



UNIVERSITÉ
DE GENÈVE

FACULTÉ DE DROIT
Centre du droit de l'art



United Nations
Educational, Scientific and
Cultural Organization

In partnership with
UNESCO

Caroline Renold, Alessandro Chechi, Marc-André Renold

February 2017

Case Inakayal Human Remains – Argentina, Museo de La Plata and Tehuelche People

Argentina/Argentine – Museo de La Plata – Tehuelche People – Human remains/restes humains – Post 1970 restitution claims/demandes de restitution post 1970 – Diplomatic channel/voie diplomatique – Deaccession – Ownership/propriété – Unconditional restitution/restitution sans condition

Inakayal was a leader of the Tehuelche people, a native tribe of Patagonia (Argentina). In 1884, he was captured by the Argentinian army. After his death in 1888 his remains became part of the collection of the Museo de La Plata. In 1991, the Argentinian Parliament enacted a law that made it possible to return Inakayal's remains to his homeland. First his bones were returned in 1994, and the rest of his remains followed in 2014.

I. Chronology; II. Dispute Resolution Process; III. Legal Issues; IV. Adopted Solution; V. Comment; VI. Sources.

ART-LAW CENTER – UNIVERSITY OF GENEVA

PLATFORM ARTHEMIS

art-adr@unige.ch – <https://unige.ch/art-adr>

This material is copyright protected.

I. Chronology

Post 1970 restitution claims

- **1884: Inakayal** was a leader of the **Tehuelche people**, a native tribe of **Patagonia** (Argentina). He was **captured by the Argentinian army** during the “conquest of the desert”, a military campaign directed by the Argentinian Government to occupy Patagonia and subdue the indigenous inhabitants. Inakayal was transferred to a prison in the Buenos Aires province.¹
- **1885: Inakayal was brought to the Museo de La Plata** to be studied by anthropologists² because he was a “rare” specimen of his “race” and because he refused to relinquish his identity and culture.³
- **24 September 1888: Inakayal passed away.** He was not buried. But his bones, brain, scalp and death mask became part of the collection of the Museo de La Plata.⁴
- **1970s:** The **Tehuelche people** and **indigenous organisations** requested the **restitution** of the remains of Inakayal and of other chiefs, but to no avail.⁵
- **1990:** The **National Senator** for Chubut, **Solari Yrigoyen**, presented draft **legislation** allowing **for the return of Inakayal’s remains** to his homeland.⁶
- **May 1991:** The **Argentinian National Congress** adopted **Law 23,940**,⁷ which provided for the return of the mortal remains of Inakayal.
- **November 1993:** The **Argentinian Government** adopted **Decree 2391/938** on the implementation of Law 23,940.
- **19 April 1994:** The **remains of Inakayal were returned** to Tecka, in the province of Chubut (Patagonia). In reality, however, **only the bones were returned**.⁹
- **Mid-2000s:** The *Grupo Universitario de Investigación en Antropología Social (GUIAS)* was established.¹⁰ It proposed to the Museo de La Plata to organize and classify all human remains of their collection.

1 Maria Luz Endere, “The Return of Inakayal to Patagonia,” in *Witnesses to History, Documents and Writings on the Return of Cultural Objects*, ed. Lyndel V. Prott (Paris: UNESCO, 2009) 283.

2 Ibid.

3 Maria Luz Endere, “Cacique Inakayal. La primera restitucion de restos humanos ordenada por ley,” *Corpus. Archivos virtuales de la alteridad americana* 1 No 1 (2011): 5.

4 Endere, “The Return of Inakayal to Patagonia,” 284.

5 Endere, “Cacique Inakayal,” 1.

6 Endere, “The Return of Inakayal to Patagonia,” 284.

7 Argentina, Law No 23,940, Establecese que el P.E.N. [poder ejecutivo nacional] dispondrá el traslado de los restos mortals del cacique Inacayal a la localidad de Tecka, provincial del Chubut, 22 May 1991, Official Journal of 2 July 1991.

8 Argentina, Decree No 2381/93, Créase una Comisión Ejecutiva que programará y coordinará las acciones tendientes a concreter el traslado de los restos del Cacique Inacayal, 18 November 1993, Official Journal of 23 November 1993.

