



Safeguarding Intangible Heritage in South Africa: a Critique of the *Draft National Policy on Living Heritage*

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ABSTRACT

South Africa published the first *Draft National Policy on South African Living Heritage* (hereafter *Draft Policy*) in 2009, sixteen years after the first democratic elections in 1994. A national policy framework on safeguarding living heritage in South Africa is long overdue, as the previous heritage legislation from the Colonial and Apartheid eras focused mainly on the conservation and management of tangible forms of heritage. Living heritage was largely marginalised and thus could not receive any formal protection from government (as it is not part of the 'National Estate'). The tentative promulgation of the *National Policy on Living Heritage* is a commendable and progressive step towards the protection of intangible forms of heritage. The *Draft Policy* has been in circulation for input and comment from a wide range of stakeholders. This paper seeks to provide a rigorous critique and commentary and to make specific recommendations on the *Draft Policy*.

Keywords

Living heritage, South Africa, Safeguarding, Policy, Indigenous knowledge systems, Apartheid and Democracy.

Background

Since the advent of democracy in South Africa in 1994 the issue of safeguarding living heritage (also referred as intangible heritage) has been an integral part of the transformation of the heritage sector in South Africa. Throughout the various periods of colonialism and apartheid (pre-democracy) several diverse aspects of

living heritage, especially those that represented the heritage of the former subjugated black South Africans, were largely subject to marginalisation - or in some cases gross misrepresentation - and were without any formal or official status of protection. Most often, colonial and apartheid heritage legislation in the form of the following pieces of policies, namely the 1911 *Bushmen*

Relics Protection Act, the Natural and Historical Monuments Act of 1923, the Natural and Historical Monuments, Relics and Antiques Act of 1934 and the National Monuments Act of 1969, collectively placed much emphasis on the protection and promotion of physical forms of heritage that served the interest and welfare of the colonial powers of the time.

In post-apartheid South Africa (the period after the 1994 democratic elections), government has been grappling with issues connected with the transformation of the heritage sector with a particular focus on the need to redress historical imbalances and correct distortions in South African history, as well as promoting and protecting the diverse heritage resources of all South Africans. A report by the Arts and Culture Task Group (a panel of experts charged with responsibility for legislative reforms in the arts, culture and heritage sectors in South Africa) also highlights the marginalisation of certain cultures from the mainstream of heritage resource management, by illustrating that the majority of people in South Africa have been excluded from history books, museums, monuments and archives. It concludes that the recording of popular culture and popular memory is a massive task that has as yet hardly begun. (ACTAG 1995:67; Galla, 1998: 38; Galla, 1999; 42).

New legislation and policies of the post-apartheid era, in the form of the *White Paper on Arts, Culture and Heritage* (1996), *National Heritage Resources Act* (1999) and the *National Heritage Councils Act* (1999), amongst other cultural heritage policies, were introduced to replace the old pieces of colonial and apartheid legislation. For the first time in the history of heritage conservation, policies advocate the safeguarding of living heritage for the benefit of present and future generations. In particular, the *White Paper on Arts, Culture and Heritage* (1996) makes specific provision for

... attention to living heritage as being of paramount importance for the reconstruction and development process in South Africa. Means must be found to enable song, dance, story-telling and oral history to be permanently recorded and conserved in the formal heritage structure. (White Paper on Arts, Culture and Heritage, 1996).

However these new national policies have not clearly defined a management framework for the safeguarding

of living heritage, except by providing a standardised definition of living heritage and outlining a few statements of intent which underpin the need to safeguard living heritage in South Africa. In this context, the *National Heritage Resources Act* of 1999 alludes to the management of living heritage that is related to heritage objects and sites. On the other hand the *National Heritage Councils Act* of 1999 refers to the management of living heritage which is not only limited to the safeguarding of living heritage that is linked to tangible forms of heritage but also covers intangible heritage *per se*.

In essence there is no clear co-ordination of living heritage as these new pieces of heritage legislation have not clearly defined a consolidated and comprehensive national policy framework for the safeguarding of living heritage in South Africa.

