



The Popular Tradition

Foundations for a law to protect the traditional dances of Guatemala and their bearers

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Foundations for a new law to protect the traditional dances of Guatemala and their bearers

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Introduction

This bulletin aims, among other objectives, to provide readers with the necessary knowledge about traditional Guatemalan dances and their bearers that, in criteria of the author, should be considered essential inputs for the development of a necessary national law that protects and ensures the survival of all those objective and subjective elements inherent to the social manifestations popular that in itself, constitute the traditional dances of Guatemala since ancestral and immemorial times of its history.

The center for Folkloric Studies has decided to republish this article, originally released in 1992, so that the criteria upheld by this center of studies and the author may be recorded, since, as is known, they are based on more than 20 years of ethnocoreological research throughout the length and breadth of the national territory, having been published on the occasion of the first incursions on these issues related to intellectual and copyright rights in a Guatemala that was gradually emerging from the State-imposed obscurantism during the Guatemalan internal armed conflict.

It is also necessary to emphasize that in this publication the term "*Folklore*" is still used in some moments because it has been the concept in use for many decades until now at the beginning of the XXI century, given the hybridizations that the economic and cultural globalization is producing throughout the country, the new social conscience regarding its use, has begun to understand it as what it has always been, simply *tradition*. In the face of the avalanche of new transformations

induced by neoliberalism and globalization, we sustain the use of the word "traditional" as a representation of the most authentic of the historical, social and cultural identities of the Guatemalan people.

Aware of the enormous importance that now and at all times means the protection of Folklore or the popular and traditional cultures of Guatemala in the entities of its bearer producers, given that in them and in them resides in essence a great part of the cultural identity of Guatemalans, also is published here, in its relevant parts, the document produced on the occasion of the seminar-workshop on Copyright held in October 1989 by the Ministry of Culture and Sports, which in turn, as will be seen through its content, reinforces the arguments that the author of this bulletin used on that occasion, 16 years ago, to propose the bases in order to develop the respective legislation on the popular dance culture of Guatemala.

The Foundations

The first official conceptions on culture appeared when the recently created Ministry of Culture and Sports began to worry about these phenomena of popular culture some twenty years ago and later founded in its institution certain sections in charge of the subject whose few good fruits have been seen, crystallized in two published essays on popular crafts and Moorish and Christian dances, as well as a cassette of music of national folkloric projection.

For example, we understand by **culture** the complete and wide range of knowledge that some leaders of Houses of Culture of the interior of the country that, encouraged in this

sense have promoted investigations and have recognized the values of the popular culture in the persons of its bearers. So that as it is proposed in the document of the seminar-workshop on Copyrights? Already mentioned, **Yes**, it is possible to create a National Council of Folklore (or of the Popular Cultures) that watches over the safeguard of such values and autonomies protected in a Law and its specific regulations, constituted by specialists and popular culturists. Here it is where operates the experience of the social scientists specialized in the different matters of popular culture that know how to distinguish the traditional, that also have detected and know the authentic bearers of the popular culture traditional and recognize the historical social value of all the objective and subjective elements that constitute it, which must always go in consonance and coordination with the same bearers and their representative institutions popular, private and official.⁵

By legislating in this sense, would be safeguarding the autonomy of popular cultures that are produced and reproduced based on the ancestral and traditional inheritance of which they are bearers, in the persons of their culturists and these, therefore, subjects of rights and obligations, as the Constitution prescribes⁶ and, consequently, in new legal figure

as internationally it is beginning to be recognized.⁷

On the other hand, there are certain selective criteria of UNESCO⁸ for naming "Cultural goods" such as immovable property which are monuments (unspecified), architectural ensembles and sites, archaeological, historical or artistic objects of "outstanding universal value". It also considers "Cultural Property" to be all those tangible objects associated with cultural traditions classified in two categories which are:

- a) Movable works of art such as books, manuscripts, objects of archaeological, artistic or historical origin and scientific collections.
- b) Non-movable works of art such as monuments of architecture, art or history, archaeological sites and buildings of historical or artistic interest.

For UNESCO, cultural heritage is constituted⁹ by:

- a) Monuments of architectural works, sculpture or painting, inscriptions, caves and elements or structures of archaeological character that have exceptional historical, artistic or scientific value.
- b) Groups or groups of constructions that integrated into the landscape have exceptional universal historical, artistic or scientific value.
- c) Places resulting from human work or its relationship with nature and archaeological areas of universal historical, aesthetic, ethnological or anthropological value.

According to Luis Hurtado de Mendoza¹⁰, all these material objects are also "natural resources because of their use and exploitation

3 See the leaflets of the *Casa de la Cultura* of Totonicapán that in collaboration with the INGUAT in that city produced annually, since 1986 for June 24, a Festival of Traditional Dances on the occasion of the anniversary of the same. Similarly, the activities frequently promoted by *Casa de la Cultura* of Mixco have also been observed.

4 Proceedings of the Final Report of the Workshop-Seminar on Copyright Law by the Ministry of Culture and Sports. January 1990.

5 The popular representative institutions would be the *cofradías* and the traditional dance groups; the private ones would be the cooperatives, the *morerías* and the NGO's related to it and, the official ones are for example the *Academia de Las Lenguas Mayas*.

