

Statement of the Association of Art Museum Directors Concerning Memorandum of Understanding Between the Government of the United States of America and the Government of Belize Concerning the Imposition of Import Restrictions on Categories of Archaeological Material Representing the Cultural Heritage of Belize from the Pre-Ceramic (approximately 9000 BCE), Pre-Classic, Classic, and Post-Classic Periods of the Pre-Columbian Era through the Early and Late Colonial Periods

Meeting of the Cultural Property Advisory Committee

March 21, 2017

I. Introduction

The Association of Art Museum Directors (the “AAMD”) respectfully submits this statement for consideration by the Cultural Property Advisory Committee (the “Committee”) in connection with the proposed renewal of the *Memorandum of Understanding Between the Government of the United States of America and the Government of Belize Concerning the Imposition of Import Restrictions on Categories of Archaeological Material Representing the Cultural Heritage of Belize from the Pre-Ceramic (approximately 9000 BCE), Pre-Classic, Classic, and Post-Classic Periods of the Pre-Columbian Era through the Early and Late Colonial Periods* (the “MOU”).¹ Pursuant to the Cultural Property Implementation Act (the “CPIA”), the Government of the United States of America and the Government of Belize (“Belize”) entered into the MOU in order to protect archaeological material ranging from about 9000 BCE to approximately 250 years ago, for a period of five years, subject to interim review by the Committee.

II. Overview

Since the MOU was entered into on February 27, 2013, Belize appears to have been unable to make any measurable progress in deterring looting or the illicit trafficking of cultural property. This cannot go unnoticed; to do so undermines the purpose of the CPIA – the equitable principle of helping those who help themselves. The Committee must also review compliance with the MOU itself before recommending renewal.

III. CPIA Determinants

The Committee is required to recommend whether the United States should extend the MOU.² In order to recommend extension, all four determinants for implementing the MOU must be

¹ Memorandum of Understanding between the Government of the United States of America and the Government of Belize Concerning the Imposition of Import Restrictions on Categories of Archaeological Material Representing the Cultural Heritage of Belize from the Pre-Ceramic (Approximately 9000 BCE), Pre-Classic, Classic, and Post-Classic Periods of the Pre-Columbian Era through the Early and Late Colonial Periods, *Bilateral Agreement* (Washington, D.C.: U.S. Department of State, Bureau of Education and Cultural Affairs, February 27, 2013), <https://eca.state.gov/files/bureau/bzmou2013.pdf>.

² 19 U.S.C. §2605(f)(2).

satisfied.³ While there are questions on a number of those determinants, significant concerns exist about two of them, specifically: (i) measures taken by Belize to protect its cultural patrimony do not appear to be commensurate with the protection required under the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (the “Convention”);⁴ and (ii) 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 Belize’s cultural patrimony, appears questionable.⁵ Belize falls short on both of these determinants and, as a result, whether the Committee can conclude that the MOU is achieving the purposes intended by the signers or implemented in accordance with its terms is a matter of genuine debate.⁶

A. Minimal Evidence of Cooperation with Other Countries

Belize is required to take “measures consistent with the Convention to protect its cultural patrimony.”⁷ The MOU requires Belize to “use its best efforts to work with other Commonwealth and European countries to combat the illicit trafficking of Belizean cultural property[,]”⁸ to “continue its efforts to prevent the illegal sale and export of archaeological objects . . . and . . . strengthen cooperation within Central America, and especially with neighboring states, for the protection of the cultural patrimony of the region.”⁹ Belize’s lack of compliance in this regard raises serious concerns.

Other than the Convention, Belize does not appear to be a party to any multilateral agreements focused on protecting cultural heritage and deterrence of illicit trafficking. By contrast, other Central American countries, including countries sharing a border with Belize, are parties to multilateral agreements.¹⁰ While Belize is a party to two bilateral agreements, Mexico and Guatemala, the distinction between Belize and other countries in the area as to multicultural agreements is striking. Furthermore, despite these agreements, looting in Belize remains rampant, particularly with respect to Guatemala, which shares the largest of Belize’s borders under contentious circumstances.

