup>52</sup>

The *Experts' Report* submitted on 26.10.2021 to the Special Commission in charge of the study on Congo Free State (1885-1908) and the Belgian colonial past in Congo (1908-1960), Rwanda and Burundi, recalls the importance of taking into account the impact and social consequences for the colonised populations of the plunder and loss of a significant part of their cultural heritage: "[...] *But how did African communities cope with the loss of objects that were important to them? There is a great lack of research in documenting the histories of and memories about the removal or disappearance of objects at the places and in the communities of origin.* Allen

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<sup>50</sup> F. Sarr et B. Savoy, *Rapport sur la restitution du patrimoine culturel africain. Vers une nouvelle éthique relationnelle*, November 2018, p. 25.

<sup>51</sup> The term 'restitution' suggests that these human remains would be treated as mere archival objects.

<sup>52</sup> G. Balandier, "La situation coloniale: approche théorique", *Cahiers internationaux de sociologie*, vol. XI, 1951, p. 36.

*Robert's research at the Tabwa in the 1970s demonstrated the relevance of these beliefs when he investigated the Tabwa's collective memory ('travail de mémoire') through their recollection of the attack by Storms and his soldiers, and the subsequent misappropriation of Lusinga's head and his statue.*

*In the context of the many other cultural and social changes that occurred under colonialism - and which also had an impact on what we would today call "intangible heritage" - it is difficult to pinpoint precisely the role of the looting and removal of objects and human remains in these social and cultural changes (which were both destructive and spawned new cultural and artistic practices). Nevertheless, it is notable that the demands for return of the items began from the moment they were looted."<sup>53</sup>*

The restitution- repatriation of human remains to the countries or communities of origin is thus essential.

In the context of the lively debate between advocates of post-colonial studies and those who oppose any remorse for the colonial past, the Committee reminds Paul Ricoeur's formula: "*Can we not say that some peoples suffer from an excess of memory, as if they are obsessed with the memory of past humiliations and also with the memory of a glorious past? But, on the other hand, can we not also say that other peoples suffer from a lack of memory, as if they are fleeing from the spectre of their own past [...] ?*"<sup>54</sup>

The Committee believes that the colonial past must be faced with lucidity and responsibility. A recovery policy developed on a case-by-case basis and strong symbolic gestures are necessary to build trust and create new collective projects.

## 7.1. Legal context

### 7.1.1. International law

- 1) United Nations Declaration on the Rights of Indigenous Peoples (2007 - UN) Adopted by Belgium (non-binding):

#### *Article 11*

*(1) Indigenous peoples have the right to practise and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future*

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<sup>53</sup> S. Van Beurden, *op.cit.*, p. 304-305.

<sup>54</sup> P. Ricoeur, " Le pardon peut-il guérir ?", *Esprit* 3-4, 1995, p.77.

*manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature.*

*(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 the use and control of their ceremonial objects; and the right to the repatriation of their human remains.*

*(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 the indigenous peoples concerned."*

#### 2) United Nations General Assembly resolution 69/2 of 22.09.2014

In its resolution 69/2, the General Assembly, in response to requests from indigenous peoples, committed itself to developing, in conjunction with the indigenous peoples concerned, fair, transparent and effective mechanisms for access to and repatriation of ceremonial objects and human remains at the national and international levels.

#### 3) United Nations Human Rights Council resolution 42/19 of 26.09.2019

In its resolution 42/19, the Human Rights Council encouraged the development of a process to facilitate the international repatriation of indigenous peoples' sacred items and human remains, through the continued engagement of all relevant parties in accordance with their mandates. Stressing the importance of partnerships, it pointed out that all UNESCO, WIPO (World Intellectual Property Organization) and the United Nations mechanisms for indigenous peoples have a role to play in this regard.

