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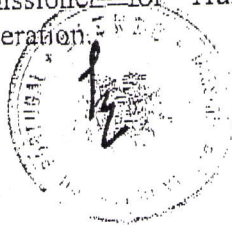
PERMANENT MISSION OF PORTUGAL
GENEVA

NSC

No. 513
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The Permanent Mission of Portugal to the United Nations Office and other International Organisations presents its compliments to the Office of the United Nations High Commissioner for Human Rights and referring to note GVA 0793, dated 7 October 2010, has the honour to enclose herewith the response by the Portuguese authorities to the questionnaire on the recognition, access and protection of cultural heritage.

The Permanent Mission of Portugal avails itself of this opportunity to renew to the Office of the United Nations High Commissioner for Human Rights the assurances of its highest consideration.



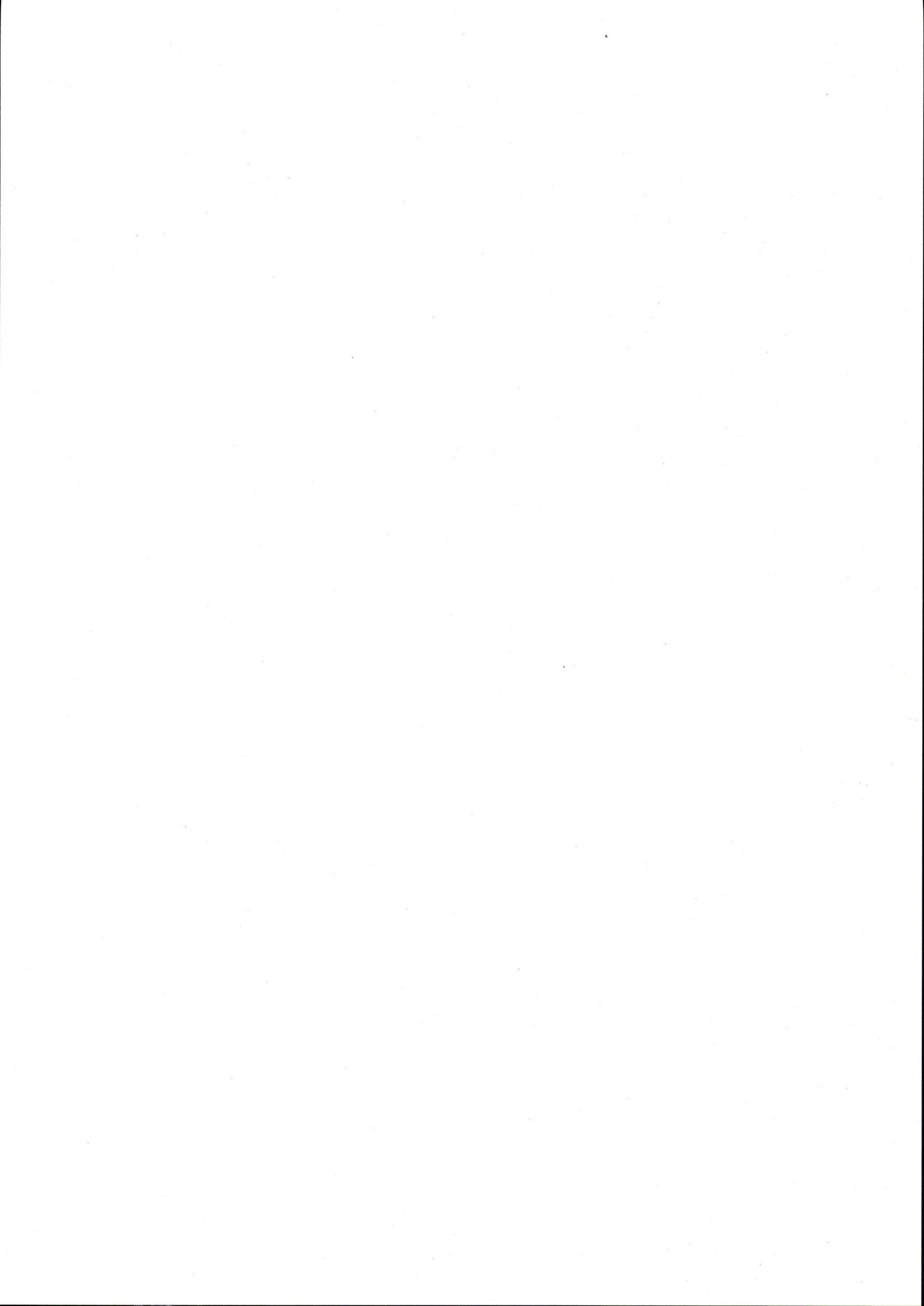
Geneva, 17 December 2010

Office of the High Commissioner for
Human Rights
To the attention of the Independent Expert
in the field of cultural rights
Fax : 022 917 01 23
Geneva

OHCHR REGISTRY

20 DEC. 2010

Recipients :.....S.P.D.....
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The response of the Portuguese Ministry of Culture is given by two specific organisms: the Institute for Museums and Conservation (IMC) and the Institute for Managing the Architectural and Archaeological Heritage (IGESPAR).