Draft National Policy on South African Living Heritage - 2009

It was in 2007 (thirteen years after 1994) that the South African Department of Arts and Culture initiated the process of developing a national policy framework on living heritage. Although the policy framework is still in a draft format and not yet ratified as an official policy for implementation, it demonstrates a commendable first attempt. The rationale behind the development of a national policy on living heritage partly relates to the deficiencies and policy gaps discussed above and most importantly in

...South Africa the necessity for national policy promoting living heritage is created by the historical imbalances in the manner in which living heritage of different communities has been regarded, as well as the need for co-ordination of living heritage which is managed by various agencies, including communities (Draft Policy).

Currently, the development of a policy framework on living heritage runs concurrently with the national consultative process for the ratification of the 2003 UNESCO *Convention on Safeguarding of Intangible Cultural Heritage*, and South Africa seeks to register formally its intent to become a State Party.

South Africa's living heritage, like that in other parts

of the world, is facing tremendous challenges. Most elements of living heritage are under threat of extinction due to neglect, enduring legacies of colonialism and apartheid regimes, modernisation, urbanisation, globalisation and environmental degradation.

The formulation of a policy towards safeguarding living heritage has become an urgent matter, long overdue, as there are no specific legal instruments to safeguard intangible forms of heritage in South Africa. The report by the Art and Culture Task Group confirms there are no existing formal structures for *Amasiko* (living heritage), but oral histories and living culture are being recorded ad hoc by several museum specialists, university researchers and archives including audio visual materials. (ACTAG:09:1995).

The *Draft Policy* has been in circulation amongst stakeholders for review and in order to subject it to rigorous discussion. In this context, this paper aims to:

- provide a critical review and analysis of the *Draft Policy*
- develop a body of knowledge from the review and from an analysis of the literature and to identify and define key management issues for safeguarding

aspects of intangible heritage

- make recommendations and proposals

Summary of the *Draft Policy*

As a point of departure, the *Draft Policy* underlines the historical imbalances and distortions regarding the inadequate and inappropriate representation of the diverse aspects of living heritage throughout the different historical periods under colonialism, apartheid and the current democratic dispensation. In this regard the *Draft Policy* has only identified four key challenges in the management of living heritage and these relate to:

- artificial separation of tangible and intangible (living) heritage;
- legacies of unequal knowledge systems;
- understanding of human rights and equality; and
- potential misinterpretation of 'safeguarding' as meaning 'stagnation'.

The aforementioned issues will be discussed later in detail. However, it is debatable whether these are the only challenges confronting the management of living heritage in South Africa as there are other notable and pertinent concerns such as a deficiency in funding and



Figure 1
Vhavenda drummers at a cultural performance.
Photo. Thabo Manetsi



Figure 2
Traditional healers paying homage to their ancestors on sacred grounds.
Photo. Thabo Manetsi

resource allocation and the lack of a co-ordination structure and framework for management of living heritage in South Africa. The other fundamental challenges relate to skills development and training in heritage management and the limitations of intellectual property laws in relation to living heritage.

According to the *Draft Policy*, the agenda for living heritage seeks to foreground two important aspects of the role of living heritage within South African society. The first relates to the safeguarding of living heritage as a valuable resource for future generations. The second is the achievement of social cohesion, a governmental priority for a cohesive and harmonious society. Furthermore, the *Draft Policy* states that

...sustaining and promoting South African forms of living heritage can help promote a positive African identity within a globalizing world. It will also address tensions between tradition and modernity. Living heritage provides people with a sense of identity and continuity within communities. Understanding common features of cultural traditions across South Africa can also foster national unity and pride while maintaining

respect for human rights. Living heritage based on the African philosophy of Ubuntu can promote a sense of common responsibility. (Draft Policy).

Also towards redressing and correcting historical imbalances, particular reference is made to the statutory obligation by the Department of Arts and Culture to fulfil the South African *Constitution* and *Bill of Rights*, and the 2003 UNESCO *Convention on the Safeguarding of Intangible Cultural Heritage*. In this regard the *Draft Policy* identifies several fundamental areas for the management of living heritage. These are notably, the establishment of the National Inventory Office, with the Department of Arts and Culture, for the registration, inventorying and listing of living heritage, mechanisms for documentation, research and transmission of living heritage, the introduction of the living human treasure system and *Ubuntu*, the relationship between living heritage and social cohesion, amongst others.

The *Draft Policy* further recognises the critical importance of community participation as an integral part of the sustainable management of living heritage for the benefit of present and future generations. The safeguarding of living heritage depends on people

continuing to enjoy, practice and transmit elements of intangible heritage from one generation to the next.