6 Arts. 57-65, Section 2^a. From the Political Constitution of the Republic of Guatemala.

7 Larrea Gabriel *El Folklore, Los Derechos Humanos y los Derechos de la Cultura, Derechos de Autor*. Paper presented at the IV International Congress on the Protection of Intellectual Rights (of the author, the artist, and the producer), held April 27-29, 1989, and published in the Congress Proceedings, Guatemala, 1989, pp. 177-185.

8 The UNESCO Courier. Paris, August 1988, pp. 34-37.

9 UNESCO. Legislation for the Protection of the Cultural Heritage of Guatemala. Guatemala, 1986, p. 87, and Guatemala, 1987, pp. 45-46.

10 Hurtado de Mendoza, Luis. *Manejo Integrado del Patrimonio Natural y Cultural para el Desarrollo de Guatemala. (Un aporte teórico y metodológico)*. Paper presented at the Workshop-Seminar on the Integrated Management of Natural and Cultural Heritage and Eco-development, Antigua Guatemala, December 1988. CONAMA. MS.n.p.

in daily activities that contribute to the economic development of the society or country.

Angel Cabezas and Patricio Tuleda¹¹ assure that the natural resource "includes all the historical and cultural heritage of a nation including not only its material evidence but also its customs, beliefs, artistic manifestations, folklore, etc. Of which the different sectors of a country participate and they add, "All this complex set of elements can be used fundamentally as an educational means of diffusion and social cohesion..."

Moreover, it is UNESCO that encourages member countries to protect, conserve and restore their cultural heritage, as well as recommends guiding bases, to elaborate their own laws, policies or theoretical positions on in this regard. Precisely, UNESCO recommended "To adopt a general policy aimed at attributing to the cultural and natural heritage a function in the collective life and to integrate the protection of this heritage in the programs of general planning."¹²

Hence, Guatemalans, aware of our abundant cultural wealth, are interested in awarding it all the value patrimonial that it means and, in the case particular of the author, motive of accused interest to propose the necessary elements of judgment for to protect them by means of the corresponding law, as well as that of proposing to declare "monuments national" to the works of art and tradition popular, deeply rooted in the creation by the collective memory, in the orality and in the traditional anonymity, as they are among other popular productions of this tenor, the dances traditional, their paraphernalia and their carriers active, without whom they would have already become extinct.

The fact that the intangible and subjective

values of culture and cultures according to UNESCO "cannot" be declared "national monuments" because they are not material entities susceptible of such denomination, this does not mean that they should not be declared as such "monuments". We have already seen how UNESCO itself recommends that member countries legislate in this respect within the framework of their own historical and cultural processes.

Regarding cultural products of great significance for the history of Guatemalans and, in the specific case of traditional dances, we all know that *El Rabinal Achí*, for example, is a monumental work whose text is genuinely pre-Hispanic and its representations keep, especially in the ritual, a secular tradition. although today there are some changes in their paraphernalic costumes. In this same sense, I have proposed for this honor other traditional dances of deep historical and socio-cultural roots, such as *El Palo Volador*, *El Venado*, *La Culebra*, *La Paach* (of corn), also the *De Toritos* and *Los Animalitos*, among others no less important, all in turn with certain changes interpolated through the colonial process. This qualifies them as distinctly regional and Guatemalan cultural products.

Given the historical importance that currently have acquired the movements indigenous regional political and socio-cultural, the mentioned traditional dances, in this specific line, constitute practically a national cultural patrimony and of the humanity, worthy of being raised to the category of "monuments" as a new figure and juridical meaning that also they must defend. Their originality, worldview particular and deep tradition, inherent in their rites and representations in the full sense of carriers of cultural identity, allow them according to I maintain.

At no time in the proposal, mentions that the sale and purchase of products from the *morerías* should be declared illegal because that would be totally contradictory to the traditional functions of the *morerías*. What is proposed is **to regulate under legal norms** the purchase and sale of traditional articles related

11 Cabezas, Ángel and Patricio Tuleda. *Los Recursos Culturales y la Protección de los yacimientos arqueológicos*. IV. Seminario Móvil Internacional sobre manejo de Áreas Silvestres. Guatemala-Belize-México. Nov.-Dec. 1987. San José, Costa Rica: CATIE. MS. 9 pp.

12 UNESCO. *El Hombre pertenece a la tierra*. International cooperation and environmental research. Unesco Programme on Man and the Biosphere. ORCYT Montevideo 1989. p. 82.

to the popular dances, because since the sixties, dance articles with historical time incorporated or accumulated have been escaping in this way, which very well, if they still existed in Guatemala, would have much to tell us about the historical past of the Guatemalans and their traditions. I am obviously referring to masks, costumes, musical instruments, paraphernalic props such as authentic swords, rattles and so-called “original” literary texts that have disappeared and are now found abroad. The *morerías* traditionally rent all these elements; however, when they are in the hands of the dancers, many times these, urged by economic survival needs, have sold them to foreigners or nationals who acquire them as souvenirs, “naif” articles or Folk curiosities that are ostentatiously displayed in private rooms inside and outside the country and in the best of cases in private or state museums. At no time would we be restricting the freedom to sell a handcrafted work, but somehow, and in this case, legally, the leakage of movable goods such as those mentioned above should be controlled, in benefit of the maintenance of authentic national heritages that provide cultural identity to Guatemalans. For this reason, the antique pieces have practically disappeared from the *morerías*, although some are still jealously guarded by their owners.

