

Original article

## The governance of cultural heritage: a view from the Cuban legal system

### La gobernanza del patrimonio cultural: una visión desde el orden legal cubano

### A governança do patrimônio cultural: uma visão da ordem jurídica cubana

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#### ABSTRACT

The legal system for the protection of cultural heritage establishes the defense mechanisms and guarantees, the functions, the system and the space in which national and local authorities can act in favor of economic growth. The research carried out has not exhausted the analysis of the multiple linkages and formulations of governance in the field of legal protection of cultural heritage, which is why the realization of this article is attractive. Its purpose is to propose the improvement of the legal framework for the protection of cultural heritage from the approach of governance, starting from identifying its foundations based on the elements of the legal protection of cultural heritage and the linkages of the legal framework for the protection of cultural heritage and governance. Based on these determinations, the rules that make up the current Cuban legal framework in this area were examined. For this purpose, the methods of analysis-synthesis, the systematization of foreign experiences related to governance in the dynamics of legal protection of cultural heritage and the exegesis of the rules contained in the General Law for the Protection of Cultural Heritage and Natural Heritage, law number 155 of 2022, were used. From its development, the foundations of the legal protection of cultural heritage and its governance, as well as an initial diagnosis of the inadequacies of the Cuban legal framework to the detriment of the conservation, transmission, management, enhancement and governance of heritage assets were identified.



**Keywords:** law; local development; governance; participation; cultural heritage.

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## RESUMEN

El ordenamiento jurídico de protección del patrimonio cultural establece los mecanismos de defensa y garantías, las funciones, sistema y el espacio en que las autoridades nacionales y locales pueden actuar en favor del crecimiento económico. Las investigaciones realizadas no han agotado el análisis de las múltiples vinculaciones y formulaciones de la gobernanza en el ámbito de la protección legal del patrimonio cultural, por lo que la realización de este artículo resulta atractiva. Su propósito es proponer el perfeccionamiento del marco legal de protección del patrimonio cultural desde el enfoque de la gobernanza, a partir de identificar sus fundamentos con base en los elementos de la protección jurídica del patrimonio cultural y las vinculaciones del marco legal de protección del patrimonio cultural y la gobernanza. Con base a estas determinaciones, se examinaron, por último, las reglas que conforman el marco legal cubano vigente en esta materia. Para ello, se utilizaron los métodos de análisis-síntesis, la sistematización de experiencias foráneas relacionadas con la gobernanza en las dinámicas de protección legal del patrimonio cultural y la exégesis de las normas contenidas en la Ley General de Protección al Patrimonio Cultural y al Patrimonio Natural, la ley número 155 de 2022. De su desarrollo, se identificaron los fundamentos de la protección jurídica del patrimonio cultural y su gobernanza y un diagnóstico inicial de las insuficiencias del marco legal cubano en detrimento de la conservación, transmisión, gestión, puesta en valor y gobernanza de los bienes patrimoniales.

**Palabras claves:** derecho; desarrollo local; gobernanza; participación; patrimonio cultural.

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## RESUMO

O sistema jurídico de proteção do patrimônio cultural estabelece os mecanismos de defesa e garantias, as funções, o sistema e o espaço em que as autoridades nacionais e locais podem atuar em prol do crescimento econômico. A pesquisa não esgotou a análise dos múltiplos vínculos e formulações de governança no campo da proteção legal do patrimônio cultural, razão pela qual este artigo é atraente. Seu objetivo é propor o aprimoramento do marco legal para a proteção do patrimônio cultural a partir da abordagem da governança, identificando seus fundamentos com base

nos elementos da proteção legal do patrimônio cultural e nos vínculos entre o marco legal para a proteção do patrimônio cultural e a governança. Com base nessas determinações, foram finalmente examinadas as normas que compõem o atual marco legal cubano nessa área. Para isso, foram utilizados os métodos de análise-síntese, a sistematização de experiências estrangeiras relacionadas à governança na dinâmica da proteção legal do patrimônio cultural e a exegese das normas contidas na Lei Geral de Proteção do Patrimônio Cultural e do Patrimônio Natural, lei número 155 de 2022. A partir de seu desenvolvimento, foram identificados os fundamentos da proteção jurídica do patrimônio cultural e sua governança, bem como um diagnóstico inicial das inadequações do marco jurídico cubano em detrimento da conservação, transmissão, gestão, valorização e governança dos bens patrimoniais.

**Palavras-chave:** direito; desenvolvimento local; governança; participação; patrimônio cultural.

## INTRODUCTION

Local development is a process of economic growth and structural changes that improves the quality of life of the population (González Cruz, 2022). Its dimensions have been unveiled and substantiated through scientific research, it would like to cite the works of Cárdenas (2002); Argüello et al. (2004); Chauca Malásquez (2010); Ortiz Bosch and Alejandro Jiménez (2020). For the purposes of this paper, three dimensions of this process are assumed, according to Vázquez Barquero (1988), Ochoa Alvarez and Gómez Monge (2014), Cruz Nieto and Frías Figueroa (2014) and González Cruz (2022): economic, socio-cultural and political-administrative. In the socio-cultural dimension, cultural heritage is an important element to promote development, from education, recreation and leisure of the population and, in particular, from the tourism industry.

