

**Statement of the Association of Art Museum Directors Concerning the Proposed
Extension of the Memorandum of Understanding Between the Government of the
United States of America and the Government of the Republic of Bolivia
Concerning the Imposition of Import Restrictions on Archaeological Material from
the Pre-Columbian Cultures and Certain Ethnological Material from the Colonial
and Republican Periods of Bolivia**

Meeting of the Cultural Property Advisory Committee

May 24, 2016

I. Introduction

The Association of Art Museum Directors (“AAMD”) respectfully submits this statement for consideration by the Cultural Property Advisory Committee (the “Committee”) in connection with the Committee’s review of the proposed renewal of the *Memorandum of Understanding Between the Government of the United States of America and the Government of the Republic¹ of Bolivia Concerning the Imposition of Import Restrictions on Archaeological Material from the Pre-Columbian Cultures and Certain Ethnological Material from the Colonial and Republican Periods of Bolivia* (the “MOU”). Pursuant to the Cultural Property Implementation Act (the “CPIA”), the Government of the United States of America and the Government of the Plurinational State of Bolivia (“Bolivia”) entered into the MOU to protect certain archaeological material ranging from 10,000 B. C. E. to 1532 C. E. as well as ethnological material ranging from 1533 C. E. to 1900 C. E., for a period of five years, subject to interim review by the Committee.

II. Preliminary Statement

Sadly, Bolivia appears to be yet another example of a country seeking ongoing import restrictions that no doubt were well intended when initially implemented, but nevertheless have not resulted in any measurable progress. Looting and illicit trafficking of cultural patrimony remain virtually unchecked due to an apparently apathetic government unwilling or unable to enforce its own long-established law. The Committee must not turn a blind eye toward this situation. Doing so would not be the result contemplated by the CPIA, which is premised in large part upon the equitable principle of helping those who help themselves.

Reflecting some of the same problems identified in the Statement with respect to looting is the relatively modest level of cultural exchanges between American museums and their Bolivian counterparts – a situation that at first glance, given Bolivia’s rich cultural heritage, is difficult to explain. On closer examination, the reasons for the relatively modest levels of interaction begin to emerge: the absence of any central or even decentralized website for objects that could be borrowed, the lack of a transparent method of obtaining approvals, and what appears to be a multi-tiered approval process, all coalesce into a picture of obstacles.

¹ Now known as the Government of the Plurinational State of Bolivia, effective under the Constitution of Bolivia, dated February 7, 2009.

Those obstacles, over time, evolved into a broad landscape of problems, whether real or perceived, and only through active collaboration can those problems be solved. In that regard, the AAMD representatives recently met with Bolivian officials to discuss ways to streamline the process for identifying significant works available for loan and for approval of those loans. The MOU could be enhanced in ways that would complement this process, while further augmenting its intended protections, as more fully explained below.

III. Executive Summary of AAMD Position

The Committee is required to make recommendations as to whether the United States should extend the MOU.² In order to recommend extension, all four determinants for implementing the MOU must be satisfied.³ While there are questions on a number of those determinants, there are significant concerns about two in particular: (1) measures taken by Bolivia to protect its cultural patrimony do not appear to be commensurate with the protection required⁴ and (2) the causal connection between the MOU and deterring a serious situation of pillage, even when applied with any similar restrictions by countries having a significant import trade in Bolivia's cultural patrimony, appears questionable.⁵ The AAMD is concerned that the situation that caused Bolivia to request an MOU in 2001 and subsequent extensions thereafter has, in fact, worsened. Despite AAMD voicing concerns about Bolivia's efforts to protect sites, whether archaeological or ethnological (in this case ecclesiastical), in 2010 and despite providing recommendations to help diminish looting or otherwise protect the country's cultural patrimony, the situation the country faces today can only be described as dire and of continually great concern.

