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*January 2013*

*Reference:* Caroline Renold, Alessandro Chechi, Marc-André Renold, “Case Sarah Baartman – France and South Africa,” Platform ArThemis (<http://unige.ch/art-adr>), Art-Law Centre, University of Geneva.

## **Case Sarah Baartman – France and South Africa**

*France – South Africa/Afrique du Sud – Human remains/restes humains – Colonialism/colonialisme – Diplomatic channel/voie diplomatique – Deaccession – Inalienability/inaliénabilité – Unconditional restitution/restitution sans condition*

*Sarah Baartman, a South African woman of Khoisan origin, also known as the “Hottentot Venus”, was exhibited as a freak show attraction in London and Paris in the 19th century. When she died, her body was dissected and her remains were exposed at the National Museum of Natural History in Paris. In 1994, South African authorities demanded the restitution of Sarah Baartman’s human remains. After much legal wrangling and debates, the French Parliament adopted an act allowing for the return of the remains to South Africa in 2002.*

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

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## I. Chronology

### Colonialism

- **1810:** A British military surgeon named Dunlop and a Dutch farmer named Cezar obtained from the British Governor of Cape Town, South Africa, the permission to travel to Europe with **Sarah Baartman**.<sup>1</sup> She was a woman of Khoisan (“Hottentot”) origin and a slave of Cezar.<sup>2</sup> In London, she was exhibited as a **freak show attraction** because of her unusual physical appearance: Khoisan women often have steatopygia and hypertrophied labia.<sup>3</sup> English **anti-slavery adherents** initiated a lawsuit to free up Sarah Baartman. But the **lawsuit failed**. The Court found that she had consented to participate in the shows and that she was under the protection of Dunlop and Cezar.<sup>4</sup>
- **1814:** Sarah was **brought to Paris**. Georges Cuvier, of the National Museum of Natural History of Paris, showed a strong interest in her physical characteristics and, despite her protests, used her for scientific analysis.<sup>5</sup> Once her novelty had worn thin with Parisians, she began to drink heavily and support herself with prostitution.<sup>6</sup>
- **1815:** **Sarah died**, probably of syphilis or tuberculosis. Upon request by Georges Cuvier, her body was dissected and conserved at the National Museum of Natural History. Moreover, the Museum conserved some of her body parts (brain, vulva and anus) and made a plaster of her body. This plaster and the skeleton were exposed at the Musée de l’Homme (a department of the National Museum of Natural History) until the late 1970s. The body parts were kept in the Museum’s collection.<sup>7</sup>
- **1994:** Upon demand of representatives of the Khoisan group, South Africa’s President, Nelson Mandela, demanded the return of the remains of Sarah Baartman to the then French President, François Mitterrand.
- **1996:** South Africa’s Ministers for Foreign Affairs and for Arts, Culture, Science and Technology demanded the return of Sarah Baartman’s remains to Jacques Godfrain, France’s Minister of Cooperation,<sup>8</sup> when he visited South Africa. However, they only agreed that Henri de Lumley, of the National Museum of Natural History, and Philip Tobias, Professor at the anatomical science department of the Witwatersrand

<sup>1</sup> Although the name Saartjie Baartman is often used, in this case note the name Sarah Baartman – the original name on her British birth certificate – is preferred because the diminutive “the” is felt to be patronising. The name “Hottentot Venus” was given to her in Europe. See Lucille Davie, “Sarah Baartman, at Rest at Last,” *Southafrica.info*, May 14, 2012, accessed January 10, 2013,

<http://www.southafrica.info/about/history/saartjie.htm#UO6byKy3rRs>.

<sup>2</sup> “The Dutch had forbidden enslavement of indigenous peoples. However [...] Baartman lived in the Cezars household alongside slaves and servants and in conditions akin to slavery”, Pamela Scully and Clifton Crais, “Sara Baartman and Hendrik Cezars in Cape Town and London,” *Chicago Journal* 47 No. 2 (2008), 309.

<sup>3</sup> Sarah Baartman was required to dance in very light attire and to expose herself so as to be touched by spectators. Lyndel V. Prott, “The Return of Saartjie Baartman to South Africa,” in *Witnesses to History, Documents and Writings on the Return of Cultural Objects*, ed. by Lyndel V. Prott (Paris : UNESCO, 2009), 288.

<sup>4</sup> Scully and Crais, “Sara Baartman and Hendrik Cezars in Cape Town and London,” 319-321.

<sup>5</sup> Prott, “The Return of Saartjie Baartman to South Africa,” 288.

<sup>6</sup> Davie, “Sarah Baartman, at Rest at Last.”

<sup>7</sup> Prott, “The Return of Saartjie Baartman to South Africa,” 288.

<sup>8</sup> Suzanne Daley, “Exploited in Life and Death, South African to Go Home,” *New York Times*, January 30, 2002, accessed January 10, 2013, <http://www.nytimes.com/2002/01/30/world/exploited-in-life-and-death-south-african-to-go-home.html>.

University in Johannesburg, should examine the case together.<sup>9</sup> However, they were not able to formulate a proposal for an agreement.

- **6 October 2000:** The South African Ambassador made an official request for the return of Sarah Baartman's remains.<sup>10</sup>
- **6 March 2002:** The French Parliament adopted a legislative act ordering the return of Sarah Baartman's human remains to South Africa.<sup>11</sup> The act read: "the surviving remains of the person known as Sarah Baartman will cease to form part of the public collections of the National Museum of Natural History. The administrative authority has a time limit of two months, starting from the date of entry into force, within which to deliver the remains to the Republic of South Africa".<sup>12</sup>
- **May 2002:** The remains of Sarah Baartman were returned to South Africa. A traditional Khoisan ceremony was held on 9 August 2002.

