

Statement of the Association of Art Museum Directors Concerning the Agreement Between the Government of the United States of America and the Government of the Republic of Mali Concerning the Imposition of Import Restrictions on Archaeological Material from Mali from the Paleolithic Era (Stone Age) to Approximately the Mid-Eighteenth Century

Meeting of the Cultural Property Advisory Committee

March 21, 2017

I. Introduction

The Association of Art Museum Directors (the “AAMD”) respectfully submits this statement for consideration by the Cultural Property Advisory Committee (the “Committee”) in connection with the proposed renewal of the *Agreement Between the Government of the United States of America and the Government of the Republic of Mali Concerning the Imposition of Import Restrictions on Archaeological Material from Mali from the Paleolithic Era (Stone Age) to Approximately the Mid-Eighteenth Century* (the “MOU”). Pursuant to the Cultural Property Implementation Act (the “CPIA”), the Government of the United States of America and the Government of the Republic of Mali entered into the MOU in order to protect certain archaeological material from and throughout Mali dating from the Paleolithic Era (Stone Age) to approximately the mid-eighteenth century for a period of five years, effective September 19, 2012, subject to interim review by the Committee.

II. Preliminary Statement and Background

Protecting Mali’s cultural heritage under the CPIA began with its request for protection due to an emergency condition. On September 23, 1993, the United States imposed emergency import restrictions on “archaeological material from the Niger River Valley region and Tellem burial caves of Bandiagara.”¹ On September 19, 1997, the United States and Mali entered into a bilateral agreement that continued the import restrictions from the emergency action without interruption and with the MOU, the United States issued a designated list of restricted items.² On September 19, 2002, the MOU was continued without amendment for an additional five years.³ Then, on September 19, 2007, the MOU was extended with amendment to Article II to

¹ “Import Restrictions Imposed on Significant Archaeological Artifacts from Mali,” *Emergency Actions and Designated List, Federal Register* (Washington, D.C.: Department of the U.S. Treasury, Customs Service, September 23, 1993), <https://eca.state.gov/files/bureau/ml1993eafn.pdf>.

² “Agreement Between the Government of the United States of America and the Government of the Republic of Mali Concerning the Imposition of Import Restrictions on Archaeological Material from the Region of the Niger River Valley and the Bandiagara Escarpment (Cliff) (with Appendix),” *Bilateral Agreement* (Washington, D.C.: U.S. Department of State, Bureau of Education and Cultural Affairs, September 19, 1997), https://eca.state.gov/files/bureau/mali-tias_1997-2007.pdf. Department of the U.S. Treasury, Customs Service, “Import Restrictions Imposed on Archaeological Artifacts from Mali,” *Designated List, Federal Register* (Washington, D.C., September 23, 1997).

³ “Agreement Between the Government of the United States of America and the Government of the Republic of Mali Concerning the Imposition of Import Restrictions on Archaeological Material from the Region of the Niger River Valley and the Bandiagara Escarpment (Cliff),” *Diplomatic Note* (Washington, D.C.: U.S.

incorporate provisions focused on management, security, training, and professional exchange. In addition, archaeological material from throughout Mali dating from the Paleolithic Era (Stone-Age) to approximately the mid-eighteenth century was added to the Designated List.⁴ With an exchange of notes, the MOU was amended and extended an additional five years on September 19, 2012.⁵ Article II was amended, *inter alia*, to require Mali to establish an inter-ministerial committee to coordinate activities related to tourism, protection, and deterrence of looting. This committee was also required to meet annually with the U.S. Embassy to review the status of the MOU.⁶

III. Support of Renewal and Invitation to Act

The AAMD supports renewal of the MOU, but with important qualifications and a corresponding invitation for the Committee to act. Mali clearly is in the midst of civil and political unrest. As recently as December 2016, an emergency was declared and plunder occurs “on a mighty scale [A]ncient sites are destroyed and [Mali’s] heritage flows out of the country.”⁷ In fact, reports state that “police have gone and tourism has evaporated,” causing much needed income to disappear.⁸ Even UN Peacekeepers working with UNESCO are being murdered at an alarming rate.⁹

Department of State, Bureau of Education and Cultural Affairs, September 11, 2002), http://eca.state.gov/files/bureau/mali-tias_1997-2007.pdf.

4 “Agreement Between the Government of the United States of America and the Government of the Republic of Mali Concerning the Imposition of Import Restrictions on Archaeological Material from the Region of the Niger River Valley and the Bandiagara Escarpment (Cliff),” *Diplomatic Note* (Washington, D.C.: U.S. Department of State, Bureau of Education and Cultural Affairs, September 11, 2007), http://eca.state.gov/files/bureau/mali_tias_1997-2007.pdf. “Extension of Import Restrictions Imposed on Archaeological Material from Mali,” *Extended Agreement and Revised Designated List, Federal Register* (Washington, D.C.: Department of Homeland Security, U.S. Customs and Border Protection, September 19, 2007), <https://eca.state.gov/files/bureau/ml2007dlfrn.pdf>.