Certainly, AAMD appreciates the financial hardships and other challenges that the Bolivian government faces; but, the CPIA *requires a high degree of commitment* by countries seeking protection by the United States and the Committee has an *obligation to ensure* that requesting countries demonstrate that commitment by fulfilling the determinants imposed by the CPIA. The Committee must also review compliance with the provisions of the MOU itself before recommending renewal.

IV. Review of CPIA Determinants and Compliance with the MOU

In order to recommend extending the MOU, the Committee must determine (1) that Bolivia's cultural patrimony is in jeopardy from the pillage of archaeological or ethnological materials; (2) that Bolivia has taken measures consistent with the 1970 UNESCO Convention (the "Convention") to protect its cultural patrimony; (3) that (a) the application of the import restrictions set forth in the MOU, if applied in concert with similar restrictions implemented, or to be implemented within a reasonable period of time, by those nations individually having a significant import trade in such material, would be of substantial benefit in deterring a serious situation of pillage, and (b) remedies less drastic are not available; and (4) that applying the import restrictions set forth in the MOU is consistent with the general interest of the

² 19 U.S.C. § 2605(f)(2).

³ 19 U.S.C. §§ 2602(a)(1) and 2605(f)(2).

⁴ 19 U.S.C. § 2602(a)(1)(B).

⁵ 19 U.S.C. § 2602(a)(1)(C)(i).

international community in the interchange of cultural property among nations for scientific, cultural, and educational purposes. Unfortunately, Bolivia falls short on at least the second and third determinants.

A. Cooperation with Other Countries to Curtail the Illicit Trafficking of Cultural Patrimony and Protection of Transit Points from Looters

Under the second determinate, Bolivia is required to take “measures consistent with the Convention to protect its cultural patrimony.”⁶ The current MOU requires Bolivia to “increase and expand its cooperation with other countries to curtail illicit trafficking of cultural heritage”⁷ and “to assess and revise the relevant cultural heritage laws...as necessary, to ensure their consistency and effectiveness.”⁸ Bolivia’s lack of compliance, whatever the reason, raises serious concerns. One cannot discount the positive efforts taken by Bolivia, including entering into bilateral agreements with Ecuador (2013), extending and expanding the agreement with Peru (2013), and extending the agreement with Uruguay (2014). In addition, Bolivia passed Law 530 in 2014, which focused on revising their cultural patrimony laws. Despite such efforts, there seems to be no effective change in their situation. Instead, confusion and even loopholes in Bolivia’s cultural heritage laws that do more harm than good continue to exist. For example, Law 530 does not contain new provisions for policing and crime prevention at heritage sites,⁹ and the bilateral agreements are easily circumvented by a major geo-political gap in protection—Argentina.

While passing laws and entering into bilateral agreements with neighboring countries are positive steps, they mean nothing unless such laws and agreements are actively enforced. Bolivia is required to “increase the attention and resources available for the protection and management of its archaeological sites and resources including public awareness efforts at transit points throughout Bolivia.”¹⁰ Nevertheless, “the primary threat to Bolivian relics is the illicit trade” arising because “there is no good, effective control[;] the only thing that is applied is social control . . . because of this, when [villagers] find an ancient piece they sell it to foreigners.”¹¹ There remain major gaps in all types of transit points for looters of Bolivian patrimony, especially Argentina. Despite the explicit requirement to increase transit point protection under Article II, security at medial and minor sites is non-existent or wholly ineffective. When transit sites actually are monitored, it is not for illicit objects or cultural

⁶ 19 U.S.C. § 2602(a)(1)(B).

⁷ MOU, Art. II(H).

⁸ MOU, Art. II(E).

⁹ Luis Fernando Cantoral, “Tráfico que Continúa: El Patrimonio de Bolivia sale por las Fronteras,” *EJU!* (August 22, 2015), <http://eju.tv/2015/08/trafico-que-continua-el-patrimonio-de-bolivia-sale-por-las-fronteras/> (accessed April 21, 2016); translated. Donna Yates, “Reality and Practicality: Challenges to Effective Cultural Property Policy on the Ground in Latin America,” *AQ* 20:XXX, 5.

