



*Collection of legislative texts concerning
the protection of movable cultural property*

E C U A D O R

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P R E F A C E

Since its foundation UNESCO has been constantly engaged in an effort to protect cultural property against the dangers of damage and destruction which threaten it and, in particular, against dangers resulting from theft, clandestine excavations and illicit traffic. The work carried out in this field in recent years has shown that national laws and regulations governing the protection of movable cultural property are little known abroad. This has prompted UNESCO to embark on the collection and distribution of legislative texts for the information and use of national services for the protection of the cultural heritage, museum curators, art dealers, antique dealers, private collectors, customs and police services, and anyone else required to have a knowledge of the legal status of cultural property, with a view to fostering international co-operation in the prevention and repression of offences concerning movable cultural property.

UNESCO has already published two volumes of a compendium containing extracts from the legislation in force in forty-five Member States. These appeared in French in 1979 and 1981 under the title "La protection du patrimoine culturel mobilier - Recueil de textes législatifs" and in English in 1984 under the title "The Protection of Movable Cultural Property - Compendium of Legislative Texts".

The publication of legislative texts governing the protection of movable cultural property is being pursued in the form of a series of booklets, each presenting the laws and regulations of one country. The booklets will, as far as possible, contain the full texts of legislation dealing with :

- . the definition of protected movable cultural property
- . the system of ownership and use
- . the extent of protection
 - inventory, registration, scheduling, declaration
 - rights and obligations of the owner, the person in possession or control and the authorities with respect to protected property
 - regulation of trade in antiquities
 - export regulations
 - import regulations
- . fortuitous discoveries and archaeological excavations
- . sanctions
- . authorities responsible for protection

The legislative texts are preceded by a brief introduction which provides information on the international conventions concerning the protection of movable cultural property to which the State concerned is party and gives the list of the texts reproduced in the booklet. The introduction also contains an index of the main provisions of national laws and regulations which concern specifically the protection of movable cultural property arranged under the above headings.

An index of national laws and regulations concerning the protection of movable cultural property in force in the Member States of UNESCO will be issued at a later date.

ECUADOR

INTERNATIONAL CONVENTIONS CONCERNING THE PROTECTION OF MOVABLE CULTURAL PROPERTY TO WHICH THE STATE IS PARTY

Convention and Protocol for the Protection of Cultural Property in the Event of Armed Conflict (The Hague, 1954).

Instrument of ratification of the Convention deposited on 2 October 1956. The Convention entered into force with respect to Ecuador on 2 January 1957. Instrument of ratification of the Protocol deposited on 8 February 1961. The Protocol entered into force with respect to Ecuador on 8 May 1961.

Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (Paris, 1970).

Instrument of acceptance deposited on 24 March 1971. The Convention entered into force with respect to Ecuador on 24 April 1972.

Convention on the Protection of the Archaeological, Historical and Artistic Heritage of the American Nations (San Salvador, 1976).

Instrument of ratification deposited on 27 September 1978.

NATIONAL LAWS AND REGULATIONS SPECIFICALLY CONCERNING THE PROTECTION OF MOVABLE CULTURAL PROPERTY

- *Cultural Heritage Act n° 3501 of 2 July 1979*
- *Diplomatic Immunities, Privileges and Exemptions Act, 1970*

INDEX OF MAIN PROVISIONS BY SUBJECT-MATTER

<u>Definition of protected property</u>	Articles 7, 11 and 39 of the Cultural Heritage Act
<u>System of ownership</u>	Articles 9 and 11 of the Cultural Heritage Act
- Declaration, and registration	Articles 4, 7 and 8 of the Cultural Heritage Act
- Rights and obligations of the owner, the person having possession or control and the competent authorities	Articles 6, 8, 12, 13, 16, 17, 22, 38, 40 and 41 of the Cultural Heritage Act
- Export regulations	Articles 23 and 37 of the Cultural Heritage Act and Articles 31 and 32 of the Diplomatic Immunities, Privileges and Exemptions Act

Fortuitous discoveries and
archaeological excavations

- Fortuitous discoveries

Article 30 of the Cultural Heritage Act

- Archaeological excavations

Articles 28 and 29 of the Cultural Heritage Act

Sanctions

Articles 13, 18, 23 and 28 of the Cultural Heritage Act

Authorities responsible for
protection

Articles 4 and 42 of the Cultural Heritage Act.