In the political-administrative dimension, the public policies approved in the territorial instances are relevant in propitiating the creation of the necessary conditions to experience social progress and establish the mechanisms that protect the activities and results achieved. To this end, the Law, in its function of ordering social life, provides the defense mechanisms and guarantees so that social progress can be effectively verified. Likewise, it establishes the functions, system and space in which national and local authorities can act in favor of economic growth. Therefore, the analysis of the impact of the legal framework on social development is essential.

In particular, the legal system for the protection of cultural heritage is made up of the set of legal statements containing values, principles, definitions, rules and institutions of public law relating to the protection of cultural heritage in a given spatial and temporal scope. This legal framework regulates the powers, obligations, duties, mechanisms and instruments that enable its identification and recognition, the access and enjoyment of heritage assets, their material preservation and the values that entail their safeguarding and enhancement, in favor of present and future generations.

A broad definition of cultural heritage has been chosen, comprising assets of artistic, historical, traditional and archaeological value, in short, tangible and intangible cultural heritage, including the categories of cultural landscape, industrial heritage, underwater heritage and itineraries.

Cultural heritage has been analyzed from different sciences, which attribute different meanings, interpretations and theories to it: historical, architectural, sociological, psychological, geographical, ecological, biological, geological and art history. However, considering that the research carried out is not completely exhausted was the idea boosted this research, especially when it is corroborated, through the literature review, that its study, from the legal perspective and linked to governance, is insufficient and attractive. Cultural heritage law has been examined mainly from the perspective of international law (Drazewska, 2015; Macmillan, 2018; Perloff-Giles, 2011). These works ignore the role of local authorities, social actors, communities and cultural groups involved in its creation and transmission and also do not study the mechanisms that promote its revaluation, safeguarding and its links with governance.

The bibliographic inquiry carried out shows a reduced number of articles, essays and researches regarding the content and scope of the legal protection of cultural heritage that deepen in terms of evolution and evaluation of the legal system. They come from studies associated with heritage buildings, monuments, urban centers and actions carried out by Historians and/or Urban Conservators (Barreto Argilagos, 2015; Bello Caballero et al., 2018; Castro Premier, 2020; Levrant, 2015).

Likewise, in the homeland, accountability reports related to cultural heritage have been drafted for international organizations and agencies<sup>1</sup>. These reports do not address the aspects of the Cuban

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<sup>1</sup> Such as UN, Joint Inspection Unit: 1982; UN, Independent Expert in the field of cultural rights: 2010; ICCROM, ICOMOS, IUCN, The Advisory Body "Our Common Dignity Initiative" on Rights-based approaches in World Heritage: Balance and perspectives: 2016.

legal system that should be improved or updated. These documents present the fundamental problems presented by Cuban heritage assets and the challenges facing the agents responsible for their preservation and transmission<sup>2</sup>.

In the current Cuban context, the State's priority is the protection, conservation and sustainable use of heritage. In this effort, legal science is called upon to contribute to transcend the negative situations that affect social development and to improve the management of heritage resources and values from the legal and institutional framework. The Bases of the National Economic and Social Development Plan until 2030, in its strategic axis dedicated to human development, equity and social justice, objectives 20 and 21, propose to reach effective levels of participation of the population in all orders of economic, political and social life, as well as in the mechanisms of evaluation, control, feedback and adjustment of the process of social transformation.

Cuba's revolutionary legal and regulatory background that has governed the protection of cultural heritage consisted mainly of Laws 1 and 2 of 1977, aimed at movable and immovable property, and Law 106 of 2009, on the National Museum System. These regulations with the rank of law limited the actions of decision makers, officials, legal operators and the population in general, in order to achieve the protection of cultural heritage. Added to this is the need to incorporate provisions that would offer a treatment to underwater heritage manifestations -of which Cuba is the depositary of a considerable potential of assets that need to be protected-, the immaterial ones -of which it has some with international recognition by UNESCO<sup>3</sup>-, the expression of the sanctioning power of the

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<sup>2</sup> Among others: the introduction of new dynamics and constructive typologies in the development of historic cities and urban centers; the intense economic crisis generated by the fall of the Socialist Bloc which, together with the intensification of the embargo measures imposed by the United States, caused a decrease in investments and opportunities for development and cultural exchange, and the increase in the deterioration or substitution of elements of the urban landscape and national heritage assets; the insufficient development of the local economy that generates a lack of experience in participatory processes and scarce articulation of instruments for the management of the territory's resources and heritage assets; insufficient development of the local economy that generates a lack of experience in participative processes and scarce articulation of instruments for the management of the resources and heritage assets of the territory; the successive dispositions in the internal and foreign policy of the country, that promote the trade of real estate, services and the appearance of small private companies, that can generate processes of mercantilization of patrimonial values, altering the integrity and identity of the assets that conform the national and local patrimony.

<sup>3</sup> The French Tumba (2008); The Cuban Rumba, a festive mix of dance and music and all the inherent cultural practices (2016); The Cuban Punto (2017); The Parrandas of the central region of Cuba (2018); The knowledge of the masters of the light rum (2022).

Administration in this matter, as well as updating the principles, actors and mechanisms of protection in the light of the international instruments of which Cuba is a signatory.

This background, in union with the 2019 constitutional mandates contained in Articles 13 h), 32 I) and k) and 90 k) of the 2019 Cuban Constitution, regarding the state responsibility to protect Cuba's natural, historical and cultural heritage; the foundations of educational, scientific and cultural policy: defending identity, safeguarding patrimonial wealth and protecting Cuba's notable places and properties, and the duty of Cuban citizens to protect their cultural heritage, motivated a new General Law for the Protection of Cultural Heritage and Natural Heritage to be proposed and approved in the National Assembly<sup>4</sup>.

