Unit 47

Workshop on developing Safeguarding Plans: Concluding session

Published in 2016 by the United Nations Educational, Scientific and Cultural Organization, 7, place de Fontenoy, 75352 Paris 07 SP, France

© UNESCO 2016



This publication is available in Open Access under the Attribution-ShareAlike 3.0 IGO (CC-BY-SA 3.0 IGO) license (<http://creativecommons.org/licenses/by-sa/3.0/igo/>). By using the content of this publication, the users accept to be bound by the terms of use of the UNESCO Open Access Repository (<http://www.unesco.org/open-access/terms-use-ccbysa-en>).

The images of this publication do not fall under the CC-BY-SA licence and may not be used, reproduced, or commercialized without the prior permission of the copyright holders.

The designations employed and the presentation of material throughout this publication do not imply the expression of any opinion whatsoever on the part of UNESCO concerning the legal status of any country, territory, city or area or of its authorities, or concerning the delimitation of its frontiers or boundaries.

The ideas and opinions expressed in this publication are those of the authors; they are not necessarily those of UNESCO and do not commit the Organization.

Lesson Plan

Duration:

3.5 hours

Objective(S):

Assess participants’ understanding of safeguarding under the Convention and test their capacity to develop and assess safeguarding plans for intangible cultural heritage. This session should also give participants an opportunity to raise any questions related to the development of safeguarding plans and to discuss aspects of ongoing or planned safeguarding projects in their country or community.

Introduce participants to some recent texts as prepared by the Intergovernmental Committee and UNESCO that are relevant in contexts in which safeguarding plans are prepared or discussed for purposes related to the implementation of the Convention on the national and international level.

Description

Unit 47 Hand-out 1 with its three series of questions is the core tool for the assessment of knowledge gained during the workshop. The questions offer an occasion to review certain aspects of the workshop and briefly discuss them again, as required. They also raise issues concerning safeguarding at the international level or international assistance requests that could not be dealt with in the discussion of the scenarios.

Supporting documents:

* Unit 47 Hand-out 1: Questions
* Transversal issues arising in the evaluation and examination of nominations, proposals and requests since 2009 (see the Forms page on the ICH website: http://www.unesco.org/culture/ich/en/forms)
* Aide-mémoire for completing nominations to the Urgent Safeguarding List (see the Forms page on the ICH website)
* The Ethical Principles adopted by the Committee in 2015 (available at <http://www.unesco.org/culture/ich/en/10com> [see Decision 10.COM 15.a])
* Basic Texts of the 2003 Convention for the Safeguarding of the Intangible Cultural Heritage[[1]](#footnote-1)

Notes and suggestions

Facilitators divide all participants into two or three groups, with ideally not more than eight or nine participants per group. Each group is given three series of questions selected among those presented in Unit 47 Hand-out 1. Facilitators will find below the same questions with comments for guiding the discussions in the plenary.

Facilitators can either ask participants to study all questions in a series, or select only a few questions from all three groups to have a good overall mix.

The session might be split into three parts (one discussion session per group of questions) and each break-out group should be followed by presentations in plenary. After the third plenary, participants should be invited to raise any pending questions. Facilitators should use this occasion to introduce some relevant texts prepared or approved by the Organs of the Convention, such as three of the texts mentioned in the box above.

At the very end of this session, participants could be invited to discuss past and present experiences from their country(ies) in safeguarding ICH, and identify possible ways forward.

Unit 47

Questions and comments

In Unit 47 Hand-out 1, participants find the following information: *In some cases there is just one correct answer, but for most of the questions several or even all answers may be correct, more or less correct, or wrong. Try to form your opinion on all options given with each question.*

#### **Series A**

### Question A.1

By ratifying the Convention, States accept a number of obligations. Which of the following, if any, belong to the obligations of States Parties under the Convention?

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

(b) Each State Party shall contribute, together with the communities concerned, to the safeguarding of all ICH elements on its territory.

(c) Each State Party shall take measures to ensure capacity building of communities, groups and, where applicable, individuals.

Option (a), which repeats exactly the wording used in Article 11.a of the Convention, is correct.

Option (b) is not correct: Article 11.a does not mean that States Parties have to contribute to the safeguarding of all ICH elements present in their territory, but rather that they have to take measures (such as those recommended in Articles 13 to 15 of the Convention) that aim at creating general conditions favorable for the enactment, enjoyment and further development of the ICH.

