Unit 14

Workshop on implementing the convention at national level: concluding session

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Lesson Plan

Duration:

3 hours

Objective(s):

Test participants’ understanding of key concepts essential for the implementation of the Convention for the Safeguarding of the Intangible Cultural Heritage[[1]](#footnote-1) on all levels and ensure coverage of areas where there are still questions. The unit also gives participants an opportunity to discuss specific aspects of how their States implement (or could implement) the Convention.

Description:

This unit offers guidance on assessing participants understanding of subjects covered in the workshop. It includes advice on tailoring the evaluation exercise to the needs of the participants and to the specific objectives of the workshop, knowing that not all subjects covered in the training materials can be dealt with. The Unit 14 Hand-out with multiple-choice questions is the core tool for the assessment.

Proposed sequence:

For possible options for the sequence, see the Notes and suggestions, below.

Supporting documents:

* Facilitator’s narrative Unit 14
* PowerPoint presentation Unit 14
* Unit 14 Hand-out : Multiple-choice questions
* Basic Texts of the 2003 Convention for the Safeguarding of the Intangible Cultural Heritage*[[2]](#footnote-2)*

Notes and suggestions

The facilitator has two options for using the multiple-choice questions.

Option 1: Led by the facilitator, in plenary, participants could discuss possible answers to the multiple-choice questions provided.

Option 2: Alternatively, the facilitator could start off by getting the participants to complete the multiple-choice questions, review areas of difficulty from the multiple-choice questions and finish with a final Q&A session.

After completing option 1 or 2, participants could then be divided into small groups to discuss possible ways of implementing (or enhancing the implementation of) the Convention in their State(s). They could concentrate on some of the following topics:

* raising awareness;
* inventorying;
* involving the communities concerned;
* intangible cultural heritage (ICH) and sustainable development;
* safeguarding measures;
* nominations;
* international cooperation and assistance; and
* policies and institutions.

For each subject a few introductory questions are given on the slides, after which the participants are asked to reflect on the way in which the issue is addressed (or might be addressed) in their own State(s).

The groups could report back to the plenary and have further discussions there, guided by the facilitator, who would then clarify any misinterpretations of the key concepts of the Convention.

Additional questions for general discussion

* Who elaborated the Convention?
* What is UNESCO’s relationship to the Convention?
* What is the main objective of the Convention?
* What are the Convention’s other objectives?
* What are the Organs of the Convention?
* What do the Organs of the Convention do?
* What is the objective of the ICH Fund?
* Who prepares the Operational Directives (ODs)?
* What is the purpose of the ODs?
* Are the ODs complete?
* What are the main components of the Convention’s definition of ICH?
* What is the status of the domains mentioned in Article 2.2 of the Convention?
* How does the Convention speak about communities, groups and individuals concerned?
* Why was there no attempt at defining communities, groups and individuals concerned?
* What ICH communities do you belong to? And your spouse/neighbours/parents?
* What are the major obligations of States Parties to the Convention at the national level?
* What are the major obligations of States Parties to the Convention at the international level?
* How do States Parties inform the Committee about the implementation of the Convention at the national level?
* By what means can the Committee address a State Party that does not fulfil its obligations under the Convention?
* In what ways are State Parties expected to inform the committee about the role gender plays in inventorying and in participation in the safeguarding process at the national level?
* Why are ethical principles needed for safeguarding intangible cultural heritage?

Unit 14

Workshop on implementing the convention at national level: Concluding Session

Facilitator’s narrative

###### Slide 1.

Workshop on implementing the Convention: concluding session

This session reviews the topics covered in the workshop on implementing the Convention through discussion of: (a) a series of questions; and (b) current and/or planned activities for the implementation of the Convention for the Safeguarding of the Intangible Cultural Heritage in the State(s) of participants.

###### Slide 2.

In this presentation …

###### Slide 3.

Raising awareness

Awareness of the existence, nature and importance of ICH is crucial to foster appreciation of ICH and to create a positive context for its safeguarding, the main objective of the Convention. This was discussed in Unit 5.

### Anchoring the Convention at the country level

Unit 5 gives various examples of awareness-raising activities. Participants should be encouraged to discuss examples, and to debate which approaches are (or would be) most successful in their own contexts. Consideration should be given to:

* the nature of the ICH about which awareness is being or would be raised;
* safeguarding needs and any customary restrictions on access that should be taken into account;
* the purpose of awareness raising and the target audience for it (actual or envisaged);
* the most appropriate media or other platforms for awareness raising, given the proposed audience and the local context; and
* mitigations of any possible negative outcomes of awareness raising.

###### Slide 4.

Identification and inventorying

Identification and inventorying of the ICH in the territory of a State Party is an obligation under the Convention and should be carried out with a view to safeguarding. This was discussed in Unit 6.

Additional questions

* How many inventories should be compiled?
* What is the relationship between inventory making and identification/definition?
* What is the relationship between inventories and nominations?
* Is an inventory supposed to be an exhaustive list of ICH?
* How are elements selected for inventorying? According to what definition?
* What should not be inventoried?

