



# INSTRUMENTS FOR SAFEGUARDING INTANGIBLE HERITAGE

Instruments that specifically aim to safeguard intangible heritage have been developed within the context of a growing number of national and international instruments affirming the importance of cultural life for the well being and development of humanity. UNESCO, for example, was established to promote education, science, culture and communication in the quest for universal respect for justice, the rule of law, human rights and fundamental freedoms. Cultural policies at a regional and national level have also emphasised the importance of culture, sometimes emphasising the need to acknowledge different cultural identities and sometimes emphasising the recognition of cultural similarities within countries, regions and humanity as a whole. The cultural agreement of the Economic Community of West African States (ECOWAS), drawn up on 9 July 1987, for example, is designed to affirm, protect and promote specific cultural identities of member states (Tambadou 2003).

In this section, we will provide an overview of organisations and countries that have been working on specific instruments for safeguarding intangible heritage. Because of the way in which these instruments have been developed, we have distinguished below between (a) instruments to safeguard intangible heritage values associated with places and objects, and (b) instruments to safeguard intangible heritage that does not have a strong material form.

Intangible values (aesthetic and social) associated with places have been explicitly accommodated within the WHC since the 1970s, and in some national legislation. Heritage objects, especially the intangible values associated with them, have often been neglected in both national and international instruments for safeguarding heritage. Approaches to the safeguarding of intangible heritage without strong material forms have focused on two main areas: (a) the protection of the rights of communities owning intangible heritage forms and (b) the development of a policy for the identification and safeguarding of intangible heritage. This section reviews the work that has been done on these issues in the last 30 years. Due to limitations of space, it is a brief summary – for further information see Blake (2001).

## **International instruments safeguarding intangible values associated with places and objects**

Intangible values associated with places and objects have received the most attention in international and national instruments (the latter will be discussed in a separate section below). The World Heritage Committee is a UNESCO body that manages the World Heritage Convention (WHC), designed to safeguard heritage places of international significance. The World Heritage List currently includes 730 places in 125 member countries. Intangible values like social and aesthetic value have been in the WHC's Operational Guidelines for some time, but these values have not traditionally been used to identify places for inscription. The Guidelines, first finalised in 1977, were modified during the 1990s to make greater provision for intangible values associated with places.

With respect to intangible heritage, perhaps the most significant shift in the Guidelines happened in 1992 when changes were made to allow for the inscription of 'cultural landscapes'. Changes were made to cultural criterion (vi) that permitted the listing of places 'directly or tangibly associated with events or *living traditions*, with ideas, or with beliefs, with *artistic and literary works* of outstanding universal significance'. Changes

were also made to criterion (v) permitting inscription of places that represented ‘an outstanding example of ... *land use*’ rather than just ‘human settlement’ (Truscott 2003). This allowed for the recognition that cultural meanings associated with natural phenomena, such as the spiritual Indigenous landscapes in Australia, are worthy of world heritage status.

Uluru Kata-Tjuta in Australia is a prime example of how intangible values have been recognised later than other values in heritage identification. Of iconic significance to all Australians as a key element of the Red Heart of Australia, this monolith is also of great sacred significance to the Anangu people of Central Australia. Despite this, it was initially only included for its natural heritage values on the World Heritage List, as associative values were not originally recognised as a world heritage criterion. A spiritual landscape, with many separate Dreaming Tracks formed by ancestral creation figures that pass through this area, Uluru Kata-Tjuta was finally listed for its indigenous core significance in 1994, only the second spiritual cultural landscape to be so listed (the first being Mount Tongariro, New Zealand). The Management Plan (Uluru Kata-Tjuta 2000) explains the centrality of the traditional belief system for this place. (Truscott 2000)

