

COSTA RICA

NATIONAL REPORT ON THE IMPLEMENTATION OF THE 1970 CONVENTION ON THE MEANS OF PROHIBITING AND PREVENTING THE ILLICIT IMPORT, EXPORT AND TRANSFER OF OWNERSHIP OF CULTURAL PROPERTY

2011 - 2015



ANNEX I
GUIDELINES FOR THE PREPARATION OF REPORTS BY MEMBER STATES
ON THE APPLICATION OF THE 1970 CONVENTION ON THE MEANS
OF PROHIBITING AND PREVENTING THE ILLICIT IMPORT, EXPORT
AND TRANSFER OF OWNERSHIP OF CULTURAL PROPERTY

As far as practicable, it is recommended that Member States follow all of the points contained in this draft. In its contribution, however, the State may disregard any aspects on which no information is available. Lastly, even though some points are framed as questions, the document must be regarded more as a guide than as a questionnaire.

I. Information on the implementation of the UNESCO Convention of 1970 (with reference to its provisions)

1. Ratification of the Convention

(a) Has this Convention already been ratified?

Yes, approved through Act 7526, which was published in "La Gaceta", on August 16, 1995.

The approval process was long and complicated due to political and legal issues.

(b) If not, please indicate, where applicable:

- the stage of the ratification process reached by the State concerned (close to ratification, under way, actively under preparation, not considering ratification in the short, medium or long term);
- obstacles or difficulties encountered in completing the ratification process (whether legal, political or practical) and the means of overcoming them;
- the extent to which UNESCO can assist in completing the process?

2. Implementation in the national legal system and in the organization of services

(a) Give the references of the principal national regulations adopted in order to implement the 1970 Convention?

- *Act No. 7 of October 6, 1938 and its regulations. Archeological Heritage*
- *Act No. 4711, published on December 21, 1970. Recommendations concerning the Preservation of cultural property endangered by public works*
- *Act No. 5980, published on December 24, 1976. Cultural and Natural Heritage Convention*
- *Act No. 6360, published on August 20, 1979. "San Salvador Convention"*
- *Act No. 6703, published in January of 1982. Archaeological Heritage.*
- *Decree No. 19016-C, published on June 12, 1989. National Archaeology Commission.*

- *Act No. 7526, published on August 16, 1995. UNESCO 70 Convention.*
- *Decree No. 28176, published on October 19, 1999.*

(b) A definition of “cultural property” agreeing with the definition proposed by the 1970 Convention is important in order to increase the effectiveness of international cooperation. State what definition is used by the national laws of the country concerned.

Definition of cultural property

“Article 1: all archaeological artifacts found on Costa Rican soil prior to the Spanish conquest, including monuments of the same era, which may not fall under this specific heritage through the enactment of this law, belong to the State“ Act No. 7 of 1938)

Definition of national archaeological heritage:

All movable and immovable property, produced by cultures prior to or contemporaneous to the establishment of the Hispanic culture in the country, as well as any human remains, flora and fauna related to these cultures, are considered national archaeological heritage.” (Act No. 6703 of 1982)

(c) Have specialized units been established in order to prevent and combat trafficking and ensure international cooperation for the protection of cultural heritage? Within the Heritage Department? In other government departments (police, customs)?

Yes. We have a department that specializes in prevention and procedures related to the illegal trafficking, both nationally and internationally, of pre-Columbian artifacts. The department is run by the National Museum of Costa Rica through the Department of Cultural Heritage Protection.

At the national level, we work with the Judicial Investigation Agency (Organismo de Investigación Judicial, OIJ), Customs and with the Police and Public Ministry.

At the international level, and when necessary, actions are coordinated with Interpol

(d) Describe briefly the administrative coordination of the activities of these specialized units, especially with the police and customs authorities.

A report is received, usually by phone, information is gathered and an Official letter to the Director of the Judicial Investigation Agency is prepared. The official letter is sent to the branch closest to where the activity was reported. A file is created for each report and the information is entered into a database.

Professionals from the National Museum provide support at the moment of confiscation by determining authenticity and assisting in packing. Objects are received in legal deposits.

With reports from customs officials, a call is received and the issue is addressed immediately. On occasion, an official letter is sent requesting a visit from an expert.

- (e) Are working meetings held to enable police officers, customs officials and ministerial representatives to meet and coordinate their activities?

Training sessions, regarding legislation and procedures pertaining to archaeological heritage, are held at least once a year.

3. Inventories and identification

- (a) State briefly the extent to which inventories provide for the risks of misappropriation and theft .CL/4102 Annex I – page 2

There are two inventories for archaeological treasures, one corresponds to artifacts that the law considers private property and the other corresponds to artifacts that are considered property of the State.

