

# GLOBAL ART AND HERITAGE LAW SERIES

## PERU



Prepared for

COMMITTEE FOR  
CULTURAL POLICY

Prepared by

**Estudio  
Echecopar.**  
Member Firm of Baker & McKenzie International

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## ACKNOWLEDGEMENTS

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CCP supports public appreciation for the art of ancient and indigenous cultures. It provides resources to educational institutions, press and policy-makers. It encourages policies that preserve artifacts and archaeological sites, adequate funding for site protection, safe harbor in international museums for at-risk objects, uncensored academic research, and the development of regulatory structures that foster the lawful collection, exhibition, and global circulation of artworks.

The Global Art and Heritage Law Series is an initiative of the Committee for Cultural Policy, Inc. In addition to the Global Art and Heritage Law Series, CCP publishes in-depth legal and policy analysis and the online journal, Cultural Property News. The websites of the Committee for Cultural Policy are [www.culturalpropertynews.org](http://www.culturalpropertynews.org) and [www.culturalpropertylaw.org](http://www.culturalpropertylaw.org).

The Committee for Cultural Policy wishes to express its heartfelt thanks to Olivia Franklin and Hazel Levent of White & Case LLP, who brought consummate organizational skills, patience, and dedication as well as legal expertise to this project. Without their generous contributions, the Global Art and Heritage Law Series could not have been completed.

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Cover photo: Iglesia de la Compañía de Jesús, Society of Jesus church, Plaza de Armas, Cusco, Peru. Author Diego Delso, [delso.photo](mailto:delso.photo), 31 July 2015, License CC-BY-SA. Image has been cropped. Contact [diego@delso.photo](mailto:diego@delso.photo)

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## I. INTRODUCTION

The cultural heritage of Peru is perhaps one of the richest in the world. It is the legacy of different peoples and cultures who used to live there hundreds of years ago (the Incas are the best-known example), the arrival of the Hispanic Empire, and different minorities coming from Africa, Asia and Europe during the Republican period. The innumerable amount of architectural monuments, ceramics, textiles and many other artistic expressions and techniques that come from those times are proof of their greatness. The present time is also witness to the expressions of the rich heritage (varied musical styles, dances, narrations, gastronomy, crafts and practices in general), which show the living art of that past greatness.

However, the legal protection of our cultural heritage is a relatively recent development. During the dominance of the Hispanic Empire (1532 - 1821), the Spanish Crown indirectly framed the foundations of the protection of the Peruvian cultural heritage within the concept of ownership of the deposits, treasures and huacas, in order to perceive “*el quinto real*”, a tax linked entirely to mining exploitation. The Ordinances of Toledo in 1574 established the conditions of discovery and exploitation of treasures in burials, huacas or Indian temples, treating these sacred places as if they were mining operations. Even if the aforementioned Ordinances had another purpose, they established limits to the right to private property of the Spanish conquerors <sup>1</sup>.

After the independence from the Spanish Crown in 1821, the view of the Peruvian cultural heritage changed in theory, but not in practice. In 1822, the Peruvian Government issued the Supreme Decree No. 89, which declared the Peruvian Nation as the owner of the remaining monuments of Peru’s pre-Hispanic cultures, created the National Museum, and prohibited the extraction without authorization from the Government of cultural property that was found in the huacas. However, the looting of the pre-Hispanic cultural heritage continued in many places in the nascent Peruvian republic. The predominant view until the end of the 19th century was to see the protection of the cultural heritage as a second-order topic or even as an obstacle to the modernization of the Nation <sup>2</sup>.

At the end of the 19th century, the Peruvian cultural heritage caught the attention of different academics around the world. Many academics came to explore and study the country’s cultural heritage, discovering or in most cases rediscovering, the legacy of pre-Hispanic cultures and making them known to Peruvians. In some cases, the relationship with these academics was tense and conflictive; in part, because some of them took the cultural goods they found to their respective countries and never returned them (the objects taken by Professor Hiram Bingham from the Inca city of Machu Picchu could be the best-known case). However, due to their work and studies, the Peruvian Government understood that knowledge of the history of pre-Hispanic Peru required the preservation of archaeological monuments, and approved specific laws about the protection of the Peruvian cultural heritage.

For example, provisions regarding cultural property were included in the Peruvian Constitution of 1933, which was the first norm to refer specifically to the protection of Peruvian cultural heritage, even though limited to certain type of objects. Article 82 of the said Constitution expressly stated, “Archeological, artistic and historical treasures are under the protection of the State”. One of the main reasons for passing this specific provision in the Constitution was the extensive sale of private collections of archaeological goods to other countries during that time. It was also during this time that the state approved the Law No. 8853 of 1939, which granted a special protection to objects and monuments with historical value from the colonial era.

The Constitution of 1979, which succeeded the one of 1933, is the first norm that expressly recognized the concept of cultural property. Article 36 of the said Constitution expressly stated that, “The deposits and archeological sites, buildings, monuments, artistic objects and testimonies with historical value, which have been declared Cultural Heritage of the Nation, are under the protection of the State. The law regulates their conservation, restoration, maintenance and restitution.” The Constitution of 1979 also expanded the list of objects considered cultural property and recognized the importance of its conservation, restoration, maintenance and restitution. The most important thing of this constitution is its recognition of intangible cultural property, such as folklore, native languages, and other expressions of popular art.

The Constitution of 1993 and the Law N° 28296 (General Law of the Cultural Heritage of the Nation), are the current applicable rules for the protection of cultural property. They follow the path taken by the Constitution of 1979 in declaring that cultural property belongs to the Nation, but complementing it with a more liberal approach, guaranteeing for example private ownership of cultural property and encouraging the participation of the private sector for the conservation of cultural property. Law N° 28296 specifically creates a Registry of objects belonging to the Cultural

<sup>1</sup> Arista Zerga, Adriana. La Protección Del Patrimonio Cultural Como Derecho Cultural: El Caso Peruano. En: [https://pradpi.es/cuadernos/8/2\\_Adrina\\_Arista.pdf](https://pradpi.es/cuadernos/8/2_Adrina_Arista.pdf)

<sup>2</sup> Ibidem.

Heritage of the Nation, and regulates the transfer, prohibitions and restitution of cultural property. Although these norms could be improved, the general opinion is that they have placed solid foundations for the regulation and protection of Peruvian cultural heritage.

Despite all these regulatory improvements, Peru still has great problems to protect its cultural heritage. The looting and clandestine excavations in the archaeological areas, as well as the theft of cultural goods from churches, convents and other liturgical objects, have increased in recent years, encouraged by with high prices paid for them in the international market. Damages to archaeological and historical monuments declared cultural heritage by means of unskilled works, demolitions, restorations without the respective authorizations by private parties and others, contributes to the destruction of their historical and / or archaeological value. The invasions promoted by land dealers encourage the less favored population, in search of houses, to occupy archeological zones destroying archaeological monuments and objects <sup>3</sup>.

The causes of these problems are many and of different kind. However, perhaps three causes have contributed the most: i) institutional weakness, ii) disinterest of the private sector, and iii) lack of education, spread and promotion of our cultural heritage.

The institutional weakness is a big obstacle to deal with these problems. Notwithstanding the reforms introduced, the Ministry of Culture is far from fulfilling an effective protection for our cultural heritage. The lack of adequate budget and personnel greatly increases the difficulty of protecting and maintaining our cultural heritage. A related problem is the lack of specialists or experts in the Judiciary, the Office of the Prosecutor and the Police to deal with the crimes against the cultural heritage. Peru long history of corruption entrenched in the same government has made it impossible to put into practice certain laws that could be beneficial for the defense and criminalization of the destruction of the cultural heritage.

The disinterest of the private sector has also affected the protection and conservation of cultural heritage. The Catholic Church, for example, has neglected the artistic and documentary treasures accumulated in its temples and convents and, in some cases, has contributed to its disappearance or loss. There are few incentives for the private sector to invest in the protection and conservation of the cultural heritage. With all the shortcomings of a developing country, the private sector has more incentives to invest in other sectors such as infrastructure or basic services, than in culture.

Although progress has been made, there is still a long way to go to educate the Peruvian population to learn to value our cultural heritage. Peru's public school education is of inferior quality compared to that of other countries, and education programs regarding cultural heritage are not a priority. University education also has many problems in the formation of new generations of specialists dedicated to the study and conservation of cultural heritage.

Even though, the laws in Peru have been evolving and improving over the years, the challenges for the effective protection of cultural heritage are very difficult. This report examines the current applicable cultural property laws in Peru, focusing on the areas of research and specific questions as set out by the Committee for Cultural Policy.

## II. LEGAL FRAMEWORK APPLICABLE IN PERU

### 2.1 APPLICABLE NATIONAL LAW<sup>4</sup>

#### The Constitution of Peru

The current Constitution was promulgated on October 31, 1993. It contains the following article on the matter:

**“Article 36.-** *The deposits and archeological sites, buildings, monuments, places, bibliographical and archive documents, artistic objects and testimonies with historical value, which have been expressly declared cultural objects, and provisionally those presumed as such, are Cultural Heritage of the Nation, independently of their condition as privately or publicly owned. They are protected by the State.*

*The law guarantees ownership of said property.*

*It fosters according to the law, private participation in the conservation, restoration, exhibition and*

<sup>3</sup> Cárdenas Oscátegui, Carolina. Importancia de la protección del patrimonio Cultural. En: [revistasinvestigacion.unmsm.edu.pe/index.php/sociales/article/download/7806/6797](http://revistasinvestigacion.unmsm.edu.pe/index.php/sociales/article/download/7806/6797)

<sup>4</sup> Accessibility to legal texts will be explained in section 2.3.

*spread of it, as well as its restitution to the country when it has been illegally transferred outside national territory.”*

In summary, today the Constitution establishes that cultural property belongs to the Nation. It grants this condition, and thus puts under the protection of the State, all objects expressly declared as such as well as all those presumed to be cultural property. Additionally, not only does it guarantee private ownership of cultural property but also it encourages the participation of the private sector for the conservation of cultural property. This last provision reflects the spirit of the Constitution of 1993, which being more liberal, enhances the right to private property and the importance of the private sector.

### **General Law of the Cultural Heritage of the Nation - Law N° 28296**

The Law N° 28296, titled General Law of the Cultural Heritage of the Nation (here in after, the “GLCPN”) is the most important legal text regarding the classification, ownership, protection and restrictions of cultural property in Peru. The Congress passed this law on July 21, 2004 after incorporating an observation made by the President to the original bill.

It is structured in 7 Titles and 12 chapters as follows:

1. Objects comprising the Cultural Heritage of the Nation
  - a. General provisions
  - b. Regulation of the objects comprising the Cultural Heritage of the Nation
  - c. Registry of objects belonging to the Cultural Heritage of the Nation
2. Protection of the Cultural Heritage of the Nation
  - a. General protection measures
  - b. Participation of State entities
3. Transfer of movable objects<sup>5</sup> comprising the Cultural Heritage of the Nation
  - a. Transfer, prohibitions and restrictions
  - b. Restitution of objects comprising the Cultural Heritage of the Nation
  - c. Exhibition of objects comprising the Cultural Heritage of the Nation
4. Private collections and museums
  - a. Private collections
  - b. Private museums
5. Financial resources and tax incentives
  - a. Financial resources
  - b. Tax incentives
6. Administrative sanctions
7. Cultural education, spread and promotion

It is worth mentioning that originally under this law as well as its regulation the National Institute of Culture (hereinafter, the “INC”), the National Library of Peru (hereinafter, the “BNP”) and the General Archive of the Nation (hereinafter, the “AGN”) were in charge of the registration, declaration and protection of cultural property, with the National Institute of Culture having a central role. This notably changed with the Supreme Decree N° 001-2010-MC, which approved the absorption by the Ministry of Culture of the National Institute of Culture, among other agencies. This has resulted in the Ministry of Culture performing most of the functions established by the GLCPN and its regulation nowadays, most notably as being in charge of imposing sanctions for infringements to the laws on the matter.

<sup>5</sup> The concept of “movable object” will be used in this report as a translation of *bien mueble*, in contrast of “real estate property” or *bien inmueble*.

We will explain the content of this law throughout the report, given the fact that most answers are based on it or its regulation.

### **Regulation of the GLCPN - Supreme Decree N° 11-2006-ED**

On May 31, 2006, the President of Peru, with the endorsement of the Minister of Education, approved the Regulation of the GLCPN, via the Supreme Decree N° 011-2006-ED (“RGLCPN”). The publishing of this regulation was long overdue, as the GLCPN established that the Executive was supposed to issue the corresponding regulations within 90 days from its entry into force.