Institute for Museums and Conservation-TANGIBLE (MOVABLE) AND INTANGIBLE HERITAGE

Created in 2007 the Institute for Museums and Conservation (IMC) pursues the task of a former body of the Ministry of Culture with a long history in the management of Portuguese Heritage: the Portuguese Institute for Museums (1991/2007). IMC currently administers 34 National Museums and Palaces, covering art, archaeology and ethnographic collections of outstanding relevance for Portuguese heritage. IMC mission is dedicated to the safeguard of cultural heritage, namely the development and implementation of the national cultural policy in the area of movable (tangible) and intangible heritage, namely on what regards museums collections, conservation, restoration and legally protected cultural property.

Institute for Managing the Architectural and Archaeological Heritage (IGESPAR, IP), the public organism responsible for architectural and archaeological cultural heritage.

According to the mission and Organic Law of the Portuguese Institute for Managing the Architectural and Archaeological Heritage (IGESPAR, IP), the responses to this questionnaire are based on its attributions, specified in the legislation (Framework Law, Law n.º 107/2001, of September 8th, Statute Law 96/2007 of March 29th and Law 376/2007 of March 30th). The Framework Law considers as "cultural heritage" all assets which, being legacies with civilizational value and bearing relevant cultural interest, should be the object of special protection or enhancement, namely the language, both value and basis of national sovereignty.

All historical, paleontological, archaeological, architectural, linguistic, documental, artistic, ethnographical, scientific, social, industrial or technological testimonies of memory, antiquity, authenticity, originality, rarity, singularity or exemplarity are also considered as cultural heritage assets. Finally, all intangible assets constituting structural parcels of Portuguese identity and collective memory integrate the concept of cultural heritage (Law n.º 107/2001 of 8th September, Article 2º).

Regarding the enlisting of immovable properties of cultural value, they can be categorized as Monuments, Groups of Buildings or Sites, according to the definitions set out in international conventions, and will be listed as assets of National, Public or Municipal interest. Immovable property listed as of National interest, whether a Monument, a Group of Buildings or a Site, is designated as a "National Monument".

An immovable asset of Public Interest, notwithstanding the recognition of its national value, is entitled to a level of protection proportionate to its category, whereas immovable assets of Municipal Interest are those that have significant cultural meaning for a certain municipality.

The identification of endangered heritage is attained in the course of enlisting, inventory and periodical assessment of monuments under tutelage of IGESPAR, I.P. The application of **cautionary measures, as stipulated in the Law, is dependent on neither previous enlisting nor inventory of cultural assets (Law n.º 107/2001 of 8th September, Article 15º).**

1 - THE RECOGNITION OF CULTURAL HERITAGE

MOVABLE AND INTANGIBLE CULTURAL HERITAGE

As the central agency for the management of movable and intangible cultural heritage in Portugal, IMC includes within its internal organization, a Department for Movable Heritage (DPM) and a Department for Intangible Heritage (DPI), dedicated to the safeguarding of those types heritage, mainly through its study documentation and public dissemination.



It is its task to promote and improve the national-wide inventory, as well as to produce and publish inventory standards and guidelines for the management of information within the database that supports that inventory.

MOVABLE CULTURAL HERITAGE

Any person, collective, public or private singular can request the classification of a cultural good, presenting for the effect, a written request and an image of the object to be protected.

In the case it has a considered museological significance it is the duty of the Institute for Museums and Conservation to instruct a classification process that is legally initiated with the notification to the interested parts, of the opening of the referred process.

With sight to the final decision, the service instructor will proceed to the hearing of the interested parties, in the terms of the law.

The time span that occurs since notification of the involved parts in what concerns the opening of procedures for administrative classification of a cultural good, up to the final decision cannot not exceed one year, and up to then the cultural good is considered as in classification pending.

In case that the classification is granted, the IMC will evaluate in which category of classification the cultural good will be fit. The final decision of classification is then placed to the appreciation of the Minister of Culture and, in case that it is granted, it will be officially published in the "Diário da República".

To all cultural heritage undergoing a classification process restrictions in all ways identical to those of already classified objects, are applied, namely, the interdiction of expedition or exportation, unless in bonanza cases that have been granted authorization from the Minister of the Culture or the competent cultural agency.

Thus, to the proprietors of classified objects or of objects undergoing classification the following obligations are attached:

- To take care of, to conserve and to protect the good, for way to guarantee its integrity and to prevent its loss, destruction or deterioration;
- To communicate to the competent organism of the central, regional or local administration, or to the police authority, danger situations that can endanger the cultural object;
- To communicate to the competent organism of the central, regional or local administration, or to the police authority about the alienation, constitution of a different property situation so that the safe can exert the right of the refusal

INTANGIBLE CULTURAL HERITAGE

A national-wide inventory of Portuguese intangible cultural heritage (ICH) will be an online and free-access database, in order to meet UNESCO's demands regarding the widest possible participation of communities, groups and individuals in the safeguarding of its ICH and the making of ICH inventories.