All artifacts are registered in the database. We do not believe that there are risks of misappropriation and theft regarding inventories.

- b) Specify the degree of precision, at the national level, of the definition of “cultural property” covered by international conventions (see above I.2(b)). State whether “national treasures” are identified in an official, tentative or exhaustive list.

At the “cultural property” level, we use the term "patrimonio cultural" which translates to "cultural heritage" and more specifically "national archaeological heritage" and "architectural heritage".

- (c) To what extent is the Object ID standard used? Is the standard adapted to the State’s needs?

The “Object ID” format is not used as a standard to document collections; the formats used in the databases are much broader and based on the needs of the collection.

It should be noted that some of the most important categories, such as description, photograph, dimensions and origin are used, but not all categories are used.

- (d) Are there systems to combat theft and to train museum staff and have specific measures been adopted for libraries, archival and manuscript repositories, and any specialized units established to monitor them?

Yes, there are security systems in place that are active 24 hours a day and all computers and databases are password protected.

The General Services department is responsible for security and the Computer Department is responsible for our databases. The collections are located in security deposits that are managed by the Department of Cultural Heritage Protection.

4. Archaeological excavations

- (a) Summarize the basic principles of the regulations on archaeological excavations and on the monitoring of excavations in force in the country.

The National Archaeological Commission, integrated by representatives from the University of Costa Rica, the Ministry of Education, the National Commission of Indigenous Affairs, the Heritage Center and the National Museum, is responsible for authorizing excavations.

Researchers must have a degree in archaeology, be duly registered with the National Archaeological Commission, submit a research project and, once the project is finalized, must turn all materials over to the Department of Cultural Heritage Protection. All drawings, maps, field journals and photographs must be turned over to the National Archaeological Commission and to the Department of Anthropology and History of the National Museum.

All excavations are monitored by the National Museum, through the Department of Anthropology and History.

- (b) Is there a recurrent problem of illegal excavations? If so, what are the reasons and when did it begin? What steps have been taken to combat this scourge?

Yes, the problem is recurrent, usually in touristic development areas or in agricultural areas. While illegal excavations are inspected as soon as they are reported, sometimes we are, unfortunately, not notified in time.

Reports are processed and inspections are carried out in areas where there are known archaeological sites.

5. Monitoring of the export and import of cultural property

- (a) Give an estimate of the scale of the illicit export or import of cultural property. Are up-to-date statistics compiled on the theft of cultural property?

We believe that there has been a decrease in both national and international smuggling, fewer pieces have been confiscated, and fewer reports have been made.

The pieces sold at auction circulate several times in the different auction houses.

The number of reports has gone from some 25 to 30 reports and confiscations to 5 for the year of 2015.

- (b) Is the illicit export of cultural property a recurring problem? If so, for which reasons (lack of financial and human resources, shortcomings in the legal supervision framework, etc.)?

The illicit export of cultural goods is also a recurring issue. We do not really know if there has been a drop in exports or if a new unknown system is being used.

The training of airport personnel has been very effective for detecting pieces, primarily crafts, leaving the country.

- (c) What are the main rules (administrative and legal) for monitoring the export and import of cultural property (existence of an export certificate, public information about the rules in force)? What categories of cultural property are covered by the rules?

Customs officers and the police control the exit of all kinds of goods and are legally authorized to detain the goods and contact the National Museum when in doubt.

Export certificates are not used. An official letter is needed to export replicas and another one is needed for the official export permits. This is for original pieces that always travel as accompanied baggage.

- (d) Do the rules provide for the restitution of illicitly imported cultural property?

Pre-Columbian pieces are seldom detected; most of the pieces confiscated are reproductions or fake.

- (e) What are the main obstacles encountered in securing the restitution of illicitly exported cultural property? What type of obstacles are they (administrative, legal or political) and why do they arise (legal loopholes, unwillingness by importing countries, lack of international cooperation, etc.)?

The biggest obstacle is that in countries that sell pre-Columbian artifacts do so illegally. It is a free commercial activity and, unless the holder is compensated for the piece, there is no way to recover the artifacts.

The objects offered for sale come from illicit excavations and exports and therefore do not have the documentation needed to support a claim.

- (f) If the country has succeeded in securing the restitution of a stolen cultural object, describe the circumstances and state whether that involved legal proceedings, arbitration or alternative dispute resolution.

The problem with arbitration, or alternative resolutions to disputes, is the fact that the UNESCO 70 Convention refers to the "good faith" of the holder and financial compensation. This is not viable for Costa Rica because the commercial trade of these artifacts is not permitted and to financially compensate the holder is to carry out an economic transaction not permitted by our laws.