A critical review

The *Draft Policy* has been circulated for critique and commentary amongst stakeholders. A consultative session in the form of a policy review workshop also took place in 2009 where key stakeholders, including members of different communities, participated. Generally, the key stakeholders noted the urgent need for safeguarding living heritage, with emphasis on the promotion and conservation of indigenous elements of living heritage. As part of the review process this will focus on a few selected aspects of the *Draft Policy* which were discussed at the workshop, particularly the following areas:

- co-ordination and structural arrangement for safeguarding living heritage;
- integrated management approach;
- use of indigenous knowledge for safeguarding living

heritage: the conservation needs of living heritage;

- *Ubuntu* as an integral part of living heritage for social cohesion; and
- application of intellectual property rights to intangible heritage.

Co-ordination and institutional arrangements

A key objective of the *Draft Policy* is to provide a co-ordinated and integrated management approach to the safeguarding of living heritage that permeates all levels of national, provincial and local government, including the community grass roots level. Although the *Draft Policy* identifies a series of specific state organisations and departments to implement some specific areas of safeguarding living heritage, it does not provide a structural framework with any form of a clearly defined institutional arrangement for co-ordinating the management of living heritage. Even though some cultural heritage institutions have been identified as implementation agencies their roles and responsibilities are not clearly delineated. There is a need for clear



Figure 3
A ritual performance by Vhavenda women.
Photo. Thabo Manetsi



Figure 4
A ritual performed by elderly women.
Photo. Thabo Manetsi

institutional arrangements and an inter-institutional relations framework to facilitate a co-ordinated management approach for co-operation amongst the different organisations implementing the *Draft Policy*.

Several museums in South Africa have an extensive history of systematic documentation and recording of aspects of living heritage which are largely classified as being part of ethnographic collections, usually in a static form that tends to limit the intrinsic dynamism of living heritage. However, the *White Paper on Arts and Culture* (1996) calls on heritage institutions to involve local communities and to encourage public participation in the management of heritage resources. In this context, heritage institutions such as museums are to provide a space conducive to community involvement in the safeguarding of heritage resources. Although the current legislation is not prescriptive on the role of museums in the safeguarding of living heritage in South Africa, the emerging trends in museum practice demonstrate a strong people- centred approach to conservation as in the case of the District Six Museum in Cape Town where the living memory of survivors of the brutal apartheid forced removals system is significant as an integral part of the museum experience. There are several other museums in South Africa that serve as sites of public engagement and discourse and continue to play a pivotal role in the transmission of living heritage amongst

individuals and across generations. However there is a need for a co-ordinated approach towards safeguarding living heritage that will provide integrated management across all levels of government and community contexts.

Integrated management

The *Draft Policy* makes reference to the artificial separation of tangible and intangible heritage where living heritage cannot be abstracted from tangible heritage. In this context the *Draft Policy* recognises that a holistic approach to safeguarding living heritage must take into account the indivisible link between intangible and tangible heritage. Often intangible and tangible heritage resources co-exist. Sometimes the one cannot be completely realised or expressed fully in the absence of the other. In some communities the distinction between intangible and tangible heritage is not made. It is also possible to consider tangible heritage in its material form as a physical manifestation of the intangible, or the intangible value may represent the non-physical aspects of tangible heritage. Some critics have suggested that perhaps intangible heritage has to be presented in a tangible way or rather translated into a visible format for it to be safeguarded (Deacon et al 2003, Luxen 2003 and Blake 2001). Simultaneously, the safeguarding of living heritage can be approached in a manner that is consistent with the conservation needs of

intangible forms of heritage. There is a general tendency to consider the conservation management of intangible forms of heritage through the framework of protecting tangible heritage, which may impose limitations on a comprehensive approach to safeguarding living heritage.

Indigenous knowledge in safeguarding living heritage

The *Draft Policy* needs to consider indigenous methods or traditional knowledge systems and know-how in safeguarding living heritage. This is in line with the advocacy for the safeguarding of marginalised types of heritage resources such as the aforementioned elements of living heritage. It is important to foreground the use of indigenous methods in any future policy and its implementation. The various cultural groups in South Africa have a long-standing history of safeguarding living heritage where traditional and indigenous methods have been applied.