Besides the role it will play in the comprehensive identification of ICH in Portugal, in particular with a view to its safeguarding, the national inventory will be the indispensable instrument for any future proposals for inscription of a given element of ICH in UNESCO's "Representative List of the Intangible Cultural Heritage of Humanity" as well as in the "List of Intangible Cultural Heritage in Need of Urgent Safeguarding", as established by articles 16 and 17 of the *Convention for the Safeguarding of the Intangible Cultural Heritage*.



NATIONAL INVENTORY OF INTANGIBLE CULTURAL HERITAGE

This inventory, a free-access online database meets UNESCO's demands regarding the widest possible participation of communities, groups and individuals in the safeguarding of ICH. The National Inventory is an inclusive platform that can be used not only by IMC but also by all kinds of institutions involved in the safeguarding of ICH in Portugal, either of documentation, scientific, educational and administrative scope. Cooperative work between all kinds of these institutions is considered by IMC as a major key factor for the success of this inventory to become, on one hand, a main awareness-raising instrument for the general public and to ensure recognition, respect for, and enhancement of ICH in Portuguese society.

Whereas many institutions involved in the study and documentation of ICH have been working separately by now, it is hoped that in data can be shared among them and made available to the respective bearers of ICH. This applies to all kinds of institutions, either of administrative scope – municipalities, regional and national cultural administration – or of scientific, educational and cultural scope, such as universities, centers for research and museums, which play a major role in documenting intangible heritage and in fact own the most important visual and sound archives on Portuguese ICH.

MOVABLE AND INTANGIBLE CULTURAL HERITAGE

A SOFTWARE for the management of information regarding movable cultural heritage, MATRIZ, will become, after updating, an instrument for promoting an integrated approach for tangible and intangible heritage among cultural institutions in Portugal, as defined by both UNESCO's operational directives and by Portuguese Law for Cultural Heritage.

In what concerns intangible heritage the national inventory is intended to be an inclusive platform to be used by all kinds of documentation, scientific, educational and administrative institutions involved in the safeguarding of ICH. Cooperative work is thus a key factor for the success of this inventory to become, on one hand, a main awareness-raising instrument for the general public and to ensure recognition, respect for, and enhancement of ICH in Portuguese society and, on the other hand, to become a main instrument for conceiving and implementing specific programs for the study, documentation and management of a given element of intangible heritage. Whereas many institutions involved in the study and documentation of ICH work separately by now, it is hoped that in the near future data can be shared among them and made available to the respective bearers of intangible heritage. This applies to all kinds of institutions, either of administrative scope – municipalities, regional and national cultural administration – or of scientific, educational and cultural reach, such as universities, research organizations and museums, which play a major role in documenting intangible heritage and in fact own the most important visual and sound archives of ICH in Portugal.

In respect to historical, paleontological, archaeological, architectonical, linguistic, documental, artistic, ethnographical, scientific, social, industrial or technological testimonies of memory, antiquity, authenticity, originality, rarity, singularity or exemplarity, they are also considered as cultural heritage assets. All intangible assets constituting structural parcels of Portuguese identity and collective memory integrate the concept of cultural heritage (Law nº 107/2001 of 8th September, Article 2º).

Regarding the enlisting of immovable properties of cultural value, they can be categorized as Monuments, Groups of Buildings or Sites, according to the definitions set out in international conventions, and will be listed as assets of National, Public or Municipal interest. Immovable property listed as of National Interest, whether a Monument, a Group of Buildings or a Site, is designated as a "National Monument". An immovable asset of Public Interest, notwithstanding the recognition of its national value, is entitled to a level of protection proportionate to its category, whereas



immovable assets of Municipal Interest are those that have significant cultural meaning to a certain municipality (Art. 15th).

The identification of endangered heritage is attained in the course of enlisting, inventory and periodical assessment of monuments under tutelage of IGESPAR, I.P. The application of *cautionary measures, as stipulated in the Law, is dependent on neither previous enlisting nor inventory of cultural assets.*

II - THE LEGAL AND POLICY FRAMEWORK FOR THE PROTECTION OF CULTURAL HERITAGE

Architectural and archaeological cultural heritage

The safeguard of cultural heritage is set out in Law 107/2001, which establishes the basis for policies and the strategy for protection and enhancement of cultural heritage. The Statute Law 215/2006 sets down the Ministry of Culture's Organic Law. To IGESPAR I.P. is assigned the continuance of heritage policies in Portugal, by means of the legal competencies ascribed in its organic law: Statute Law 96/2007 of 29th March. Law 376/2007 defines the Statutes/Organization of IGESPAR IP. Regulatory Statute 34/2007 defines the Statutes/Organization of Regional Directorates for Culture. Statute Law 138/2009 establishes the creation of the Heritage Safeguard Fund, and Statute Law 139/2009 establishes the **Juridical Regime** to the Safeguard of Intangible Heritage. Statute Law 309/2009 establishes the enlisting procedures of immovable property of cultural value, as well as the protection zone and detailed urban plan regulation. The nuclear structure of Regional Directorates for Culture, and the competencies of its respective organic units, is set out in Law n° 373/2007 of 30th March. Statute Law n° 131/2002 of 11th May establishes the creation and management of Archaeological Parks.

