Unit 10

Lesson plan

ICH[[1]](#footnote-1) policies and institutions

Duration:

2 hours

Objective(s):

Establish an understanding of the recommendations to States Parties in the Convention for the Safeguarding of the Intangible Cultural Heritage[[2]](#footnote-2) and the Operational Directives (ODs) concerning the adoption (or reinforcement) of policies and legislation; the establishment (or reinforcement) of administrative frameworks and institutions for safeguarding the intangible cultural heritage (ICH); and the creation or designation of several kinds of networks and organizations at the institutional level, with responsibility for activities such as inventory-making, training in managing and safeguarding ICH, and academic studies and research.

Description:

This unit is about how the Convention and the ODs suggest that legal, technical, administrative and financial measures at the local, national and international levels can help to facilitate the implementation of the Convention on the national level. The topics covered include: what the Convention recommends, local and national policies and measures, institutional frameworks, and codes of ethics.

Proposed sequence:

* What are legal and institutional frameworks for?
* The frameworks supporting safeguarding of the Yamahoko float ceremony (Japan)
* Local frameworks (with examples)
* National frameworks (with examples)
* International frameworks (with examples)
* Guidelines and codes of ethics

Supporting documents:

* Unit 10 PowerPoint presentation plus facilitator’s notes
* Participant’s text Unit 10
* Participant’s text Unit 3: ‘Intellectual property’ and ‘International, regional, subregional, local’
* Case studies 1 and 28–32

Notes and suggestions

This Unit is intended to illustrate how policies and institutions at various levels can support the implementation of the Convention.

Building on its use in Unit 4, the role of international, regional and local policies and institutions in supporting the safeguarding of the Yamahoko float ceremony is used as an anchor case study. Alternative case studies may be used, as long as there is sufficient detail available on these levels of support for safeguarding. Additional case studies are provided for each of the local, regional and international levels, and these may also be replaced or supplemented by other examples.

The exercises at slides 11, 18 and 22 (10 mins each) on ‘How policies/institutions affect implementation’ allow participants to explore how local, national and international policies and institutions might affect implementation in their own context. This may help participants to apply the ideas introduced in the Unit to their own situation. If some participants are unfamiliar with the relevant legislation, policies and institutions, the facilitator may use these exercises to introduce some of them. The time allocated for these exercises largely depends on the needs and interests of the participants. In States where there is little existing policy, legislation or institutional support for ICH, consideration might be given to discussing which of the examples provided in the Unit from other contexts might be most suitable for the participants’ own context. This issue can be explored further in Unit 14.

Unit 10

ICH policies and institutions

###### Slide 1.

Intangible heritage policies and institutions

###### Slide 2.

In this presentation …

###### Slide 3.

Legal and administrative frameworks

Participant’s text Unit 10.1 outlines what the Convention and its ODs say about legal and administrative measures for ICH safeguarding.

Participant’s text Unit 10.2 discusses legal and administrative measures at local, national and international levels.

The slide shows how provisions, regulations and institutions active at these different levels may work together for the implementation of the Convention. Ideally, the relationship between these different levels could be represented as a relationship between cogs in a machine. National frameworks intersect with various international conventions, agreements and organizations, especially where States are signatories to these Conventions and agreements. National frameworks also determine, to a large extent, the organization and possible activities of safeguarding programmes at a local level. In the diagram on the slide, local legal and administrative frameworks are placed centre stage, since they are crucial for the implementation of the Convention at the national level, and often somewhat neglected. Although the role of national governments on the one hand, and communities on the other, tend to receive more attention in discussions of ICH safeguarding, local legal and administrative frameworks have an important enabling role to play in this process.

**Article 13 – Other measures for safeguarding**

To ensure the safeguarding, development and promotion of the intangible cultural heritage present in its territory, each State Party shall endeavour to:

(a) adopt a general policy aimed at promoting the function of the intangible cultural heritage in society, and at integrating the safeguarding of such heritage into planning programmes;

(b) designate or establish one or more competent bodies for the safeguarding of the intangible cultural heritage present in its territory;

…

(d) adopt appropriate legal, technical, administrative and financial measures aimed at:

(i) fostering the creation or strengthening of institutions for training in the management of the intangible cultural heritage …;

...

(iii) establishing documentation institutions for the intangible cultural heritage and facilitating access to them.