9 Endere, “Cacique Inakayal,” 4.

10 See at: <http://grupoguias.blogspot.ch/>.

- **November 2001:** The **National Congress adopted Law 25,517** establishing that the remains of aboriginal people who are part of museums and/or public or private collections should be made available to indigenous peoples.
- **2006:** GUIAS researcher identified the **scalp of Inakayal**. They also found two brains without identification preserved in formol, and contended that one was the brain of Inakayal. This led the indigenous organizations and the Secretary for Culture of Chubut to submit **new requests for restitution**. The museum, however, refused restitution, arguing that it could not find out which brain was Inakayal's because DNA identification was inefficient on formol-impregnated tissue.¹²
- **May 2007:** GUIAS identified **Inakayal's brain** by comparing observations made by a scientist in 1906.¹³
- **2010:** GUIAS inaugurated the exhibition "Prisioneros de la Ciencia" in the Museo de la Patagonia Francisco Moreno (San Carlos de Bariloche). The photographic exhibition then circulated throughout Argentina and supported a **general claim** for the complete restitution of the Museo de la Plata's "human collection" (10'000 items).¹⁴
- **9 December 2014:** The Museo de la Plata **completed the restitution** of the Inakayal's human remains (brain, scalp and left ear). The remains of his wife and of his niece, Margarita Foyel (daughter of the lonko Foyel), who died in 1887 in the institution, were also returned and buried in the dedicated mausoleum of Tecka.¹⁵

II. Dispute Resolution Process

Diplomatic channel

- Tehuelche people and indigenous organizations demanded the return of Inakayal's remains beginning in the 1970s.¹⁶ Yet it was only thanks to Senator Solari Yrigoyen – a human rights lawyer – that the request moved forward. He introduced draft legislation for the return of

11 Argentina, Law No 25,517, Establécese que, deberán ser puestos a disposición de los pueblos indígenas y/o comunidades de pertenencia que lo reclamen, los restos mortales de aborígenes, que formen parte de museos y/o colecciones públicas o privadas, 21 November 2001, Official Journal of 20 December 2011.

12 Endere, "Cacique Inakayal," 4.

13 "El documental 'Inacayal. La negación de nuestra identidad' recibió cinco premios," *Prensa ANM Derechos Humanos*, September 19, 2012, accessed January 16, 2013, http://www.prensaanm.com.ar/pei/md_notas.asp?id=13884.

14 Gutiérrez, Ana, "Prisioneros de la Ciencia. Entrevista al colectivo GUIAS," *Analytica del Sur*, July 2014, accessed December 16, 2016, <http://analyticadelsur.com.ar/prisioneros-de-la-ciencia/>.

15 "La UNLP completó la restitución de los restos del Cacique Inacayal," *Universidad Nacional de La Plata*, December 9, 2014, accessed December 16, 2016,

http://www.unlp.edu.ar/articulo/2014/12/9/restitucion_de_los_restos_de_cacique_inacayal_dic_2014;

"Los restos de un cacique emblemático ya descansan en su pueblo," *Clarín*, December 11, 2014, accessed December 16, 2016,

http://www.clarin.com/sociedad/restos-cacique-inacayal-tecka-chubut_0_BJZ-8Ow5w7g.html.

16 Endere, "Cacique Inakayal," 2.

Inakayal's remains and made several claims and filed a lawsuit against governmental authorities for failure to comply with Law 23,940.¹⁷

- The Museo de La Plata did not participate in the negotiation process. At first, it was very reluctant to return the remains. It appears that the museum had refused the restitution because there was no guarantee as of their final destination. The museum reversed its position and approved restitution in 1994 after the adoption of Decree 2391/93. In the view of Senator Solari Yrigoyen, museum's authorities changed "their mind because they became conscious of their legal responsibility".¹⁸

III. Legal Issues

Deaccession – Ownership

- The remains of Inakayal were public patrimony of the State.¹⁹ Therefore, the adoption of a formal legislative act was necessary to remove them from the Museo de La Plata's collection and to return them to the Tehuelche people.

IV. Adopted Solution

Unconditional restitution

- The remains of Inakayal left the Museo de La Plata in an official commemoration. Then they were transported in a National Air Force airplane, accompanied by national and provincial authorities as well as representatives of the museum. At the arrival in Patagonia, at Esquel airport, the remains received military honours from the Argentine army. Then the remains were carried by indigenous descendants in a funerary procession up to the town of Tecka. Here the remains were deposited in a mausoleum, the Argentine flag was placed over the urn and it was covered in stones in the style of indigenous tombs. The entire ceremony was followed by over 2,500 persons. The mausoleum is now considered a sacred place.²⁰
- However, only the bones of Inakayal were first returned. The organs and tissues could not be identified in the museum's collection²¹ because of an "administrative error".²² Obviously, the retention of these items was in contravention of Law 23,940 and Law 25,157. The case was finally resolved in December 2014 with the restitution of the rest of Inakayal's human remains.

17 Endere, "The Return of Inakayal to Patagonia," 285.

18 Ibid., 285.

19 Art. 2340 (9) of the Civil Code, implemented through Law No 340 of 29 September 1869.

20 Endere, "The Return of Inakayal to Patagonia," 285-286.

21 Endere, "Cacique Inakayal," 4.

22 Gustavo Vallejo, "Museo y derechos humanos. Un templo de la ciencia finisecular en La Plata y aspectos de su relación con los pueblos originarios," *Revista Derecho y Ciencias Sociales* 7 (October 2012): 160.