- 4) Recommendations of the expert mechanism report on repatriation of ceremonial objects and human remains (A/HRC/45/35 - 2020)<sup>55</sup>

*"(86) A framework for the international repatriation of ceremonial objects, human remains and intangible cultural heritage should be firmly based on the United Nations Declaration on the Rights of Indigenous Peoples, in particular the rights to equality, non-discrimination, self-determination, participation and consultation, pursuant to articles 2, 3, 8, 18 and 19. All stakeholders must take a human rights-based approach to indigenous peoples' repatriation claims in order to effectuate remedies and promote the living cultures, religions, spiritualities, technologies and other rights of indigenous peoples, pursuant to articles 11, 12 and 31. (...).*

*(87) States should enact or reform legislation on repatriation in accordance with the Declaration on the Rights of Indigenous Peoples, in particular articles 11, 12 and 31, with the full and meaningful participation of indigenous peoples and the safeguard of free, prior and informed consent. This includes statutes, regulations and policies on museum collections, deaccession and repatriation. In case of ambiguities or challenges in implementation, the Declaration can be used as an interpretive tool. All such programmes for repatriation must be fully funded so that museums and indigenous peoples do not bear the burden that States have to comply with their human rights obligations.*

*(88) States must recognize that indigenous peoples have their own concerns about human remains, ceremonial objects and cultural heritage and, when making claims for protection or repatriation, consider not only national interests but indigenous peoples' own rights. (...).*

*(93) Indigenous peoples themselves also have a duty to advocate for the repatriation of their ceremonial objects, human remains and cultural heritage. Repatriation requires active community advocacy and involvement if it is to be carried out under indigenous peoples' terms. (...)"*

### 7.1.2. European law

*"On 3 July 2018, the European Parliament adopted a broad resolution calling on the European Union and its member states to address the issue of indigenous peoples' rights. In doing so, it explicitly expressed support for the international repatriation requests of indigenous peoples and the establishment of an international mechanism to combat the sale of indigenous objects illegally taken from them; according to the Parliament the establishment of this international*

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<sup>55</sup> See : <https://www.ohchr.org/en/hrc-subidiaries/expert-mechanism-on-indigenous-peoples>  
"The Expert Mechanism provides the Human Rights Council with expertise and advice on the rights of Indigenous Peoples. It assists Member States in achieving the goals of the United Nations Declaration on the Rights of Indigenous Peoples. "

*mechanism could be facilitated by financial support under the European Instrument for Democracy and Human Rights.*"<sup>56</sup>

### 7.1.3. Belgian law

There is currently no legal framework in Belgium for the restitution of human remains of foreign origin in the possession of museums and scientific institutions.

Specific legislation, a *lex specialis*, is therefore needed to allow such a restitution.

On 30.06.2022, the Chamber of Representatives adopted a law<sup>57</sup> recognising the alienability of properties related to the colonial past of the Belgian state and establishing a legal framework for their restitution and return (promulgated on 03.07.2022), which was published in the Belgian Official Gazette on 28.09.2022. This law only applies to cultural objects and not to human remains. On the other hand, we also read the following herein: "*The restitution envisaged concerns only property owned by the Belgian state and forming part of the museum collections of federal scientific institutions [...] Furthermore, the restitution and return of a property, which has been found to have been unlawfully acquired and must be returned, can only be made to the state of origin of the property. Restitution and return therefore take place only from state to state.*"<sup>58</sup>

This law defines in advance some terms used in it:

*"For the application of this law, the following definitions apply:*

*1° property: movable property belonging to a museum collection of one of the federal scientific institutions and owned by the Belgian State, excluding human remains and archives;*

*2° restitutable property: property originating in the State of origin acquired during the political and administrative domination exercised on it by the Belgian State from the signing of the Act of the Berlin Conference in 1885 until the independence of the State of origin;*

*3° State of origin: the State from which the restitutable property originates and in favour of which the restitution and return are prioritised within the framework of the bilateral agreement to be concluded on scientific and cultural cooperation;*

*4° restitution: the transfer of the legal ownership of the returnable property, decided in accordance with this law;*

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<sup>56</sup> See European Parliament resolution of 3 July 2018 on violation of the rights of indigenous peoples in the world, including land grabbing. [https://www.europarl.europa.eu/doceo/document/TA-8-2018-0279\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-8-2018-0279_EN.html).

