

UNESCO

REGIONAL WORKSHOP ON THE FIGHT AGAINST ILLICIT TRAFFICKING OF CULTURAL PROPERTY Cape Town, South Africa 27-30 September 2004

Organization

Coordinated by Ms. Moji Okuribido, Programme Specialist for Culture, UNESCO Windhoek Cluster Office, with Ms. Alcina Chipeio, Assistant Research Programme Officer for Culture, UNESCO Windhoek Cluster Office. In liaison with Mr. Lupwishi Mbuyamba, Regional Adviser for Culture, UNESCO Maputo and Dr. Guido Carducci, Chief, International Standards Section, Division of Cultural Heritage, UNESCO, Paris. Co-hosted by the South African UNESCO Commission, Pretoria. Rapporteur: Liz Brouckaert, Cape Town.

Description

A regional workshop on the Fight Against Illicit Trafficking of Cultural Property (FAITCP) held in Cape Town (27-30 September) at the Breakwater Lodge Conference Centre. There were 32 participants with six expert contributors and national representatives from seven Southern, Central Eastern and Western African countries. See annex II for the list of workshop participants.

Seven sessions were held over four days with two cultural outings: one to Robben Island and one to the Cape Point Nature Reserve. The workshop schedule also included an evening event held at the South African Cultural Museum for the launching of the International December 2nd International Day to Commemorate the Abolition of Slavery events, organized by Mr. M.K. Malefane of Aba-Kapeng Event Management, South Africa. At the event, Prof. Kader Asmal, former Minister of Education of South Africa and currently the chairperson of the Intergovernmental Commission for the International Convention on the Protection of the Diversity of Cultural Contents and Artistic Expressions, addressed workshop participants and other invited guests.

Aims of workshop:

1. To provide an opportunity for experts from Eastern and Southern Africa to meet with colleagues from Central and Western Africa, to share information; experiences and revisit existing strategies in the Fight against the Illicit Trafficking of Cultural Property.
2. To meet with experts from World Customs Organization (WCO), INTERPOL and the Chief of the UNESCO International Standards Section, to facilitate and develop a regional strategy.

Publications and papers made available for the workshop (attached to the present report)

1. The workshop programme
2. Information kit: Promoting the return or the restitution of Cultural Property, UNESCO Publication
3. Information kit: Promoting the Convention on the Protection of the Underwater Cultural Heritage, 2001, UNESCO Publication
4. 'Working against Illicit Traffic in Cultural Heritage, who does what?' Training materials, UNESCO Publication (step-by-step action listing)
5. New Developments in the Law of the Sea: The UNESCO Convention on the Protection of Underwater Cultural Heritage, by Guido Carducci
6. Information kit: Promoting the Convention for the Safe-guarding of the Intangible Cultural Heritage, 2003, UNESCO Publication
7. Role of Interpol, Paper presented by Dr Karl Heinz Kind, Interpol General Secretariat.
8. Object ID Checklist- The Getty Information Institute
9. 'Negotiations for the return of Nok sculptures from France to Nigeria-an unrighteous conclusion' Professor Folarin Shyllon, Nigeria
10. 'The Recovery of Cultural Objects by African States through the UNESCO and UNIDROIT Conventions and the Role of Arbitration' – Professor Folarin Shyllon, Nigeria

11. AFRICOM and the Fight against Illicit Traffic of Cultural Property in Africa-Alphas Namodi, AFRICOM, Kenya
12. World Customs Organisation, Combating Illicit Trafficking in Cultural Property- Mr. Beyers Theron, South Africa

OPENING SESSION

The UNESCO Secretary General of the South African National Commission, Mr. Stranger Kgamphe, reiterated South Africa's commitment to the Fight Against the Illicit Trafficking of Cultural Property and praised the South African Department of Arts and Culture's efforts in this regard.

Mr. Kgamphe highlighted to following points:

- Member states need to confirm their positions in terms of the regional strategy in the Fight Against Illicit Trafficking of Cultural Property
- They need to raise awareness around best practice.
- Lobby to facilitate the ratification of conventions of 1954 and 1970
- Member states need to provide forums for exchange and keep up communication on an ongoing basis

He went on to welcome the South African Deputy Minister of Arts and Culture, Ms N.G.W. Botha to deliver the opening address.

Opening Address

The South African Deputy Minister of Arts and Culture, Ms N.G.W. Botha, welcomed the delegates and invited them to use the workshop as an opportunity to share experiences and intensify the Fight Against the Illicit Trafficking of Cultural Property.

