

**Statement of the Association of Art Museum Directors Concerning the Interim Review of the Memorandum of Understanding Between the Government of the United States of America and the Government of the Republic of Guatemala Concerning the Imposition of Import Restrictions on Archaeological Material from the Pre-Columbian Cultures and Ecclesiastical Ethnological Material from the Conquest and Colonial Periods of Guatemala**

**Meeting of the Cultural Property Advisory Committee**

**September 30 – October 2, 2015**

**I. Introduction**

This statement is made on behalf of the Association of Art Museum Directors (the “AAMD”) regarding the interim review of the *Memorandum of Understanding Between the Government of the United States of America and the Government of the Republic of Guatemala Concerning the Imposition of Import Restrictions on Archaeological Material from the Pre-Columbian Cultures and Ecclesiastical Ethnological Material from the Conquest and Colonial Periods of Guatemala* (the “MOU”) by the Cultural Property Advisory Committee (the “Committee”).

**II. General Background**

Under the Cultural Property Implementation Act (the “CPIA”), the Committee is tasked with an interim review of the MOU in order to determine, among other things, whether the MOU is achieving the purpose for which it was established.<sup>1</sup> The AAMD and the public that the museums of which its members are directors have a vested interest in ensuring that every bilateral agreement receives a meaningful interim review to determine if the circumstances giving rise to the MOU have changed and if the parties to the MOU are in compliance with its provisions.

**III. Issues Material to Interim Review of MOU**

The purpose of the MOU, as amended, is to “reduce the incentive for pillage of irreplaceable archaeological objects and materials representing the Pre-Columbian cultures and ecclesiastical ethnological materials representing the Conquest and Colonial periods of Guatemala.”<sup>2</sup> In order to fulfill this purpose, Article II of the MOU sets forth obligations and undertakings on the part of the Republic of Guatemala, several of which merit the Committee’s attention during its interim review of the MOU. The AAMD’s concerns fall generally into two categories: obligations and undertakings lacking meaningful data or information to evaluate, and obligations and undertakings known to be problematic.

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<sup>1</sup> 11 U.S.C. § 2605(g).

<sup>2</sup> MOU, Preamble.

A. *Issues Lacking Meaningful Data to Evaluate*

Several of Guatemala's obligations under the MOU present questions of compliance in various areas into which, the AAMD respectfully submits, the Committee should inquire during its interim review. AAMD identifies four areas that lack meaningful data to evaluate whether Guatemala is adhering to the provisions set forth in Article II of the MOU.

First, the AAMD has been unable to determine if Guatemala has digitized and registered all known archaeological and ethnological material.<sup>3</sup> For example, the Guatemalan Ministry of Sports and Culture's website directs a search for such registry to the Guatemalan National Library, which, in turn, provides little information.

Second, the AAMD has been unable to determine whether Guatemala formed an intra-agency commission tasked with combating looting or is cooperating with agencies monitoring drug trafficking, a practice that can accompany the illicit export of cultural property.<sup>4</sup> Such measures are especially necessary considering the overall increase in crime in the country (as discussed in Part II(B) below).

Third, though a bilateral agreement exists between Mexico and Guatemala, the AAMD has been unable to determine whether Guatemala is working with other Central American countries to protect its cultural property or is even soliciting similar support from other countries with import trade in its archaeological and ethnological material.<sup>5</sup> This is especially relevant with respect to El Salvador, which shares a border with Guatemala in one of its most problematic areas, *Cara Sucia*.<sup>6</sup>

Finally, and as largely demonstrated above, it is unknown whether Guatemala has sufficiently informed the United States of the steps it took in order to fulfill its obligations under the MOU.<sup>7</sup> Indeed, the Committee would be well justified in either requesting such information as part of the interim review or, at a minimum, informing the President and Congress that no such information has been provided to the Committee.

B. *Known Problematic Issues*

Where Guatemala appears to fall short is in connection with its obligation to continue the enforcement of laws protecting cultural property, with an emphasis on the prosecution of offenders in order to reduce the incentive for looting archaeological sites and ethnological material.<sup>8</sup> As recently as 2013, reports indicate that 98% of *all crimes* go unprosecuted.<sup>9</sup> The

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<sup>3</sup> MOU, Art. II(B) (requiring Guatemala to register "all known archaeological and ethnological material in the country, and [to] work to digitize the Registry in the form of a searchable database").

<sup>4</sup> MOU, Art. II(E) (requiring Guatemala to "use its best efforts to coordinate intra-governmental efforts in protecting its cultural property, including by forming an inter-agency commission to combat the looting of archaeological and ethnological sites and by cooperating with agencies that monitor drug trafficking").

<sup>5</sup> MOU, Art. II(H) (requiring Guatemala to work with other Central American countries to protect its cultural patrimony and to solicit cooperation from other countries "having an import trade in Guatemalan archaeological and ethnological material").

<sup>6</sup> This issue, as it relates to El Salvador, was addressed in AAMD's position statement to the Committee in connection with El Salvador's request to extend its bilateral agreement in 2014.

<sup>7</sup> MOU, Art. II(I).

<sup>8</sup> MOU, Art. II(F).

lack of prosecution manifests itself in prolific crime that can affect cultural property. In the rare event of arrest, works are usually not recovered and are often lost to illicit markets.

The theft of the Tomas de Merlo paintings illustrates this point. In February 2015, Guatemalan officials arrested two men accused of entering a church in February 2014 and stealing—at gunpoint—paintings by Tomas de Merlo. The men are believed to be involved in a criminal ring “that robs houses and religious buildings often by dressing as police officers and impersonating investigators[.];” the works were not recovered at the time of the arrest and are believed to have already been smuggled out of the country.<sup>10</sup> The loss of these paintings is significant and considered to be a great tragedy for the country. This is not an isolated incident.