The regulation has 12 chapters as follows:

1. General provisions
2. Declaration of cultural object
3. Transference of cultural objects
4. National Registry of Cultural Objects comprising the Cultural Heritage of the Nation
5. Real Estate Cultural Property
  - a. General provisions
  - b. Viceroyal and republican cultural objects
  - c. Concessions
  - d. Expropriation
6. Movable Cultural Objects
  - a. General provisions
  - b. Transport of movable cultural objects
  - c. Temporal export of movable cultural objects
  - d. Commissaries
  - e. Restitution of cultural objects in case of illegal export
  - f. Historic-artistic movable cultural objects
  - g. Documentary bibliography cultural property
  - h. Archivistic cultural property
7. Subaquatic cultural property
8. Protection of cultural objects in case of armed conflict
9. Intangible cultural property
10. Private collections and museums
11. Infringements and sanctions
12. Spread and promotion of cultural property

As with the GLCPN, we will explain the content of this regulation through the report.

### **Regulation of Administrative Sanctions for Infringements against the Cultural Heritage of the Nation - Directorial Resolution N° 5-2016-DCS-DGDP-VMPCIC-MC**

The current Regulation of Administrative Sanctions for Infringements against the Cultural Heritage of the Nation (here in after, the “Regulation of Sanctions”) was approved by the General Director of Defense of Cultural Property of the



*Upper Urubamba valley, Valle del Alto Urubamba, Cuzco, Peru. Author Diego Delso, delso.photo, 30 July 2015, License CC-BY-SA. Image has been cropped. Contact [diego@delso.photo](mailto:diego@delso.photo)*

Ministry of Culture on April 28, 2016. It replaced the previous regulation issued by the National Institute of Culture back in 2004.

The regulation has the following structure:

1. General provision
2. Of the administrative sanctioning procedure
  - a. Definition
  - b. Of the infringements
  - c. Of the sanctions
  - d. Previous actions of investigation, inquiry and inspection
  - e. Development of the administrative sanctioning procedure
  - f. Phases of the administrative sanctioning procedure
  - g. Interim measures
  - h. Archiving
  - i. Procedure for the enforcement of sanctions
3. Of the technical multimember body in charge of proposing administrative sanctions
  - a. Of the nature, purpose and scope of the technical multimember body
  - b. Of the functions of the technical multimember body
  - c. Of the quorum, voting and agreements
  - d. Of the sessions and absences
4. Complementary provisions

The Regulation of Sanctions starts by recognizing some principles aimed at limiting the sanctioning power of the State such as legality, due process, reasonability, prohibition of retroactivity, etc. It also sets criteria for determining the severity of the sanctions. As a special regulation, the provisions of the Law of the General Administrative Procedure supplement it.

Notably, the Regulation of Sanctions establishes the following types of imposable sanctions:

- a) Fee
- b) Seizure of cultural objects
- c) Forfeiture of cultural objects
- d) Suspension of works (regarding real estate property)
- e) Demolition of works (regarding real estate property)

It is also worth mentioning that the regulation of sanctions sets the following classification for infringements:

- a) When the holder or owner of cultural property does not request its registry.
- b) When the holder or owner of cultural property damages it.
- c) When the holder or owner of cultural property attempts its export without authorization.
- d) When the holder of foreign cultural property attempts its import without authorization from its origin country.

- e) The execution or promotion of excavations in archeological sites or alteration of real estate cultural property without authorization from the Ministry of Culture.
- f) The execution of works in a real estate property belonging or linked to the Cultural Heritage of the Nation without authorization from the Ministry of Culture or breaching the terms of said authorization.

### **Criminal Code of 1991**

The current Criminal Code of Peru was promulgated on April 3, 1991 (here in after, the “Criminal Code”). It entered into force on April 9, 1991, the day after its official publishing.

The Criminal Code stands out for having a special section regarding crimes committed against cultural property. It sanctions the destruction or alteration to cultural property as well as its illegal extraction and trade. It also sanctions as crimes of their own the indirect participation in the damage of archeological sites and the facilitation of the commission of said crimes by public officials. Additionally, it establishes that the State may forfeit materials, equipment and vehicles used to commit said crimes. We will further develop this information in the corresponding section.

It is worth mentioning that the Criminal Code also establishes the quality of cultural property as an aggravating circumstance in crimes such as theft, robbery, usurpation, damages and endangerment of the public<sup>6</sup>.

### **Rule of Organization and Functions of the Ministry of Culture – Supreme Decree N° 005-2013-MC**

The Rule of Organization and Functions of the Ministry of Culture (hereinafter, the “ROF”) was approved by the Minister of Culture on June 19, 2013. This legal document serves as an organizational tool as it determines the role of each office part of the Ministry of Culture.

Considering the importance of this particular Minister for the administration of cultural property countrywide, this Rule is crucial in order to identify the specific institutions in charge of managing each part of the national regulation of cultural property. For instance, it allows us to determine which office is in charge of which registry of cultural objects, which one is in charge of which type of cultural property, which one is in charge of the museums, etc.

## **APPLICABLE INTERNATIONAL TREATIES**

### **Multilateral conventions**

- a. Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property of 1970.  
  
Peru officially joined this convention on October 24, 1979. The Congress had previously approved it on September 18, 1979 via the Legislative Resolution N° 22680. It entered into force for Peru on January 24, 1980.
- b. Convention concerning the Protection of the World Cultural and Natural Heritage of 1972.  
  
Peru officially joined this convention on February 24, 1982. The Congress had previously approved it on December 21, 1981 via the Legislative Resolution N° 23349. It entered into force for Peru on May 24, 1982.
- c. Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict of 1954.  
  
Peru officially joined this convention on July 21, 1989. The Congress had previously approved the convention and its First Protocol on May 23, 1989 via the Legislative Resolution N° 25030. It entered into force for Peru on October 21, 1989. The Congress approved its Second Protocol on December 11, 2003 via the Legislative Resolution N° 28159.
- d. UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects of 1995.  
  
Peru officially joined this convention on May 3, 1998. The Executive of Peru had previously ratified the convention on August 29, 1997 via the Supreme Decree N° 027-97-RE. It entered into force for Peru on September 1, 1998.

<sup>6</sup> Articles 186, 189, 204, 206 and 275.2 of the Criminal Code.



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- e. Convention for the Safeguarding of Intangible Cultural Heritage of 2003.

Peru is one of the original signatories of this convention as of October 17, 2003. The Congress of Peru approved the convention on June 3, 2005, and the Executive proceeded to officially ratify it on August 10, 2005 via the Supreme Decree N° 059-2005-RE. It entered into force for Peru on April 20, 2006.

## **BILATERAL TREATIES**

**The Republic of Peru has signed the following treaties with the United States of America pertaining to cultural property:**

- a. Agreement for the recovery and return of stolen archeological, historical and cultural properties.

This treaty was signed by the United States and Peru at Lima on September 15, 1981. It entered into force on the same date.

- b. Memorandum of understanding concerning the imposition of import restrictions on archaeological material from the pre-Hispanic cultures and certain ethnological material from the colonial period of Peru.

This treaty was signed by the United States and Peru at Washington on June 9, 1997. It entered into force on the same date. The treaty has been extended multiple times; most recently, it was extended for five more years starting from June 9, 2017.

Under this treaty, the USA assumes the compromise to restrict the importation into its territory of the archeological and ethnological material listed in the Appendix of the Memorandum. It also offers to return any material in said list forfeited to the Government of the USA. It additionally contains cooperation provisions between both governments for the protection, promotion and study of cultural objects.

**The Republic of Peru has signed the following treaties with European countries pertaining to cultural property:**

- a. Agreement of cooperation between the **Government of the Republic of Peru** and the **Swiss Federal Council** to prevent the illicit traffic of cultural objects.

Signed on July 12, 2016, it entered into force on October 19, 2016, for an extension of 5 years, which will

automatically renew unless denounced by one of the parties.

In application of this treaty, the custom agents of both parties have the duty to verify that cultural objects imported from the other country have received the corresponding authorization according to their origin's country law. If it lacks said authorization, the enforcement agents have the duty to stop those objects from entering the country.

The treaty also allows for cooperation in the form of communicating to each other of the theft or loss of cultural objects so that they may alert their authorities, among other provisions.

- b. Agreement for the protection, conservation, recovery and return of cultural, archeological, artistic and historical objects stolen or illegally exported or transferred between the **Republic of Peru** and **Montenegro**.

Signed at Podgorica on May 7, 2010, Peru ratified this agreement on May 7, 2014<sup>7</sup>, which contains provisions similar to those agreed with Switzerland.

- c. Agreement between the **Republic of Peru** and the **Republic of Turkey** for the protection, preservation and restitution of cultural, archeological, artistic and historical objects resulting of the illegal traffic, export or transfer.

Signed at Vienna on February 6, 2003, Peru ratified this convention<sup>8</sup> on March 19, 2003, which contains provisions similar to those agreed with Switzerland. It entered into force on February 12, 2010.

- d. Agreement between the **Republic of Peru** and the **Portuguese Republic** for the Protection, Conservation, Recovery and Return of cultural, paleontological, archeological, artistic and historic objects stolen and illegally exported or transferred.

Signed at Lisbon on November 19, 2012, Peru ratified this agreement on July 11, 2000<sup>9</sup>. It entered into force on August 16, 2017.

The agreement establishes the mechanisms for a country to request the other to employ legal means to recover and return the aforementioned cultural objects as well as imposes duties to both parties to seize cultural objects imported without an authorization, among other provisions.

- e. Agreement between the **Republic of Peru** and the **Hellenic Republic** concerning the Prevention of thefts, illegal excavations and illegal export, transit or transfer of ownership over cultural objects and the promotion of the restitution of them to their origin country.

Signed at Lima on December 15, 2015, Peru ratified it on January 13, 2016<sup>10</sup>.

The agreement contains provisions for the exchange information regarding stolen cultural property so that the other country may alert their local law enforcement agents as well as provisions regarding cooperation for the recovery of such property.

- f. **Austro-Peruvian** memorandum of understanding concerning joint cooperation for the prevention of the illegal export of cultural objects.

Both parties signed this document at Vienna on March 29, 1999. However, it is only a compromise between the parties to cooperate towards the aforementioned prevention goal, but it does not establish concrete duties to either party in order to achieve said goal.

- g. Memorandum of understanding between the **Republic of Peru** and the **Republic of Hungary** for the Protection and Preservation of Archeological, Historical and Cultural Property.

Both parties signed this document at Lima on November 18, 1999. Peru ratified it on January 17, 2000<sup>11</sup>. However, it only defines terms for a future treaty between both parties, which is yet to be subscribed.

<sup>7</sup> Ratified by the Supreme Decree N° 017-2014-RE.

<sup>8</sup> Ratified by the Supreme Decree N° 051-2003-RE.

<sup>9</sup> Ratified by the Supreme Decree N° 033-2014-RE.

<sup>10</sup> Ratified by the Supreme Decree N° 002-2016-RE

<sup>11</sup> Ratified by the Supreme Decree N° 002-2000-RE.

**The Republic of Peru has signed the following treaties with other Latin-American countries pertaining to cultural property:**

- a. Agreement for the protection, conservation, recovery and return of cultural, archeological, artistic and historical objects stolen or illegally exported or transferred between the **Republic of Peru** and the **Republic of Argentina**, signed on May 15, 2001. The parties subscribed a modifying protocol on March 22, 2010.  
  
Previously, both countries had signed the *Memorandum of understanding between the Republic of Peru and the Republic of Argentina for the protection and conservation of archeological, historical and cultural objects* on February 23, 2000.  
  
They had also subscribed the *Agreement concerning the protection of archeological, historical and artistic property* on May 14, 1963.
- b. Agreement between the **Republic of Peru** and the **Republic of Paraguay** concerning the recovery and return of imported, exported, transferred or stolen cultural objects, signed on March 5, 2001.
- c. Agreement concerning the protection and restitution of cultural objects between the **Republic of Peru** and the **Republic of Chile**, signed on August 23, 2002.
- d. Agreement for the protection, conservation, recovery and return of cultural, archeological, artistic and historical objects stolen or illegally exported or transferred between the Dominican Republic and the **Republic of Peru**, signed on January 18, 2011.  
  