<sup>57</sup> DOC 55 2646/006.

<sup>58</sup> Explanatory memorandum.

5° return: the physical handover to the State of origin of the returnable property whose restitution is determined in accordance with this law;  
6° administrator: the federal scientific institution entrusted with the management of the restitutable property; (art.3)".

It is based on the following principles:

"- The restitution of the restitutable property can only take place pursuant to a treaty concluded by the Belgian State and the State of origin and on the basis of a scientific investigation, on the initiative of the Belgian State or the State of origin, regarding the illegal nature of the acquisition of the returnable property, in particular in the sense that it was made under duress or as a result of violent circumstances. (Art. 4, §1, par.1);

- It is up to the Belgian State and the State of origin to determine together, based on a treaty, the conditions of scientific research.

Following this scientific examination, the King may, subject to a particularly reasoned decision, decide to disaffect the restitutable property and return it to the State of origin. (Art. 4, §1, par.2);

- The restitutions decision has the effect of transferring ownership of the restitutable property to the state of origin. (Art. 4, §2);

- The return of the restitutable property decided in accordance with Article 4 may be requested from the administrator. - It is up to the Belgian State and the State of origin to determine together, through a treaty, the terms of the return of the property. (Art. 5, §1);

- Whatever the reason, if return cannot take place immediately and as long as the restitutable property is not physically returned, it will be kept in the museum collection of the administrator where it is on the day of the decision to return it. During this period, the property retains the guarantee of inalienability, immutability and non-seizability.

During this period, the State of origin is associated with the conservation, management and valorisation of the property. (Art. 5, §2).

- The decision referred to in Article 4 to return the restitutable property to the State of origin will take effect notwithstanding any contractual provisions to the contrary or previous acquisitive prescription. (Art. 6).

- The administrator ensures the transparency of the restitution and return process and publishes on its website, among other things, the restitution decisions of the restitutable properties. (Art. 7)."

These principles can serve as a reference for legislators on the issue submitted to the Committee.

## 7.2. Restitution-repatriation of human remains and the need for a common look back at the past

The Committee believes that the issue of restitution-repatriation of human remains should not be dealt with in a detached and purely administrative manner without looking back at the past. An informed, sincere and serene dialogue should be initiated. This dialogue should address both the significance of these human remains for the country of origin and the social consequences for the colonised peoples of the brutal manner in which these human remains were acquired with the intention to establish a pretended hierarchy of races. Particular attention should be paid to the impact of these misappropriations on societies where veneration of the dead remains very important.

In this connection, it is important to take into account the often significant trauma suffered by a community when meaningful human remains are stolen or desecrated. A classic example is that of the Tabwa, who carry the beheading of three of their chiefs, including Lusinga, in their collective memory (see section 4.3). The repatriation and burial of the skulls of these tribal leaders according to customary tradition are necessary for the wounds to heal.

*As noted in the Sarr et Savoy report : "the questions raised by restitution are [...] far from being limited to the legal aspects of legitimate ownership. They are also political, symbolic, philosophical and relational. Restitution implies a profound reflection not only on history, memory and the colonial past but also on the history of the design and development of Western museum collections; and also regarding the different views on heritage, on the museum and on the way objects are presented; on the circulation of objects and, finally, on the nature and quality of relations between peoples and nations."<sup>59</sup>*

Regarding the additional question of the prioritisation of restitution requests for the return of human remains in museum or institutional collections, the Committee believes that this issue is more a matter of politics (federal, regional, community or local, as the case may be) and legislation rather than ethics and certainly bioethics. In any case, the Committee considers that any requests for restitution addressed to the institutions and museums that preserve these remains or to the competent Belgian political authorities should be considered. According to the Committee, authorities should provide the appropriate means (procedures and official

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<sup>59</sup> F.Sarr & B. Savoy, *op.cit.*, p. 25.

reference body(bodies)—in order to ensure orderly and equal treatment of all requests and provide administrative assistance to applicants.