Option (c) is also correct; see OD 82, which uses ‘shall’ language. OD 82 does not specify capacity building for what, so participants might start a discussion about that, with reference to OD 81. In view of Committee decisions and recommendations, one may conclude that OD 80 aims at having capacities within communities enhanced or built at least for the inventorying and safeguarding of their own ICH.

### Question A.2

Can States Parties cooperate with States that are not party to the Convention, to assist in safeguarding shared ICH?

(a) Yes, on condition that the Intergovernmental Committee gives its permission.

(b) No, not until they are all States Parties.

(c) Yes, if the communities concerned agree to joint safeguarding activities.

Option (c) is correct: the Organs of the Convention are happy with any sound safeguarding activity, anywhere in the world that takes place with the free, prior and informed consent of the community or communities concerned and that leaves them in control of the management of their ICH. See Article 14 of the Convention and section 4 of forms ITH-01 and ITH-02.

### Question A.3

In a mediation practice of community Y, women cannot be mediators, not even for mediating between women. The practice, which is in need of safeguarding, was included in the Provincial Inventory of ICH. Representatives from community Y developed a safeguarding plan for the tradition and applied to the Ministry of Culture for assistance. The ministry, which is tasked to promote gender equality in accordance with national law, has identified three options. Please advise them as to which of the following strategies could be pursued, and why:

(a) No assistance should be offered as ICH that promotes gender inequality should not be supported by this State, but the element may remain in the inventory as it was recognized as part of its cultural heritage by community Y.

(b) Start discussions with community Y to see whether the community might wish to adapt the practice to evolving understandings in society and whether a new safeguarding plan might be developed once the mediation practice does promote gender equality.

(c) Take the element out of the inventory and wait five to ten years to see what happens.

Everywhere in the world, there are ICH elements recognized by communities as forming part of their ICH that cannot pass the test of the third line of the ICH definition in the Convention (Article 2.1).

States Parties are free to establish criteria for the inclusion of elements of ICH in their inventories. While conscious that elements that have aspects that are not in conformity with generally accepted human rights instruments cannot be acknowledged at the international level, States Parties still may see reasons to include them in their inventories of ICH, in particular if they are not in conflict with national legislation. Problematic aspects should not be hidden in the descriptions of such elements in an inventory, and the State should make it clear that such inclusion does not mean approval by the State of the elements concerned. Once the information that is provided for such an element in an inventory can be accessed; debates may start in the society, too. That is what recently happened in the case of an element included in the inventory of the Netherlands, which – in the eyes of many – has an outspoken racist aspect.

Option (a) is not impossible, but option (b) is to be preferred since the wish of the community to safeguard the element and the willingness of authorities to discuss possibilities for such action, may open doors for discussing the practice, adapting it and developing a new safeguarding plan for an adapted version of the element. Safeguarding may then contribute to better observance of human rights.

Option (c) may not lead to mitigating negative aspects of the element concerned.

### Question A.4

Can languages be safeguarded in the framework of the implementation of the Convention at the national level?

(a) No, since languages as such are not mentioned among the domains of ICH in Article 2.2 of the Convention (they are only mentioned as a vehicle of the ICH).

(b) Yes, they are intrinsic to ICH and should always be safeguarded both as a vehicle of the ICH and in their own right.

(c) Languages as such can be safeguarded in the framework of the implementation of the Convention on the national level if they are included by the State Party concerned under their definition of ICH.

Option (a) is not valid: the list of domains in Article 2.2 is explicitly presented as non-exhaustive; so, languages are not *a priori* excluded from inventorying or safeguarding activities.

Option (b) is not valid either: many people believe that languages are intrinsic to ICH, but this is not explicitly recognized at the level of the Convention, which only speaks about language as a vehicle of ICH (Article 2.2). The Convention and the ODs do not contain an obligation for the State Parties to assist communities in safeguarding specific elements of their ICH.

Option (c) seems unproblematic; it is in the spirit of the Convention that States Parties contribute, in accordance with various international human rights instruments, to the safeguarding of the languages of indigenous and other communities which are all – to an extent – vehicles of the ICH of the communities (and groups and individuals) concerned.

### Question A.5

The population in rural area Y has diminished considerably over the last 20 years with young people leaving to find work and entertainment elsewhere. Much of the ICH in the area is endangered, especially singing and dancing practices. Experts from the Ethnomusicological Research Centre in the capital developed a safeguarding plan for a few of these traditions that they consider unique. The community concerned will be asked for their consent for the project as soon as possible. Would you advise the ministry to fund the plan that aims at enlarging the repertoire of the current generation of singers and dancers, using documentation? If not, what reasons would you give?