In Article 35, the Convention recognizes that federal States may be in a different position from other States. Where some powers are devolved to individual constituent States, counties, provinces or cantons, it may be difficult to develop federal policies. In that case, the central government is supposed to encourage the governments of the constituent States to implement the Convention on their level. The central government may encourage or organize cooperation between the constituent States; it remains responsible for compiling the six-year reports to the Committee about the implementation of the Convention in the State as a whole.

**Article 35 – Federal or non-unitary constitutional systems**

The following provisions shall apply to States Parties which have a federal or non-unitary constitutional system:

(a) with regard to the provisions of this Convention, the implementation of which comes under the legal jurisdiction of the federal or central legislative power, the obligations of the federal or central government shall be the same as for those States Parties which are not federal States;

(b) with regard to the provisions of this Convention, the implementation of which comes under the jurisdiction of individual constituent States, countries, provinces or cantons which are not obliged by the constitutional system of the federation to take legislative measures, the federal government shall inform the competent authorities of such States, countries, provinces or cantons of the said provisions, with its recommendation for their adoption.

###### Slide 4.

Frameworks: what for?

Participant’s text Unit 10.1 outlines some of the tasks that legal and administrative frameworks might facilitate, coordinate or perform.

Note on developing legal and administrative frameworks
that could assist in ICH safeguarding

Some States, now States Parties to the Convention, have already been paying considerable attention to ICH in their heritage legislation, policies and planning. Other States Parties will need to rethink their heritage policies and other frameworks in order to give due consideration to ICH safeguarding. This may mean revising the mandates of ministries and publicly funded institutions, creating new institutions and revising budget allocations, among other things. If such interventions are not possible initially, States Parties may, at the very least, include capacity building for government officials in existing (tangible) heritage departments, which will increasingly have to turn their attention to the safeguarding of ICH.

###### Slide 5.

Yamahoko float ceremony, Kyoto Gion festival (Japan)

States Parties must ensure that different levels of the legal and administrative frameworks work together, as in the case of the Yamahoko float ceremony of the Gion festival in Kyoto, Japan.

See Case study 1.

###### Slide 6.

Yamahoko-related frameworks

This slide shows how the various frameworks, at local, national and international levels, work together to assist the local population in continuing to enact and transmit the Yamahoko float procession.

Starting with the smallest cog – the one on the international level – the element is on the RL of the Intangible Heritage Convention. Japan has ratified the Convention and has thus undertaken to safeguard the ICH in its territory; it bears special responsibility for safeguarding elements inscribed on the Convention’s Lists, such as the Yamahoko float procession.

Thus, Japan’s obligations under the Convention are linked to national efforts for safeguarding (the second cog); they require, for example, that the Japanese Government report about the element (since it is inscribed on the RL) every six years (OD 152). Under the Law for the Protection of Cultural Properties (1950), a national inventory was created: the Yamahoko float procession was included on it as an Important Intangible Folk Cultural Property in 1979. Being included in an inventory was a criterion for listing the element on the RL, another link between the national and international frameworks. Universities and institutes such as the National Research Institute for Cultural Properties in Tokyo, an independent research institute, conduct research on ICH such as the Yamahoko float procession.

Finally, the third and most important cog: at a local level, the procession features on provincial and municipal inventories of ICH in Kyoto Prefecture and Kyoto City. A Kyoto Prefectural (provincial) ordinance (the Prefectural Ordinance for the Promotion of the Revitalization of Kyoto Based on Cultural Power) provides a broader rationale for municipal and provincial investment in the event. Within this legislative framework, national, provincial and municipal governments all provide funds for the maintenance of floats, research and training. The Kyoto municipal government regulates the procession’s route through the city, ensuring for instance that overhead cables do not prevent the passage of the floats.

The Foundation for Gion Festival Preservation Associations (a community organization) coordinates training for participants and support workers, coordinates the community groups involved in the procession and ensures maintenance and storage of the floats and their decorations. It also undertakes research, with the help of research institutes and universities.

Almost all these legislative and institutional infrastructures predate the Convention itself, but in safeguarding the element they work to support the implementation of the Convention at local, national and international levels.

###### Slide 7.

Local frameworks

Participant’s text Unit 10.3 discusses the importance of local (subnational) policies and measures for the implementation of the Convention. Various examples can be given.

###### Slide 8.

Example: irrigators’ tribunals (Spain)

This element was inscribed on the RL in 2009.