### Anchoring the Convention at the country level

Unit 6 various examples of inventorying projects were given. Participants should be encouraged to discuss examples, and to debate which approaches are (or would be) most successful in their own contexts. Possible approaches include:

* large-scale inventorying projects covering the whole State, whether researcher-led or led by government staff at municipal or regional levels;
* locally managed, community-based inventorying projects, each covering a small area of the State or a single community; and
* a range of inventorying projects based on an ethnolinguistic group or ICH domain.

In discussing the most appropriate approaches for their own contexts, brief consideration might be given to:

* the purpose(s) of the inventorying project(s) and likely use of the inventory(ies) themselves; and
* the ways in which communities or their representatives are (or would be) involved.

###### Slide 5.

Involving the communities concerned

Any activity concerning an element of ICH that is undertaken in the framework of the implementation of the Convention should take place with the fullest possible participation and consent of the communities, groups or individuals concerned. This was discussed in Unit 7, with further information in Units 4, 8 and 9.

Additional questions

* Who can represent the communities/groups in making decisions about inventorying or safeguarding?
* What happens if the community concerned does not want their ICH element included in a safeguarding programme, nomination or inventory?
* How can safeguarding or inventorying of their ICH elements benefit the communities concerned?

### Anchoring the Convention at the country level

Unit 7 gives various examples of community participation in aspects of ICH safeguarding and the implementation of the Convention. Participants should be encouraged to discuss examples, and to debate which approaches are (or would be) most successful in their own contexts. They should also discuss whether these approaches are in conformity with the requirements and spirit of the Convention. Consideration should be given to:

* planning processes to maximize community ownership of, control over and benefit from planned activities for identifying and safeguarding their ICH;
* choosing different mechanisms for encouraging community participation depending on the activities being planned (e.g. identification, safeguarding, submission of nominations) or the size and context of the communities concerned; and
* choosing methods for determining community consent depending on the level of trust between stakeholders, the size and context of the communities concerned and the nature of the ICH in question.

###### Slide 6.

ICH and sustainable development

Only ICH ‘compatible with … the requirements of … sustainable development’ will be given consideration for the purposes of the Convention (Article 2.1). This was discussed in Unit 8.

Additional questions

* How can sustainability of communities contribute to ICH safeguarding?
* How can ICH safeguarding generate income for the communities concerned in a sustainable way?

### Anchoring the Convention at the country level

Unit 8 gives various examples of the relationship between sustainable development and ICH. Participants should be encouraged to discuss examples of this relationship from their own contexts, and to debate which safeguarding approaches for specific ICH elements are (or would be) most successful in achieving the interlinked goals of economic prosperity, environmental quality and social equity in ICH practice and safeguarding.

###### Slide 7.

Safeguarding

Safeguarding means ensuring the viability of ICH, i.e. ensuring its continued enactment and transmission by, for and within the communities concerned. Unit 9 discusses this topic.

Additional questions

* What is the main difference between ICH safeguarding and tangible heritage conservation?
* Can/should all endangered ICH be safeguarded?
* Who should be involved in developing safeguarding measures?

### Anchoring the Convention at the country level

Unit 9 discusses various examples of safeguarding practices. Participants should be encouraged to discuss examples, and to debate which approaches are (or would be) most successful in their own contexts. Consideration should be given to:

* characteristics of the elements and of the communities concerned;
* the threats and risks to viability faced by the elements; and
* the process by which safeguarding measures could be elaborated with community participation and consent.

###### Slide 8.

ICH policies and institutions

Legal and institutional frameworks at the local, national and international levels are necessary to create an enabling environment for implementing the Convention. Unit 10 discusses this topic.

Additional questions

* Do all ICH policies at the national level have to follow the definition of ICH in the Convention if a State has ratified it?
* Does a State Party have to appoint a single institution to oversee the work of ICH safeguarding at the national level?
* What kinds of legal instruments could assist ICH safeguarding at the national level?

### Anchoring the Convention at the country level

Unit 10 discusses examples of legal and institutional frameworks. In discussing the approaches that are being adopted (or might be adopted) in their own contexts, participants may consider the following issues:

* the mandates and capacities of existing institutions and the scope of existing legal frameworks; and
* the requirement for new institutions and legal frameworks, if any.

###### Slide 9.

Nominations

States Parties may nominate ICH elements to the Urgent Safeguarding List or the Representative List. They may also nominate programmes, projects or activities to the Register of Good Safeguarding Practices. Unit 11 discusses this topic.

Additional questions

* What is the Register of the Convention and where can it be found in the ODs?
* Why are there many more nominations to the RL than the USL or the Register?
* What is the mechanism for making multi-national nominations?
* What might be the consequences of inscribing an element on one of the Lists of the Convention?

### Anchoring the Convention at the country level

Not all States Parties will wish to nominate elements to the Convention’s Lists and/or Register. In regard to their own contexts, participants may consider the following issues:

If their State(s) has(have) already submitted one or more nominations:

* How were communities involved in the nomination process? Was this done in a satisfactory way? How could things be improved?
* How were the nominated ICH elements or the projects selected at the national level? Was this done in a satisfactory way? How could things be improved?