Statute Law n°164/97 of 24th June establishes the Protection of **Underwater Cultural Heritage, and ratifies the Convention** on the Protection of the **Underwater Cultural Heritage approved in the 31st session of UNESCO's General Conference.**

Regarding urban regulations, the legislation in force is Statute Law 177/2001, 1st Series A, n° 129, of 4th June 2001, by which the Ministry of Environment has established the juridical regime of urbanization and construction. In the field of international cooperation, IGESPAR IP has signed cooperation protocols with ICOMOS e UNESCO, and develops projects with ICOMOS/Portugal and UNESCO/Portugal.

IGESPAR IP also develops cooperation projects related to architectural and archaeological heritage with the African Countries of Portuguese Official Language (PALOPs), namely in the field of training activities. Architectural and archaeological heritage safeguard in Portugal obeys the principles proclaimed in all main European Council documents.

Regarding cultural heritage safeguard policies, namely the inventory procedures, and besides the IGESPAR IP and the IHRU - **Institute** of Housing and Urban Rehabilitation inventories (the Information System and the SIPA, respectively) there are hundreds of city councils, public and private institutions and several other entities with responsibilities in the cultural field developing partial inventories, both thematic or of local or regional scope.

Restrictions on access to cultural heritage may occur whenever they is the need to protect its physical integrity, or to guarantee the safety of the public, as derives from the



MOVABLE AND INTANGIBLE CULTURAL HERITAGE

LEGAL INSTRUMENTS

In recent years a set of important measures have been developed in Portugal aiming at safeguarding Cultural Heritage, both at the legislative and at the institutional level. The main applicable legislation related to the classification of cultural heritage is the **Law N.º 107/2001, of 8 of September** that establishes a basis for the policy and the regimen for protection and valuation of cultural heritage

MOVABLE CULTURAL HERITAGE

In accordance with the above referred law (Law N.º 107/2001, of 8 of September), currently going through a regulation phase, the legal protection of the cultural goods is ranged between the "classification" and the "listing", corresponding the first to the higher level of protection and the latter to the minimum form of protection. The classification register admits three categories that hierarchically reflect its patrimonial value. Thus, cultural goods can be classified as of **national interest** (receiving the assignment as being a "national treasure"), of **public interest** and in third place as of **municipal interest**.

The classification of a cultural object, as of national interest, only applies if the carrying object is considered of relevant interest for the Portuguese cultural environment, and because of that deserves to be object of a special protection. The application of this legal act aims at safeguarding the fragility of specific cultural goods, that for its originality, authenticity, rarity represent material certifications of our collective memory.