When the creation of an **economic fund** is proposed for the maintenance of the practices of traditional dances, it is based on the research carried out over 20 years in the interior of the country, and with the daily experience of the consequences of the economic inflation that today more than ever hits the country and its neediest inhabitants, popular sectors indigenous and mestizos, who find themselves at every moment with the impossibility of sustaining economically their dance practices, the that require high expenses, given the high rental costs that the *morerías* impose to the users throughout the country and the economic inflation that affects the brotherhoods and all equally.

With this economic fund administered by an *ad hoc* institution, the State (based on the corresponding scientific research) would

support and promote the dance performances, whose main owners or representatives, would be morally obliged to maintain their annual practice “as long as these are performed in accordance with their traditions and customs” as the proposal states. It is true that it is a duty that “the locals” have towards their customs and traditions, but it is also true that it is not possible to sustain them if they do not have the economic solvency to do so. Raising the social status of each one of them precisely corresponds to the social and economic development that the State must promote in society in general and especially in the most deprived sectors. But, has the State and its government ever achieved this? What real benefits has the State provided to artists of all genres, and especially to popular artists?

Only the previous scientific research will be able to provide us with the right knowledge, correct and adequate about what happens with the dances, their bearers and all the paraphernalia necessary in their traditional practice. So that will be the specialized scholars who will have the word to guide and advise in this sense to the authorities in charge of taking the respective decisions, and not the intellectuals amateurs who for their lack of knowledge systematized and logical, rather misunderstand the phenomena of popular culture and, in many and certain cases, take advantage of their badly grasped knowledge to carry out their creations, with all the unfair appropriation of which they are capable to show off their “artistic creations” to those that lately they have also given in calling “projections” pretending or, ignoring with it, the individual or collective authorship of the carriers of the phenomena of popular culture in the frame of a false conception of what pretends to be the “national culture” that is to say, the culture of all.

Thus, they take its elements to manage it with indiscriminate and interested whim in turn, as it happens, precisely, with the popular choreographies that, as we already know, belong to the historical and collective memory of the peoples that preserve and practice them in the persons of “their bearers.

The creation of a “*morería*” does not necessarily have to be “state” but with an initial fund that drives it. This would alleviate the sacrifices and the expenses that the bearers of the dances have to make to be able to execute them according to their own and traditional legacies. The *morería* would be administered by the bearers of that knowledge and would greatly benefit for example, the inhabitants of the central region of the country (who for now are forced for example to travel to Totonicapán or to Quiché to obtain the sets of costumes that have decided to rent) if it were for example in some place near the capital. Or well, why not support the recent *morerías* in this region such as the one in Sumpango or San Juan Sacatepéquez?

Although it is true that in Guatemala there exists the free expression of cults protected by the Constitution of the Republic, this has given rise to an uncontrollable systematic attack against of the phenomena of popular culture tending to its destruction and disappearance of the popular collective conscience; attacks coming both from the fundamentalist evangelical sects and from the charismatic Catholic ones. Five hundred years ago that the evangelizing mission of the Catholic Church raged against the cosmogonic and worldview beliefs of the original inhabitants of the American continent producing in consequence diverse religious syncretism that gave form to the popular Catholicism regional of the continent, nourished obviously, of the respective traditional beliefs of the peoples. But now, the North American Department of State¹³ has directly propitiated since the years of the Reagan-Bush administration the invasion of sects to the Latin American countries with disadvantaged development, to divide the settlers introducing new numbing religious beliefs, alienating and distracting of their reality concrete in the communities where little by little they have been inserted from much more before. Consequently, the popular traditions have been attacked for being

conceived as contrary to the evangelical postulates; of a Bible Catholic or evangelical, interpreted at the whim of these great monopolistic interests of the international capital. Then, if the State must protect all those phenomena cultural producers of identity and at the same time socially cohesive, is it not in the obligation to regulate and control the penetration intense of these sects? In other countries even. they have been expelled to protect traditional cultures and their own worldview.

If we live in a country whose inhabitants have difficulties in understanding and recognizing each other due to the diversity of cultures, making the appropriate scientific studies of the traditional dances, **it is feasible** to contribute to the construction of a new society in which its inhabitants participate and recognize themselves in the cultural phenomena of which they are producers. applying the knowledge generated by the investigations to the national educational system, without prostituting the traditional popular culture OR well, the traditional dances in the particularity and own contexts of their cosmovision. Nobody more than the *bearers* of traditional culture and the specialized social scientist are those who can, after the respective joint analysis, **apply** the knowledge generated in benefit of a childhood and youth that grow as until now, with total ignorance or indifference towards the phenomena of traditional popular culture, in this case dances, and therefore propitiating the social discrimination and cultural that Guatemalans still practice.

When amateur researchers have gone to the interior of the republic to observe the characteristics of the traditional choreographies of the dances, taking advantage of their observations to create their own choreographies and present them to the urban and erudite public or, abroad showing them as “what is ours”, “Guatemalan nationality” or “Guatemalan folklore”, then they have prostituted a tradition that in itself keeps its specificities and roots in the popular conscience and ancestral worldview, for the eagerness to stand out in the amorphous circle of the Guatemalan intellectuality with choreographies pretended to be their own and announced as such.