¹⁰ MOU, Art. II(F).

¹¹ “Mafias de Traficantes operan en Bolivia,” *La Razón* (November 5, 2012) http://www.la-razon.com/suplementos/informe/Mafias-trafficantes-operan-Bolivia_0_1716428485.html (accessed May 4, 2016); translated.

heritage, but rather immigration documents.¹² This is an escalating problem – so much so that in 2010, a member of the Committee expressed concern about Bolivia’s lack of investment in site protection and border control; a major problem that continues today.¹³

B. Reliability of Law Enforcement and Effectiveness of Penalties

Bolivia is required to “develop” and “prepare” a workforce capable of protecting the patrimony for future generations¹⁴ and to “ensure” the “consistency and effectiveness” of laws and penalties.¹⁵ While the laws currently in place may demonstrate a legislative concern for the cultural heritage of Bolivia, this is not a substitute for action. Despite these laws and stiff penalties on paper,¹⁶ looting continues apparently undeterred due to legal loopholes, blurred lines of responsibility, and delayed or non-existent responses from law enforcement officials. Perhaps the best evidence of the Bolivian government’s failure to enforce its cultural patrimony laws is the fact that communities take it upon themselves to capture and punish looters—even by way of execution.¹⁷ One must seriously question whether recommending renewal of the MOU amounts to the Committee’s tacit endorsement of Bolivia’s lack of law enforcement and resulting self-help force by its citizens.

C. Looting of Ecclesiastical Objects

The problems are especially acute with respect to ecclesiastical objects that have not been specifically addressed. Bolivia is considered to be the center of theft for ecclesiastical heritage.¹⁸ Between 2009 and 2012 alone, at least 34 *reported* church thefts occurred, including *multiple* robberies of the *same* church.¹⁹ During the six-month period ending April 2013, eight colonial churches in Potosí, five of which are considered national monuments, suffered theft²⁰ of valuable ecclesiastical items.²¹ Often guardians or “stewards” of the church

¹² As determined *during el Primer Seminario Taller Internacional para la Prevención y Lucha contra el Tráfico Ilícito de Bienes Culturales* March 25-28, 2008, in Bolivia. A special force was to be created. Eight years later, this still has not occurred. See Luis Fernando Cantoral.

¹³ Donna Yates, “Church Theft, Insecurity, and Community Justice: The Reality of Source-End Regulation of the Market for Illicit Bolivian Objects,” *European Journal of Criminal Policy and Research* (February 22, 2014), 2.

¹⁴ MOU, Art. II(D).

¹⁵ MOU, Art. II(E).

¹⁶ Bolivian Penal Code, Title XII, Chapter 1, Article 223 and 326 (2010). See also, Donna Yates, “The Theft of Cultural Property in Bolivia: The Absence of Metal Detectors,” *Forum: The Looting of Archaeological Heritage, Part I* (2013); 10-11

¹⁷ Donna Yates, “Reality and Practicality,” 5. See also, Donna Yates, “Church Theft, Insecurity, and Community Justice,” 6-9.

¹⁸ Luis Fernando Cantoral.

¹⁹ For example, in San Miguel de Tomave, thieves stole five 18th century paintings from the Church – and this was the third time the church had been plundered since 2007. See AP, “Sacred Art Stolen from Andean Churches,” *The Telegraph U.K.* (August 26, 2013) <http://www.telegraph.co.uk/culture/art/10267122/Sacred-art-stolen-from-andean-churches.html> (accessed May 4, 2016).

²⁰ Anahi Cazas, “What does the Bolivian State do to Protect our Heritage?!” *Pagina Siete* (April 21, 2013) <https://bolivianthoughts.com/2013/04/21/> (accessed May 4, 2016).