CULTURAL HERITAGE ACT⁽¹⁾

No. 865 - OFFICIAL GAZETTE - 2 July 1979

No. 3501

THE SUPREME COUNCIL OF GOVERNMENT

Considering:

That it is the duty of the State to conserve the cultural heritage of a people, which is the foundation of its nationhood, constituted by the values of human thought as expressed through science, technology, craftsmanship and art, and by its linguistic, literary and musical expressions in accordance with its traditional way of life and ancestral customs down to the present day;

That it is necessary to protect the cultural legacy of our forefathers and outstanding works of modern art, by preventing them from being taken abroad illegally, thereby diminishing the cultural heritage of the Nation;

That there is a need to stimulate those who possess archaeological or ethnographical objects, collections of colonial, republican or contemporary art objects or documents of any kind and have them realize that it is indispensable to make an inventory of this heritage as a fundamental measure to preserve it and make it widely known;

That the State has an obligation to set up national bodies to be responsible for the attainment of these goals;

That the Artistic Heritage Act passed by the 1945 Constituent Assembly, is inadequate and outmoded, and that it is necessary to supplement it and give it a new direction; therefore,

By virtue of the powers vested in it,

Decrees:

THE PROCLAMATION OF THE FOLLOWING CULTURAL HERITAGE ACT

Article 1. By Decree No. 2600 of 9 June 1978, published in Official Gazette No. 618 of 29 June 1978, the Cultural Heritage Institute was established with legal personality and attached to the House of Ecuadorian Culture, to replace

(1) Unofficial translation prepared by Unesco

the Directorate of Artistic Heritage, and is to be financed with funds which shall appear annually in the budget of the National Government, in the section devoted to the Ministry of Education and Culture.

Article 2. The National Cultural Heritage Institute shall comprise: a Governing Board, a National Directorate, Subdirectorates and the technical and administrative units laid down in the relevant Regulations. It shall be the duty of the Governing Board to draft and approve the Functional Regulations of the Institute.

The Governing Board shall be made up of the following members:

The Minister of Education and Culture or his delegate, as chairman;

The Minister of Defence or his delegate;

The Minister of Government and Municipalities or his delegate;

The Director of Cultural Heritage; and

The Chairman of the National Council for Higher Education or his delegate.

The Official Secretary of this body shall be the Secretary of the National Cultural Heritage Institute.

Article 3. The National Director of the Institute shall be appointed by the Governing Board and shall be the legal representative of the Organization. He shall act as the delegate or representative of the country at all international meetings related to his field of competence.

Article 4. The National Cultural Heritage Institute shall have the following functions and authority:

- (a) to carry out research, conserve, preserve, restore, exhibit and promote the cultural heritage in Ecuador, as well as to regulate, in accordance with the Act, all activities of this nature carried out in the country;
- (b) to draw up an inventory of all the property that constitutes this heritage, both public and private;

- (c) to conduct anthropological research and in accordance with the Act, to regulate these activities throughout the country;
- (d) to ensure proper compliance with the present Act; and
- (e) to perform any other functions and duties assigned to it under the present Act and the Regulations.

Article 5. For the attainment of the aims set forth in the preceding Article, the Institute shall be exempt from customs duty.

Article 6. Natural and legal persons, the Armed Forces, the civilian police and customs officials shall be required to lend their assistance in defending and conserving the cultural heritage of Ecuador.

Article 7. Property included in the following categories is declared to be property belonging to the cultural heritage of the State:

- (a) movable and immovable archaeological monuments such as objects in ceramics, metal, stone or any other material belonging to the pre-hispanic and colonial periods; ruins of fortifications, edifices, cemeteries and archaeological deposits in general; as well as human remains or traces of the flora and fauna related to those periods;
- (b) churches, convents, chapels and other edifices which were built during the colonial period; paintings, sculptures, carvings, objects wrought in gold or silver, ceramics, etc., belonging to the same period;
- (c) old manuscripts and incunabula, rare editions of books, maps and other important documents;
- (d) objects and documents belonging or related to the precursors and founding fathers of national independence or to persons of especial eminence in the history of Ecuador;
- (e) coins, bank notes, insignias, medals and any other objects made within the country or abroad at any time during its history, which might be of national numismatic interest;
- (f) seals, stamps and any other object of national philatelic interest produced within the country or abroad at any time;