V. Comment

- As the first successful restitution claim of human remains in Argentina, the Inakayal case has had a profound impact on Tehuelche people. It also had a strong impact on the scientific community, concerned by the loss of items of cultural and scientific interest, and the general public, shocked that human remains were still kept in national museums.²³ Furthermore, it led to the creation of GUIAS and to the adoption of Law 25,517. Lastly, the case paved the way for other restitutions claims.²⁴
- Interestingly, Endere noted that restitution requests were only made for the remains of important historical figures. For example, the remains of Inakayal's wife and daughter were not included in the request for restitution. She argues that restitution claims are closely linked to the reaffirmation of indigenous identity and history rather than to the human right to a decent burial.²⁵ At the national level, this is supported by the inclusion of a new article in the 1994 Constitution on the recognition of the ethnic and cultural pre-existence of Argentinian indigenous people.²⁶ At the international level, this case preceded the adoption of the United Nations Declaration on the Rights of Indigenous Peoples.²⁷ Notably, Article 12 of the Declaration recognizes the right of indigenous people to the repatriation of their human remains.

VI. Sources

a. Bibliography

- Endere, Maria Luz. "Cacique Inakayal. La primera restitucion de restos humanos ordenada por ley." *Corpus. Archivos virtuales de la alteridad americana* 1 No 1 (2011).
- Endere, Maria Luz. "The Return of Inakayal to Patagonia." In *Witnesses to History, Documents and writings on the return of cultural objects*, edited by Lyndel V. Prott, 283-288. Paris: UNESCO, 2009.
- Vallejo, Gustavo. "Museo y derechos humanos. Un templo de la ciencia finisecular en La Plata y aspectos de su relación con los pueblos originarios." *Revista Derecho y Ciencias Sociales* 7 (October 2012): 146-164.

23 Endere, "Cacique Inakayal," 3-4.

24 One of such claims concerns the restitution of the remains of a young girl, Damiana, from the Museo de La Plata collection, to the Aché Community in Paraguay. See at: <http://grupoguias.blogspot.ch/>.

25 Endere, "Cacique Inakayal," 5-6.

26 Art 75(17) Argentina, National Constitution Argentina (original title: "Constitucion Nacional"), August 22, 1994, official Journal of August 23, 1994.

27 United Nations General Assembly Resolution 61/295 of September 13, 2007.

b. Legislation

- Argentina. Civil Code. Implemented through Law No 340, September 29, 1869.
- Argentina. Law No 23,940 Establecese que el P.E.N. [poder ejecutivo nacional] dispondrá el traslado de los restos mortales del cacique Inacayal a la localidad de Tecka, provincial del Chubut. 22 May 1991. Official Journal of 2 July 1991.
- Argentina. Decree No 2381/93 Créase una Comisión Ejecutiva que programará y coordinará las acciones tendientes a concretar el traslado de los restos del Cacique Inacayal. 18 November 1993. Official Journal of 23 November 1993.
- Argentina, Constitution. 22 August 1994. Official Journal of 23 August 1994.
- Argentina. Law No 25,517 Establécese que, deberán ser puestos a disposición de los pueblos indígenas y/o comunidades de pertenencia que lo reclamen, los restos mortales de aborígenes, que formen parte de museos y/o colecciones públicas o privadas. 21 November 2001. Official Journal of 20 December 2011.

c. Media

- Gutiérrez, Ana. “Prisioneros de la Ciencia. Entrevista al colectivo GUIAS.” *Analytica del Sur*. July 2014. Accessed December 16, 2016. <http://analyticadelsur.com.ar/prisioneros-de-la-ciencia/>.
- “Los restos de un cacique emblemático ya descansan en su pueblo.” *Clarín*. December 11, 2014. Accessed December 16, 2016. http://www.clarin.com/sociedad/restos-cacique-inacayal-tecka-chubut_0_BJZ-8Ow5w7g.html.
- “La UNLP completó la restitución de los restos del Cacique Inacayal.” *Universidad Nacional de La Plata*. December 9, 2014. Accessed December 16, 2016. http://www.unlp.edu.ar/articulo/2014/12/9/restitucion_de_los_restos_de_cacique_inacayal_dic_2014.
- “El documental ‘Inacayal. La negación de nuestra identidad’ recibió cinco premios.” *Prensa ANM Derechos Humanos*, September 19, 2012. Accessed January 16, 2013. http://www.prensaanm.com.ar/pei/md_notas.asp?id=13