Unit 7

involving the communities concerned

lesson plan

Duration:

2 hours (plus additional time for the optional exercises at the end)

Objective(s):

Identify, through discussions and the presentation of case studies, various ways in which communities, groups and individuals can participate in the widest possible way in the safeguarding of their intangible cultural heritage (ICH), and in other aspects of the implementation of the Convention for the Safeguarding of the Intangible Cultural Heritage.[[1]](#footnote-1)

Description:

This unit is about community participation in the implementation of the Convention and covers the following topics: what the Convention and the Operational Directives (ODs) tell us about community participation, why and when community participation and consent are required, community participation in different safeguarding activities (inventorying, awareness-raising, preparing nomination files and requests for international assistance, etc.), the identification of communities and their representatives, obtaining free, prior and informed consent, protecting the rights of communities and ensuring that they benefit from the implementation of the Convention.

Proposed sequence:

* What can go wrong
* Why community participation
* What the Convention and the ODs say (and do not say) about community participation
* Role of States and rights of communities
* Community participation in general: identification, inventorying and safeguarding
* Community participation in inventorying
* Community participation in awareness-raising
* Community participation in nominations and international assistance requests
* Process of ensuring community participation and consent

Supporting documents:

* Facilitator’s narrative Unit 7
* PowerPoint presentation Unit 7
* Participant’s text Unit 7
* Participant’s text Unit 3: ‘Communities, groups and individuals’, ‘Free, prior and informed consent’, ‘Indigenous communities’ and ‘Intellectual property’
* Case studies 9–13
* Basic Texts of the 2003 Convention for the Safeguarding of the Intangible Cultural Heritage[[2]](#footnote-2)

Notes and suggestions

The International Cooperative Biodiversity Groups (ICBG) Maya case study (this is included as an example in the Facilitator’s narrative only) or a similar local example of a project in which community participation became a contested issue could be described and discussed in some detail. The other case studies are illustrative. Alternative case studies could be selected and discussed to illustrate specific local challenges that participants may face. It is advisable to have examples of both urban and rural communities. In discussions on the case studies, particular attention should be paid to the question of the legitimacy and authority of community representatives, an issue nicely illustrated by the Patum case study (this is included as an example in the Facilitator’s narrative only). The point can be made that different strategies for community participation and representation may be appropriate for different sizes and kinds of communities.

Various exercises are provided in the Facilitator’s notes. Two of them focus on relating the content of the unit to the participants’ context: the ‘Role of stakeholders’ exercise (slide 6: approx. 20 mins) and the ‘Who are my communities?’ exercise (slide 16: approx. 15 mins). These are important learning exercises in which the discussion can be tailored to the level of experience of participants in the workshop.

The two additional, optional exercises provided at the end of the unit are role plays that allow participants to explore some of the difficult issues that might arise during the development of a community participation strategy. These exercises will take some time to conduct (at least 1 hour and 30 minutes is needed for each of them). Facilitators could decide to use only one of them and it should only be included in the workshop if sufficient time is available.

Unit 7

involving the communities concerned

facilitator’s narrative

###### Slide 1.

Involving the communities concerned

###### Slide 2.

In this presentation …

###### Slide 3.

The ‘ICBG[[3]](#footnote-3) Maya bioprospecting project’[[4]](#footnote-4)

This case study is provided in the Facilitator’s narrative only.

Although the ICBG Maya bioprospecting project was mainly aimed at bioprospecting (searching for natural products that may be used in the production of new medicines) rather than safeguarding ICH, it is an interesting case study to discuss. Various problems that arose in the course of the project show that it is not always easy to deal in a satisfactory way with community interests and needs.

Although the project designers did reportedly intend to contribute to community development, and to seek community consent, the project failed because of disputes over:

* who constituted the community;
* who represented the community;
* how the community would benefit; and
* what constituted community consent for the project to proceed.