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).

⁶ 19 U.S.C. §2605(g)(2)(B).

⁷ 19 U.S.C. §2602(a)(1)(B).

⁸ MOU, Art. II(F).

⁹ MOU, Art. II(H).

¹⁰ Multilateral agreements reviewed: San Salvador Convention; Central American Convention for the Protection of Cultural Heritage; and Central American Convention for the Restitution and Return of Archaeological, Historical, and Artistic Objects.

Even with these bilateral agreements in place, the Committee should look behind them to the facts. Unfortunately, the bilateral agreement with Guatemala has not resolved the many issues present in the border area. Border disputes with Guatemala date back “more than 150 years.”¹¹ “Guatemala claims 12,272 square kilometers of the territory that today [is occupied by] Belize, representing more than half of that country.”¹² Since 2000, the countries have tried to work together under the Organization of American States to resolve this dispute, one that has been “deemed by all Belizeans to be unfounded and unjust.”¹³ Perhaps illustrating the magnitude of the problem, at one point Guatemala reserved “the right to resurrect its claim to ‘all of Belize’.”¹⁴

The western border with Guatemala seems to have the “greatest cross-border tensions” due to illegal activities including the looting of Belizean artifacts.¹⁵ El Pilar, a unique archaeological site that crosses into Guatemala, illustrates such tensions. In October 2014, it was reported that the site was to be abandoned by Belizean tourist associations due to security concerns. Tourism is not viable because of the “danger lurking right across the border;” a lack of presence of any meaningful security and violence occasioned by bandits.¹⁶ Those coming to the site “run the risk of being robbed”¹⁷ and looting is evidenced by trenches cut throughout the site.¹⁸

Another site on the western border is Chiquibul National Park which, on the Belizean side, lacks “human settlement,” giving way to illicit activity that “is primarily driven by Guatemalan communities.”¹⁹ Lack of security forces and access roads make monitoring this site by the Friends for Conservation and Development and Belize Forest Department “very difficult.”²⁰ To illustrate this difficulty, as of February 2016 there were only nine rangers tasked with patrolling

¹¹ Associated Press, “Guatemalan Troops Mass near Belize Border after Shooting Incident,” *The Guardian*, April 22, 2016, sec. World news, <https://www.theguardian.com/world/2016/apr/22/guatemalan-troops-mass-belize-border-shooting-incident>.

¹² EFE, “Belice Pide Investigar Incidente En Frontera Con Guatemala,” *Prensa Libre*, March 20, 2016, <http://www.prensalibre.com/guatemala/politica/belice-pide-investigar-incidente-en-la-frontera-con-guatemala> (translated).

¹³ Adele Ramos, “Guatemala’s Exact Claim over Belize Still Undefined,” *Amandala Newspaper*, July 31, 2015, <http://amandala.com.bz/news/guatemalas-exact-claim-belize-undefined/>.

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ “Abandoning El Pilar due to Security Concerns,” *7 News Belize*, October 1, 2014, <http://www.7newsbelize.com/sstory.php?nid=30225>.

¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ Francisco Sierra, “Chiquibul National Park Jeopardized by the Lack of Agreement on Borders,” *Mountain Wilderness*, February 14, 2016, <http://www.mountainwilderness.org/2016/02/14/chiquibul-national-park-jeopardized-by-the-lack-of-agreement-on-borders/>.

²⁰ Ibid.

a park spanning the 45 km border 24 hours/day, seven days/week.²¹ Furthermore, while “looting of cultural artifacts” at Chiquibul is a serious concern, so is safety. In 2014, Tourism Police Officer, Danny Conoroque, was shot and killed by bandits, once again demonstrating the need for adequate security and training for Belize’s tourism industry to be viable.²²

Due to “the density and remoteness of the jungle, as well as Belize’s small population and understaffed police and defense forces[.]” looters slip almost effortlessly through the relatively open and unprotected borders.²³ Belizean police admit that their “checkpoints are easily avoided ‘by simply walking through the jungle.’”²⁴ Such porous borders caused Belize to become “a strategic point in international trafficking of all sorts of goods.”²⁵ Moreover, “many of the criminals operating Belize’s borders are former Central American paramilitaries....commonly found better armed than police.”²⁶ Simply put, Belize must do more to resolve these issues.

