

## The Journey Home: The Repatriation of the Maaso Kova

### Introduction

The Maaso Kova is a ceremonial deer head sacred to the Yaqui peoples of Mexico that is an essential part of community ritual. As Pascua Yaqui Chairman Peter Yucupici explains, while a dancer is wearing the Maaso Kova, “he’s the only being that can be here in this world, which is the material world, and can travel to the spirit world ... and visit our ancestors. That’s how important it is to us.”<sup>1</sup>

Almost 90 years after its removal, Sweden and Mexico signed an agreement for the repatriation of the Maaso Kova in June 2022. This *Insight* summarizes the removal of the Maaso Kova from Mexico and the subsequent repatriation process. It then contextualizes and analyzes the agreement to repatriate the Maaso Kova highlighting its significance for indigenous concepts, institutions and rights with particular reference to Article 12 of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and Article 15 of the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (UNESCO Convention 1970).

### The Removal of the Maaso Kova

Like most Indigenous Peoples, the Yaqui were subjected to abuse by the state including discrimination, forced relocation, and violence. As part of this pattern of abuse, the Yaqui were conscripted into the Mexican Army and garrisoned away from their homelands. Within this colonial context, Bodil Christensen and Helga Larsen Christensen, two Danish anthropologist sisters conducting field work in Mexico, removed the Maaso Kova from the Yaqui peoples in 1934.<sup>2</sup> There is evidence that the sisters purchased “some dance

attributes,” though it is not clear that these attributes included the Maaso Kova.<sup>3</sup> The value of the Maaso Kova was listed as 10 USD when it arrived in Sweden in 1937.<sup>4</sup>

### **The Significance of the Repatriation of the Maaso Kova**

In 1937, the Museum of Ethnography in Stockholm included the Maaso Kova in its collection and exhibited it to the public. At the request of the Yaqui peoples in 2003, the Maaso Kova was no longer publicly displayed. In January 2014 official efforts for the repatriation of the Maaso Kova began when the Yaqui peoples requested its return.<sup>5</sup> This initial request for repatriation of the Maaso Kova was made under UNDRIP Article 11(2), which offers that states shall provide redress, which may include restitution, for cultural property “taken without their free, prior, and informed consent or in violation of their laws, traditions, and customs.” However, Sweden considered this approach insufficient without a formal request from Mexico. Moreover, the museum in its own investigation concluded that there were no grounds under Article 11(2) for return as the object was legally acquired from the legal owner in Mexico in a voluntary manner.<sup>6</sup>

Ultimately, it was the UN Expert Mechanism on the Rights of Indigenous Peoples (EMRIP), which played an important role in securing the agreement to repatriate the Maaso Kova. The EMRIP was established to provide expertise and advice to the Human Rights Council on the rights provided in UNDRIP and to assist member states, upon request, in achieving the ends of UNDRIP. Between 2018 and 2020, EMRIP undertook a country engagement to facilitate negotiations between Sweden and the Yaqui peoples. As a result of this process, the parties agreed to the repatriation of the Maaso Kova along with 23 other items sacred to the Yaqui peoples in Mexico. Specifically, in dialogue with EMRIP, Sweden considered that a return could be made based on UNDRIP Article 12(2) and Article 15 of the UNESCO Convention 1970.<sup>7</sup> Ultimately, the agreement to repatriate the Maaso Kova based on these international agreements clarifies and legitimizes key indigenous concepts, institutions, and rights.

### **Clarification and the Repatriation of the Maaso Kova**

UNDRIP Article 12(2) provides that states shall seek “to enable access and/or repatriation of ceremonial objects ... in their possession....” In recognizing Article 12(2) as the basis for the return of the Maaso Kova, the agreement for repatriation is a significant example of state practice applying provisions of UNDRIP retroactively as the Maaso Kova and other ceremonial objects had been removed many years before the adoption of UNDRIP in 2007. Moreover, it can be extrapolated from this that UNDRIP’s general provision for redress in relation to cultural property found in Article 11(2) should also apply retroactively.

