unit 17

Ratifying the Convention

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Lesson Plan

Duration:

2.5 hours

Objective(s):

Develop an understanding of the process of ratifying the Convention for the Safeguarding of the Intangible Cultural Heritage.[[1]](#footnote-1) Examine the diverse strategies for ratification adopted by States Parties through specific examples from different countries. At the end of the workshop, participants should be able to identify strategies and challenges related to the ratification of the Convention by their country and discuss how these strategies might be implemented and challenges addressed.

Description:

This unit provides information on legal aspects and possible paths to ratification of the Convention and the status of ratifications to date.

Proposed sequence:

* Process of ratification
* Working towards ratification
* Patterns of ratification
* Examples: Croatia, Brazil, Kenya

Supporting documents:

* Facilitator’s notes Unit 17
* PowerPoint presentation Unit 17
* Participant’s text Unit 17
* Participant’s text Unit 3 (relevant entries include: ‘Ratification’ and ‘State Party’)
* Unit 17 Hand-out 1: Model instrument of ratification
* Unit 17 Hand-out 2: Multiple-choice questions on ratification
* Basic Texts of the 2003 Convention for the Safeguarding of the Intangible Cultural Heritage[[2]](#footnote-2)

Notes and suggestions

This session is divided into two parts. The first part (about 1.5 hours) should cover the benefits and process of ratification and deal with some examples in other contexts, using the PowerPoint presentation and the examples provided.

The second part of the session (the final hour) should focus on strategies and challenges for ratification in the State(s) represented in the workshop. The participants will discuss, from their own perspectives, opportunities, as well as issues and challenges their country face in regard to ratification of the Convention. This session may start in plenary with brief reports by participants, followed by a discussion guided by the facilitator. If there are participants from more than one State, small group discussions may be preferred.

Participants should be encouraged to discuss possible routes towards ratification in their country, and to speak about their experiences and expectations in this regard. Even if they have reached some common understanding of the benefits and obligations that accompany ratification of the Convention, their views on the processes related to ratification will differ depending on their jobs, expertise, and their understanding of the national situation and its sensitivities. Participants may hold positions as ministerial employees, workers in the NGO sector or community representatives. They may also have different professional backgrounds, for example as lawyers, civil servants, ICH researchers or practitioners.

The facilitator should not play too didactic or advisory role in this discussion, as UNESCO is not expected to interfere in the internal affairs of Member States that consider ratifying its Conventions. The Director-General of UNESCO encourages all Member States to ratify all UNESCO Conventions, so the facilitator who is leading a workshop under the auspices of UNESCO, may express the hope that all States that have not yet ratified the Intangible Heritage Convention will seriously consider doing so.

#### Reluctance to ratify

The facilitator should be aware that various people or institutions in Member States may be reluctant to see their country ratify the Convention. Some may have difficulty with the principles behind the Convention, or specific concerns about the possible political or financial consequences of ratifying the Convention. The facilitator should try to identify such objections and have them discussed in a constructive way.

In many cases objections are based on misunderstandings and misinterpretations – in such cases it will often be possible to point the participants concerned to the relevant parts of the Convention and ODs, or to the decisions and statements of the Committee. In this regard, facilitators should review the recent evaluation of the implementation of the Convention ([http://www.unesco.org/culture/ich/doc/src/ITH-13-8.COM-INF.5.c-EN.doc](http://www.unesco.org/culture/ich/doc/src/ITH-13-8.COM-#INF.5.c-EN.doc)).

In this session, the facilitator may clarify matters of fact and objectively facilitate the discussion, while presenting UNESCO’s and the Committee’s point of view that any country may benefit from adhering to the Convention. The facilitator may also take notes on opportunities and obstacles to ratification as described by participants. The facilitator should submit these notes, with the permission of the participants, to the UNESCO Intangible Cultural Heritage Section with his/her report about the workshop. This information will assist the Section in understanding possible challenges related to the ratification of the Convention.

Participants should be reminded that States Parties and their delegations to UNESCO that are considering ratification may at any time seek assistance and advice on an individual basis from the Intangible Cultural Heritage Section at UNESCO.

#### Relationships with other UNESCO Conventions

Units 2 and 13 discuss relationships and differences between three UNESCO Conventions that contribute to the promotion of cultural diversity, including the Intangible Heritage Convention.