B. Internal Laws Appear to be Unenforced or of Minimal Impact

In order to have a real deterrent effect, Belize’s cultural heritage laws should be revised. Nowhere is this more evident than in the case of Noh Mul.

Noh Mul, one of Belize’s largest Mayan pyramids and known as the site of “some landmark work on trace element analysis of obsidian tools,” was destroyed by a private construction company in May 2013.²⁷ The pyramid was reduced to rubble while digging for crushed rock for use in roadways the company was building.²⁸ According to Jaime Awe, then Director of

²¹ Ibid.

²² Ibid. In response to Danny Conoroque’s killing, 12 members of the Belize Defence Force were stationed permanently at the Caracol Conservation Post within Chiquibul in 2015. See Adele Ramos, “...Don’t Let Danny Die in Vain!” *Amandala Newspaper*, July 24, 2015, <http://amandala.com.bz/news/dont-danny-die-vain/>.

²³ Donna Yates, “Reality and Practicality: Challenges to Effective Cultural Property Policy on the Ground in Latin America,” *International Journal of Cultural Property* 22, no. 2–3 (2015): 345. The ability for police to respond to any incident is limited due to the fact that they understaffed and poorly equipped, see Robert Curley, “Crime and Safety in Belize,” *About.com Travel*, July 8, 2016, <http://gocaribbean.about.com/od/belize/a/Crime-And-Safety-In-Belize.htm>.

²⁴ Donna Yates, “Reality and Practicality: Challenges to Effective Cultural Property Policy on the Ground in Latin America,” 345.

²⁵ Ibid, 346.

²⁶ Ibid.

²⁷ Donna Yates, “Ancient Temple Bulldozed in Belize for Road Construction,” *USI - Union Solidarity International*, May 14, 2013, <https://usilive.org/ancient-temple-bulldozed-in-belize-for-road-construction/>.

²⁸ Vincze Miklós, “Ancient Archeological Sites That Were Destroyed by Stupid Humans,” *io9*, October 8, 2013, <http://io9.gizmodo.com/ancient-archeological-sites-that-were-destroyed-by-care-1442434226>.

Belize's National Institute of Culture and History's (NICH) Institute of Archaeology, "These guys knew that this was an ancient structure. It's just bloody laziness."²⁹

Ultimately, the directors of the construction company, Denny Grijalva and Emelda Grijalva, reportedly faced two charges:

"removing earth from an ancient monument without a permit contrary to Section 61," and "willful damaging of an ancient monument" contrary to Section 62 (1), (a) read along with Section 66 (1) of NICH Act Chapter 331 of the Substantive Laws of Belize, revised edition 2003.³⁰

Javier Nunex [the company's project manager] and Emil Cruz [the company's excavator] were reportedly charged with:

"causing the removal of earth from an ancient monument without a permit," contrary to Section 61 of the NICH Act, Chapter 331 of the Substantive Laws of Belize revised edition 2003.³¹

Three years after the events, a guilty verdict was handed down with the maximum penalty³²—a mere \$6,000 fine for each offender.³³ "Representatives from the office of the Director of Public Prosecutions stated that [Noh Mul] highlights the need for laws governing this type of offense to be revisited."³⁴

Still others recognize the nominally deterrent effect of relatively minimal, monetary penalties. Francisco Estrada-Belli, a professor at Tulane University, stated "I don't think I am exaggerating if I say that every day a Maya mound is being destroyed for construction in one of the countries where the Maya lived."³⁵ Because this is not taken seriously, "the only way to stop it is by showing that it is a major crime and people can and will go to jail for it."³⁶

Unfortunately, to date, AAMD cannot find evidence that laws with stronger penalties were passed since the Noh Mul verdict despite concerns raised over the minimal fine. Stronger

²⁹ Associated Press, "Bulldozers Destroy Mayan Pyramid in Belize," *CBS News*, May 13, 2013, <http://www.cbsnews.com/news/bulldozers-destroy-mayan-pyramid-in-belize/>.