6. System for trade-in, acquisition, ownership and transfer of cultural property

- (a) Give a brief description of the cultural goods market in the country (financial volume of the market, number and turnover of auction houses including via the Internet).

In Costa Rica, there are no open Markets for goods. There have been a few cases of sales, in the country, over the Internet on the "OLX" site, but they were reported immediately and the pieces were confiscated.

Most galleries sell paintings, sculptures and modern crafts. Some places sell "antiques" (furniture, coins, bills, etc.), which is not restricted.

- (b) What are the main rules governing trade in cultural goods? Are control measures in place for such trade (maintenance of a police register), in particular through the Internet (for example, reference to the basic measures proposed by UNESCO, INTERPOL and ICOM)?

There are no stores that trade in pre-Columbian artifacts; there are other types of antique shops.

Reports regarding trade are sent to the Judicial Investigation Agency for further investigation, at a national level, and to Interpol or the Costa Rican Ministry of Foreign Affairs, at an international level.

- (c) Do measures exist to control the acquisition of cultural property (for example, mechanisms to prevent museums and similar institutions from acquiring cultural property exported illegally from another State)? CL/4102 Annex I – page 3

National archaeological treasures belong to the State, which is why all recovered artifacts must be surrendered to the National Museum of Costa Rica.

If a Museum would like to exhibit pre-Columbian artifacts, this can be done through a transfer of custody or a temporary loan agreement.

- (d) Specify the existing legal system concerning ownership of cultural property:

- Is the principle of inalienability applied to cultural items in national collections and objects originating in heritage sites?

The UNESCO Convention of 1970 is Costa Rican Act No. 7526, which states in article 13, paragraph d, that they are imprescriptible and inalienable.

- What is the status of yet unfound cultural objects, of cultural items found by chance and archaeological artifacts found during legal or illegal excavations?

All objects obtained from legal or illegal excavations belong to the State and must be turned over to the National Museum, either by the holder or the person who discovered them.

The law establishes sanctions for anyone who finds an object and does not notify the National Museum or the local authorities.

Artifacts obtained through legal excavations, authorized by the National Archaeological Commission, are turned over to the National Museum, along with an inventory list.

- Are there any due diligence requirements in place?

Yes, in the case of legal excavations, the researcher must surrender all artifacts to the National Museum, as well as submit all field diaries.

In the case of artifacts obtained from illegal excavations, a document is drawn up detailing the number of artifacts along with the personal details of the person turning in the pieces.

- What are the rules governing the search of provenance?

Knowledge pertaining to the country's archaeology is referred to, and information generated about archaeology, which is vast and often well illustrated through drawings and photographs, is consulted.

Catalogues prepared for national and international exhibits are an important source of information for artifacts from other countries.

The style and details represented in the piece is key in determining provenance and authenticity.

- (e) Are there special rules on the transfer of title deeds in respect of cultural property? If so, please summarize their content.

There are no special rules for the transfer of title deeds for pre-Columbian artifacts. The artifacts are either private property, duly demonstrated and registered, or are property of the State.

7. Bilateral agreements

- (a) List the bilateral agreements concluded with other countries on the import, export and return of cultural property and comment briefly on their results.

Ecuador and in process with the United States for 2015

In implementing the San Salvador Convention, we have returned pieces to Guatemala, Honduras, Panama and Peru.

- (b) What conditions are set by the importing country with regard to the admissibility of requests for restitution from a country of origin?

The conditions of eligibility to import or request the restitution of an artifact is an expert report submitted by the objects country of origin, the corresponding permits or authorizations and the reason for import.

In the event of restitution, administrative proceedings are initiated in order to ensure due process on all parts, and, ultimately, a resolution known and accepted by the Board of Directors of the National Museum is issued.

If objects must be restituted, the issue is resolved at the administrative level and the objects are delivered the Ambassador of the country of origin.

- (c) Apart from these agreements, is there administrative aid or any other type of cooperation with neighboring countries, particularly in respect of police and customs services?

The Costa Rican Ministry of Foreign Affairs carries out all services required

II. Code of ethics, awareness raising and education

Ethical standards

- (a) Are the UNESCO International Code of Ethics for Dealers in Cultural Property and that of ICOM for museums known to the professionals concerned (in particular, curators, antique dealers, merchants and collectors)? How is their observance checked?

The Code of Ethics is applied to all things indicated therein, while in compliance with local legislation.

Awareness raising and education

- (b) Are the "One hundred missing objects" series and the ICOM Red Lists disseminated and read?

