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Case Waurà Indians Collection – Museum der Kulturen Basel, Penteadó Coelho Heirs and Museu de Arqueologia e Etnologia Universidade de São Paulo, Waurà Indians

Vera Penteadó Coelho – Museum der Kulturen Basel – Museu de Arqueologia e Etnologia Universidad de São Paulo – Waurà Indians/Indiens Waurà – Indigenous object/objet autochtone – Post 1970 restitution demands/demandes en restitution post 1970 – Negotiation/négociation – Settlement agreement/accord transactionnel – Legacy/legs – Cultural cooperation/coopération culturelle – Donation

Vera Penteadó Coelho, a Brazilian ethnologist, bequeathed to the Museum der Kulturen Basel her collection of Waurà cultural objects. Following opposition from the Waurà Indians and the Museu de Arqueologia e Etnologia Universidade de São Paulo, the Basel Museum entered into negotiations to allow the collection to remain in Brazil. Eight years later, in 2008, the collection was donated to the São Paulo Museum. The donation contract included clauses of cultural cooperation, a guarantee of access to the collection for indigenous people and the scientific community, as well as the possibility for the collection to be transferred to a future Waurà museum.

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

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I. Chronology

Post 1970 restitution demands

- **2000: Death of Vera Penteadó Coelho**, a Brazilian ethnologist. In her will, **she bequeathed her collection of Waurà Indian cultural objects and her scientific estate to the Museum der Kulturen Basel**¹. The collection was valued at US\$ 90'000 and was composed of the ethnologist's personal research, pictures, indigenous drawings and paintings sold to her by the Waurà Indians, as well as traditional artefacts.
- **July 2001: The Museum der Kulturen decided to accept the inheritance**². The museum was aware that some of the objects could not be exported because of cultural property rules, and thus expected only to export the parts of the inheritance it was allowed to. However, approximately at the same time, the museum received **a letter from representatives of the Waurà Indians protesting against the exportation of the collection**. They were opposed to their cultural patrimony being sent overseas, far away from themselves and future generations³. **The Museu de Arqueologia e Etnologia Universidade de São Paulo also contested the legacy**. It claimed that the collection should remain at the São Paulo Museum because Vera Penteadó Coelho had been employed by the museum and her research had partially been financed by public funds⁴.
- Reconsidering its decision, **the Museum der Kulturen Basel declared itself in favour of keeping the collection in Brazil**⁵.
- **May – June 2003: The Museum der Kulturen Basel met with the Waurà representatives, the São Paulo Museum, and the Penteadó Coelho family. All agreed that the Museu de Arqueologia e Etnologia should be the final depositary**, because the Waurà Indians did not have the capacity to preserve the objects⁶.
- **June 2003: The Museum der Kulturen Basel accepted the inheritance** in order to fulfil Vera Penteadó Coelho's testament and to be able to move forward. As a first interim solution, a **loan contract** was established between the Museum der Kulturen and the Museu de Arqueologia e Etnologia, so that the collection could remain in Brazil.
- **2004: Both museums and the Waurà Indians, with support from the Swiss Agency for Development and Cooperation, developed a cooperation project around the collection.**

¹ See Cultural Office, Department of Presidential Affairs, Canton of Basel-Stadt, Press Release, "Museum der Kulturen unterzeichnet Schenkungsvertrag mit Zukunftspotential," September 22, 2009, accessed January 15, 2013, <http://www.medienmitteilungen.bs.ch/showmm.htm?url=2009-09-22-pd-003.htm>, 1.

² See Alexander Brust, "Don't be afraid of the Indians. A Case Study of Alternative Solutions for Restitution Claims of Brazilian Native People and State Institutions," slides for a Workshop organised by the Basel Institute of Governance – Alternative Solutions to Restitution Processes, September 29, 2009, 9.

³ See reproduced letter addressed to the Museum der Kulturen in Brust, "Don't be afraid of the Indians," 10.

⁴ See Alessandro Chechi, "Multi-Level Cooperation to Safeguard the Human Dimension of Cultural Heritage and to Secure the Return of Wrongfully Removed Cultural Objects," in Cultural Heritage, Cultural Rights, Cultural Diversity, New Developments in International Law, ed. Silvia Borelli and Federico Enzerini (Netherlands: Martinus Nijhoff Publishers, 2012), 347.

⁵ See Cultural Office, Department of Presidential Affairs, Canton of Basel-Stadt, "Museum der Kulturen unterzeichnet Schenkungsvertrag mit Zukunftspotential," 1.

⁶ See Brust, "Don't be afraid of the Indians," 14.

The aim was to promote exchange of knowledge on the thematic and to understand the importance of the collection for the Waurà Indians⁷.

- The Museum der Kulturen Basel, the Department of Culture of the Canton of Basel-Stadt, and the University of Basel worked very closely to draft a donation contract allowing the collection to remain in the Museu de Arqueologia e Etnologia in São Paulo. Upon receiving a request by the Waurà Indians to give them the photos and drawings in order to create their own Waurà Museum, the Museum der Kulturen and the Museu de Arqueologia e Etnologia decided to halt the donation process to consider the proposition⁸. The choice to donate to the São Paulo Museum was however pursued, **and the contract was ready to be signed in 2006⁹.**
- **June 2008: The donation and cultural collaboration contract was signed in Brazil by both Museums, the Waurà Indians representative, and a representative of the Penteadó Coelho family.** A future tripartite cooperation was also put in place and exhibitions were planned with the Waurà Indians in Xingu Park, with the Museu de Arqueologia e Etnologia Universidade de São Paulo and the Museum der Kulturen Basel in Basel¹⁰.
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II. Dispute Resolution Process