From all of the above, the theoretical interest of the object under study can be deduced due to the legal problems it raises, a complexity that is increased by the multidisciplinary analysis that distinguishes the subject, since its study and understanding go beyond the limits of Law, resulting in the application of concepts and categories of political science and other disciplines.

On the other hand, governance is assumed in this work as a category of political order, which alludes to a new mode of management of public affairs, conducive to social progress, facilitates the application of the legal order and allows the resolution of conflicts that the orientation of the legal norm has not foreseen, but through the processes of negotiation and alternative dispute resolution.

In order to avoid problems of competition, ambiguities, overlapping mechanisms, processes and structures that damage or detract from the meaning of legal protection, it is vital to establish the contributions of each discipline and identify the linkages, strengths and elements that can be beneficial through their harmonization to preserve cultural heritage and achieve higher levels of social growth.

That is why the purpose of this paper is to propose the improvement of the legal framework for the protection of cultural heritage from the approach of governance, by identifying its foundations based on the elements of the legal protection of cultural heritage and the links between the legal framework

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<sup>4</sup> Agreement IX-140 by the National Assembly of the People's Power of the Republic of Cuba, Official Gazette of the Republic of Cuba Ordinary 58, dated June 8, 2022.

for the protection of cultural heritage and governance. Based on these determinations, the rules that make up the current Cuban legal framework in this area are finally examined.

It is aware that the assessments referred here do not exhaust the analysis of the multiple linkages and formulations of governance in the field of cultural heritage protection since this article offers a general look at the subject and does not delve into each of the legal elements linked to governance. However, important results from its development can be seen, focused on the identification of the foundations based on the elements of the legal protection of cultural heritage and its governance, as well as an initial diagnosis of the inadequacies of the Cuban legal framework to the detriment of the conservation, transmission, management, enhancement and governance of heritage assets.

## **MATERIALS AND METHODS**

For the purposes of the objective outlined, the method of analysis-synthesis of the referenced works and others that indirectly deal with the subject has been used. This made it possible to know the characteristics and classification of the theoretical models of governance and revealed the system of relations, the subjects, public-social structures and their scope or content.

The method of systematization of foreign experiences related to governance in the dynamics of legal protection of cultural heritage was also used. This made it possible to distinguish the system of intra- and inter-systemic interconnections, the instruments and tools that enable their effectiveness and the determining elements that the legal framework must regulate in order to promote governance.

The review of the legal rules for the protection of Cuban cultural heritage provided information on the state of the current legal framework and the dimensioning of the categories and instruments that regulate, related to governance, detecting opportunities for improvement and offering proposals for its improvement. To this end, the General Law for the Protection of Cultural Heritage and Natural Heritage No. 155 of 2022 was analyzed. It has been developed using a methodology based on hermeneutics, exegesis and deduction. First, the legal statements were studied in order to understand the system of relations established by the Cuban norm for the protection of cultural heritage with the rest of the legal system, especially with the constitutional mandates, as well as its interconnection with the current Cuban historical and social context.

Through exegesis, the intention of the legislator with respect to the governance model to be established by the legal statements contained in the framework of legal protection of cultural heritage

was understood. To this end, it was taken into account that: every word has its value; every omission is intentional; the words have been understood in their natural sense, except for those definitions with precise technical content that appear in the norm and that, when there are obscure, imprecise or incomplete terms, the historical element, the statements of the preparatory works, preliminary drafts and normative projects, the corresponding parliamentary discussions and the rules of equity and logic are taken into account.

## RESULTS AND DISCUSSION

### Foundations of the legal protection of cultural heritage

The legal protection of cultural heritage is the result of the confluence of historical, theoretical-doctrinal and normative conditioning and approaches to the protection of heritage assets.

The extra-legal criteria derived from architecture and fine arts linked to the values they represent and contain have an impact on their conception: the emergence of theoretical postulates on the conservation of properties containing remarkable artistic elements, fundamentally based on two theoretical pillars: Restoration theory<sup>5</sup> and scientific restoration<sup>6</sup>; the postulates enunciated by Alois Riegl<sup>7</sup> at the beginning of the 20th century and those of architect Louis Cloquet<sup>8</sup> on the values of

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<sup>5</sup> It defends restoration as a lesser evil or sad necessity. It is restored in the search for the artistic origins of the building, even if it never had all the elements of style, converting the restoration into reconstruction by using construction techniques of a particular style, creating the false historical. It introduces the restoration in style, giving rise to a *revival*. Ruskin's theory of conservation rather than restoration, because when the latter is done "a step of history is destroyed", giving birth to theories related to ruins and conservation with varied approaches.

<sup>6</sup> It reconciles the previous theories: ruin is avoidable by means of certain technical procedures. Condemns restoration because it is always false. It advocates for a minimum exceptional restoration action by consolidation, the new actions must always be differentiated and recognizable. It establishes the requirements for restoration, emphasizes the documentary detail of the restorative action, the materials and techniques to follow, as well as the publicity in the restored set.

<sup>7</sup> Riegl recognizes the existence of a use value and the need for reuse in cases where the original use does not exist. He establishes how to intervene in the monument, considering the use value of memory, especially the value of antiquity and historical value.