5 “Agreement Between the Government of the United States of America and the Government of the Republic of Mali Concerning the Imposition of Import Restrictions on Archaeological Material from Mali from the Paleolithic Era (Stone Age) to Approximately the Mid-Eighteenth Century,” *Diplomatic Note* (Washington, D.C.: U.S. Department of State, Bureau of Education and Cultural Affairs, August 15, 2012), https://eca.state.gov/files/bureau/mali_tias_2012.pdf.

6 Ibid.

7 Aisling Irwin, “Emergency in Mali as Looters Are Plundering Ancient Treasures,” *New Scientist*, December 15, 2016, <https://www.newscientist.com/article/2116243-emergency-in-mali-as-looters-are-plundering-ancient-treasures/>.

8 Ibid.

9 “In 2016, the third year in a row, the greatest of loss of life was recorded in Mali, where at least 23 personnel were killed in ambushes, by improvised explosive devices or when their vehicles hit landmines. In 2015, at least 25 personnel, including 11 peacekeepers and 14 civilians and associated personnel, were killed in Mali.” See United Nations, “At Least 32 United Nations Personnel Killed as Assailants Deliberately Attack Peacekeeping Operations in 2016,” *ReliefWeb*, (February 14, 2017), <http://reliefweb.int/report/world/least-32-united-nations-personnel-killed-assailants-deliberately-attack-peacekeeping>.

The government of Mali has taken steps to try to secure the country's cultural heritage from looters and iconoclast terrorists. For example, Mali recently set a precedent by referring Ahmad Al-Faqi Al-Mahdi to the International Criminal Court at The Hague (ICC) for destroying Mali's cultural property, thus "gaining recognition for the importance of heritage for humanity as a whole."¹⁰ The ICC accepted the case and charged Al-Faqi Al-Mahdi with war crimes. Al-Faqi Al-Mahdi admitted his guilt for the destruction of nine key shrines of Sufi Saints in Timbuktu and the destruction of the sacred gate of the Sidi Yahia Mosque¹¹ (all but one of these sites are considered World Heritage Sites) and the ICC rendered a guilty verdict as a co-perpetrator or war crimes.¹² He is serving a nine-year prison sentence, which cannot be appealed.¹³

There is an argument that the fluid and hopefully temporary conditions in Mali do not warrant a long-term memorandum of understanding under the CPIA. Rather, Mali should make a new request for a temporary emergency restriction addressing the conditions in the areas of the country subject to looting and destruction. If the Committee decides to recommend renewal of the MOU, the Committee is uniquely positioned in its report to recommend steps to *augment* support for Mali through reasoned amendments to Article II as discussed below.

IV. Recommendations

If the Committee concludes that the MOU should be extended, then the AAMD recommends that the following amendments be incorporated into Article II, thereby further assisting Mali in protecting – *even saving* its cultural heritage.

A. Enhancing Cultural Protection by Encouraging Loans

The first and primary role of American art museums is to present, through both their permanent collections and exhibitions, the artistic and creative efforts of mankind. Both temporary exhibitions of loaned materials and long-term loans to the permanent collection are crucial ways to bring great works of art to the public. By definition, memoranda of understanding curtail the trade in archaeological and ethnological material. Given the restrictions in trade, in order to enhance public understanding of the world's great cultures, the United States must require the countries seeking its assistance to make available for loan objects of cultural significance for

10 UNESCO World Heritage Centre, "Timbuktu Trial: 'A Major Step towards Peace and Reconciliation in Mali,'" *UNESCO World Heritage Centre*, September 27, 2016, <http://whc.unesco.org/en/news/1559/>.

11 Sidi Yahia is described as the patron saint of the town and, the opening door is significant because local belief states that when the door is opened, the end of the world would begin. See "Ahmad Al-Faqi Al-Mahdi: The Vandal of Timbuktu," *BBC News*, September 27, 2016, sec. Africa, <http://www.bbc.com/news/world-africa-37438360>.

12 All but one of these structures were part of the Timbuktu World Heritage Site recognized by UNESCO, See Marlise Simons, "Prison Sentence Over Smashing of Shrines in Timbuktu: 9 Years," *The New York Times*, September 27, 2016, <https://www.nytimes.com/2016/09/28/world/europe/ahmad-al-faqi-al-mahdi-timbuktu-mali.html>.

