

**Committee for Cultural Policy and Global Heritage Alliance on the  
Proposed Memorandum of Understanding (MOU) with the Islamic Republic of Pakistan  
Submission to Cultural Property Advisory Committee, Bureau of Educational and  
Cultural Affairs, U.S. Department of State**

Date of Meeting: April 26–27, 2022

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Sent via docket # DOS–2022–0008

Re: Request from the Government of the Islamic Republic of Pakistan Under Article 9 of the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property

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Submission Date: April 19, 2022

Mr. Stefan Passantino, Chair  
Cultural Property Advisory Committee  
Cultural Heritage Center (ECA/P/C)  
U.S. Department of State 2200 C Street, NW Washington, DC 20037

Dear Chairman Passantino and Members of the Cultural Property Advisory Committee to the President:

The Committee for Cultural Policy<sup>1</sup> and Global Heritage Alliance<sup>2</sup> jointly submit this testimony on the Proposed Memorandum of Understanding (MOU) with the Islamic Republic of Pakistan. We have addressed below whether the requests meet the legal criteria set by Congress for import restrictions under the Cultural Property Implementation Act, the fractured state of Pakistan’s laws and their ineffective administration, the underfunding and neglect of museums and sites, the government’s failure to address religious persecution of minorities and abysmal human and cultural rights record.

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<sup>1</sup> The Committee for Cultural Policy, Inc (CCP) is an educational and policy research organization that supports the preservation and public appreciation of the art of ancient and indigenous cultures. CCP supports policies that enable the lawful collection, exhibition, and global circulation of artworks and preserve artifacts and archaeological sites through funding for site protection. CCP deplores the destruction of archaeological sites and monuments and encourage policies enabling safe harbor in international museums for at-risk objects from countries in crisis. CCP defends uncensored academic research and urges funding for museum development around the world. CCP believes that communication through artistic exchange is beneficial for international understanding and that the protection and preservation of art is the responsibility and duty of all humankind. The Committee for Cultural Policy, POB 4881, Santa Fe, NM 87502. [www.culturalpropertynews.org](http://www.culturalpropertynews.org), [info@culturalpropertynews.org](mailto:info@culturalpropertynews.org).

<sup>2</sup> Global Heritage Alliance, Inc (GHA) advocates for policies that will restore balance in U.S. government policy in order to foster appreciation of ancient and indigenous cultures and the preservation of their artifacts for the education and enjoyment of the American public. GHA supports policies that facilitate lawful trade in cultural artifacts and promotes responsible collecting and stewardship of archaeological and ethnological objects. The Global Heritage Alliance, 5335 Wisconsin Ave., NW Ste 440, Washington, DC 20015. <http://global-heritage.org/>

## BACKGROUND

In Pakistan's request for an MOU, we can clearly see the contradictions between a feel-good narrative in which nations have come together under the umbrella of the 1970 UNESCO Convention to do everything possible to preserve global heritage – versus the harsh realities of corruption, bad faith, and neglect that have characterized Pakistan's administration of its museums, sites, and cultural legacy.

### **Pakistan Has Failed Abysmally to Protect its Ancient Cultural Heritage – or its Living Cultural Diversity**

A US MOU would condone Pakistan's government's systematized corruption in which objects in museums, historical buildings, and archaeological sites are seriously neglected, subject to theft, dismantling and destruction and exploited for improper commercial usage. Abuses are well known but accepted by officials at all levels and the guilty go scot-free.

Despite laws requiring equal protection, Pakistan's government has turned a blind eye to fanaticism and failed to act to curb religious persecution and killings of Christian, Hindu, and Shi'a minorities in eastern and northern Pakistan, and Hazara Afghan refugees in Quetta. There are frequent bombings of minority religious institutions and schools. Blasphemy laws that carry the death penalty are used to frame the innocent and criminalize the mentally ill. Public lynchings by mobs go unpunished or culprits are quickly released. Destruction of minority cultural property and religious monuments is sanctioned by local officials who face few consequences - and tolerated by higher officials who protest, but not too much, for fear of alienating supporters.

Cultural rights are human rights.

Minority cultural heritage often suffers as a result of such virulent prejudice. In 2021, the local Hindu community protested the illegal construction of toilets at the buried base of the Shiva lingam at the 3,000 year old Shiv Temple at Mansehra in Khyber Pakhtun-khwa Province.<sup>3</sup>

A Rajput palace in Dera Ismail Khan, Khyber Pakhtun-khwa Province, formerly the home of renowned philanthropist Rai Sahib Das Ram Bagai was demolished by a local politician and real estate dealer, who said ““It was owned by a Hindu,” he said, “I want to show the Hindu sympathizers that this is now *my* property. Period.”<sup>4</sup>

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<sup>3</sup> Arshad Aziz Malika, *Illegal construction at Mansehra temple irks Hindus*, June 9, 2021, The News, Pakistan, Hindu Affairs Deputy Secretary Faraz Abbas denied receiving any complaint. The archaeology department is insisting that all old buildings be handed over to it. <https://www.thenews.com.pk/print/846783-illegal-construction-at-mansehra-temple-irks-hindus>

<sup>4</sup> Ehtesham Hassan, *Palace Intrigue*, April 17, 2021, The News, <https://www.thenews.com.pk/tns/detail/821732-palace-intrigue>. Das Ram built schools and colleges in the region and set up free dispensaries as well as tuberculosis wards in local hospitals. He built embankments on the Indus, to protect the city from flooding. The archaeology department of Khyber-Pakhtun-Khwa said it would do nothing, claiming that the building (actually built 125-150 years ago) was only 92 years old and must be 100 years old to qualify for protection.

## **Pakistan’s Military-backed Governments Routinely Violate U.S. and International Norms of Human and Cultural Rights**

The United States Commission on International Religious Freedom (USCIRF) recommended that the State Department name Pakistan as a “country of particular concern” (CPC), its highest level of concern, in its 2021 Annual Report and is expected to do so again in 2022.<sup>5</sup> The USCIRF took particular note of Pakistan’s blasphemy laws and human and women’s rights violations, stating:

“Pakistan’s religiously discriminatory legislation, such as the blasphemy and anti-Ahmadiyya laws, used in combination with new media rules, contributed to egregious human rights abuses and fostered an overall atmosphere of intolerance for religious minorities that often leads to violence and discrimination. In August [2020] alone, over 40 blasphemy First Incident Reports (FIRs) were registered, mostly targeting the Shi’a minority during the month of Muharram.