### 7.3. Scientific research on human remains from other cultures

The Committee favours a holistic and universalist approach whereby human remains are seen as the remnants of a common history that the living continue, without losing sight of the fact that respect for human remains manifests itself according to specific and different customs in non-Western cultures, which have their own legitimacy.

In many non-Western cultures, the boundary between the world of the living and the world of the dead is porous, hence the fundamental importance of performing certain rituals. Even in the West, the separation between the two worlds is not absolute; just think of the spiritualist séances in Victorian England or the worship of relics.<sup>60</sup>

Given the diversity of cultural customs and traditions regarding human remains, the starting point should therefore be: what is the importance, the significance of the human remains we preserve for the community to which they belong?

This question implies, for example, that scientific research, while important, cannot justify everything (see 5.3 above) and must be balanced against the cultural customs and traditions in which human remains are embedded.

By way of example: *"almost 10 years ago, Professor Willerslev [a world-renowned Danish geneticist] heard about the authenticity search of Ernie LaPointe [a descendant of Sitting Bull] and he offered his services. A hair braid of Sitting Bull, removed after his death, was returned to Ernie LaPointe by a museum in Washington in 2007, but before handing it over to Professor Willerslev, he wanted to check whether the scientist had pure intentions. Ernie LaPointe therefore asked Eske Willerslev to participate in a ceremony with a medicine man (the function of healer among Indian tribes), drumming and singing in a darkened room. 'A blue-green light appeared in the middle of the room - and I'm a scientist by nature, so I thought, "well that's the medicine man walking around with a lamp," but when I stretched out my arms into the darkness, there was no one there,' the professor said. Eske Willerslev and his hosts then smoked a Lakota pipe and ate buffalo meat before Ernie LaPointe informed him that the mysterious light was none other than the spirit of Sitting Bull, who gave his blessing to the study.*<sup>61</sup>

The research would reveal that Ernie LaPointe is indeed a descendant of Sitting Bull.

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<sup>60</sup> Whether they are religious (saints) or secular (showbiz stars).

<sup>61</sup> "Un lien de parenté avec le chef amérindien Sitting Bull confirmé grâce à une innovation génétique", [https://www.sciencesetavenir.fr/archeo-paleo/archeologie/un-lien-de-parente-avec-le-chef-amerindien-sitting-bull-confirme-grace-a-une-innovation-genetique\\_158567](https://www.sciencesetavenir.fr/archeo-paleo/archeologie/un-lien-de-parente-avec-le-chef-amerindien-sitting-bull-confirme-grace-a-une-innovation-genetique_158567).



This concern for taking seriously the cultural context to which human remains that are the subject of scientific research belong is gradually gaining ground:

- Since 1990, the Native American Graves Protection and Repatriation Act (NAGPRA) has required federally funded US institutions to maintain an inventory of Native American human remains and funerary objects to facilitate their return to their respective tribes. As there are still too many gaps in the law, consultations are held with the tribes on amending the law;
- Australian Aborigines, in return for ethnologists visiting them on site, have asked for "memory centres" to be set up where computers will be made available and where everything that still exists (in the world) about their culture will be provided to them (photos, testimonies, cultural artefacts, etc.). On this basis, history is (re)constructed together. This is motivated by the importance they attach to a long and "active" history. Some of them visited European museums to study what was there and how the objects were treated. Museum curators feared this would lead to requests to return everything, although this was not their intention. They were of the opinion that their artworks fulfilled their role in the museum they were held.

#### 7.4. Ethical principles on restitution repatriation

In its opinion No. 111, the French Comité consultatif national d'éthique pour les sciences de la vie et de la santé states that "*history shows that all peoples have always wanted to honour their dead. The peoples' request [involved in a demand for the restitution of human remains] expresses an anthropological need present in all civilisations: ritualizing death and the granting of burial to the deceased. It is not just a matter of recognising a right of a people, but also of enabling them to fulfil their duties towards their dead.*"<sup>62</sup>

One expert heard cited three basic principles for a smooth restitution:

1. Relationship of trust between parties,
2. Equal treatment of the parties,
3. Justice in the sense of an impartial treatment of the application by the country receiving the demand.<sup>63</sup>

According to this expert, it is of fundamental importance to engage in a dialogue with the representatives of the countries of origin and to take into account the agenda proposed by these countries, some of which are not yet prepared to receive the return of these human/ancestral

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<sup>62</sup> CCNE, Opinion No 111, 07.01.2010, p. 10.