If their State(s) has(have) not yet submitted a nomination:

* Give examples of ICH elements in their State(s) that could be candidates for nomination to the Lists of the Convention.
* Give examples of programmes, projects or activities in their State(s) that could be candidates for nomination to the Register.
* Explain the process by which decisions on what elements to nominate are made (or could be made) in the State(s), with the participation and consent of the communities concerned.

###### Slide 10.

International cooperation and assistance

States Parties are encouraged to engage in international cooperation in implementing the Convention in several ways, for instance by:

* sharing information and resources;
* documenting, safeguarding and perhaps nominating internationally shared heritage; or
* jointly applying for support from the ICH Fund.

This was discussed in Unit 12.

Additional questions

* How can States Parties assist one another in safeguarding ICH shared across their borders?
* What kinds of assistance requests are supported by the ICH Fund?
* Does one State Party have the power of veto over a nomination by other countries?
* Are State Parties obliged to make multi-national nominations for shared heritage?
* Do all States Parties in a multi-national nomination for the USL have to make periodic reports about the element concerned?

### Anchoring the Convention at the country level.

There are not, as yet, many examples of cooperation concerning the safeguarding of ICH shared across national borders. Unit 12 discusses examples of international assistance requests. In discussing the approaches that are being adopted (or might be adopted) in their own contexts, participants may consider the following issues:

* the shared heritage present in their own State(s) and another State (preferably a State Party) and safeguarding activities that have been (or could be) planned; and
* safeguarding or other projects for which assistance may be sought from the ICH Fund.

Unit 14

Multiple-choice questions (Facilitator’s Copy)

The questions are based on frequently asked questions. They may be handed out to participants and then referred to at various stages during the workshop. They will take some time to discuss because of the complexity of the issues involved.

The correct answer (with an explanation) is indicated in the box below each question – some of the other answers may be partly correct.

#### About the Convention

### Question 1

Which of the actions mentioned below, if any, are States obliged to undertake before they can ratify the Convention?

(a) Create inventories of the ICH present in their territory.

(b) Obtain the consent of communities, groups and individuals (who are the stewards of the ICH within the State) for ratification.

(c) Adapt national legislation – if necessary – to create a legal framework for ICH safeguarding.

(d) None of the above.

Option (d) is correct. None of these actions is required before ratification. The State only has to go through the procedures foreseen in its constitution for the ratification of international (in this case multilateral) treaties. Activities presented in options (a) and (c) could greatly help the future implementation of the Convention. Regarding (b), future participation of the communities, groups and individuals concerned in the implementation of the Convention could be encouraged if the State makes public its intention to ratify the Convention and the possible consequences. After the Convention has entered into force for a State, (b) becomes an obligation and (c) becomes a recommendation.

### Question 2

By ratifying the Convention, States take upon themselves a number of obligations. Which of the following, if any, are *not* obligations of States Parties under the Convention?

(a) Each State Party shall draw up one or more registers of the communities and groups present in its territory.

(b) Each State Party shall take the necessary measures to ensure the viability of the ICH present in its territory.

(c) Each State Party shall regularly report to the Committee about the measures taken for the implementation of the Convention.

(d) Each State Party shall identify a competent body for the safeguarding of the ICH at the national level, or create such a body.

(e) Each State Party shall draw up one or more inventories of the ICH present in its territory.

Options (b) (see Article 11(a)), (c) (see Article 29) and (e) (see Article 12.1) are obligations under the Convention; options (a) and (d) are not. In option (b), the word ‘safeguarding’ has been replaced by a phrase with essentially the same meaning: ‘ensuring the viability of the ICH’ (see Article 2.3).

When discussing the answers with participants, the facilitator may ask them to identify the articles of the Convention that relate to the obligations mentioned.

Option (a): the Convention does not define communities and/or groups in a specific way. The Convention was designed to accommodate the fact that communities (and groups) are fluid entities; that people may belong to several communities; and that they may join and leave communities. Furthermore, it was acknowledged that States have very different demographics and cultural policies, in which the position of constituent communities varies considerably. So the Convention does not require its States Parties to identify or register their communities. Some States have nevertheless identified, for various reasons, a number of communities or minorities living in their territory (indigenous, linguistic, regional communities, or otherwise defined), but this is not a requirement under the Convention.

Option (d): identifying or establishing the competent body referred to is not an obligation; the Convention simply strongly encourages the States Parties to do so: ‘[E]ach State Party shall endeavour …’ to designate or establish such an institution (see Article 13(b)).

### Question 3

Who selects the members of the Intergovernmental Committee?

(a) The Committee renews itself.

(b) The General Assembly.

(c) The Director-General of UNESCO.

Option (b) is correct: see Article 5.1 of the Convention. The Committee is selected by the General Assembly from among the States Parties. States are elected as members of the Committee for four years; every two years half of the members of the Committee are renewed. States cannot be members of the Committee for two consecutive terms (see Article 6). The Organs of the Convention are sovereign and the Director-General of UNESCO is not involved in the election process.