“Other religious communities were also targeted with blasphemy charges. In 2020, there reportedly were 30 Christians, including seven on death row, jailed in Pakistan on charges of blasphemy. They include Asif Pervaiz, a 37-year-old Christian garment factory worker whom a Lahore court sentenced to death in September [2020].

“The issue of abduction, forced conversion to Islam, rape, and forced marriage remained an imminent threat for religious minority women and children, particularly from the Hindu and Christian faiths. During 2020, USCIRF documented incidents of forced marriages, more than half involving minors. The government did little to ensure minor girls’ safety and return to their families. Authorities often do not take any action, and in abduction cases that are brought to the courts, officials have claimed that victims willingly converted to Islam. The head of the Parliamentary Committee on Forced Religious Conversions, Senator Anwarul Haq Kakar, claimed that most cases of forced conversion “have some degree of willingness on the part of the girl.” Pakistani courts systematically failed to protect and provide justice to victims, who are often forced to testify that they converted voluntarily to protect themselves and their families from further harm. In April, Myra Shahbaz, a 14-year-old Christian schoolgirl, was abducted at gunpoint. Despite Myra telling police she was drugged, raped, and forced to sign papers her abductor later used to allege that she was 19 and had voluntarily married and converted, the court ordered that she be returned to her abductor.”<sup>6</sup>

The USCIRF specifically recommended that the U.S. Government impose targeted sanctions on Pakistani government officials and, “Redesignate Pakistan as a “country of particular concern,” or CPC, for engaging in systematic, ongoing, and egregious violations of religious freedom, as defined by the International Religious Freedom Act (IRFA), and lift the waiver releasing the administration from taking otherwise legislatively mandated action as a result of the designation.”<sup>7</sup>

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<sup>5</sup> *Annual Report of the U.S. Commission on International Religious Freedom*, USCIRF, April 2021, at 2, [https://www.uscirf.gov/sites/default/files/2021-04/2021%20Annual%20Report\\_0.pdf](https://www.uscirf.gov/sites/default/files/2021-04/2021%20Annual%20Report_0.pdf)

<sup>6</sup> *Id.* at 36.

<sup>7</sup> *Id.*

A U.S. MOU would ignore Pakistan's cooperation with China in the refoulement of Uyghur refugees, where they face imprisonment, torture and death, a violation of international human rights conventions and against every legal, human, and religious right that the United States holds dear.<sup>8</sup> Pakistan's actions make it complicit in the destruction of Uyghur heritage and history and the genocide perpetrated upon the Muslim population of Xinjiang.

Pakistan is one of the world's worse slave states. There are an estimated 2.134 million people living in inescapable debt-bondage, subject to continuous hard labor, vicious treatment and regular beatings, forced labor and rape of women and children, forced marriage and sex trafficking. Pakistan is ranked in the worst ten countries globally<sup>9</sup> with 3.186 million people living in slavery, according to the Global Slavery Index of 2018.<sup>10</sup>

According to Human Rights Watch, "Although slavery is unconstitutional in Pakistan and violates various national and international laws, state practices support its existence. The state rarely prosecutes or punishes employers who hold workers in servitude. Moreover, workers who contest their exploitation are invariably confronted with police harassment, often leading to imprisonment under false charges."

An extensive HRW report<sup>11</sup> makes clear that Pakistan's powerful elite, including politicians and high-level military, are deeply invested in industries such as brick making, sugar, and textile weaving, where workers are literally locked into debt-bondage lasting multiple generations. Slavery in these industries is not the exception, but the norm.

### **Pakistan's Actions Caused the Loss of Afghanistan and the Deaths of American Servicemen and Women**

Pakistan's unstable government and its military, which holds decisive power in the country, is both the beneficiary of billions of dollars in U.S. funding to fight terrorism, and the original sponsor of the Taliban, a supporter of extremist training camps and the primary supplier of weapons used to kill American troops. This is corroborated by a partial transcript of a July 2021 phone call between U.S. President Joe Biden and then Afghan President Ashraf Ghani acquired by Reuters, Ashraf Ghani speaking:

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<sup>8</sup> Brent E. Huffman, *Pakistan Is Cracking Down on Uyghur Muslims Who Fled China*, Pulitzer Center, May 21, 2021, <https://pulitzercenter.org/stories/pakistan-cracking-down-uyghur-muslims-who-fled-china>

<sup>9</sup> *Modern Day Slavery in Pakistan*, Courting the Law, February 13, 2020, <https://courtingthelaw.com/2020/02/13/commentary/modern-day-slavery-in-pakistan/>; See also *Life of slavery — the perpetuation of bonded labor in Pakistan*, DW, December 25, 2019, <https://www.dw.com/en/life-of-slavery-the-perpetuation-of-bonded-labor-in-pakistan/a-51792298>.

<sup>10</sup> Global Slavery Index, *Pakistan* <https://www.globalslaveryindex.org/2018/data/maps/#prevalence>

<sup>11</sup> *Contemporary Forms of Slavery in Pakistan*, Human Rights Watch, July 1995 Library of Congress Catalog Card Number: 95-77876, SBN 1-56432-154-1, <https://www.hrw.org/reports/1995/Pakistan.htm#:~:text=Although%20slavery%20is%20unconstitutional%20in,who%20hold%20workers%20in%20servitude>

"Mr. President... We are facing a full-scale invasion, composed of Taliban, full Pakistani planning and logistical support, and at least 10-15,000 international terrorists, prominently Pakistanis thrown into this, so that dimension needs to be taken account of."<sup>12</sup>

Pakistan's military intelligence service, the ISI, created and promoted the Taliban as part of its flawed but many times repeated attempts to destabilize Afghanistan.<sup>13</sup> Pakistan's intelligence head and many others in power have gloated over the U.S. loss in Afghanistan.<sup>14</sup> Pakistan is largely responsible for the eventual success of the Taliban in taking Kabul. In large part its government is hostile, not a friend to the United States, and government officials continue to encourage public resentment of the U.S.<sup>15</sup>

## The Pakistan Request

CPAC's administrators notified the public of the scope of the proposed MOU by placing the following on the ECA website:

"The Government of Pakistan seeks import restrictions on archaeological and ethnological material from the Lower Paleolithic, Mesolithic, Neolithic, Chalcolithic, Bronze Age, Iron Age, Historic Pre-Muslim Period, Early Muslim Period, Mughal, Sikh, and Colonial periods through the creation of Pakistan. Requested archaeological material includes, but is not limited to, stone; ceramics; metal objects including coins; stucco/plaster; glassware; bone, ivory, shell, and horn; manuscripts, paintings, proclamations, deeds, books, and documents; textiles of silk, wool, leather; and wood, dating from the lower Paleolithic (2 million years before present) through the first half of the twentieth century A.D. Requested ethnological material includes, but is not limited to stone; ceramics; metal objects including coins; stucco/plaster; glassware; bone, ivory, shell, and horn; manuscripts, paintings, proclamations, deeds, books, and documents; textiles of silk, wool, leather, and wood objects both architectural and moveable objects; and wooden objects dating from the Pre-Muslim Historic period through the first half of the twentieth century A.D."