<sup>63</sup> One of the experts here refers to: Amartya Sen, *The idea of justice*, Penguin Books, 2009.

remains and funerary objects under proper conditions. He argued that the problematic circumstances in which these human remains and funerary objects were acquired do not allow the countries in possession of them to impose conditions on restitution/repatriation.

Another expert believes that human remains cannot be separated from the funerary objects directly associated with them, nor, if applicable, from the container (sarcophagus, fabrics, etc.) in which they were found or from the objects placed on and near the remains (jewellery, etc.).

The Committee believes that the restitution-repatriation of human remains to their country of origin involves the restitution-repatriation of the funerary objects directly associated with them, as well as the container in which they were found and the objects placed on and near the remains.

## 8. Trade

The trade in human remains is ancient: the trade in mummified Maori heads in the 18th and 19th centuries is a well-known and significant example.

Even today, it is perfectly possible to acquire human bones (especially skulls, decorated or not).

Before 2016, trading was mainly through eBay. This site, however, banned the sale of human remains (with the exception of hair). Since then, the market has moved to other networks, such as Instagram. According to a 2017 report by archaeologists D. Huffer and S. Graham, \$5,200 worth of human bones were sold on Instagram in 2013, while \$57,000 worth of bones changed hands in 2016<sup>64</sup>, giving an idea of the growth of this kind of online trade.

In Belgium, there is no legislation on trade in human remains with the exception of:

- The law of 13.06.1986 regulating the removal of organs *post mortem* with a view to their transplantation for therapeutic purposes;
- Law of 19.12.2008 regulating the acquisition and use of human body material *post mortem* for the purpose of medical application to humans or scientific research;
- Article L1232-26, §1, of the Walloon Local Democracy and Decentralisation Code on the ashes of the deceased;<sup>65</sup>
- Article 24 of the Flemish Region Decree of 26.01.2004.<sup>66</sup>

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<sup>64</sup> D. Huffer and S. Graham, 2017, "The Insta-Dead: the rhetoric of the human remains trade on Instagram", *Internet Archaeology* 45, 2017, <https://doi.org/10.111141/ia.45.5>

<sup>65</sup> "The ashes of the deceased shall be treated with respect and reverence and cannot be the subject of any commercial activity, with the exception of activities related to the scattering or burial of the ashes or their transfer to the place where the ashes will be kept."

<sup>66</sup> "The ashes of the deceased shall be treated with respect and reverence and cannot be the subject of any commercial activity, with the exception of activities related to the scattering or burial of the ashes or their transfer to the place where the ashes will be kept."

Once certain categories of human remains are considered objects (which is currently the case), these human remains are also subject to rules under civil law on ownership: the owners of these remains are considered owners if they possess and keep them in good faith. This means that, in principle, human remains found during archaeological excavations belong to the owner of the site (art. 3.63 of Book III of the new Civil Code).

This legal vacuum contrasts with the regulation of cultural heritage (cf. UNESCO conventions) and wildlife regulations (cf. CITES Convention of 03/03/1973 on International Trade in Endangered Species of Wild Fauna and Flora, also applicable to the remains of protected animals).