### Question 4

The government of Country A is unhappy about a procedure developed in the ODs. Which approach would be most appropriate for Country A to address the situation?

(a) Request the Director-General of UNESCO to change the procedure and, in conformity with that, the OD concerned.

(b) Put the issue on the agenda of the next session of the General Assembly, with the aim of convincing the Assembly to ask the Committee to study the matter again and come up with a new proposal for a procedure.

(c) Decide never to make use of the procedure.

Option (b) is the best solution: representatives of Country A could talk first to other States Parties consult them on the issue, then raise the issue in the General Assembly and try to have the Assembly request that the Intergovernmental Committee study the matter – preferably in a period when Country A is a State Member of the Committee – and possibly develop a proposal for a new procedure (see Article 7(e)). Country A could also ask any current Member of the Committee to place the question on the Committee’s agenda, or could request the Director-General to do so.

Option (a): the Organs of the Convention are sovereign (Articles 4 and 5, in particular 4.1). UNESCO provides the Secretariat for the Convention (Article 10) and its Director-General is the Depositary of the Convention (Article 37), but UNESCO has no power to make any changes to the text of the ODs (let alone the Convention).

Option (c): this would be a very negative solution as the Convention encourages States Parties to cooperate as much as possible and to implement the Convention fully. Such an isolationist position might have negative consequences for the communities or elements concerned or for international cooperation as advocated by the Convention.

#### Definitions and concepts

### Question 5

Does gender differentiation of tasks or practices within ICH elements always constitute a human rights violation?

(a) No, gender differentiation does not constitute a human rights violation

(b) Differentiation by gender within ICH elements does not always constitute a human rights violation.

(c) Yes, any gender differentiation is a human rights violation.

Option (b) is correct: gender differentiation of tasks or functions in enacting or transmitting ICH elements is not necessarily contrary to the requirements of international human rights instruments. For example, women might perform some aspects of a dance or ceremony, while men perform other aspects of it. Or within the same community, certain rituals may be attended only by men and others only by women. However, if such differentiation generates the power to humiliate others, or creates circumstances of clearly unfavorable for some people, then it is contrary to the requirements of international human rights instruments and the element cannot be considered as ICH in terms of the Convention. Thus, rituals in which there is forced abduction of women, beating of children, human sacrifice or bodily mutilation, for example, cannot be taken into account under the Convention (see Article 2.1).

### Question 6

Can documentation of ICH always be considered a safeguarding measure?

(a) Yes, any documentation of the element will automatically contribute to safeguarding.

(b) Not always: only if it is explicitly aimed at safeguarding.

(c) No, documentation is always negative because it takes power and knowledge away from communities, while bringing the evolution of the ICH concerned to a standstill.

Option (b) is correct: documentation can play an important role in safeguarding, but this is not automatically the case. In fact, documentation can even be counterproductive from the perspective of safeguarding ICH.

As a safeguarding measure, documentation should contribute to the continued practice and transmission of ICH. Ideally, documentation presents the contemporary variation and the changing character of the ICH; safeguarding measures, now or in the future, might make use of documentation to revitalize endangered ICH. If variation is not taken into account, documentation and recordings can lead to ‘freezing’ of an element in some supposedly ‘authentic’ and ‘original’ form. Both researchers and the communities concerned need to be aware of this problem.

Documentation should be carried out in cooperation with the communities concerned and with their consent; the results of documentation projects should be made accessible to the communities and groups concerned and should be disseminated in ways that they find acceptable. Documentation may include – with their consent – knowledge considered secret by the communities and groups concerned. Access to such information should be regulated in conformity with the requirement in the Convention that customary restrictions on access to the ICH are to be respected (Article 13(d)(ii)).

#### Inventorying

### Question 7

Country B intends to develop one inventory for all the ICH present in its territory. The Minister of Culture needs to choose a name for the inventory. Which name would be most in line with the spirit of the Convention?

(a) The national inventory of the ICH of Country B.

(b) The inventory of ICH from Country B.

(c) The inventory of ICH in Country B.

Option (c) seems to be most in line with the Convention. However, the Convention does not impose strict guidelines for inventories, and the State Party is free to choose any of the three solutions.

Option (a): nowhere does the Convention mention national inventories; a national inventory might exclude sets of ICH present in Country B that do not fit in with present or future ideas about who and what constitutes the nation. The Convention talks of ‘communities, groups and individuals’, not ‘nations’. The Convention is meant to contribute to cultural diversity, including the diversity of ICH expressions and practices within States Parties, not to the homogenization that often comes with nation building.

Option (b): this option no longer qualifies the inventory as ‘national’ but shares with option (a) the idea of ICH ‘of the State’. Nowhere does the Convention speak of the ICH of a State, but – instead – of the ICH of communities, groups and individuals. Communities of immigrants might be excluded (or feel excluded) by virtue of this name.

Option (c): this might be the best solution, from the point of view of the Convention. It does not exclude from the outset any ICH present in the territory of the State (such as the ICH of immigrant communities) from being inventoried; nor does it make any claims for State ownership of, or authority over, the ICH that will be inventoried.

