

SWAZILAND

NATIONAL REPORT ON THE IMPLEMENTATION OF THE 1970 CONVENTION ON THE MEANS OF PROHIBITING AND PREVENTING THE ILLICIT IMPORT, EXPORT AND TRANSFER OF OWNERSHIP OF CULTURAL PROPERTY

2011 – 2015

I. **Information on the implementation of the UNESCO Convention of 1970 (with reference to its provisions)**

1. **Ratification of the Convention**

Has this Convention already been ratified?

Yes

(b) If not, please indicate, where applicable:

- the stage of the ratification process reached by the State concerned (close to ratification, under way, actively under preparation, not considering ratification in the short, medium or long term);
- obstacles or difficulties encountered in completing the ratification process (whether legal, political or practical) and the means of overcoming them;
- the extent to which UNESCO can assist in completing the process?

2. **Implementation in the national legal system and in the organization of services**

(a) Give the references of the principal national regulations adopted in order to implement the 1970 Convention?

The Swaziland National Trust Commission (Amendment) Bill 2015

(b) A definition of “cultural property” agreeing with the definition proposed by the 1970 Convention is important in order to increase the effectiveness of international cooperation. State what definition is used by the national laws of the country concerned.

The 1970 Convention is used for the definition of cultural property

(c) Have specialized units been established in order to prevent and combat trafficking and ensure international cooperation for the protection of cultural heritage? Within the Heritage Department? In other government departments (police, customs)?

No specialised units have been set up; however, awareness of illicit traffic of cultural property has been made to the customs. An official was invited to the SADC Association of Museums workshop held in Botswana in 2013 where Interpol Officials held discussions with delegates outlining the illicit traffic of cultural property and measures now in use to curb it.

- (d) Describe briefly the administrative coordination of the activities of these specialized units, especially with the police and customs authorities.

The National Museum Director has in the past held workshops and communication with Interpol, and Customs officials. However, this workshop was held some time back and although communication continues with officials that they need to be aware of trafficked cultural property items.

- (e) Are working meetings held to enable police officers, customs officials and ministerial representatives to meet and coordinate their activities?

A workshop and meetings were held with Interpol, however, these are not as frequent as the need arise.

3. Inventories and identification

- (a) State briefly the extent to which inventories provide for the risks of misappropriation and theft.

Inventories are an essential part of identification of cultural property and can assist to minimise risk of theft or if theft has occurred, maximise chances of recovery of the object.

- (b) Specify the degree of precision, at the national level, of the definition of "cultural property" covered by international conventions (see above I.2(b)). State whether "national treasures" are identified in an official, tentative or exhaustive list.

The National Museum is in the process of identifying and documenting the National Treasures.

- (c) To what extent is the Object ID standard used? Is the standard adapted to the State's needs?

- (d) Are there systems to combat theft and to train museum staff and have specific measures been adopted for libraries, archival and manuscript repositories, and any specialized units established to monitor them?

There are systems to combat theft e.g. objects stored in strong rooms and having objects shelved and the storeroom locked. Objects in exhibition rooms are exhibited in showcases that are normally locked. Museum staff have been trained although it would be of benefit if they were exposed to refresher courses and new equipments and systems to combat theft.

4. Archaeological excavations

(a) Summarize the basic principles of the regulations on archaeological excavations and on the monitoring of excavations in force in the country.

- In Swaziland archaeological sites are categorized under national Monuments as stated on the SNTC Act of 1972 amended 1973
- Section 25 (1) (i) as a national monument, any area of land having a distinctive or beautiful scenery or geological formation, or any area of land containing a rare or distinctive or a beautiful flora or fauna, **or any area of land containing objects of archaeological**, historical, or scientific interest or value, or any waterfall, cave, grotto, avenue of trees, old building, or any other place or object (whether natural or constructed by man) of aesthetic, historical, archaeological, scientific, sacred, or religious value or interest;
- (iii) as an antique, any movable object (not being a monument or relic) of aesthetic, historical, **archaeological or scientific value or interest**, the whole or more valuable portion whereof has for more than thirty years been in any part of Southern Africa, or which was made therein more than fifty years before the publication of such notice;

(b) Is there a recurrent problem of illegal excavations? If so, what are the reasons and when did it begin? What steps have been taken to combat this scourge?