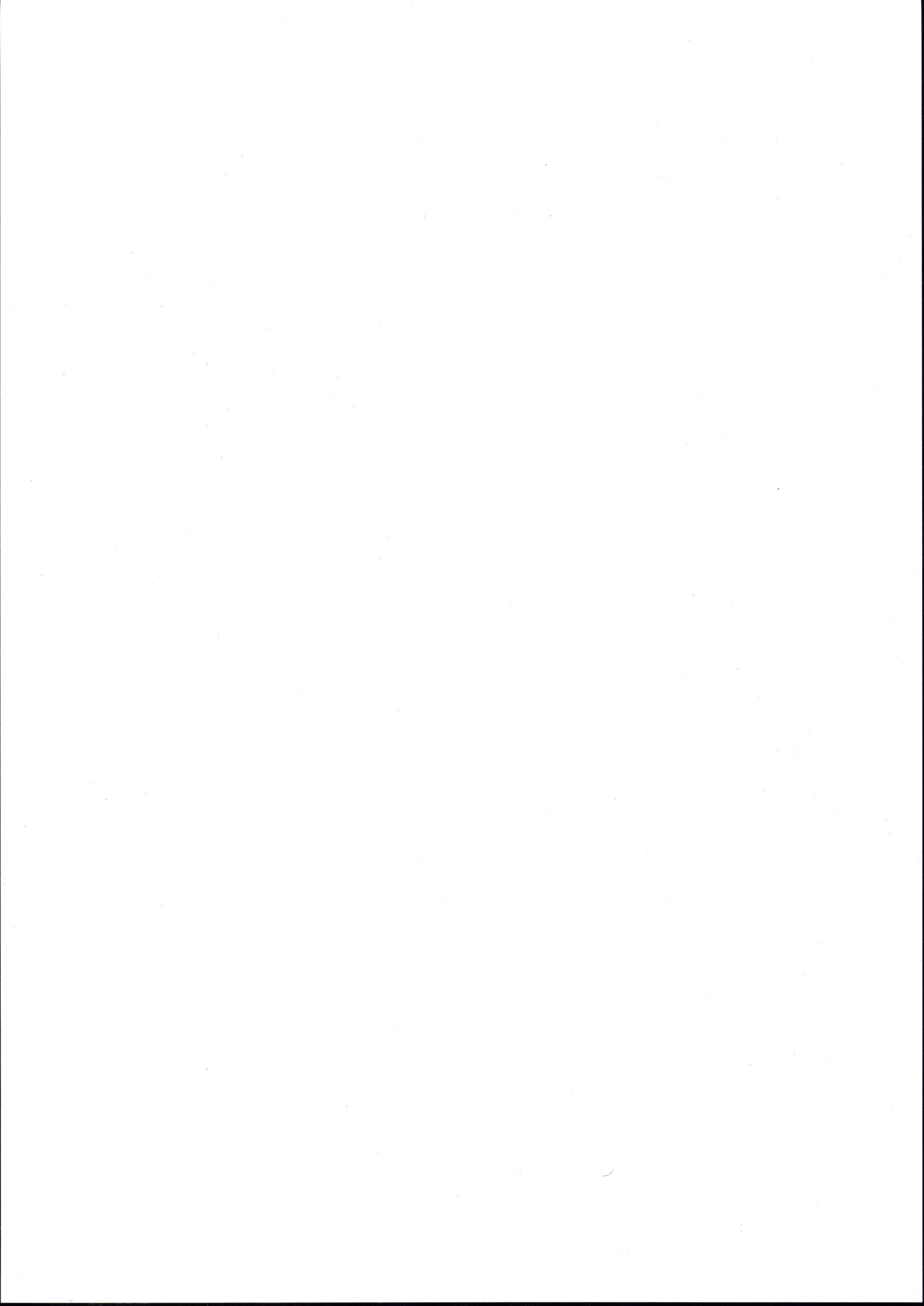
Cultural objects classified as of national interest (national treasures) cannot be sold abroad and may only leave Portuguese territory temporarily for very specific cultural and/or scientific purpose, and have always to be granted with a special authorization given by Minister of the Culture. In the same way other classified objects of public and/or municipal interest may only be forwarded or even exported with authorization of the cultural administration.

INTANGIBLE CULTURAL HERITAGE, MORE LEGAL INSTRUMENTS:

In what concerns Intangible Cultural Heritage (ICH), the first measures came upon with the in the entry into force of a new Heritage Law in 2001, which establishes a specific paradigm for the safeguarding of ICH within the general measures dedicated to the protection of Portuguese Cultural Heritage.

In 2009 and 2010 two legal texts have entered into force as the main legislative measures for the safeguarding ICH in Portugal. Both texts (*Decree nr. 139/2009, of June 15th*, and *Ordinance nr. 196/2010, of April 9th*) develop the legislative scope previously defined on ICH, either by the *Portuguese Heritage Law (2001)* and by the *Convention for the Safeguarding of Intangible Cultural Heritage*, which was ratified by Portugal in 2008. One of the main issues defined by those legislative measures is the framework for the *National Inventory for Intangible Cultural Heritage*. Those legal texts have been produced with the collaboration of IMC.

This paradigm for ICH can be characterized as innovative, for it considers every element of ICH as being as important as all others, no matter different its social, historical or geographical scope may be, thus not subjecting an element of intangible heritage to the hierarchical-based system of legal protection applied to movable and intangible heritage according to the same Law.



This legal framework for safeguarding ICH can also be characterized as innovative for it is clearly based on an integrated approach to tangible and intangible heritage. Further developments of Portuguese Heritage Law regarding the safeguarding of ICH are currently in the making and expected to operate in 2010, both as an expression of the ratification of UNESCO's *Convention for the Safeguarding of the Intangible Cultural Heritage* (acting in Portugal since August 2008), and also as an expression of the recent work developed by the Institute for Museums and Conservation in order to establish the National Inventory of ICH.

Portuguese Heritage Law, including its future developments, is nonetheless complemented by a wide array of other types of legislative instruments which have entered into force in Portugal since the late 1990's. Among these must be pointed out the ones that protect linguistic diversity and recognize to the "Mirandese" language, spoken only in a small area in the north-east Portugal, the same legal status as the Portuguese (1999), traditional gastronomy (2001) and traditional botanical knowledge (2002). Other legislative measures are above all of economical scope and must be understood as instruments for social development, such as the ones that foster traditional craftsmanship units and their products (2001, 2002) and industrial property (2008). The last is in fact an instrument for protecting intellectual property regarding some traditional-based economic activities and their local or regional origin and significance. From a financial point of view it must also be referred that a set of regional-based and EU-funded initiatives presently supports and is expected to be an indispensable contribution for the drawing up of programs for safeguarding ICH throughout all regions in Portugal until 2012.

At the institutional level, the main measures developed in Portugal largely derived from the restructuring of the Administration of cultural heritage in 2007. Both within the Ministry of Culture new agencies with competencies in ICH were created. At the central level, the Institute for Museums and Conservation (IMC), to which the mission of defining and implementing the national cultural policy for the safeguarding of ICH is assigned.