³⁰ "Noh Mul Destruction Calls for Increase in Penalties," *The San Pedro Sun News*, April 28, 2016, <http://www.sanpedrosun.com/arts-culture/2016/04/28/noh-mul-destruction-calls-for-increase-in-penalties/>.

³¹ *Ibid.*

³² Rowland A. Parks, "Guilty of Destroying Ancient Maya Site, Noh Mul!," *Amandala Newspaper*, April 19, 2016, <http://amandala.com.bz/news/guilty-destroying-ancient-maya-site-noh-mul/>.

³³ "Noh Mul Destruction Calls for Increase in Penalties."

³⁴ "Noh Mul Cost Grijalva \$6,000," *The Reporter Newspaper*, April 22, 2016, <http://www.reporter.bz/front-page/noh-mul-cost-grijalva-6000/>

³⁵ Associated Press, "Bulldozers Destroy Mayan Pyramid in Belize."

³⁶ *Ibid.*

penalties and effective prosecution must be a focus in order to have any impact on deterring looting and destruction of Belize’s cultural property and heritage sites.

C. Minimal Efforts to Inventory and Publicize Protected Property

Article 5 of the Convention requires Belize:

“ 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....”³⁷

In Belize, there is a shortage of funds available to protect cultural heritage sites and “even fewer people with archaeological training.”³⁸ While the national library hopes to make records publicly available online, “as of 2014, they lacked the appropriate scanning equipment and more importantly, lacked the staff needed to accomplish this task.”³⁹ It does not appear that this situation has changed.

The MOU similarly requires Belize to “use its best efforts to ensure the practices that have given rise to its positive international relationships, including its efforts related to loans of Belizean cultural property ... are institutionalized as the standard practices within the National Institute of Culture and History.”⁴⁰ Without a central registry in Belize, potential borrowers have no way to determine what is available and where the property is located. The current system of local, regional, and national governmental authorities is complex and difficult to navigate due to a lack of information and broken links found on the NICH website. National standards for lending do not seem to exist. Progress in all of these areas is absolutely necessary and, based on the Convention, compulsory.

³⁷ 1970 Convention, Article 5.

³⁸ Donna Yates, “Ancient Temple Bulldozed in Belize for Road Construction.”

³⁹ Donna Yates, “Reality and Practicality: Challenges to Effective Cultural Property Policy on the Ground in Latin America,” 344.

⁴⁰ MOU, Art. II(D). Cultural exchange is also another of the four determinants the Committee must consider in determining whether the import restrictions under the MOU are consistent with the general interest of the international community in the interchange of cultural property. See 19 U.S.C. §§2602(a)(1)(D) and 2602(e)(1).

IV. Review of the Designated List

The import restrictions under the MOU are broad and blanket an incredibly long time period. Legislative history shows that the bilateral agreements permitted under the CPIA were intended to apply *only* to a “narrow range of objects possessing certain characteristics.”⁴¹ The MOU, like so many others,⁴² includes objects created, in some instances, over a period in excess of *eleven thousand years*, without any limitation as to archaeological sites, geographical location, or cultural identity. This can hardly be what Congress meant when it confined archeological material to objects of “cultural significance.”⁴³

The limitations expressed in the CPIA and its legislative history are meant to preserve the delicate balance between the United States’ interest in supporting the international market for art against situations where protection is appropriate due to jeopardy from the pillage of archaeological and/or ethnological material. A designated list as broad and undefined as that of Belize certainly raises questions as to whether that balance has been or can be achieved. By way of example, the description for “stone” objects gives little guidance to the importer:

“Objects in any type of stone, including jade, greenstone, obsidian, flint, alabaster/calcite, limestone, slate, and other.”⁴⁴

Such descriptions are hardly narrow, identify no culturally significant or distinctive characteristics, and easily give rise to the interpretation that *all* artifacts older than 250 years are restricted. Furthermore, while the Peruvian designated list is no model of clarity, the Committee should compare the lengthy description in that list with the less-than-one-page explanation in the Belize designated list. Blanket restrictions of all artifacts are inconsistent with the plain language of the CPIA and the legislative intent behind it.

V. Recommended Changes

A. Article II

Considering the foregoing, AAMD recommends that, if the MOU is renewed, Article II be revised to incorporate or expand upon the following concepts:

⁴¹ “Implementing Legislation for the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property,” *U.S. Senate Report 97-564* (Washington, D.C.: U.S. Senate, 1982), 4, <https://eca.state.gov/files/bureau/97-564.pdf>. “Only the term ‘archaeological or ethnological materials of the State Party’ requires fuller explication here. The Convention does not define these terms. The definition is intended by the committee to reflect the understanding of U.S. negotiators that the application of import restrictions under agreements entered into under Section 203 or emergency actions taken under Section 204 is limited to a narrow range of objects possessing certain characteristics” (Ibid, 4). A copy of the report can be found at the following link: <https://eca.state.gov/files/bureau/97-564.pdf> (accessed March 2, 2017).

⁴² For example, the MOU with Peru spans over 13,000 years and Bolivia spans approximately 12,000 years.

⁴³ 19 U.S.C. §2601(2)(C)(i)(I).

⁴⁴ Department of Homeland Security and Department of Treasury, Customs Service, “Import Restrictions Imposed on Certain Archaeological Material from Belize,” Sec. II, *Federal Register* (Washington, D.C., March 5, 2013), <https://eca.state.gov/files/bureau/bz2013dlfrn.pdf>.

- Specific Measures Streamlining Cultural Exchange. The Committee could improve the MOU in order to streamline and facilitate cultural exchange with Belize, whether with respect to loans or opportunities for collaboration on education, research, and/or conservation. Such efforts, if implemented, might have the additional benefit of assisting Belize in other efforts to protect its cultural property, such as through the creation of inventories or databases, potentially at little or no cost to Belize.
- Establishment of Consistent and Prompt Outbound Approval Process. The Committee should require Belize to (a) establish and publish (*e.g.*, on the NICH website) a uniform outbound loan and exhibition approval process and (b) adhere to prompt review of proposed outbound loans and exhibitions.
- Publication of Objects Available for Long-Term Loans. The Committee should require Belize to establish a centralized database or clearinghouse providing information (*e.g.*, the NICH) detailing objects available for long-term loans.
- Publication of Procedures to Request Exhibition and Long-Term Loans. The Committee should require Belize to publish on NICH's website the procedures, contact addresses and requirements for American museums to request exhibition and long-term loans.
- Publication of Stolen Items. The Committee should require Belize to create a database, with images, of objects that have been stolen or illegally exported and make that database available publicly.

B. The Designated List

As discussed above, the Designated List is far too generic and expansive to provide any practical guidance for museums or law enforcement officials alike. It should be confined to those items that are truly significant and can be demonstrated to come exclusively or predominately from Belize.

VI. Conclusion

There is a continued perception that MOUs, once implemented, are perpetual and immutable. This is contrary to the intent of CPIA and the Committee should scrutinize carefully Belize's request to extend the MOU. A reasonably objective evaluation of Belize's efforts over the past five years demonstrates that there are significant issues concerning protection of its cultural patrimony that must be discussed with Belize by the Committee, and that there are legitimate questions about the benefit of the MOU. Little progress has been made in five years, and if the Committee determines that extending the MOU is appropriate, major changes are needed to address *bona fide* concerns of those impacted by its terms.

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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.