(a) No, implementing the Convention should not in the first place satisfy the research agenda of experts, but cater to the needs of communities concerned.

(b) No, the plan should be rejected out of hand as it was drafted without the involvement of the community concerned.

(c) No, the community concerned has other, serious problems; a safeguarding plan for their ICH should also take those problems into account.

A major flaw in this scenario is, of course, the preparation of a safeguarding plan without the involvement of the community concerned; another flaw is the expert-driven focus of the plan. So, option (a) is not an ideal answer as plans developed without community involvement that supposedly meet their needs may also fail.

Option (b) is valid, and it is the best answer as it identifies the main problem with the plan.

Option (c) is valid too – no effort was made, apparently, to take into account the situation of the community concerned, which can only yield a project that is not relevant for the sustainable safeguarding of the ICH concerned. Option (c) points at a solution: sitting around the table with community representatives, NGO representatives (if relevant) and a few experts and discussing whether one might think of a safeguarding plan for part of that community’s ICH that might contribute not only to safeguarding that specific ICH, but also to the social, environmental or economic development of the community concerned

In 2015, the Committee adopted a set of ‘Ethical principles’ (10.COM 15a), some of which might be referred to while discussing this question.

### Question A.6

A dance form that was once widely practised in town B, and that was well documented in the 1960s, has not been performed since the 1980s. Which of the measures shown below, if any, could be described as ‘revitalizing’ the practice of this dance?

(a) Reconstruction of the dance by researchers, using recordings from the 1960s, and having it reintroduced into the community concerned through training sessions with the assistance of community members who remember the dance and the occasions on which it was performed well.

(b) Training members of a folklore association in the country’s capital to perform the dance with the help of recordings from the 1960s and the advice of community members who still remember it well.

The term revitalization applies to safeguarding measures that are aimed at reinforcing an ICH practice that is seriously endangered because it has almost ceased to exist (or is even no longer actively performed) within the community concerned but is – at least – still remembered, missed and considered as valuable by some in the community.

For safeguarding through revitalization, too, the initiative should come from the community itself, which should be committed to assume its responsibilities in the execution of the safeguarding plan. Since circumstances have changed – and since there must have been reasons for the very low degree of viability of the ICH concerned – the practice will probably resurge in a form adapted to the new circumstances and with values that may not be exactly identical to the values the element had before.

If the dance was still practiced until the 1980s, there might be enough community members who remember the tradition, and its values and who could assist in revitalizing the practice, so option (a) seems a feasible revitalization measure.

Option (b) does not aim to reintroduce the practice in the community concerned; if the plan succeeds, it will only be performed in staged form outside of the original context, and without the values that were attached to it within the community, or values similar to those. If the dance is to become viable again as ICH, it should be performed and transmitted by community members rather than by members of a folklore association who are not part of that community.

#### **SERIES B**

### Question B.1

Which of the actions mentioned below, if any, are States Parties obliged to undertake before they can start assisting a community in safeguarding a specific ICH?

(a) Include the ICH concerned in an inventory of the ICH present in their territory.

(b) Obtain the consent of communities, groups and individuals concerned.

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

Communities have always been managing their ICH and taken safeguarding measures, and in many countries State institutions have assisted them in doing so before as well as after their adoption of the 2003 Convention. By ratifying the Convention, States Parties declare that they will contribute to the safeguarding of the ICH present in their territory in the spirit of the Convention. A major requirement under the Convention is that for any action concerning a specific ICH the consent of the community/ies, group(s) and/or individuals concerned is required. See, for instance Article 15 of the Convention and also the forms for nominating elements to the Lists of the Convention or for submitting safeguarding practices for the Register that confirm and make explicit the Committee’s thinking about the obligatory nature of the deep involvement of the communities concerned whenever safeguarding of their ICH is at stake. Option (b) is therefore the correct answer.

As to option (a): a State Party may very well assist a community in the safeguarding of an ICH element that for one reason or another has not – or not yet – found its way to an inventory.

Option (c): the Convention – and the Committee keeps echoing that – does encourage each and every State Party to adopt legislation to “ensure the safeguarding, development and promotion of the ICH present in its territory,” but safeguarding activities that are in line with the 2003 Convention may very well take place in States that have not (yet) developed such legislation.