<sup>8</sup> He defends the distinction between living monuments and dead monuments. The latter are the monuments of antiquity, "for which a practical use is ruled out". While living monuments are those, "for which a concrete function not very different from the primitive one can be attributed".

heritage assets; the conclusions reached by the Franceschini Commission<sup>9</sup>, and the appearance of the theory of cultural assets by M. S. Giannini. S. Giannini<sup>10</sup>.

With the presentation of the notion of enhancement, embodied in Chapter VI and the Recommendations of the 1967 Quito Rules, it is recommended to the States to make the unexploited wealth that underlies the cultural heritage productive, through a process of revaluation that highlights its values and allows its optimal use. To this end, plans should be drawn up, protectionist regulations should be extended to properties located in the buffer or protection zone, and measures should be established to encourage private initiative, such as tax exemptions for the conservation of heritage properties and tax breaks to compensate for limitations on private property, regulate the associated commercial activity, and prevent the alteration of characteristics and the loss of heritage values.

The system conceived from this approach provides the procedural rudiments of heritage management, as a process that involves aspects related to civil administration and, in addition, assumes the possibility that other public and private entities and even private individuals contribute with their funds and efforts to the enhancement of heritage assets and the spaces they occupy.

The conception of the management of heritage assets has been refined by virtue of the Sustainable Development paradigm, contemplated with actions that impact economic-social development from heritage dynamics, especially with regard to the added value from the use of land in areas recognized as cultural heritage, and from the 2005 UNESCO Convention, the arguments concerning cultural services (cultural industries and expressions), which must be distinguished from other products and excluded from the rules of international trade (Rodríguez Barba, 2009).

The European Architectural Heritage Charter of 1975, numbers 7 to 10, advocates the integrated conservation of cultural heritage and its surroundings. This conception is based on the principles of considering heritage assets and those located in their surroundings as common property of the European continent and the need for cooperation and citizen participation to preserve it. To this end,

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<sup>9</sup> It provides the notion of historical and artistic value of cultural property which, based on its valuation, fulfills a dual purpose: public and private. The former prevails, through the rules of Administrative Law that limits the exercise of powers over the object, because of what they represent for humanity.

<sup>10</sup> It dates from 1976 and specifies the immateriality of the cultural property because it is an asset open to public enjoyment. It can belong to natural or juridical persons, including the State, and refers that the State is the only one that can protect the function of collective use, through the control of the use and enjoyment of private property, being able, even, to establish the promotion of the property.

it recommends to the States the modification of the regulations that protect the architectural heritage that were not in tune with this approach, the training of personnel with technical skills that favor conservation, as well as the design of financial aid and tax incentives.

This approach is reiterated in Paragraphs 4, 10, 11, 12 and 16 of the 2004 Yamamoto Declaration. To this end, it is recognized that tangible properties associated with intangible cultural manifestations should be protected, given their interdependent nature, and that the former should be considered as cultural heritage. It proposes the principle of establishing integrated safeguarding in conjunction with the communities and groups that are bearers of cultural heritage, in favor of heritage viability and economic benefits.

The legal protection of cultural heritage has also been impacted by the notion of democratization of culture, derived from the impossibility of the State to centrally manage the sociocultural development of society. As a consequence, States must encourage new social actors to contribute to the cultural development of nations.

The 2001 UNESCO Convention linked culture and democracy by recognizing the role of culture in social cohesion and peace. The postulates of the 2005 Convention call on States to develop policies that integrate culture into sustainable development strategies. As a result, States will develop domestic policies to respect, protect and safeguard cultural heritage, adopt measures that take into account the characteristics of national cultural products and encourage financial support for the participation of communities, public service institutions and independent cultural industries.

The 2005 Faro Convention is another example of this approach from a regional perspective. It is a multilateral treaty of the Council of Europe, whereby States undertake to protect cultural heritage and the rights of citizens to have access to it and to participate in its preservation and enhancement. It defines Europe's common cultural heritage as a resource that fosters cultural diversity and sustainable development and consolidates the prosperity and unity of the peoples of the region.

UNESCO's Culture for Development Indicators of 2014 dimension the categories of governance, participation and cultural heritage, based on establishing the relevance of culture for social progress. These indicators consider cultural heritage as a process, a product and an important element for promoting peace and development; they advocate its sustainable management and propose establishing and implementing policies and standards to conserve, safeguard, manage, transmit and

revalue it. This conception constitutes a guide for the legislator when constructing and determining the legal measures and mechanisms integrated to sustainable development.

The international norm, mainly from UNESCO, is a reference for national regimes in terms of the purpose, principles and measures for the legal protection of cultural heritage. The notion of protection offered by these documents is global, in that it covers the tangible, intangible and legal aspects of heritage properties.

Regarding the object, and according to articles 1-4 of the 1972 Convention, and 3, 11-15 of the 2003 Convention, cultural assets recognized as the heritage of nations of a tangible and intangible nature are protected. The tangible elements associated with the intangible values of monuments, objects and cultural spaces (Rudolff, 2010) are also protected. Special reference is made to assets that has been totally or partially submerged for at least one hundred years, in accordance with Article 1.a) of the 2001 Convention, and to serial or collective cultural assets, such as cultural ensembles, landscapes and routes. The legal order in accordance with Paragraphs 4, 10, 11, 12 and 16 of the 2014 Yamamoto Declaration will protect not only heritage properties, but also properties located in the vicinity of heritage properties.