The French civil code, on the other hand, provides for a certain extra-commercialisation of human remains, as Marie Cornu reminds us:

*"The human body, its components and its products cannot be the subject of a property right" according to Article 16-1 of the Civil Code. Furthermore, Article 16-5 provides that "agreements which have the effect of attributing a property value to the human body, its parts or products are null and void". [...] The ban on any property right introduced by the so-called bioethics laws in the Civil Code in 1994 was simply meant to prohibit any lucrative trade. The human body cannot be the subject of commercial transactions. This was intended to establish a form of non-commerciality of the human body, not to declare it as non-pecuniary [...] This prohibition has different implications for the public institutions tasked with preserving these body parts. It means they cannot acquire elements of the human body in the art market. However, in the absence of case law on this point, the scope of the prohibition is not clear. Is it absolute and does it involve human remains, including very old ones, such as a mummy, or archaeological pieces? One might assume that it refers only to assets the trade in which could violate the principle of human dignity. In reality, however, this boundary is highly uncertain today. Everything depends on how this principle is interpreted: is it intended to respect for families or loved ones intended or, more generally, the safeguarding of the humanity contained in the dead body, which some jurists call "une chose publique humaine". This is the view of some authors and it fits into a clear tendency towards objectification of the dignity principle in jurisprudence. According to this approach, this means, for example, that ancient bodies or remains without identified genealogy should not be placed on the market. The strong wording of Articles 16-1 and 16-1-1 seem to argue for this. Certainly certain collections, such as shrunken heads or funerary urns currently offered by auction houses, should not be placed on the art market."<sup>67</sup>*

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<sup>67</sup> M. Cornu, " Les restes humains " patrimonialisés " et la loi ", *Technè*, n° 44, 2016, p. 10 <https://journals.openedition.org/technè/909>.

China and India, meanwhile, have banned the export of human remains.<sup>68</sup>

Given the specific status of human remains as described in section 3, the Committee considers that the trade in human remains is unacceptable, even for scientific reasons.<sup>69</sup>

According to the Committee, the European Union should develop regulations to ban the trade in human remains both within the EU and with third countries.

## 9. Deontological rules

The specialisation of the observer (doctor, biologist, archaeologist, palaeontologist, anthropologist, etc.) who comes into contact with human remains generates a differentiated approach with its own deontological rules.

For physicians, the deceased remains a patient and medical ethics unquestionably apply. An archaeologist, palaeontologist or anthropologist approaches his object of study from a greater distance which might, in certain circumstances, incline a researcher to violate certain deontological rules in the interest of science. For the Committee, it is essential that an ethical perspective be applied to all research involving human remains.

With regard to museums, the ICOM (International Council of Museums) Code of Ethics for Museums (2017) states the following:

### *"4.3 Exhibition of Sensitive Materials*

*Human remains and materials of sacred significance must be displayed in a manner consistent with professional standards and, where known, taking into account the interests and beliefs of members of the community, ethnic or religious groups from whom the objects originated. They must be presented with great tact and respect for the feelings of human dignity held by all peoples.*

### *4.4 Removal from Public display*

*Requests for removal from public display of human remains or material of sacred significance from the originating communities must be addressed expeditiously with respect and sensitivity. Requests for the return of such material should be addressed similarly. Museum policies should clearly define the process for responding such requests. "*

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<sup>68</sup> The ban on the sale of human skeletons in India (1985) and China (2008) can be found on the BBAO (British association for biological anthropology and osteoarcheology), website: <https://www.babao.org.uk/sale-of-human-remains/> .

<sup>69</sup> For medical students, there are skulls and skeletons in plastic or resin.

In the light of this situation, the Committee considers it desirable, regarding the deontology of the various actors regarding human remains, to establish a set of rules or principles applicable to all, to which the specific requirements of each profession could be added.

## 10. Conclusions and recommendations

In general, therefore, it can be said that human remains deserve specific status because they contribute to the cohesion of human groups at different levels. This implies the recognition that we share a history or histories, and that this history of humanity is continued by the living. Therefore, if human remains have a specific status, then it is to the extent that the dead are vectors of significance to the living. (see point 3.1.3.). Given this particular status, human remains should be treated with respect, dignity and decency.