13 García-Ruiz, Jesús F. *Las sectas fundamentalistas en Guatemala. Cuadernos No. 3 Ciencia y Tecnología para Guatemala CITGUA*, year 2, april 1985.

The controversy

The protection of the dance heritage of Guatemala implies the necessary respect for the peoples and their bearers of that heritage cultural received through five centuries and more, through generative processes of constant aesthetic cultural production, of the dramatic popular in its artistic, social, economic and historical phenomena.

It should be considered as a contradiction to establish protective measures for the traditional dances itself, as such manifestations of the traditional Guatemalan popular culture, without taking into account its bearers and all those objects related to them with all of which conforms this certain national heritage.

Therefore, in order to establish parameters for an adequate protection of these concrete phenomena of our popular dramatic, it is necessary to begin dictating that the traditional dances Guatemalan constitute popular structures of traditional, linguistic, historical and sociocultural character, that respond to traditional canons of organization, ludic and cultural functions and of social cohesion. Interrelated with the brotherhoods, municipal and morerías, they refer their choreology and choreography to an oral text, to a specific costume and to the cult of a religious entity, by means of a dance manifestation that is currently fused with pre-Hispanic, Hispanic-colonial, Afro-American and contemporary cultural elements, whose result is at the same time artistic-popular, socially cohesive, producer of identity and at the same time contesting before the official instances of the dominant¹⁴ culture.

It is also necessary to establish that the policies for the protection of traditional dances should take into account all those aspects that have influenced the effects of accelerated transformation, deformation of their traditional elements, abuse and/or exploitation of these

values for the benefit of official and private institutions and the direct and veiled attacks they have suffered from foreign institutions of an evangelical¹⁵ religious order and also from the excessive and misguided exploitation of international tourism with respect to traditions in general.

As expressed by Carlos Guzmán Bóckler in 1975:¹⁶

“As a consequence of the process of colonization initiated by the Europeans from the XVI century and continued to date by the powers framed within the international capitalist market, both in Europe and in North America, the American autochthonous populations have been dispossessed economically; and, on the other hand, they have suffered incessant onslaughts in order to be bent in what concerns their historical and collective identity.”

In this sense, the diverse manifestations of traditional popular culture such as handicrafts, linguistics and orality, the social and religious activities, and among them traditional dances, now, more than ever, are in a process of deterioration, of extinction, or of transformation, which obeys a dynamic imposed in the last twenty years in Guatemala, as represented by the economic regime of land tenure, the massive agricultural labor recruitment in the coast, at the same time cheap, and seasonal in the Guatemalan highlands, a regime that tends to reproduce the capitalist forms of production that, in turn, greatly affect as forms of cultural domination transforming the sociocultural needs of the customs and traditions long rooted in the daily life of the productive forces in the city and in the countryside of our country.

15 Samandú, Luis. **Breve reseña histórica del protestantismo en Guatemala.** (Guatemala, Cuadernos de Investigación, DIGI-USAC, No.2-89) p.13 cuyo texto dice: “No son pocos los testimonios que señalan el singular papel jugado por algunas agrupaciones evangélicas, en las zonas rurales durante el apogeo de la violencia política, las cuales dotadas de un virulento fanatismo religioso, contribuían a disolver los lazos de solidaridad interna en las comunidades y favorecían la persecución de sus hermanos. Actitud ésta alimentada principalmente por el evangelismo neo-pentecostal, con su discurso apocalíptico y de definido sesgo ideológico”.

16 Guzmán Bóckler, Carlos. **Principios fundamentales para la protección del patrimonio cultural, lingüístico y folklórico de la América Central.** Ponencia ante el I Congreso de antropología y de la Defensa del Patrimonio Cultural de América Central, San José, Costa Rica, 1975, p.80.

14 García Escobar, Carlos René **Talleres, Trajes y Danzas Tradicionales de Guatemala. El caso de San Cristóbal Totonicapán.** (Guatemala: Edit. Univ.1987) pp. 93-99); **Panorama de las Danzas tradicionales de Guatemala** (Guatemala: La Tradición Popular, No.71); **Atlas Danzario de Guatemala** (Cefol-Digi-Edit. Cultura, 1996).

Since the traditional dances are an authentic reservoir of different cultural manifestations with historical-cultural roots in our process of formation as Guatemalan Nation and State as well as the crafts in them involved, the orality of their literary texts, the legend, the history of their contents, the music, the choreographies, the ritual and other popular institutions (brotherhoods and *morerías*), must be totally subject, them, their objects and their producers, to a Law of Protection on the part of the State that guarantees the authenticity of their constituent elements and that really protects the Copyright that belong to their leaders and performers as well as determines the necessary mechanisms for that the traditional dances and their bearers are in the administrative capacity (regime economic) to continue executing them, with what would be achieved not only their preservation but their continuity to the extent that as such authentic reservoirs of traditional culture, function within the framework of the own dynamics of the social life of the communities where they are produced, because a law in these terms would effectively help to protect a great part of the social cultural heritage of Guatemala.

Therefore the following instances and/or approaches are proposed to be taken into account in the formulation of the Law for the Protection of the Cultural Heritage of the Nation in which the Traditional Dances are by themselves and by the factors that constitute them, object of utmost relevance or importance given their connection with the cultural heritage in general.