### Question 8

Country C is deciding how to organize an inventory covering a specific region of the country that is particularly rich in musical traditions. How should the inventory process deal with the associated musical instruments?

(a) Information about the instruments should not be included in the inventory – this is an inventory about ICH expressions and practices, not material objects.

(b) Information about the instruments should be included in the inventory entries for the associated musical traditions.

(c) A separate section in the inventory should be created for information about objects and instruments associated with inventoried ICH elements.

Option (b) is the closest to the spirit of the Convention, although the Convention does not impose strict guidelines for inventories.

Option (a): in order to present the element in a clear manner, any indispensable instruments or objects should be mentioned in the inventory. Article 2.1 of the Convention explicitly includes associated instruments, objects, etc. in the definition of ICH, which encourages the inclusion of such objects in an inventory. Therefore, they should not be excluded.

Options (b) and (c): an inventory of ICH should in principle focus on ICH elements (expressions, practices, skills, knowledge), so it is preferable not to have separate entries for associated instruments, objects, persons or so-called cultural spaces. Option (b) therefore seems better than option (c). If an inventory of ICH is digitally accessible, it would be useful to have search functions: this would make it possible, for example, to identify which musical instruments are used in the enactment of ICH expressions inscribed in an inventory.

### Question 9

Country D will soon start the process of inventorying the ICH in its territory. Accordingly, its Ministry of Culture has produced a list of categories to be considered for use in the inventory. Which of these categories might cause concern when the Committee examines the periodic reports submitted by the State Party?

(a) ICH that is no longer practised.

(b) ICH that is endangered.

(c) ICH that is not in conformity with generally accepted international human rights instruments.

(d) ICH to which there is limited access because it is considered secret or sacred by the communities and groups concerned.

(e) ICH that was not identified with the participation of the communities concerned.

(f) ICH practices that the communities concerned did not want to be inventoried.

(g) ICH that is linked to tangible heritage, such as musical instruments or specific places.

(h) ICH that is linked to sites inscribed on the World Heritage List.

States Parties may draw up their inventories in ways that are adapted to their situation. They may therefore use definitions and domains of ICH that differ from those used in the Convention. This may lead to the inclusion of elements in inventories prepared by States Parties that cannot be successfully submitted for nomination to the Lists of the Convention. When the Committee reviews States Parties’ periodic reports on the implementation of the Convention, it may formulate comments and recommendations; it cannot enforce actions at the national level.

Categories (b), (g) and (h) would not be considered problematic as they fall within the definition of ICH in the Convention (Article 2.1; see also Article 3(a) on World Heritage). Nor would including ICH elements under category (d) probably be considered problematic, as long as the communities concerned agree to the ways in which information about the elements concerned will be presented in the inventory and made accessible to the public. The communities concerned might not want secret or sacred elements to be inventoried, or want them only partially inventoried; they may wish public access to the inventory data to be limited.

When evaluating the periodic reports that States Parties submit regarding their inventorying and other activities, the Committee may consider the inclusion of ICH that conforms to categories (e) and (f) as less desirable, since it is a requirement for States Parties to identify and define inventoried ICH with the participation of the communities concerned (Article 11(b)) and to try to ensure their participation in the management of their ICH (Article 15). If communities do not want their ICH to be inventoried, but it is inventoried nevertheless, this may have negative impacts on safeguarding of the ICH, and it goes against the idea (Article 12) that inventorying contributes to safeguarding.

Category (a) does not comply with the definition of ICH in the Convention. However, if the elements in question are placed in special sections of an inventory, they can be clearly distinguished from living ICH elements which do comply with the definition in the Convention and can be nominated to the Lists of the Convention.

Explicitly mentioning ICH elements that are contrary to human rights in the inventory (category (c)) might have a positive effect: it might lead to discussions and negotiations aimed at the mitigation of problematic aspects of the elements concerned. Such elements cannot be taken into account in the implementation of the Convention at the international level.

### Question 10

Can States Parties to the Convention adopt their own definitions of intangible cultural heritage for national or local inventories?

(a) Yes, as they are allowed to draw up their inventories in ways geared to their own circumstances.

(b) No, they must comply with the Convention’s definition of ICH.

(c) No, they must comply with the Convention’s definition of ICH but a special case can be made if they ask permission.

Option (a) is correct: States Parties have the freedom to draw up national or local inventories in manners geared to their own situation and – consequently – also using their own definitions of ICH. Of course, if they wish to nominate elements to the Convention’s Lists, then these specific elements must comply with the criteria listed in ODs 1 and 2. As far as classification of elements in an inventory is concerned, there, too, States Parties have complete freedom, especially since the list of domains in Article 2.2 of the Convention is not exhaustive.

### Question 11

If elements in national or local inventories do not comply with the definition of ICH in the Convention, can they be inscribed on the Lists of the Convention?

(a) Yes, elements on national or local inventories can be inscribed on the Lists of the Convention even if they do not comply with the definition of ICH in the Convention.

