

ECUADOR

**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

I. INFORMATION ON THE IMPLEMENTATION OF THE UNESCO 1970 CONVENTION (IN REFERENCE TO ITS PROVISIONS)

1. Ratification of the Convention

(a) Ecuador ratified the Convention on March 24th 1971

2. Implementation in National law and the organization of services

(a) The main national regulations adopted for the implementation of the 1970 Convention are:

- Constitution of the Republic of Ecuador ¹
- Cultural Heritage Law.
- Rules of Procedure of the Cultural Heritage Law
- The Organic Integral Criminal Code
- Organic Code of Territorial Organization and Decentralization

(b) Article 7 of the Ecuadorian Cultural Heritage Law establishes that:

“Art. 7. - It is declared property belonging to the State Cultural Heritage, those comprised in the following categories:

a) Movable and unmovable archaeological monuments, such as: ceramic objects, metal, stone or any other material belonging to the prehispanic and colonial time; fortification ruins, buildings, cemeteries and general archaeological deposits; as well as human remains, flora and fauna, related to the same epochs;

b) Temples, monasteries, chapels and other buildings that have been built during the Colony; paintings, sculptures, carvings, golden objects, ceramics, etc., belonging to the same epoch;

c) The ancient manuscripts and incunables, rare editions of books, maps and other important documents;

¹ Art. 380 of the Constitution of the Republic of Ecuador.

d) *The objects and documents belonging or relating to the precursors and heroes of the National independence or important characters that marked the Ecuadorian History;*

e) *Coins, banknotes, payments, medals and any other objects made inside or abroad Ecuador and belonging to any time of its history, and that are of national numismatic interest;*

f) *Seals, stamps and any other objects of national philatelic interest that have been produced within the country or abroad in any time of its history;*

g) *The ethnographic objects which have a scientific, historical or artistic importance, belonging to the Ethnographic Heritage;*

h) *the cultural goods or objects produced by awarded contemporary artists, will be considered as belonging to the State Cultural Heritage, starting from the time of the artist's death, and also will be considered State belonging those properties that have been awarded by a National Prize during the artist's life; or those that are older than 30 years after their execution;*

i) *Works of nature, whose features or importance have been highlighted by man's intervention or that hold scientific interest for the study of flora, fauna and paleontology; and,*

j) *In general, any object and production that have not been mentioned in the previous items and that are a product of the State's Cultural Heritage of the past and the present times, and that have been declared as State's Cultural Heritage because of their artistic, scientific and historic merits and that have been declared by the Institute as goods belonging to the Cultural Heritage, whether they are under the power of the State, any religious institutions, private companies or individuals. Real estate properties will be considered as part of the State's Cultural Heritage along with their environmental and landscape surroundings necessary to give them the adequate visibility; they must conserve the integrity and setting conditions in which they were built. It is a competence of the Cultural Heritage Institute to define the area of influence².*

(c) In its aim at preventing and fighting against illicit trafficking of cultural properties, Ecuador counts with the following institutions:

- National Cultural Heritage Institute, created in 1978

² Article 7, Cultural Heritage Law

- National Commission for the Fight Against the Illicit Traffic of Cultural Goods, made up of the highest authorities of the following institutions: Coordinating Ministry of Knowledge and Human Talent, Ministry of Culture and Heritage, Ministry of Foreign Affairs and Human Mobility, Ministry of Interior, Office of the General Advocate of the State, General Prosecutor of the State, and National Cultural Heritage Institute at a political level.
- National Technical Committee for the Fight Against the Illicit Trafficking of Cultural Goods, made up of experts of the following institutions: Coordinating Ministry of Knowledge and Human Talent, Ministry of Culture and Heritage, Ministry of Foreign Affairs and Human Mobility, Ministry of Interior, Office of the General Advocate of the State, General Prosecutor of the State and National Cultural Heritage Institute at a technical level.
- Specialized Unit on Investigation of Crimes against the Cultural Heritage, created in August 2011, in charge of the research of illicit acts against the State Cultural Heritage.