On the protection and preservation of the Cultural Dance Heritage:

- ❖ Request that the inventory of the dance goods -movable and immovable- of Guatemala be declared a top priority including the different periods of its historical process such as pre-Hispanic, Hispanic-colonial, republican and contemporary (XX century) and their respective classification under the indispensable scientific theoretical requirements.
- ❖ To declare illegal the purchase, sale and escape of such goods – real and immovable – dances, whenever it is in usufruct of persons and entities foreigners of any country, or of persons and official and private entities of Guatemala.
- ❖ Given that there are dances of proven pre-Hispanic origin – although they have suffered alterations in the colonial and contemporary historical course such as *El Palo Volador*, *El Rabinal Achi*, *El Venado*, *La Culebra* and *El Maíz (La Paach)*, be declared as “National Monuments” and that in view of this an economic fund be created for their maintenance to be distributed among their Principals and performers, year after year, as long as they perform them in accordance with their traditions and customs.
- ❖ It is understood that the dance heritage and everything that constitutes it are cultural goods transmitted from generation to generation for what its bearers are the legitimate owners and possessors and authentic for which the State could possess them until proving the real nonexistence of its owners and the non-continuity of its practice.
- ❖ It is recommended to stimulate the study and the investigation of the traditional dances and all the manifestations with them related and to promote the creation of centers specialized in this matter of national and regional character.
- ❖ It is recommended the creation of a *morería* that can supply at economic and feasible prices of payment, the costumes, the masks and everything related to all the dances and whose performers go to the current *morerías* to obtain their costumes and masks in rent. This *Morería* would be located in the Capital or in its surroundings so that it would be easier for the bearers to approach it and obtain their products without so much economic difficulty. The *Morería* could be an institution with managing partners and administrators, as well as with salaried personnel – costume tailors and masqueraders–; it should

- operate as a private or state company, providing the labor benefits that the Law and the Labor Code require.
- ❖ It should be noted here as well as included in the Law of Cultural Heritage Dance of the Country, the need to control and evaluate the activities constantly carried out by evangelical and non-evangelical religious sects, whose practices and teachings, taking advantage of the freedom of cults and/or taking advantage of it, undermine and deeply detrimentally affect the culture popular traditional dance and everything related to it, causing the accelerated transformation and/or extinction of this national cultural heritage.
 - ❖ Since the formation of national and regional consciousness among Guatemalans is essential to safeguard the dance cultural heritage, the inclusion of traditional dances in the current educational system based on specialized studies is necessary. Teaching their anthropological and historical value is important for recognizing the true national history. It is also important to use modern communication media—radio, video, television, cinema, written press—and organize academic activities such as congresses, seminars, workshops, and meetings. These should help form the historical consciousness and cultural identity tied to the true values of the nation. Additionally, the creation of national archives, files, and museums specifically controlled by research and study centers on Guatemala's traditional dances should be regulated according to this Law for the Protection of the Nation's Cultural Heritage.
 - ❖ It is recommended to create a **Council for the Protection of the Nation's Cultural Heritage** that includes a specific entity dedicated to the protection of Traditional Dances and all their heritage. This council should have the legal, institutional, and human mechanisms to ensure compliance with the aforementioned law.
 - ❖ The government is urged to intensify surveillance and, when necessary, proceed to cancel the operations of any foreign institution that, allegedly under the guise of cultural or religious activities and/or studies, is found to serve programs of alienation, control, and penetration of values that estrange the authentic cultural values of the Nation.

Annex 1

International Organizations and Legislation Addressing the Protection of Folklore *Seminar-Workshop on Copyright, 1989.*

Among international organizations concerned with folklore protection, UNESCO stands out. In June 1987, UNESCO convened a “**Special Committee of Technicians and Jurists on the Safeguarding of Folklore.**”

The committee concluded that it was urgent to “establish a general international committee related to the safeguarding of folklore.”

The document produced by this committee contains very important aspects that must be considered.

Regarding the **Identification of Folklore**, it points out:

“Folklore, as intellectual property, must be safeguarded by and for the group (family, professional, national, regional, religious, ethnic, etc.) whose identity it expresses.”¹⁷

Regarding the **Conservation of Folklore**, it indicates: “Conservation refers to the documentation of folkloric traditions, and its objective, in case of non-use or development of such traditions, is that researchers and tradition bearers can access data that allow them to understand the process of evolution and

¹⁷ Conclusiones del Comité Especial de Técnicos y Juristas sobre la Salvaguardia del Folklore. Organización de las Naciones Unidas para la Educación, la Ciencia y la Cultura, París, Francia 1987. p. 2.

modification of the tradition. Since folklore is alive and evolutionary in nature, it does not always allow direct protection; folklore fixed in form should be effectively protected. To that end, it would be advisable to:

- a) Establish a national archival service where collected folklore can be properly stored and made accessible for controlled use;
- b) Establish a central national archive with service purposes (central cataloging, dissemination of information about folkloric materials, and standards for work related to folklore including safeguarding aspects);
- c) Create museums or folklore sections in existing museums where folklore can be exhibited;
- d) Standardize archival methods;
- e) Provide training to collectors, archivists, documentalists, and other specialists in folklore conservation, covering everything from physical conservation to analytical work;
- f) Provide means for making backup and working copies of all folkloric materials, and copies for regional institutions of materials collected in their respective areas.¹⁸