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<sup>12</sup> Reuters, *Excerpts of call between Joe Biden and Ashraf Ghani July 23*, Reuters, August 31, 2021, <https://www.reuters.com/world/excerpts-call-between-joe-biden-ashraf-ghani-july-23-2021-08-31/>

<sup>13</sup> NPR correspondent and former U.S. senior government official and former military advisor in Afghanistan, Sarah Chayes, wrote on August 16, 2021 after the fall of Kabul: "You may have heard that the Taliban first emerged in the early 1990s, in Kandahar. That is incorrect... The Taliban were a strategic project of the Pakistani military intelligence agency, the ISI. It even conducted market surveys in the villages around Kandahar, to test the label and the messaging. "Taliban" worked well. The image evoked was of the young students who apprenticed themselves to village religious leaders. They were known as sober, studious, and gentle. These Taliban, according to the ISI messaging, had no interest in government. They just wanted to get the militiamen who infested the city to stop extorting people at every turn in the road. Both label and message were lies." Sarah Chayes, *The Ides of August*, August 16, 2021, updated September 2, 2021, <https://www.sarahchayes.org/post/the-ides-of-august>.

<sup>14</sup> Barkha Dutt, *It's time the U.S. ends its toxic reliance on Pakistan, before it really regrets it*, Washington Post, September 21, 2021, <https://www.washingtonpost.com/opinions/2021/09/21/us-pakistan-quad-biden-isi-afghanistan-taliban-end-reliance/>.

<sup>15</sup> *Don't Worry, Everything Will Be Okay, Says ISI Chief After Landing In Kabul*, The Nation, September 5, 2021, <https://nation.com.pk/2021/09/05/don-t-worry-everything-will-be-okay-says-isi-chief-after-landing-in-kabul/>, Said by a smiling Lt-Gen Faiz Hameed, Director General of ISI, Pakistan's intelligence service.

The Pakistan request is extremely overbroad, extending from the Lower Paleolithic period to the mid-20<sup>th</sup> century. It includes objects from ancient periods for which there is no evidence of an illegal market and ‘ethnographic’ items that have been and continue to be legitimately sold domestically in Pakistan and exported overseas.

- There is evidence for continued risk of looting for foreign markets in only a few periods in art from Pakistan, notably that of the Hellenistic and Gandharan periods. Records of seizures may be deceptive as the majority of ‘Gandharan’ art offered for sale in Pakistan is fake (or from Southeast Asia) and has been widely faked for 50 years. For example, after a widely publicized seizure of 395 sculptures in 2012, Pakistani experts determined that “over 90%” were fake, but a Pakistan museum planned to exhibit them anyway as “art.”<sup>16</sup> U.S. Homeland Security and Pakistan officials celebrated the return of a “rare Starving Buddha” abandoned in U.S. Customs in 2007, as only “the second sculpture of its kind”, but it was quickly identified by a UK art expert as a poor copy of a sculpture in the Lahore Museum.<sup>17</sup> Pakistan officials insisted it was authentic.
- There is little or no market, in the U.S. or internationally, for objects from other periods listed. The Indus Valley civilization, for all its mudbrick regularity, left unornamented buildings and virtually no art.
- With respect to “stucco/plaster; glassware; bone, ivory, shell, and horn; manuscripts, paintings, proclamations, deeds, books, and documents,” there is little left of value in Pakistan, and what there is, is completely indistinguishable from Indian material, because it is, in fact Indian. The U.S has no cultural property restrictions on Indian art. Valuable Mughal artworks were almost entirely removed from Pakistan, primarily by Indian buyers, but also by European and American dealers in the 1960s and 1970s.
- Coins and later Islamic materials in the proposed restrictions are openly sold to Pakistani and foreign buyers and widely collected in Pakistan itself. In fact, the only truly professionally operated museum in Pakistan is the museum featuring coins and currency that is housed and run by the State Bank of Pakistan.<sup>18</sup>
- There is no “traditional” or ethnic carpet weaving in Pakistan, all is commercial. Textiles of silk and wool, i.e. carpets and embroideries, are important handicraft industries and major export commodities for Pakistan. Pakistan-made carpets have long been considered of poor quality; many are made in factories by debt-bonded weavers and children. Their export is legal.
- Nota bene: Carpets imported from Afghanistan for sale in Pakistan or made by Afghan refugee weavers in Pakistan are of far better quality, but they are indistinguishable from Afghan products, which are not restricted under the Afghanistan MOU.

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<sup>16</sup> *Gandhara Relics: Seized artifacts fake, but ‘pieces of art’ to still get museum display*, The Express Tribune, August 31, 2012, regarding a seizure of 395 sculptures, 90% of which were replicas.

<https://tribune.com.pk/story/429285/gandhara-relics-seized-artefacts-fake-but-%E2%80%98pieces-of-art%E2%80%99-to-still-get-museum-display>

<sup>17</sup> Martha Lufkin, *Starving Buddha sculpture returned to Pakistan*, The Art Newspaper, February 26, 2007, <https://www.theartnewspaper.com/2007/03/01/starving-buddha-sculpture-returned-to-pakistan>

<sup>18</sup> State Bank of Pakistan Museum, <https://www.sbp.org.pk/Museum/index.htm>

- Listed ‘ethnographic’ objects such as wood and metalwork are openly sold in Peshawar, the Swat Valley, Islamabad, and Lahore, and have been lawfully exported to the U.S., U.K. and European countries for decades by the container-load.<sup>19</sup>
- Antique and used copper vessels, utensils, and trays are sold by the kilo in Lahore and Peshawar, Pakistan, for the price of copper. Old fashioned wedding parties march with these in traditional display but new vessels are considered more prestigious, so most objects are hammered flat and melted down for sale as scrap.