The guiding principles for the protection of cultural heritage, supported by international normative provisions and methodological instruments, are as follows:

- Respect for cultural heritage, which is expressed by the recognition of the obligation to prohibit, prevent and stop any act that implies the deterioration or destruction of cultural property<sup>11</sup>;
- Publicity, related to the creation of inventories and the adoption of control measures on heritage assets, which enable access and information to citizens regarding the safeguarding of and respect for cultural assets;
- Free circulation implies the possibility of controlled international and national transportation and exchange for the purpose of facilitating access, contemplation and enjoyment of cultural assets;
- Effective financing, for which a system of contributions is adopted to enable the adoption of measures aimed at restoring, protecting and conserving the cultural heritage;

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<sup>11</sup> *Vid.* articles 2 to 11 of the 1954 Convention.

- International cooperation, based on the value of solidarity, through which actions are planned and carried out to promote the safeguarding of cultural assets at the international and regional levels.

In terms of measures, the legal protection of cultural heritage at the international level recognizes a:

- The mechanisms for identifying heritage values through the inventory and/or catalog;
- Recognition mechanisms, aimed at validating the legal status of a cultural manifestation that possesses relevant values through the fulfillment of the phases of patrimonialization<sup>12</sup>;
- Preservation mechanisms, basically aimed at preserving the material elements of the heritage assets and those related to their use, enjoyment and disposition;
- The mechanisms that protect cultural heritage against the global illegal market of cultural manifestations are aimed at movable property declared or recognized as cultural heritage and those that present significant values for the identity of societies. They include cases of export and import and the carrying out of dispositive acts on heritage property;
- Safeguarding understood as a set of protection measures and actions developed by the State, its agencies and the subjects involved. The objects to be safeguarded are the values and heritage assets, as well as the cultural spaces associated with them. Its purpose is to promote economic and social development and to build the future from the current cultural conditions (Nikoèeviaè et al., 2012);
- The management of heritage assets has been defined by the Spanish Association of Managers as the efficient administration of resources aimed at achieving social objectives that affect cultural heritage (Zamora Baños, 2002);
- The mechanisms for the enhancement of heritage assets are designed to make the economic potential that underlies them productive, through the establishment of measures that encourage institutional cooperation, private initiative and citizen participation.

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<sup>12</sup> Patrimonialization is "converting" into heritage or "building heritage" from certain pre-existing elements, selected and evaluated in this process. Patrimonialization is a strategic process of social intervention and socio-political participation because it is a process of endowment of meaning, identification and collective legitimization.

Other foundations that support the legal framework for the protection of cultural heritage emerge from an extensive series of methodological documents issued by international and regional organizations that contain guidelines for the treatment to be offered to heritage assets<sup>13</sup>.

### **Governance of cultural heritage**

Governance in the cultural field is related to transparency, accessibility, participation, respect for identity and diversity, intercultural dialogue, cultural rights and cultural heritage management (Lézé, 2013).

This relationship has been consolidated through the adoption of the 2005 UNESCO Convention on the Promotion of the Diversity of Cultural Expressions. This international instrument calls for the implementation of a new system of governance, based on the adoption of policies and the design of measures that have a direct effect on the creation, production, distribution and access to the diversity of cultural expressions, including goods, services and activities related to heritage assets.

This relationship also evidences the extension of UNESCO's Culture for Development Indicators of 2014, in which the category of governance is dimensioned, albeit in a general manner, in the field of culture in which heritage is integrated, relating it to law. It recognizes as its central elements: the normative framework in culture, the political and institutional framework in culture, the distribution of cultural infrastructure at levels below the state level, and the participation of civil society in the formulation and implementation of cultural policies, programs and strategies.

Participation is a tool for communities and stakeholders to become involved and actively contribute. They share multiple experiences and visions that will ensure the processes of conservation and transfer of cultural heritage to future generations. The law must regulate these tools and procedures.

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<sup>13</sup> To cite but a few: the Athens Charter of 1931; the Charter of Restauro, complementary to the Athens Charter of 1931; the Athens Town Planning Charter of 1933 and its preliminary draft law of 1972, which was never enacted; the Venice Charter of 1964; the Toledo Charter of 1975; the European Charter of Architectural Heritage of 1975; the Florence Charter of 1981, on gardens; the Nara Charter of 1994; the Charter on the use of classical performance venues of 1997; the Burra Charter of 1999; the Cultural Tourism Charter of 1999: sets out six principles to help establish cultural tourism that captures the economic aspects of heritage, harnessing the benefits for its conservation, generating funds and educating the community and influencing its policy; Krakow Charter 2000: the concept of community and its role in safeguarding is made explicit and the Xian Charter, 2005.

From the bibliographic analysis, three theoretical proposals can be appreciated that offer options to the legislator in the legal modeling of participation for the legal protection of cultural heritage: utilitarian participation<sup>14</sup>; co-management<sup>15</sup>, and post-patrimonial participation (Asensio, 2013)<sup>16</sup>.

Governance in the protection of cultural heritage refers to a multi-agent and multilevel management strategy that recognizes the role of the actors involved in protection and develops mechanisms for participation throughout the cycle of preservation, management, safeguarding and enhancement of cultural heritage (Cámara et al., 2108; Shipley & Kovacs, 2008).