Previously, both countries had signed the *Agreement for the protection, conservation and return of cultural, archeological, artistic and historical objects stolen or illegally exported or transferred between the Republic of Peru and the Dominican Republic* on July 25, 2003.
- e. Agreement for the protection, conservation, recovery and return of cultural, archeological, artistic and historical objects stolen or illegally exported or transferred between the Government of the **Republic of Peru** and the **Government of the Republic of Honduras**, signed on March 7, 2007.
- f. Agreement between Government of the **Republic of Peru** and the **Government of the Republic of Guatemala** for the protection, conservation, recovery and return of cultural, archeological, artistic and historical objects stolen or illegally exported or transferred, signed on August 25, 2004.
- g. Agreement for the protection, conservation, recovery and return of cultural, archeological, artistic and historical objects stolen or illegally exported or transferred between the **Republic of Peru** and the **Oriental Republic of Uruguay**, signed on April 11, 2002.  
  
Previously, both countries had signed the *Agreement concerning the spread, protection, conservation and recovery of archeological, historical and cultural objects* on April 10, 1981.
- h. Agreement for the protection, conservation, recovery and return of archeological, artistic, historical and cultural objects stolen or illegally exported or transferred between the **Republic of Peru** and the **United Mexican States**, signed on October 10, 2002.  
  
Previously, both countries had signed the *Agreement of protection and restitution of archeological, artistic and historical objects between the Government of the Peruvian Republic and the Government of the United Mexican States* on October 15, 1975.
- i. Agreement for the protection, conservation, recovery and return of cultural, archeological, artistic and historical objects stolen or illegally exported or transferred between the **Republic of Peru** and the **Republic of Panama**, signed on July 2, 2002.
- j. Agreement for the protection of cultural property and recovery of archeological, artistic and historical objects stolen or illegally exported or transferred between the **Republic of Peru** and the **Republic of Ecuador**, signed on January 13, 1997.
- k. Agreement between the **Republic of Peru** and the Republic of Bolivia for the recovery of cultural and other objects stolen, or illegally imported or exported, signed on December 14, 1998.

Previously, both countries had signed the *Agreement concerning scientific research and defense of the archeological patronage between the Republic of Peru and the Republic of Bolivia* on November 26, 1975.

- l. Agreement regarding the protection and return of cultural objects between the **Republic of Nicaragua** and the **Republic of Peru**, signed on June 4, 2004.
- m. Agreement regarding the protection and return of cultural objects between the **Republic of Peru** and the **Republic of Costa Rica**, signed on January 1, 2003.
- n. Agreement between the **Republic of Peru** and the **Federal Republic of Brazil** for the recovery of stolen or illegally exported cultural objects, signed on February 26, 1996.
- o. Memorandum of understanding between the Government of the **Republic of Peru** and the **Government of the Republic of Colombia** for mutual cooperation on the matter of cultural property, signed on November 26, 2002.

Previously, both countries had signed the *Agreement between Republic of Peru and the Republic of Colombia for the protection, conservation and recovery of archeological, historical and cultural objects* on May 24, 1989.

- p. Agreement between the **Republic of Peru** and the **Bolivarian Republic of Venezuela** for the return of stolen or illegally imported, exported or transferred cultural objects, signed on October 14, 2011.
- q. Agreement for the protection, conservation, recovery and return of cultural, archeological, artistic, anthropological and historical objects stolen or illegally exported or transferred between the **Republic of Peru** and the **Republic of El Salvador**, signed on August 22, 2000.

**The Republic of Peru has also signed the following bilateral treaties pertaining to cultural property:**

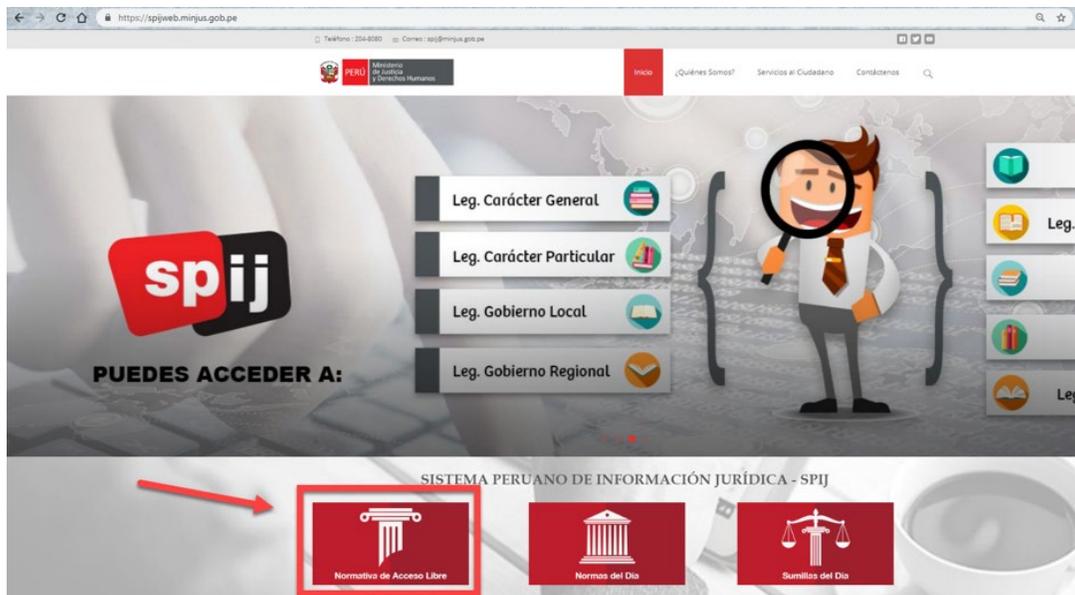
- a. Agreement between the Government of the **Republic of Peru** and the United Nations Educational, Scientific and Cultural Organization regarding the regional Center for the Safeguard of Intangible Cultural Property of Latin America (CRESPIAL) at Cusco (Peru), signed on July 21, 2014.

Previously, both parties had signed the *Agreement for the protection project and its start regarding the archeological complex Kuntur Wasi, San Pablo, Cajamarca* on February 28, 2011.

- b. Agreement between the **Government of the Republic of Peru** and the **Government of the Arab Republic of Egypt** for the protection and return of stolen or illegally transferred cultural objects, signed on May 17, 2005.
- c. Agreement for the protection and return of cultural objects between the **Government of the Republic of Peru** and the **Government of the People's Republic of China**, signed on March 30, 2000.
- d. Agreement for the exchange of notes regarding the Japanese donation for the equipment project for the conservation of the archeological sanctuary of Pachacamac and the education of the local museum of Pachacamac between the **Republic of Peru** and **Japan**, signed on July 5, 2016.
- e. Agreement between the Government of the **Republic of Peru** and the **Government of the Kingdom of Morocco** for the protection and return of stolen or illegally transferred cultural objects, signed on July 5, 2011.

## ONLINE ACCESSIBILITY OF LAWS

Peruvian laws can be freely accessed via the Peruvian Legal Information System<sup>12</sup>. The Peruvian Government updates this database daily. However, most laws are only provided in Spanish.





PERÚ Ministerio de Justicia y Derechos Humanos



sistema peruano de información jurídica



**Sistema Peruano de Información Jurídica.**

El Sistema Peruano de Información Jurídica - SPIJ, es una edición oficial a través de medios electrónicos elaborada por el Ministerio de Justicia y Derechos Humanos del Perú, en cumplimiento a su función de sistematizar y difundir la legislación, expresada en la Ley de Organización y Funciones del Sector Justicia y Derechos Humanos y en su Reglamento de Organización y Funciones. Contiene la legislación nacional vigente y derogada en textos completos concordados y actualizados, así como información jurídica complementaria.

Cuenta con potentes herramientas de búsqueda y recuperación de la información que le permite un acceso fácil y fluido a la legislación a través de palabras, frases, número de norma, tipo de norma, por materia, por sectores, fecha de publicación, a nivel de sumillas, por órgano emisor, etc. Asimismo, permite imprimir todos los textos, formatos, anexos y gráficos contenidos en el sistema, así como copiarlos a un procesador de textos de acuerdo a su necesidad.

In addition, the Ministry of Culture publishes the corresponding regulations in the Cultural Heritage section of its website:

<sup>12</sup> <https://spijweb.minjus.gob.pe/>

Ministerio de Cultura | Bienvenido

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define al patrimonio cultural de la siguiente manera:

"Se entiende por bien integrante del Patrimonio Cultural de la Nación a toda manifestación del quehacer humano –material o inmaterial– que por su importancia, valor y significado paleontológico, arqueológico, arquitectónico, histórico, artístico, militar, social, antropológico o intelectual, sea expresamente declarado como tal o sobre el que exista la presunción legal de serlo. Dichos bienes tienen la condición de propiedad pública o privada con las limitaciones que establece la presente Ley."

Desde esta perspectiva, entendemos que patrimonio cultural es el legado constituido por bienes tangibles como los libros, las piezas artísticas y arquitectónicas; del mismo modo, comprende las distintas expresiones como la lengua, religión, valores, costumbres, celebraciones, hasta la danza y la música. Y lo más importante, es que se reconocen a estas manifestaciones culturales ya sean de las comunidades tradicionales, indígenas o afrodescendientes de nuestro país.

Las Direcciones Generales responsables de velar por la integridad, conservación y transmisión de nuestro patrimonio son :

- Dirección General de Patrimonio Cultural
- Dirección General de Museos
- Dirección General de Patrimonio Arqueológico Inmueble

**Categorías del patrimonio cultural**

- Patrimonio material inmueble:** se refiere a los bienes culturales que no pueden trasladarse y abarca tanto los sitios arqueológicos (huacas, cementerios, templos, cuevas, andenes) como las edificaciones coloniales y republicanas.
- Patrimonio material mueble:** incluye todos los bienes culturales que pueden trasladarse de un lugar a otro, es decir, objetos como pinturas, cerámicas, orfebrería, mobiliario, esculturas, monedas, libros, documentos y textiles, entre otros.
- Patrimonio inmaterial:** Se refiere a lo que llamamos cultura viva, como el folclor, la medicina tradicional, el arte popular, las leyendas, la cocina típica, las ceremonias y costumbres, etc. Se trata de los usos, representaciones, expresiones, conocimientos y técnicas, asociados a los instrumentos, objetos, artefactos y espacios culturales que les son

SISTEMA DE INFORMACIÓN GEOGRÁFICA DE ARQUEOLOGÍA

SIGDA

RNA  
REGISTRO NACIONAL DE ARQUEÓLOGOS

RNA  
Formulario  
Registro Nacional de Consultores en Arqueología

RNCA  
Formulario  
Registro Nacional de Profesionales en Disciplinas Afines a la Arqueología

RNDA  
Formatos RIA

FORMATOS RIA

Declaratorias de Patrimonio

Guía de Museos

Museo de Pachacamac

TORNADA DE JÓVENES INVESTIGADORES EN PALEONTOLOGÍA

International treaties and conventions can be accessed via the following link of the Peruvian Ministry of Foreign Affairs: [https://apps.rree.gob.pe/portal/webtratados.nsf/Vista\\_Tratados\\_MU.xsp](https://apps.rree.gob.pe/portal/webtratados.nsf/Vista_Tratados_MU.xsp)

MRE Ministerio de Relaciones Exteriores  
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Organismo internacional :

Tema :

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**Descargo de Responsabilidad**

El Ministerio de Relaciones Exteriores del Perú mantiene este sitio web para fines informativos de acuerdo a los datos que autoridades nacionales y extranjeras hacen llegar a la Dirección General de Tratados de este Ministerio para su registro, archivo y publicación. El Ministerio de Relaciones Exteriores no se hace responsable por eventuales errores, datos faltantes o demoras en la publicación de los datos en el Archivo Nacional de Tratados Embajador Juan Miguel Bákula Patiño. Para fines judiciales, procesos administrativos o de índole oficial, deben solicitarse copias autenticadas y certificadas de vigencia de tratados. En caso de consulta al respecto, puede dirigirse al correo [archivonacionaldetratados@rree.gob.pe](mailto:archivonacionaldetratados@rree.gob.pe).

Ministerio de Relaciones Exteriores del Perú - Oficina de Tecnologías de la Información - Unidad de Desarrollo de Sistemas © 2014



*Aerial view of one of the geoglyphs of the Nazca Lines, which are located in the Nazca Desert in southern Peru. The geoglyphs of this UNESCO World Heritage Site (since 1994) are spread over a 80 km (50 mi) plateau between the towns of Nazca and Palpa, between 500 B.C. and 500 A.D. old. Author Diego Delso, delso.photo, 29 July 2015, License CC-BY-SA. Image has been cropped. Contact [diego@delso.photo](mailto:diego@delso.photo)*

### III. IDENTIFICATION OF NATIONAL CULTURAL INVENTORY – DISTRIBUTION, STATUS, AND TITLE

#### 3.1 CONCEPT OF CULTURAL PROPERTY

##### Current concept of cultural property

The Peruvian law does not establish an exact definition of what constitutes cultural property. It simply establishes that cultural property are those objects and immaterial goods declared as such. As mentioned in the section 1.1.1, the Constitution of Peru only hints that the following things can be declared cultural property:

- a. Archaeological deposits and sites;
- b. Buildings;
- c. Monuments;
- d. Places;
- e. Bibliographical and archive documents;
- f. Artistic objects;
- g. Testimonies with historical value.