- (g) ethnographical objects that have scientific, historical or artistic value and that belong to our ethnographical heritage;
- (h) cultural articles or property produced by prize-winning contemporary artists shall be considered to be property belonging to the cultural heritage of the nation upon their death, and during their lifetime in the case of those who have received national prizes; likewise any such objects shall be so considered thirty years or more after being produced;
- (i) works of nature, the features or value of which have been enhanced by the intervention of man and which are of scientific interest for the study of the flora, the fauna or palaeontological remains;
- (j) in general, any object or production which is not covered by the above subparagraphs and which is a product of the Cultural Heritage of the Nation, either of the past or of the present, and which, on account of its artistic, scientific or historical merit, has been declared property belonging to the Cultural Heritage by the Institute, whether it be in the possession of the State, religious institutions, private corporations or individuals.

In the case of immovable property, it shall be considered that the property itself, its environmental surroundings and the landscape required to make it adequately visible, belong to the cultural heritage of the nation, since it is important to conserve the environmental and integrative conditions under which it was constructed. The Cultural Heritage Institute shall delimit the scope of such areas.

Article 8. The owners, administrators and holders of objects included in the list in the preceding article shall be required to inform the Cultural Heritage Institute, by means of a detailed list, of the existence of such objects within the time limit set by the Institute, and allow the Institute to carry out its inventory when it decides to do so.

Article 9. As from the date on which the present act enters into force, the State shall become and shall be the owner of archaeological property to be found on the land, in the subsoil or on the seabed of the territory of Ecuador, be they objects in ceramics, metal, stone or any other material belonging to the pre-Hispanic or colonial periods, including human remains or traces of the flora and fauna related to those periods, irrespective of the control which public or private institutions, including corporations of all kinds or individuals, may have over the land area where they may be situated or may have been found intentionally or accidentally.

The State shall have exclusive control over the property mentioned in the foregoing paragraph, which may have been in the possession of public or private institutions or natural persons before the coming into force of the present Act, if the existence of such property was not brought to the notice of the Cultural Heritage Institute in accordance with the preceding article, or if it was not possible to do so, through no fault of the present holders, by the deadlines set for this purpose and published by the Institute in the press.

In order to avoid confusion, existing copies of archaeological objects shall be embossed with seals to identify them as such.

In the case of ceramic objects, the seals shall be stamped on them before firing.

State ownership rights shall be exercised through the National Cultural Heritage Institute, which may keep the aforementioned archaeological property for cultural uses, or hand them over to the custody of the other major public museums in the country.

Article 10. The provisions of this Act shall not derogate from the obligations of diocesans, pursuant to Article 8 of the Modus Vivendi concluded between the Holy See and the Government of Ecuador on 24 July 1937.

The Director of the Cultural Heritage Institute shall act as the representative of the government with respect to the fulfilment of obligations laid down in the aforesaid article of the Modus Vivendi.

Article 11. The Declaration which confers the status of property belonging to the Cultural Heritage of the Nation, as stipulated in Article 7 of this Act or as formulated by the Cultural Heritage Institute, shall not deprive its owner of the exercise of ownership rights over this property, within the limits laid down by the present Act.

Article 12. Any transfer of ownership in respect of objects belonging to the Cultural Heritage of the Nation, gratuitously or otherwise, shall be subject to the authorization of the Cultural Heritage Institute, and the location of such objects shall not be changed without the permission of the Institute. In either case, if the need to conserve the Heritage should so require, the applications for authorization may be refused.

The Institute shall regulate trading within the country in property belonging to the Cultural Heritage. It shall impose penalties in the event of non-compliance with its rulings; it may even declare unauthorized transfers null and void.

Article 13. No repairs, restorations or modifications of property belonging to the Cultural Heritage shall be carried out without the prior authorization of the Institute.