When the aforementioned UNESCO document refers to the safeguarding of folklore, it states that this concerns “the protection of folkloric traditions, with the understanding that the people have a right to their own culture, and that their adherence to this culture tends to weaken under the influence of industrialized culture spread by mass media. Therefore, it is necessary to take measures to guarantee the status and economic support of folkloric traditions both within the communities where they originated and beyond them. To that end, it would be advisable to:

- a) Develop and introduce in both formal and informal educational programs the teaching and study of folklore in an appropriate manner, considering not only rural or village cultures but also those created in urban areas by various social, professional groups, institutions, etc., to foster a better understanding of cultural diversity and different worldviews, especially in the case

of those not participating in the dominant culture;

- b) Guarantee the right of access of various ethnic groups and other social or national communities to their own folklore, supporting their work in areas such as documentation, archives, research, etc., as well as in the practice of traditions that remain alive;
- c) Establish a National Folklore Council on an interdisciplinary basis and another similar coordinating body representing various interested groups;
- d) Support individuals and institutions that possess folkloric items, for example by compiling lists of collectors and informants.¹⁹

Regarding the dissemination of folklore, it suggests:

“Raising public awareness about the importance of folklore as an element of cultural identity. To enable awareness of the value of folklore and the need for its conservation, it is essential to widely disseminate its elements. However, care must be taken to avoid caricature and distortion in such dissemination, to safeguard the integrity of the traditions. To that end, it would be advisable to:

- a) Promote the organization of national, regional, and international events such as fairs, festivals, films, exhibitions, seminars, symposia, workshops, training courses, congresses, etc., and support the dissemination and publication of their materials, documents, and other results;
- b) Encourage greater dissemination of folkloric material on national and regional television and radio and other mass media, for example through donations, creation of jobs for folklorists in those sectors, correct archiving of folkloric materials collected by mass media, and the creation of folklore departments in broadcasting organizations;
- c) Stimulate regions, municipalities, associations, and other groups involved with folklore to create full-time folklorist jobs aimed at planning and coordinating folkloric activities in the region.

18 Loc. Cit, p.2.

19 Loc. Cit, p.3.

- d) Support existing units and create new ones for the production of educational video films based on recent practical work and other materials, and encourage their use in schools, folklore museums, and at national and international folklore festivals and exhibitions;
- e) Ensure the availability of adequate information about folklore through documentation centers, libraries, museums, archives, as well as special bulletins and periodic publications on folklore.
- f) Facilitate meetings and exchanges among individuals, groups, and institutions interested in folklore at both national and international levels, taking into account bilateral cultural agreements.”²⁰

Concerning the **Use of Folklore**, the document points out that folklore, as an expression of intellectual creativity, deserves protection akin to that granted to intellectual productions. Such protection is indispensable to develop, perpetuate, and widely disseminate this heritage both domestically and internationally, without harming legitimate interests.

Besides aspects of “Intellectual Property” protection for folklore expressions, there are other categories of rights already protected, which should continue to be so in folklore documentation centers and archive services. To this end, it would be advisable to:

- a) Regarding “intellectual property”, draw the attention of competent authorities to the important work of UNESCO and WIPO on intellectual property, while recognizing that these works relate only to one aspect of folklore protection, and emphasizing the urgency of dividing activities into various spheres to safeguard folklore.
- b) Regarding other involved rights:
 - i. Protect the informant in their role as tradition bearer.
 - ii. Ensure collected materials are kept in archives in good condition and in an organized manner.

- iii. Take necessary measures to protect collected materials from intentional or abusive misuse.
- iv. Recognize archive services' rights to control the use of collected materials²¹.

Finally, UNESCO technicians and jurists refer to international cooperation, stating the need to intensify cooperation and cultural exchanges between member states in folklore matters.

- a) Cooperate with associations, institutions, and international and regional organizations involved with folklore.
- b) Cooperate in knowledge, dissemination, and protection of folklore, especially through the exchange of information of all kinds and scientific and technical publications, specialist training, granting travel scholarships, sending scientific and technical personnel and materials, organizing expert meetings, study courses, and working groups on specific topics, especially the classification and cataloging of folklore data and expressions.
- c) Urge UNESCO to consult with governmental, intergovernmental, and non-governmental organizations responsible for certain folklore aspects, to create under its auspices a global folklore council or committee to stimulate and coordinate international cooperation, gather international information on folklore protection, and make this information available to national folklore councils and competent authorities in each country.
- d) Cooperate closely to ensure internationally that different rights holders (communities or natural or legal persons) enjoy pecuniary rights, moral rights, and related rights arising from research, creation, composition, performance, recording, and/or dissemination of folklore.

20 *Loc. Cit.*, p.3.

21 *Loc. Cit.*, p.4.

On its part, the Organization of American States (OAS) has shown concern for the protection of one aspect of folklore: popular arts and crafts. For this purpose, in 1973 it tasked a group of experts with drafting the **Inter-American Charter of Popular Art and Crafts**.

Taking into consideration two guidelines presented in that charter, several Latin American countries have since passed legislation in this regard, such as Mexico, Colombia, Bolivia, Ecuador, Peru, Chile, and Brazil.