As one may see, it is a very poor definition. It does not seem to consider movable objects (other than artistic ones and documents) or intangible goods. However, this “definition” is expanded by the GLCPN. This law goes further by establishing that the declaration of objects or intangible goods (whether public or private) as cultural property depends on their importance, value and significance, which may be paleontological, archaeological, architectural, historical, artistic, military, social, anthropological, traditional, religious, ethnological, scientific, technological or intellectual.

The GLCPN also establishes that any object originated during the pre-Hispanic, viceregal or republican periods is automatically presumed to be cultural property when they present the aforementioned importance or they are included within international treaties or conventions of which Peru is a party<sup>13</sup>.

Article 66 of the RGLCPN, also recognizes as cultural objects artistic works, such as sculptures, engravings and other plastic works that:

- a. Were made since the second decade of the 20th century;
- b. Have the characteristics described in articles II and III of the preliminary title of the GLCPN; and
- c. Their authors have died.

##### Classification

According to article 1 of the GLCPN, there are two primary categories of cultural property under the state registry<sup>14</sup>:

- a. **Tangible goods:** divided into two categories:
  - i. Real estate property: includes, with no limitations, all infrastructure, historic buildings, monuments, historical centers, and any other constructions that have archeological, architectural, historic, religious, ethnic, artistic, or anthropological value, in all Peruvian territory, including under water.

Article 25 of the RGLCPN establishes a classification of real estate cultural property according to the time period it was originated in: pre-Hispanic, vice royal or republican.

<sup>13</sup> The republican period goes approximately from the 19th up to the 20th century. The viceregal period goes from approximately the 15th century up to the 19th century. The pre-Hispanic period comprehends that time before.

<sup>14</sup> Law No. 28296, PCPL.

However, this classification is also applied to some extent to moveable goods in the Criminal Code.

ii. Movable objects: includes, but is not limited to:

- Collections and unique specimens of zoological, botanical, mineralogical, or paleontological interest.
- Property related to history, in the scientific, technical, military, social and biographical fields, as well as to the lives of leaders, thinkers, sages and artists, and to events of national importance.
- The products of archaeological excavations and discoveries, whatever their origin.
- Elements from the dismemberment of artistic or historical monuments and archaeological sites.
- Inscriptions, commemorative medals, coins, banknotes, stamps, engravings, artefacts, tools, weapons and ancient musical instruments of historical or artistic value.
- Ethnological material.
- Goods of artistic interest such as paintings, canvases, sculptures and drawings, musical and poetic compositions made on any medium and in any material.
- Rare manuscripts, incunabula, books, documents, photos, negatives, daguerreotypes and old publications of special interest for their historical, artistic, scientific or literary value.
- Objects and ornaments for liturgical use, such as chalices, candlesticks, banners, incense burners, vestments and other materials of historical and/or artistic interest.
- Any samples of the objects described above that are submerged in aquatic spaces of the national territory are also covered.

The RGLCPN further establishes special categories of moveable goods:

- Historic-artistic moveable cultural property: artistic pieces produced in Peru during the second half of the 20th century such as paintings, sculptures, drafts, engravings, and other manifestations of plastic arts presenting the traits described by the law.
- Bibliographic or other documentary cultural heritage: rare manuscripts, incunabula, books, documents, photos, negatives, daguerreotypes and old publications of special interest for their historical, artistic, scientific or literary value; handwritten, phonographic, cinematographic, video, digital and other types of documents which could function as sources of information for scientific, historical, social, political, artistic, ethnological and economic research; letters, certificates and diplomas, blueprints, library and personal archives.
- Archival cultural heritage: group of documents of any time period and of any form, whether physical or digital, which was produced by national public and private entities in the fulfilment of their tasks and activities.

- b. **Intangible goods:** this term refers to what is also called “*living culture*”<sup>15</sup>, such as folklore, traditional medicine, popular art, legends, culinary arts, ceremonies and customs, etc. It concerns the uses, representations, expressions, knowledge and skills, associated with instruments, objects, artifacts and cultural spaces that are transmitted from generation to generation, often by word of mouth, or through practical demonstrations.

<sup>15</sup> <https://www.cultura.gob.pe/sites/default/files/paginternas/tablaarchivos/04/1manualqueespatrimonio.pdf>

### Evolution of the concept

The previously general law of cultural property, Law N° 24047, promulgated on January 3, 1985, contained similar provisions regarding the definition and the legal presumption. Nonetheless, it is worth mentioning that it only expressly recognized that an object could be declared cultural property for its artistic, scientific, historical and technical importance and that it established the following list of cultural objects:

- a. Real estate property
  - i. Archeological sites;
  - ii. Buildings and other constructions with artistic, scientific, historical and technical value;
  - iii. Sets and environments of constructions, whether urban or rural, which possess cultural value even if comprised by goods of diverse antiquity and purpose;
- b. Movable goods such as furniture, objects, documents, books and other things that have the importance previously described.

Similarly, the Law-Decree N° 19033, issued on November 16, 1971, established that objects from the pre-Hispanic, vicerojal or republican periods could be declared Monumental Property of the Nation (classification comparable to that of cultural property) for their architectural, aesthetic, urbanistic, historical or documental merits.

Interestingly, there is a tax law, the Legislative Decree N° 188 dated June 12, 1981, which provides a more specific definition of cultural objects. According to it, “monumental cultural objects” were archeological or artistic movable objects that constitute unique pieces, and possess extraordinary artistic quality or irreplaceable documental value. On the other hand, “non-monumental cultural objects” were archeological or artistic movable objects with undoubtable authenticity, which did not present the extraordinary characteristics of their monumental counterparts. We may point out that these older laws do not make any mention to intangible cultural property.

It is also worth mentioning the Law N° 6634, which created the National Patronage of Archeology, dated June 13, 1929. Although it does not explicitly use the concept of cultural property, it defines as historical monuments: temples, palaces, monoliths, carved stones and rocks, intihuatanas, cemeteries, niches built on cliffs, caves, or sub terrains, dolmens, huacas, roads, bridges, aqueducts, canals, baths, ruins of towns and cities and any building or remain of human making, originated during the pre-Hispanic period which serves for the study of the civilization and history of the antique inhabitants of Peru.

### Inalienability of cultural property

The GLCPN currently establishes that all pre-Hispanic real estate property (along with its parts) and anything built on top of pre-Hispanic remains is owned by the State whether it is located on private or State-owned land. This type of property is given the condition of intangible, inalienable and imprescriptible.

This was also the rule with the two previous laws (Law N° 24047 and Law-Decree N° 188). However, the Law-Decree N° 188 also granted the condition of inalienable and imprescriptible to monumental real estate and movable objects originated during the colonial and republican periods, when owned by the State.

This criterion seems to originate from long before, as the already mentioned Law N° 6634, also established that all historical monuments originated during the pre-Hispanic period, as well as any human remain, tissue, artifact or object contained within it, were property of the State. They were also inalienable and imprescriptible.

## EXPORTATION OF CULTURAL PROPERTY

As a rule, the law prohibits the export of cultural property. Nonetheless, it allows some exceptions, which we will proceed to explain.

Article 34 of the GLCPN allows for temporary exportation of cultural property with the authorization of the Peruvian Government. However, this is limited to four cases:

- a. For Artistic, Scientific or Cultural Exhibitions;



*Machu Picchu, Peru, Author Diego Delso, delso.photo, 30 July 2015, License CC-BY-SA. Image has been cropped. Contact diego@delso.photo*

- b. For studies of the cultural objects that cannot be done in Peru;
- c. Restoration of the cultural objects that cannot be done in Peru; and
- d. For diplomatic purposes.

Authorizations for export are granted for a maximum of one year, but it may be renewed for an additional year. The RGLCPN forbids the permanence of cultural objects abroad for longer than two years. This rule does not apply to cultural objects exported for diplomatic missions, which are given authorizations for the length of said missions. Nevertheless, under no circumstances, can any cultural object leaving Peruvian territory remain abroad indefinitely. However, after its return to Peru its export may be authorized again.

Exportation of cultural objects must fulfill the following requirements:

- a. The hiring of “nail to nail” insurance, which aims to cover all risks involved in the transport of the cultural asset and its return to its owner;
- b. The loan of the cultural asset will be only for a maximum period of one year, which may be extended only once, and only for the same period established in the first instance;
- c. The authorization will be given only under supreme resolution with a previous favorable opinion by the competent organization.

The following table establishes the requirements and terms for the temporary exportation according to each type of cultural object:

Archeological samples for scientific use <sup>16</sup>	Cultural Assets for international exhibitions <sup>17</sup>
1. Form No. FP23DGPA (Annex No. 1)	1. Form No. FP01DGM (Annex No. 2)
2. File with the information required in article 91 of the Regulation of Archaeological Interventions, duly folded, bound or banded, and the samples required for the application.	2. Power of attorney in force for the person or persons who, on behalf of the organizing entity, request the Temporary Exit Authorization for movable cultural property that is part of the National Cultural Heritage for exhibitions abroad (must be in force according to Peruvian law, with the Hague Apostille and/or consular legalization).
3. Authorization of the corresponding Decentralized Directorate of Culture for the transfer of the samples, or a certificate of verification issued by the Headquarters of the Ministry of Culture in the case of samples recovered in archaeological interventions that are not under the custody of the researcher.	3. Letter of acceptance of the loan by the owner and/or custodian of the assets.
4. Authorization from the management of the museum of origin or from the corresponding Decentralized authority for the management of culture in the case of samples that have not been recovered in archaeological interventions or are in museums or deposits administered by the Ministry of Culture.	4. Appraised list of movable cultural property on loan, duly registered by the Ministry of Culture.
5. Letter of commitment to submit the scientific report and publish the results within 1 year from the date of obtaining the results	5. “Nail to Nail” insurance policy <sup>18</sup> against all risks and at an agreed value, stating that the beneficiary is the Ministry of Culture and/or the owner, as the case may be. The 30-day period for resolution begins upon receipt of the original policy. The policy must include the general and particular or special conditions of cover.
6. Letter of commitment to use the results of sample analysis only for scientific and non-commercial purposes.	6. In the event that the Ministry of Culture administers the goods requested, a loan agreement between the organizing entity and the Ministry must be signed.
7. The entity has 15 business days to issue a resolution approving or rejecting the application. In case of rejection, applicants can issue an appeal or reconsideration letter, which will be resolved in the next 30 calendar days.	7. In the case of a representative, he or she must prove his or her status and the express powers to carry out the procedure. For example: a letter from the organizer stating that the representative will carry out the procedures on behalf of the organizer and that the organizer delegates to them the authority to do so.

It is important to mention that these restrictions apply to both state owned as well as privately owned cultural objects.

<sup>16</sup> <https://www.gob.pe/602-autorizar-exportacion-de-muestras-arqueologicas>

<sup>17</sup> <https://www.gob.pe/611-autorizar-salida-temporal-de-bienes-culturales-muebles-para-exposiciones-en-el-extranjero>

<sup>18</sup> Insurance that covers transport from the usual location of the cultural property to the exhibition site, the period spent at the exhibition site and transport back to the place of origin.

We are providing the main forms for the export or import of cultural goods as schedule A of this report.

## **OWNERSHIP OF CULTURAL PROPERTY**

### **Private ownership**

Private ownership of cultural property is recognized by article 4 of the GLCPN, subject to certain limitations.

Real estate, pre-Hispanic cultural property, as well as undiscovered cultural heritage and subaquatic cultural property, can only be public property.

According to article 6.4 of the GLCPN, private owners are subject to all the obligations and limitations established in the GLCPN. Thus, private owners of cultural property have the following duties, as stated in article 7 of the GLCPN:

- a. The owner must register, protect and conserve their property adequately, avoiding its abandonment, depreciation, or deterioration. In the event that any of the aforementioned occur, they are obligated to inform the competent organisation.
- b. The owner must communicate to the competent public entity all restoration and conservation measures to be used in order to protect the cultural goods.
- c. Failure to comply with any of the stated requirements will lead to civil, criminal and administrative proceedings, regardless of whether the owner's actions qualify as unintentional negligence or a willful failure.