### Question B.2

Some ICH practices seem to need safeguarding measures as well as intellectual property protection. Which of the following statements is true, if any?

1. Intellectual property protection can assist in ICH safeguarding in some cases.
2. The 2003 Convention does not include intellectual property protection among the safeguarding measures in Article 2.3 and it is therefore not an appropriate safeguarding measure.
3. ICH safeguarding is not compatible with intellectual property protection, see Article 3(b) of the Convention.

Option (a) is correct; in different types of cases it may be beneficial for the communities, groups or individuals concerned to have element(s) of their ICH simultaneously safeguarded in ways advocated by the ICH Convention and through the protection of their intellectual property rights.

Option (b) is not correct: the list of safeguarding measures in Article 2.3, which does not claim to be exhaustive, does include ‘protection’ as a safeguarding measure, which may be interpreted as also including protection through various legal means. The Organs of the Convention paved the way for such interpretation by the wording of 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.’

Option (c ) is not correct: Article 3(b) just means that ratification of the ICH Convention in States Parties does not affect any other rights and obligations that relate to intellectual property rights (or to the use of biological and ecological resources) that derive from other international instruments to which they are parties.

### Question B.3

Under the Convention, is a State Party free to assist recent immigrant communities in safeguarding their ICH?

(a) Yes, but only if the communities concerned have transmitted that ICH for a few generations in their new homeland.

(b) Yes, but only if their state of origin agrees.

(c) Yes, a State may decide to assist any community present in its territory in safeguarding its ICH.

1. No, elements of ICH should be safeguarded as much as possible in their original context.

The Committee has not explicitly dealt with this question, so we have to interpret it in line with the thinking of the Organs of the Convention.

No doubt, option (c) is the most valid one. Immigrant groups bring with them the knowledge and skills related to their traditional practices and expressions. If these have been transmitted from generation to generation and also otherwise meet the definition of ICH in the Convention, then these expressions and practices belong to the ICH present in their country of immigration. See also paragraph 45 of the Aide-mémoire for the Representative List.

States Parties may of course introduce regulations that they will only include ICH of immigrants in their inventorying and safeguarding activities if they have been living in the country for at least a certain number of years to be sure they that have to do with a group that has settled for good on their territory. It does not seem right, however, to link such regulations to the ‘from generation to generation’ requirement that is part of the definition of ICH in Article 2.1 of the Convention. So, option (a) is not a preferred choice.

Option (d) does not seem to be ideal either: ICH is in the first place practised by people and if a group moves, its ICH moves, in principle, with the group. Some of the group’s ICH may lose in viability in their new surroundings, due to different social, legal, material, natural or environmental contexts. When enough people from a community are together to perform and participate and they feel it is right to enact an expression or practice, one should not speak of a context that is not ‘original’ (if participants do not like that term, they are right).

Regarding option (b): there is no obligation under the Convention to ask for the agreement of the State of origin for safeguarding activities to take place. It would, however, be in line with the Convention’s insistence on international cooperation and with the Committee’s history of taking political sensitivities into account, to at least inform the States of origin if significant safeguarding measures are undertaken, especially on the international level (such as nominations or international assistance requests). If that State objects, neither that State, nor the Committee would have the means to stop the State that welcomed the immigrant group in question to pursue the preparation and implementation of a safeguarding plan for elements of the ICH of that group.

### Question B.4

Which of the following statements is true, if any?

(a) States Parties have the obligation to assist in the safeguarding of all elements included in their official inventories.

(b) States Parties have the obligation to assist in the safeguarding of all elements included at their request in the Representative List.

(c) States Parties have the obligation to assist in the safeguarding of all elements included at their request in the Urgent Safeguarding List.

Option (a) is not valid, unless States Parties have developed binding regulations to this effect at the national level.

Option (b) and (c): no binding obligation to this effect can be found in the Basic texts of the Convention. But, when submitting nominations to the Lists of the Convention, States Parties have to propose safeguarding measures (Representative List) or safeguarding plans (Urgent Safeguarding List) for the nominated elements, for which they have to indicate the commitments made by the State and the communities concerned.

In conclusion, when submitting nominations to the Lists of the Convention, States Parties do take on obligations for assisting the communities concerned in managing and/or safeguarding the nominated elements once they will have been inscribed; the Committee will not inscribe elements if it is not convinced that the commitments made by the States Parties are serious, or if no such commitments are made at all.

So, options (b) and (c) are correct: States Parties have such obligations, but the Committee cannot make them binding.