Case study: community engagement and representation: a failed bioprospecting project in Mexico

Bioprospecting often relies on traditional medicinal knowledge. There are many cases of bioprospecting using traditional knowledge where community participation, consent and benefit are not a priority for the initiators of projects: this is contrary to the spirit of the Convention and should be avoided. Other examples of bioprospecting show that the communities concerned, and perhaps other parties too, can benefit from the use of their knowledge while safeguarding their ICH. In order to achieve this, it is necessary to develop tailor-made community participation, consent and benefit models, as well as ICH safeguarding strategies that are considered acceptable and legitimate by the communities concerned and other parties involved. This case study shows how a project can fail in spite of an extensive community consent process and plans for the community concerned to benefit.

The ‘Drug Discovery and Biodiversity among the Maya of Mexico’ project (the ICBG Maya project) was planned by the ICBG as a five-year research project in the Chiapas Highlands in the south of Mexico. It sought to develop an inventory of indigenous plants from the area with the aim of developing commercial products, where possible. In 1988 the project was awarded a grant of US$2.5 million from the ICBG programme. Other actors, such as the Mexican multidisciplinary research and graduate teaching centre and a small for-profit natural products discovery company based in Wales, UK were involved in the project.

Mexican national regulations stated that plant collection for scientific purposes could only be permitted with the prior informed consent of the legal owners of the land where the plants were found. However, national regulations to manage consents for bioprospecting were not yet in place at the time of the ICBG Maya project. Following the requirement in the UN Convention on Biological Diversity (1992) for consultation with local communities, one of the project’s first steps was to seek consent from communities in the region for the use of the plants. To inform the communities about the main features of the project and its implementation, theatre performances and visits to the project facilities were used. Subsequently written consents were obtained from the local authorities in 46 out of the 47 hamlets in the area.

Indigenous people in the Chiapas region have historically been marginalized. Partly because of this background, the ICBG Maya project set up a non-profit organization called Promotion of Intellectual Property Rights of the Highland Maya of Chiapas (PROMAYA), to represent the local Maya population and its interests in relation to the project. It was to receive one quarter of all profits generated by successful bioprospecting work. PROMAYA was designed to have a majority of Maya representatives and some outside members.

Although the ICBG Maya project initiators[[5]](#footnote-5) thought they were following legal and ethical requirements for informed consent and distribution of benefits, community organizations raised objections to the project and it was eventually cancelled.

An organization promoting Mayan traditional medicine raised concerns about the project with the Council of Traditional Indigenous Doctor and Midwife Organizations (COMPITCH), an organization created to promote traditional medicine in the region. COMPITCH declined to participate in PROMAYA in 1998 and objected to the fact that it would have been excluded from the division of profits. An international NGO called Rural Advancement Foundation International (RAFI), which had been campaigning on the issue of intellectual property in the region, helped the Council and its organizations to make their case against the project.

In December 1999 RAFI issued a statement on the internet: ‘Biopiracy Project in Chiapas Mexico Denounced by Mayan Indigenous Group’. The project leaders answered by asserting that they were not appropriating sacred knowledge, but ‘knowledge that is openly shared between Maya households, communities, municipalities and outsiders’. They questioned COMPITCH’s authority to speak for all the Maya in the area and also questioned the role of advisers and international organizations (such as RAFI) in speaking for COMPITCH. RAFI’s response was immediate: ‘The project’s partners have fallen victim to the … syndrome wherein anthropologists (who usually know better) delude themselves into thinking that it is their role to set the rules of engagement’. The community organizations refused to negotiate with the project organizers and refuted the claim that the organizers were seeking to represent the local people. They called for a national moratorium on all bioprospecting projects until a comprehensive legal framework was in place. As a result of this contestation, the Mexican State soon withdrew as partner and the ICBG Maya project was cancelled in 2001.

What went wrong?

The project failed because community representatives were not involved early enough in the process and the community concerned was therefore not involved in the planning stage as an equal partner. Distrust between the parties also played an important role. Disputes arose between community organizations, activists and the project team about the process, intentions and likely outcomes of the project, how consent should have been reached and how the community concerned should have been defined.

The case study shows that it is difficult to establish community consent in the absence of strong community governance structures that are perceived as legitimate by all concerned, and in the absence of trust between the parties. It also shows the importance of having clear and consistent national legislation and monitoring mechanisms to ensure that community rights over traditional knowledge are protected and informed consent is sought for such projects. Such legislation and other instruments should be drafted in accordance with obligations that States may have accepted by ratifying such international legal instruments as the Convention on Biological Diversity and the Intangible Heritage Convention.