In Spain, the Council of Wise Men of the plain of Murcia and the Water Tribunal of the plain of Valencia are traditional courts that resolve disputes between farmers over the use of irrigation water from the Segura and Turia rivers, according to customary law passed down orally through the generations. The town authorities of Murcia support the Council of Good Men of Murcia’s Watered Land. It meets once a week in Murcia City Hall (and is the only institution other than the City Council to have the privilege of using it). The Tribunal of Waters of Valencia’s Watered Land meets every week at the Apostles’ Gate of Valencia Cathedral. The Segura River Basin Authority helps to maintain the flow of water into the Murcia Watered Land irrigation system. The Statutes of Autonomy of the Murcian and Valencian Communities (regional authorities within Spain) formally recognize and support the water courts.

Local recognition of the courts and their procedures for managing the irrigation system has been echoed at national and international levels. Both courts were declared ‘Intangible Goods of Cultural Interest’, providing the highest protection for cultural heritage under Spanish law. The people passing judgement in the courts are local farmers rather than professional lawyers, but their decisions are formally recognized in Spain’s judicial system. Cultural heritage and town planning legislation helps to protect the weirs, waterwheels and other immovable heritage supporting the irrigation system and to control suburban development in the irrigated lands. The courts have also been inscribed on the RL of the Convention (in 2009).

###### Slide 9.

Example: Village Development Committees (Nepal)

See Participant’s text Unit 10.3.

In Nepal, municipalities and Village Development Committees (VDCs) play an important role in coordinating the different actors involved in ICH safeguarding. The slide shows a Facebook page developed by one of the VDCs.

###### Slide 10.

Example: Heemkunde Vlaanderen and FARO (Flanders, Belgium)

Case study 28, on Heemkunde Vlaanderen and FARO (Flanders, Belgium) illustrates the importance of institutions at the subnational level in helping to implement the Convention.

Example: Aboriginal Sacred Sites Act (Australia’s Northern Territory)

See Participant’s text Unit 10.3.

An example of legislation at the subnational level that enables ICH safeguarding is the Northern Territory Aboriginal Sacred Sites Act(2006): this helps Indigenous (Aboriginal) communities in the Northern Territory of Australia retain control over their intangible heritage management and any benefits arising from it.

###### Slide 11.

Local (municipal, provincial) frameworks can best …

See Participant’s text Unit 10.3.

Exercise (10 mins): how local policies/institutions affect implementation

Participants could be asked to mention one existing policy, piece of legislation or institution at the local level that affects the implementation of the Convention in their State.

They could then be asked to mention the way(s) in which this policy, piece of legislation or institution at the local level might assist in the implementation of the Convention.

###### Slide 12.

National frameworks

See Participant’s text Unit 10.4.

###### Slide 13.

Hopping procession of Echternach (Luxembourg)

An example that illustrates the role of national legal frameworks in supporting ICH is the hopping procession of Echternach in Luxembourg, which was inscribed on the RL in 2010. This has traditionally been held on the second day after Whitsuntide (a Christian religious holiday in early summer), which is a national holiday. The procession’s nomination to the RL was a further sign of recognition for this local event on the national level, and a guarantee that Whit Tuesday will continue to be an official holiday. This means that citizens from all over the State have a free day and can join the citizens of Echternach in the procession, together with pilgrim groups from villages across the border. Nearly 14,000 people attend the procession, although the population of Echternach is under 5,000.

###### Slide 14.

National legal and administrative frameworks

Participant’s text Units 10.4 and 10.5 discuss the nature of legal and institutional support for ICH safeguarding at the national level.

Note on existing institutional initiatives

Existing institutions could be asked to play new roles, if necessary, in the implementation of the Convention. Where institutions, NGOs or community organizations, or networks thereof, have already taken on similar tasks on their own initiative, the State concerned would ideally involve them in its efforts.

###### Slide 15.

Case study: South Africa

Case study 29, discusses the different South African legal and administrative frameworks at the national level that relate to ICH safeguarding.

Example: Mongolia’s national legal framework for ICH

The Government of Mongolia has been quite active in the domain of protecting and safeguarding the State’s heritage and also in exploiting the opportunities offered by the Convention on the international level. Mongolia has had five ICH elements inscribed on the RL (two of which concern shared ICH) and three on the USL. Mongolia passed a Law on Culture and a State Policy on Culture in 1996, and a Law on the Protection of the Cultural Heritage in 2001. All these laws contain a special section on the protection of ICH. Institutions have also been set up in Mongolia for the inventorying of the ICH. In 1998 the National Centre for Intangible Cultural Heritage was founded by artists, and has since established a national database on ICH. In 1999 the Government launched a National Programme for the Support of Traditional Folk Arts 1999–2006, and various national festivals promoted ICH elements. The Government is planning to establish a National Council for Identifying Intangible Cultural Heritage and its Bearers, to implement the Mongolian National Action Plan for ICH, and create a Living Treasures Programme.[[3]](#footnote-3)

###### Slide 16.

Intellectual property rights

Participant’s text Unit 10.6 discusses the protection of community intellectual property rights (IPR) at the national level.