The inheritance and/or gifting of cultural goods is also permitted, subject to certain restrictions. Transfers of ownership can only be made within national territory and they must be previously communicated to the competent authority. Failure to do so may result in seizure of the goods.

Neither the GLCPN nor its regulations make any distinction between private and communal property for community owned artifacts, such as objects used in religious rituals or ceremonies by a minority or majority religion. As private ownership is allowed under the aforementioned limitations, if objects of religious heritage fall within the law's purview they are protected by the state, regardless of whether they are owned by a community, family, or private individual, meaning that objects of religious heritage are included within state control. Although the trait of pertaining to religious heritage may be considered as a criterion to establish the quality of cultural heritage of a good, the law does not go further in giving any special treatment to this type of cultural property.

Marriage documents classify as archival cultural heritage, while family Bibles, letters and photographs qualify as bibliographical documentary heritage.

Article III of the GLCPN establishes a legal presumption that all goods originating in the republican, vice royal or pre-Hispanic periods of history are part of the cultural heritage of the Nation, and thus protected by law unless the state declares otherwise.

In that sense, it is worth mentioning that national cultural property legislation applies to the export of such minority individual or community properties, as they are protected under the GLCPN and its regulations, all the laws applied to the export of cultural property will also apply, in the same manner, to the export of such minority individual and/or community property. As they are registered by the Ministry of Culture, they are considered as cultural heritage property and thus will be protected and shall fall under the same provisions as any other cultural heritage property regardless of its origin or who is in possession of it.

### **Ownership by religious groups**

Article 8 of the GLCPN recognizes religious ownership of cultural property, subject to the limitations established by the Law.

However, religious heritage properties are within the State's control of Cultural Heritage.

In this area, the GLCPN includes the following immovable materials: structures that have religious value, including the soil and subsoil beneath them, the air and any surrounding framework, to the extent technically necessary for each case. The GLCPN also includes the following movable material goods: objects and ornaments for liturgical use, such as chalices, patens, monstrance, ciboria, candelabras, banners, incense burners, costumes and other materials of

historical and/or artistic interest. Finally, it includes within intangible property the creations of a cultural community based on religious traditions.

It should be noted that the property belonging to the Cultural Heritage of the Nation which is owned by the Catholic Church, religious congregations or other confessions, has the status of private ownership, obliging the owners to protect and register it in accordance with the provisions of the relevant regulations.

### **Illicit possession**

Illicit possession is not a criminal offense itself. Failure to register possession of cultural property will only result in a fine imposed by the Administration of 0.25 UIT. If there are more than 20 unregistered goods in the violator's possession, an additional 0.01 UIT will be charged for each additional good. As long as its origin is licit, unreported possession will not result in criminal liability.

The case of possession because of another criminal offense against cultural property provisions is different. In this case, the possessor may be charged with receiving stolen goods (article 194 of the Criminal code) which is sanctioned with 2 to 4 years of prison (sentences under 4 years of jail time are usually suspended sentences), if they were received via illicit trade or illicit appropriation, if their custody was legally received for a term of time and never given back, (article 190 of the Criminal Code) which is sanctioned with 1 to 4 years of prison and a fine equivalent to 4 to 39 times their daily wage. As possession originated in a violation of cultural property criminal provisions, the property seizure provisions previously explained for cases illicit trade will also apply.

### **Private collections**

A private owner of movable property belonging to the Cultural Heritage of the Nation may form both private collections and private museums, as established in the rule.

In the case of private collections, it will be necessary for the goods always to be linked to each other so that they remain an indivisible unit. A collection is understood as any set or grouping of cultural goods, linked to each other either because they belong to a particular context, or because they have common characteristics by reason of their nature, chronology, provenance, typology and/or theme.

The character of private collection is determined by the competent body at the request of the owner, which will lead to the corresponding argumentation of their responsibilities.

After designation, the collection will be identified with the name of the collector and must be registered in the corresponding Registry, without prejudice to the obligation to include cultural property individually in it.

The owner of the said collection is obliged to keep an inventory that must contain a descriptive and photographic catalogue of each one of the pieces that make up the collection, and its condition of conservation, being administratively, civilly and criminally liable for any deterioration or damage suffered as a consequence of acts of negligence or willful misconduct.

The rights of ownership or co-ownership of the collection may be freely transferred, but the State has the right of first refusal in any transfer made for valuable consideration. Any transfer should be registered with the competent body, and should include an assessment of the integrity of the pieces that make up the collection in order to maintain its unity. The individual transfer of some pieces requires prior authorization from the competent body, and should be registered with that body. Transfer to a person convicted of crimes against cultural heritage during the time of conviction is prohibited and null and void.

With respect to the establishment of private museums, it is necessary that the owner of the property has the adequate infrastructure to carry out research, conservation, exhibition and dissemination of the objects, which also meets the technical and scientific requirements indicated by the competent authority. The formal conferring of museum status is determined exclusively by the National Institute of Culture.

In order for the museum to operate, it must be registered, at the request of the party, in the National Register of Public and Private Museums. In addition, the owner of the museum is obliged to request the registration and cataloguing of the assets of the Cultural Heritage of the Nation in its charge by the competent agency.

Likewise, the museum is administratively, civilly and criminally liable for any deterioration or damage suffered by its property as a result of negligence or willful misconduct. To prevent this, it must have at its disposal the necessary personnel and conditions to ensure the conservation and protection of property.



*Panoramic view of Cusco, Peru. Author Diego Delso, delso.photo, 31 July 2015, License CC-BY-SA. Image has been cropped. Contact diego@delso.photo*

In addition, museums, as custodians of cultural property, are obliged to ensure the dissemination of their property to the public by establishing relevant programs and services to facilitate citizens' access to this source of knowledge.

Finally, the museum owner is obliged to ensure the authenticity of its collections. If replicas and/or reproductions are used for museological purposes, they must display a sign indicating the quality of reproduction of the original; if replicas are made of the pieces that make up their collections for promotion or sale, they must indelibly inscribe the word "replica" on the piece.

## **TRADE OF CULTURAL PROPERTY**

### **Trade limitations**

Domestic trade of cultural property under any title is allowed under article 9 of the GLCPN. This article states that, within the national territory, a property forming part of the Cultural Heritage of the Nation may be freely transferred under any title, including sale. The competent bodies must be notified of the transfer in advance.

Additionally, in transfers by sale, the State has the right of preemption, which means that whoever intends to sell a property that is part of the National Cultural Heritage must first notify the competent state ministry, declaring the price and conditions of the transfer. The State will have to reply in a maximum term of 30 working days. If the State does not respond in this period, the owner will be able to transfer the afore-mentioned goods to the third party.

The transfer of independent goods, which are part of a collection, is prohibited. They can only be transferred as a whole collection, with the exception of an express authorization by the competent public entity.

It should be pointed out that it is prohibited to transfer a piece of property that is part of the National Cultural Heritage to a person convicted, during the time of conviction, for the crimes included in Title VIII of Book Two of the Penal Code (crimes against the Cultural Heritage of the Nation). A transfer made in contravention of this provision is invalid.

If these conditions are not respected, the transfer will be sanctioned with nullity and the competent public prosecutor's office will commence the relevant legal actions.

In summary, trade has the following limitations:

- a. The potential sale must be communicated in advance to the competent authority along with its terms and price. If not, the sale will be considered invalid.
- b. Cultural property cannot be transferred to a person who has being condemned for crimes against the National Cultural Heritage, as described in Title VIII of the Criminal Code.
- c. The State has a preemptive right to buy the property. If the right of preemption is not respected, the sale will be considered invalid.



*Panoramic view of the Lake Umayo and the Sillustani burial ground: 2 towers on the right. Sillustani is a pre-Incan cemetery with tombs (chullpas) built above ground in tower-like structures housing the remains of nobles. The place was built by the Aymara, that were conquered by the Inca in the 15th century. Author Diego Delso, delso.photo, 1 August 2015, License CC-BY-SA. Image has been cropped. Contact diego@delso.photo*

- d. The independent transfer of objects part of a collection is prohibited. They can only be transferred as a whole collection, with the exception of express authorization by the competent agency.

#### **Sanctions to illicit trade**

The Criminal Code establishes that unauthorized commercialization of cultural property is a crime punishable with a prison sentence.

- a. In the case of pre-Hispanic goods, their trade is sanctioned with 3 to 8 years and a fine. If the perpetrator was a public servant who had custody over the goods, the sanction is increased to between 5 and 10 years in prison (article 228).
- b. In the case of other types of cultural property, its commercialization is sanctioned with 2 to 5 years in prison and a fine (article 230). Public servants who fail to fulfill their duties to intervene, or who allow the crime to be committed, are sanctioned with 3 to 6 years in prison, a fine and disbarment for at least a year. If there is no criminal intention behind their negligence, the maximum sentence is 2 years (article 229).

The judge may also impose the duty to compensate the victim for actual damages, if applicable.

As will be explained in section 3.3.2, the Criminal Code allows for the seizure and forfeiture of illegally acquired cultural property as well as of the materials, equipment and vehicles used in the commission of the crimes.

Seized property is transferred to the State, according to article 231 of the Criminal Code. An Administrative Sanctioning Procedure, in accordance with article 230 of the General Administrative Law, may lead to cession of ownership or the payment of fines. Moreover, in accordance with article 94 of the GLCPN, the fine, depending on the gravity of the infringement, may be no less than 0.25 UIT (US\$ 315.00 approximately) and no more than 1000 UIT (US\$ 1,257,575.75 approximately), while the seized property will be transferred in favor of the state.

These laws are enforced in practice.

## IV. IDENTIFICATION OF THE ADMINISTRATION AND ENFORCEMENT SYSTEMS AND RESULTS

### 4.1 NATIONAL ADMINISTRATIVE SYSTEM OF CULTURAL PROPERTY

#### Structure

The Ministry of Culture can be described as the head of the existing system for the management and administration of cultural property. Its mission is the protection, conservation and spread of the cultural heritage of the Nation. Specifically, these matters are under the supervision of the Viceministerial Office of Cultural Property and Cultural Industries. This office's main function is to declare, manage and protect the Cultural Heritage of the Nation, as well as to promote the spread and creation of culture and of the arts. In order to fulfill this role, it has five General Directorates, with the following structure:

1. General directorate of cultural property
  - a. Directorate of historical real estate property
  - b. Directorate of intangible property
  - c. Directorate of world heritage sites
  - d. Directorate of cultural landscapes
2. General directorate of archeological real estate property
  - a. Directorate of monuments management
  - b. Directorate of cadastre
  - c. Directorate of archeological interventions scoring
  - d. Directorate of certifications
3. General directorate of museums
  - a. Directorate of research and museologic planning
  - b. Directorate of assessments and technical services
  - c. Directorate of management, registry and cataloguing of movable cultural objects
4. General directorate of the defense of cultural property
  - a. Directorate of control and supervision
  - b. Directorate of recoveries
  - c. Directorate of citizen participation
5. General directorate of cultural industries and arts

The General Directorate of Cultural Property is the body responsible for designing, proposing and conducting the implementation of policies, plans, strategies, programs and projects for the proper management, registration, inventory, research, conservation, presentation, social use, promotion and dissemination of cultural heritage, including paleontological and underwater heritage, with the exception of movable archeological objects and real estate archaeological property.

The General Directorate of Archeological Real Estate Property is the body responsible for the execution of the technical and normative aspects of the management, conservation and protection of the country's archaeological heritage, and for the formulation and proposal of policies, plans, programs, projects, strategies and norms, as well as the execution and promotion of registration, research, conservation, presentation, enhancement and social use, and dissemination of immovable archaeological heritage.

The Museums General Directorate is the body responsible for formulating policies and regulations covering museums, as well as the management of museums and the protection, conservation and spread of the movable objects that make up the cultural heritage of the Nation.

As part of the Ministry of Culture, we also find two public agencies (organismos públicos ejecutores) which are the National Library of Peru (BNP) and the General Archive of the Nation (AGN). Both these agencies preexist the Ministry of Culture and were given roles by the GLCPN to identify, register, protect and promote bibliographical and documentary cultural property respectively.

*Llama Vessel, Earthenware with colored slips, Peru, North Coast, Moche style (50-800), Cleveland Museum of Art, John L. Severance Fund, <https://clevelandart.org/art/1990.128>*



It is worth mentioning that before the creation of the Ministry of Culture in recent years, the National Institute of Culture (INC) was mainly in charge of the management of cultural property, with the BNP and the AGN having functions as described in the previous paragraph. Said institutions were then under the control of the Ministry of the Education, as historically this Ministry was assigned the functions to manage cultural affairs. The Ministry of Culture, however, eventually absorbed the INC, in 2010, as already explained in section 1.1.2. The BNP and AGN also became part of this new Ministry.