(d) The administrative coordination of organization involved in the protection of Cultural Heritage is carried out through the National Commission for the Fight Against the Illicit Traffic of Cultural Goods as a political entity; and, at the technical level it is done by the National Technical Committee for the Fight Against the Illicit Trafficking of Cultural Goods, which is made up of the following institutions: Coordinating Ministry of Knowledge and Human Talent, Ministry of Culture and Heritage, Ministry of Interior, Ministry of Foreign Affairs and Human Mobility, General Prosecutor of the State, Office of the General Advocate of the State and the National Cultural Heritage Institute.

The operational coordination at the research level is done through the Specialized Unit on Investigation of Crimes against the Cultural Heritage, and the control of cultural properties out of the territory is done by the Customs Surveillance Service.

(e) The training is organized annually by the National Technical Committee for the Fight against the Illicit Trafficking of Cultural Goods aimed at public officials, who, due to their administrative competences are obliged to protect the cultural heritage, such as: Police, Customs, City Halls, Post Office, Postal National Agency, Airport and Port Security, so that they know how to proceed in case of an attack to the heritage.

3. Inventories

- (a) Ecuador counts with a software tool called-ABACO- which allows organizing the data of the records and inventories of the cultural heritage properties in an informatics system of great capacity and scope, this system supports directly the analysis and planning of activities such as:
- Elaboration of diagnosis of the current situation of local heritage to guide conservation strategies.
 - Creation of indicators for the elaboration of heritage management and conservation plans.
 - Identification of local economic development axes linked to the enhancement of the cultural heritage.
 - Establishment of preventive measures in case of risks.
 - Development and implementation of standards for the conservation of the heritage.
 - Preparation of statistic reports on the basis of variables comprised within the system, such as: conservation status, property type, location, construction materials, etc.
- (b) The Ecuadorian Cultural Heritage Law in its Article 7 determines what are the goods declared as the State's cultural heritage, there is no status for "National Treasures"
- (c) In 2012, Ecuador implemented the use of the standard "Object ID" of standard fast registration, adapted to the technical aspects of the heritage properties of the country.
- (d) There are systems to combat theft and to train museum staff that have specific measures adopted for libraries, archival repositories of manuscripts and specialized units established to do the corresponding follow up.

During 2008 and 2009, 279 basic security kits were installed at a national level. These preventive systems have been monitored and revised in 2010, 2012 and 2014.

In 2011 the "Guide of preventive measures for the safety and protection of cultural heritage property" was drafted and published, and subsequently in 2012 this document was released to 88 custodians responsible for Cultural Heritage Properties at a national level.

4. Archaeological excavations

(a) According to the Ecuadorian norm contained in Articles 28 and 29 of the Cultural Heritage Law and 64 and 66 of its Regulations, any national or foreign professional is allowed to work in archaeological research in the country, as long as they meet with the established requirements and the concerned regulations. Nevertheless, if they do not follow the above mentioned parameters, they would be considered as illegal excavations, devoid of scientific techniques, configuring through this practice the crime of Cultural Heritage crime, which is regulated by the Integral Criminal chapter on Crimes against the Right of Culture.

(b) Illegal excavations or “huaquerismo” are common place in the country. These archaeological materials are much demanded by collectors, heritage asset dealers and people who buy them as souvenirs ignoring the damage they are so doing to the national heritage. This activity is especially developed in areas that were occupied by human groups, whose cultural production include anthropomorphic and zoomorphic figurines, serving bowls and vases with bright decorative attributes.

Unfortunately, the main actors of these illegal activities are family members that live nearby the archaeological sites, isolated spaces considered marginal places. This sad reality increases with the lack of social-economic development policies, becoming an important economic activity to these groups.