### Question B.5

The Ministry’s Advisory Body for ICH in State Party A agreed in principle to assist community B financially in safeguarding musical practice C. The focus of the proposed safeguarding plan, that was prepared with the involvement of practitioners and other representatives from the community concerned, is on the transmission of knowledge and skills to a new generation of players and singers. It is foreseen to use ‘modern’ musical instruments as the traditional instruments can no longer be produced. There is discussion among experts within the Ministry’s Advisory Body about this issue, which for the community concerned seems to be of little importance. What would you advise?

(a) Using ‘modern’ instruments as proposed by the community in the safeguarding plan.

(b) Stopping the development of the safeguarding plan for musical tradition C – traditional instruments should be part of it.

(c) Not financing the safeguarding plan and starting a procedure for withdrawing tradition C from the national inventory.

|  |
| --- |
| Option (a) is correct; apparently for the community concerned, the value and significance of musical practice C does not depend on the use of traditional musical instruments. Experts may regret this, but in such cases the community should have the first and the last word: it is their tradition and they are the ones who will enact it and who will carry it on. They are also the ones who have to decide what adaptations are acceptable (and what adaptations are not) when safeguarding measures are being prepared to help the element regain its viability against the background of changing circumstances.  One hopes that participants will conclude without much hesitation that options (b) and (c) are not viable. It does however make sense to have them seriously discussed as in quite a few States Parties officers in ministries and other institutions may be more inclined to listen to experts than to knowledgeable community members, even if these experts’ thinking is not in line with the Convention.  See also the Ethical Principles |

### Question B.6

The Ministry of Culture of country E has limited funding for assisting projects that aim at safeguarding specific elements of ICH. It needs to decide on the appropriate criteria for making its choices. Which of the following criteria for selecting projects for safeguarding would be in the spirit of the Convention?

(a) Projects that concern ICH elements that are most widely known and practised within the country because more people can associate with them.

(b) Projects that concern outstanding and interesting ICH that will foster national pride.

(c) Projects that concern ICH not found in other countries and that demonstrate the uniqueness of the nation.

(d) ICH elements that are most in need of safeguarding.

(e) Projects that concern ICH that complies with the Convention’s definition of ICH.

(f) Projects that contribute to the consolidation of country E as a nation state.

(g) Projects that concern historical forms of ICH.

(h) Projects that contribute to the sustainable development of the community or group concerned, or the region(s) concerned.

Options (d), (e) and (h) are consistent with the Convention, its ODs as well as decisions and recommendations of the Committee. The same cannot be said about the other options, some of which are completely contrary to the spirit of the Convention. It may be useful to explain to the participants that one may think differently about which of the three should have priority, and whether they should all apply at the same time. Three criteria might be enough – it is not a good idea to introduce more criteria than the strictly necessary minimum.

As to the other criteria:

1. No group or community – whatever its size – should be *a priori* excluded from the possibility to profit from safeguarding activities; the ICH of smaller and larger communities alike should be included in inventories and qualify in principle for assistance for safeguarding.
2. and (c): the Convention does not want elements of ICH to be judged or prioritized on the basis of criteria such as uniqueness, outstanding nature, authenticity, originality, beauty or antiquity that create hierarchies and that contradict the way ICH is presented in the Convention and understood by the Committee.
3. and (f): the Convention wishes to foster diversity and creativity within States as well as between States. The Convention and its ODs therefore do not use expressions such as ‘nation’, ‘nation-building’ and only rarely the expression ‘national’. One hopes that the implementation of the ICH Convention will contribute to maintaining and fostering cultural and social diversity within the State Parties rather than to their cultural, social and linguistic homogenization around one or a few major groups.
4. Any element of ICH that has a certain tradition of transmission within a community or group should in principle be eligible for being selected when safeguarding is needed. The alleged antiquity of a practice or expression should not play a determining role when it comes to identifying priorities for safeguarding activities, especially not when such an argument comes from outsiders to the community.

#### **SERIES C**

### Question C.1

Does inclusion of an endangered element of ICH in an official inventory of the country mean that the Government has the obligation to assist the community concerned in safeguarding the element?

(a) Yes, any inclusion in an official inventory means that the State has to assist the community concerned in safeguarding their ICH, where required, because the Convention says that inventories are to be set up ‘with a view to safeguarding’ (Article 12).

(b) No, the State is obliged to assist the community concerned only if there are legal regulations to this effect at the national level.