Infringement of the provisions of this article shall be punishable by fines and imprisonment of up to one year in accordance with the regulations. If as a result of these infringements the characteristics of a piece of cultural property have been marred, the owner shall be required to restore it to its former state; the Institute shall also impose a yearly fine until such restoration has been achieved. Fines shall be extended to the contractors or works administrators, or the material authors of the infringement, and may even go so far as to include confiscation.

Article 14. Municipalities and State bodies may not order or authorize the demolition, restoration or repairs of immovable property belonging to the Cultural Heritage of the Nation without the prior permission of the Institute,

and the official who issues such an order or authorization shall be responsible for the infringement and fined as provided for in the Regulations.

Article 15. The municipal authorities of those cities which possess historic centres, urban units or isolated buildings with architectural features worthy of being preserved shall issue ordinances or regulations to protect them, said ordinances or regulations to be previously endorsed by the Cultural Heritage Institute.

Should the regulatory plans adopted by such municipalities put those features in jeopardy, the Institute shall demand reform thereof and shall insist on compliance with this article.

Article 16. Any attempt to debase property belonging to the Cultural Heritage of the Nation shall be prohibited, whereas all technical means shall be used for their conservation and consolidation which shall be restricted to the restoration, with the prior authorization from the Cultural Heritage Institute, for what is absolutely indispensable while ensuring that any additions will always be recognizable.

Article 17. It shall be the ineluctable duty of State bodies, religious institutions, corporations or private individuals who possess property belonging to the Cultural Heritage of the Nation, to allow it, at the request of the Institute, to be visited on days and at times previously appointed, for the observation, study and photographic reproduction or sketching of objects falling within the purview of this Act that they may own or have in their possession.

The Institute shall be entitled to have its delegates, upon presentation of the proper credentials, inspect places where cultural property exists.

Article 18. Negligence in the conservation of property belonging to the Cultural Heritage of the Nation shall be punishable by the confiscation of the work if it runs the danger of being destroyed, in which case the owner shall be compensated with 25 per cent of the value of the property as assessed by experts.

Article 19. Anyone may report infringements of the present Act to the Cultural Heritage Institute and, if the allegation is proved true, shall be entitled to a reward of up to 25 per cent of the value of the fine imposed. Any such denunciation shall be discreet in nature.

Article 20. No taxes whatsoever shall be levied on movable objects listed in the inventory of the Cultural Heritage of the Nation, and they shall be exempt from payment of any existing taxes to which they might have been subject, such as taxes on income, inheritance, bequests and donations; this means that they shall enjoy total and automatic exemption and exoneration from all kinds of national, provincial and municipal taxes.

Article 21. Buildings and constructions declared to be property belonging to the Cultural Heritage of the Nation, which are properly maintained and are included in the inventory, shall be exonerated from 50 per cent of real estate and related taxes.

When such buildings have been restored with the appropriate permission of the Cultural Heritage Institute and of the municipalities, and provided that the cost of the restoration work amounts to at least 30 per cent of the cadastral appraisal of the building, there shall be total tax exemption for a period of five years upon termination of the work. If it is found that proper maintenance has been neglected, such exemption shall be terminated.

Article 22. Property belonging to the Cultural Heritage, which is endangered in any way, may be removed temporarily from its usual location, upon the decision of the Institute, so long as the danger subsists.

Article 23. No objects belonging to the Cultural Heritage of the Nation may leave the country, except as part of an exhibition or for other cultural dissemination purposes, and then only on a temporary basis, with the permission of the Governing Board and, in all cases, after the preparation of a technical report by the Institute.

Any act which reflects an intention to take cultural property out of the country shall be punished in accordance with the provisions of the Regulations.

In cases where such property is in fact taken out of the country, that property shall be seized; those responsible shall be punished by imprisonment for up to two years and by any other penalties laid down in the Regulations.

The reporting of any infringements mentioned in this article is hereby declared to be action in the interest of the common good, and those reporting them shall be rewarded with 25 per cent of the value of the fine levied in each case.

Article 24. Anyone bringing into the country cultural property that, in the opinion of the Cultural Heritage Institute, deserves to be considered as such, shall be exempt from the payment of customs.

Article 25. The Regulations shall establish the time limits and requirements for taking out of the country any cultural property that has entered with or without such exemption.