There has, however, been some resistance to the inclusion of intangible values in the Guidelines. Cultural criterion (vi), perhaps the criterion most easily accommodating of the intangible values of places, was originally intended to allow the inscription of places like the Church of Nativity at Bethlehem or Cape Kennedy but was soon employed to list places associated with conflict and places whose main significance lay in their intangible values (for a historical review of the changes to this criterion see Beazley 2002). Because most of the World Heritage Sites have positive associations, the application to list Auschwitz in 1979 as a ‘symbol of the cruelty of man to his fellow-men in the 20th century’, surprised the World Heritage Committee (Beazley 2003). It was listed as a ‘unique’ site and by 1980 listings under criterion (vi) were limited to exceptional cases (Beazley 2002). The use of symbolic meaning as a criterion for inclusion of places of conflict on the list has caused political dissent among the member states, and, after the fraught declaration of the Hiroshima Memorial (1996), criterion (vi) was altered so that it could no longer be used as the sole justification for inscription. There has been a growing challenge to this view, however, because many delegates wanted criterion (vi) to be used to list places that have important intangible associations ‘of outstanding universal significance’ but do not fulfil any of the other cultural or natural criteria.

There are four categories in which places associated with intangible heritage values have been inscribed onto the World Heritage List to date:

- *Cultural routes or itineraries* whose tangible traces and constructed signs bear the mark of cultural and artistic interchanges across frontiers and across the centuries: pilgrim routes such as the road to Santiago de Compostela; trade routes such as the Silk Road; migration or exploration routes such as the Salt Road and the slave roads, including the slave holding station on Goree off Senegal (it was inscribed as a World Heritage Site in 1978). In each instance, the route identification is based on ‘serial inscriptions’ of physical evidence: however, it is the route as such that is identified as a cultural property.
- *Cultural landscapes* that bear the mark of systems of agriculture or husbandry, such as terraced rice paddies, vineyards or the wooded countryside of the bocages in

northern France; or of traditions of human inhabitation or forms of community, such as the troglodyte dwellings of Cappadocia, the site of Sugur in Nigeria or the cliffs of Bandiagara in the Dogon territory.

- *Associative sites* that evoke a legend or myth, such as the sites of Tongariro in New Zealand or Uluru Kata-Tjuta in Australia, where there is no visible human construction but which nonetheless represent significant cultural heritage value to the local population. Australian Indigenous people believe that Uluru Kata-Tjuta was actually built by two ancestor figures, so the notion of construction is relative (Truscott 2003).
- *Commemorative sites*, marked by a dramatic moment in human history, such as the Auschwitz concentration camp, Robben Island or the Genbaku Dome, the Memorial to Peace in Hiroshima (Luxen 2000).

A Global Strategy for a balanced and representative World Heritage List was adopted by UNESCO's World Heritage Centre and ICOMOS in 1994. At the time, African cultural heritage was 'especially under-represented on the World Heritage List, in spite of its tremendous archaeological, technological, architectural and spiritual wealth, its ways of organizing and using land and space, its network system for trade and the exchange of ideas and goods, etc' (World Heritage Centre 1997). The aim of the WHC is to ensure that the List reflects the world's cultural and natural diversity of outstanding universal value. Conferences and studies aimed at implementing the Global Strategy have been held in or are planned for Africa, the Pacific region, the Arab region, the Andean region, the Caribbean, central Asia and south-east Asia (World Heritage Centre 2003; UNESCO 1999). In 1995 and 2000, two meetings were held in Zimbabwe to identify ways of implementing the Global Strategy and to identify heritage places in a more inclusive way. Work on the Nara Document on Authenticity (Nara 1994) highlighted the need to move away from purely Western expert testimony in determining authenticity and to recognise the values that a cultural property represents in the eyes of the community concerned. The annual ICOMOS meeting was held in Zimbabwe in October 2003 and focused on intangible heritage.

ICOMOS and UNESCO initiatives on intangible heritage (see below) have stimulated some discussion about intangible values associated with moveable objects as well. The International Council of Museums (ICOM) is a worldwide network for museum professionals of all disciplines and specialisations, dedicated to the development of museums and the museum profession and the preservation of cultural heritage. The theme of the General Assembly of ICOM 2004 in Seoul, Korea, is intangible heritage (see ICOM 2003). Other initiatives include the Asia Pacific Regional Assembly of ICOM for 2002 in Shanghai, China, which dealt with both tangible and intangible heritage in a holistic context and considered museums as key vehicles for documentation, preservation and promotion of these resources. The participants drew up a regional Charter for the Safeguarding of Intangible Heritage: the Shanghai Charter. It affirms the significance of creativity, adaptability and the distinctiveness of peoples, places and communities. It recognises that these provide the framework in which the voices, values, traditions, languages, oral history, folk life, and so on are recognised and promoted in all museological and heritage practices. It recommends actions for museums to take as facilitators of constructive partnerships in the safeguarding of this heritage of humanity (Shanghai Charter 2002).