Ms. Botha spoke about the South African experience in the context of the 10 years of Freedom and Democracy celebrations and the Heritage month of September, culminating on Heritage Day, 24th September 2004, which had as its theme 'Celebrating Living Heritage' with the objective to introduce and popularize the International Convention for the Safeguarding of Intangible Cultural Heritage.

Giving several examples, she went on to remark on how looting of Cultural Property in Africa in the context of war and colonial domination impacts on the soul of a nation. Ms. Botha observed the importance of the Red List recently released by AFRICOM detailing significant losses such as:

- Nok Terracotta, pottery, bronzes and stone statues from Nigeria
- Terracotta and stone statuettes, bronzes and potteries from the Bura System and the Niger Valley
- Stone Statues from the North of Burkina Faso and neighbouring regions

Highlighting that this issue affects the entire international community, she stressed that the immediate concern was to look at regional challenges and the need to exchange expertise in the area of collection, management, conservation and restoration of cultural properties. There is a challenge to develop national inventories and national databanks that are a pre-requisite for protection and preservation of cultural properties.

She underscored the need to set up appropriate infrastructure and legislation to increase security measures to curb theft and also urged the participants to form partnerships with the rest of the world and benefit from the training programs that are on offer.

After thanking UNESCO and the organizers for putting together the workshop, Ms. Botha invited the international guests to explore the exquisite Cape area. In conclusion, she urged for the emergence of a strong lobby to help mobilize the Fight against the Illicit Trafficking of Cultural Property.

Opening remarks by Professor Lupwishi Mbuyamba

He addressed the delegates on behalf of the Director General of the UNESCO Mr Koitchiro Matsuura, extending to them the greetings from the Assistant Director General for Culture, Mr. Mounir Bouchenaki.

Mr. Mbuyamba insisted that the Fight Against the Illicit Trafficking of Cultural Property, is at the core of culture and its development and as such, the workshop would provide a rare opportunity to assess the level of commitment of everyone involved in a global strategy of cultural development.

He went on to thank the Deputy Minister for her presence and also expressed his appreciation to the Cape Town municipality and provincial authorities for having helped organize the meeting.

He provided the gathering with a short summary of the activities of UNESCO in the Fight Against the Illicit Trafficking of Cultural Property (FAITCP), highlighting the development and administration of the Conventions that support the fight.

The phenomenon of illicit trafficking of Cultural Property has a strong regional and international character and there is therefore a need for a common and integrated strategy. Africa is expected to reinforce its campaign and take initiative in bilateral and multilateral cooperation to preserve its heritage and recuperate the properties lost.

Previous meetings were organized in the 90's to develop common strategies in Southern Africa, Central Africa, Western Africa and East Africa. At the recent consultation of National Commissions for UNESCO for the Africa Region held in Maputo in May 2004, there was consensus that the present focus line be maintained.

Mr. Mbuyamba went on to affirm that the participation of partners from National Law enforcement bodies and from Interpol would provide the expert knowledge and help facilitate the implementation of a global strategy at the Cape Town meeting.

He concluded by thanking the gathering for responding to the invitation and urged for the formation of a dynamic network that would help positively change the mentality of all and enhance the protection of Cultural Heritage in Africa.

WORKSHOP PROCEEDINGS

The workshop proceeded with the presentation of seven country reports and eight topics as per the attached programme, punctuated by lively debates.

Country Reports

Attached to the present report are abstracts of the country reports presented by participants as follows:

1. ANGOLA Mr. Ziva Domingos
 Instituto Nacional do Património Cultural (INPC)-Luanda
2. DEMOCRATIC REPUBLIC OF CONGO:
 Mr Theodore NGANZI NDONI,
 Congolese Observatory for Cultural Rights
3. MALAWI: Mr. Chavula
 Copyright Administrator, Copyright Society of Malawi
4. NAMIBIA: Ms. Esther Moombolah-/Goângoses
 Deputy Director, Ministry of Basic Education, Sport & Culture

5. SOUTH AFRICA: Mr Vusithemba Ndima
Chief Director, Heritage, Department of Arts and Culture
6. UGANDA: Mr. Bakaye
Assistant Commissioner for Culture
7. ZIMBABWE Mr. Pascal Taruvinga, Head of Archaeology & Monuments Department
Zimbabwe Museum of Human Sciences
Ms. Rufaro Mahonde, Principal Curator /Collections Manager
National Museums and Monuments of Zimbabwe