#### Intellectual property rights

The Convention does not create new, or affect existing, intellectual property rights related to ICH (Article 3(b)): it is up to each country to regulate such rights on the national level. In this process they may be inspired by the work of the World Intellectual Property Organization (WIPO). The Member States of WIPO (largely the same States as the Member States of UNESCO) are studying possibilities for regulating intellectual property rights relating to traditional knowledge and traditional cultural expressions on the international level.

Further information on intellectual property rights is given in Unit 3.

Unit 17

Ratifying the Convention

Facilitator’s narrative

###### Slide 1.

Ratifying the Convention

###### Slide 2.

In this presentation …

###### Slide 3.

Process of ratification

Participant’s text Unit 17.1 explains legal aspects of ratification both for Member States of UNESCO (as illustrated on the slide) and for non-Member States.

Note on reservations/declarations

Article 26.2 of the Intangible Heritage Convention explicitly indicates that a State at the moment of the deposit of its instrument of ratification may declare that it shall not be bound by the provisions in Article 26.1 concerning contributions into the Fund of the Convention. Several States Parties are currently not bound by Article 26.1 by virtue of such declarations.

Article 26.3 of the Intangible Heritage Convention calls upon States Parties who have made the reservation referred to in Article 26.2 to endeavour to withdraw it, by notifying the Director-General of UNESCO.

There are no other provisions concerning reservations or declarations to be found in the Convention, but according to Article 19 of the Vienna Convention on the Law of Treaties,[[3]](#footnote-3) States may however indicate other reservations at the moment of ratification, as long as these reservations are considered to be compatible with the object and purpose of the Convention. The statements made so far mainly concern limitations to or expansions of the territorial application of the Convention.

The legal department of UNESCO presents, on the UNESCO website, reservations and declarations that so far have been made by ratifying States.

See: [http://portal.unesco.org/en/ev.php-URL\_ID=17716&URL\_DO=DO\_TOPIC&URL\_SECTION=201.html#RESERVES](http://portal.unesco.org/en/ev.php-#URL_ID=17716&URL_DO=DO_TOPIC&URL_SECTION=201.html)

Declarations and reservations by States Parties at the time of ratification of the Convention

**Argentina: ‘**Declaration: The Argentine Republic, in accordance with Article 26, paragraph 2 of the Convention, shall not be bound by the provisions of paragraph 1 of this Article. Reservation: The Argentine Republic considers that Article 33, paragraph 2 and the correlative Article 2, paragraph 5 of the Convention are not applicable in respect of the territories that are the subject of a sovereignty dispute between two States Parties to the Convention that is recognized by the General Assembly of the United Nations.’

**Colombia:** Statement: ‘Amendments to Article 5 and other amendments that have entered into force at such time as Colombia becomes a Party to the Convention, as referred to in Article 38, paragraphs 5 and 6, will only enter into force for Colombia once the internal procedure has been completed for the approval and revision of these amendments prior to ratification as provided for under Article 150, paragraph 16, and Article 241, paragraph 10, of the Political Constitution of Colombia.’

**Denmark:** Declaration: ‘Until further notice, the Convention shall not apply to the Faroe Islands and Greenland.’ On 17 December 2013, Denmark informed the Director-General that ‘Denmark withdraws its declaration in respect of Greenland’.

**Indonesia: ‘**The Government of the Republic of Indonesia, by virtue of Article 26 paragraph (2) of this present Convention, declares that it shall not be bound by the provision of Article 26 paragraph (1)’.

**Saudi Arabia:** ‘I announce under this document on the accession of Saudi Arabia and the acceptance of the International Convention of the Safeguarding of the Intangible Cultural Heritage and its commitment to implement its items without any association of the provisions of paragraph (1) of Article (26) of this convention’.

**Seychelles:** ‘The Republic of Seychelles, by virtue of this present Instrument, ratifies the United Nations Educational, Scientific and Cultural Organisation Convention for the Safeguarding of the Intangible Cultural Heritage reserving the right not to be bound by Article 26 paragraph 1’.

**Syrian Arab Republic:** ‘The fact that the Syrian Arab Republic is joining the Convention does not, in any way, mean recognizing Israel, and does not lead to entering with it any kind of dealings under the provisions of this Convention’.