The International Centre for the Preservation and Restoration of Cultural Property (ICCROM) is an intergovernmental organisation with 100 member states, founded by UNESCO in 1959. Most of the ICCROM projects focus on place and collections management; but although recent meetings have addressed the issue of intangible heritage, it is not an explicit focus. The 'living heritage' sites programme includes two subprogrammes; a regional pilot project based in southeast Asia (Mekong River region subprogramme) and the ICCROM Forum on living religious heritage that took place in 2003 (ICCROM Living Heritage Sites 2003).

### **International instruments safeguarding intangible heritage without strong material forms**

In 1989, the General Conference of UNESCO adopted a 'Recommendation on the Safeguarding of Traditional Culture and Folklore'. Since then, few UN member states have adopted the 1989 Recommendation. Key criticisms of the Recommendation were that it could recommend to but not oblige states to implement protective mechanisms, and that it failed to ensure that control over intangible heritage management and benefits remained with the communities who owned that heritage. There was debate about the way in which folklore had been defined in the Recommendation and about the Recommendation's scope and approach to safeguarding intangible heritage (Blake 2001: v). At a joint UNESCO and Smithsonian Institute Conference in Washington in 1999,<sup>6</sup> a recommendation was made to investigate a new instrument for the safeguarding of traditional culture and folklore (Blake 2001: viii).

In spite of the criticisms of the instrument, the UNESCO Recommendation of 1989 encouraged within the international community a greater awareness of the need to safeguard intangible heritage. In 1993, Korea proposed a Living Human Treasures programme (UNESCO 1993a) to honour outstanding examples of intangible heritage passed down through generations and make recommendations to member states on the kinds of cultural policies and legislation that could be introduced nationally. A project called UNESCO Red Book of Languages in Danger of Disappearing was launched in 1993 to gather updated information on endangered languages and promote research (UNESCO 2003b). Studies of seriously endangered languages in the south-western Pacific, Siberia, Australia, Indonesia and Thailand were carried out, and an International Clearing House and Data Bank Centre for Endangered Languages was set up at Tokyo University in 1995, hosting a rich database of endangered languages (Tokyo University 1995). The UNESCO *Atlas of the World's Languages in Danger of Disappearing* has highlighted the need to safeguard certain languages (UNESCO 2001c). UNESCO's Memory of the World programme was initiated in 1996 to safeguard endangered documentary heritage (UNESCO 2003c). The programme reflects a concern to safeguard and provide access to the documents, manuscripts, oral traditions, audio-visual and electronic materials, sound recordings, and library and archival holdings of universal value that make up the memory of the world (UNESCO New Zealand 2003). Similarly, UNESCO's collection of *Traditional Music of the World* promotes the traditional musical works of many different cultural groups (UNESCO 2003d). The Intangible Heritage Unit of UNESCO's Cultural Heritage Division 'aims to serve as a link between the safeguarding of the tangible and the preservation of the intangible heritage' (UNESCO 2003a).

<sup>6</sup> For the full conference proceedings and papers see (<http://www.folklife.si.edu/unesco/>).

In 1998, UNESCO also launched the *Masterpieces of Oral and Intangible Heritage*. Masterpieces proclaimed with the first group in 2001 include centuries-old traditional theatres such as India's *Kutiyattam* and China's *Kunqu* opera, a minority group's traditional chants such as the *Hudbud* chants of the Ifugao people in the Philippines and the Cultural Spaces of the Boysun district in Uzbekistan. One of the African masterpieces is the 'Oral Heritage of Gelede', listed by Benin and supported by Nigeria and Togo (UNESCO 2003h):

