THE SUBTLE POWER OF INTANGIBLE HERITAGE

LEGAL AND FINANCIAL INSTRUMENTS FOR SAFEGUARDING INTANGIBLE HERITAGE

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RESEARCH MONOGRAPH

SOCIAL COHESION AND INTEGRATION
RESEARCH PROGRAMME

Compiled by the Social Cohesion and Integration Research Programme,
Human Sciences Research Council

Published by HSRC Publishers
Private Bag X9182, Cape Town, 8000, South Africa
www.hsrcpublishers.ac.za

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First published 2004

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ISBN 0 7969 2074 5

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Production by comPress

Distributed in Africa by Blue Weaver Marketing and Distribution,
PO Box 30370, Tokai, Cape Town, 7966, South Africa.
Tel: +27 +21-701-4477
Fax: +27 +21-701-7302
email: booksales@hsrc.ac.za

Distributed worldwide, except Africa, by Independent Publishers Group,
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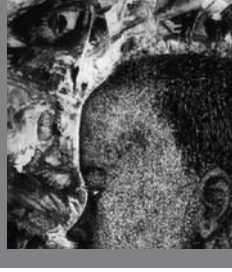

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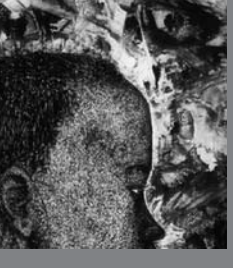

Acknowledgements

Harriet Deacon (independent consultant) was the lead author on this project. Sandra Prosalendis managed the project for the HSRC, and Luvuyo Dondolo and Mbulelo Mrubata were the research assistants.

Utando Baduza helped to organise two workshops to discuss issues related to the report. Besides the core author team, the following people attended the workshops: Peter Rule (chair), Nokuzola Mndende, Isabel Hofmeyr, Leslie Witz, Vincent Kolbe (who also supplied a written contribution), David Morris, Phakamani Mtembu, Achille Mbembe, Felicity Swanson, Yonah Seleti, Mogege Mosimege and Mandla Matyumza. Discussions were also held with Sean Field (Centre for Popular Memory, UCT) and Pumla Madiba (SAHRA). Detailed comments on the final version of the paper were received from Anita Smith, Olwen Beazley, Marilyn Truscott, Isabel Hofmeyr and Deirdre Prins.

Thanks are also extended to Anita Smith (ICOMOS Australia) and Olwen Beazley (AHC) for providing us with important documentary sources for the paper. Material was added to the paper from the representative from Senegal, Moustapha Tambadou, concerning the situation in Francophone Africa, although time and budget did not allow for completion of this aspect of the project. The paper was presented to the International Network on Cultural Policy (INCP-RIPC) meeting in Croatia in October 2003.

The original impetus for this research monograph came from the Department of Arts and Culture. We gratefully acknowledge their financial assistance which enabled us to conduct the initial research.

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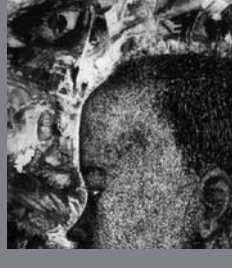

Executive summary

Cultural policy can contribute to social and economic development by growing our cultural capital, promoting local identity and promoting global cultural diversity. Tangible and intangible heritage forms a crucial part of this cultural capital and needs to be safeguarded. At the International Network on Cultural Policy (INCP-RIPC) meeting in Cape Town in October 2002, member states decided to adopt and to implement national policies to protect and promote cultural heritage. South Africa and Senegal agreed to write a research report analysing the legal and financial instruments currently employed by countries and regions to safeguard their intangible heritage.

In drafting this research report, we began by discussing the definition of intangible heritage. We looked at various legal and financial instruments employed by countries and regions to safeguard their intangible heritage. We also identified international instruments for this purpose. We then outlined and analysed various elements within existing legal and financial instruments which are needed to safeguard intangible heritage. Finally, we made recommendations for cultural policy-makers which could help to safeguard intangible heritage.

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. Intangible heritage can be found all over the world. It includes meanings associated with places and objects, making it an essential component of all heritage. Because cultural activity plays an essential part in identity formation, it is essential not to lose our ancient knowledge, especially the traditional and indigenous knowledge that has been marginalised for so long. However, not all intangible heritage is old, rural or indigenous to a particular area or to a specific, ethnically defined community. We need to remember and value diffuse and modern heritage forms like the oral histories of people who suffered under apartheid or other forms of colonialism.

A number of countries have developed laws and policies to manage intangible heritage. Each country or region tends to focus on specific issues. One of the leading voices has been Japan, which has an integrated approach to tangible and intangible heritage. For over 50 years, Japan has recognised the importance of the intangible heritage in Japanese building techniques, crafts and performing arts. Australia and New Zealand have been particularly rigorous in developing the relationship between government and indigenous communities, both in assessing significance and deciding on the management of heritage such as cultural landscapes with spiritual significance. In Canada, the key issue has been the use of indigenous frameworks to assess landscape significance in national parks. Although not much legislation developed by countries in Africa directly mentions intangible heritage, postcolonial Africanisation policies have encouraged local traditions and languages for some time. In South Africa, heritage legislation explicitly covers intangible values associated with places and mentions the importance of popular memory as a form of 'living heritage'. The emphasis in most national legislation remains on heritage places, however, rather than on intangible heritage or even heritage objects.

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). Instruments like UNESCO's new Intangible Heritage Convention have helped us to expand the concept of heritage beyond buildings, places and objects

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and to correct an earlier bias towards Western buildings in heritage lists. There is no technical need to have separate international instruments for the safeguarding of tangible and intangible heritage, although having two separate heritage registers may assist in redressing past inequalities.