### **Pakistan’s Former Laws on Antiquities**

Contrary to oft-repeated claims that Pakistan has had national ownership of antiquities since 1975, this is not true.<sup>20</sup> The 1975 law’s primary purpose was to prevent the destruction of antiquities and monuments by private owners.<sup>21</sup> It restricted export, requiring a license from the Director of Antiquities (a “temporary export” provision could be granted at the Director’s discretion on placement of a small bond). The 1975 Act provided for private ownership of sites and monuments, termed “antiquities”, for compensation to owners for any damage by the government, and for the government to take ownership only if no owner could be located (Sections 2(k)(iv.-v.), 11, 12(ii)(g), 28). Restrictions could be placed by a private owner on usage. The government could also take guardianship of an “antiquity” under an agreement with the private owner (Section 12). Government preemption of an antiquity placed for sale required payment to the owner or dealer of the object or site’s fair market value.

Pakistan’s 1975 federal antiquities law did not nationalize underground movable heritage until it was amended by the Act No. XXI of 1992.<sup>22</sup> The 1992 Amendment added a section #13A providing that “Ownership of buried antiquities – Notwithstanding anything contained in any other law for the time being in force, the ownership of all buried antiquities shall vest in the Federal Government.”

The 1992 Amendment gave the Director General of the Antiquities Department the ability to determine compensation for preemption of an antiquity instead of the independent valuation required under the 1975 Act. However, even after 1992, monuments, historic sites, and above ground archaeological remains were privately owned.

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<sup>19</sup> Pakistan is a major source of supply for architectural wood. Photographs are attached taken April 17, 2022 of the outside inventory of a store in Santa Fe, comprising both Indian and Pakistani wood architectural elements. Nota bene: Experienced ethnographers know that the so-called Nuristani, “Kafir” and Pashai wood items now available are copies, not authentically old. This was the case even 30 years ago.

<sup>20</sup> See Appendix 2, Act VII of 1976, Antiquities Act, 1975. This law explicitly repealed The Antiquities Act, 1968 (XIV of 1968), and the Antiquities Ordinance, 1975 (XX of 1975).

<sup>21</sup> Antiquities Act 1975, Section 15(i): “If the Federal Government apprehends that a protected immovable antiquity is in danger of being destroyed, injured or allowed to fall into decay, it may, after consultation with the Advisory Committee, direct the Provincial Government to acquire such antiquity or any part thereof; and the Provincial Government shall thereupon acquire such antiquity or part under the Land Acquisition Act, 1894 (I of 1894), as for a public purpose.

<sup>22</sup> See Appendix 2, Act No. XXI of 1992

Conversely, objects excavated under archaeological permits issued by the Director General of Archaeology were earlier made the property of the Government of Pakistan by the Archaeological Excavation and Exploration Rules 1978.<sup>23</sup>

The Acquisition of Antiquities Rules 1989,<sup>24</sup> established pursuant to Article 37 of the Antiquities Act, 1975 (VII of 1976), created an Acquisition Committee made up of “eminent historians, archaeologists, linguists and specialists in numismatics, epigraphy, ethnography, calligraphy, and paintings” to establish the purchase price for government acquisition of antiquities.<sup>25</sup>

Rules for the granting of licenses to antiquities dealers were established in 1989, together with application forms for licensing. Among other responsibilities, licensed dealers were required to maintain registers for purchases and sales, and “to inform all customers that export of antiquities outside Pakistan is completely banned except as provided in the Act and the Export of Antiquities Rules, 1979.”<sup>26</sup>

The Export of Antiquities Rules, 1979 also provide under Section 3(1)(a) for the “temporary export of an antiquity for the purpose of exhibition, examination or treatment for presentation,” requiring only “a bank guarantee for an amount equivalent to the value of the antiquity as a security for the return of the antiquity to Pakistan,”<sup>27</sup> a clause that may have been used to legitimate the export of antiquities in the past.

### **Pakistan Has Delegated All Domestic Regulation of Antiquities to Provinces, Splintering Authority and Reducing Accountability, Funding, and Enforcement**

An 18<sup>th</sup> Amendment to Pakistan’s Constitution passed on April 8, 2010 reduced the power of the President. It was also intended to curb powers and infringements on the Constitution of Pakistan by the military.<sup>28</sup> The enhancement of provincial authority and delegation of formerly federal powers resulted in a significant shift to provincial assemblies to legislate in health, education, women’s and children’s affairs. It also radically altered the administration of cultural heritage in Pakistan by delegating almost all authority over antiquities to the administration of four of Pakistan’s provinces; Balochistan, Khyber Pakhtunkhwa, Punjab and Sindh. (Islamabad Capital Territory is federally administered and Azad Jammu and Kashmir and Gilgit-Baltistan are ‘autonomous territories.’)

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<sup>23</sup> Compiled by Muhammad Rafique Mughal, *Legislations for the Protection and Management of Archaeological Heritage of Pakistan*, Subsection Archaeological Excavation and Exploration Rules 1978, pages 16-21, available at [https://en.unesco.org/sites/default/files/pakistan\\_legislation\\_07\\_1995\\_engl\\_orof.pdf](https://en.unesco.org/sites/default/files/pakistan_legislation_07_1995_engl_orof.pdf).

<sup>24</sup> *Id.* at Subsection Acquisition of Antiquities Rules 1989, pages 25-26.

<sup>25</sup> *Id.* at Subsection Acquisition of Antiquities Rules 1989, page 25.

<sup>26</sup> *Id.* at Subsection Dealing in Antiquities Rules 1989, page 29.

<sup>27</sup> *Id.* at Subsection Export of Antiquities Rules 1979, pages 34-35.

<sup>28</sup> Eighteenth Amendment to the Constitution of Pakistan, Wikimedia, [https://en.wikipedia.org/wiki/Eighteenth\\_Amendment\\_to\\_the\\_Constitution\\_of\\_Pakistan#:~:text=The%20Eighteenth%20Amendment%20of%20the,semi%20presidential%20to%20a%20parliamentary](https://en.wikipedia.org/wiki/Eighteenth_Amendment_to_the_Constitution_of_Pakistan#:~:text=The%20Eighteenth%20Amendment%20of%20the,semi%20presidential%20to%20a%20parliamentary). The 18<sup>th</sup> Amendment turned Pakistan from a semi-presidential to a parliamentary republic, renamed the N.W.F.P as Khyber Pakhtunkhwa,



With these changes, Pakistan's Ministry of Archaeology and Culture was first subsumed under a 'Ministry of Culture', which was subsequently transformed into the Ministry of Information and Broadcasting.