The existence of principles for good governance, linked to participation, has been noted. They have been referenced in the documents of the ICOMOS General Assembly, as well as in the charters and methodological standards related to cultural heritage<sup>17</sup>, they are:

- Legitimacy and voice, based on participation and consensus<sup>18</sup>;
- Management, based on a strategic vision that includes human development and the historical, cultural and social complexities<sup>19</sup>;

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<sup>14</sup> It is committed to ensuring that those involved in the use and management enjoy and benefit directly from the enhancement of the heritage. It also includes conceiving a co-ownership by quotas or in common, whose object is the fruits received from the management. The distribution of the benefits and their use will be adapted to the rules of civil co-ownership.

<sup>15</sup> Express recognition of the right of the population to benefit from the enhancement and to decide on its relevance. It implies limiting the intervention of managers, and conceiving the process of negotiating these limits with the population.

<sup>16</sup> All stakeholders have equal ownership rights and authority over the use of the heritage assets. Stakeholders are obliged to negotiate with other social actors, shared use agreements through rules of understanding.

<sup>17</sup> Charter of Venice, 1964; Charter of Florence, 1982; Charter of Washington, 1987; Charter on the Protection and Management of Archaeological Heritage, 1990; Charter on Submerged Heritage, 1996; Charter on Cultural Tourism, 1976; Charter on Built Vernacular Heritage, 1999; Principles for the Preservation of Timber Structures, 1999; Charter of Athens, 1931; Declaration of Quito, 1967; Declaration of Amsterdam, 1975 and the European Charter on Architectural Heritage.

<sup>18</sup> It consists of 6 criteria: existence of democratic support and contextualized human rights; appropriate degree of decentralization in decision making; collaborative management in decision making; citizen participation at all levels; existence of civil society groups and media that allow the exercise of balanced power of public authorities; high levels of trust in public power and leaders.

<sup>19</sup> The criteria are: consistency with international management standards; existence of a legal management framework; planning of the management system; existence of management plans; demonstration of effective leadership; impartial leadership.

- Enforcement, which takes into account the responsiveness of institutions and the effectiveness and efficiency of conflict resolution processes<sup>20</sup>;
- Responsibility, based on the transparent behavior of public stakeholders and institutions<sup>21</sup>;
- Justice, based on equity and the role of the rule of law<sup>22</sup>.

The models of governance in cultural heritage recognized in the doctrinal field are (León Aravena et al., 2018):

- Institutional governance: it focuses on the management of institutional alliances generated around the integral heritage cycle, driven by the public sector.
- Scientific-technological governance: derived from the management of academic and technological alliances generated around the integral heritage cycle. Its main scenarios are universities and technology centers.
- Social governance: arising from the management of social alliances generated around the integral cycle of cultural heritage. It is driven by citizens and socio-cultural organizations.
- Urban governance: emanating from the management of strategic alliances generated around the integral heritage cycle. Its protagonists are social organizations and citizen groups.

In the protection of cultural heritage, the closed institutional model of governance, based on a *top-down* approach and centralized management, has predominated (Cámara et al., 2018). This model has evolved towards open models, in which social and economic interests predominate, based on multi-agent and multilevel management. In them, the perspective of participatory or democratic governance emerges strongly (León Aravena et al., 2018), which promotes a *bottom-up* approach and decentralizes its management. It develops cultural and social participation mechanisms linked to the Sustainable Development Agenda (Cámara et al., 2108).

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<sup>20</sup> Criteria for this principle are: cost-effectiveness; capacity; coordination; development of public information; sensitivity; monitoring and evaluation; adaptive management; risk management; incorporation of people with adequate levels of skills, knowledge, experience and professionalism.

<sup>21</sup> Its criteria are: clarity; coherence and comprehensiveness; role of political leaders; accountable public institutions; civil society and communicative transparency; guarantee of impartiality; guarantee of sharing the new knowledge acquired.

<sup>22</sup> Its criteria are: fairness, impartiality and effective compliance with conservation rules; fairness in the process of establishing new conservation sites; fairness in the management of the sites to be conserved; careful balance of decisions when conflicts occur between the different principles.

Participatory governance emphasizes democratic engagement through the design of deliberative mechanisms based on the development of citizen competencies. In the field of cultural heritage, it encourages the participation of different audiences and stakeholders in its protection, recovery and socialization.

In the *top-down* and *bottom-up* modes of governance, at least six intensities of participation can be identified in the field of cultural heritage (Cámara et al., 2108): informative, consultative, contributive, interactive, experiential and transformative<sup>23</sup>. The last two are those that foster the creative and active participation of citizens.

From the analysis of the literature consulted, it is noticed in the European framework the existence of normative referents of governance in the area of land use and environmental matters, extended to aspects related to the cultural landscape (European Union Report 477 of 2014)<sup>24</sup>.

There is also an alternative model of systemic governance developed in the Basque Country, Spain, which integrates the closed and open governance models. It identifies the actors involved in governance: state institutions, academia and civil society (Cámara et al., 2108).

Another experience comes from the Italian context, through the normative regulation of instruments that make decision-making more flexible, privileging the interest of citizens and attracting private investors in favor of local development<sup>25</sup>. The Negotiated Programming<sup>26</sup> are outstood -in terms of

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<sup>23</sup> 1. Informative participation: passive mode of participation in which audiences and stakeholders receive structured information about cultural heritage; 2. Consultative participation: passive mode of participation in which audiences and stakeholders are consulted about decisions to be implemented or implemented around cultural heritage; 3. Interactive participation: active mode of participation in which publics and stakeholders co-design parts of the actions or strategies to be implemented around cultural heritage; 5. Experimental participation: active mode of participation in which publics and stakeholders experiment and design solutions to promote new actions or strategies around cultural heritage; 6. Transformative participation: active mode of participation in which publics and stakeholders scale and develop new organizations and networks around the social and urban promotion of cultural heritage.