In May 2015, approximately 300 pieces of Colonial era Guatemalan artifacts were stolen from a church in Antigua.<sup>11</sup> Churches or ecclesiastical buildings, especially those located in rural areas, lack any meaningful security<sup>12</sup> and often contain cultural property that are of great interest to traffickers. Even Museums are not safe. On May 16, 2015, over 200 Colonial and Republican objects were stolen from the *Museo Guatemalteco de Arte*.<sup>13</sup> The museum houses the Palacios-Weymann collection; a collection that is an important part of Guatemala’s artistic heritage.<sup>14</sup>

Apparently, thefts are even being committed with specific items in mind – the result of orders and special requests from buyers on the illicit market.<sup>15</sup> Despite the laws and restrictions imposed to protect cultural patrimony, the rate of thefts in Guatemala, especially of ecclesiastical property, are still on the rise. Based on available information, it seems that Guatemala does not appear to be prosecuting cultural property crimes to an extent that deters future offenses. Moreover, *El Periódico* reports that looters count on Guatemala’s “blind” borders to facilitate the transfer of items, which is a fierce indicator that there is a lack of presence or visibility of border patrol or law enforcement to further deter looting.<sup>16</sup>

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<sup>9</sup> Lianne Milton, “Life is Worth Nothing in Guatemala,” *Newsweek* (December 2, 2013), <http://www.newsweek.com/life-worth-nothing-guatemala-207586> (accessed August 28, 2015).

<sup>10</sup> James Bargent, “Guatemala Nabs Art Thieves but Paintings Disappear into Black Market,” *Insight Crime* (February 25, 2015), <http://www.insightcrime.org/news-briefs/guatemala-nabs-art-thieves-but-paintings-disappear-into-black-market> (accessed April 30, 2015). The paintings believed to be stolen are a selection of six Passion of Christ paintings from the 18<sup>th</sup> century by Tomas de Merlo.

<sup>11</sup> Alicia Alvarez, “Se Roban Piezas de Arte en Antigua Guatemala,” *Contrapoder* (May 31, 2015), <http://contrapoder.com.gt/2015/05/31/se-roban-piezas-de-arte-en-antigua-guatemala/> (accessed June 23, 2015).

<sup>12</sup> El Saqueo del Patrimonio Cultural de Guatemala, *El Blog de Carlos* (February 15, 2014), <https://tenacarlos.wordpress.com/2014/02/15/el-saqueo-del-patrimonio-cultural-en-guatemala/> (accessed August 28, 2015).

<sup>13</sup> “Over 200 Colonial and Republican Objects Stolen from Guatemalan Museum,” *Anonymous Swiss Collector Blog* (June 1, 2015), <http://www.anonymousswisscollector.com/2015/06/over-200-colonial-objects-stolen-from-guatemalan-museum-official-records-and-photos.html> (accessed June 23, 2015).

<sup>14</sup> “Palacios-Weymann Collection,” *FUNBA Guatemala* (2015) <http://funbaguatemala.org/en/coleccion-palacios-weymann/> (accessed June 23, 2015).

<sup>15</sup> “Banda se Dedicar a Robar Pinturas ‘Por Encargo’,” *El Periódico* (February 24, 2015), <http://bdc.elperiodico.com.gt/es/20150224/pais/9056/Banda-se-dedicar-a-robar-pinturas-%E2%80%9Cpor-encargo%E2%80%9D.htm> (accessed August 28, 2015); also, see James Bargent.

<sup>16</sup> “Banda se Dedicar a Robar Pinturas ‘Por Encargo’.”

Finally, cartels and gangs even use cultural patrimony as collateral for drug and gun sales.<sup>17</sup> Gang related crime is so rampant that, in 2015, the Director-General of UNESCO focused on preventing violence in Guatemala.<sup>18</sup> According to Samuel Franco, chairman of Blue Shield Guatemala, an emergency response agency for culture, “[w]e have a major enemy in the drug lords” who “[a]ccording to UNESCO . . . are looting archaeological sites to launder money.”<sup>19</sup>

#### IV. Conclusion

Like the Committee, the AAMD is mindful of the need for a careful interim review of the MOU. The AAMD hopes that this submission is useful to the Committee for purposes of fulfilling its duties under the CPIA by conducting a meaningful, fulsome, and accurate review of the MOU and, if necessary, providing an attendant report to the President and Congress regarding the MOU and state of Guatemalan affairs.

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The AAMD is a professional organization consisting of approximately 240 directors of major art museums throughout the United States, Canada, and Mexico. The purpose of the AAMD is to support its members in increasing the contribution of art museums to society. The AAMD accomplishes this mission by establishing and maintaining the highest standards of professional practice, serving as a forum for the exchange of information and ideas, acting as an advocate for its member art museums, and being a leader in shaping public discourse about the arts community and the role of art in society.

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<sup>17</sup> James Bargent.

<sup>18</sup> “The Director-General Emphasized the Role of Prevention for the Elimination of Violence in Guatemala,” *UNESCO Media Services* (January 18, 2015.), [http://www.unesco.org/new/en/media-services/single-view/news/the\\_director\\_general\\_emphasized\\_the\\_role\\_of\\_prevention\\_for\\_the\\_elimination\\_of\\_violence\\_in\\_guatemala/#.VgRRztVViko](http://www.unesco.org/new/en/media-services/single-view/news/the_director_general_emphasized_the_role_of_prevention_for_the_elimination_of_violence_in_guatemala/#.VgRRztVViko) (accessed August 31, 2015).

<sup>19</sup> “Global Collaboration Fights Cultural Destruction,” *BBC.com* (May 1, 2015), <http://www.bbc.com/news/magazine-32526030> (accessed May 1, 2015)