Workshop Presentations

A summary of the following presentations are annexed to the present report:

1. UNESCO CONVENTIONS RELATED TO THE FIGHT AGAINST ILLICIT TRAFFICKING OF CULTURAL PROPERTY by Mr Guido Carducci, Chief, International Standards Section

Mr. Carducci summarized the role of UNESCO in negotiating, elaborating, adopting and promoting various conventions in the Fight against the Illicit Trafficking of Cultural Property such as:

- Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict and protocols 1954 and 1999,
http://portal.unesco.org/en/ev.php-URL_ID=13637&URL_DO=DO_TOPIC&URL_SECTION=201.html
- 1970 Convention of the means of Prohibiting and Preventing Illicit Import Export and Transfer of Ownership of Cultural Property
http://portal.unesco.org/en/ev.php-URL_ID=13039&URL_DO=DO_TOPIC&URL_SECTION=201.html
- 2001 Convention on Underwater Cultural Heritage
http://portal.unesco.org/en/ev.php-URL_ID=13520&URL_DO=DO_TOPIC&URL_SECTION=201.htm
- 2003 Convention for the Safeguarding of Intangible Cultural Heritage
http://portal.unesco.org/en/ev.php-URL_ID=17716&URL_DO=DO_TOPIC&URL_SECTION=201.html
- 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects, prepared by the International Institute for the Unification of Private Law, complements the 1970 UNESCO Convention. <http://www.unidroit.org/english/conventions/1995culturalproperty/1995culturalproperty-explanatoryreport-e.pdf>

2. THE RECOVERY OF CULTURAL OBJECTS BY AFRICAN STATES THROUGH THE UNESCO (1970) AND UNIDROIT (1995) CONVENTIONS AND THE ROLE OF ARBITRATION by Prof. Folarin Shyllon, Professor, Faculty of Law, University of Ibadan, Nigeria.

After outlining the benefits of becoming State party to the UNESCO and UNIDROIT Conventions compared to operating outside of the convention, he made the following recommendations:

- *Formulation of a specialized body devoted to arbitration of cultural property disputes* operating under the aegis of either UNIDROIT or UNESCO, more probably the former since it already has a pool of lawyers versed in the complex legal and ethical issues that arise in the context of cultural property disputes.
- *Setting up of an international fund to assist in prosecuting claims:* In 1993, a Regional workshop of ICOM/UNESCO urged for the establishment of an international fund to finance the acquisition of stolen property and its restitution to museums and communities when the national and international legislations did not provide for this
- *Harmonization of African Cultural Property Laws:* African States should examine their legislations on the protection and preservation of cultural property and make sure they are adequate to deal with the current emergency. Laws should be upgraded in accordance with all the international instruments.

He concluded by highlighting the reasons why, in his opinion, African States have not embraced the Convention, which include the following:

- The failure of African lawyers to show an interest in the intricate issues involved in the return and restitution of cultural objects resulting in the ignorance of the benefits to be derived from membership of the Conventions
- The cost and duration of pursuing cases in foreign courts
- The failure of previous attempts to recover cultural objects in foreign courts

3. NEGOTIATIONS FOR THE RETURN OF NOK SCULPTURES FROM TO NIGERIA- AN UNRIGHTEOUS CONCLUSION, a second presentation made by Prof. Shyllon.

This presentation recounted the controversy over the three illegally exported Nok and Sokoto objects originating from Nigeria which landed in an exhibition at the Louvre organized in anticipation of the new Quai Branly Museum. Despite the fact that these objects were on the Red List posted on ICOM's website, the French government negotiated their acquisition from a Belgian art dealer with the proviso that an agreement from the Nigerian government would be required before the actual purchase. President Chirac is reported to have personally sought and obtained the approval for the purchase of the Nok from President Obasanjo of Nigeria despite the strong opposition of the top echelon of Nigeria's National Commission for Museums and Monuments on the grounds that the objects were illegally exported from Nigeria and therefore remained the legal cultural property of Nigeria.

In the end a wholly unsatisfactory and unrighteous arrangement was entered into between Nigeria and France which consisted of France's recognition of Nigeria's ownership of the three Nok and Sokoto objects deposited with the Musée du Quai Branly, to be exhibited with the museum's permanent collection for the exceptionally long period of twenty-five years (renewable).

4. THE ROLE OF INTERPOL IN THE FIGHT AGAINST ILLICIT TRAFFICKING IN CULTURAL PROPERTY by Mr. Karl-Heinz Kind of Interpol General Secretariat.