The State, in order to prevent illegal or clandestine excavation, through the Ministry of Production, the Ministry of Economic and Social Inclusion, the National Cultural Heritage Institute, and the participation of craft guilds belonging to the areas where illicit excavations take place, has trained the craftspeople in the production of high quality handicrafts and have also suggested the establishment of local brands of these goods; however, these are not enough and they are not long-term measures to prevent this problem.

5. Monitoring the export and import of cultural properties

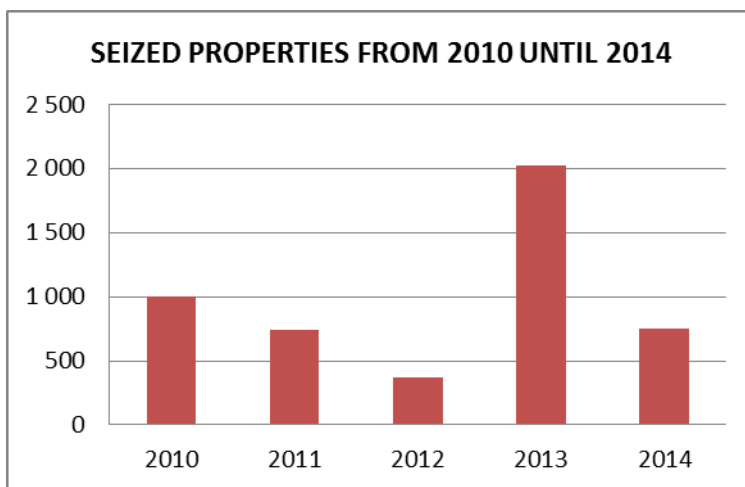
(a) Properties seized at the national level

Thanks to the joint work between the Specialized Unit on Investigation of Crimes against the Cultural Heritage, General Prosecutor of the State and the technicians of the National Cultural Heritage Institute, 4.895 cultural heritage properties have been seized, from 2010 to 2014, as follows:

PROPERTIES SEIZED FROM 2010 TO 2014

YEAR	PROPERTIES FREE OF LEGAL PROCESSES	PROPERTIES UNDER LEGAL PROCESS	TOTAL SEIZED PROPERTIES
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2010	1.002	1	1.003
2011	2	739	741
2012	127	248	375
2013		2.028	2.028
2014	2	746	748
TOTAL	1.133	3.762	4.895



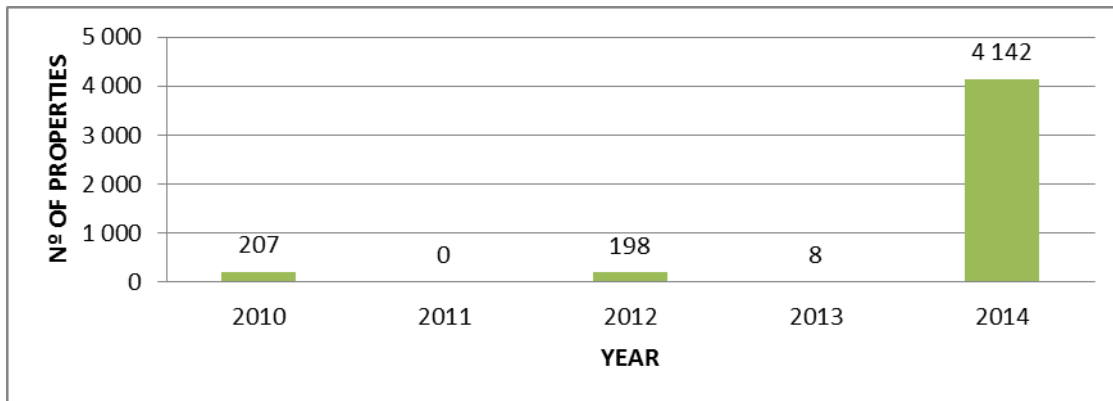
Recovered and returned properties at the international level

Through different diplomatic negotiations done by the Ministry of Foreign Affairs, through its Embassies in different countries, together with the diverse trials carried out by the State's General Advocate abroad, and based on the reports done by the technicians of the National Cultural Heritage Institute, since 2010 up to the present, 4,555 cultural heritage properties have been recovered.