Article 26. The government shall endeavour to conclude international agreements to prevent illicit trading in cultural property and to facilitate the return of property which has illegally left Ecuador.

Article 27. Any monument erected in Ecuador, which is to be placed in a street, square, promenade or park, such as sculpture groups, commemorative statues, etc., shall require the prior approval of the Cultural Heritage Institute to which the plans, drawings, models, etc., shall be sent so that its erection may be authorized.

Article 28. No individual or private or public body shall carry out archaeological or palaeontological excavation work in Ecuador without the written authorization of the Cultural Heritage Institute. The military, police or customs authorities shall enforce the provisions laid down in relation to such work.

Non-compliance with this article shall be punishable by imprisonment of up to two years, confiscation of the objects excavated and of the vehicles and tools used for that purpose, and by regulation fines.

Article 29. The Cultural Heritage Institute may grant the authorization referred to in the preceding article only to persons or institutions that in its judgement, meet the conditions required to carry out such work technically and in due manner and, whenever it considers it appropriate, it shall have the excavations supervised by persons whom it shall appoint, in accordance with the regulations that shall be made in this regard.

Article 30. In all types of mining exploration, earth movement work for buildings, highway or other constructions, as well as in the demolition of buildings, the rights of the State over historic monuments and over objects of archaeological or palaeontological interest found on the surface of the land or in the subsoil when carrying out such work, shall remain inviolable. In such cases, the contractor, the administrator or the person immediately in charge shall report to the Cultural Heritage Institute and suspend work on the site where the find has been made.

In the event that notice of the find is made known to any of the Chairmen of the provincial branches of the House of Ecuadorian Culture, he shall bring it immediately to the attention of the Institute, which shall order the relevant technical inspection in order to decide on the importance or merit of the discovery and take the required measures.

Article 31. To the extent that the permanence and continuity of certain ethnic groups of indigenous culture in Ecuador are living proof of the plurality of vernacular cultures, the Cultural Heritage Institute shall, itself or through other organizations, adopt measures for the conservation of their customs and language, as well as those cultural, handicraft, technical, artistic, musical, religious, ritual or community manifestations which the indigenous peoples themselves recognize as belonging to an unbroken tradition that is part and parcel of their identity and cultural expression.

Such conservation must not be to the detriment of the cultural development, or the social and economic improvement and integration of the indigenous peoples.

Article 32. The conducting of anthropological research or the signing by the national government of any agreement with national or foreign persons or institutions that are carrying out research studies in the country on aspects referred to in the preceding article shall necessarily require endorsement by the Institute and a copy of the findings of such research shall be transmitted to the Institute.

Non-compliance with this rule shall be punished in accordance with the Regulations.

Article 33. The Cultural Heritage Institute shall itself or through the competent authorities request the adoption of measures to safeguard and conserve manifestations such as folkloric, musical, choreographical, religious, literary or linguistic expressions of culturally homogeneous ethnic groups. It shall be the responsibility of the Institute to preserve these manifestations in all their purity by means of photography, cinematography, sound recordings or other means.

The collection of such material for commercial purposes shall require the prior authorization of the Institute.

Article 34. The Cultural Heritage Institute shall ensure that the authentic cultural genius of the country, expressed in all the manifestations of its cultural pluralism, is not distorted; it shall accomplish this by supervising and exerting control over representations or exhibitions in connection with property listed as belonging to the Cultural Heritage of the Nation.

Article 35. In order to attain the goals set out in the present Act, the Cultural Heritage Institute may request the government or municipalities to declare a piece of immovable property which is directly or indirectly part of the cultural heritage of the State to be in the public interest, with a view to its expropriation.

Article 36. The amount of any donation made to the Institute for restoration purposes or other contributions of benefit to the Cultural Heritage of the State shall be deductible from taxable income.

Article 37. Any person leaving the country, even if he has diplomatic status, shall present to the immigration or customs authorities at the port of embarkation a sworn statement to the effect that no object belonging to the Cultural Heritage of the State is in his luggage, in accordance with the relevant regulatory provisions.