- Regulation on archaeological excavation
- **Section 29(2) of the SNTC Act states that: No person shall destroy, damage, excavate, alter, remove from its original site or export any monument, relic or antique, or any meteorite or fossil or any drawing or painting or stone or petroglyph known or commonly believed to have been executed by Bushmen or other aboriginal inhabitants of Southern Africa, or any implement or ornament known or commonly believed to have been used by them, or any anthropological or archaeological contents of the graves, caves, rock shelters, middens, shell mounds or other sites used by them or any other archaeological or paleontological material or object, except under the authority of and in accordance with a permit granted under this section.**
- **Section 29(5) states that 'Whenever any person has been convicted of damaging or altering anything in contravention of subsection (2) above, the Commission may -**
- **by notice in writing served upon such person by post or by delivery to him personally, direct him to effect such specified repairs or alterations to it within such period as may be specified therein;**
- **upon failure of such person to comply with such notice, effect or cause to be effected such repairs or alterations and recover the cost thereof from such person.**

5. Monitoring of the export and import of cultural property

- (a) Give an estimate of the scale of the illicit export or import of cultural property. Are up-to-date statistics compiled on the theft of cultural property?

It is difficult to give a scale of illicit export or import of cultural property. To date, a few objects have been stolen from the museums.

We have no up to date statistics on illicit traffic of cultural property as this is still on a very low scale. The interest in cultural objects (import and export) is not high in the country. What is usually exported out are cycads and some endangered species of plants.

- (b) Is the illicit export of cultural property a recurring problem? If so, for which reasons (lack of financial and human resources, shortcomings in the legal supervision framework, etc.)?

No.

It is difficult to give a scale of illicit export or import of cultural property. To date, a few objects have been stolen from the museums.

- (c) What are the main rules (administrative and legal) for monitoring the export and import of cultural property (existence of an export certificate, public information about the rules in force)? What categories of cultural property are covered by the rules?

The object identification card is used for documentation of all objects in the museum.

The SNTC Act, section V prohibits section 29 (1) (2) 32(1), 2, 3 prohibits the export of monument, relic or antique, or any meteorite or fossil or any drawing or painting or stone or petrolyph from original inhabitants. A permit is required to remove the above items.

- (d) Do the rules provide for the restitution of illicitly imported cultural property?

Yes.

Due to financial constraints, the museum has no continuous training of museum staff to combat illicit traffic, we try to ensure that the objects are securely locked in the strong rooms.

- (e) What are the main obstacles encountered in securing the restitution of illicitly exported cultural property? What type of obstacles are they (administrative, legal or political) and why do they arise (legal loopholes, unwillingness by importing countries, lack of international cooperation, etc.)?

The main obstacles with restitution especially of objects taken out during the colonial period, our country has difficulty in proving ownership of the objects since they were collected and removed prior to the SNTC Act of 1972 coming into effect.

- (f) If the country has succeeded in securing the restitution of a stolen cultural object, describe the circumstances and state whether that involved legal proceedings, arbitration or alternative dispute resolution.

The country has only succeeded in bringing back smoking pipes (used during royal family burials in the mountains) from the University of Wits. The National Museum had to re-purchase the smoking pipes from Wits University Museum. Lack of International cooperation is also a major factor in the restitution of cultural property.

Restitution of cultural property in our case did not involve legal proceedings with the Wits University Museum. A third party negotiated for the release of the objects, and paid for them and donated them to the museum. The objects had been excavated and stolen from royal burial sites in the country.

6. System for trade-in, acquisition, ownership and transfer of cultural property

- (a) Give a brief description of the cultural goods market in the country (financial volume of the market, number and turnover of auction houses including via the Internet).

The cultural goods market in the country is not so large. Most of the cultural goods that leave, are works of art by local artists, sculptures, ceramics, paintings, basketry etc. Most of the above are also contemporary pieces.

- (b) What are the main rules governing trade in cultural goods? Are control measures in place for such trade (maintenance of a police register), in particular through the Internet (for example, reference to the basic measures proposed by UNESCO, INTERPOL and ICOM)?

Whilst the SNTC Act is in place, there are no other control measures, besides the operations of the Act.

- (c) Do measures exist to control the acquisition of cultural property (for example, mechanisms to prevent museums and similar institutions from acquiring cultural property exported illegally from another State)?

No measures exist currently from preventing museums or similar institution from acquiring cultural property exported illegally from another State.

In Swaziland, there is only one National Museum and Site Museum. So the problem of import and export of cultural heritage materials is minimised.

- (d) Specify the existing legal system concerning ownership of cultural property:

The existing legal system concerning the ownership of cultural property is found in the Swaziland National Trust Commission Act No. 9 of 1972, amended by Kings Order in Council in 1973 and the new amendment bill of 2015 for SNTC.

- Is the principle of inalienability applied to cultural items in national collections and objects originating in heritage sites?
- What is the status of yet unfound cultural objects, of cultural items found by chance and archaeological artefacts found during legal or illegal excavations?
- Are there any due diligence requirements in place?
- What are the rules governing the search of provenance?

- (g) Are there special rules on the transfer of title deeds in respect of cultural property? If so, please summarize their content.

7. Bilateral agreements (a) (b) (c)

- (a) List the bilateral agreements concluded with other countries on the import, export and return of cultural property and comment briefly on their results.
- (b) What conditions are set by the importing country with regard to the admissibility of requests for restitution from a country of origin?
- (c) Apart from these agreements, is there administrative aid or any other type of cooperation with neighbouring countries, particularly in respect of police and customs services?