The significance of this temporal clarification is amplified by the fact that international heritage law does not compel the return of items like the Maaso Kova, which were removed from Indigenous Peoples as part of campaigns of collection carried in the eighteenth, nineteenth, and early twentieth centuries. International heritage law forecloses claims for the repatriation of indigenous heritage amassed during this period of colonial collection through adherence to the principle of non-retroactivity. Non-retroactivity ensures that treaties do not apply to actions taken before the adoption of a treaty unless the treaty expressly intends to bind the parties in relation to any act or fact which took place before the date of entry into force of the treaty in relation to the parties concerned.<sup>8</sup> A different intention does not appear in the primary international heritage treaties: the UNESCO Convention 1970 and the UNIDROIT Convention on the International Return of Stolen or Illegally Exported Cultural Objects (UNIDROIT Convention 1995). Rather, these treaties explicitly adhere to the principle of non-retroactivity foreclosing indigenous claims.<sup>9</sup>

### **Legitimacy and the Repatriation of the Maaso Kova**

The significance of the agreement to repatriate the Maaso Kova also lies in its contribution to legitimacy. Legitimacy here refers to “the quality in international norms that leads states to internalize the pull to voluntarily and habitually obey these norms even when it might not be in their interest to do so.”<sup>10</sup> Legitimacy as compliance in relation to international norms is increased by both the substance<sup>11</sup> of the norms and by engagement with such norms.<sup>12</sup> Specifically, through the consideration of international norms as the basis for the redress of cultural heritage and the use of the EMRIP, the agreement to repatriate the Maaso Kova contributes to the legitimacy of indigenous concepts, rights, and institutions.

### **Legitimacy as Coherence**

Substance legitimacy relates to the quality of the substance of norms including their coherence, which is rooted in their consistency as applied within an international legal regime.<sup>13</sup> In clarifying the temporal scope of redress, the agreement to repatriate the Maaso Kova brings UNDRIP’s provisions on redress in relation to cultural heritage in line with its provision on redress in relation to land—another integral aspect of indigenous heritage, which has been interpreted to apply retroactively.<sup>14</sup> In turn, the agreement to repatriate the Maaso Kova underscores a holistic view of heritage<sup>15</sup> in line with indigenous concepts of a cosmovision.<sup>16</sup>

In addition, the agreement to repatriate the Maaso Kova provides for coherence across indigenous rights and international heritage law. Through the EMRIP dialogue, the agreement to repatriate the Maaso Kova was based on both recognition of indigenous rights in UNDRIP Article 12(2) and international heritage law in Article 15 of the UNESCO Convention 1970, which allows for states to conclude special agreements for the restitution of cultural property removed before the entry into force of the Convention for the states concerned. This is significant because human rights standards, including indigenous rights, are not reflected in international heritage law, including UNESCO documentation such as the UNESCO Convention 1970.<sup>17</sup> Rather, international heritage law is fragmented and compartmentalized preventing the formation of consistent, shared principles and interpretations across indigenous rights, human rights, and international heritage law.<sup>18</sup> However, the citation of both UNDRIP and UNESCO provisions in relation to a repatriation agreement is evidence of, and encouragement for, the interpretation of UNESCO documents in line with UNDRIP. The reasoning underpinning the agreement to repatriate the Maaso Kova thereby contributes to the coherent development of the law across indigenous rights and international heritage law and ultimately the legitimacy of such laws, which supports the more effective protection of Indigenous Peoples and their heritage.

### **Legitimacy as Engagement**

Legitimacy also flows from engagement as “increased state and public interaction with indigenous peoples’ rights lead[s] to, over time, their ‘normalisation’ and acceptance in governmental and public consciousness.”<sup>19</sup> Prior to EMRIP’s involvement, Sweden conducted its own investigation concluding that no valid legal grounds compelled the return of the items based on their acquisition.<sup>20</sup> However, after engaging with EMRIP, Sweden agreed to the repatriation of the Maaso Kova. Further, in agreeing to this return, Sweden in dialogue with EMRIP accepted that the return could be made based on indigenous rights and international heritage law. In effect, not only did Sweden agree to repatriate the Maaso Kova, but when presented with the opportunity to return ceremonial objects on voluntary grounds alone, Sweden chose to recognize the repatriation of the Maaso Kova on the basis of international law and specifically indigenous rights under UNDRIP Article 12(2). This is the first time an agreement to repatriate cultural property has expressly recognized UNDRIP. Ultimately, Sweden’s engagement with EMRIP as part of the Maaso Kova repatriation process reflects how engagement with international infrastructure leads to legitimacy in the sense of the internalization of norms.

The significance of this engagement is augmented by the soft law status of UNDRIP as a formally non-binding declaration. In turn, the repatriation of the Maaso Kova under

UNDRIP contributes to its growing legal influence and to enhancing the quality of Indigenous Peoples' rights and institutions under international law despite the lack of an international sovereign and/or sanctions. In effect, the more that the Declaration and associated international indigenous institutions are used the more their legitimacy increases.