**China:** Territorial Application: Notification (6 January 2005): Extension to: Hong Kong.

**Netherlands:** Territorial Application: Notification (15 May 2012): European part of the Netherlands, the Caribbean part of the Netherlands (the islands of Bonaire, Sint Eustatius and Saba) and Aruba

Note on accession

**Article 33 says**

1. That the Convention shall be open to accession by all States not Members of UNESCO that are invited by the General Conference of UNESCO to accede to it.

2. That the Convention shall also be open to accession by territories which enjoy full internal self-government recognized as such by the United Nations, but have not attained full independence in accordance with General Assembly resolution 1514 (XV), and which have competence over the matters governed by this Convention, including the competence to enter into treaties in respect of such matters.

3. That the instrument of accession shall be deposited with the Director-General of UNESCO (see also Article 2.5 of the Convention).

By virtue of Article 33.2, Palestine was able to accede to the Convention in 2011.

###### Slide 4.

Working towards ratification

Participant’s text Unit 17.2 and 17.3 discuss the various paths States may take towards ratification.

###### Slide 5.

Ratification by year

Participant’s text Unit 17.4 discusses the ratification of the Convention to date. Please note that updated information on ratification can be found on the Facts and Figures webpage.

###### Slide 6.

Ratification map

The map on the slide shows in green the States that had ratified the Convention by 2013. For the current map of ratification of the Convention around the world, please consult the Facts and figures webpage.

###### Slide 7.

Ratification strategies: Examples

To illustrate the use of some ratification strategies, the facilitator may present a few examples. They may include the examples on the following slides.

###### Slide 8.

Ratification strategies: Croatia[[4]](#footnote-4)

Croatia was able to ratify the Convention relatively early, and to immediately start implementing it because of the high level of awareness about ICH among the communities concerned as well as in the general public and among politicians; the considerable expertise present in academia; and the early efforts made to include ICH in cultural policies, allotting budgets for its promotion and protection.

* Local anthropological and ethnological research since the 19th century fostered the establishment of a strong academic community, which is still very active.
* The people in what used to be Yugoslavia never stopped transmitting their vibrant ICH and were encouraged to continue doing so – though controlled by State policies - in socialist Yugoslavia.
* Croatian independence began in 1991 and was consolidated in 1995 after a turbulent period.
* In 1999, ICH was included for the first time in legislative provisions, as part of a judicial review after independence.
* In 2000 a major exhibition (‘Croatian Folk Culture at the cross roads of worlds and eras’) was organized under the auspices of the Ministry of Culture presenting material and non-material aspects of that culture; a voluminous catalogue, identifying many aspects of the ICH present in Croatia, was published and widely disseminated.
* In UNESCO, Croatia actively supported the elaboration of the 2003 Convention;
* In 2004, the Minister of Culture appointed the first National ICH Committee, with 4 members.
* Croatia submitted files for the Masterpieces programme in 2003 and 2005; the elements concerned were not proclaimed as Masterpieces but were nominated to the RL in 2008 and inscribed in 2009.
* The Minister of Culture took a personal interest in the safeguarding of the ICH in his country and was keen to see progress on the implementation of the Convention. He personally supervised the preparations for ratification and also reinforced the National ICH Committee, expanding it from 4 to 20 members.
* Croatia ratified the Convention in 2005. By mid-2009, 65 ICH elements had already been included in the ICH inventory (Register of Cultural Goods) of Croatia. Within Europe it proved to be the most active State Party for preparing and submitting nominations for the Lists of the Convention. Croatia has one element inscribed on the USL, and thirteen on the RL, of which one is a multinational file (Mediterranean Diet).

###### Slide 9.

Ratification strategies: Brazil[[5]](#footnote-5)

By the time that Brazil ratified the Intangible Heritage Convention in 2006 - a Convention it had helped to draft - the country had already fostered a number of initiatives for ICH-related research and inventorying by competent institutions. Brazilian law protected the rights of indigenous people in respect to research and intellectual property rights, and ICH was recognized in law as part of the cultural heritage of the country. This meant that the ratification of the Convention was easily approved by Parliament and the implementation thereof proceeded very quickly thereafter.