²¹ La Merced Church located in the Province of Tomás Frías had about half a million dollars of silver and gold sacred objects stolen on March 16, 2013. See Anahi Cazas. Upon review of Interpol’s Database for Stolen Works of Art, five items were reported stolen. See Interpol Case No. 2013/28036-1.1-5.

are the primary suspects.²² Bishops have even been accused of stealing or having knowledge of who took valuable ecclesiastical property from the church, because “they have the keys” where items are locked up and “should know who [is] behind the crime.”²³

Compounding this problem is the confusion as to whether the church or state owns ecclesiastical property and, thus, bears the responsibility of protecting it.²⁴ The result is a serious lack of coordination. The fact that such debate exists is perplexing, given that under the new cultural protection law, the state must provide necessary resources to register, secure, and protect artifacts – which even includes training.²⁵ Until appropriate security is provided, ecclesiastical property, especially property in remote areas or areas with little presence of law enforcement, will continue to be in jeopardy.

Law enforcement with respect to looting of ecclesiastical property is also ineffective. “In Bolivia, police protection and state-level justice remains unavailable to most citizens. In 2012 nearly half of Bolivia’s municipalities did not have a judge, 77 percent did not have a prosecutor, and 97 percent did not have a public defender.”²⁶ Not surprisingly, “Bolivian communities believe that their authorities are not competent and are entirely unable to protect their heritage sites.”²⁷

Under the circumstances, if the Committee recommends a third extension of the MOU, it must also seriously consider deleting reference to Bolivia’s “*excellent progress* in the protection of the nation’s Colonial-period heritage.”²⁸ One must question the source of this flattering characterization.

D. Destruction of Protected Archaeological and World Heritage Sites

“[A]t least 10 of Bolivia’s cultural heritage sites [have been] at risk” since 2014, mainly archaeological sites, museums, and churches.²⁹ A few examples of sites that are deteriorating—some to the point of being lost forever—are:

- Potosí. Potosí, characterized as one of eleven places to see before it is forever lost to history,³⁰ was placed on the endangered list in 2014 due to

²² “Mafias de Traficantes operan en Bolivia.”

²³ “Bolivian Church Denies Collusion in Theft of Jewels,” *BBC News* (April 27, 2013), <http://www.bbc.com/news/world-latin-america-22319650> (accessed May 4, 2016).

²⁴ Anahi Cazas.

²⁵ Donna Yates, “Church Theft, Insecurity, and Community Justice,” 4.

²⁶ Donna Yates, “Reality and Practicality,” 4.

²⁷ *Ibid.*, 5.

²⁸ MOU, Art. II(f) (*emphasis added*).

²⁹ Anahi Cazas and Margarita Palacios, “Heritage 101: At Least 10 of Bolivia’s Cultural Heritage Sites are at Risk,” *Pagina Siete* (June 27, 2014), <https://bolivianthoughts.com/2014/06/27/heritage-101-at-least-10-of-bolivias-cultural-heritage-sites-are-at-risk/> (accessed May 4, 2016).

³⁰ Jada Young, “11 Places to See Before They’re Gone,” *BuzzFeed.com* (April 21, 2015) http://www.buzzfeed.com/jadayoung/hatchett/going-going-gone?utm_term=.njJpbPrYj#/kaDB2zdx1 (accessed May 4, 2015).

excessive silver mining that may result in a situation that is beyond repair.³¹

- Tiwanaku. Tiwanaku is in danger due to “lack of management and a holistic view of the ‘use’ of this site.”³² For example, UNESCO advised against allowing climbing the Akapana pyramid—advice Bolivia ignored, resulting in further deterioration.³³
- Samaipata. Declared a National Monument in 1951 and of Humanity in 1998, Samaipata is abandoned. Still visited by tourists, there is no security to preserve this cultural heritage site.³⁴
- Conodor Amaya. Declared a National Monument of Bolivia in 2006, not “a single penny” has been invested to keep this structure from crumbling.³⁵
- Pasto Grande. Another national monument, the Pasto Grande National Monument, is “one of the most neglected archaeological sites in the country and may be in danger of being lost.”³⁶
- Intinkala. This site is at risk of being lost due to “lack of care and conservation. Vandalism w[as] recorded as inscriptions on rocks and trash are [all] over the place.”³⁷ Further damage is precipitated by the presence of a regularly utilized soccer field established next to the site.³⁸