Supervision of archaeology and cultural heritage legislation (except with respect to Customs export) effectively disappears from Pakistan's federal government and is instead vested in the provincial governments. There is still a Director General of the Federal Department of Archaeology (created under a prior 1995 federal law), who sits on the board of each provincial archaeological ministry.

### **Pakistan Spends a Pittance on Cultural Heritage Protection**

The annual budget estimates for Pakistan's entire federal National Heritage and Cultural Division for 2020-21 were 1,422,335,000 rupees or 7.7 million dollars at current exchange rates. More than half this amount is for salaries. This budget estimate includes the cost for every form of cultural funding including academies, language institutes, grants, monuments, libraries, two national museums, and Pakistan's contribution to UNESCO and the World Heritage Fund. It also covers the Lok Virsa, the National Institute of Folk & Traditional Heritage.<sup>29</sup>

***The annual amount allocated to the Department of Archaeology & Museums for 2020-21 was \$346,628, of which two-thirds was for salaries and pensions, leaving \$117,120 for all other expenses.***

The 18<sup>th</sup> Amendment left each province to pass new heritage laws, establish rules to administer heritage sites and museums, grant excavation permits, and appoint heritage protection and archaeology departments.

Antiquities protection was not the provinces top priority. It took six years, from 2010 to 2016, for the Khyber Pakhtunkhwa provincial assembly to adopt a law regulating antiquities excavation, ownership trade, superseding the federal 1975 Antiquities Act in all respects except for export.<sup>30</sup>

The devolution of the Archeology and Museums Department of Pakistan, together with the authority held by that department, to the governments of each of Pakistan's provinces means that antiquities and ethnographic objects on a Designated List must be returned to the proper province, as each province now claims legal ownership of the antiquities found within it.

### **The Khyber Pakhtunkhwa Province Example**

Khyber Pakhtunkhwa province comprises most of the formerly North West Frontier Province (N.W.F.P.) In 2018, it was merged with the previously Federally Administered Tribal Areas

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<sup>29</sup> *Budget Estimates 2020-2021 National Heritage & Culture Division (Demand No.056)*, <https://heritage.pakistan.gov.pk/SiteImage/Misc/files/BudetEstimates2020-21.pdf>

<sup>30</sup> Nisar Mahmood, *KP Assembly passes Antiquities Bill 2016*, The News, March 30, 2016, <https://www.thenews.com.pk/print/108985-KP-Assembly-passes-Antiquities-Bill-2016>.

(FATA) and Provincially Administered Tribal Areas (PATA), thereby consolidating three of most unruly and least governable regions of Pakistan.

The following excerpt from the Khyber Pakhtunkhwa Antiquities Act, 2016 gives a hint of the potential complications that U.S. authorities could face in repatriating seized goods, which now explicitly belong to Khyber Pakhtunkhwa and not to Pakistan.

This could be a challenging issue, since there is significant crossover between the types of goods (especially “ethnographic” goods) between Pakistan’s provinces due to both voluntary and forced movements of peoples between them. According to the new Khyber Pakhtunkhwa legislation, in which the term “Government” means the Khyber Pakhtunkhwa government:

*52. Retrieval of antiquities from abroad.---*

*(1) Government shall initiate urgent action for retrieval of antiquities smuggled out of the Province abroad, sold to any person, organization, museum, university or trust.*

*(2) Directorate shall register FIRs against known or unknown culprits involved or instrumental in the theft, smuggling, trafficking and sale of any antiquity or cultural objects.*

*(3) For retrieval of smuggled or sold antiquities diplomatic channels as well as assistance of foreign organizations shall be sought by seeking guidance from national and international laws concerning this issue.*

*(4) Government shall enter into mutual agreements with different governments through the Ministry of Foreign Affairs for return of the smuggled antiquities.*

*(5) Director shall prepare list of all such antiquities smuggled out of the Province and now on display in different museums abroad or in possession of private collectors or Auctioneers and collect information about their place of origin and other information necessary to prove that the antiquity actually belonged to the Province.*

### **Other Provincial Examples**

A survey in 2016 reported that more than one hundred archaeological sites belonging to prehistoric and historic times have been explored in the former Khyber Agency tribal territory, now Federally Administered Tribal Areas (FATA), administered federally by the military since the colonial period, so police were not allowed entry. However, by parliamentary decision, the federal Antiquities Act 1975 was not applied to FATA. Only recently was FATA incorporated into the Khyber Pakhtunkhwa province, making it subject to the new Khyber Pakhtunkhwa Antiquities Act, enacted six years after responsibility for antiquities devolved to the provinces.<sup>31</sup>

An unfortunate example of the exercise of the provinces’ new authority was seen when an Italian archaeological mission that had a longstanding relationship with local authorities was told it must stop work on a project it had been working on for years until it had reapplied to the provincial authorities, met all the provincial legislation’s criteria and paid a new excavation fee.

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<sup>31</sup> Rafiullah Khan, *Carving history*, The News, December 25, 2016, <https://www.thenews.com.pk/tns/detail/562363-carving-history>. Article 247 (3) of the constitution pronounced inapplicability of laws enacted by the parliament to FATA. It is only applicable through presidential ordinance. There is no archaeological department in FATA.

Pakistan's Dawn newspaper noted in 2010 that "The provincial antiquities draft law is reportedly gathering dust at the Sindh law department, with the result that the newly established antiquities department does not quite know where its jurisdiction crosses paths with the provincial culture ministry." The report noted that 129 archaeological sites including Moenjodaro, a World Heritage site, had been turned over to the provincial government but that no steps had been taken.