Negotiation – Settlement agreement

- Upon receiving notification of the existing opposition to the legacy, the Museum der Kulturen Basel immediately initiated discussions with both the Museu de Arqueologia e Etnologia and the Waurà Indians representatives. Because the Basel Museum claimed “an active part in the discussion [on] how to deal with cultural heritage of the 'others' ”¹¹, it was open to negotiations, which was a crucial factor in solving the dispute without resorting to litigation.
- It took various in-person meetings and a lengthy drafting process – eight years – to achieve an agreement. This exemplifies how time-consuming and demanding such a negotiation process may be, even when the agreement of all parties is secured. Moreover, it is important to note that the Museum der Kulturen Basel worked intensely with the Department of Culture of the Basel-Stadt Canton and the University of Basel to draft the contract.

⁷ See Alexander Brust, “Nur eine Frage der Ethik?” Die Schweizer Museumszeitschrift 6 (2011) 112, accessed January 15, 2013, <http://www.museums.ch/assets/ebooks/museums-n6/index.html#/110/zoomed>

⁸ See Brust, “Don't be afraid of the Indians,” 17.

⁹ Ibid.

¹⁰ See Cultural Office, Department of Presidential Affairs, Canton of Basel-Stadt, “Museum der Kulturen unterzeichnet Schenkungsvertrag mit Zukunftspotential,” 2.

¹¹ See Brust, “Don't be afraid of the Indians,” 28.

III. Legal Issues

Legacy

- Vera Penteadó Coelho had purchased the paintings from the indigenous community, for whom it had apparently been decisive that, on the one hand, the ethnologist was a close friend and, on the other hand, she had promised the collection would not leave the country¹². Had the legality of the legacy been analysed, it might have been revealed that it violated the terms of the original sale.
- It was clear to all parties that some objects of the collection would not be authorized for exportation as they constituted protected cultural patrimony¹³. In Brazil, all cultural works require a permit for exportation, and the exportation of unique specimens can be prohibited¹⁴. Even if the Basel Museum had benefited from the inheritance, it would only have been on some of the objects.
- The Basel Museum renounced to exercise its right to keep some objects of the collection because it considered the Waurà Indians had a right to enjoy their cultural heritage as a whole, and that the collection was part of the history of science of São Paulo¹⁵.

IV. Adopted Solution

Donation – Cultural cooperation

- All partners agreed in 2003 that the São Paulo Museum was the adequate place for the collection because the Waurà Indians did not have the logistical capacity to preserve the objects. The adopted solution thus was to donate the collection to the Museu de Arqueologia e Etnologia Universidade de São Paulo. The tripartite agreement guarantees the Waurà and other Indian groups as well as the Basel Museum and other scientific researchers access to the collection¹⁶.
- Moreover, the contract foresees, should the Waurà Indians create their own museum in the future, the possibility to transfer the collection to that museum¹⁷.
- The agreement also sets up a privileged partnership for future loans of the collection to the Museum der Kulturen Basel¹⁸. Furthermore, alongside the donation, both Museums and the Waurà Indians developed a cooperation project, reflecting on the role of the collection for the

¹² See Brust, “Only a question of Ethic?” 112.

¹³ Ibid.

¹⁴ Art. 11 and 12 Brazil, Decree 6.734 of January 21, 1941 (original title: “Decreto n. 6.734, de 21 de janeiro de 1941”), available on the UNESCO Database of National Cultural Heritage Law, accessed January 16, 2013, http://www.unesco.org/culture/natlaws/media/pdf/bresil/brazil_decreto_6734_21_01_1941_por_orof.pdf.

¹⁵ Ibid.

¹⁶ See Brust, “Only a question of Ethic?” 112.

¹⁷ Ibid.

¹⁸ See Brust, “Don't be afraid of the Indians,” 28.

Waurà tribe¹⁹. This further strengthened the ties between the actors and offered additional prospects of cultural cooperation.

V. Comment

- This case of restitution is very interesting because it combined in a very satisfying manner the different involved interests:
 - The right of indigenous people to enjoy their cultural heritage;
 - The sufficient conditions of conservation of cultural objects;
 - The need to grant access to the collection to the indigenous population, the Museum der Kulturen and to the wider scientific community.
- According to Alexander Brust, curator at the Museum der Kulturen Basel, the discussion within Switzerland on the Federal Act on the International Transfer of Cultural Property²⁰ and the ICOM Code of Ethics²¹ shaped the position taken by the Museum der Kulturen Basel in this case²². The Basel Museum wanted to achieve a consensual solution, satisfying all actors, and was thus inclined to negotiate. Moreover, the Museum was conscious of its role as a “cultural actor” and not only as a “culture curator”²³. In other words, it was aware that for indigenous communities such as the Waurà Indians, preserving their cultural patrimony lies alongside the aim of defending their rights as a community, and that museums do play an important role in this process²⁴.

VI. Sources

a. Bibliography

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¹⁹ See Brust, “Only a question of Ethic?” 112.

²⁰ Federal Act on the International Transfer of Cultural Property, June 20, 2003, RO 2005 1869.

²¹ International Council of Museums (ICOM) Code of Ethics for Museums, version of 2006, accessed January 15, 2012, <http://icom.museum/the-vision/code-of-ethics/>.

²² See Brust, “Only a question of Ethic?” 113.

²³ Ibid.

²⁴ Ibid.

b. Legislation

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