For 100 years, the Yoruba-nago, Fon and Mahi communities have practised their rites and dances after the harvest, as well as during droughts and epidemics. The ritual, featuring carved masks, is sung in Yoruba, recalling the history and myths of the Yoruba-nago people. The community is divided into groups which could be led by a man or a woman – the only mask society where women can play that role. Singers accompanied by a drum perform in this night-time ceremony, followed by dancers accompanied by an orchestra. Satirical masks mock certain types of behaviour. The mythical origin of the Gelede is said to reflect the transformation from a matriarchal society into a patriarchal society. It aims to pacify the anger of the mythical mothers and the spirits of the ancestors. Animal figures are often used – the snake, symbol of power, or the bird, messenger of the 'mothers'. (UNESCO 2003i)

Conferences and fact-finding missions were conducted in the late 1990s by UNESCO and WIPO, and a report was drawn up to synthesise all the suggestions for improving the Recommendation (UNESCO 2001a). This report suggested the need for a new standard-setting instrument for managing intangible heritage and protecting the rights associated with it. In 2002, representatives from 110 countries, among them 72 culture ministers, attended the Third Roundtable on Intangible Heritage and Cultural Diversity, held in Istanbul, Turkey. They discussed ways in which sustainable development, cultural diversity and intangible cultural heritage were interlinked. The two-day meeting adopted the 'Istanbul Declaration', in which they recognised the value of intangible cultural heritage and voiced their full support for effective measures at all levels, from international to local, to safeguard intangible cultural heritage. They proposed the adoption of a new international Convention recognising the complex nature of intangible heritage and its need for protection (Istanbul Declaration 2002). UNESCO has now adopted this new Convention, similar to the WHC (1972) for heritage places (UNESCO 2003e). Representatives in different regions have been developing local and regional studies to help inform the new Convention (eg. Campean 2001).

Other international organisations have begun to debate the idea of intangible heritage policy as well. The International Network on Cultural Policy (INCP-RIPC) is an international forum through which culture ministers can exchange views on emerging cultural policy issues. Through it, national ministers responsible for culture explore new and emerging cultural policy issues and consider integrated ways to promote cultural diversity (INCP-RIPC 2003). The INCP-RIPC Working Group on Cultural Heritage has identified intangible heritage as one of its key foci. Some of the questions it considers are:

- How can the important contribution that intangible heritage makes to societies be recognised?
- How can intangible cultural heritage be integrated into larger development programmes as an effective tool for social and economic development?

- How can intangible cultural heritage be used to enable people to gain access to resources and increase their capacity to improve their lives and influence decisions that affect them?
- How could the promotion and protection of intangible cultural heritage be used to encourage cultural tourism?
- How can we protect intangible cultural heritage and the peoples from whom it originates?

A report from several virtual meetings organised by Mexico was presented to the INCP-RIPC meeting in Cape Town in 2002, summarising the position of five member countries on intangible heritage (López 2002). Within the INCP-RIPC, the level of debate on intangible heritage is very general at present and there has not been direct engagement with the UNESCO proposals or with national legislation. The purpose of this research report is to assist INCP-RIPC members to do exactly that.

### **International instruments protecting the rights associated with intangible heritage**

One of the key issues addressed in instruments to safeguard intangible heritage has been the question about community rights. This is both because of the emphasis on addressing the historical marginalisation of many forms of heritage (and the communities who practised these heritages) and the necessity to support people who will maintain intangible heritage forms as part of safeguarding them.

Intellectual property rights have been the focus of most work on the establishment of community rights around intangible heritage. There are a number of international organisations working in this area, led by WIPO. This work built on earlier interventions: in 1967, a revision of the Berne Convention provided some intellectual property protection for expressions of folklore in article 15(4) (WIPO 2001b). In 1973, the Government of Bolivia proposed to UNESCO that a protocol be added to the Universal Copyright Convention in order to protect folklore. During a meeting organised in 1976 with the assistance of UNESCO and WIPO, a committee of governmental experts adopted the Tunis Model Law, which refers to the protection of folklore (Blake 2001: 18). In 1982, UNESCO jointly issued with WIPO 'Model Provisions for National Laws on the Protection of Expressions of Folklore against Illicit Exploitation and other Prejudicial Actions'. Few countries adopted the Model Provisions, however.