Another disturbing fact is that archaeologists are uncertain what sites are being looted.³⁹ According to archaeologist Dr. Donna Yates, she excavated a Bolivian site following all of the proper procedures, including reporting the finds to the government. Upon visiting the site ten years later, she found that artifacts discovered during her earlier excavation remained uncatalogued or were not properly stored.⁴⁰

31 “Turismo Masivo Ponen en Peligro Patrimonios de la Humanidad,” *Conoce los Patrimonios de la Humanidad que están en Peligro en América Latina* (June 18, 2015).

32 Anahí Cazas and Margarita Palacios.

33 Ibid. This particular site, specifically the pyramid, was of particular concern in AAMD’s written testimony for the last request for renewal, 5 years ago.

34 Ibid.

35 Ibid.

36 Ibid.

37 Ibid.

38 Ibid.

39 Donna Yates, “Reality and Practicality,” 5-6.

40 Ibid, 17 fn 13.

E. Requiring a National Inventory and System to Document and Track Incidents of Looting and Return of Cultural Patrimony

The CPIA requires Bolivia to comply with the Convention. Bolivia's level of compliance with the second determinant, by reference to the Convention, specifically Article V, is questionable. Article V requires Bolivia:

“ . . . to set up within [its territory] . . . one or more national services, where such services do not already exist, for the protection of the cultural heritage, with a qualified staff sufficient in number for the effective carrying out of the following functions:

...

(b) establishing and keeping up to date, on the basis of a national inventory of protected property, a list of important public and private cultural property whose export would constitute an appreciable impoverishment of the national cultural heritage ”⁴¹

While a registry was created, the registry does not appear to have been updated since the 1980s and a database of stolen items is simply unavailable to anyone outside of the Ministry of Culture – *even law enforcement officials*.⁴²

The MOU calls on Bolivia to “devise and maintain a system to document and track incidents of looting, interdiction, and return of archaeological materials, similar to the system in place for Colonial materials.”⁴³ AAMD's research failed to show that any such system has been created. Though there is a registry of cultural property in museums and churches, it is only a paper file, which has been kept by one dedicated individual.⁴⁴ This registry has never been digitized, severely limiting its value to police, customs agents, and others.⁴⁵ The obvious lack of records, political will, and clarity on the agencies responsible for custody make Bolivia an intriguing destination for looting.⁴⁶ This cannot be considered progress - much still remains to be done.

As previously mentioned, customs officials seem to be more concerned with issues of immigration than policing cultural heritage leaving their country. In reviewing the Interpol Database for Stolen Works of Art for the last five years, only 10 cases have been reported with a total of 74 objects reportedly stolen – all of which were ecclesiastical cultural property. *Nothing* was reported stolen from archaeological sites or museums, which is odd—if not

⁴¹ UNESCO, *Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property* (November 4, 1970, Paris); http://portal.unesco.org/en/ev.php-URL_ID=13039&URL_DO=DO_TOPIC&URL_SECTION=201.html (Accessed May 2, 2016).

⁴² Donna Yates, “Reality and Practicality,” 5.

⁴³ MOU, Art. II(F).

⁴⁴ Donna Yates, “Reality and Practicality,” 4.