<sup>24</sup> European Commission Report 477 of 2014, paragraphs 5, 8 and 14, entitled "Towards an integrated approach to cultural heritage for Europe", has placed the need to adopt a governance model that not only involves public actors in a logic of multilevel action, but also the private sector in decision-making and definition of strategies, from a *bottom-up* perspective, in their implementation and evaluation.

<sup>25</sup> Law 142 of 1990, which reforms local authorities and Law 241 of the same year, on justice procedures.

<sup>26</sup> *Programmazione negoziata*. Decision-making is done through negotiation between public entities and stakeholders, agreements formalized in a Protocol and approved by the Central Administration once its relevance to local development

land use, which promotes inter-institutional cooperation to accelerate regional development-, by means of which the investors that will participate in the works are determined. For this purpose, a model for selecting participants has been generated, based on questions focused on the development of the process and possible contributions/benefits (Tufano et al., 2018).

Another experience in Italy, although of French origin<sup>27</sup>, is the holding of Public Debates with the citizens, prior to the initiation of heritage conservation works<sup>28</sup>.

### **Inadequacies of the Cuban legal framework for the governance of cultural heritage**

In Cuba, the design of a governance model that favors citizen participation in heritage protection is still in its infancy. The Bases of the National Economic and Social Development Plan until 2030 stand out in its strategic axis related to socialist government, which projects as its first general objective: to consolidate the socialist and democratic state and strengthen decisive popular participation in all spheres.

The specific objective is to achieve territorial development by strengthening the territories' planning and management powers and capacities, the participation of social actors and coordination with other government agencies in order to enhance local resources.

All this poses a challenge to the Cuban legislator, in conceiving cultural policy and legal norms related to cultural heritage that contain mechanisms in favor of the participation of the actors involved in heritage dynamics, as well as regulating aspects related to governance in the heritage field.

The principles of good governance need to be taken into account in the regulation of cultural heritage protection mechanisms, especially those related to legitimacy, voice and accountability, due to the high potential for conflict that the implementation and application of the legal framework represents.

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objectives is assessed. It is then implemented and monitored by a public entity. One of the first of these took place through the implementation of Regional Pacts under the aegis of Law 186 of 1964 in the southern Italian region. At the national level, other planning processes can be seen in Law 142 of 1990; Law 488 of 1992; Law 104 of 1995; Law 662 of 1996.

<sup>27</sup> French model of *démocratie de proximité*, related to land use. Through a democratic system that includes listening and discussion procedures between citizens and public administrations.

<sup>28</sup> Public debates disciplined by Law 276 of 2002. Discussions are conducted by a commission of independent experts, allowing conflicts related to the project to be brought to light. Potentially affected parties are informed and can participate, and changes can be made to the initial construction plan as needed.

These principles are vital in the creation of organizations or public entities that administer and manage heritage assets, in the monitoring of activities, and in the management and evaluation of their impact on heritage properties and society in general.

The Cuban Constitution of 2019, in Article 79, recognizes the right to participate in the cultural and artistic life of the nation. This regulation does not ensure the protection of cultural heritage and the social functions it fulfills, since the special legal framework does not implement the mechanisms that favor its participatory governance and the processes of enhancement, revaluation and heritage management.

The Cuban constitutional text recognizes other rights (Articles 58, 73, 75, 78 and 80) that indirectly affect the protection of cultural heritage and that the special legal framework does not fully take into account: the right to enjoy the goods owned; the right to education; the right to a healthy environment; access to prior information on the consumption of quality goods and services; and the right to participate in the formation, exercise and control of State power. Although the participation of reference is referred to the electoral process, the areas of participation it recognizes constitute referents to project in the legal framework for the protection of cultural heritage.

The alternative means of conflict resolution, regulated in the constitutional text in Article 93, guarantee the enjoyment and exercise of the fundamental rights recognized to Cuban citizens. Consequently, Decree Law 69 of 2023 on conflict mediation<sup>29</sup> has been adopted. It is inferred from articles four and five, that conflicts associated with the application of the regime for the protection of Cuban cultural heritage are susceptible to be aired according to its postulates. Likewise, it determines, in its second paragraph, that the National Organization of Collective Law Firms will be the entity in charge of guaranteeing the realization of the mediation processes. Following Rivera Rodón and González Ruiz (2020), it is considered that this procedure can benefit and lighten the application of the legal regime, especially in the area of material interventions in real estate and patrimonial management. Nevertheless the above, it is believed possible to determine in the law of the matter, own specifications given the nature of the assets and the treatment they will receive. These notes will emerge from the application of Decree Law 269 and from the accumulation of

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<sup>29</sup> Official Gazette of the Republic of Cuba 19 Ordinary Edition, dated February 22, 2023.

positive experiences in the management and solution of litigation in the field of cultural heritage. In this regard, the responsible authorities must follow up on the achievement of such procedures.