The main problems can be summarized as follows:

* Consent was sought before there had been proper community participation in planning.
* Plants were collected from the site before the project began, which undermined the consent process.
* Instead of putting forward proposals for discussion, the project initiators positioned the indigenous community as recipients rather than co-organizers.
* PROMAYA was set up by the foreign project initiators without prior consultation with the community concerned.
* The plan for community representation through PROMAYA, benefit sharing, and intellectual property protection had already been drawn up when the Maya community were invited to give their consent.
* Community organizations, and the NGOs representing them, claimed that not enough information was given to people in this process for their consent to have been ‘informed’.
* Community organizations, and the NGOs representing them, questioned the validity of the project’s approach to consent, in which individual community agreements were negotiated separately, instead of seeking a more holistic approach to negotiations.
* They also argued that, according to community law, a larger proportion of community members’ signatures were needed on the consent forms for the project.
* The various stakeholders disagreed about the boundaries of the community concerned and its legitimate representatives. Community organizations claimed that the entire Maya community should be consulted – some two million people in Mexico and neighbouring Guatemala, not just in the Chiapas Highlands.
* There were disagreements over the likely beneficiaries of the project. The project planners believed that it would benefit indigenous people. It would, they claimed, protect Maya intellectual property because of a proposed co-ownership plan for any patents; the documentation of Maya traditional plant knowledge would classify it as ‘prior art’ and thus prevent companies from patenting it without their permission. PROMAYA was to have a veto over the use of patents. In no case were plants to be patented or research products used for the development of transgenic organisms. Most economic benefits were expected to be locally generated and not dependent on bioprospecting results or eventual agreements with pharmaceutical companies. In the event of any bioprospecting results, the project organizers agreed to share monetary benefits between the four agencies involved, including PROMAYA.
* Community organizations claimed that the project was an example of Northern imperialism; only the academic and commercial partners would benefit while local people would be forced to pay more for their health care. This was part of a broader objection to the commercialization, privatization and individualization of knowledge and resources that had previously been owned collectively and freely exchanged.

The problems that arose around the project were thus part of a broader political and social contestation between community activists on the one hand and State agencies, academics and the pharmaceutical trade on the other. These groups all had different ideas of the community concerned and how it should best be defined and protected, and of the resources involved and how they should be protected. The stakeholders did not (and perhaps could not) develop a common position through broader public participation before proceeding with the project and so it failed. One positive outcome was a greater sensitivity to these problems within Mexico and more broadly; it also encouraged Mexican State agencies to improve legal guidelines for bioprospecting projects.

For further information

* Naville, L. 2004. ‘The Experts, the Heroes, and the Indigenous People: the Story of the ICBG Maya Bioprospecting Project in Chiapas, Mexico’. Masters thesis, Noragric, Agricultural University of Norway, Ås, Norway.

<http://www.umb.no/statisk/noragric/publications/master/2004_lauren_naville.pdf>

Other references used for this case study

* Berlin, B. and Berlin, E. 2004. ‘Community Autonomy and the Maya ICBG Project in Chiapas, Mexico: How a Bioprospecting Project that should have Succeeded Failed’. *Human Organization* (Winter).
* Cecena, A. 2000. *¿Biopiratería o desarrollo sustentable?* Era-IIE, Chiapas, Mexico.
* Feinholz-Klip, D., Barrios, L. and Cook Lucas, J. 2009. ‘The Limitations of Good Intent: Problems of Representation and Informed Consent in the Maya ICBG Project in Chiapas, Mexico’. In: R. Wynberg, et al. (eds.), *Indigenous Peoples, Consent and Benefit Sharing: Lessons from the San-Hoodia Case*. Heidelberg, Springer Science+Business Media B.V., pp. 315–31.
* Rosenthal, J. P. 2006. ‘Politics, Culture, and Governance in the Development of Prior Informed Consent in Indigenous Communities’. *Current Anthropology*, Vol. 47, No. 1, pp. 119–42.