"Only months ago a controversy had broken out when the family of the provincial culture minister was accused of digging a waterway across the protected Makli necropolis in Thatta. The antiquities department had cried itself hoarse but it was not clear whether it had any jurisdiction in the matter."<sup>32</sup>

In August 2020, A widely disseminated video posted on Twitter<sup>33</sup> showed construction workers smashing a large Buddhist statue with sledgehammers. The builders encountered the massive stone statue while excavating earth for the foundations of a house being built in Mardan, Khyber Pakhtunkhwa province. The construction workers who smashed the Buddhist statue filmed themselves destroying the 'idol.' The contractor was ostensibly told by a local cleric that he would "lose his imaan (faith) and his nikah (marriage) will also not remain valid any more" if the Buddha was not destroyed.<sup>34</sup>

### **Museums and monuments, including World Heritage sites, suffer from a longstanding policy of neglect and covering up failures to protect and secure heritage**

According to a UNESCO Pakistan Country Strategic Document 2018-2022 discussing Pakistan's museums:

"a lack of learning resources and trained staff as well as the limited access to digital technologies inhibit the educational role of museums and visitors get little learning experience by visiting. Further, due to limited staff capacity and lack of financial resources many collections do not receive the research and preservation they require."<sup>35</sup>

With the notable exception of the Bank of Pakistan's well-curated, organized, and displayed coin and currency museum, Pakistan's museums have a poor record characterized by neglect, failure to preserve or conserve fragile material, lack of records and loss of objects through theft, breakage, and replacement with fakes. They rarely change or update exhibits or didactic and do not involve local communities or students, seeing the museum as merely a tourist attraction for foreigners.

Examples follow of reports on monuments and museums in Pakistan by the local press:

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<sup>32</sup> *Sindh Antiquities Act*, Dawn, April 8, 2010, <https://www.dawn.com/news/846074/sindh-antiquities-act>.

<sup>33</sup> <https://twitter.com/arifaajakia/status/1284306652364144641>

<sup>34</sup> Kate Fitz Gibbon, *Smashing Buddhas in Pakistan: Rural Ignorance and Museum Indifference*, Cultural Property News, August 15, 2020, <https://culturalpropertynews.org/smashing-buddhas-in-pakistan-rural-ignorance-and-museum-indifference/>

<sup>35</sup> *UNESCO Pakistan Country Strategic Document 2018-2022*, at 15, <https://en.unesco.org/sites/default/files/ucsd.pdf>

The authentic, world famous Fasting Buddha, “the jewel of the Lahore Museum,” was damaged in 2014 after a botched attempt at cleaning and an amateur repair by staffers who filled a crack with prior damage with epoxy. The National Museum has no conservator and its lab is run by untrained staff.<sup>36</sup> The Fasting Buddha was excavated in 1894 by Colonel H.A. Dean and donated to the then Lahore Museum.

As late as 2019, there was only one trained art conservator working in Pakistan, primarily on paintings, although he undertook restoration in other media. Zubair Ahmed Madani works at the National Museum in Karachi and also takes private clients.<sup>37</sup>

In 2018, civil society organizations expressed outrage that Culture, Tourism and Antiquities Preservation Secretary Akbar Laghari said that encroachments to be bulldozed on Burnes Gardens could result in the demolition of the National Museum in Karachi and emergency removal of the artifacts there, including 56,000 rare coins, 10,000 manuscripts, 4,000 Gandharan artefacts, 50,000 rare images of different sites and 10,000 archaeological artefacts.<sup>38</sup>

The artifacts at the National Museum had already suffered in prior moves. According to national newspaper Dawn, archaeologists were alarmed by the abrupt transfer of archaeological collections and a valuable library of rare books from storage to the National Museum. Dawn reported:

“There were boxes lying on the dusty floor. It looked like as if someone had packed them in haste... The boxes were lying in the middle of a large room that looked like a badly kept library. It is not. The books are no less valuable than the artefacts. According to the person who was at the branch at the time and did not wish to be named, the books belonged to the federal government. In one corner, one could see broken pieces of pottery. It seems they are part of the materials found by local and foreign archaeologists over the course of their excavations and got damaged while being removed to be transferred to another site.”<sup>39</sup>

In 2016, Pakistan news media reported that serious irregularities and misconduct at the Peshawar Museum, including replacement of real antiquities with fakes, had come to light in a National Museum investigation. Many coins that were acquired before 1947 had been replaced with replicas and museum staff could not say when this had occurred. The museum had not a single record of any confiscated antiquities it had received from Customs seizures, a category of objects particularly hard hit by theft. “The report noted irregularities in appointment of candidates with no proper background of archeology and mentioned it as one of the main reasons for the missing

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<sup>36</sup> Shoaib Ahmed, ‘Fasting Buddha’ damaged during cleaning, Dawn, June 26, 2014, <https://www.dawn.com/news/1115168>

<sup>37</sup> Iqra Sarfaraz, *Preserving art*, You magazine, The News, <https://www.thenews.com.pk/magazine/you/549832-preserving-art>

<sup>38</sup> *Civil society perturbed over likely demolition of National Museum*, The News, August 21, 2018, <https://www.thenews.com.pk/print/357875-civil-society-perturbed-over-likely-demolition-of-national-museum>

<sup>39</sup> Peerzada Salman/Bhagwandas, *Precious artefacts get damaged, others face risk of theft during shifting*, Dawn, July 5, 2015, <https://www.dawn.com/news/1192345>

record,” and that “the process of replacing original antiques with replicas was supported by bogus documentation.”<sup>40</sup>

Also in 2016, Dawn reported that there was still no clue to the whereabouts of “81 rare antiquities, including the priceless statues of Greek god and goddess, which were ‘stolen’ from the Taxila Museum” in 1999. Police working as security at the museum and the museum’s own guards each accused each other of the theft. (Dawn noted that four years previously, the curator of the Moenjodaro Museum was “terminated from service” after a group of Moenjodaro seals disappeared.) There is still no alarm system at the Taxila Museum.<sup>41</sup>

In 2012, Dawn reported that at the 17th-century Shalamar Gardens, Lahore, a UNESCO World Heritage site, contractors had reconstructed rather than conserved the walls and buildings, defacing the historical structures. Dawn called for employing conservationists from abroad because Pakistan lacks experts, rather than leaving the ancient buildings to the “whims of building contractors and architects to do as they please with them.”<sup>42</sup>

While an important Hindu palace apparently cannot receive protection under antiquities laws, the original family residences in Peshawar of two legendary Bollywood stars, Dilip Kumar and Raj Kapoor, are proposed to be turned into museums by the Khyber-Pakhtunkhwa government. The Director of Archaeology of Khyber-Pakhtunkhwa, Dr. Abdul Samad Khan, announced that both houses had been declared national heritage sites and both would be turned into museums.<sup>43</sup>