### **Role in the registration of cultural property**

Historically, article 14 of the GLCPN established that the INC was responsible for maintaining an updated inventory of cultural property, while the BNP and the AGN were responsible for maintaining an updated inventory of bibliographic, documentary and archival material related to cultural property. Today, however, the Ministry of Culture has assumed the functions of the National Institute of Culture.

Specifically, the General Directorate of Cultural Property is in charge of managing the National Informatic Registry of Objects comprising the Cultural Heritage of the Nation, although the Directorate of Intangible Property, the Directorate of Cultural Landscapes and the General Directorate of Archeological Real Estate Property also upload the information regarding cultural property under their supervision. The Directorate of Historical Real Estate Property is in charge of managing the Registry of Real Estate Property Comprising the Cultural Heritage of the Nation. The Directorate of Management, Registry and Cataloguing of Movable Cultural Objects is in charge of updating the National Registry of Movable Objects Comprising the Cultural Heritage of the Nation. The Directorate of Protection of Collections of the BNP is in charge of updating the National Registry of Bibliographical Material while the AGN is in charge of managing the National Registry of Documentary Collections and Historical Archives, Public or Private.

Movable cultural objects can be registered before the Ministry of Culture via Procedure 37 of its TUPA (text containing all the administrative procedures of a public agency). A form is presented to the Ministry of Culture along with photos



*Uros floating islands, Titicaca Lake, Peru. Author Diego Delso, delso.photo, 1 August 2015, License CC-BY-SA. Image has been cropped. Contact diego@delso.photo.*

from different points of view of the object or objects and a list of object(s) to be registered, their dimensions and how they were acquired. The Directorate of Management, Registry and Cataloguing of Movable Cultural Objects has 7 to 30 business days (depending on the number of objects presented) to make a decision. If the request is rejected, the owner may appeal it.

## REGISTRY OF CULTURAL OBJECTS

### Existing registries

Chapter IV of the RGLCPN, in accordance with Chapter III of the GLCPN, regulates the National Registry of Cultural Objects comprising the Cultural Heritage of the Nation (*Registro Nacional de Bienes integrantes del Patrimonio Cultural de la Nación*) (hereinafter, the “National Registry”). Every cultural asset owned by the private or public sector must be recorded, as it aims to improve the government’s control over all cultural property in the country (article 9 of the RGLCPN).

The National Registry is at the same time comprised of many registries according to the classification of cultural objects. Article 18 of the RGLCPN, in accordance with article 16 of the GLCPN established the following registries:

- a. The National Registry of Real Estate Property Comprising to the Cultural Heritage of the Nation, which records all real estate belonging to the cultural heritage of the Nation, whether owned by the State or by private individuals.
- b. The National Registry of Movable Objects Comprising the Cultural Heritage of the Nation, where all the tangible movable goods of the cultural heritage of the nation are registered, apart from those belonging to the bibliographic, documentary and archival patrimony, which are property of the State or of individuals.
- c. The National Registry of Bibliographical Material.
- d. The National Registry of Documentary Collections and Historical Archives, Public or Private.
- e. The National Registry of Public and Private Museums, where all public and private museums that exhibit properties that are part of the National Cultural Heritage are registered.
- f. The National Registry of Folklore and Popular Culture, where all the tangible or intangible property belonging to folklore and popular culture that is part of the National Cultural Heritage is registered.
- g. The National Registry of Natural or Legal Persons engaged in the trade of Cultural Heritage Member Assets

of the Nation.

h. Others that the competent agencies consider necessary.

As can be observed from the registries created by the GLCPN, which we previously mentioned in Definitions, the classification made by the law is reflected to some extent in the said registries. However, the General Cultural Heritage Directorate is responsible for the registration of all cultural heritage regardless of its classification.

It is worth mentioning that the Ministry of Culture has currently incorporated the National Registry of Cultural Movable Objects comprising the Cultural Heritage of the Nation in an IT System. This facilitates management of said registry by its personnel, and enables access to its contents for the owners of registered goods, and researchers.

In theory, this inventory could allow the State to establish the date of illicit removal or export of cultural objects. However, considering the ministry currently lacks the capability to audit continuously the state of the registered goods, it would be very difficult to establish accurate dates for any illicit removal or export of said goods.

### **Duty to register cultural objects**

The GLCPN and the RGLCPN require the registration of cultural property owned either by the State or by individuals in the National Registry. In the case of cultural objects owned by the State, they must also be registered in the State Property Information System.

The purpose of this registry is to identify each one of the assets that make up our cultural legacy, whether they are public or private property, and to control their location, transfer, export, or any interventions for the sake of their conservation. As explained, this registry is administered by the Ministry of Culture, which is also in charge of centralizing online all the information produced by the registries that make up the National Registry, notwithstanding the competences that correspond to the BNP and the AGN.

Any property that is declared part of the cultural heritage of the Nation will be recorded ex officio in the National Registry, generating a file containing a detailed description and technical recognition of the property. The inscription in this register will be generated following the resolution of the declaration of inclusion in Peru's cultural heritage. In the case of real estate, the INC will provide the owner with a registration certificate.

In cases involving the restitution or seizure of movable cultural property, or donations to the competent bodies, the property in question shall be entered ex officio in the appropriate register.

The competent bodies shall encourage the signing of agreements with the owners or possessors of cultural property, in order to promote their registration. Without prejudice to this, the owner of a property that is part of the cultural heritage of the Nation is obliged to apply to the competent agency for registration of cultural property at its expense.

Any person who acquires property that is part of the cultural heritage of the Nation has the duty to comply with the established procedures and prove the validity of their acquisition. If they do not comply with the requirements, their acquisition of the property is presumed to have been illicit, nullifying the transfer of property or transfer of possession and reverting it in favor of the State, unless their right is approved through the judicial process.

In the case of restitution and seizure of movable cultural property, or donations to the competent bodies, these shall be entered ex officio in the appropriate register.

The competent entities are obliged to provide to any entity of the State that requires it, the information contained in the National Registry.

### **Public access to the registries**

As a rule, in accordance with the Law 27806, all information held by the State is deemed public and therefore can be accessed by presenting a request of access to public information, in this case to the Ministry of Culture. The Registry of Real Estate Cultural Property can be easily accessed via the following link: <http://www.cultura.gob.pe/es/serviciosonline/patrimoniohistoricoinmueble>.

Online access to the Registry of Moveable Cultural Objects is also granted to the owners of registered objects as well as authorized researchers.

## **LAW ENFORCEMENT AND PROSECUTION**

### Competent agencies

The agency in charge of enforcing the law and imposing sanctions depends on the nature of the infringement (whether civil, criminal, administrative, etc.).

- a. Crimes against cultural heritage are prosecuted by the Public Prosecutor's Office before a judge specializing in criminal law in the judicial district where the crime took place. These judges are also the ones that determine civil liability originating in crimes.
- b. The Ministry of Culture is in charge of administrative sanctions. Its decision can be appealed before a judge specializing in contentious-administrative law.

According to the available information, during the year 2018, the Ministry of Culture initiated 55 administrative proceedings to punish violations to the provisions of the GLCPN and issued 34 resolutions imposing sanctions for such violations.

- c. Civil liability suits can be filed before a judge specializing in the civil law of the judicial district in which the counterparty is domiciled, in order to obtain compensation for actual damages.

Nevertheless, there is a general rule in the GLCPN that any Peruvian public entity has the duty to inform to the Public Prosecutor's Office (Ministerio Público) in the event of any disruption or damage of Peruvian cultural property. Here are some examples:

- a. The Peruvian embassies, consulates and Peruvian representatives in foreign nations, have the duty to inform to the Public Prosecutor's Office: a) if they become aware of any not permitted exhibition of Peruvian cultural property, or b) if they become aware of any illegal commercialization of Peruvian cultural property (articles 35.2 of the GLCPN).
- b. Any public entity has the duty to inform the Public Prosecutor's Office of any illegal exportation of Peruvian cultural properties which they become aware of (article 35.3 of the GLCPN).

In these cases, the Public Prosecutor's Office will initiate an investigation and indict when appropriate.

### Preemption and confiscation

Although authorization per se is not needed, article 53 of the RGLCPN establishes that any transfer that has not been previously communicated to the competent authority will be declared invalid and may result in the seizure of the goods. Furthermore, article 49.2 of the GLCPN establishes that seized goods will be delivered to the competent authority which will then determine whether they are to be returned to their owner or forfeited in favor of the State.

The Criminal Code also establishes in article 231 that crimes against the national cultural heritage, including its illegal commercialization, may be sanctioned with the seizure and forfeiture of the illegally obtained goods.

As an example of confiscation, in December 2014, the police in coordination with the Ministry of Culture confiscated 21 textile pieces in Tacna. These textiles were destined to be illegally transported and sold in Chile. The person involved in this trafficking was convicted, under criminal law, of the illicit trafficking of cultural objects.

The law transfers cultural property to the State in three additional cases:

- a. As a legal consequence of the following activities:
  - i. Damaging cultural property whether with intent or due to negligence
  - ii. Attempting to export cultural property without authorization
  - iii. Attempting to import foreign cultural property without authorization from its origin country.

In each of these cases the original owner receives no compensation and may even be sanctioned with a fine.

- b. According to article 11 of the GLCPN, expropriation of real estate may take place due to public necessity, when the property is in danger of being lost due to abandonment, negligence, serious risk of destruction, or



*Rumicolca, Cuzco, Peru, Author Diego Delso, delso.photo, 31 July 2015, License CC-BY-SA. Image has been cropped. Contact [diego@delso.photo](mailto:diego@delso.photo)*

substantial deterioration, any of which conditions may be identified by the Ministry of Culture.

However, such expropriation may be suspended if, within 30 days of the declaration of public necessity, the owner of the property submits to the Ministry of Culture a project for the conservation, restoration and enhancement of the property, and implements the project within 30 days of its approval.<sup>19</sup> The Ministry of Culture's technical personnel must supervise these works. If the works are suspended for more than one month, or if the execution of the project does not meet with the Ministry of Culture's approval, the expropriation procedure will be initiated.<sup>20</sup>

The Expropriation Law - Law 27117, regulates compensation. Article 15 establishes that the State must pay the commercial price of the real estate as well as any actual damage the expropriation procedure may have caused.

- c. Preemption right of the State. As previously explained with regard to the sale of cultural property, the State has a preferential right to buy the property, in which case it will pay the owner the price offered by the potential buyer.

### **Funding**

Article 45 of the GLCPN establishes the following as resources for the protection of the national heritage: funds from the public treasury, resources raised directly by public agencies (fines), donations and legacies, funds from international cooperation, a percentage of the insurance policy of goods exhibited in the other countries. In general, public limited funding.

Criminal prosecutions for crimes against Peruvian cultural property are in the charge of the Public Prosecutor's Office and have their own independent funding.

### **Recovery of cultural property lost to other nations**

Peru has diplomatic procedures for the recovery of cultural property that has been lost to foreign nations under the framework of different treaties and international agreements. The Ministry of Foreign Affairs, for example, conducts these within the framework of the UNESCO Convention of 1970 and the UNIDROIT Convention of 1995.

In recent years, Peru has used these procedures effectively, as demonstrated by the recovery of a large amount of cultural property. For example, up to September of 2018, Peru recovered around 1700 archeological and artistic

<sup>19</sup> Articles 11.3 and 43.

<sup>20</sup> *Idem.*

pieces from Argentina, Australia, Colombia, Ecuador, the USA, the Netherlands, the United Kingdom, Sweden and Switzerland.<sup>21</sup> Peru has also recovered approximately 800 books from Chile, which are part of the Peruvian bibliographic and documentary cultural heritage.<sup>22</sup>

## V. ARCHEOLOGICAL WORK

### 5.1 MANAGEMENT OF ARCHEOLOGICAL WORK

The General Direction of Archaeological Heritage (part of the Ministry Culture) is an institutional body, which is in charge of archaeological works. Universities usually support these works. In the following sections, we will expand on how this works.

#### ISSUING OF PERMISSIONS

The Ministry of Culture has the authority to grant all permissions for excavations and study to either domestic or foreign archeologists. As previously mentioned, all archaeologists, whether domestic or foreign, should follow the TUPA procedure in order to first be registered in the National Registry of Archeologists, and should then follow TUPA No. 13, in order to obtain the “Authorization to carry out Projects of Archeological Research”.