The separation between the World Heritage Convention and the new Intangible Heritage Convention may, however, perpetuate the idea that the heritage of the West is tangible, 'civilised' and separable from the 'intangible' heritage of the developing world. It is important to ensure that the existence of two World Heritage Conventions does not perpetuate existing dichotomies and inequalities between North and South or East and West. It is therefore critical that close relationships between these two instruments are set up, particularly regarding administration and the development of operational guidelines.

WIPO's work on the protection of intellectual property rights has suggested that community rights over intangible heritage can only partly be protected by existing international intellectual property law. Specific protection may be provided by a sui generis regime, but intellectual property protection is only one element in a whole range of possible ways to ensure that communities can continue to benefit from, and practise, their intangible heritage. It is not the only way of safeguarding the intangible heritage and protecting community rights.

Governments will have to develop ways of supporting communities in their quest to safeguard their intangible heritage. One of these ways may be the development of databases or registers of intangible heritage. The format for the listing of intangible heritage on national or international registers will need to be different from that used to create lists of tangible resources. On seeking listing on national or international heritage registers, practising communities would need to provide information to confirm the provenance, significance and ownership of such resources. There would have to be a variation in this documentation process for resources that do not have a cohesive, well-defined or extant practising community, or whose practising community is willing but unable to be involved in listing the resource. In creating such registers or databases, due attention should be given to the protection of intellectual property and to the recognition of community control over and ownership of their heritage resources.

Heritage should not always be celebrated uncritically. Recording what we know of the past (whatever its moral status) and using it to inform the present is helpful and valuable, but uncritically accepting utopian versions of the past or perpetuating damaging aspects of the past is not. We cannot, for example, condone the physical abuse of women because it is 'traditional'. The notion of human rights is often presented as a universal aim of all societies, but in reality many societies continue to function in ways incompatible with human rights discourse. If we restrict intangible heritage listings to forms of heritage that correspond with human rights principles, this will affect not only what can be considered heritage but it may also mean that the form and/or modes of transmission of some forms of heritage would have to be encouraged to change.

It is difficult to 'manage' intangible heritage forms in the same way that built heritage has been managed because intangible heritage forms change so frequently. Intangible heritage is often not expressed in a permanent physical form. Every performance or expression of intangible heritage is different. Changes can, however, be documented and

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communities can be encouraged to continue practising and passing on the traditions. Heritage only retains its significance through performance or use. Governments therefore need to devolve greater responsibility for heritage management to the communities who use, practise or own this heritage. This highlights the need for heritage experts to work with communities too. We also need sustainable ways of protecting the rights of communities over their knowledge and skills, and of linking the safeguarding of heritage with community development. The best way of safeguarding intangible heritage is by supporting cultural activity at the local level.

It is often difficult to define who owns a specific cultural form and who constitutes a community. We therefore need to think carefully about what we mean by 'community' and 'ownership' so that the rights of communities to benefit from profits associated with the commercial exploitation of intangible heritage are maximised. These rights should not depend on models of inheritance that are more appropriate to family jewels than to cultural practices. Development needs to be closely linked to heritage management strategies, but funding should not be contingent on the identification of heritage forms. The solution is not to ring-fence budgets and instruments for safeguarding intangible heritage, but to integrate issues around heritage conservation into all development work and to write national instruments with this in mind. Safeguarding intangible heritage should be one of the ways in which general development funding finds appropriate and sustainable channels for use rather than a means by which development funding is obtained.

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 sustainable. New reasons for cultural production will change traditional craft techniques, performances and other forms of expression, and may (or may not) have a negative impact on the meaning of the heritage resource for the community. Models of successful interventions and innovative instruments need to be developed and shared more broadly. The most successful incentives and safeguarding strategies will involve the use of intangible heritage forms as springboards for new cultural expressions that have relevance and meaning in the modern world. An excellent example can be found in broadcasting initiatives that use local vernaculars to tell current news and provide cultural commentaries while collecting advertising revenue.

This study can form the basis for lobbying for changes in existing international instruments such as UNESCO's Intangible Heritage Convention, the World Heritage Convention or WIPO's model legislation. Any international instrument for the safeguarding of intangible heritage should address the historical imbalance in international heritage listings which has resulted in the under representation of the heritage of developing nations. It should, however, promote an integrated approach to the safeguarding of both tangible and intangible heritage. In providing guidelines for the safeguarding of intangible heritage, it should also make sufficient provision for the involvement of communities who practise or own that heritage.

Perhaps most important, this study can also inform national policy-making. National heritage legislation can provide for the safeguarding of intangible and tangible heritage under one legislative umbrella. Separate heritage registers for intangible heritage can be

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created where necessary to redress the historical focus on heritage places. It may also be necessary to develop special guidelines for the safeguarding of intangible heritage. This will improve and expand on traditional approaches to the safeguarding of tangible heritage by making us more sensitive to the role of communities, intellectual property and the need to maintain the vitality of heritage through use.

One of the biggest challenges for the safeguarding of heritage, particularly the intangible elements, is not just the development of national cultural policy and legislation but also the better integration of the functions of government departments responsible for culture, heritage and social development. The discussion on intangible heritage challenges the neat compartmentalisation of government policies on heritage, culture and development. We need to consider the integrated administrative and financial context within which heritage legislation is implemented. Heritage administrations should be neither ghettoes for uneconomical cultural artefacts nor platforms for selling off the nation's cultural capital to tourism. They should be focused on identifying and improving the connections between communities and their cultural capital, and integrating this work with social and economic development activities in the most appropriate and sustainable manner. Safeguarding intangible heritage should not be a cheap ticket to development funding so much as one of the ways in which development funding finds appropriate and sustainable channels for use.

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