⁴⁵ *Ibid.*

⁴⁶ Tráfico que continua: El Patrimonio de Bolivia sale por las Fronteras,” *EJU!* (August 22, 2015).

altogether inexplicable—given the voluminous reports of looting and thefts found in news sources, journals, and other media.⁴⁷

V. Cultural Exchange and Loans

The MOU requires that Bolivia “shall endeavor to permit the exchange of its archaeological and ethnological objects for cultural, educational and scientific purposes.”⁴⁸ As indicated previously in this Statement, for many reasons the level of exchange between Bolivian institutions and American museums is incongruous with Bolivia’s rich cultural heritage. Clearly, efforts must be made on both sides to improve this situation, but Bolivia must do its part. Currently, there is a complex system of local, regional, and national governmental authorities, all of which have or believe they have approval rights with respect to loans. There is no central registry for potential borrowers to determine what is available and where it is located. There are no national standards for lending. Progress in all of these areas could change the perception that Bolivia is incapable of making significant loans.

VI. **Recommended Modifications**

If the Committee determines to recommend extending the MOU, it must be revised in several respects in order to address ongoing situations of paramount concern.

A. The MOU Should Provide for Periodic Review of Progress.

Article II of the MOU should be amended to provide that, on an annual basis, Bolivia will provide the Committee with reasonable proof of its compliance with the MOU and resulting impact on the illicit activity it is designed to prevent. Only then can there begin to be any assurance that the current situation is improving. The MOU is a *binding, legal agreement* between the United States and Bolivia. It is not aspirational, but mandatory. Where the United States freely agrees to restrict the import of cultural property from which Americans otherwise would benefit, requiring the beneficiary of such restrictions to fulfill its own promises, and to provide regular, factually supported, reports of progress is entirely reasonable.

B. The MOU Should Implement Specific Measures Streamlining Cultural Exchange.

Based on the collective experience and input of its members, the AAMD identified several areas in which the Committee could improve the MOU in order to streamline and facilitate cultural exchange with Bolivia. Specifically, Article II of the MOU should be amended to provide that:

- Establishment of Consistent and Prompt Outbound Approval Process. Bolivia will endeavor (a) to establish and publish a uniform outbound loan and exhibition approval process applicable to all of Bolivia; and (b)

⁴⁷ Interpol Database reveals three thefts in 2011, two thefts in 2012, three thefts in 2013, one theft in 2014, and one theft in 2015.

⁴⁸ MOU, Art. II(B).

to adhere to a prompt review of proposed outbound loans and exhibitions.

- Publication of Objects Available for Long-Term Loans. Bolivia will establish a centralized database or clearinghouse providing information (e.g., the office of the Minister of Culture and Tourism) regarding objects that are available for long-term loans.
- Publication of Procedures to Request Long-Term Loans. Bolivia will publish on a Ministry of Culture and Tourism website the procedures, contact addresses and requirements for American museums to request long-term loans.
- Publication of Stolen Items. Bolivia will create a database, with images of objects that have been stolen or illegally exported and make that list available publicly.

VII. Conclusion

There appears to be a perception that MOUs, once implemented, are perpetual and immutable. This is clearly not the intent behind the CPIA and the Committee should scrutinize carefully Bolivia's request to extend the MOU. A reasonably objective evaluation of Bolivia's efforts over the past five years demonstrates that there are significant issues concerning protection of its cultural patrimony that must be discussed with Bolivia by the Committee, and that there are legitimate questions about the benefit of the MOU in deterring a serious situation of pillage. Furthermore, little progress has been made in five years with respect to cultural exchange, an issue of vital importance to American museums and the public they serve.

If the Committee determines to extend the MOU, then it must do so with a major overhaul of Article II to address *bona fide* concerns of those impacted by its terms. To be frank, the "boilerplate" used in the past and in most MOUs proves woefully inadequate in providing measurable goals for subsequent review by the Committee or comment by the field. The AAMD is happy to do its part in this process, but governments that control the processes and procedures around cultural exchange must do their part as well. The Committee should seize upon this opportunity to recommend amending Article II to provide real and tangible benefits for the American public, to initiate oversight systems to assure compliance, and to open a meaningful dialogue with Bolivian officials about creating a renewed effort at effective cultural exchange. For its part, the AAMD has already taken steps to assist in this process by meeting with Bolivian officials about loans and approvals.

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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.