Article 38. Property belonging to the Cultural Heritage of the State, which has been collected by a State body or by a natural or private legal person in a coherent manner, may be declared to be a collection. The collection shall constitute a single entity for legal purposes, and shall be indivisible in nature, which means that the movable objects that comprise it may be adjudged to several persons or kept or exhibited in different places only with the authorization of the Cultural Heritage Institute.

Article 39. An article may be declared to have lost its status as property belonging to the Cultural Heritage when damage has completely deprived it of its interest as such and it cannot be restored.

Article 40. National museums may, under exceptional circumstances, be authorized by resolution of the Governing Board of the Cultural Heritage Institute to exchange national or foreign objects belonging to the Cultural Heritage of the State which have characteristics similar to those of other national or foreign movable property abroad.

Article 41. The Cultural Heritage Institute shall be empowered to impose on the owners or those in charge of property belonging to the Cultural Heritage of the State the adoption of certain precautionary measures to protect such property. Failure to comply with such measures shall be punishable by the penalties laid down in the regulations. The Institute may also expropriate or seize such cultural property against payment of up to 25 per cent of the estimated value, in the event of expropriation.

Article 42. The Cultural Heritage Institute may delegate its powers to monitor compliance with this Act in a given area to public bodies and authorities which it considers to be appropriate.

GENERAL PROVISIONS

First. Within a time limit of ninety days, the Institute shall draft and submit for the approval of the Minister of Education and Culture the Regulations and manuals related to the present Act.

Second. The Governing Board of the Institute shall approve its draft annual budget, which shall be submitted to the Ministry of Finance for consideration and final approval, in accordance with the National Government Budget Act, the Law Organizing the Financial Administration and Control, and the Law governing Civil Service and Administrative Careers.

Third. The proceeds from penalties imposed shall accrue to the assets of the Institute.

TRANSITIONAL PROVISION

The assets and equipment which belong to the Directorate of Artistic Heritage shall be transferred to the Cultural Heritage Institute.

It shall be incumbent upon the Institute, in so far as possible, to retain the staff that has been working for the Directorate of Artistic Heritage.

FINAL PROVISION

The Artistic Heritage Act promulgated by the Constituent Assembly on 22 February 1945, published in the Supplement to Official Gazette No. 1202 of 20 August 1960, and Decree No. 1008 of 8 June 1971, published in Official Gazette No. 266 of 14 July 1971, are hereby superseded together with all provisions contrary to the present Act, which shall come into force upon its publication in the Official Gazette, at which time the Minister of Education and Culture and the Minister of Finance and Public Credit shall become responsible for the implementation thereof.

Done at the National Palace, Quito, 19 June 1979.

DIPLOMATIC IMMUNITIES, PRIVILEGES AND EXEMPTIONS ACT⁽¹⁾

- 1970 -

Under the national policy for the defense of the cultural heritage of Ecuador, and in accordance with the provisions of the 1945 Artistic Heritage Act and of the Cultural Heritage Act of 2 July 1979, Articles 31 and 32 of the Diplomatic Immunities, Privileges and Exemptions Act guarantee respect for and the untouchable nature of cultural property, especially archaeological and colonial objects.

Supreme Decree No. 682 of 13 June 1973, which codifies Act 373-B on Immunities, Privileges and Exemptions granted to diplomats, consular officials and international organizations, of 4 September 1970 with later amendments stipulates in the aforesaid Articles 31 and 32 the following:

Article 31. Diplomatic officials, attachés and non-Ecuadorian employees of a mission shall not acquire, free of charge or otherwise, by themselves or through third parties, Ecuadorian archaeological or colonial art objects or documents that are basic to the history of the country, and they shall, in all cases, be subject to the Cultural Heritage Act.

Infringement of these provisions shall be sufficient reason for the infringer to be declared persona non grata and for the object(s) in question to be seized.

Article 32. All diplomatic imports and baggage containing personal effects accompanying the diplomatic official or members of his family may be inspected by the Customs Department of the Republic, when there is good reason to believe that they contain objects not listed in the statement which should accompany the application for waiver, or objects the import or export of which is prohibited in Ecuador or subject to quarantine health regulations or regulations in defence of national artistic heritage. When a customs inspection is carried out, it shall be done in the presence of the diplomatic officer or of his authorized representative.

(1) Unofficial translation prepared by Unesco