Based on the Model Provisions, a draft treaty was prepared by the two organisations in 1984, which also did not come into force (UNESCO 2001a: 1). 'This ... would have created an obligation on States to protect folklore and this was rejected by the industrialized States on the basis of: philosophical objections to protecting a communal heritage; their assessment of the low priority of folklore; and the problem of protecting internationally a heritage that may be common to several States' (Blake 2001: 19). The World Forum on the Protection of Folklore organised by UNESCO and WIPO in Phuket, Thailand, in 1997 (WIPO 1997) and four subsequent regional meetings in 1999 (WIPO 1999) were held to review the Model Provisions.

WIPO refers to 'traditional knowledge' and 'expressions of folklore' or 'traditional cultural expressions', which broadly correspond to what UNESCO defines as intangible heritage.<sup>7</sup> At the WIPO General Assembly in 2000, an Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore was created (UNESCO 2001a). In 2001, this Committee sent out questionnaires to individual countries asking how the Model Provisions (1982) should be adjusted (WIPO 2001a). There is ongoing discussion in WIPO and member states about intellectual property protection for 'expressions of folklore' and 'traditional knowledge'. WIPO has now developed a draft toolkit<sup>8</sup> and a practical guide on the protection of traditional cultural expressions.<sup>9</sup> Technical requirements for databases or registers have been drafted, including the need for appropriate security mechanisms<sup>10</sup> and access limitations (WIPO 2003a: 10–11). In the Pacific region, a 'Model Law for the Protection of Traditional Knowledge and Expressions of Culture' has been drafted to aid regional co-operation between Pacific Island countries on intellectual property rights. The African Intellectual Property Organization (OAPI) drafted the Bangui Agreement (latest version 1999) which contains a special annexure dealing with folklore and indigenous knowledge (Blavin 2003). The Arab Copyright Convention also refers to folklore (Blake 2001: 27).

Other organisations have been involved in this area too. The Third World Network developed 'a Conceptual Framework and Essential Elements of a Rights Regime for the Protection of Indigenous Rights and Biodiversity' in 1996 (WIPO 2001b: 14). The World Health Organization (WHO) has been active in relation to the regulation, recording and intellectual property-related aspects of traditional medicinal and botanical knowledge. The Food and Agriculture Organization (FAO) has carried out work on farmers' and breeders' rights, many of whom are indigenous farmers. The United Nations Conference on Trade and Development (UNCTAD) held an Expert Meeting on Systems and National Experiences for Protecting Traditional Knowledge, Innovations and Practices (in October–November 2000) to identify issues with potential benefits to developing countries and to study ways of protecting traditional knowledge, innovations and practices' (UNESCO 2001a).

The United Nations Convention on Biological Diversity 1992 (CBD) requires each country that is a signatory to the Convention 'subject to its national legislation, [to] respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustained use of biological diversity' (article 8(j)). A working group on the implementation of article 8(j) and related provisions has been established by the CBD Secretariat with the assistance of WIPO to assist member countries to develop legislation to implement these provisions. They are also required to define the key concepts in that article and the

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7 WIPO distinguishes between traditional knowledge and expressions of folklore for the purposes of some of its work, but considers folklore to be a subset of traditional knowledge (2001b: B). Their definition of traditional knowledge is being refined but for the purposes of the 2001 survey (2001b: article 30 ff.) it was defined as somewhat broader than that of intangible heritage (by including tradition-based scientific discoveries and inventions) and also somewhat narrower in limiting itself to tradition-based innovations and creations in the industrial, scientific, literary or artistic fields. This seems not to include the spiritual aspect of culture. Fundamentally, WIPO is interested in managing the interaction between traditional knowledge and other knowledge systems, such as the use of traditional plant knowledge by pharmaceutical experts to create new medicines.

8 For example, see documents WIPO/GRTKF/IC/4/5; WIPO/GRTKF/IC/5/5 (<http://www.wipo.org/globalissues/igc/documents/index.html>).