(b) No, elements on national or local inventories that do not comply with the definition of ICH in the Convention cannot be inscribed on the Lists of the Convention.

(c) Yes, elements on national or local inventories that do not comply with the definition of ICH in the Convention can be inscribed on the Lists of the Convention if special permission is obtained from the Intergovernmental Committee.

Option (b) is correct: the criteria for nominations (ODs 1 and 2) specify that elements that are nominated to the Lists of the Convention must comply with the definition of ICH in the Convention. ICH elements that are included in a national inventory and are not compatible with international human rights instruments, or with the requirements of mutual respect among communities and sustainable development, cannot be inscribed on the Lists of the Convention (Article 2.1). The Intergovernmental Committee is obliged to follow the ODs as approved by the General Assembly.

### Question 12

Which of the following statements is true?

(a) Safeguarding measures must have been developed for an ICH element before it can be inventoried.

(b) An ICH element must have been inventoried before any safeguarding activity can be undertaken.

(c) Safeguarding measures must have been implemented for an ICH element before it can be nominated to one of the Lists of the Convention.

(d) An ICH element must have been inventoried before it can be nominated to one of the Lists of the Convention.

Option (d) is the only true statement.

ODs 1 and 2 specify that an element proposed for inscription on one of the Lists must first have been included in an inventory. Therefore, nomination is preceded by inventorying and, by implication, identification.

Safeguarding itself may have preceded nomination, but that is not obligatory: safeguarding measures must be elaborated before the submission of a nomination file for one of the Lists of the Convention, but they do not need to have been implemented. Nothing in the Convention or ODs requires an element to have been inventoried before safeguarding can start.

### Question 13

The Ministry of Culture of Country E wishes to include on its national ICH inventory only some of the numerous elements of ICH that are on its provincial inventories. The Ministry needs to decide on the most appropriate criteria for choosing ICH elements to include on the national inventory. Which of the following criteria would not be in the spirit of the Convention?

(a) ICH elements that are most widely known and practised within the country should be on the national inventory because more people can associate with them.

(b) Only outstanding and beautiful ICH elements should be on the national inventory because this will foster national pride.

(c) ICH elements from each province should be chosen for the national inventory to ensure that it is representative of the whole country.

(d) ICH elements that are not found in other countries should be selected for the national inventory to demonstrate the uniqueness of the nation.

(e) ICH elements that are most in need of safeguarding should be chosen for the national inventory.

The Convention does not prescribe how States Parties should compile their inventories, but it does require: (a) community participation in identification and inventorying (Articles 2.1, 11(b) and 15); (b) that inventories contribute to safeguarding (Article 12.1); (c) that the ICH in the territory of the State is inventoried (Article 12.1); and (d) that inventories be regularly updated (Article 12.2). Inventorying should not violate customary practices concerning access to ICH and any associated places, persons and materials (Article 13(d)(ii)).

In principle, inventories should cover the ICH present in the territory of the States Parties; it is understandable, however, when there are many elements to cover, that States Parties make choices about where to start, especially in the initial phase of the inventorying process.

Options (a), (b) and (d) are not in the spirit of the Convention, which does not distinguish between ICH elements on aesthetic grounds, their relationship to national identity or the size of the communities concerned.

Option (c) is not a necessary criterion, although it would be understandable if a national inventory were to cover only a representative sample of ICH in the territory (that is, if it did not aim to provide a full overview of the ICH within the territory). There is no obligation for States Parties to have a national inventory, or indeed a tentative list of possible nominations to the Lists of the Convention. The provincial inventories by themselves would comply with the requirement of ‘drawing up one or more inventories of the ICH present in the territory’ of the State.

Because the intention of the Convention and of any inventory is to promote safeguarding, option (e) would not be contrary to the spirit of the Convention.

#### Safeguarding

### Question 14

Would a safeguarding plan that proposes staging endangered community dances as part of the professional repertoire of a State’s National Theatre be in the spirit of the Convention?

(a) No, the Convention wishes elements to be safeguarded in their original context only.

(b) Yes, because safeguarding the element may include adapting it to changing circumstances.

(c) No, but a safeguarding plan aimed at revitalizing the dances within the community, as well as staging performances, might be appropriate.

Option (c) seems the most correct: professionalizing community dances and relocating them to a staged environment may be of assistance as an awareness-raising tool if the community agrees, but it cannot replace the community performance. Sometimes elements can no longer be safeguarded in their ‘original’ context (the notion of an ‘original’ context gives the impression that there is only one true, authentic context for the element and would be contrary to the spirit of the Convention). Thus the Convention does not exclude the possibility that elements might be revitalized under conditions that are adapted to new circumstances. However, where communities wish to continue practising an element as before, this should be encouraged; if they do not want their element to be staged, then this should not happen. The ODs clearly indicate that there should be no misappropriation of ICH (see OD 117).

### Question 15

A dance form that was once widely practised in a rural community, and was well documented in the 1970s, has not been performed since the 1980s. Which of the measures shown below could be described as ‘revitalizing’ the practice of this dance?

(a) Reconstructing the dance in a research centre, using film recordings from the 1930s and reintroducing it into the community concerned.

