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### **Comments on the *Guidelines on Dealing with Collections from Colonial Contexts***

**The authors of the *Guidelines* are to be commended for their effort, the usefulness of much of the information, the positions taken and many of the suggestions.**

**The *Guidelines* are the outcome of an intra-German process and not of a dialogue with former colonies, based on equity and equality. The role and the rights of the latter in drawing these up have remained limited.**

**Restitution deserves much more weight in the *Guidelines* and is to be discussed in an open dialogue with former colonies.**

**The *Guidelines* miss a thorough reference to how European countries deal with Nazi-looted art works. An option is the adaptation of the 1998 Washington Conference Principles for Nazi-looted Art for tainted objects acquired in colonial contexts.**

#### **Role and rights of former colonies**

As stated in the *Guidelines*, the acquisition of many colonial cultural and historical objects and collections involved the use of force and/or highly dependent relationships. In the 21<sup>st</sup> century, war booty, objects confiscated by missionaries and items smuggled by colonial officials, soldiers, scientists and dealers are considered more and more problematic, illegal and/or immoral. European colonisers committed injustice.

That claims are barred does not undo this injustice. It remains therefore a right, be it not enforceable, of those who lost objects and collections that this injustice is undone. Decisions about the future of tainted colonial objects should not depend upon one-sided European steps, let alone charity, but on a duty to undo injustice.

The members of the Working Group and the sources, mentioned in the report, show that the *Guidelines* are the outcome of an intra-German process. The role and the rights of counterparts from former colonial contexts has remained limited. The *Guidelines* might create more unity in the way German museums and institutions can deal with colonial collections and how they can make this acceptable for the German Federal Government than that they help initiating a dialogue with former colonies, based on equity and equality.

The option of more initiative at the side of those who lost relics is lacking, for instance, in the *'starting points for prioritisation'* (p. 23,). Why is starting point Nr. 1 not a dialogue with a former colony? With e.g. Namibia, Cameroun or the Bismarck Archipelago?

This intra-German approach is also seen elsewhere. In e.g. the Netherlands the National Museum of World Cultures in the Netherlands is preparing a restitution framework (to be published in 2019), a framework without much ideology and rather pragmatic. Although the authors have done their best to consult many experts from former colonial areas, it has remained a Dutch product, that lies between a list with points of attention to make a restitution acceptable for the Dutch Minister for Culture and an overview that explains to potential claimants the standards they have to meet.

The recent advice to French President Emmanuel Macron *'The restitution of African cultural heritage. Towards a new relational ethics'* by Felwine Sarr and Bénédicte Savoy is a clear co-production by an expert of the former colonies and one from the former colonisers. The writers are much more after a combination of exploring the restitution-possibilities of France and understanding the longings of former colonies.

### **The nature of restitution**

A major aim of the discussion about the future of *Collections from Colonial Contexts* is healing the relationship between former colonised and former colonisers. The return, in October 2017, by the Free State of Saxony of human remains to Hawai'i is a good example of how a return can heal. It requires the recognition that the erstwhile colonisers have committed injustice and that the Hawai'ians re entitled to get back the human remains. The present European generation is not guilty of this injustice, but research outcomes and new ethics and insights charge it with the responsibility (the ability to respond) to deal with what their ancestors did.

Another aspect of the discussion is the physical return of objects. I agree with Kwame Opoku that the *Guidelines* have remained poor in this. Since the publication of the *Guidelines* in May 2018, new reports and positions have been published. In addition to the outspoken advice to President Macron, a group of Belgian museum-officials and academics has stated that *'restitution is primarily about the physical return of museum objects. Digitization, loans and traveling exhibitions are also important, but should not divert attention from the main issue.'*<sup>1</sup> In this context, the observation in the *Guidelines* that *'the decision regarding any return is the responsibility of the museum and the body which oversees it'* (p. 94) expresses little longing for dialogue and justice.

### **Colonial loot and Nazi-looted art works**

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<sup>1</sup> Let's talk about colonial collections and restitution  
[https://faro.be/sites/default/files/bijlagen/blog/openletter\\_restitution\\_Eng.pdf](https://faro.be/sites/default/files/bijlagen/blog/openletter_restitution_Eng.pdf) (accessed December 6, 2018).

The *Guidelines* miss a thorough reference to how Germany and other European countries deal with Nazi-looted art works. Both Nazi-looted art and colonial loot are examples of historic injustice. European countries, however, have done much more to undo the confiscation of art works of the victims of the Second World War than of cultural and historical objects that were confiscated in colonial contexts.