At the regional level, a set of five bodies in charge of cultural administration that must support the documentation of ICH according to the directives and guidelines produced by IMC as the central agency for this area. The regional bodies play an important role given their close relation to municipalities, which act as close representatives of communities, groups and individuals in the Portuguese administrative context

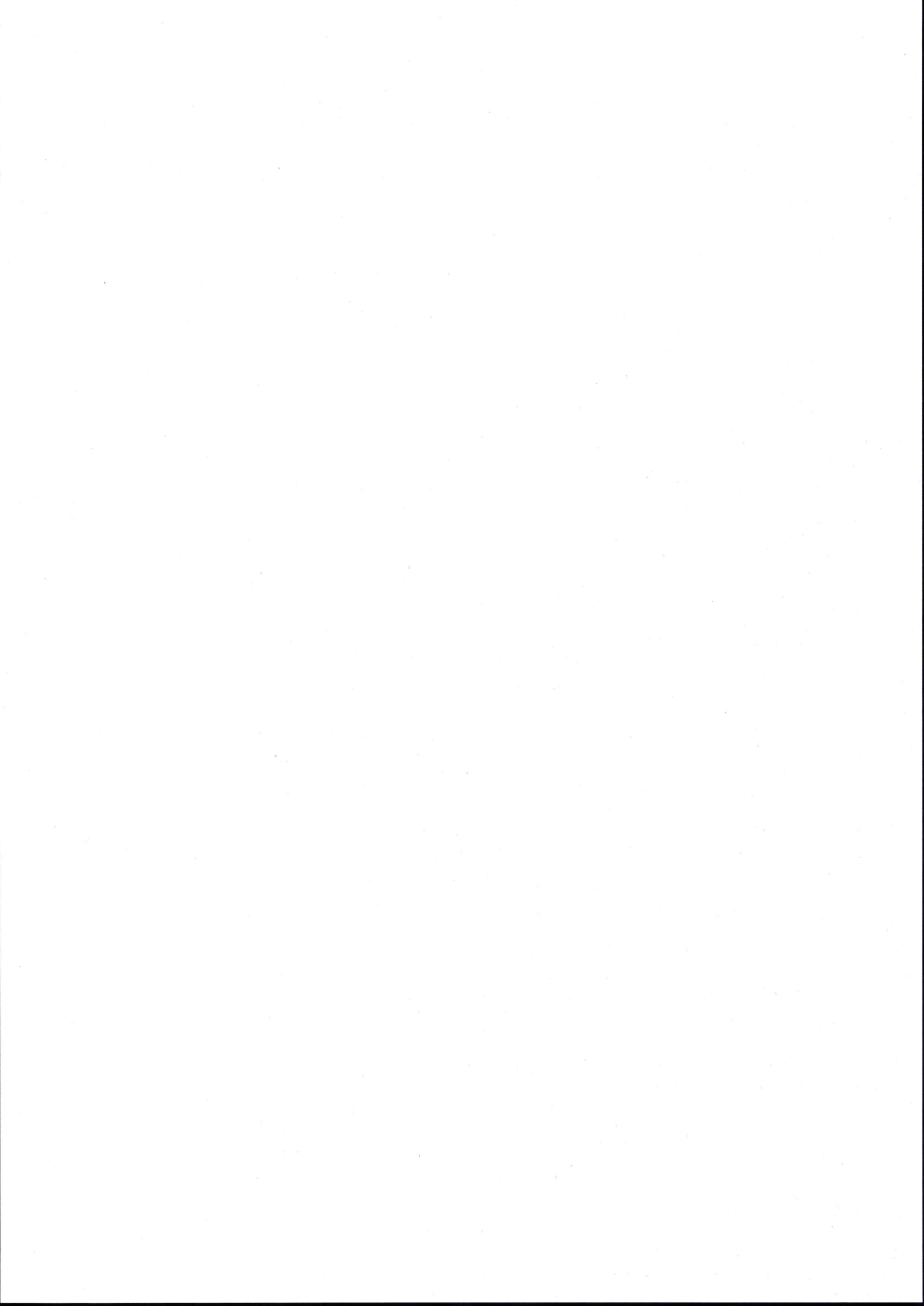
III - ACCESS TO CULTURAL HERITAGE

Architectural and archaeological cultural heritage

As consigned by law, all citizens are entitled to the fruition of the values and assets composing cultural heritage, as a means to personal development through cultural realization. In the same way, third parties fruition of cultural assets whose physical support constitutes private property or is under any other legal right will depend on the means of promotion and access settled between cultural heritage administration and property owners.

The public fruition of cultural assets should be harmonized with their functional, safety, preservation and conservational demands. The State also respects, as a mean of cultural fruition, the liturgical, devotional, catechetical and educational use of cultural assets ascribed to religious use (Law 107/2001, 7th, 1st, 2nd, 3rd and 4th Articles).