9 For example, see document WIPO/GRTKF/IC/3/10, para. 155 (<http://www.wipo.org/globalissues/igc/documents/index.html>).

10 For example, see document WIPO/GRTKF/IC/4/14 (<http://www.wipo.org/globalissues/igc/documents/index.html>).

related provisions that recognise and safeguard the rights of indigenous and local communities over their traditional knowledge. The United Nations Environment Programme (UNEP) is working on the preservation of traditional knowledge, with a particular focus on indigenous knowledge that can assist in preserving the natural environment, subsistence resources and biological diversity. It is also concerned with the preservation of languages threatened with disappearance (UNESCO 2001a).

### National initiatives to safeguard intangible heritage

At a national level, much of the policy work has been done in East Asia, Australia and Canada, although a number of countries are currently developing legislation to safeguard intangible heritage (Blake 2001: 43–44). The majority of countries ‘whose legislation protects aspects of intangible heritage do so within the framework of copyright and other intellectual property laws while others employ a mix of intellectual property-type protection with cultural heritage and other laws’ (Blake 2001: 43).

Countries in East Asia have begun the move towards the safeguarding of their intangible heritage. By the 1970s, governments such as those of Japan (1950), Korea (1964), Thailand (1985) and the Philippines (1973) had already adopted legal systems within their own countries for safeguarding intangible cultural resources, specifically in the performing and applied arts (UNESCO 2003a). These examples influenced the formulation of the debates on intangible heritage within UNESCO. In Japan, the *Cultural Properties Protection Act* of 1950, subsequently amended to include conservation areas in 1975 and listed buildings in 1996, now covers both tangible and intangible heritage (Nishimura in Campean 2001). In 1999, after a long interest in promoting folk performance art, Mongolia began to develop legislation to safeguard intangible heritage and its National Center for Intangible Cultural Heritage has established a national database (ACCU 2000b). Vietnam introduced new national heritage legislation in 2001 which will recognise and afford protection to intangible heritage (Beazley 2002).

Most wealthy countries in the West consider intangible heritage to be in the public domain and do not have legislative protection for expressions of folklore. Certain countries, however, including Finland, Sweden, Norway, Canada, Australia, New Zealand and the United States of America, have laws aimed specifically at safeguarding the cultural heritage of their native peoples (Blake 2001: 27). Canada has no specific intangible heritage legislation but seeks to include intangible heritage in existing heritage legislation. Canadian authorities recognise the importance of centralising the administration of intangible heritage, focusing on sustainability and working with local communities (López 2002). The Canadian province of Quebec has been particularly active in developing instruments to manage intangible heritage. Since 1994, the Quebec government has provided tools for making inventories of intangible heritage, focusing on ethnological knowledge and practices (Roy in Campean 2001).<sup>11</sup>

The Australian government commissioned a Federal inquiry in 1986, published as *Folklife: Our Living Heritage*, which highlighted both the importance of intangible heritage and its neglect in that country until that time. Although the *Folklife* report was never systematically implemented, it raised awareness of the issue (Smith & Marotta in press). The Burra Charter (the Australian ICOMOS Charter for Places of Cultural Significance) was

<sup>11</sup> See (<http://www.mcc.gouv.qc.ca/pamu/champs/ethno/tablem.htm>).



reworked in 1999 to make more explicit reference to the critical importance of community contributions to the identification of social value (i.e. intangible values associated with places) and their key role in making decisions on the management of places with such social value (Truscott 2003). Recent national heritage policies on heritage collections and heritage places invoke intangible values in their action plans (Truscott 2000). The *Aboriginal and Torres Strait Islander Heritage Protection Bill* (1998), not yet in force, is a revision of the 1984 Act of the same name. Both the Act and the Bill provide an overarching federal (commonwealth) legal framework for the protection of Indigenous heritage in Australia which can serve as a last resort for communities who find that state or territory-level legislation cannot protect their heritage (Truscott 2003).