In the case of the diverse indigenous KhoiSan community in South Africa, there is strong evidence of the application of traditional methodology in the management of heritage resources. As a point of

reference, the Nama people of the Richtersveld, Northern Cape, have since times immemorial developed and adopted strong survival skills and knowledge in the harsh arid desert landscape. Renowned for their nomadic way of life, the Nama continue to demonstrate unique skills and know-how in the management of land and the sustainable use of the natural environment. They are still considered transhumance pastoralists who tend to move with their livestock between stock posts as the seasons change. In this regard the land is used seasonally for grazing purposes and this rotation of pastures helps to preserve the land from overuse. This system of land use and management continues to be transmitted from one generation to the next. The traditional knowledge and indigenous skills are still intact compared to other similar systems in Southern Africa.

Ubuntu as an integral part of living heritage for social cohesion

The *Draft Policy* refers specifically to the notion of *Ubuntu* as a critical aspect of living heritage that has potential for fostering social cohesion in South African society. In particular the *Draft Policy* states that:



Figure 5
Sangoma Savumisa, a traditional healer performing a ritual.
Photo. Thabo Manetsi



Figure 6
Showing respect - this posture is a sign of respect.
Photo. Thabo Manetsi

*Ubuntu is a social philosophy that promotes an obligation of humans towards the welfare of each other while taking responsibility for the environment. It is recognition of the significance of each and every human life, the need for humans to take care of each other as social beings, and to take care of the environment that surrounds them. Often phrased as a belief that *motho ke motho ka batho* (a person is a person through others), it emphasizes that humanity is not simply biological, but largely a product of socialization and active promotion of good social values. It enshrines communal responsibility for human rights and human welfare. As an inclusive social philosophy ubuntu is a national living heritage element that will be instrumental in establishing and encouraging social cohesion in South Africa. (Draft Policy).*

The polemic nature of the philosophy of *Ubuntu*, articulated in the draft policy as an all- embracing value system and moral code for all South Africans, creates a set of limitations. Firstly, not all the diverse race and ethnic groups in a multicultural society such as South Africa fully subscribe to the notion of *Ubuntu* as a philosophy and a way of life. *Ubuntu* still enjoys more

support from a cultural and traditional perspective from sections of the majority population of South Africa, even though there is some measure of appreciation, acceptance and understanding of *Ubuntu* by the other cultural groups.

Secondly, the debate on *Ubuntu* has usually not transcended the rhetoric around the definition of the word (*motho ke motho ka batho* – meaning ‘a person is a person through others’), to address the tangible ways *Ubuntu* is expressed in practice and its physical manifestation as a living aspect of culture. In other words, much more emphasis is required on the practical implementation of *Ubuntu* in action in society rather than on the perpetual rhetoric and theory of *Ubuntu* and its definition which tends to present *Ubuntu* as an ideal.

Intellectual property rights and intangible heritage

It has become common practice to consider intellectual property (IP) laws and their application in the protection of intangible forms of heritage such as traditional knowledge or indigenous knowledge systems in South Africa. In this regard the *Draft Policy* makes specific reference to the protection of aspects of living

heritage, particularly indigenous knowledge, through the application of copyright laws. In practice, the application of IP laws to intangible forms of heritage, especially to traditional or indigenous forms of heritage, presents several challenges. It has been noted that IP laws are essentially individualistic and express a set of values that place a high premium on the concepts of authorship and innovation, and are viewed as Eurocentric and alien to the value systems of many indigenous and local societies (Bellagio Conference Blake 2001).

The notion of collective ownership as opposed to private ownership by individuals of heritage resources, especially living heritage, is still the norm in many South African communities. Thus it has been argued that IP regimes are often at odds with indigenous cultures, which emphasise the collective creation and ownership of knowledge (Mashelkar 2002:190). In this context, the issue of applying IP laws to protect traditional or indigenous heritage belonging to a particular group of people tends to be complicated. Some critics have argued that traditionally in Africa *...heritage was managed either communally or through a group of elders or kingship as the custodian, the advent of colonialism drastically altered this management.* (Abungu 1996: 01)

In the government *Gazette* published in 1996, the then Ministry of Arts, Culture, Science and Technology considered the significance of including local communities in the management of heritage by acknowledging that it is the communities' fundamental right to have access to, to participate in, and to benefit from the cultural life of the country. However, in practice there has also been a serious concern that systems of IP rights encourage the appropriation of indigenous knowledge for commercial use without the benefits being shared fairly with the holders of this knowledge (Mosimege 2005:15).