* In the late 1940s, a National Commission of Folklore was created, whose function was to link regional commissions in every state and to promote the research and dissemination of information about ‘folklore’.
* In 1958, the Campaign for the Defence of Brazilian Folklore was established under the Ministry of Education and Culture. The campaign was incorporated into the National Foundation of Art as the National Institute of Folklore in 1976, and in 1997, its name was altered to become the Centre for National Folklore and Popular Culture.
* By the 1970s, inventorying and documentation activities carried out by many different organizations and experts had highlighted elements of the ICH of many different groups living in Brazil.
* The Constitution of 1988 stated that the Brazilian cultural heritage consists of both tangible and intangible heritage, including creative activities, practices and ways of life of all the groups that form Brazilian society. At this stage there was not yet specific legislation focusing on ICH safeguarding.
* Ethnological and anthropological research was increasingly performed under strict protocols that gave some measure of control to the communities concerned. Indigenous communities gained special rights by virtue of the 1988 Constitution and other legislation, which meant among other things that the documentation of their ICH – for instance, the right to collect it, and manage access to it - is regulated not only by copyright law, but also by FUNAI, the National Foundation for the Indian.
* In 1997, an International Seminar on ‘Intangible Heritage: strategies and forms of protection’ recommended that Brazil develop ICH-related legislation and conduct ICH inventorying at the national level.
* In August 2000 Presidential Decrees established the Registry of Intangible Cultural Assets and the National Programme for Intangible Heritage (PNPI). IPHAN, which had already been inventorying and conserving heritage places and objects, was tasked with the supervision and coordination of national activities for safeguarding ICH. IPHAN developed an inventorying methodology to be used in compiling the National Inventory of Cultural References that was aimed at safeguarding.
* Brazil and UNESCO co-organized an intergovernmental meeting in Rio in January 2002 on the classification of ICH, in order to prepare a list of domains of ICH that could be included in the future Convention. Brazil also participated actively in the intergovernmental meeting that prepared the draft text of the Convention in Paris between September 2002 and June 2003 (assuming for instance the task of rapporteur of that meeting).
* In late 2003 the Centro Nacional de Folclore e Cultura Popular, or CNFCP (formerly the National Institute of Folklore), a State agency with large collections and a huge website, was incorporated into IPHAN. In 2004 a special Department of Intangible Heritage - DPI - was established within IPHAN. In May 2009, DPI was divided into two units, one for identification and registration, and one for safeguarding.
* The ratification process proceeded smoothly through the Ministry of Culture, the Government, Congress, the Chamber of Deputies and Parliament. Brazil ratified the Convention in March 2006.

###### Slide 10.

Ratification strategies: Kenya[[6]](#footnote-6)

* In August 2003, before the adoption of the Convention, the Kenyan Ministry of Culture mobilized a team of stakeholders, including local cultural practitioners and community representatives, to compile a country position on the draft Convention. During the UNESCO General Conference in September-October 2003, the Ministry of Culture engaged with the UNESCO fraternity and analyzed what other countries were doing.
* In 2004 the Ministry of Culture developed a ratification plan which identified appropriate activities, roles and a timeframe. The Ministry of Culture held several workshops with community representatives and other stakeholders in 2005 to make them acquainted with the contents of the Convention.
* The Ministry of Culture lobbied different ministries dealing with culture (for example the Ministries of Environment, Education, Tourism, Agriculture, International Relations and Internal Security) and provincial administrations in order to include them in discussions about ratification.
* The Ministry of Culture consulted with other institutions such as the National Museums of Kenya, the Kenya Copyright Board, the Music Copyright Society of Kenya, public and private universities, non-governmental organizations, the Kenya Oral Literature Association, the National Book Development Council, looking at how to ‘domesticate’ the various aspects of the Convention.
* In 2004 UNESCO and the Kenyan government organized a regional information meeting in Nairobi, Kenya, that involved eastern and southern African States. The meeting aimed at informing those states about the Convention and encouraging them to ratify it. Kenya used the experiences of other countries to develop the Kenyan ratification plan and to brief ministers and Members of Parliament in the lobbying process.
* Kenya delayed developing a national cultural policy so as to incorporate aspects of the Convention and used the stakeholder consultation process for the national cultural policy to discuss issues around the Convention.
* A Culture Committee was established in 2005 as part of the national constitutional review process.
* In 2005 the Culture Committee recommended the inclusion of a cultural chapter in the constitution. The national Constitution of Kenya (adopted in 2010) recognizes the significance of cultural heritage and the role of communities as the creators and bearers of such heritage.
* In 2007 the Culture Committee prepared a Cabinet memorandum requesting the Cabinet to approve the ratification of the Convention. This was granted and the Minister for Foreign Affairs prepared and deposited the instruments of ratification with the Director-General of UNESCO. Kenya became a State Party in October 2007.
* After ratification Kenya soon had one element inscribed on the USL: the ‘Traditions and practices associated to the Kayas in the sacred forests of the Mijikenda’ (2009). At the same time, the Committee granted financial assistance to cover some of the safeguarding measures proposed for this element.