13 Jess Clarke, "International Crimes Against Cultural Heritage: The ICC's Mali Judgment," *Australian Human Rights Centre*, October 20, 2016, <http://www.ahrcentre.org/news/2016/10/20/852>. The case can be accessed at <https://www.icc-cpi.int/mali/al-mahdi/documents/almahdieng.pdf>.

exhibition, display, study, and research on both a short and long-term basis and with reasonable terms.

MOU Article II(C), as currently drafted, provides that Mali “agrees to use its *best efforts* to *encourage* further interchange through *consideration* of accommodating requests for extended international loans of archaeological material . . .” (*emphasis added*). While this speaks to cultural exchange, it does so in a way that does not reflect a defined commitment by Mali, but merely a notional aspiration. The Committee must consider whether notional aspirations are sufficient drivers of cultural exchange given the turbulent circumstances in Mali, particularly when such exchange, if exercised, might very well be the difference between preservation and outright evisceration of cultural property.

The Committee should recommend that, *if* the MOU is extended, it contain a defined *commitment* by Mali to foster cultural exchange with American museums, not only to allow, but *encourage* both exhibition and long-term loans of significant objects. Accordingly, Article II(C) should be amended and restated as follows:

The Government of the United States of America recognizes that the Government of the Republic of Mali has a history of permitting the interchange of archaeological materials for exhibition and educational purposes to enable public appreciation of and access to Mali’s cultural heritage. Accordingly, the Government of the Republic of Mali will further facilitate the exchange of its archaeological materials, at all times in a way that does not jeopardize Mali’s cultural patrimony, by:

- 1. Taking reasonable measures to create an online database or otherwise readily available list of objects of archaeological and artistic available for exhibition or long-term loans;*
- 2. Increasing the number of exhibition loans of objects of archaeological and artistic interest;*
- 3. Increasing the number and overall length of long-term loans of objects of archaeological and artistic interest for research and educational purposes, agreed upon, on a case-by-case basis, by American and Malian museums or similar institutions, recognizing the spirit of goodwill that exists between cultural institutions in both countries;*
- 4. Encouraging American museums and universities to propose and participate in joint excavation projects authorized by the Government of Mali, with the understanding that certain of the scientifically excavated objects from such projects could be given as a loan to the American participants through specific agreements with the Government of Mali; and*
- 5. Promoting agreements for academic exchanges and specific study programs agreed upon by museums and universities of Mali and American art museums.*

Several of the concepts reflected in the proposed revisions to MOU Article II(C) were adopted into Article II of the Memorandum of Understanding between the United States and Italy, even prior to its amendment and extension in 2016. AAMD believes such language was a catalyst to significant progress with Italy, and hopes that the suggested definitive language in the MOU with Mali will have an equally mutually beneficial effect.

B. Advancing a Safe Haven in the United States

In view of the readily ascertainable state of emergency for cultural property in Mali, the AAMD recommends that Article II be amended to create an undertaking by the United States, at the request of the Government of Mali, to use its best efforts to become a safe haven for cultural heritage by assisting in finding depositories for objects that are subject to potential destruction, with a commitment to return those objects whenever the Government of Mali deems appropriate. One way to carry out this commitment would be for AAMD member museums to take the rescued objects on loan, pursuant to safe havens protocol already established by the AAMD.¹⁴ In appropriate circumstances, this could even be done with the protections of the Immunity from Seizure Act,¹⁵ administered by the Department of State. During the term of the loan, the museums would store the objects and, perhaps, with the consent of the Government of Mali, undertake conservation and/or research efforts. Also, with the consent of the Government of Mali, the works could be exhibited as a means to call attention to Mali's cultural heritage and the dangers it faces today. Of course, this is just one possible model and there may well be others. The Louvre Museum in France, for example, is offering a "haven for world treasures rescued from war zones such as Syria and Iraq at a secure storage facility in northern France[]" by using a new conservation facility in Liévin as "a temporary repository for [these] international cultural and artistic treasures."¹⁶

Amending Article II to encourage the United States to act as a temporary safe haven at Mali's request would produce several benefits. First, of course, it might lead to the preservation of *irreplaceable* examples of world culture. Second, it could encourage and incentivize increased rescue efforts within Mali, and also cause other countries, especially neighboring countries, to agree to act as safe havens. Third, such assistance unequivocally would advance the "grounds of principle, good foreign relations, and concern for the preservation of the cultural heritage of mankind," all of which are necessary underpinnings of the CPIA.¹⁷ Beyond these benefits, encouraging temporary safe havens in the United States would be consistent with prevailing

14 *AAMD Protocols for Safe Havens for Works of Cultural Significance from Countries in Crisis*, <https://aamd.org/document/aamd-protocols-for-safe-havens-for-works-of-cultural-significance-from-countries-in-crisis> (last accessed March 13, 2017). Please note that whether and to what extent AAMD's member museums would agree to serve as safe havens is a matter left to the discretion of each institution.