(b) Training members of the community concerned in the dance form, with the help of film recordings and of older community members who remember the practice well.

(c) Training members of a folklore association in the country’s capital to perform the dance with the help of recordings from the 1970s and the advice of community members who still remember it well.

Option (b) is the best option. Revitalization is a safeguarding measure, aimed at reinforcing an ICH practice that is seriously endangered because it has almost ceased to exist (or is no longer actively performed) within the community concerned but is still well remembered by some people. If the dance was still practised until the 1980s, there would be community members who could assist in revitalizing the practice, so option (b) seems feasible.

Option (a) does not take advantage of community members who might remember the dance form; and it relies on a very old recording of the dance – essentially reviving, probably bringing back in ‘frozen’ form, the dance as performed in the 1930s.

Option (c) does not aim to reintroduce the practice in the community concerned: if the dance is to be viable within the community concerned (i.e. to remain ICH), it should be performed by community members rather than members of a folklore association who are not part of that community.

#### Nominations

### Question 16

States Parties submit nominations to the Lists of the Convention. Many stakeholders may be involved in the preparation of a nomination, but which of them can initiate it?

(a) Any group or agency may initiate the process, as long as the relevant communities, groups and individuals participate and agree to it.

(b) Communities, or their representatives, must initiate the process because they are the ones who need to give prior informed consent.

(c) Researchers or specialized institutions must start the process because they are the best informed about the ICH being nominated.

Option (a) is the correct answer: there is no indication whatsoever in the Convention or the ODs as to who should initiate the process of nomination. The ODs explicitly require that, whoever is leading the process, the community concerned should always be informed (ODs 1 and 2), be involved (OD 23) and have given its consent (ODs 1 and 2). Without the free, prior and informed consent of the communities concerned, the nomination file will be incomplete.

Option (b) is not well formulated: the communities concerned may initiate the process, but they do not need to be the ones to start it, as long as they are involved, informed and consent to it.

Option (c) is not formulated in the spirit of the Convention, which stresses community knowledge and control over their ICH. Researchers or specialized institutions are not always best informed about the ICH. They may take the initiative, of course, but should, from very early on in the process, inform and involve the community concerned and not proceed without its consent.

Nomination files must be submitted by State(s) Party(ies). If the nomination process is started by a non-State agency, it would be wise to inform the appropriate State agencies early on in the process. A nomination proposed by a community, NGO or institution may not always enjoy high priority in the eyes of the government; this may lead to delays or even a failure to submit the nomination. Whoever takes the initiative, it is important that the major stakeholders be informed from an early stage (see OD 80, which encourages the creation of a coordination mechanism in States Parties to assist in the preparation of nomination files). In a few rather centralized States, the State may wish to control the entire process and not be open to proposals from other stakeholders; such situations may change under the influence of better practices in other States.

### Question 17

Can countries that are not States Parties to the Convention nominate elements for inscription on the Lists of the Convention?

(a) Yes, but only if the element is in need of extremely urgent safeguarding.

(b) No, not until they become States Parties.

(c) Yes, but only if they are part of a multi-national nomination submitted by one or more other States who are already States Parties to the Convention.

Option (b) is correct: only States Parties to the Convention can nominate elements to the Convention’s Lists and they can only nominate elements present in their own territory.

### Question 18

Can languages be inscribed on the Convention’s Lists?

(a) Yes, languages can be inscribed on the Convention’s Lists because they are intrinsic to ICH.

(b) No, languages cannot be mentioned in nominations to the Lists of the Convention because language is not relevant as an ICH domain.

(c) No, the Convention indicates that languages may only be part of an inscription when considered as vehicles of ICH.

Option (b) is not valid: the list of domains in Article 2.2 is explicitly presented as non-exhaustive.

Options (a) and (c): the Committee has not yet been confronted with nominations of languages and will have to interpret the matter in due course. At the moment, there are no indications as to which of the two remaining options might be preferred by the Committee.

During the preparation of the Convention, it was recognized that language is intrinsic to ICH as it is relevant to the practice and transmission of most ICH. Language is a carrier of values and knowledge and a major tool in ICH transmission. Nevertheless, it was decided not to include ‘language’ in its own right in the list of domains in Article 2.2 of the Convention, although language does feature in the first domain mentioned in that list: ‘oral traditions and expressions, including language as a vehicle of the intangible cultural heritage’. That list, of course, is not exhaustive. This compromise reflected the very different policies of the various States concerning their internal linguistic diversity.

### Question 19

Can several States Parties to the Convention nominate a shared element together, rather than making separate nominations?

(a) Yes, the Convention and the ODs encourage multi-national nominations for the same element if it is shared across borders.

(b) No, if an element occurs in two States, they must find a way of differentiating it so that two different nominations can be made.

(c) No, only the State Party where the element has the longest history of uninterrupted practice is allowed to submit a nomination file.