PROPERTIES RECOVERED SINCE 2010 UNTIL 2014

YEAR	NUMBER OF PROPERTIES/GOODS	NUMBER OF FRAGMENTS
2010	207	
2011	0	
2012	198	

2013	8	
2014	3.858	284
TOTAL	4.271	284



SUMMARY:

PROPERTIES RECOVERED AT NATIONAL LEVEL	RETURNED PROPERTIES	TOTAL OF PROPERTIES
4.895	4.555	9.450

Additionally, since 2008 until the present time, the National Cultural Heritage Institute has received 20 reports of theft of goods which belong to the Cultural Heritage.

a) Ecuador does not count with concrete data on illicit exports, however, the presence of archaeological cultural Ecuadorian properties in international auction houses, has been obvious in recent years. In this sense, it is important to highlight that the lack of financial resources has not allowed for the strengthening and installing of control emplacements in airports, ports and frontier areas.

b) The main legal and administrative provisions that regulate the control of export and import of cultural properties are:

- ❖ The Constitution of the Republic of Ecuador
- ❖ Comprehensive Organic Penal Code
- ❖ Cultural Heritage Law

- ❖ Regulations to the Cultural Heritage Law
- ❖ Rules of Procedures for the temporary exit of properties belonging to the Ecuadorian Cultural Heritage
- ❖ Instructions for the control of non-Cultural Heritage properties exit
- ❖ Regulations on activities directed to the Underwater Cultural Heritage.
- ❖ Ecuador has two categories of cultural properties over which control is exercised and an authorization is required to exit the country by a competent authority: 1) cultural heritage properties, in accordance with what has been established in article 7 of the Cultural Heritage Law; and, 2) Non-Heritage cultural properties, in accordance with the Regulation established in the Cultural Heritage Law and the Control Instructive of Non-Heritage Cultural Properties exiting the country.

Our legislation punishes the sending out of the country of any kind of Cultural Heritage properties, even if it is done by the owner of the good, or if it done without the intention to smuggle them out of the country, or to trade them, and even if there is an intention to bring them back to our country.

The State owned cultural heritage properties cannot exit the country; exceptionally, and on a temporary basis they can do so under the following circumstances: 1.- temporary exhibitions or with other purposes of dissemination; 2.- Research; and, 3.- Restorations that cannot be done in our country.

For the above mentioned purposes, it is necessary to count with the authorization of the Director of the National Cultural Heritage Institute-INPC, as stated in article 54 of the Law Regulations for Cultural Heritage, and the Rules of Procedure for the temporary sending out of the Ecuadorian Cultural Heritage Properties, issued by INPC.

Additionally, the Cultural Heritage Law stipulates that the Central Government will seek to conclude international agreements preventing the illicit trade of cultural property and facilitate the return of those which could have been exported illegally from Ecuador; this provision serves two purposes: on one hand, it prevents the consummation of the crime to receive Ecuadorian Cultural Heritage properties, in foreign territories and, secondly, if this occurs, to facilitate it's return to its rightful owner: the Ecuadorian people.

d) The return shall be made through the binational conventions or agreements ratified by Ecuador, with countries involved in the issue, once their provenance and originality has been analyzed and established.

In the present time, Ecuador has signed 17 bilateral agreements and has proposed 54.

e)The 1970 Convention, obliges the States to comply with the following formal requirements prior to the recovery of their heritage properties, which have seriously

affected the implementation of the Convention for their purposes and that have hindered the return of cultural property illegally:

1. - Previous Inventory: it is required that to retrieve the properties, these should be inventoried in a public list, in order to determine their existence and cultural belonging. This requirement does not consider the fact that most of our countries do not have an inventory of their patrimonial universe and that the trafficked properties, mostly archaeological, are product of illegal excavations and therefore countries are unaware of their existence.

