

INTRODUCTION



At the International Network on Cultural Policy (INCP-RIPC) meeting in Cape Town in October 2002, member states decided to adopt and implement national policies to protect and promote cultural heritage. Mexico submitted a report at the Cape Town meeting on five national experiences in promoting and safeguarding¹ tangible and intangible cultural heritage. The South African Minister of Arts and Culture, Dr Ben Ngubane, and Minister Amadou Tidiane Wone of Senegal agreed to present a joint research report at the INCP-RIPC Conference in Croatia in 2003 on the legal and financial instruments for safeguarding¹ intangible heritage. It is this research report that has now been published by the HSRC to allow for wider discussion of the issue within the African context.

The aim of the INCP-RIPC is to develop an inventory of the financial and legal instruments that exist internationally to underpin the development, promotion and preservation of intangible heritage. They wish to use this inventory to engage with other organisations such as UNESCO and WIPO to ensure the appropriate safeguarding of intangible heritage, especially in the developing world and non-Anglophone countries. INCP-RIPC member states will use the resource to help draft appropriate instruments at a national level.

In writing this research report for the INCP, we found that most of the work on specific instruments for safeguarding intangible heritage has been done at an international level by organisations such as the United Nations Educational, Scientific and Cultural Organization (UNESCO) and the World Intellectual Property Organization (WIPO).² Most countries do not yet have specific national instruments for safeguarding intangible heritage. Many have more general instruments for financing arts and culture, safeguarding heritage places and objects, and for protecting community rights over intangible heritage through constitutional provisions, copyright laws, and so on. Some of these instruments have not been specifically designed to safeguard intangible heritage but could still play an important role in doing so, and where possible they have been discussed. A few countries, especially in East Asia and Oceania, have been at the forefront of developing instruments specifically designed to safeguard intangible heritage. This study focused on the assessment of instruments already written in, or translated into, English, because of time and budget constraints. A limited amount of work was done on French instruments.

In this research report, we have therefore concentrated on providing an insight into some of the debates around the definition and management of intangible heritage, and on discussing elements within existing legal and financial instruments that could help to safeguard it rather than listing all instruments and doing a comprehensive review of each instrument.

Future work should couple a multilingual analysis of the global heritage legislation not covered in this research report with an in-depth series of national studies that examine the way in which the historical, cultural and economic situation of a country, as well as its current legislative environment, affects the identification and safeguarding of its intangible heritage in a specific place.

¹ As in the UNESCO Draft Convention on Intangible Heritage (2002b; and 2003e, 2(3)) 'safeguarding' has been used in this research report to mean 'adopting measures to ensure the viability of the intangible cultural heritage, including the identification, documentation, protection, promotion, transmission and revitalization of aspects of such heritage'.

² UNESCO currently has 186 Member States. The main objective of UNESCO is to contribute to peace and security in the world by promoting collaboration among nations. It uses education, science, culture and communication to further universal respect for justice, the rule of law and for human rights and fundamental freedoms. These are affirmed for the peoples of the world, without distinction of race, sex, language or religion, by the Charter of the United Nations.

Only through such an in-depth study can the impact on the safeguarding of intangible heritage of a variety of legal and financial instruments (not just those specifically designed to safeguard intangible heritage) be properly assessed. Particular emphasis should be placed on identifying financial incentives for safeguarding intangible heritage. More detailed recommendations can then be made for the improvement of international or regional instruments and the development of an appropriate approach to the safeguarding of intangible heritage at a national level.

Key questions for the project

- What is intangible heritage?
- Which countries or international bodies have developed legal and financial instruments to manage intangible heritage?
- How can these instruments help to safeguard intangible heritage?
- How can we develop better instruments to safeguard intangible heritage?

Key findings of the project

- Intangible heritage consists of the oral traditions, memories, languages, traditional performing arts or rituals, knowledge systems, values and know-how that we want to safeguard and pass on to future generations. It is essential not to lose our ancient knowledge, especially the traditional and indigenous knowledge that has been marginalised for so long; we need to remember and value more recent heritage too, such as the oral histories of people who lived under apartheid.
- There is no need to have separate legal instruments for the safeguarding of tangible and intangible heritage, although having two separate heritage registers may assist in redressing past inequalities. It is important to ensure that separate instruments or registers, where they exist, do not perpetuate existing dichotomies and inequalities between North and South or East and West.
- Communities are the mode of creation and transmission of intangible heritage and thus are critical to its survival. Governments will have to develop ways of supporting communities in safeguarding their intangible heritage. Communities cannot protect their intangible heritage unless they can protect their intellectual property rights over these resources as well as improve or retain their socio-economic status. Government arts, heritage and development functions should accordingly be closely linked.
- Economic incentives to safeguard intangible heritage will probably play the largest role of all in encouraging transmission and re-enactment of intangible heritage. Simply creating a heritage product for sale to outsiders, however, will not necessarily safeguard intangible heritage or be economically sustainable.