In Guatemala, the National Commission of Arts, Crafts, and Popular Industries was established in 1975, composed of representatives from various institutions, including the University of San Carlos of Guatemala, through its Center for Folkloric Studies.

This commission proposed in 1975 the creation of a **National Institute of Arts, Crafts, and Popular Industries**, whose purpose would be to protect such expressions and their bearers. As of the date of this report (1989), the project has not yet been approved.

The Political Constitution of the Republic of Guatemala, in Section Two, Chapter II, regarding Culture, includes in Article 58 the “Right of individuals and communities to their cultural identity according to their values and customs.”²²

Article 61 refers to the protection of Cultural Heritage, and Article 62 specifically addresses the protection of art, folklore, and traditional crafts. It states that “National artistic expression, popular art, folklore, and native crafts and industries shall be subject to special protection by the State in order to preserve their authenticity...”²³

In international legislation on Copyright, no specific reference was found concerning the protection of folklore.

However, it is considered that the **International Convention for the Protection of Performers, Producers of Phonograms**

and Broadcasting Organizations, held in Rome in 1961, in Article 3, Section a), protects artists, performers, musicians, dancers, etc. This may be applicable to the bearers of some aspects of folklore.

The **Berne Convention for the protection of literary and artistic works**, in Article 2, when referring to protected works, mentions “literary and artistic works,” which could be applied to spiritual, social, and material aspects of folklore. Likewise, Articles 7, 8, and 15 of the same convention refer to anonymous works. Since one of the characteristics of folklore is its anonymous nature, this protection could apply.

Annex 2

Proposal from the Center for Folkloric Studies to Protect Folklore and Its Bearers *Presented at the Copyright Seminar-Workshop, 1989.*

1. That the State declare traditional cultures as part of Guatemala’s Cultural Heritage.
2. That the State declare the bearers of traditional assets as “Living Heritage of the Nation” and guarantee respect for their right to be bearers of the tradition, as legitimate transmitters of their ethnic group’s collective ideas. Likewise, the State must guarantee their transmission to future generations within the family, community, ethnic, and national spheres of the traditional asset to avoid adulteration, artificial transformations, or extinction.
3. The State of Guatemala, through its legal system, must establish norms to protect traditional popular culture and its bearers according to their specific and unique characteristics. The State should promote the signing of international agreements and promote the exchange and protection of folklore and its study through bilateral or multilateral treaties.
4. The National Congress should create a legal figure that protects not only the bearers of tradition but also the cultural heritage of an ethnic group, trying to harmonize the collective

²² Political Constitution of the Republic of Guatemala., 1985. *Guatemala. Editorial Piedra Santa p.*

²²

²³ *IBID. p. 23.*

nature of folklore with the individual nature of its bearer, aiming to encourage tradition and its development.

5. Create a national commission for the protection of folklore that would oversee nationally that the authenticity of folkloric manifestations is respected in their essence, and that projections of traditions and folklore maintain a fundamental minimum of the projected phenomenon. The commission would also ensure that no folkloric phenomenon is used without prior prospective research proving the veracity and authenticity of the traditional manifestations, and would oversee the proper use of folklore by foreign institutions and researchers.

- a. The commission would be subject to particular regulations. For the formation of this regulation, it is proposed to include a lawyer, a folklore specialist, and a copyright expert.
- b. The commission would basically be composed of the following members:
 1. A delegate from the Center for Folkloric Studies of the University of San Carlos of Guatemala.
 2. A delegate from the Ministry of Culture and Sports.
 3. A delegate specialized in Copyright.
 4. Various delegates from different ethnic groups of Guatemala, basically considering the four major groups, plus the *Garífuna* from the North and Ladinos from the East.
6. Seek means so that folklore bearers themselves have access to oral tradition archives such as craft technique banks and design in state, private, and autonomous entities dedicated to research.

7. Create the National Center for Guatemalan Craft Design. With the creation of this archive of Guatemalan textile designs, not only would an authentic sample of Guatemala's material folklore designs be achieved, but also their natural transformations and contemporary applications.

In joint work with the commission proposed in point 5, not only could authentic

Guatemalan folklore designs be preserved, but policies for development and self-development could be created for applications that allow folklore to adapt to contemporary culture while preserving its specificities.

Annex 3

Folklore, Human Rights, and Cultural Rights Copyright

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At present, there is widespread concern over the protection of folklore, especially in countries like those in Latin America, where traditions, customs, and intellectual creations have been transmitted across generations. Unfortunately, due to economic difficulties, these cultural expressions are often undervalued or lack proper protection and promotion. As a result, folklore faces a serious threat, exacerbated by the so-called cultural invasion through the works exported by countries with powerful and well-established infrastructures. The problem is intensified when we consider that these imported works often do not reflect our ideology, idiosyncrasy, or way of thinking and being. In light of this situation, the protection of folklore in Latin America becomes a matter of vital importance.

1. Background

1.1 The United Nations Educational, Scientific and Cultural Organization (UNESCO) has been holding a series of meetings starting from a proposal dated April 24, 1973, made by the Ministry of Foreign Affairs and Worship of the Government of Bolivia. This proposal aimed to issue a protocol to the Universal Copyright Convention, regulating the “*conservation, promotion, and dissemination of folklore*”.