Option (a) is correct: in the spirit of the Convention, the ODs encourage multi-national nominations, which are possible as long as the States in which the shared heritage is located are States Parties to the Convention. Although States Parties are not obliged to nominate shared heritage under a multi-national nomination, they are strongly encouraged to do so as it promotes international cooperation and is advantageous for safeguarding efforts. In such cases, of course, the opinion of the community(ies) concerned should be decisive.

### Question 20

Does ICH of immigrant communities qualify for inclusion in the Lists of the Convention?

(a) Yes, nominations to the Lists of the Convention that include ICH elements from immigrant communities located in a particular State may be inscribed if these elements meet the criteria set out in the ODs.

(b) Yes, elements nominated to the Lists of the Convention that include ICH of immigrant communities may be inscribed, but only if special permission is sought from the countries of origin of the immigrants concerned.

(c) No, only elements that are indigenous to the submitting States Parties, and that are relevant to their national identity or to that of majority groups present in them, may be included in the Lists of the Convention.

Option (a) is correct: it is up to States Parties to the Convention to decide what elements to nominate to the Lists of the Convention, as long as these elements and the communities concerned are located within their territory. There is no reason why ICH of immigrants could not be inscribed on the Lists as long as the element complies with the criteria and the file is considered convincing and complete. In fact, there may be very good reasons for doing so.

Option (b): any State Party is free to nominate ICH elements that are located in its territory for inscription. If the element is also practised by groups in the country of origin of the immigrants concerned, and if that country happens to be a State Party to the Convention, the States Parties are recommended to engage in international cooperation with a view to making multi-national nominations (OD 13). That recommendation, however, cannot be enforced.

Option (c): the idea that only ‘indigenous’ ICH elements should be nominated is problematic. The Convention, which is intended to promote and celebrate cultural diversity, does not intend the ICH of any groups or communities in the territory of States Parties to the Convention to be excluded from safeguarding at the national level or from being nominated to the Lists of the Convention. The Convention does not mention national identity; many States – in particular federal ones – do not claim to have national identities. What is more, the spirit of the Convention would not allow distinctions to be made between the ICH of majority and minority groups.

### Question 21

Can inscribing an element on the Lists of the Convention be used to establish a community or group’s intellectual property rights (IPR) over an element?

(a) No, the Convention cannot establish IPR over an ICH element through inscription on its Lists.

(b) Yes, inscription on one of the Convention’s Lists gives communities and groups the automatic right to sue for damages if anyone else practises their ICH element.

(c) Yes, inscription on one of the Convention’s Lists gives the communities and groups concerned IPR over their heritage.

Option (a) is correct: the Convention focus on safeguarding intangible cultural heritage, i.e. on ensuring its continuous re-creation rather than on legally protecting specific manifestations through IPR, which at the international level falls mainly within the field of competence of the World Intellectual Property Organization. WIPO is investigating the feasibility of a standard-setting instrument for the protection of IPR in respect of traditional cultural expressions, traditional knowledge and expressions of folklore. WIPO also assists its Member States in drawing up national laws and regulations to do this.

The Convention states, in Article 3, that its provisions may not be interpreted as affecting the rights and obligations of States Parties deriving from any international instrument related to IPR. These rights are established, in the first place, through legislation at the national level; and ICH elements enjoy such rights in several States.

### Question 22

UNESCO proclaimed 90 ICH elements as Masterpieces of the Oral and Intangible Heritage of Humanity. What happened to these elements after the entry into force of the Convention?

(a) The List of Masterpieces was not affected by the entry into force of the Convention and continues to be promoted by UNESCO.

(b) The Masterpieces were inscribed on a separate List of the Convention in 2008 and are still referred to as Masterpieces.

(c) The elements proclaimed as Masterpieces were incorporated onto one of the Lists of the Convention in 2008 and are no longer referred to as Masterpieces.

Option (c) is correct: in conformity with Article 31 of the Convention, and with ODs 57–65, the elements that had been proclaimed as Masterpieces were incorporated into the Representative List of the Convention at the third session of the Committee in 2008. From then on, they were no longer referred to as ‘Masterpieces’ and they are treated in the same way as the other elements inscribed on that List.

The Masterpieces programme had been strongly influenced by World Heritage thinking, both in terms of the criteria for inscription/proclamation and in the terminology used. The government experts who prepared the text of the Convention explicitly rejected the idea of establishing a hierarchy between any two elements of ICH. For example, elements that are listed, or – for that matter – inventoried, are not considered more valuable, important or outstanding than elements that are not; neither are elements that are practised by millions of people more valuable, important or outstanding than elements practised by smaller groups. In this spirit, the drafters of the Convention did not want ICH elements on the Lists of the Convention to be referred to as Masterpieces.

1. . Frequently referred to as the ‘Intangible Heritage Convention’, the ‘2003 Convention’ and, for the purpose of this unit, simply the ‘Convention’. [↑](#footnote-ref-1)
2. . UNESCO. *Basic Texts of the 2003 Convention for the Safeguarding of the Intangible Cultural Heritage* (referred to in this unit as Basic Texts). Paris, UNESCO. Available at <http://www.unesco.org/culture/ich/index.php?lg=en&pg=00503>. [↑](#footnote-ref-2)