Under the indirect administration of the State, IGESPAR, I.P. is the public institute that carries on the attributions of the Ministry of Culture, in the scope of the architectural and archaeological cultural heritage, and under superintendence and tutelage of the minister (Law Statute n° 96/2007 of 29th March, 1st Article).



Being a central organism with jurisdiction in all national territory, its mission is the management, safeguard, conservation and enhancement of assets that, due to their value and interest, integrate Portugal's listed architectural and archaeological cultural heritage.

The IGESPAR I.P. proposes the listing and inventory of assets of national and public interest, establishes special protection zones, and elaborates plans, programs and projects, in conjunction with Regional Directorates for Culture. It assures, with those very services, the management and enhancement of architectural and archaeological cultural heritage under its tutelage, and promotes, executes and supervises all necessary works. It also promotes the systematic inventory of cultural heritage assets, deliberates on public or private plans, projects, works and interventions under the terms of the law, and fulfils the determinations of the Framework Law for the Policy and Regime of Protection and Enhancement of Cultural Heritage, and complementary legislation (Statute Law nº 96/2007 of 29th March, 2nd and 3rd Articles).

MOVABLE AND INTANGIBLE CULTURAL HERITAGE

MATRIZNET is the internet interface of MATRIZ - Inventory and Collections Management, the program conceived and developed by the former Portuguese Institute of Museums (IPM) enables the computerization of museum inventories, the digitization of museum collections, as well as the management of the circulation of museum pieces. Presenting, since 2002, the inventory of movable cultural heritage pertaining to IPM museums, MATRIZNET provides on line the information contained in the inventory files of museum objects, as well as information concerning bibliography and exhibitions. It also enables transversal searches in museum collections and pieces of a certain historical age, artistic period or authorship. MATRIZNET innovated the national museum setting, affording a professional tool for museum professionals, students and researchers, in addition to bringing movable cultural heritage closer to the general public.

INTANGIBLE CULTURAL HERITAGE

Along with the drawing-up of the national inventory, other activities have been developed by the Institute for Museums and Conservation for raising awareness on the importance of safeguarding ICH. An editorial line dedicated to the importance of the film in documenting ICH was started by the end of 2008. This Film Collection is entitled "Archives of the Intangible" and its first title is dedicated to the mid-winter festivals in north-east Portugal, traditionally characterized by the presence of masked men.

In 2009 the Institute for Museums and Conservation has drawn-up a specific training program for the study, documentation and safeguarding of ICH, focused on professionals that work within the Portuguese Network of Museums, presently comprised by 125 museums.

RAISING PUBLIC AWARENESS

Since it was created, IMC has endeavored to raise public awareness regarding the importance of safeguarding ICH, namely in the framework of UNESCO's 2003 *Convention*. The major of these actions as a set of six conferences on "Museums and ICH", which has been made from February to November 2008 and that was attended by more than 600 participants. This set of conferences revealed of utmost importance for IMC, given the fact that it constituted a global assessment of the Portuguese global framework for the setting-up of the national strategy for the safeguarding of ICH, namely the *National Inventory*. The proceedings of these conferences were published by IMC in 2009 (see "Publications").

NATIONAL INQUIRY ON PORTUGUESE ICH

In the year 2010 IMC started a comprehensive enquiry destined to produce a directory on the main organizations and their respective archives, repertoires and ongoing projects for



the safeguarding of ICH in Portugal. This directory will be accessible online, and is expected to become an important information resource for all institutions that document intangible heritage in Portugal, in order to update previously made studies on a given element of ICH and to support the drawing-up of appropriate programs and measures for its management in its actual social context.

As its main objectives, the inquiry intends: a) to raise public awareness on the importance of safeguarding ICH, namely among scientific, administrative and cultural organizations; b) to identify programs and plans of action, either of regional or local scope, recently carried out or in the making for the safeguarding of ICH; c) to identify the existence of archives on ICH (either in film, photography, sound or text support), for which preservation measures, including digitization, must be adopted.

The inquiry is as an essential tool for in-depth knowledge of the sector, thus allowing the definition of priorities for action, particularly on what regards the drawing up of safeguarding plans, either of local, regional or thematic scope.

Upon completion of the treatment of the inquiry data, the results of the inquiry will be published by IMC. A directory of the more relevant organizations for safeguarding ICH in Portugal already was produced as the first output of this inquiry, and is available on IMC's Portal on ICH (www.matrizpcj.imc-ip.pt).