The fate of Buddhist antiquities in Pakistan’s museums made headlines five years after they were seized when several large Gandharan stone statues were discovered in a rubbish pile at the National Museum in Karachi, Pakistan. The statues had been recovered from a Pakistani smuggling ring in 2012. (Other Pakistan experts claimed that 90% of the “smuggled” objects were fakes, but the National Museum asserted they were real, but would not be harmed by being left outside.) Two of the five statues were used to decorate the doorway of the antiquities director-general’s personal office, the others were tossed into a rubbish heap outside. Stated National Museum director Mohammad Shah, “We believe this sculpture dates back 1,500 years and it will be given an original look when we wash it.”<sup>44</sup>

After over 35 years of local protests, in 2017, Peshawar city authorities finally ordered the destruction of a wedding hall constructed inside the 2,600 year old Gor Khatri Archaeological Complex. The Municipal Corporation Peshawar (MCP) erected the commercial building on the Gor Khatri land in the early 1980s. According to a report in The News, “There were efforts by

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<sup>40</sup> *Inquiry report points out irregularities in Peshawar Museum*, The News, May 20, 2016,

<https://www.thenews.com.pk/print/121255-Inquiry-report-points-out-irregularities-in-Peshawar-Museum>

<sup>41</sup> Amjad Iqbal, *No clue to antiquities stolen in 1999*, Dawn, March 25, 2016,

<https://www.dawn.com/news/1247824/no-clue-to-antiquities-stolen-in-1999>

<sup>42</sup> *Historical Monuments*, Dawn, February 29, 2012, <https://www.dawn.com/news/699308/historical-monuments>.

<sup>43</sup> Arshad Aziz Malik, *Converted into museums: Govt officials visit Dilip Kumar, Raj Kapoor houses today*, The News, September 30, 2020, <https://www.thenews.com.pk/print/722379-converted-into-museums-govt-officials-visit-dilip-kumar-raj-kapoor-houses-today>

<sup>44</sup> Hafeez Tunio, *1,500 year old statues left in the trash at National Museum*, Express Tribune, November 17, 2017, <https://tribune.com.pk/story/1560429/1-1500-year-old-statues-left-trash-national-museum>

the conscientious citizens to have this monstrous structure knocked down but a powerful mafia drawing cash benefits from the building continued to fail them by resorting to various means.”<sup>45</sup>

In January 2020, The National newspaper reported that legal action would be taken after a local corporation, the Fatima Fertilizer Co., hired out the 400-year-old royal kitchen of the Lahore Fort for a wedding party, “causing a public outcry after which the Punjab government was forced to take action.”<sup>46</sup> The Lahore Fort is recognized as an endangered monument by UNESCO and listed as a World Heritage Site in Danger. “Pakistan's Federal Antiquities Act 1975 governs the Lahore Fort and Shalimar Gardens. The Act states that the “protected immovable antiquity shall not be used for any purpose inconsistent with its character or for a purpose other than that directly related to its administration and preservation.” The Lahore Walled Authority, which administers the fort and gardens, initially denied that the event was a wedding party, but videos circulated of the event contradicted them.

The sole exhibition in Pakistan of pre-historic pottery from Balochistan was for only one month in 2015 at the National Museum in Karachi. It was arranged by the German Consulate-General, the Sindh Department of Antiquities and the Islamic Museum in Berlin, the Berlin Islamic Museum creating the exhibit.<sup>47</sup>

In February 2021, in Mansehra, Khyber Pakhtunkwa province, after repeated complaints by locals, the district administration banned the digging up of graves and tombs by treasure hunters in search of antiquities, saying such activities had not previously come to the attention of the police. A local, Bilal Aman, said that it was a common perception and widely accepted that Hindus buried their gold and other precious goods in fear of theft when they left for India at the time of partition. “The treasure hunters are active in search of such left-over gold and other antiquities,” he said.”<sup>48</sup> Three treasure hunters were arrested the following October.<sup>49</sup>

## **The Request Fails to meet Legal Criteria Under the CPIA**

### **(1) All restricted cultural patrimony must be threatened by pillage. P**

Pakistan has failed to demonstrate that the hitherto unidentified objects in the proposed Designated List are in jeopardy of pillage.

### **(2) Self help is required.**

Pakistan has clearly failed to take sufficient measures to protect its cultural patrimony.

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<sup>45</sup> The News Bureau, *Demolition of wedding hall in historic Gor Khatri starts*, The News, October 17, 2017,

<sup>46</sup> *Wedding event at Lahore Fort causes public outcry*, The News, January 10, 2020, <https://www.thenews.com.pk/latest/596558-wedding-event-at-lahore-fort-causes-public-outcry>

<sup>47</sup> Anil Datta, *An exposition of pre-historic pottery from Balochistan*, The News, <https://www.thenews.com.pk/print/237131-Demolition-of-wedding-hall-in-historical-Gor-Khatri-starts><https://www.thenews.com.pk/print/74228-an-exposition-of-pre-historic-pottery-from-balochistan>

<sup>48</sup> *Treasure hunters' dig up old grave in Mansehra*, The News, February 3, 2021, <https://www.thenews.com.pk/print/784337-treasure-hunters-dig-up-old-grave-in-mansehra>

<sup>49</sup> *Three treasure hunters held*, The News, October 7, 2021, <https://www.thenews.com.pk/print/898246-three-treasure-hunters-held>

**(3) U.S. import restrictions may be implemented only if applied in concert with similar restrictions implemented, or to be implemented within a reasonable period of time, by nations with a significant import trade in the designated objects, would be of substantial benefit in deterring a serious situation of pillage, or establish that other, less drastic remedies are not available.**

The U.S. market for Pakistan antiquities and ethnographic materials has not triggered a current “serious situation of pillage.” The U.S. market has a more than adequate supply of Gandharan art available in domestic and European collections made over the last century. Other antiquities are not marketable, and ethnographic goods are oversupplied already.

**(4) The request does not meet the criteria that the application of the import restrictions is consistent with the general interest of the international community in the interchange of cultural property.**

One Buddhist sculpture lent to Switzerland,<sup>50</sup> the only loan of Pakistan art in recent years, does not equal a significant “interchange of cultural property.”

Under the conditions specified under the CPIA, the request from the Republic of Pakistan for a bilateral agreement with the US cannot be undertaken.