The recent discovery of the government's lack of control over the commercial exploitation of the *hoodia gordoniana* plant by big pharmaceutical corporations has set in motion a heated debate on IP rights over the ownership of the knowledge and use of this plant (which acts as an appetite-suppressant). In this particular case, critics have argued that ethical codes and public policy seldom address indigenous needs such as the control indigenous people have over their cultural and intellectual property (Ouzmen et al 2003:195). It was in

November 2000 that the decision was made by Pfizer Pharmaceuticals to acknowledge southern Africa's San people, both financially and intellectually, for their knowledge of the *hoodia gordoniana* plant's slimming properties. The Council for Scientific and Industrial Research (CSIR) in South Africa and the San Community of the Kalahari concluded a trust agreement (the San Hoodia Benefit Sharing Trust) to share the benefits accruing from the potential commercialisation which would follow research and development and the patenting of new technologies related to the medicinal plant.

In this context, the knowledge and expertise related to the use of the plant is treated as an asset of the relevant community which can be transferred to an institution and developed further. According to Mshana the current IP rights, regimes and especially patents, threaten to worsen the piracy of biological resources and traditional knowledge associated with those resources. He maintains that 'bio-piracy' of indigenous knowledge is a double theft, it steals creativity and innovation, patents stolen knowledge and robs owners of the potential for the economic development of their knowledge of their particular resource. (Mshana 2002:204)

Broadly speaking, within the South African context the feasibility of applying IP laws to the protection of *Amasiko* or *Ditso* or 'living culture' proves to be difficult, especially considering the existing disparities between the so-called 'European' legal instruments and traditional African customary laws of protection. For example, the concept of exclusivity of rights over traditional cultural heritage is one that is frequently incompatible with the customs of the community within which the heritage resources originate.

Some aspects of living heritage are highly sensitive, and to a substantial measure they are also sacred and secretive (certain rituals or cultural practices, for example). In this regard, cultural protocols (customary rules/laws) pertaining to gaining prior informed consent or authorisation, and the ethical issues concerning access to, use of, and the presentation of intangible heritage must be observed. In particular, access to intangible heritage resources must be negotiated with those parties or communities to whom they belong, and any interested organisation should show respect for customary practices governing access to specific aspects

of such heritage. The mandatory prior informed consent required for nomination to the *Representative and Urgent Safeguarding Lists* of the 2003 UNESCO *Convention* is valuable in setting standards of practice. It will be an important aspect of safeguarding the intangible heritage and community rights in South Africa.

Conclusion

The *Draft Policy* framework is a commendable first attempt towards safeguarding living heritage in South Africa. Clearly the task of formulating policy and appropriate instruments for safeguarding intangible heritage is cumbersome and quite extensive as it requires several extended, specific, in-depth research initiatives, as living heritage by its dynamic nature has many facets. To a substantial extent, the *Draft Policy* provides a general diagnosis of the challenges confronting heritage management in South Africa, with particular focus on the issue of redressing historical imbalances in the heritage sector. However, what are sadly lacking within the overall diagnosis and the proposed intervention strategies within the *Draft Policy* framework, are some of the most current and pertinent issues. These relate to training and the development of capacity, funding and the mobilisation of resources, and the general integration of the concept of safeguarding living heritage into the mainstream of heritage management in South Africa.

The safeguarding of living heritage should not be considered in isolation from the framework of heritage management in South Africa, regardless of the specific legal instruments for the safeguarding of living heritage. Also, it remains crucial that the *Draft Policy* should make a clear pronouncement on the development of capacity and skills as there is a serious deficiency of these in heritage resources management, particularly in the conservation, safeguarding and sustainable management of intangible forms of heritage.

Since issues of heritage conservation tend to compete for funding and resource allocation with other national priorities within a developing state such as South Africa, there is a dire need for adequate funding, as well as for the financing of an appropriate infrastructure for the effective implementation of the draft policy.

The development of an integrated management approach that includes community-based safeguarding strategies for protection of living heritage is of paramount importance. It is important to recognise that living heritage resides mainly within communities at local grassroots levels, and also to consider that local communities, over a period of time, have developed and adopted highly specialised skills and traditional forms of knowledge to safeguard their own heritage resources. In this context, the safeguarding and sustainable management of living heritage should make provision for communities to continue with their own traditions of transmitting knowledge and skills to future generations.



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