Swaziland has no bilateral agreements concluded with other countries. However, the SADC Association of Museums exist to foster relationships, networking and communication amongst Museum professionals. In this way, though no formal platform exists, we are able to communicate and get back our objects or materials from neighbouring states.

II. Code of ethics, awareness raising and education

Ethical standards

- (a) Are the UNESCO International Code of Ethics for Dealers in Cultural Property and that of ICOM for museums known to the professionals concerned (in particular, curators, antique dealers, merchants and collectors)? How is their observance checked?

The UNESCO International Code of Ethics for dealers in Cultural Property and that of ICOM is;

Awareness raising and education

- (b) Are the “One hundred missing objects” series and the ICOM Red Lists disseminated and read?

The 100 missing objects series and the ICOM Red Lists were disseminated and read

- (c) Briefly describe activities carried out to raise the awareness of the authorities and educate the public, children in particular, regarding the serious damage that can be caused by illegal excavations, theft of cultural property and illegal export. How far can UNESCO contribute to these activities?

The National Museum had a serious shortage of funds, so that it needs some funding from UNESCO to run some awareness raising campaigns to educate the public.

III. Cooperation with other international and regional agencies

Police

- (a) What is the state of national cooperation with INTERPOL? What specialized police services can heritage officials call on for enquiries, legal proceedings and punitive measures?

Interpol in Swaziland is very much aware of the SNTC Act, of 1972 and conservation of both cultural and natural heritage.

- (b) If a cultural object is stolen, is the INTERPOL database on stolen objects checked? Is information on the persons implicated in the theft of cultural property transmitted to INTERPOL?

We have no database of stolen items with Interpol at present.

- (c) Do members of police services follow a specific training programme?

We have had one training workshop for Interpol and customs that was sponsored by ICOM/UNESCO.

- (d) Do criminal law provisions allow for the punishment of fraud and theft related to cultural property? Are judges specialized in this field?

Yes, section 31 (1, 2, 3)

- (e) Does cooperation exist with the United Nations Office on Drugs and Crime (UNODC)?

No. We have not started cooperation with UNODC.

Customs

- (f) What is the status of cooperation with the World Customs Organization and which specialized customs services can assist heritage officials in preventing the illicit export of cultural property?

No cooperation with World Customs Organisation in as far as Cultural Heritage protection, because the issue is still very low key, except one or two cases that have been tackled in the last twenty years.

- (g) Do members of the customs administration follow a specific training programme?

No.

- (h) Is the UNESCO-WCO Model Export Certificate for Cultural Objects used?

Not yet.

European Union

Have particular measures been adopted to apply the Council of the European Communities Directive 93/7/EEC of 15 March 1993 on the return of cultural objects unlawfully removed from the territory of a Member State.

The directive of the Council of the European Communities Directive 93/7 EEC of 15 March 1993 on the return of cultural objects unlawfully removed from member states has not been fully explored. We do have materials and archaeological objects, including colonial records that have to be retrieved from neighbouring countries.

IV. Emergency situations and heritage at risk

- (a) What is the strategy in place in your country to face emergency situations for heritage in case of natural disaster or conflict?

- (b) More particularly, what are the measures undertaken to implement UNSC Resolution 2199 (paragraph 17, 12 February 2015) for the protection of Syrian and Iraqi cultural heritage?

V. Other legislative, legal and administrative measures taken by the State

1. Accession to the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects

- (a) Has this Convention been ratified, in addition to that of 1970?

No, we have not ratified the 1995 UNIDROIT Convention.

- (b) If not, please indicate, where applicable:

- the stage of the ratification process reached by the State concerned (close to ratification, under way, actively under preparation, not considering ratification in the short, medium or long term) ;
- obstacles or difficulties encountered in completing the ratification process (whether legal, political or practical) and the means of overcoming them;

To be ratified shortly.

No obstacles, it is just that the process of ratification takes time as all stakeholders have to be made aware of the Convention before ratification.

- the extent to which UNESCO can assist in completing the process.

The SNTC has to hold stakeholders workshop before conventions can be ratified, and thereafter, these are tabled in Parliament for ratification.

UNESCO can assist with funding for these workshops.

2. Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation

Describe the extent to which the State concerned is following the work of the UNESCO Intergovernmental Committee (observer, member, State concerned by a case under discussion, etc.).

At present, we have not set up an intergovernmental committee for the promotion of the Return of Cultural Property to its countries of origin.

3. UNESCO Database of National Cultural Heritage Laws

Indicate action taken to organize the contribution to the UNESCO Database of National Cultural Heritage Laws and to check whether it contains all historical and existing laws and regulations, including successive amendments.