2. - Possessor in good faith – compensation: The Convention requires to the complaining to prove the illicit status of the possessor (current) and the bad faith of having acquired a heritage piece.

This implies, in one hand, that States are charged with the proof of the illicit possession; and on the other hand, they will have to compensate the “good will” claimer for the heritage property. In the case of Ecuador, the Ecuadorian properties belong to the State, by Law; therefore these requirements generate an opposite effect to the spirit of the Convention, as there will always be demands upon these kinds of properties.

3.- Date of exit from the country: In the above circumstances, the heritage affected countries are obliged to opt for penal action, which in turn are hampered, as it is required to prove an exit date of the stolen property from its country of origin. This will determine if it has been prescribed illicitly or not, although this is difficult to know under these circumstances as the properties have been removed clandestinely.

4. - Export document: It requires that the State Parties forbid the export of cultural properties from their territories, unless they are accompanied with an export certificate; however they do not require the States Party to forbid the entrance of cultural properties without the certificate to their territories.

f) The country has been successful in the return of a stolen cultural property in the following cases:

LEGAL PROCEDURE

AVILES-MARCILLO CASE.- On July 21st 2006, INTERPOL informs the prosecutor’s office that near 600 Ecuadorian cultural properties have been traded and illicitly trafficked, these comprise the following: golden archaeological pieces, ceramics and other materials, through a web page; thanks to the research undertaken in Miami in coordination with the OIPC INTERPOL in Lyon France, INTERPOL Washington and the

United States FBI, verification was obtained of the original archaeological pieces trafficked from Guayaquil, that where intended to be sold through Internet.

The above mentioned research enables to identify the traders (Edgar Nakache, Ana Cecilia Marcillo Muirragui, Susana María Avilés Marcillo, Luis Alberto Avilés Marcillo, Javier Alfonso Veliz Alvarado), who have been arrested. A total of 168 Ecuadorian archaeological pieces are confiscated. These are part of a 600 heritage pieces collection.

Regarding this case and through appropriate means, the trafficked pieces where brought from the United States, and once they arrived to the country, they have been in custody of the National Cultural Heritage Institute-INPC.

ADMINISTRATIVE PROCEDURE

NORERO CASE – CUSTOMS GENOA, PAVESI AND BARONETO

Since 2004, Ecuador has been undertaking diplomatic efforts and judicial actions, to try and recuperate the archaeological pieces which were illegally in Italy. The hard work done by the Institutions that form the National Technical Committee to fight against the illicit trafficking of cultural properties, allowed on December 22nd 2014 the expatriation of 4.289 pieces from Italy and 284 archeological fragments, belonging to different prehispanic cultures, such as: Chorrera, la Tolita, Capulí, Valdivia, among others.

6. Exchange, acquisition, ownership and transfer of cultural property system

a. - Unfortunately Ecuador does not count yet with a record market volume nor counts with cultural properties sales. Currently, a register of the merchandised sites and a cultural properties production has been drawn at a National level.

b. - Currently, Ecuador counts with a standard that regulates the establishment of sites that are dedicated to the merchandising of cultural properties (Cultural Heritage Law and its Regulation) and it has recorded at a National level 179 sites that commercialize and 228 sites of artisan producer; there is no Regulation for the merchandising of cultural properties. Nor there is a record of the police.

c.- The National Cultural Heritage Institute authorizes any transfer of ownership, either free of charge of properties belonging to the National Cultural Heritage that are registered or inventoried; there are no measures to control the acquisition of presumably illicitly exported properties, the regulation is just for properties belonging to the Ecuadorian Cultural Heritage.

d. - The Ecuadorian Constitution in its article 379, states that the State cultural Heritage Properties are inalienable, unseizable and imprescriptible.

Archaeological properties, such as ceramic, metal or stone objects, or any other materials belonging to the prehispanic and colonial times, as well as human remains, flora and fauna found in the soil or subsoil, or in the seabed of the Ecuadorian territory belong to the Ecuadorian State; even if public or private institutions, comprising all types of companies or private people settled on the premises that find the properties in an intentional or accidental way.