Unit 17

Multiple-choice questions (Facilitator’s Copy)

These are based on frequently asked questions. They may be handed out to participants and then referred to at various stages during the workshop, but 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?

1. Create inventories of the ICH present on their territory.
2. Obtain the consent of communities, groups and individuals, who are the stewards of the ICH within the country, for ratification.
3. Adapt national legislation – if necessary – to create a legal framework for ICH safeguarding.
4. 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 intentions 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

If UNESCO Member States wish to become States Parties to the Intangible Heritage Convention should they ratify, accept, approve or accede to it?

1. Member States should accede to the Convention.
2. Member States may neither accept nor approve the Convention, they have to ratify it instead.
3. Member States may ratify, approve or accept the Convention, in accordance with their constitutional procedures; non-Member States may accede to the Convention if they wish.

Option (c) is correct – UNESCO Member States can ratify, approve or accept the Convention; accession is only to be used by non-Member States. In the case of ratification, acceptance, approval or accession, States Parties’ obligations under the Convention remain the same. For current data on which States Parties have approved the Convention, which have accepted it and which have ratified it, see:

http://portal.unesco.org/la/convention.asp?KO=17116&language=E&order=alpha

#### Question 3

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?

1. Each State Party shall draw up one or more registers of the communities and groups present in its territory.
2. Each State Party shall take the necessary measures to ensure the viability of the ICH present in its territory.
3. Each State Party shall periodically report to the Committee about the measures taken for the implementation of the Convention.
4. Each State Party shall identify a competent body for the safeguarding of ICH at the national level, or create such a body.
5. 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, although the Convention strongly encourages States Parties to do so: ‘each State Party shall endeavour …’ to designate or establish such an institution (see Article 13(b)).

#### Question 4

Who selects the members of the Intergovernmental Committee?

1. The Committee renews itself.
2. The General Assembly.
3. 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 5

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?

1. Request the Director-General of UNESCO to change the procedure and, in conformity with that, the OD concerned.
2. 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.
3. 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 to sound them out 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 Member State 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 change anything in the text of the ODs (let alone the Convention).

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

#### Definitions and concepts

#### Question 6

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

1. No, gender differentiation does not constitute a human rights violation.
2. Differentiation by gender within ICH elements does not always constitute a human rights violation.
3. 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 need not be 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 one and 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 clear disbenefit 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).

#### Inventorying

#### Question 7

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

1. The national inventory of the ICH of Country B.
2. The inventory of ICH from Country B.
3. 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 speaks 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

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

1. Yes, as they are allowed to draw up their inventories in ways geared to their own circumstances.
2. No, they have to comply with the Convention’s definition of ICH.
3. No, they have to 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 liberty to draw up national or local inventories in ways geared to their own situation and consequently also using their own definitions of ICH. Of course, if they wish to nominate elements to the Lists of the Convention, then these specific elements have to comply with the criteria listed in ODs 1–2. As far as classification of elements in an inventory is concerned, there, too, States Parties have complete freedom, especially as the list of domains in Article 2.2 of the Convention is not exhaustive.

#### Question 9

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?

1. 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.
2. 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.
3. 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, can also not 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 10

Which statements are true?

1. Safeguarding measures must have been developed for an ICH element before it can be inventoried.
2. An ICH element must have been inventoried before any safeguarding activity can be undertaken.
3. Safeguarding measures must have been implemented for an ICH element before it can be nominated to one of the Lists of the Convention.
4. 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 correct answer.