## II. Dispute Resolution Process

### Diplomatic channel

- A resolution of the restitution claim through the diplomatic channel was the option preferred by the two States.
- Southern African authorities first demanded the restitution of the remains of Sarah Baartman in 1994, following internal pressure by representatives of the Khoisan group. Therefore, the claim originated first and foremost from the indigenous community.
- State representatives also involved two experts from the National Museum of Natural History and Witwatersrand University. However, this attempt failed.
- The affair was not solved directly through diplomatic means, but rather thanks to the initiative a French Senator, Nicolas About, who introduced a bill authorizing the return of Sarah Baartman's remains to South Africa.

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<sup>9</sup> French Senate, Report on behalf of the Committee on Cultural Affairs, on the proposal of a bill by Mr Nicolas About authorizing the restitution of the remains of Saartjie Baartman, known as the "Hottentot Venus", to South Africa, Ordinary Session of 2001-2002, accessed on January 10, 2013, <http://www.senat.fr/rap/101-177/101-1771.pdf>, 6.

<sup>10</sup> French National Assembly, Report on behalf of the Committee on Cultural, Family and Social Affairs, on the proposal of a bill, adopted by the Senate, regarding the restitution of the remains of Saartjie Baartman to South Africa, January 30, 2002, accessed on January 10, 2013, <http://www.assemblee-nationale.fr/11/pdf/rapports/r3563.pdf>, 10.

<sup>11</sup> France, Law No. 2002-323 of 6 March 2002, on the restitution of the remains of Saartje Baartman to South Africa by France, Official Journal of 7 March 2002.

<sup>12</sup> Ibid.

### III. Legal Issues

#### Deaccession – Inalienability

- Being part of a French national collection, Sarah Baartman's human remains were considered to be inalienable. It was for this reason that the adoption of a formal act was necessary to authorize the deaccessioning of these remains from the National Museum of Natural History and their return to South Africa.<sup>13</sup> In summary, the required act had to acknowledge that France no longer had interest in owning the remains because of the lack of scientific interest and of public utility and had to authorize their removal from the State patrimony and their restitution to South Africa.<sup>14</sup>
- However, the French Parliament – concerned to avoid further delays in returning the remains, already 8 years had gone by since the original request – decided to pass a law to accelerate the process and bypass the reluctance of the government to adopt an administrative measure.<sup>15</sup>
- The French Government was afraid of being subsequently flooded by restitution demands. Furthermore, it was argued that, in the absence of an official request from the South African Government, France could not unilaterally offer the return of the remains.<sup>16</sup> Finally, the French Government opposed the restitution by raising the argument that there could be no property rights on human remains<sup>17</sup> – regardless of the merits of the claim.<sup>18</sup>
- The French Parliament adopted the law that eventually permitted the return to South Africa of Sarah Baartman's remains without providing a response to these concerns.

### IV. Adopted Solution

#### Unconditional restitution

- On 6 March 2002, the French Parliament adopted a legislative act allowing for the return of Sarah Baartman's human remains to South Africa.<sup>19</sup>
- The remains were returned to South Africa in May 2002 and a traditional Khoisan ceremony was held on 9 August 2002.

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<sup>13</sup> Law No. 2002-323 of 6 March 2002.

<sup>14</sup> French National Assembly, Report, 11.

<sup>15</sup> See Law No. 2002-323 of 6 March 2002; French National Assembly, Report, 11; French Senate, Report, 7.

<sup>16</sup> French National Assembly, Report, 11.

<sup>17</sup> France, Law No. 94-654 of 29 July 1994, governing the donation and use of elements and products of the human body, medically assisted reproduction and prenatal diagnosis, Official Journal of 29 July 1994.

<sup>18</sup> French Senate, Report, 7-8.

<sup>19</sup> Law No. 2002-323 of 6 March 2002. An overview of the legislative process can be found on the website of the French Senate (accessed January 10, 2013, <http://www.senat.fr/dossier-legislatif/pp101-114.htm>).

## V. Comment

- This restitution case is interesting in that it was resolved thanks to the adoption of a legislative act by the French Parliament. The adoption of a formal legislative act was not the only alternative available to address the South African demand. As said, the government could have taken an administrative measure. The Parliament decided to intervene because: first, to send a strong sign of its commitment to sanction the return of the remains of a woman who had been subject to the worst forms of racism and sexism during her life and after her death; second, to bypass the government's failure to take action.<sup>20</sup>
- Nevertheless, although in some cases a legislative measure may be the only available tool in order to achieve the deaccessioning of an object from a public collection, it is not the easiest and fastest method. Moreover, it is doubtful whether legislation is the appropriate way to solve this type of dispute and whether it will be used widely in future cases.<sup>21</sup>

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<sup>20</sup> The same approach was espoused by the French Parliament in the case of a Maori Head, which France returned to New-Zealand. See Raphael Contel, Anne Laure Bandle, Marc-André Renold, "Affaire Tête Maori de Rouen – France et Nouvelle-Zélande", Plateforme ArThemis (<http://unige.ch/art-adr>), Centre du droit de l'art, Université de Genève.

<sup>21</sup> Cornu and Renold, "New Developments in the Restitution of Cultural Property," 11.

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