(c) No, the State is obliged to assist the community concerned only if the officially approved inventory entry explicitly states that the element needs safeguarding and measures are indicated.

The Convention states in Article 12.1 that inventories are to be drawn up to identify ICH ‘with a view to safeguarding’; this means that inventory entries for specific elements of ICH should include information that is useful for the safeguarding of the element (current viability, threats and risks). The Convention does not indicate anywhere that States Parties should assist communities concerned in safeguarding endangered ICH that is inventoried with the consent of the State (in a State inventory). This renders options (a) and (c) invalid.

If an explicit regulation on the national level obliges a State Party to contribute to the safeguarding of elements for which safeguarding measures are included in an inventory, then the State would have to contribute to the safeguarding activities for such elements. Option (b), which introduces such a regulation, is the correct answer.

### Question C.2

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 and effectively contributes to the continued practice and transmission of the element.

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

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

Options (a) and (c) are not correct.

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; it should also provide information about the organization of the element and about its function in and the values for the community concerned. Safeguarding measures 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.

Documentation should be carried out in cooperation with the communities concerned and with their free, prior and informed 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 – but only 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)) – see also the Ethical Principles.

### Question C.3

Who, within a State Party, is able to apply for international assistance for safeguarding projects?

(a) The ministry responsible for the implementation of the Convention, or their representative.

(b) The community or communities concerned.

(c) A committee of experts from institutions and research centres.

(d) A committee or organ of representatives from communities, NGOs and institutions and research centers as foreseen in the Operational Directives.

Option (a) is correct; the Convention being an agreement between States, all nominations and requests that are submitted to the Committee in the framework of the implementation of the Convention on the international level, should be signed by the ministry responsible for the implementation of the Convention, or her or his representative, which might be – for instance the State’s permanent delegate at UNESCO.

The other options are not correct.

### Question C.4

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

(a) No, gender differentiation never constitutes 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 always 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 that are clearly unfavorable for some people, then it is contrary to the requirements of international human rights instruments and the element cannot be considered ICH in the 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).

States Parties will have to determine, when drafting legislation and policies for inventorying and safeguarding ICH, how they want to deal with human rights violations that may be part of the enactment or transmission of ICH elements. They may decide to exclude such ICH from inventorying, or not. They might make their assistance for safeguarding of such ICH conditional on the acceptance of measures to eliminate discriminatory or offensive aspects from the practice of the ICH concerned.

### QUESTION C.5

Community P in State Party Q discovered audio-visual documentation about their amateur theatre tradition T that a documentation project created in 1946 and donated to an archive. The tradition stopped being practised around 1950. At the request of community P’s cultural club, a producer started organizing new performances in the style of tradition T with amateur actors from within the community. These performances were based on the 1946 documentation and on interviews with two persons who remember having seen some of the plays in their childhood. The organizers are now planning for the third season, which many people in community P are eagerly awaiting.

For each of the following statements state whether you agree, or not:

(a) This is a revival of tradition T.

(b) This is a revitalization of tradition T.

(c) The practice of the new performance meets the Convention’s definition of ICH.

(d) State Party Q should not support or acknowledge such activities.

Since the performances stopped more than 65 years ago, and since we have to do here with an expression that, when it is viable, is performed several times a year, we have to do here with revival (option (a)) rather than with revitalization (option (b)).

Option (c) is not correct: these theatrical practices can be accepted as ICH only after uninterrupted enactment and transmission ‘from generation to generation’, as defined in Article 2.1 of the Convention.

If the budget is available and regulations allow, there should be no problem for a State to support the revival of practices and expressions that ceased to exist a long time ago, but that communities concerned would be happy to enact again. So, option (d) is not correct.

### Question C.6

Can several States Parties to the Convention undertake a joint safeguarding plan for endangered cross-border ICH?

(a) Yes, the Convention and the ODs encourage international cooperation for ICH that is shared across borders.

(b) No, if an element occurs in two or more States, each of them is responsible for safeguarding it in its own territory.

(c) Yes, on the condition that all the communities concerned agree.

|  |
| --- |
| Although each State is indeed responsible for safeguarding activities that are carried out in the framework of the implementation of the Convention for ICH elements present on its territory, this does not mean that States cannot or should not join forces when they can. So, option (b) is not correct.  Options (a) and (c) are both correct: the Convention and the ODs do encourage joint actions between States Parties to the Convention, but such actions should only be carried out if the community/communities concerned agree(s).  See also the Ethical Principles. |

1. . 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-1)