1. The Committee is of the opinion that distinguishing within the historical period or between the historical period and the prehistoric period (human fossils) is ethically unhelpful and irrelevant. All human fossils deserve the same level of attention and dedication. In this context, it reminds that chronologies can always be revised. However, nothing prevents museums or scientific institutions from making divisions, provided these are scientifically justified and explained to the public.
2. The Committee believes that any scientific research involving human remains should undergo external ethical scrutiny to support the views of the researcher himself.
3. The ethical principles for the careful handling of human remains in institutional or private museum and scientific collections (i.e. in the context of scientific research and conservation), with the exception of human remains collected in a colonial context (see section 5), should be as closely aligned as possible with the good practices applicable to the handling of deceased persons in a medical or research context. These principles are as follows: the application of rigorous scientific methods, the pursuit of scientifically validated objectives, the proportionality of manipulations with the scientific or conservation objectives pursued, the respect for the integrity of the body or body parts by using the most minimally invasive methods possible that keep the body intact, and finally the prohibition of trade.
4. The Committee considers that the ethical principles described in section 3 equally apply to the display of human remains to the public (with the exception of human remains collected in a colonial context (see section 5)). Additionally, the principle of respecting the dignity of the deceased also applies in this context. This includes, among other things, avoiding the display of naked bodies. These principles apply to both institutional and private collections, including human remains displayed in a religious context.

5. Human remains from colonised countries were collected in a context of violence and with the purposes of establishing a hierarchy of races to justify the coloniser's domination ("scientific" racism). In the light of this, the Committee believes that it is not justified to continue exhibiting these remains in our museums, even in compliance with the ethical principles described in section 3.
6. According to the Committee, the restitution-repatriation of human remains to the country of origin should also include the restitution-repatriation of the funerary objects directly related to them as well as the container in which they were found and the objects found on or near the remains
7. The Committee believes that the issue of restitution-repatriation of human remains should not be dealt with in a detached and purely administrative manner without looking back into the past. An informed, sincere and serene dialogue should be initiated. It should address the significance of these human remains for the community to which they belong and the social consequences of the brutal manner of acquisition, with racist intentions, for the colonised peoples. Finally, particular attention should be paid to the impact of the theft of human remains on societies where ancestral worship remains very important.
8. The Committee believes that on the question of restitution-repatriation of human remains, principles, guidelines and rules of conduct should be established. In particular, the Committee believes that any requests for restitution that may be addressed to the institutions and museums that preserve these human remains or to the competent Belgian political authorities should be considered. Moreover, the Committee believes that authorities should provide the appropriate means (procedures and official referral body(s)) to ensure the orderly and equal treatment of all requests and provide administrative assistance to applicants in this regard.
9. The Committee considers it desirable to formulate a set of principles and rules applicable to all with regards the deontology of the various actors with regard to human remains. Specific obligations may be added for each professional group.
10. The Committee believes that the European Union should develop a regulation to ban the trade in human remains both within the Union and with third countries, and to allow those who possess remains to transfer those remains anonymously to an official body similar to the regulation for ivory.<sup>70</sup>

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<sup>70</sup> [Elephants and ivory: What is allowed in Belgium? | FPS Public Health \(belgium.be\)](#)

11. The Committee believes a code of conduct should be drawn up for the preservation of human remains.
12. The Committee believes that through legislative work, the principle of the Civil Code (Article 3.63 of Book III) which provides that the owner of a piece of land automatically becomes the owner of everything in and on this land should not apply to human remains.
13. The Committee believes that a solution must be worked out for human remains that no one wants or claims: for example, a memorial could be created for these remains depending on their origin.

The opinion was prepared by the select commission 2020/4, consisting of :

Joint chairpersons	Joint reporters	Members	Member of the Bureau
Lardinois	P. Lardinois	C. Lefebve	F. Caeymaex
C. Van Hul	M.F. Meurisse	J. Libbrecht	
	C. Van Hul	J. Messinne	
		M.F. Meurisse	

#### Members of the secretariat

B. Deseyn, D. Dugois

#### Experts interviewed

**Patrick Semal:** Curator of the anthropology and history collections at the Institute of Natural Sciences - Director of the Scientific Heritage Department - Promoter of the *Home Project*

**Marie-Sophie de Clippele:** Post-doctoral researcher (F.R.S.-FNRS) - Visiting professor (Université Saint-Louis - Brussels) involved in several interdisciplinary research projects: the restitution of colonial collections (partly at the Royal Academy of Belgium), legal status and the repatriation of human remains (as part of the HOME project, coordinated by the Royal Belgian Institute of Natural Sciences).