IV - THE WAY FORWARD

Architectural and archaeological cultural heritage

The recent release of IGESPAR, IP and its dependent services new websites, and the creation of specific websites for the Regional Directorates for Culture, presenting a large group of functionalities for the promotion and safeguard of architectural and archaeological heritage, allowed for a better access of the public to heritage.

www.igespar.pt

www.culturanoorte.pt

www.culturacentro.pt

www.drcivl.pt

www.culturaalentejo.pt

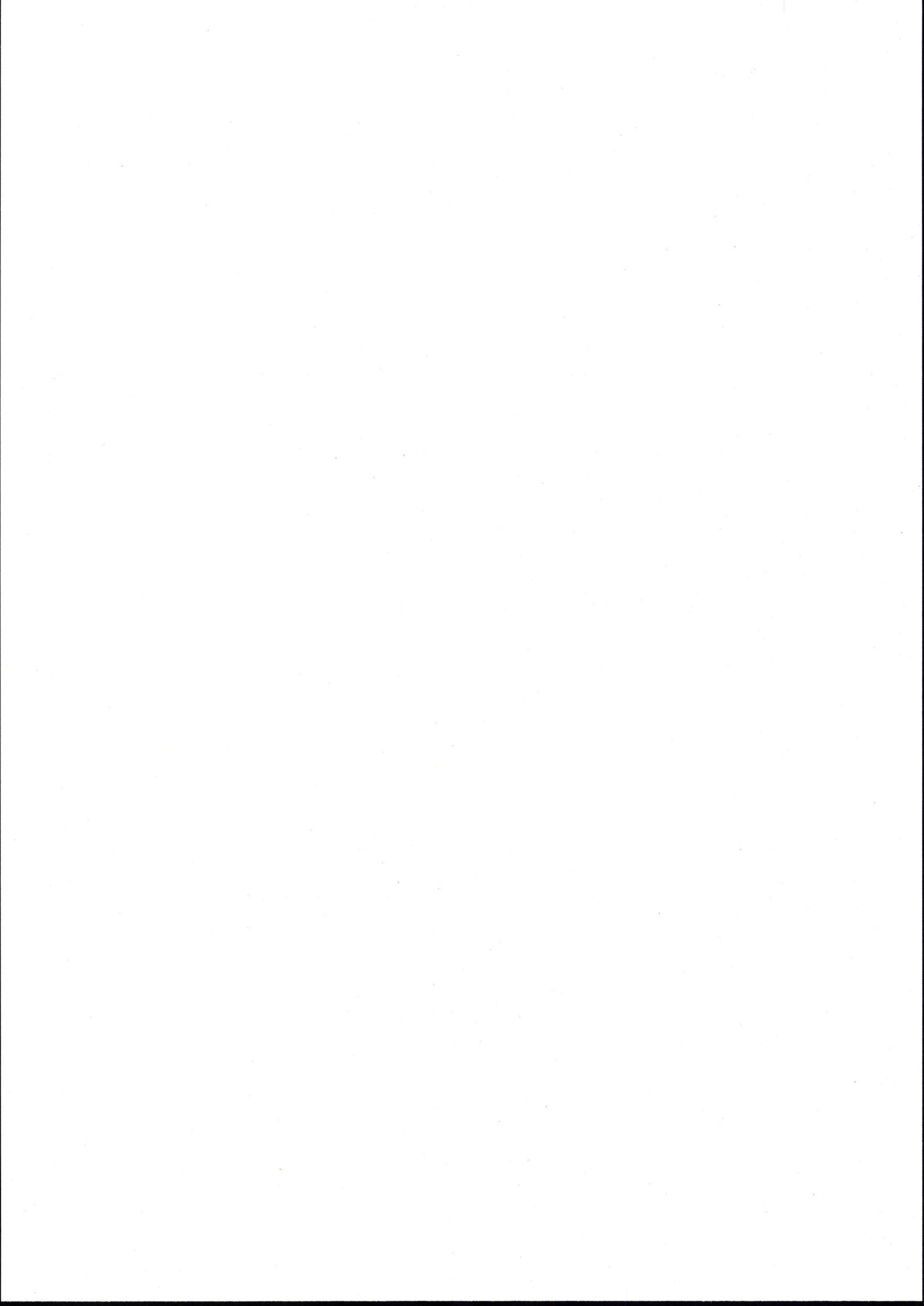
www.culturaal.pt

www.conventocristo.pt

MOVABLE AND INTANGIBLE CULTURAL HERITAGE

The Institute for Museum and Conservation will keep on with its effort for raising awareness on the role of museums in the safeguarding of ICH, namely from the perspective of an integrated approach to tangible and intangible heritage

The way forward will stress the importance of technologies and internet on raising public awareness to the matter of cultural heritage.



Therefore and within this conviction the latest version of this document, MATRIZNET, above mentioned, fosters an integrated approach to tangible and intangible heritage, according to UNESCO's 2003 Convention. Among its many features, MATRIZ 3.0 (updated version) allows the documentation of ICH expressions, movable and intangible heritage, cultural and natural spaces. It also allows the management of photo, film, sound, drawing, cartography, text and oral archives, as well as the management of planning programs for the safeguarding of cultural and natural heritage.

Also considered of vital importance is institutional cooperation as IMC is deeply involved in fostering close cooperation with other agencies of special relevance for the safeguarding cultural heritage. Besides having started to co-operate with institutions in Spain and in Latin American countries, IMC promotes national-wide coordination with universities, centers for research, museums, and most of all with the Ministry of Culture's set of regional bodies, which play an important role in safeguarding cultural heritage in Portugal.