A major lesson from dealings with Nazi-looted art works is that the soft-law principles that have been formulated since 1998 have seriously impacted Europe’s dealing with such art works. Much injustice has been undone since then. An adaptation of these principles (see: Appendix below) can serve to a Europe-wide commitment for dealing with tainted colonial objects and collections. Guidelines as these can help for their operationalisation at national and lower level.

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### **Appendix: 1998 Washington Principles adapted for Colonial Objects\***

<b>Washington Conference Principles on Nazi-Confiscated Art</b>	<b>Principles on objects of cultural or historical importance, taken without just compensation or involuntarily lost in the European colonial era</b>
<p>In developing a consensus on non-binding principles to assist in resolving issues relating to Nazi-confiscated art, the Conference recognizes that among participating nations there are differing legal systems and that countries act within the context of their own laws.</p>	<p>In developing a consensus on non-binding principles to assist in resolving issues relating to objects of cultural or historical importance, that were taken without just compensation or were involuntarily lost in the European colonial era, it is recognized that among participating nations, there are differing legal systems and that countries act within the context of their own laws.</p>
<p>1. Art that had been confiscated by the Nazis and not subsequently restituted should be identified.</p>	<p>1. Objects of cultural or historical importance taken without just compensation or involuntarily lost in a territory controlled by European, American or Asian colonial powers and not subsequently returned should be identified.</p>
<p>2. Relevant records and archives should be open and accessible to researchers, in accordance with the guidelines of the International Council on Archives.</p>	<p>2. Relevant records and archives should be open and accessible to researchers, in accordance with the guidelines of the International Council on Archives.</p>
<p>3. Resources and personnel should be made</p>	<p>3. Resources and personnel should be made</p>

available to facilitate the identification of all art that had been confiscated by the Nazis and not subsequently restituted.	available to facilitate the identification of all objects of cultural or historical importance taken without just compensation or involuntarily lost in the European colonial era and not subsequently returned.
4. In establishing that a work of art had been confiscated by the Nazis and not subsequently restituted, consideration should be given to unavoidable gaps or ambiguities in the provenance in light of the passage of time and the circumstances of the Holocaust era.	4. In establishing that an object of cultural or historical importance was taken without just compensation or had been lost involuntarily in the European colonial era and not subsequently returned, consideration should be given to unavoidable gaps or ambiguities in the provenance in light of the passage of time and the circumstances of the European colonial era.
5. Every effort should be made to publicize art that is found to have been confiscated by the Nazis and not subsequently restituted in order to locate its pre-War owners or their heirs.	5. Every effort should be made to publicise objects of cultural or historical importance that are found to have been taken without just compensation or were lost involuntarily during the European colonial era and not subsequently returned in order to locate its rightful claimants.
6. Efforts should be made to establish a central registry of such information.	6. Efforts should be made to establish a registry of such information on a bilateral basis.
7. Pre-War owners and their heirs should be encouraged to come forward and make known their claims to art that was confiscated by the Nazis and not subsequently restituted.	7. Rightful parties should be encouraged to come forward and make known their claims to objects that were taken without just compensation or lost involuntarily in the European colonial era and not subsequently returned.
8. If the pre-War owners of art that is found to have been confiscated by the Nazis and not subsequently restituted, or their heirs, can be identified, steps should be taken expeditiously to achieve a just and fair solution, recognizing this may vary according to the facts and circumstances surrounding a specific case.	8. If the rightful claimants can be identified, steps should be taken expeditiously to achieve a just and fair solution, recognizing this may vary according to the facts and circumstances surrounding a specific case.
9. If the pre-War owners of art that is found to have been confiscated by the Nazis, or their heirs, cannot be identified, steps should be taken expeditiously to achieve a just and fair solution.	9. If no rightful claimants can be identified, steps should be taken expeditiously to achieve a just and fair solution.
10. Commissions or other bodies established to identify art that was confiscated by the Nazis and to assist in addressing ownership issues should have a balanced membership.	10. Commissions or other bodies established to identify objects of cultural or historical importance that are found to have been taken without just compensation or to have been lost involuntarily in the European colonial era and to assist in

	addressing ownership issues should have a balanced membership.
11 Nations are encouraged to develop national processes to implement these principles, particularly as they relate to alternative dispute resolution mechanisms for resolving ownership issues.	11. Nations, including the minorities and indigenous peoples in these nations, are encouraged to develop national and international processes to implement these principles, particularly as they relate to alternative dispute resolution mechanisms for resolving ownership issues.

\* Source: Jos van Beurden, *Treasures in Trusted Hands – Negotiating the Future of Colonial Cultural Objects*, pp. 252-253. <https://www.sidestone.com/books/treasures-in-trusted-hands>