The following requirements must be fulfilled in order to obtain the excavation authorization:

1. Application under the Format No. FP05DGPA.
2. Payment of the fee for the authorization and approval procedure.
3. Two (2) copies of the Project file, duly foliated, bound and ringed, each one with its digital version (text, tables, photos, maps, blueprints with UTM coordinates, datum WGS 84 and indicating the geographical zone)
4. Letter of introduction from the applicant, generally the project’s director.
5. Copy of a letter from the project’s sponsor indicating its commitment to the financing of the project and the total amount provided.
6. Letters of commitment stating the intention not to adversely affect the Cultural Heritage of the Nation, taking responsibility for any damages, signed by the director and the applicant, if applicable. **In the case of implementation of value enhancement for an archaeological site, the following documents must also be submitted, in accordance with international standards:**
7. Layout of the site with the proposed route for pedestrian visitors, including viewpoints, rest stations, and signage.
8. Presentation of samples of the proposed signage.
9. Blueprints of civil works with their respective technical data, in cases involving the execution of civil works.
10. Project registration form, SNIP formats 03 and 04, and copy of the Initial Opening Budget, if the project is part of a PIP (Public Investment Project).<sup>23</sup>

The entity responsible for the authorization is the General Directorate of Archaeological Heritage Property, who has 30 days to accept or reject the authorization for the archeological investigation.<sup>24</sup>

Moreover, the authorization granted by the Ministry of Culture, is only given for up to one (1) year, at the end of which

<sup>21</sup> <https://www.efe.com/efe/cono-sur/cultura/peru-recupera-1-700-piezas-arqueologicas-y-obras-de-arte-desde-nueve-paises/50000756-3756328>

<sup>22</sup> <https://elperuano.pe/noticia-destacan-repatriacion-bienes-culturales-66904.aspx>

<sup>23</sup> [http://archivospatrimonio.cultura.gob.pe/rbc\\_prod/anexos/ConsolidadoTUPA.pdf](http://archivospatrimonio.cultura.gob.pe/rbc_prod/anexos/ConsolidadoTUPA.pdf)

<sup>24</sup> [http://archivospatrimonio.cultura.gob.pe/rbc\\_prod/anexos/ConsolidadoTUPA.pdf](http://archivospatrimonio.cultura.gob.pe/rbc_prod/anexos/ConsolidadoTUPA.pdf)

the team is required to present before the Ministry the final report of their investigation.<sup>25</sup> The archeological excavation time period may be extended, in which case an application should be submitted at least 15 days before the end of the initial allotted time period, stating the following: (i) an advance review of the work done to date, (ii) work plan, and (iii) budget for the extension.

It is worth mentioning that we do not have a record for metal detectorists or private archaeological groups. Instead, we have a national record of archaeologists in which all professionals in archaeology are registered, which allows them to be identified and enabled to direct archaeological interventions.

## FOREIGN ARCHEOLOGICAL WORK

As a first requirement, in order to direct an archaeological intervention, professionals in archaeology, whether national or foreign, must be registered in the National Registry of Archaeologists of the Ministry of Culture.

When a foreign researcher who does not reside in Peru directs archaeological research programs and projects, the project must also have a director of Peruvian nationality. Both directors must be registered with the State.

It should be noted that foreign professionals who wish to register in the National Registry of Archaeologists must submit:

- a) An authenticated copy of their professional title in archaeology or degree of magister or doctor in archaeology, issued by a Peruvian university, or revalidated by the competent entity.
- b) A documented curriculum vitae in Spanish language, including:
  - i. Letter of introduction from the academic institution with which they are affiliated, indicating their area of specialization and employment status, and where they obtained their professional competence.
  - ii. Documents demonstrating their professional and research experience, relevant academic publications, and scientific associations or corporations to which they belong.

All archaeological interventions, whether carried out solely by nationals or by foreigners as research directors, are subject to ocular inspection. The ocular inspection consists in the follow-up and control, in the form of an inspection, which is carried out ex officio by the Ministry of Culture in archaeological interventions.

This inspection will be carried out by a professional with extensive experience in fieldwork, by the Directorate General of Real Estate Archaeological Heritage or by the Decentralized Directorates of Culture, according to the scope of their competencies.

In the case of archaeological research programs in general, the Directorate General of Real Estate Archaeological Heritage will undertake the ocular inspection. In the case of archaeological research projects, archaeological evaluation projects and archaeological monitoring plans that are under the jurisdiction of the Decentralized Directorates of Culture, these directorates will be the ones to carry out the ocular inspection. In the case of archaeological rescue projects, emergency archaeological actions and emergency projects, the General Directorate of Real Estate Archaeological Heritage will carry out the inspection.

This inspection will be coordinated with the director of the intervention; however, independently of the coordinated inspections, the Ministry of Culture reserves the right to carry out unannounced inspections when it deems it appropriate.

The inspector must verify that the archaeological interventions are being carried out appropriately, in accordance with the directive establishing the procedure for visual inspection approved by the Ministry of Culture, the set objectives, and the procedures described in the authorization for the intervention. It will also check that the work and findings have been properly recorded and that the appropriate techniques have been used for excavation, conservation and cabinet work, indicating to the director of the intervention their opinions and recommendations regarding what has been observed in the worksite.

For each inspection, a Computerized Inspection Record must be drawn up on site, which will be signed by the inspector and the director of the intervention. This report follows a format established by the Ministry of Culture, and

<sup>25</sup> [http://www.unesco.org/culture/natlaws/media/pdf/peru/peru\\_supdec003\\_2014\\_spaorof](http://www.unesco.org/culture/natlaws/media/pdf/peru/peru_supdec003_2014_spaorof) - Article 17.



*Rumicolca, Cuzco, Peru, Author Diego Delso, delso.photo, 31 July 2015, License CC-BY-SA. Image has been cropped. Contact [diego@delso.photo](mailto:diego@delso.photo)*

is intended to verify whether the inspected intervention complies with the following:

- i. The proposed objectives;
- ii. The proposed methodology; and,
- iii. The terms of the authorization resolution.

After that, the inspector must indicate the conformity or non-conformity of the work carried out. He shall also specify the observations and recommendations, if any, the execution and correction of which must be verified by the inspector, up to the last inspection he carries out.

The report of the site inspection, in conformity with the Computerized Inspection format, as well as the relevant graphic documentation, shall be sent to the Directorate of Qualification of Interventions at the Central Headquarters of the Ministry of Culture, or forwarded to the director of the Decentralized Directorate of Culture, according to the scope of its competency, within a maximum period of 3 working days after the signing of the report.

The aforementioned report has the rank of a technical report and its preparation will be a necessary condition for the approval of the Final Report of the archaeological interventions. The number and frequency of inspections, according to the nature of the intervention and its duration, will be established in the directorial resolution authorizing archaeological interventions.

### **AUTHORIZATION OF ARCHAEOLOGICAL EXCAVATION**

Contractors working in both government and private construction are obliged to have an archaeological review of the site. Areas where archeological objects are often found are obliged to obtain an archeological report saying there are no archeological objects in site. If a grave or archeological materials are found, regulations require construction work to halt pending further archaeological review and if necessary, archaeological excavation.

These regulations are enforced as State archaeologists and contracting private archaeologists regularly halt construction for archaeological review and excavation.

It is worth mentioning that we currently have two main laws that seek to prohibit unauthorized archaeological extractions; these are the Criminal Code and the GLCPN.

These are criminal and administrative laws respectively.

## VI. CONSISTENCY OF APPLICATION OF CULTURAL PROPERTY LAW

### 6.1 EXTINGUISHING OF THE CONDITION OF CULTURAL PROPERTY

The classification of an object or a real estate property as a cultural property can be extinguished. Three agencies of the Peruvian Government are in charge of this administrative procedure (the National Institute of Culture, the Peruvian National Library and the Peruvian National Archive).

An administrative procedure shall be carried out for the removal of cultural property, whether movable or immovable, from the register. The condition of cultural property is only extinguished based on a declaration made by the competent agency, and such declaration must be made via a resolution that identifies in an indubitable manner the property to which the extinction will apply.

### APPLICATION OF INTERNATIONAL CULTURAL PROPERTY LAWS

As previously mentioned, article 49 of the GLCPN establishes the same sanctions for attempting to illegally export cultural property, and for attempting to import foreign cultural property without authorization from its country of origin. Also, as already mentioned in a previous answer, the law establishes as a crime both the import and export of illegal goods with a value that exceeds 4 UIT.

## VII. TRENDS, THE FUTURE AND THE IMPACT OF PLANS AND/OR INITIATIVES

### 7.1 POTENTIAL MODIFICATIONS OF THE CURRENT LEGAL FRAMEWORK

The most important future change to cultural property law is the new National Regulation of the Sanctioning Administrative Procedure in Charge of the Ministry of Culture, in the framework of the Law N° 282296, General Law of the Cultural Heritage of the Nation, which will replace the current Regulation of Sanctions.

This new regulation further develops the procedure, clearly establishing its steps, detailed criteria for the determination of damages and the imposing of sanctions, statutes of limitations and the responsibility to communicate violations to the law to the Ministry of Culture's attorney in order to take criminal law actions, among other changes.

This new regulation is currently in process of approval according to the Ministry of Culture. It can be accessed via the following link: [https://cdn.www.gob.pe/uploads/document/file/232042/207902\\_rm324.pdf20181203-3039-1yk7i9g.pdf](https://cdn.www.gob.pe/uploads/document/file/232042/207902_rm324.pdf20181203-3039-1yk7i9g.pdf).

At the Legislative level, there were approximately 45 bills in the Congress regarding matters of cultural property as of April 10, 2019. Of these, two are worth mentioning:

- a. The Bill N° 3988/2018-CR, presented on March 6, 2019, proposes the modification of the GLCPN regarding real estate cultural property in favor of its owner. For instance, it modifies the law so that legal protection only covers the exterior of buildings considered cultural property, thus giving more freedom to the owner to alter their interiors. It limits the possibility of the Public Prosecutor to take action against the destruction or alteration of real estate cultural property only to the cases where legal procedures were not followed. It also adds an article lifting the restrictions imposed by the law when a building is at risk of destruction and represents a danger for the life of its occupants. It also establishes a term for the Administration to issue opinions regarding requests required to the Municipalities to make decisions.

This Bill is currently being examined by the both the Congress Commissions of Culture and Cultural Property and of Economy, Banking, Finances and Financial Intelligence.

- b. The Bill N° 2769-2017, presented on April 20, 2018, proposes two modifications to the Law of Promotion of the Sustainable Development of Touristic Services in Real Estate Properties comprising the Cultural Property (of the Nation) - Law N° 29164. It eliminated the requirement for hotels to have at least four stars and restaurants to have a classification of at least four forks in order to be given concession of buildings that are cultural property.

Annex No. 1<sup>26</sup>

PERÚ

Ministerio de Cultura

FORMULARIO  
FP23DGPA

## AUTORIZACIÓN PARA REALIZAR EXPORTACIÓN DE MUESTRAS ARQUEOLÓGICAS CON FINES CIENTÍFICOS

D.S. N° 003-2014-MC

### FUNCIONARIO QUE APRUEBA EL TRÁMITE

 VICEMINISTRO DE PATRIMONIO CULTURAL E INDUSTRIAS CULTURALES

### SOLICITA:

 Autorización para realizar la exportación de muestras con fines científicos

### I. DATOS DEL SOLICITANTE

PERSONA NATURAL PERSONA JURÍDICA 

APELLIDOS Y NOMBRES O RAZÓN SOCIAL

DOMICILIO LEGAL (AV. / CALLE / JIRÓN / PSJE. / N° / DPTO. / MZ. / LOTE / URB.)

DISTRITO

PROVINCIA

DEPARTAMENTO

D.N.I.

C.E.  C.I. 

N° de RUC

TELÉFONO / FAX

CELULAR

CORREO ELECTRÓNICO (E-MAIL)

REPRESENTANTE LEGAL (APELLIDOS Y NOMBRES)

DOMICILIO REPRESENTANTE LEGAL (AV. / CALLE / JIRÓN / PSJE. / N° / DPTO. / MZA / LOTE / URB.)

D.N.I.  C.E.  C.I. 

### II. EXPRESIÓN COMPLETA Y PRECISA DE SU PEDIDO (ARGUMENTACIÓN DE LA SOLICITUD)

DESCRIPCIÓN

Nombre del investigador responsable:.....

Número de registro de RNA o RNDA, de ser el caso:.....

Domicilio:.....

Procedencia de las muestras (número y fecha de la resolución de autorización de la intervención, número y fecha de la resolución directoral de custodia, museos, etc.):.....

Datos de la persona que efectuara el traslado de las muestras:.....