**Kathleen Van De Vijver:** Archaeologist, physical anthropologist and doctor in biology at KU Leuven. Physical anthropologist at the Royal Belgian Institute of Natural Sciences. She works part-time on all human remains found during archaeological excavations in the Brussels Capital Region and part-time on the expertise of archaeological human remains from Flanders - Collaborator on the MEMOR project.

**Jos van Beurden:** Senior researcher (PhD) in the field of colonial collections and restitution issues, affiliated to Vrije Universiteit Amsterdam. Graduated in law, specialising in philosophy of law (Utrecht University) and conflict resolution (Groningen University). Author of the book *"Uncomfortable Heritage - Colonial collections and restitution in the Low Countries"* Member of *Restitution Belgium*.

**Philippe Charlier:** Forensic physician, palaeopathologist, anthropologist and editor-in-chief of the "e-journal Ethics, Medicine, and Public Health" (Elsevier) Director of the Département de la recherche et de l'éducation Musée du Quai Branly Jacques Chirac - Paris.

**Billy Kalonji:** chair of the COMRAF (AfricaMuseum's consultation committee with African associations). This organisation represents the diaspora and advised the museum during the renovation. Expert in cultural and inclusive diversity

**Dibwe dia Mwembu:** professor emeritus at the University of Lubumbashi. PhD history at the University of Laval. Member of the Congolese Academy of Sciences (ACCOS) since 2021 and of several other scientific institutions.

**Lucienne Strivay:** anthropologist at the University of Luik

**Philippe Boxho:** forensic physician and director of the University of Luik forensic institute. Doctor of philosophy and member of the Advisory Committee

This opinion is available on [www.health.belgium.be/bioeth](http://www.health.belgium.be/bioeth).



# ATTACHMENT

## HOME Survey 2020 EN<sup>71</sup>

**This survey aims to make a catalogue of the human remains housed by public and private collections in Belgium**

### **1. Human remains from Belgian origin and historical time**

This includes all human remains collected in Belgium (e.g. cemeteries).

### **2. Human remains from European origin and historical time**

This includes all human remains collected in Europe (Belgium excluded).  
see the list of European countries on Worldometers

### **3. Human remains from the colonial period and context**

#### **3.a Democratic Republic of Congo, Rwanda and Burundi**

This includes all human remains collected during the colonial period or collected within a colonial context (e.g. Congo Free State). The human remains as a part of an artefact/relic are evaluated in a separate category (see below).

#### **3.b Non-European origin but not Belgian colonies**

This includes all human remains collected in a colonial context (e.g. from colonies of other European countries). The human remains as a part of an artefact/relic are evaluated in a separate category (see below).

### **4. Human Mummies**

This includes all human mummies (natural and anthropic).

### **5. Human remains as part of an artefact (incl. religious relics, skull trophies, etc.)**

#### **5.a Belgium**

#### **5.b Democratic Republic of Congo, Rwanda and Burundi**

#### **5.c Rest of the world**

### **6. Human fossils (*Homo sapiens sapiens*)**

#### **6.a Belgium**

This includes all human remains from the prehistoric period (Upper Paleolithic, Mesolithic, Neolithic, Protohistory)

#### **6.b Democratic Republic of Congo, Rwanda and Burundi**

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<sup>71</sup> <https://collections.naturalsciences.be/ssh-anthropology/home/survey>

This includes all human remains from the prehistoric period according to the local chronologies, but pre-colonial period

#### 6.c Rest of the world

This includes all human remains from the prehistoric period according to local chronologies, but pre-colonial period

### **7. Fossil hominids**

This includes all fossil hominids of species other than *Homo sapiens sapiens*.

(e.g. Neanderthals, early *Homo*)

### **8. Human bodies, parts of bodies or human organs**

as part of a medical collection (anatomical preparations, wet collection). This includes all human anatomical anatomical preparations of *Homo sapiens sapiens*

### **9. Human remains of unknown origin**