That same year (1973), the Intergovernmental Committee on Copyright, established under Article 11 of the Universal Copyright Convention and serviced by UNESCO, discussed the matter in its year-end meeting. As a representative of the Mexican delegation (observer status) to that committee, I had the opportunity to support Bolivia's proposal, advocating for a more in-depth study of a subject that, while little understood by many of those present, was considered important by some and trivial by others. It was decided to conduct a preliminary study, to be jointly reviewed by both the Intergovernmental Committee on Copyright and the Executive Committee of the Berne Union, under Article 23 of the Berne Convention for the Protection of Literary and Artistic Works, during their 1975 meeting. These committees noted that the issue was essentially cultural and extended beyond the scope of traditional copyright law, and requested UNESCO to prepare an exhaustive study of all aspects involved in folklore protection. In 1977, a meeting of experts was held in Tunisia to review that preliminary study prepared by UNESCO.

1.2 Also in 1977, the Intergovernmental Committee on Copyright and the Executive Committee of the Berne Union reexamined the topic and decided that UNESCO should continue studying it using an interdisciplinary and global approach, and that the World Intellectual Property Organization (WIPO) should be involved in examining copyright-related aspects.

1.3 In 1981, a survey was conducted among all UNESCO member states, based on a global study of the folklore issue. Then in 1982, another Committee of Experts met with the goal of *“analyzing various aspects of folklore from an interdisciplinary and global perspective, aiming to define measures to ensure its survival, development, authenticity, and protection from distortion. That committee adopted a series of recommendations on the definition, identification, conservation, and analysis of folklore, as well as its preservation, appreciation, revitalization, and use.*

(UNESCO Document CC/MD/4, April 1, 1988).

In January 1985, a new committee was convened to conduct a study on the scope and potential of a general international instrument for the safeguarding of folklore.

1.4 The General Conference of UNESCO did not deem it appropriate to issue a statement at that stage regarding intellectual creators. Human beings cannot have free access to culture if culture does not exist, or if there is no dynamic of creation and social participation.

1.5 What is the normative core that can establish real balance? These two human rights, access to culture and the protection of creators, do not contradict each other. That core is Copyright Law, which acts as the backbone of Cultural Law or Cultural Rights, and has the capacity to establish that balance. In our opinion, copyright law is the legal mechanism that, on the one hand, grants moral and economic rights to authors, and on the other hand, defines how and under what conditions society's members can use those works. The issue is not an easy one to resolve, and each country must adopt the necessary measures to achieve that balance. This is especially true in the case of folklore, where different situations and conditions exist in Guatemala, Mexico, Bolivia, Colombia, Peru, Brazil, and other Latin American countries. The preservation and protection of folklore is essential, not only to prevent abuse and distortion, but also because it constitutes an inexhaustible source of inspiration and creative wealth for the authors of our countries. We must pay more attention to issues related to folklore, especially in order to define it, identify it, preserve it, safeguard it, disseminate it, and guide its use appropriately.

Conclusions

1. We believe that through copyright law, it is possible to establish a balance between the human rights set forth in Article 27 of the Universal Declaration of Human Rights, which refers to both the right of every person to freely participate in cultural life and the right of creators to the protection of their moral and material interests. In relation to the protection of folklore, we think that only those literary, artistic, and scientific works included within the concept of folklore (as defined in section 2.2 of this document) can be protected by copyright law. These are works that are already part of what is called the public domain. As for the other manifestations of folklore, they must be protected through other legal provisions within the domain of cultural law.
2. It may be useful to reference Mexican law concerning public domain. The Federal Copyright Law of 1963 establishes several provisions for the protection of works. On one hand, it states that moral rights (Article 27, Sections I and II) are considered inseparable from the author, and are perpetual, inalienable, imprescriptible, and non-renounceable. These rights are: *“The right to be recognized as the author,”* and *“The right to oppose any distortion, mutilation, or modification of the work carried out without authorization, as well as any action that diminishes the work or harms the honor, prestige, or reputation of the author.”*

Article 22 of the same law provides that if the holder of moral rights dies without transferring their exercise, the Ministry of Public Education shall become the holder of those rights. Therefore, the Ministry may oppose the distortion or mutilation of public domain works and thus ensure the preservation of literary, artistic, and scientific works included within folklore. Likewise, Article 81 of the law establishes that in Mexico, the public domain

generates income. Two percent (2%) of the total income generated from the exploitation of public domain works must be given to the Ministry of Public Education, which is responsible for using it to support institutions that benefit authors, such as cooperatives, mutual societies, and similar entities (Article 118, Section III). This means that the Ministry not only has the power to prevent distortion of public domain works but also the power to collect income (2%) from their exploitation and use it to support the creative sector. In this way, copyright law provides a legal framework for the protection, promotion, and dissemination of folklore, while also encouraging the creation of new works inspired by it.

3. Finally, it must be said that national laws are not enough to protect folklore. It is also necessary to establish international agreements or standards to prevent the abuse and unauthorized use of folklore by other countries, regardless of their economic strength. Without such measures, it will be impossible to effectively protect folklore or benefit the communities from which it originates.

One clear example of the lack of international regulations to protect folklore is the Mexican folk song *“La Bamba.”* Today, thanks to modern communication technologies, the song has spread worldwide—but its copyright holders are two individuals of British origin. This shows the urgent need to resolve the legal challenges surrounding the protection of folklore.

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