After informing the meeting of the organization's purpose, its areas of expertise, difficulties of operation, he enumerated the tools available to INTERPOL to efficiently fight against the illicit traffic of cultural property which include the following:

- A wide and fast circulation of information among Interpol's member countries-worldwide telecommunication network called 1-24/7
- Poster of the most wanted Works of Art-published every 6 months
- Computerized database for stolen works of art, including descriptions and photographs, using standard object ID, with 26,500 items with 72% reported from European countries, with 287 items reported from Africa and if North Africa is excluded, 129 items (0.5%)
- Direct access to the database through EASYFORM
- CD Rom Stolen Works of Art
- Website- www.interpol.int which lists recent reported thefts and recovered items
- Organization of International Conferences-held every 3 years in Lyons dealing with the Illicit traffic and theft of works of art, antiques and cultural objects

Mr. Kind concluded that an effective fight against illicit trafficking should include:

- Adopting laws for the protection of cultural heritage
- Being party to international conventions
- Establishing and update inventories of collections
- Reporting any information concerning stolen cultural property as rapidly as possible to the competent police service
- Ensuring that museum personnel participate in the police and customs training sessions
- Establishing good co-operation between the relevant ministries
- Establishing a database

5. Mr. Beyers Theron, Chairperson of the Enforcement Committee of the WCO ROLE OF THE WORLD CUSTOMS ORGANISATION (WCO) made a Powerpoint presentation detailing the history, role and action of WCO. He also listed the various instruments of mutual assistance such as conventions and Memoranda of Understanding and means of cooperating with various entities in combating illicit trafficking.

6. AFROCPMAND THE FIGHT AGAINST ILLICIT TRAFFIC OF CULTURAL PROPERTY IN AFRICA by Mr. Alphas Namodi, Program manager, International Council of African Museums- AFRICOM

Mr. Namodi outlined the origins of AFRICOM initiated by ICOM's Programme for Africa and its mission to contribute to the positive development of African societies by encouraging the role of Museums as generators of culture and agents of social cohesion. Mr. Namodi went on to discuss AFRICOM's priority areas of action, its partnerships in the fight against illicit trafficking

He concluded by stating that:

- Museums and heritage organisations in Africa have a tremendous role to play in safeguarding our natural and cultural heritage against plunder and trafficking.
- Close collaboration among organisations, consultation and co-operation from African governments can go a long way in ensuring that illicit traffic in cultural material has no place in Africa.

7. OBJECT ID TRAINING SESSION by Mr. Karl-Heinz Kind

Mr. Kind introduced Object ID training, an international standard for describing art, antiques and antiquities to the workshop participants.

Object ID consists of fulfilling the following procedure:

- Taking photographs
- Answering these questions:
 - What kind of object is it?
 - What are the materials? How was it made?
 - What is the size and weight?
 - Are there any identifying markings numbers or inscriptions on the object?
 - Does the object have any distinguishing physical characteristics that could help identify it?
 - Does it have a title by which it is known?
 - What is pictured or represented?
 - When was the object made?
 - Who made the object?
- Writing a short description
- Keeping the documentation and information secure

The workshop participants were asked to carry out the Object ID procedure with three objects and then report back to the plenary session.

It was observed by most participants that even though the process appears quite straight forward, it requires focus, time, practice and comparison to get it right. It is an exacting and technical procedure.

8. 'WHY DO WE NEED TO PROTECT UNDERWATER CULTURAL HERITAGE?' by Mr. John Gribble, Maritime Archaeologist, South African Heritage Resources Agency SAHRA.

Mr. Gribble's PowerPoint presentation was made in conjunction with the session covering the 2001 Convention on Underwater Cultural Heritage led by Mr. Guido Carducci.

After using the study areas in the Western and Southern Cape to illustrate his presentation, Mr. Gribble went on to describe the nature and significance of various underwater heritage, the threats to such heritage and mechanisms/legal instruments for their protection and preservation.