Yes, it is a document that is well known and discussed during training sessions. The document must be printed up on a larger scale in order to disseminate among judges, prosecutors and to police and customs officials in general.

- (c) Briefly describe activities carried out to raise the awareness of the authorities and educate the public, children in particular, regarding the serious damage that can be caused by illegal excavations, theft of cultural property and illegal export. How far can UNESCO contribute to these activities?

Activities carried out with the authorities are generally aimed at letting people know that there are laws to protect and procedures in place to coordinate with the National Museum.

When there is enough time, a practice session is carried out using original and fake pieces to demonstrate differences between them.

We believe that UNESCO could help with the printing of displayable materials or of brochures to help disseminate information pertaining to different topics, and therefore increase coverage.

III. Cooperation with other international and regional agencies Police

- (a) What is the state of national cooperation with INTERPOL? What specialized police services can heritage officials call on for enquiries, legal proceedings and punitive measures?

INTERPOL is an office that depends on direct communication with the Judicial Investigations Agency, which, in turn, maintains direct contact with the National Museum.

- (b) If a cultural object is stolen, is the INTERPOL database on stolen objects checked? Is information on the persons implicated in the theft of cultural property transmitted to INTERPOL? CL/4102 Annex I – page 4

Yes, in the event of theft, it is reported to INTERPOL, as is the case of a small format painting that was stolen several years ago.

Unless stolen from a museum or a properly registered home, the theft of pre-Colombian artifacts is not reported.

- (c) Do members of police services follow a specific training programme?

Yes, they do receive training. However, due to a lack of personnel, we do not have a permanent training program.

- (d) Do criminal law provisions allow for the punishment of fraud and theft related to cultural property? Are judges specialized in this field?

The law punishes the trade, transfer, export and attempt to export artifacts, as well as the failure to notify a finding or the use of National Archaeological Commission permits for other purposes.

- (e) Does cooperation exist with the United Nations Office on Drugs and Crime (UNODC)?

There is no partnership with UNODC

Customs

- (f) What is the status of cooperation with the World Customs Organization (WCO) and which specialized customs services can assist heritage officials in preventing the illicit export of cultural property?

We have not received nor requested cooperation on the issue.

- (g) Do members of the customs administration follow a specific training programme?

Some people participate in training activities, but it is not common practice.

- (h) Is the UNESCO-WCO Model Export Certificate for Cultural Objects used?

It is not used.

European Union

Have particular measures been adopted to apply the Council of the European Communities Directive 93/7/EEC of 15 March 1993 on the return of cultural objects unlawfully removed from the territory of a Member State.

IV. Emergency situations and heritage at risk

- (a) What is the strategy in place in your country to face emergency situations for heritage in case of natural disaster or conflict?

We do not have a strategy designed to deal with natural disasters or conflicts. Collections are located in museums with 24-hour security. The entrance to collections deposits is restricted and they are equipped with alarm systems.

In the event of a natural disaster, the shelves on which the objects are found are attached one to another and a nylon rope is used to prevent them from falling.

We are in the process of obtaining a document on this subject for those sites nominated by UNESCO.

- (b) More particularly, what are the measures undertaken to implement UNSC Resolution 2199 (paragraph 17, 12 February 2015) for the protection of Syrian and Iraqi cultural heritage?

No specific measures have been taken.

V. Other legislative, legal and administrative measures taken by the State

1. Accession to the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects

- (a) Has this Convention been ratified, in addition to that of 1970?

Not yet, legal studies are needed to determine if there are any contradictions with national laws.

- (b) If not, please indicate, where applicable:

- the stage of the ratification process reached by the State concerned (close to ratification, under way, actively under preparation, not considering ratification in the short, medium or long term) ;

- obstacles or difficulties encountered in completing the ratification process (whether legal, political or practical) and the means of overcoming them;
- the extent to which UNESCO can assist in completing the process.

The ratification, acceptance or approval of the convention could be in the medium term.

There are legal and political difficulties.

It is important that UNESCO provide assistance regarding the importance of ratifying the UNIDROIT Convention.

2. Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation

Describe the extent to which the State concerned is following the work of the UNESCO Intergovernmental Committee (observer, member, State concerned by a case under discussion, etc.).CL/4102 Annex I – page 5

We do not have an Intergovernmental Committee.

3. UNESCO Database of National Cultural Heritage Laws

Indicate action taken to organize the contribution to the UNESCO Database of National Cultural Heritage Laws and to check whether it contains all historical and existing laws and regulations, including successive amendments. CL/4102 Annex II – page 1

Current legislation has been sent on several occasions to be included in the UNESCO database.