This exclusive ownership of the State is applicable to the properties mentioned in the previous paragraph, which are in the hands of public or private institutions or individuals, prior to the enactment of the Law, whose existence had not been communicated, or shall not have to do so, to the National Cultural Heritage Institute according to the previous article, and through no fault from their current holders, within the terms that the Institute will determine to publish in the press.

e. - The Cultural Heritage Law states, as far as the transfer of ownership of cultural property, the following:

Art. 12. - Any transfer of ownership of objects belonging to the State's Cultural Heritage, whether for free or for a fee, will be authorized by The National Cultural Heritage Institute; their change of emplacement will not be able without the requested authorization. In either case, in the aim to preserve the Cultural heritage such an authorization may be refused.

7. Bilateral Agreements

(a) To the present time, Ecuador has signed 17 bilateral agreements for the protection, conservation, recuperation and return of Cultural Heritage Properties, which have been stolen, looted, transported, trafficked and merchandized illicitly.

Through these agreements, the restitution and the repatriation of the properties from the following countries have come back to the country: Egypt, Italy, Colombia, Chile and Argentina; and Ecuador has returned properties to Colombia.

Agreements have been proposed to 54 countries, from which Ecuador still awaits their answer, most of them are European countries who feel reluctant, except Italy.

(b) The restitution of properties, through bilateral agreements, does not demand any type of additional requirement, but to demonstrate that the property belongs to the State Cultural Heritage.

(c) A part from these Agreements, the Police Specialized Units from the neighbor countries, the police maintains mutual cooperation in cultural heritage issues, inclusively through INTERPOL.

II. ETHICS, AWARENESS AND EDUCATION CODES

Ethics standards

a) Unfortunately, no regulations exist in the country in that respect.

Awareness and education

(a) Ecuador has provided with training aimed at administrative, judicial operators, cultural heritage control and management public institutions.

(b) Until the present time, Ecuador has not benefited from UNESCO's training or material for training of the public in general and children in particular.

III. International and regional cooperation with other agencies

Police

(a) The Specialized Unit on Investigation of Crimes against the Cultural Heritage, "UEIDPC", Works in close relationship with INTERPOL, which is comprised by police officers, enabling to count with firsthand Information and to process it in an efficient manner within the research of crimes against cultural heritage, adopting legal procedures to present to the competent authority.

(b) When UEIDPC learns of a theft concerning cultural property, it immediately proceeds to activate the INTERPOL Network and communicates the issue to the International Organization of Criminal Police-OIPC, known as Regional 4, which corresponds to the South American Zone. When a person is involved and after determining its participation through investigations, the issue is communicated to INTERPOL.

(c) UEIDPC members attend eventual training

(d) The Integrated Criminal Code of Ecuador punishes crimes against the Cultural Right, such as theft and fraud. We do not acknowledge at this time any judges specialized in this field.

(e) Presently there isn't a communication and cooperation channel between UNODC and Ecuador's UEIDPC.

IV. Emergency situations and heritage at risk

(a) Since 2010 location, diagnosis and geo-referencing data collection is being raised for quantitative analysis of population at risk on Ecuadorian movable property according to the ISO 31000:2009 methodology for the Management of Risks.

The diagnosis was applied to a total of 284 museums at national level, museums under-project and those whose collections are stored and others that do not meet any function did not enter within this diagnosis.

Risk management process:

- Establishing the context.
 - Risk identification.
 - Risk analysis.
 - Risk evaluation.
 - Risk management.
- Communication and consultation/ Monitoring and revision

(b)The Ecuadorian State, through the National Technical Committee for the Fight against the Illicit Trafficking of Cultural Goods, has informed on the Resolution to all the control authorities at a National level.

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

The Ecuadorian State has ratified the UNIDROIT 1995 Convention.