### **Corruption as a Way of Life**

‘Pak’ means pure or clean. At its founding Pakistan was intended to be a ‘clean’ state operating under Islamic law. The vision of its founder, Muhammad Ali Jinnah, a former barrister trained at Lincoln’s Inn in London, was that East and West Pakistan would be an alternative to living under a Hindu-majority, secular state of independent India.

Jinnah’s Presidential Address delivered to Pakistan’s first Constituent Assembly denounced the bribery and corruption he saw as “one of the biggest curses from which India is suffering.” He urged the delegates to “tackle this monster, which today is a colossal crime against society,” and always to be guided by principles of justice and complete impartiality.

Yet for decades past Pakistan’s government has been one of the most corrupt in the world.<sup>51</sup>

The Committee for Cultural Policy and Global Heritage Alliance assert that endemic corruption, from the highest to the lowest levels of government in Pakistan, renders Pakistan incapable of satisfying the criteria set by Congress in the CPIA at this time. There is irrefutable evidence that Pakistan’s extreme domestic corruption renders the laws of Pakistan ineffective. Positions in law enforcement are highly sought after, because they guarantee income from bribery and payoffs. A country where heritage laws are not enforced - from site protection to preservation of archives and artifacts in museums, to laws banning export of antiquities – cannot meet Congressional criteria for import restrictions under the CPIA.

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<sup>50</sup> Pak, Swiss ties ‘strengthened’ as ancient Buddha sculpture sent from Peshawar to Zurich, December 13, 2018, <https://www.thenews.com.pk/latest/405418-pakistan-loans-ancient-budha-monument-to-switzerland>

<sup>51</sup> Transparency.org, Pakistan scores a low 28 for 2021 on a zero to 100 scale, ranking 140<sup>th</sup> out of 180 countries in the world. A score below 50 indicates serious corruption. <https://www.transparency.org/en/cpi/2021/index/pak>

Pakistan is not a state under siege from outside criminal elements like Al Capone's Chicago. It is a 70 year old, nominally-democratic state that holds elections, however flawed. It has a highly bureaucratized governing system. It has a large body of laws, many inherited from India's colonial past, but it is not a country in which laws govern society.

Pakistan's governing system functions on a daily basis through payoffs for doing ordinary work, for cutting corners, or for criminal actions - and its bureaucracy punishes those who cannot afford to or will not pay. Bribes flow upward through a system of patronage to higher and higher levels of government. In exchange, higher officials reward lower echelon participants with support in the form of job security regardless of incompetence, legal immunity from complaints of abuse, and carte blanche to bureaucrats to enrich themselves by many times their official salaries every year.

For the US to be like Pakistan is today, it would be necessary to have massive corruption by the majority of Congress, the Departments of Justice and Treasury, and agents of the FBI, CIA, the IRS, Homeland Security, and state and local police officers. Most judges would be on the take. A similar U.S. system would enable politicians or their families to monopolize industries such as textiles, forestry, and mining as their own private property. The system would – in practice – nullify all U.S. laws against conflict of interest, bribery, and money laundering, and weaken insider trading and tax evasion laws.<sup>52</sup>

Funds generated through corrupt, criminal activities would be the primary support for political candidates. The highest levels of government would not only be aware of all these activities but would support them. The Chief Executive's spouse could be popularly known as "Mr. Ten Percent," taking a cut on all government purchases. While claiming that the country was nearly bankrupt, and demanding massive infusions of foreign aid, top politicians would hide millions and even billions of the money collected through excess profits and bribes in off-shore banks and high value real estate in foreign countries.

Archaeological sites and monuments would be used for rock concerts and rented out for weddings. Museum collections would be subject to petty theft by employees and outright appropriation by political leaders who took important objects to decorate their homes and offices and even to their private mansions overseas.

How is the corruption system relevant to whether the U.S. signs an MOU with Pakistan? An MOU must be effective in order to be justified under US law. It is not required to completely cure the problems of neglect and destruction and looting of heritage, but it IS required to have an effect; Pakistan's government must truly be committed to preserving its heritage.

Sarah Chayes has written:

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<sup>52</sup> A number of sources detail how the highest officials and military in Pakistan engage in corrupt practices. A useful compilation of international press reports covering both domestic corruption and international entanglements (such as found in the Panama Papers) is entitled "*Pakistan in Focus: Political Corruption at its Peak: The Challenge for Judicial Activism*," by Dr. Wazir Ali Khan, 2018.



*“In international development circles, it’s fashionable to speak of “fragile” or “failing” states. But such states are deceptive. They are in fact run by sophisticated networks. These networks may be failing at governing, but governing is not their objective. Self-enrichment is. And at that they are highly successful.”*<sup>53</sup>

Does Pakistan’s record show that it would honor a cultural property agreement by checking looting, documenting damage and destruction to heritage, and taking self-help measures it has so far failed to make? Or would there be merely a veneer of cover-ups and pretended compliance while decades of neglect continued unabated?

Congress placed procedural and substantive constraints on the executive authority to impose import controls under the CPIA. Under the aegis of the State Department’s Bureau of Educational and Cultural Affairs, import restrictions under the CPIA have provided for near permanent bans on the import of virtually all cultural items from the prehistoric to the present time from the countries which have sought agreements. If CPAC fails to heed the concerns of Congress regarding overbroad import restrictions unsubstantiated by clear evidence of meeting the four determinations, CPAC acts in derogation of U.S. law and against the best interests of the people of the United States.

The Department of State should provide all assistance possible to Pakistan’s now-fragmented cultural authorities and work with them and with Pakistan’s federal officials to build a cultural infrastructure that will expand protections within that nation. Given Pakistan’s current state of cultural heritage management, grants for education and other assistance will be far more effective in safeguarding heritage than an MOU that will have no domestic effect.

The Department of State should also acknowledge the public’s interest in an effective cultural policy by publishing the substance of source country requests together with factual analyses of existing cultural policy by the foreign government. Other State Department sections publish reports and analyses dealing with human rights, religious freedom and other matters essential to developing U.S. public policy. These are often highly critical of foreign governments but their publication does not result in weakening of U.S. security or breaches in foreign relations. Greater transparency at the Bureau of Educational and Cultural Affairs would strengthen, not weaken U.S. cultural policy.

Thank you for your attention.

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<sup>53</sup> Sarah Chayes, *Failing States*, September 8, 2021, <https://www.sarahchayes.org/post/failing-states>.