OD 104 States Parties shall endeavour to ensure, in particular through the application of intellectual property rights, privacy rights and any other appropriate form of legal protection, that the rights of the communities, groups and individuals that create, bear and transmit their intangible cultural heritage are duly protected when raising awareness about their heritage or engaging in commercial activities.

An impressive number of States, often assisted by WIPO, already have legislation to enable communities to protect their IPR over their ICH.

A useful WIPO publication on IPR relating to ICH is:
<http://www.wipo.int/freepublications/en/tk/913/wipo_pub_913.pdf>

###### Slide 17.

Case study: the toi iho trademark (New Zealand)

The slide shows trademarks relating to traditional symbols and names registered to protect indigenous craft practitioners. In Australia, certification marks like the National Indigenous Arts Advocacy Association (NIAAA) ‘Label of Authenticity’ have been registered by the NIAAA. In Canada, trademarks, including the ‘Authentically Aboriginal’ certification mark, are used by Aboriginal people to identify a wide range of goods and services, ranging from traditional art and artwork to food products, clothing, tourist services, and enterprises run by First Nations.[[4]](#footnote-4)

It is interesting to note here the use of the word ‘authenticity’, something that the Convention specifically avoids (see Participant’s text Unit 3: ‘Authenticity’). In the context of trademarks and certification marks, however, authenticity is usually established not by proving that the ICH itself has remained unchanged, but by proving that its connection to the community concerned has (according to their own assessment) remained intact. This idea is not against the spirit of the Convention, which is very clear on the importance of maintaining and establishing the link between ICH elements and the communities concerned.

Case study 30, on the Maori toi iho trademarks in New Zealand, a series of trademarks also featured on the slide.

###### Slide 18.

Institutional frameworks to assist in…

Participant’s text Unit 10.5 discusses the role of institutions in implementing the Convention at the national level.

Exercise (10 mins): how national policies/institutions affect implementation

Participants should be asked to mention one existing policy, piece of legislation or institution at the national level that might affect the implementation of the Convention in their own State(s).

They should then be asked to explain how this policy, piece of legislation or institution at the national level might assist in the implementation of the Convention in their own State(s).

###### Slide 19.

Legal and administrative frameworks at the international level

###### Slide 20.

International frameworks

Participant’s text Unit 10.7 discusses a number of different legal and institutional frameworks at the international level that may affect the implementation of the Convention at the national level.

###### Slide 21.

International legal instruments

See Participant’s text Units 10.8–10.10.

International legal instruments, whether mentioned in the Convention or not, may affect the way in which States Parties choose to implement the Convention. These can be subjects for discussion in the session, especially if the States represented at the workshop have ratified them.

Note on the UN Convention on Biological Diversity (CBD)

Participant’s text Unit 10.10 discusses this Convention.

Some international instruments like the CBD or intellectual property guidelines developed by the World Intellectual Property Organization (WIPO) can be helpful in safeguarding ICH in States that have ratified both Conventions.

**CBD Article 8(j):** States Parties are encouraged to ‘respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote the wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices.’

**CBD Article 18.4:** ‘Contracting Parties are required, subject to national legislation, to ‘encourage and develop models of cooperation for the development and use of technologies, including traditional & indigenous technologies.’

Examples of regional IPR protections relevant to ICH

Participant’s text Unit 10.10 discusses the role of WIPO.

IPR regimes for ICH and related expressions can be developed at a regional as well as a national level, and WIPO is well advanced in its efforts to do so at an international level. In December 2009 the Pacific Islands Forum, with sixteen regional member states, launched the Traditional Knowledge Action Plan to facilitate the protection of the intellectual property associated with traditional knowledge. The Plan supports domestic implementation efforts alongside regional efforts for the ‘protection of ownership rights and the effective commercialization and economic use of traditional knowledge’. Its overarching purpose is ‘to provide an enabling environment for cultural industries to grow and contribute to economic development and improvement of livelihoods across the region’ and thereby to eradicate poverty in the region.[[5]](#footnote-5) Under the Action Plan, six Parliaments (Cook Islands, Fiji, Kiribati, Papua New Guinea, Palau and Vanuatu) aimed to adopt legislation based on the Model Law for the Protection of Traditional Knowledge and Expressions of Culture developed in 2002 under the Pacific Islands Forum’s Regional Framework for the Protection of Traditional Knowledge and Expressions of Culture. The Action Plan also proposed that a draft regional agreement be drawn up and should be in force within two years.[[6]](#footnote-6)