ODs 1 and 2 require that an element proposed for inscription on one of the lists should first have been included in an inventory. Therefore, the nomination of an element is preceded by inclusion in an inventory and, by implication, its 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.

#### Safeguarding

#### Question 11

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?

1. No, the Convention wishes elements to be safeguarded in their original context only.
2. Yes, because safeguarding the element may include adapting it to changing circumstances.
3. No, but a safeguarding plan aimed at revitalizing the dances within the community, but also 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 community performance as ICH. Sometimes elements can no longer be safeguarded in their ‘original’ context (even the notion of an original context gives the impression that there is just one true, authentic context for the element, but this 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).

#### Nominations

#### Question 12

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?

1. Any group or agency may initiate the process, as long as the relevant communities, groups and individuals participate and agree to it.
2. Communities, or their representatives, must initiate the process because they are the ones who need to give prior informed consent.
3. 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 start 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 24) 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 have 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 ICH. They may take the initiative of course, but should, from very early in the process, inform and involve the community concerned and not proceed without its consent.

Nomination files have to be submitted by State(s) Party(ies). If the nomination process is initiated by a non-State agency, it would be wise to inform the appropriate State agencies as soon as possible. A nomination proposed by a community, NGO or institution may not always enjoy high priority in the eyes of the government, which 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 by other stakeholders; such situations may change under the influence of better practices in other States.

#### Question 13

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

1. Yes, but only if the element is in need of extremely urgent safeguarding.
2. No, not until they become States Parties.
3. Yes, but only if they are part of a multi-national nomination submitted by one or more other countries 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 14

Can languages as such be inscribed on the Convention’s Lists?

1. Yes, languages can be inscribed on the Lists because they are intrinsic to ICH.
2. No, languages cannot be mentioned in nominations to the Lists because language is not relevant as an ICH domain.
3. 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 concerning 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 15

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

1. Yes, the Convention and the ODs encourage multi-national nominations for the same element if it is shared across borders.
2. No, if an element occurs in two States, they must find a way of differentiating them so that two different nominations can be made.
3. 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 16

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

1. 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.
2. 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.
3. 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 on 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 the 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 ‘indigenous’ ICH should be the only elements 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 17

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

1. No, the Convention cannot establish intellectual property rights over an ICH element through inscription on its Lists.
2. 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.
3. Yes, inscription on one of the Convention’s Lists gives the communities and groups concerned intellectual property rights over their heritage.

Option (a) is correct: the [Convention](http://www.unesco.org/culture/ich/index.php?lg=en&pg=0006) focuses on safeguarding the intangible cultural heritage, i.e. on ensuring its continuous re-creation rather than on legally protecting specific manifestations through intellectual property rights, which at the international level falls mainly within the field of competence of the World Intellectual Property Organization (WIPO). WIPO is currently 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 relating to intellectual property rights. These rights are established, in the first place, through legislation at the national level; and ICH elements enjoy such rights in several States.

#### Question 18

UNESCO proclaimed ninety 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?

1. The list of Masterpieces was not affected by the entry into force of the Convention and continues to be promoted by UNESCO.
2. The Masterpieces were inscribed on a separate list of the Convention in 2008 and are still referred to as Masterpieces.
3. 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 RL 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 governmental 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 therefore 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)
3. . See https://treaties.un.org/doc/Publication/UNTS/Volume%201155/volume-1155-I-18232-English.pdf [↑](#footnote-ref-3)
4. . Sources include: interview with Dr Tvrtko Zebek, UNESCO, 16 February 2010. [↑](#footnote-ref-4)
5. . Sources include: L. Lowthorp, ‘National Intangible Cultural Heritage (ICH) Legislation and Initiatives’, UNESCO-New Delhi Field Office, 2010; Interview with Dr Londres Fonseca, UNESCO, 16 February 2010; A. Arantes, Documenting and Disseminating Traditional Knowledge and Cultural Expressions in Brazil, vol. II Brazil Intellectual Property and Heritage Legislation, Institutional Guidelines and Instruments, Prepared for the World Intellectual Property Organisation (WIPO): <http://www.wipo.int/export/sites/www/tk/en/culturalheritage/casestudies/arantes_report_vol2.pdf> [↑](#footnote-ref-5)
6. . Interview with Silverse Anami, UNESCO, 16 February 2010. [↑](#footnote-ref-6)