

LEGAL FRAMEWORKS FOR HERITAGE IN GENERAL

GOOD TIPS

- ▶ If shortcomings in the legal framework are compromising the effectiveness of the management system for a property, heritage managers can try to reform the law. If unrealistic at a high level, reform at a local level may be feasible by using, for example, regional law, development by-laws, local policy, partnerships between institutions and capacity-building.⁵¹ For instance, in order to regulate the buffer zone, many countries use the legislation of regional or local councils. Successful 'local' solutions can provide the leverage in the long term for making reforms to national heritage legislation. Thus site managers can exert influence upwards through the management system.
- ▶ The challenges posed by cultural heritage with multiple private ownership and/or intensive land use within or around the property (e.g. historic urban centres, cultural landscapes) are similar to those often encountered in the management of large natural properties. Much can be learned from the natural heritage sector: for example, mechanisms (e.g. policies, monitoring, use agreements etc.) used to ensure that the resource use that is permitted in and around cultural properties is compatible and sustainable and that, wherever possible, benefit-sharing is embraced.⁵²
- ▶ Legislation is not static but evolves. It may be necessary to change mindsets periodically in response to changes in heritage legislation or to other legislation that has an impact on heritage management.
- ▶ For guidance on how to improve legislation, refer to the Recommendation Concerning the Protection, at National Level, of the Cultural and Natural Heritage,⁵³ a document adopted by UNESCO at the same time as the UNESCO World Heritage Convention (1972) but much less familiar to heritage practitioners.

USEFUL QUESTIONS TO ASK

- ▶ Does your national constitution mention cultural heritage? To whom is responsibility for it allocated? Even among federal systems, Canada, for example, maintains many responsibilities at national level whereas Germany devolves more to the provincial level. In other countries (e.g. Italy), cultural heritage protection and its enhancement may be overseen by different authorities.
- ▶ Does your national constitution/legislation give importance only to protection or also to public access, working with others, etc.? Is there a dedicated ministry for culture or is the culture portfolio paired with another such as education, research, the environment or even sport? How high does heritage rank in your country compared with other national priorities? And is the level of commitment to cultural heritage matched by a capacity for action?
- ▶ What is the weight of legislation dealing with cultural heritage relative to other legislation? Does your legal framework ensure that cultural heritage legislation and plans take priority over other legislation and plans (e.g. over development plans, tourism plans)? It is important to check that measures for heritage are not undermined by other government measures.
- ▶ Is the legislation in place actually being used? Is it effective? Are policies implemented? Could capacity-building⁵⁴ help staff to implement legislation and regulations? Sometimes legislation exists but is not enforced, to the detriment of the cultural properties concerned.

51. See: UNESCO World Heritage Centre. 2011. *Presentation and adoption of the World Heritage strategy for capacity building*. Paris, UNESCO World Heritage Centre. (Doc WHC-11/35.COM/9B) <http://whc.unesco.org/archive/2011/whc11-35com-9Be.pdf>

52. UNESCO, ICCROM, ICOMOS and IUCN. 2012. *Managing Natural World Heritage*. Paris, UNESCO World Heritage Centre. (World Heritage Resource Manual) pp. 57-61.

53. UNESCO World Heritage Centre. 2011. *Recommendation on the Historic Urban Landscape*. http://portal.unesco.org/en/ev.php-URL_ID=13087&URL_DO=DO_TOPIC&URL_SECTION=201.html

54. See: UNESCO World Heritage Centre. 2011. *Presentation and adoption of the World Heritage strategy for capacity building*. Paris, UNESCO World Heritage Centre. (Doc WHC-11/35.COM/9B) <http://whc.unesco.org/archive/2011/whc11-35com-9Be.pdf>