Cuba's legal framework made up by Laws 1 and 2 of 1977, expressed a clear paternalistic tendency of the State with respect to the protection of cultural heritage. It modeled an alliance between the State and its provincial and municipal structures, Offices of Historians/Conservators in each of the territories and the national system of Museums. This alliance delegitimizes the link between the populations and their heritage (Asensio, 2013).

The Cuban legal framework for the protection of cultural heritage has recently been improved through the adoption of a new General Law. It fails to regulate administrative measures to revalue heritage assets, even though the principles it embodies are designed to promote the prosperity of citizens and sustainable development through the knowledge, appreciation and enjoyment of cultural heritage. It is also incongruent with the State's own responsibilities declared in the tenth article.

Regarding management, the new General Law for the Protection of Cultural Heritage and Natural Heritage of 2022 dedicates the third of the titles to declare the subjects involved in management, in accordance with the object of the regulation determined in the second article, paragraph f. However, from the reading of its statements, a considerable number of functions and competences granted to administrative structures that go beyond management, linked to preservation, use, mobility mechanisms, promotion and safeguarding, can be appreciated. These are issues that should be part of the organic framework where the system of legal protection to be provided to the Cultural Heritage and Natural Heritage of the Cuban Nation is based.

The distinctive features of the management of intangible manifestations are declared and the measures aimed at protecting the tangible assets and spaces associated with them are omitted. It is stated in this sense, in article 109.a), that the main instrument is the Agreement between the bearers and the Council of the Municipal Administration, obviating the role played by the managers who are not part of the Administration, whose interests, obligations and responsibilities must be set out in such an important document.

The legal text analyzed, concerning citizen participation in its article 14.4, models an institutional and symbolic system (Roura Expósito, 2019) that directs, supervises and evaluates the protection of cultural heritage. It allows the participation of citizens and legal entities in the assumptions of identification, cataloging and nomination of Cultural and Natural Heritage, through the request to

include and nominate in the Representative Lists an intangible manifestation, a movable property and National and/or Local Monuments (articles 43, 47, 48, 56 and 79). Although the concept of participation of natural persons with respect to heritage assets provided for in Article 73, I. paragraphs a-d and f, II. paragraphs a-d. is correct, these possibilities for citizen action are not implemented in this text itself or in its Regulations (Decree 92 of 2023)<sup>30</sup>.

The law under study sets forth the obligation that any natural or legal person owner or possessor of a patrimonial asset according to article 80.d) is obliged to communicate to the authorities any circumstance that may or may have affected its physical state, or its loss or misplacement, changes in its location and the intention to dispose of the real rights they have over it. This obligation is not limited by the administrative, civil or criminal consequences that may arise.

Pursuant to Article 81, it is required to report to the Central Registry of the acts transferring ownership of patrimonial property. For this purpose, the direct presentation of the public instrument or the issuance of affidavits by the officials of said entity is envisaged. However, the consequences derived from non-compliance and the consequent actions of the registry office are not foreseen. This last aspect, it is believed, is conceived to update the legal status of the registered patrimonial assets and the control of the internal and external legality of the patrimonial transactions.

In the current framework, there are statements that allow conceiving other spaces for participation in times of peace and in contingency situations and the use of new technologies for this purpose (Roura Expósito, 2019). This is the case of the procedure for the evaluation of meanings and interpretation of the values of the intangible manifestations of article 28, decision-making procedure and the instrumentation of alternative means of conflict derived from article 73, I. paragraphs b, d and f, and II. paragraphs c and d; the participation of patrimonial volunteering in the measures of promotion in accordance with public programs and policies to revalue it according to articles 98 and 99.

In pursuit of the improvement of the legal framework for the protection of Cuban cultural heritage and social progress, it is suggested:

Include mechanisms and measures for the revaluation of heritage assets, referring to measures of an economic and financial nature; those aimed at attracting finances and resources for the

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<sup>30</sup> *Vid.* Official Gazette of the Republic of Cuba 84 Ordinary Edition, dated September 7, 2023.

preservation, use and enjoyment of cultural heritage, emphasizing the instruments of Collaboration agreements or Public-private association, sponsorship contracts, patronage, sponsorship and its consequent system of rewards; the honorary ones that establish awards, distinctions and other recognitions, and the measures that promote the enjoyment and access to heritage assets through education, dissemination and safeguarding and the associated structures through institutional cooperation, private initiative, the instrumentation of minimum elements and the role of cultural volunteering and citizen participation.

To dimension participation in the protection of cultural heritage, in the sense of recognizing citizens the possibility of participating in popular consultations, public debates in decision making regarding the use and management of heritage assets; to give their opinion regarding the accountability of state entities or not regarding their actions on heritage assets; to revoke the decisions adopted, to exercise initiative in the improvement, evaluation and control of the actions developed on the cultural heritage; to associate with collective entities interested in preserving and revaluing the cultural heritage, for which it is required to conceive the minimum elements of the activity of cultural/heritage volunteering; to be informed of the management and state of the heritage assets and the benefits or losses obtained from the management.

To implement procedures and channels for the participation of citizens and mass, political and social organizations, associations and foundations, volunteers and public and private entities in the identification, nomination and assessment of the heritage process, in the actions of use, enjoyment, preservation, safeguarding and management, and control of compliance with the legal framework of the administrative sanctioning regime.

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### **Conflict of interest**

Author declares that she has no conflicts of interest.

### **Authors' contribution**

Rosa Julliet González Ruiz wrote the manuscript and approves the version finally submitted.



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