In many countries the only protection afforded intangible heritage is through a Constitution that recognises cultural diversity and, in the case of Mexico and other places, the value of indigenous culture. In Africa, cultural policy has been generally neglected. Government approaches to development were initially linked to governance and trade rather than culture. Most African countries created a ministry of culture only ten years after independence from colonial rule. Few cultural policies have been drafted at national level (OAU 2000: section 60). Because of the legacy of colonialism, many African countries (as well as former European colonies elsewhere in the world) have followed European trends and not much of the heritage-related legislation specifically includes intangible heritage. Although many countries deal with heritage objects in museums rather than heritage policy and legislation (Truscott 2003), in Africa, most heritage legislation protects objects as well as places. Non-material heritage forms are not usually protected by heritage legislation.

However, many African countries such as Zambia and Kenya adopted wide-ranging Africanisation policies after independence from the colonial powers, and in South Africa the government has promoted an 'African Renaissance' strategy during the last few years (Seleti 2003). This approach has helped to raise the profile of indigenous African languages and cultural forms in a number of African countries. It has also helped to ensure that folklore is specifically protected in copyright legislation in many developing countries (Blake 2001: 27; Blavin 2003). Community rights to, for example, freedom of religion have been protected in broad government policy or constitutional provisions. These rights are sometimes protected by other legislation too: for example, South Africa recently passed legislation to create a Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities (Act No. 19 of 2002).

In the Southern African Development Community (SADC) region, few countries have cultural policies or recent heritage legislation, and many separate the administration of heritage places and objects from the performing arts. In Zambia, the *National Heritage Conservation Commission Act* of 1989 (administered by the National Heritage Conservation Commission under the Department of Tourism) does not include intangible heritage, although the Department of Cultural Services under the Ministry of Community Development and Social Welfare plays an important role in the preservation and promotion of performing arts such as music and dance, and of sculpture, painting and other cultural forms such as folklore and traditional ceremonies (Sinvula 2001). Zimbabwe's heritage legislation (the *National Museums and Monuments Act*) is even older, dating from 1972, and protects buildings, objects and culturally or scientifically significant natural places. Intangible heritage like sculpture, drama and traditional dance

falls under the Department of Culture (Chauke & Nehowa 2001). Lesotho's *Historical Monuments, Relics, Fauna and Flora Act* (41 of 1967) also deals only with places and objects (Lebeko-Molibeli 2001).

The heritage in Botswana is protected by the *Monument and Relics Act* of 1970 which covers places and objects (Mmutle 2001). It has been revised recently. Botswana's cultural policy (Botswana 2001) subscribes to UNESCO's broad and flexible definition of culture that includes intangible heritage:

Culture ... [is] the whole complex of distinctive spiritual, material, intellectual and emotional features that characterise a society or social group. It includes not only the arts and letters, but also modes of life, the fundamental rights of the human being, value systems, traditions and beliefs. (Botswana 2001: section 2.0)

Specific reference is made to intangible heritage (Botswana 2001: section 6.4), and a system of cultural centres is proposed to promote cultural activities. Namibia's draft policy on Arts and Culture also subscribes to the UNESCO definition of culture (Namibia 2001) but no specific reference is made to 'intangible heritage'.

South Africa's *National Heritage Resources Act* (1999) recognises the importance of 'living heritage' values associated with objects and places, but it does not at this stage safeguard intangible heritage that is not associated with objects or places. However, there have been a number of oral history projects in the past, and organisations like the South African Heritage Resources Agency (SAHRA) and the National Archives, under the Department of Arts and Culture (DAC), the South African Development Education Trust (SADET) history project (eg. Ndlovu 2002) and various museums are conducting a number of projects to collect oral testimony, especially that relating to the struggle against apartheid (Deacon et al. 2003).

Non-governmental organisations (NGOs) have played a large role in supporting communities to safeguard their intangible heritage. National legislation needs to play an enabling role for such organisations. In Senegal, for example, several NGOs that were regrouped within the National NGO Council of Support for Development (CONGAD) have helped to revitalise the intangible heritage. These NGOs usually act locally in terms of Act 96-06 of 22 March 1996, which devolves to local organisations with elected assemblies the powers previously held by the state to design and implement cultural development programmes. NGO support helped to develop a project for revitalising traditional trades and know-how at Ndeme in the Diourbel region which led to the creation of several salaried jobs in a rural environment (Tambadou 2003).