The African Regional Intellectual Property Organization (ARIPO) has recently developed a Legal Instrument for the Protection of Traditional Knowledge and Expressions of Folklore (2007) and the Swakopmund Protocol on the Protection of Traditional Knowledge and Expressions of Folklore (2010). The Protocol will enter into force once it has been ratified by six Member States of ARIPO. Its purpose (Article 1.1) is:

(a) to protect traditional knowledge holders against any infringement of their rights as recognized by this Protocol; and

(b) to protect expressions of folklore against misappropriation, misuse and unlawful exploitation beyond their traditional context.

The Protocol aims to empower the custodians and holders of traditional knowledge and expressions of folklore to utilize their knowledge for socio-economic development and wealth creation; curtail biopiracy; and enable the ARIPO Office to register traditional knowledge and expressions of folklore that are trans-boundary and multicultural in nature.[[7]](#footnote-7)

Other regions have also attempted to protect community rights over their ICH. In 2000 Member States of the Andean Community and Pacific Island States took a decision that:

signs, whose use in trade may unduly affect a third party right, may not be registered, in particular when they consist of the name of indigenous, African-American or local communities, denominations, words, letters, characters or signs used to distinguish their products, services, or the way in which they are processed, or constitute the expression of their culture or practice, except where the application is filed by the community itself or with its express consent.

In one instance, this decision was enforced by the Colombian Government, even though the community concerned had not objected.[[8]](#footnote-8)

###### Slide 22.

Guidelines and codes of ethics

See Participant’s text Unit 10.11.

The slide shows an example of a research protocol relating to ICH called *Ask First: a guide to respecting Indigenous heritage places and values in Australia* (Australian Heritage Commission, 2002). This provides guidelines for identifying and involving relevant Indigenous communities in matters relating to their heritage places and values.

Example: research ethics in Brazil

Case study 31, discusses the system by which authorization to carry out research among indigenous groups is managed in Brazil.

Example: the Hopi Protocol for Research, Publications and Recordings

Case study 32, describes the Hopi research protocol that states how the Hopi people would like their intellectual resources and traditional cultural expressions to be used by others.

Exercise (10 mins): how international policies/institutions affect implementation

Participants should be asked to name a legal instrument, common policy or institution at the international or regional level that affects (or might affect) the implementation of the Convention in their State(s).

They should then be asked to say how the implementation of the Convention in their State(s) has been (or might be) affected by this policy, legal instrument or institution at the international or regional level.

1. . “ICH” here refers to ‘intangible cultural heritage’. [↑](#footnote-ref-1)
2. . Frequently referred to as the Intangible Heritage Convention and, for the purpose of this Unit, simply the Convention. [↑](#footnote-ref-2)
3. . L. Lowthorp, 2010, ‘National Intangible Cultural Heritage (ICH) Legislation and Initiatives’, UNESCO-New Delhi Field Office, pp. 23–24. [↑](#footnote-ref-3)
4. .. W. B. Wendland, 2006, ‘Intellectual Property and the Protection of Traditional Knowledge and Cultural Expressions’, in B. T. Hoffman (ed.), *Art and Cultural Heritage: Law, Policy, and Practice*,Cambridge, Cambridge University, p. 333. [↑](#footnote-ref-4)
5. . L. Lowthorp, 2010, ‘National Intangible Cultural Heritage (ICH) Legislation and Initiatives’, UNESCO-New Delhi Field Office, p. 11. [↑](#footnote-ref-5)
6. . R. Burchill, ‘Pacific Islands Forum (PIF)’, Reports on international organizations, American Society of International Law. [↑](#footnote-ref-6)
7. . ‘Swakopmund Protocol on TK available online’, TK Bulletin: http://tkbulletin.wordpress.com/2010/09/15/this-week-in-review-%E2%80%A6-swakopmund-protocol-on-tk-available-online/ [↑](#footnote-ref-7)
8. . Article 136(g) of Decision 486 of the Commission of the Andean Community (2000) in WIPO, 2003, Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore, Fifth Session, Geneva, 7–15 July 2003: ‘Information on national experiences with the intellectual property protection of traditional knowledge’, pp. 5-7. [↑](#footnote-ref-8)