SUMMARY OF DEBATES AND ISSUES RAISED DURING THE WORKSHOP

General

- There are limited resources in African countries available to combat illicit trafficking of cultural property
- There are few statistics on stolen items available to the international agencies and within African states
- There is a need for standardized inventories of cultural property at a national level amongst the African member states
- The lack of inventories and statistics further complicates the Fight Against Illicit Trafficking of Cultural Property in Africa
- There is a need to integrate and mobilize services between different heritage and law enforcement agencies at a national level among member states on the African continent
- There is a need to share information on stolen items and criminals on a regional basis
- There is a need for co-operation, co-ordination and training of Law enforcement officers, Customs and Museum personnel
- There are international services available that are not being fully utilized by national agencies in many African countries that are engaged in the Fight Against Illicit Trafficking of Cultural Property
- There is a need to lobby governments and politicize the Cultural Agenda to have it among National Government's priorities
- Few African states have ratified those Conventions that support the Fight against the Illicit trafficking of Cultural Property
- There is an urgent need for African States to ratify the conventions.
- The question was raised "Why have African States not ratified?"- Is it Ignorance or Indifference? Or is it lack of awareness and reservations on the part of African governments?
- Outside of the Conventions there are limited means for restitution and these are complex and expensive.
- There is a concern expressed over the role of leaders who do not safeguard National Treasures, with the subsequent dislocation between the Cultural Sector and Political Leaders in African countries
- There was a debate that juxtaposed 'Political' versus 'Legal' solutions
- Conflicts in African are more often of an ethnic nature and cultural heritage becomes a deliberate target between belligerents to weaken the enemy in its soul, belief, and religion.
- How do we bridge the gap with what has happened before?
- The issue of Compensation of "Good Faith" possessor raised concerns amongst African experts who challenged the protection/support afforded to dealers of cultural property in this clause.
- There is a need to lobby on a Pan African Basis and approach the challenge on a regional basis
- There was an expressed need to link Regional Intelligence Network Organizations
- The roles, responsibilities and limitations of UNESCO as an international agency in the Fight Against Illicit Trafficking were questioned.
- There is a need for global management of regional meetings and continuity.
- There was an expressed need to bring the political issues home to member states and address international issues through the UNESCO General Assembly

Intangible Cultural Heritage

- Intangible Cultural Heritage needs to be identified and defined with participation of the communities concerned.

- Under the 2003 Convention Intangible Cultural Heritage is defined as having resisted the time factor, through transmission across generations.
- To be compatible with International Human Rights instruments there is a need to limit the purely anthropological perspective that would consider Intangible Cultural Heritage, any practice that the community deems appropriate if it involves for instance mutilations or, worse, human sacrifice.
- It is considered an important Convention for Africa
- Early ratification should be considered as the first 30 States Parties may have a chance to be among the first 18 members of the Committee and subsequently input to the development of guidelines
- There was discussion about the ongoing debate with World Intellectual Property Organization (WIPO) around Intellectual Property Copyright Law as applicable to Intangible Cultural Heritage.

CLOSING SESSION

The workshop concluded with the Presentation of the Final Report; the workshop recommendations and resolutions and the Vote of thanks.

RESOLUTIONS

The Participants in the Regional Workshop on the Fight against Illicit Trafficking of Cultural Property:

a.) *Commit themselves to:*

1. Urge their respective governments to ratify all the conventions relating to the protection of cultural property; (1954, 1970, 1972, 1995, 2001 and 2003 Conventions);
2. Urge their respective governments to revise, update, with a view to strengthening it, adopt and implement their legislation on the protection of cultural property,
3. Prepare national strategies for the proper administration, management and protection of cultural property.
 - Development of national inventories for movable cultural property incorporating the Standard Object ID as a minimum standard.
 - Identifying and co coordinating national stakeholders in the fight against illicit trafficking of cultural property.
 - Role of Media
4. To share and exchange information on the protection of cultural property.

b.) *Recommend to:*

Their respective governments

1. To expedite the ratification of the above-mentioned Conventions.
2. To expedite the above-mentioned revision, up-dating, adoption and implementation process of their legislation.

Non-Governmental Organizations

1. AFRICOM to bring to the attention of the Chairman of the African Union Commission to urge the Member States to promptly ratify and implement the above-mentioned Conventions and to take all necessary measures to prevent the illicit trafficking of African cultural property.
2. AFRICOM or another similar institution to become the facilitator for the establishment of a regional database on movable cultural property, as well as regional lobbying and training on issues relating to the fight against Illicit trafficking of cultural property in the region.

African Union

1. To consider strengthening at a regional level the cooperation between existing National customs and Law Enforcement Agencies, in cooperation with international organizations (WCO and Interpol), to better fight against Illicit Trafficking of African cultural property.

UNESCO

1. To continue supporting the national and regional strategies in fighting against the illicit trafficking of cultural property, among others in cooperation with SADC, ECOWAS and GEMC.