## Conclusions

The agreement to repatriate the Maaso Kova is an example of the rapid changes that characterize the development of the promotion and protection of indigenous heritage. Specifically, the process of engaging EMRIP and the reasoning underpinning this repatriation agreement, which recognizes both UNDRIP and the UNESCO Convention 1970 as sources of law, offers significant developments in relation to the clarification and legitimacy of indigenous concepts, institutions and rights. The Maaso Kova and the associated collection have been received by the Mexican government including the National Institute for Indigenous Peoples and National Institute of Anthropology and History (INAH), while the Yaqui peoples make appropriate arrangements for the homecoming.<sup>21</sup> At the time of writing, these arrangements are being made.

**About the Author:** Shea Esterling is a Senior Lecturer in the Faculty of Law at the University of Canterbury in Christchurch, New Zealand. She is Co-Chair of the ASIL Rights of Indigenous Peoples Interest Group and is author of *Indigenous Cultural Property and International Law: Restitution, Rights & Wrongs*, London: Routledge (2023).

---

<sup>1</sup> Bianca Morales, Ceremonial Yaqui Artifact Maaso Koba being returned after 100 years in Swedish Museum, TUCSON SENTINEL TIMES (June 8, 2022) [https://www.tucson sentinel.com/arts/report/060822\\_yaqui\\_artifacts/ceremonial-yaqui-artifact-maaso-koba-being-returned-after-100-years-swedish-museum/](https://www.tucson sentinel.com/arts/report/060822_yaqui_artifacts/ceremonial-yaqui-artifact-maaso-koba-being-returned-after-100-years-swedish-museum/).

<sup>2</sup> Expert Mechanism on the Rights of Indigenous Peoples, *Technical Advisory Note: Repatriation Request for the Yaqui Maaso Kova* 8 (2020) [hereinafter Advisory Note].

<sup>3</sup> *Id.* at 14.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at 8.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at 14-15. See also Press Release, Ethnographic Museum of Stockholm, Press Release, The National Museums of World Culture to return objects to Mexico, (May 5, 2022), <https://perma.cc/LH6U-VDNX>.

<sup>8</sup> See Vienna Convention on the Law of Treaties, May 23, 1969, 1115 U.N.T.S. 331; 8 I.L.M. 679, art. 28.

<sup>9</sup> See Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, adopted Nov. 14, 1970, 823 U.N.T.S. 232, art. 7; See Convention on the International Return of Stolen or Illegally Exported Cultural Objects, June 24, 1995, 34 I.L.M. 1326, art. 10.

<sup>10</sup> Claire Charters, *The Legitimising Effect of Coordination Between Relevant International Institutions and the Harmonisation of the Rights of Indigenous Peoples*, 32 ARIZ. J. INT'L & COMP. L. 169, 171 (2015).

---

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at 181.

<sup>13</sup> *Id.*

<sup>14</sup> See Centre for Minority Rights Development (Kenya) & Minority Rts Group Int'l (on behalf of Endorois Welfare Council) v. Kenya, Comm. No. 276/2003, Afr. Comm'n H.P.R. (Feb. 4, 2010), ¶¶ 209 (finding Indigenous Peoples are entitled to the restitution of their lands that they have lost including lands lost before adoption of the Declaration).

<sup>15</sup> See U.N. Doc. E/CN.4/Sub.2/AC.4.2006/5, ¶ 4 (noting a holistic view of heritage includes not only cultural property but lands, territories and resources).

<sup>16</sup> See Erica-Irene Daes, *Study on the Protection of the Cultural and Intellectual Property of Indigenous Peoples*, UN Doc. E/CN.4/Sub.2/1993/28 (1993) at para. 164 (detailing that a holistic approach to heritage characterizes an indigenous cosmovision).

<sup>17</sup> Aside from the UNESCO Convention 1970, other UNESCO documentation that reflects such fragmentation includes the World Heritage Convention 1972, the Universal Declaration on Cultural Diversity 2001 and the Convention for the Safeguarding of Intangible Cultural Property 2003. See Alexandra Xanthaki, *International Instruments on Cultural Heritage: Tales of Fragmentation* in *Cultural Heritage and Indigenous Peoples: Rights, Debates, Challenges* 13 (A. Xanthaki et. al. eds., Brill 2017).

<sup>18</sup> *Id.* at 10.

<sup>19</sup> Charters, *supra* n.7, at 181.

<sup>20</sup> See Advisory Note, *supra* n. 2, at 9.

<sup>21</sup> Ethnographic Museum of Stockholm, Press Release, *Yaqui Objects Returned - Case becomes Digital Exhibition*, (3 June 2022) <https://www.mynewsdesk.com/se/varldskulturmuseerna/pressreleases/yaqui-objects-returned-case-becomes-digital-exhibition-3186828>