### III. DOCUMENTACIÓN QUE ADJUNTA: (en concordancia a lo establecido en el TUPA)

- Indica número de comprobante de pago. N° .....
- Expediente con la información requerida en el artículo 91 del Reglamento de Intervenciones Arqueológicas, debidamente foliado, encuadernado o anillado, y las muestras materia de solicitud
- Autorización de la Dirección Desconcentrada de Cultura correspondiente para el traslado de las muestras, o acta de verificación emitida por la Sede Central del Ministerio de Cultura, en el caso de muestras recuperadas en intervenciones arqueológicas que no se encuentren bajo custodia del investigador
- Autorización de la Dirección del Museo de procedencia o de la Dirección Desconcentrada de Cultura correspondiente en el caso de muestras que no hayan sido recuperadas en intervenciones arqueológicas o se encuentren en museos o depósitos administrados por el Ministerio de Cultura
- Carta de compromiso de entrega de informe científico y publicación de los resultados dentro del plazo de un (1) año contado a partir de la fecha de obtención de los resultados
- Carta de compromiso de utilizar el resultado de los análisis de las muestras únicamente para fines científicos y no comerciales

#### Nota:

- El trámite se realiza en la sede central del Ministerio de Cultura luego de solicitar en mesa de partes o descargar en la página web [www.cultura.gob.pe](http://www.cultura.gob.pe) el formulario respectivo, e ingresando el mismo a través de mesa de partes junto con las muestras que son materia de la solicitud.

Procedencia de las muestras (número y fecha de resolución de autorización de la intervención, número y fecha de la resolución directoral de custodia, museos, etc.);

NO SE ACEPTAN BORRONES NI ENMIENDADURAS

<sup>26</sup> <http://www.cultura.gob.pe/sites/default/files/atencionciudadano/tablaarchivos/06/fp23dgpai-autorizacionpararealizarexportaciondemuestra-sarqueologicasconfinescientificos.pdf>

**IV. El Expediente de la solicitud de autorización para realizar exportación de muestras con fines científicos contendrá la siguiente información:**

1. Finalidad de los análisis
2. Tipo de análisis (indicar el análisis específico y si éste es destructivo o no destructivo) y nivel de tratamiento de la muestra
3. Lugar y nombre del laboratorio o laboratorios en los que realizará inicialmente el o los análisis
4. Lugar de procedencia de las muestras. Si proviene de una intervención, indicar el nombre del monumento, ubicación política y, datos del contexto arqueológico. Si proviene de una colección o fondo museográfico, indicar el nombre del museo, su ubicación política e información de registro y catalogación de la muestra
5. Datos cuantitativos y cualitativos de las muestras (tipo de material, cantidad, peso)

**V. DECLARACIÓN JURADA**

**DECLARO BAJO JURAMENTO QUE LOS DATOS SEÑALADOS EXPRESAN LA VERDAD**

\_\_\_\_\_

APELLIDOS Y NOMBRES

\_\_\_\_\_

FIRMA DEL SOLICITANTE / REPRESENTANTE LEGAL

Autorizo que todo acto administrativo derivado del presente procedimiento, se me notifique en el correo electrónico (e-mail) consignado en el presente formulario (ley N° 27444, numeral 20.4 del artículo 20°), Si  No

Autorizo las acciones que el Ministerio de Cultura pueda realizar en el área materia de esta solicitud a fin de tener un mejor criterio para resolver el procedimiento y cumplir con sus funciones en salvaguarda del Patrimonio Cultural.

**ACLARACIÓN SOBRE FALSEDAD DE LA INFORMACIÓN DECLARADA**

**Ley N° 27444 (numeral 32.3 del artículo 32°)**

“ En caso de comprobar fraude o falsedad en la declaración, información o en la documentación presentada por el administrado, la entidad considerará no satisfecha la exigencia respectiva para todos sus efectos, procediendo a comunicar el hecho a la autoridad jerárquicamente superior, si lo hubiere, para que se declare la nulidad del acto administrativo sustentado en dicha declaración, información o documento; imponga a quien haya empleado esa declaración, información o documento una multa en favor de la entidad entre dos y cinco Unidades Impositivas Tributarias vigentes a la fecha de pago; y además, si la conducta se adecúa a los supuestos previstos en el Título XIX Delitos Contra la Fe Pública del Código Penal, ésta deberá ser comunicada al Ministerio Público para que interponga la acción penal correspondiente.”

**SÍRVASE COMPLETAR CON LETRA LEGIBLE**

Annex No. 2<sup>27</sup>

FORMULARIO FP01DGM		AUTORIZACIÓN DE SALIDA TEMPORAL DE BIENES CULTURALES MUEBLES INTEGRANTES DEL PATRIMONIO CULTURAL DE LA NACIÓN PARA EXPOSICIONES EN EL EXTRANJERO			
FUNCIONARIO QUE APRUEBA EL TRÁMITE					
PRESIDENTE DE LA REPÚBLICA					
<b>LA SOLICITUD DEBE SER PRESENTADA CON UN MÍNIMO 90 DÍAS HÁBILES ANTES DE LA FECHA DE LA EXPOSICIÓN</b>					
I. DATOS DEL SOLICITANTE					
PERSONA NATURAL <input type="checkbox"/>			PERSONA JURÍDICA <input type="checkbox"/>		
APELLIDOS Y NOMBRES O RAZÓN SOCIAL					
DOMICILIO LEGAL (AV. / CALLE / JIRÓN / PSJE. / N° / DPTO. / MZ. / LOTE / URB. )					
DISTRITO		PROVINCIA		DEPARTAMENTO	
D.N.I.	C.E. <input type="checkbox"/>	C.I. <input type="checkbox"/>	PASAPORTE <input type="checkbox"/>	N° de RUC	
REPRESENTANTE LEGAL (APELLIDOS Y NOMBRES)				D.N.I. <input type="checkbox"/>	PASAPORTE <input type="checkbox"/>
DOMICILIO REPRESENTANTE LEGAL (AV. / CALLE / JIRÓN / PSJE. / N° / DPTO. / MZ. / LOTE / URB. )					
TELÉFONO	CELULAR	CORREO ELECTRÓNICO (E-MAIL)			
II. DATOS DE LA EXPOSICIÓN					
NOMBRE DE LA INSTITUCIÓN ORGANIZADORA					
REPRESENTANTE EN EL PAÍS					
NOMBRE DE LA EXPOSICIÓN, SEDE, CIUDAD Y PAÍS					
.....					
.....					
FECHA DE INAUGURACIÓN	FECHA DE CLAUSURA	FECHA ESTIMADA DE SALIDA DE LOS BIENES	FECHA ESTIMADA DE RETORNO DE LOS BIENES		
INDICAR SEDES DE ITINERANCIA, FECHAS DE INAUGURACIÓN Y CLAUSURA					
.....					
.....					
.....					
.....					
ESTÁNDARES DE CONSERVACIÓN Y SEGURIDAD					
<p>La institución organizadora declara que todas las sedes de exposición cumplen con los estándares internacionales físicos, ambientales y de seguridad, los mismos que han sido evaluados por el conservador a cargo de la exposición. El conservador se asegurará de que el montaje de los bienes se realice con materiales neutros y de acuerdo a las indicaciones del propietario y/o custodio de los bienes.</p> <input type="checkbox"/>					
NOMBRE DEL CONSERVADOR RESPONSABLE DE LOS BIENES EN DESTINO					
TELÉFONO	CELULAR	CORREO ELECTRÓNICO (E-MAIL)			

FORMULARIO GRATUITO - NO SE ACEPTAN BORRONES NI ENMENDADURAS

FORMULARIO GRATUITO - NO SE ACEPTAN BORRONES NI ENMENDADURAS

<sup>27</sup> <http://www.cultura.gob.pe/sites/default/files/atencionciudadano/tablaarchivos/06/fp01dgmautorizacsalidatemporalbcmexposicionesestranjero.pdf>

III. ARGUMENTACIÓN PRECISA DE SU SOLICITUD	
DESCRIPCIÓN	
<p>.....</p> <p>.....</p>	
IV. DOCUMENTACIÓN QUE ADJUNTA (en concordancia a lo establecido en el TUPA)	
CALIFICACIÓN	
Pago por derecho de trámite N° ..... <input type="checkbox"/> - Evaluación técnica de expediente <input type="checkbox"/> - Por cada pieza. Solicitud por ( ) piezas.	
<input type="checkbox"/> Poder vigente de la persona y/o personas que a nombre de la entidad organizadora soliciten la Autorización de Salida Temporal de bienes culturales muebles integrantes del Patrimonio Cultural de la Nación para Exposiciones en el Extranjero (deberá estar vigente conforme a la legislación peruana con la apostilla de La Haya y/o legalización consular).	
<input type="checkbox"/> Carta de aceptación del préstamo por parte del propietario y/o custodio de los bienes.	
<input type="checkbox"/> Listado valorizado de bienes culturales muebles solicitados en préstamo, debidamente registrados por el Ministerio de Cultura.	
<input type="checkbox"/> Póliza de Seguro "Clavo a Clavo" contra todo riesgo y a valor convenido, donde se deje constancia que el beneficiario es el Ministerio de Cultura y/o el propietario según corresponda. El plazo de 30 días para resolver se inicia a partir de la recepción de la póliza original. La póliza deberá incluir las condiciones generales y particulares o especiales de cobertura.	
<input type="checkbox"/> Convenio de préstamo suscrito entre la entidad organizadora y el Ministerio de Cultura, conforme a las normas vigentes (en el caso que los bienes solicitados sean administrados por el Ministerio).	
Notas: * Toda la documentación deberá ser redactada en el idioma español o traducida a éste, incluida la Póliza de Seguro. * Cuando el administrado intervenga mediante representante, éste deberá acreditar el mandato de su condición de representante y las facultades expresas para realizar el trámite.	
COMPROMISOS DE LA INSTITUCIÓN ORGANIZADORA	
La institución organizadora declara que asumirá los gastos que ocasionen las funciones del (los) comisario (s) que el Ministerio de Cultura designe: - Emisión de pasaporte, emisión de visa y movilidad local. <input type="checkbox"/> - Pasajes nacionales e impuestos de viaje, alojamiento y viáticos dentro del país cuando se requiera traslados en el interior del país o si el comisario vive en otra ciudad (tanto a la salida como al retorno de los bienes). - Pasajes internacionales de ida y vuelta e impuestos de viaje (tanto a la salida como al retorno de los bienes, y en los viajes intermedios que sean necesarios en las itinerancias) - Alojamiento, viáticos y seguro internacional de viaje para el comisario (tipo Assist Card o similar) durante su estadía fuera del país.	
La institución organizadora declara que entregará al Ministerio de Cultura en la Sede Nacional y sin costo alguno: <input type="checkbox"/> * Por el préstamo de 1 a 30 bienes: 20 catálogos de la exposición y 10 ejemplares de cualquier otro elemento de difusión de la exposición. * Por el préstamo de 31 bienes a más: 50 catálogos de la exposición y 10 ejemplares de cualquier otro elemento de difusión de la exposición.	
V. DECLARACIÓN JURADA	
<b>DECLARO BAJO JURAMENTO QUE LOS DATOS SEÑALADOS EXPRESAN LA VERDAD</b>	
<p>.....</p> <p style="text-align: center;">APELLIDOS Y NOMBRES <span style="float: right;">FIRMA DEL SOLICITANTE / REPRESENTANTE LEGAL</span></p>	
Asimismo, autorizo que todo acto administrativo derivado del presente procedimiento, se me notifique en el correo electrónico (E-mail) consignado en el presente formulario. (Ley N° 27444, numeral 20.4 del artículo 20°) <span style="float: right;">SI <input type="checkbox"/> NO <input type="checkbox"/></span>	
ACLARACIÓN SOBRE FALSEDADE DE LA INFORMACIÓN DECLARADA	
<small>Ley N° 27444 (numeral 32.3 del artículo 32°)            * En caso de comprobar fraude o falsedad en la declaración, información o en la documentación presentada por el administrado, la entidad considerará no satisfecha la exigencia respectiva para todos sus efectos, procediendo a comunicar el hecho a la autoridad jerárquicamente superior, si lo hubiere, para que se declare la nulidad del acto administrativo sustentado en dicha declaración, información o documento; imponga a quien haya empleado esa declaración, información o documento una multa en favor de la entidad entre dos y cinco Unidades Impositivas Tributarias vigentes a la fecha de pago; y además, si la conducta se adecúa a los supuestos previstos en el Título XIX Delitos Contra la Fe Pública del Código Penal, ésta deberá ser comunicada al Ministerio Público para que interponga la acción penal correspondiente.*</small>	
<b>SÍRVASE COMPLETAR CON LETRA LEGIBLE</b>	