15 22 U.S.C. § 2459.

16 Kim Willsher, "Louvre to Offer Shelter for World Treasures Rescued from War Zones," *The Guardian*, November 1, 2016, sec. World news, <https://www.theguardian.com/world/2016/nov/01/louvre-safe-haven-world-treasures-rescued-war-zones-secure-facility-hollande>.

17 Statements by Department of State made in connection with the adoption of the CPIA in 1983, available at: <https://eca.state.gov/cultural-heritage-center/cultural-property-protection/process-and-purpose/background>.

international sentiment, set forth most recently in the December 2016 *Déclaration d'Abou Dhabi* endorsing:

[t]he creation of an international network of safe havens to temporarily safeguard cultural property endangered by armed conflicts or terrorism on their own territory, or if they cannot be secured at a national level, in a neighbouring country, or as a last resort, in another country, in accordance with international law at the request of the governments concerned, and taking into account the national and regional characteristics and contexts of cultural property to be protected.¹⁸

The United States has a long history of providing a safe haven for cultural objects, most recently with respect to books and documents preserved by the National Archives after they were found in the Mukhabarat headquarters in Iraq, and the creation of a safe-haven exception for endangered Syrian cultural property pursuant to the Protect and Preserve International Cultural Property Act (Pub. Law 114-151), signed into law on May 9, 2016. The United States, of course, has not been alone in doing so. Before and during World War II, many priceless cultural objects were removed from their situs country in order to be protected in other countries and ultimately returned. For example, the Prado collection was removed to Geneva during the Spanish Civil War. The tapestries from Wawel Castle in Poland found their way to London and Canada. Many private collections were relocated before the Nazis were able to spoliage them, often to the United States.

As the Committee considers these safe-haven concepts, it should bear in mind one unequivocal point: *this is not about acquiring works of art*. This is about *saving* a nation's cultural patrimony. One need only look at the AAMD website on acquisitions of archaeological material and ancient art to see that AAMD members have nothing to do with the commercial exploitation of art looted during Mali's civil and political unrest. On the contrary, American museums and American museum professionals have long shown a dedication to the protection of cultural property in times of unrest. From the Monuments Men to museum curators on the ground in Iraq, American museum personnel have been at the forefront of efforts to rescue objects and sites from destruction and looting. In this instance again, American museums and their professional staffs - curators, conservators, and registrars - can play a vital role in protecting and preserving for all humanity the great works of art threatened by the extremists in Mali. Furthermore, implementing this type of program can provide a model for other cultures in danger of extinction, Syria, Iraq and Egypt being just a few examples.

The AAMD recognizes that there are many issues to be considered before pursuing any safe-haven program. Importantly, in asking the Committee to consider such concepts, the Committee should also understand that the AAMD is not asking the Committee to do so alone. If the

18 "Conférence Internationale Sur La Protection Du Patrimoine En Péril - Déclaration d'Abou Dhabi (03.12.16)," *France Diplomatie* : : *Ministère Des Affaires Étrangères et Du Développement International*, décembre 2016, <http://www.diplomatie.gouv.fr/fr/politique-etrangere-de-la-france/diplomatie-culturelle/les-actualites-et-evenements-de-la-diplomatie-culturelle-en-2016/conference-internationale-sur-la-protection-du-patrimoine-en-peril-abou-dabi-2/article/conference-internationale-sur-la-protection-du-patrimoine-en-peril-declaration>.

Committee believes that safe-haven concepts are meritorious, then the AAMD would be happy to work with the Committee, and any others for that matter, in attempting to formulate a methodology to better protect Mali's cultural heritage. With that in mind, the Committee could use Mali's request to extend the MOU as a vehicle for determining the extent of Mali's interest in safe-haven concepts. After all, assistance is only as beneficial as one's willingness to receive it.

V. Conclusion

Subject to the concerns set forth above, the AAMD supports the request of Mali for an extension of the 2012 MOU.

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The AAMD is a professional organization consisting of approximately 240 directors of major art museums throughout the United States, Canada, and Mexico. The purpose of the AAMD is to support its members in increasing the contribution of art museums to society. The AAMD accomplishes this mission by establishing and maintaining the highest standards of professional practice, serving as a forum for the exchange of information and ideas, acting as an advocate for its member art museums, and being a leader in shaping public discourse about the arts community and the role of art in society.