###### Slide 4.

What the Convention and the ODs say (and do not say)

Participant’s text Unit 7.1 introduces the idea that although the Convention and the ODs provide some guidance, they leave much leeway to States Parties; they do not, for example, define the concept of communities.

###### Slide 5.

Why community participation?

Participant’s text Unit 7.2 explains why community participation is essential in safeguarding and managing their ICH.

###### Slide 6.

Role of States and the rights of communities

See Participant’s text Unit 7.2.

Exercise (20 mins): role of stakeholders

Participant’s text Unit 4 gives examples of the various roles that States Parties, NGOs, experts and other stakeholders can play alongside the communities and groups concerned in implementing the Convention.

The facilitator may ask participants to explain how communities have been involved in various roles in implementing the Convention so far, and lead a discussion on this issue.

###### Slide 7.

Community participation in what?

Participant’s text Unit 7.3 outlines areas of activity in which the Convention and the ODs recommend or require community participation and consent.

Note on best practices in community participation for safeguarding

It is important to have good examples of community participation in implementing the Convention. Since 2009 several examples have been selected by the Committee as best practices and widely disseminated.

See the list of the programmes selected for the Register of the Best Safeguarding Practices: http://www.unesco.org/culture/ich/en/Register

Note on community participation in tangible heritage management

In the management of tangible heritage, community participation has become a very important principle, especially as public value or social value has become more important in establishing the significance of places and objects. New fields of research and practice have emerged around it (such as community archaeology and public archaeology).

###### Slide 8.

Community participation in inventorying their ICH

Participant’s text Unit 7.4 discusses the importance of community participation in inventorying.

The slide shows a quote from Dr Londres Fonseca from the Institute for National Artistic and Cultural Heritage (IPHAN), the major government heritage institution in Brazil:

In my opinion, what is really needed is for the community to participate in the process [of inventorying], because otherwise our vision is going to be too remote from what is actually happening and we shall fail to realize that the name and category of the element are not the only thing that matters. What matters above all are its meanings, the values attributed to it and how people practise it, which varies a lot [ … ] Of course, an anthropologist’s view helps a lot, but I doubt whether the anthropologist’s view is enough. No doubt an anthropologist is very helpful and knows the methodology, but the problem is not just description, because for us an inventory is the first step towards safeguarding. If the population takes part in the inventory, if the community is involved, it has already become a partner in this process. If the inscription takes place without dialogue with the community, even if there is a formal gesture in this direction, I wonder whether there will actually be any involvement in safeguarding or whether this involvement will have to be built afterwards. This is not impossible, but I think it is better to do it beforehand if possible. However, I realize that scale is something very complicated here, and I think that each country must find its own answers.

###### Slide 9.

Case study: documenting Subanen indigenous knowledge (the Philippines)

This example is from Case study 9.

Between 2003 and 2004 the Subanen community in Zamboanga Peninsula (Western Mindanao) in the Philippines documented their indigenous knowledge about local plants. Note that this activity was not followed by a nomination to one of the Lists or to the Register of the Convention. It is nevertheless a good example of community participation in documentation.

Key points to note are:

* The elders realized that their knowledge about local plants was no longer being passed on to younger community members.
* They asked for help in training young people to document this knowledge within the community, which led to a successful documentation project and enhanced transmission of the knowledge.
* Copyright protection was gained in the process of documentation.
* Materials were included in the school curriculum, leading to further awareness-raising.

###### Slide 10.

Community participation in awareness-raising

Participant’s text Unit 7.5 discusses the importance of community participation in awareness-raising.

###### Slide 11.

Community participation in nominations and international assistance requests

See Participant’s text Unit 7.6.

Note on what can go wrong if the community concerned is not well informed about and/or does not participate in the nomination process

A French ethnologist had studied a procession that takes place every six years in a village in the west of France. He was concerned that the procession was now attracting fewer people than it had some decades earlier and that it was taking on a folkloric flavour. He felt that it would be a good candidate for listing under the Convention and announced in the press that ‘Paris’ had already approved the idea of nominating the procession to the Representative List (RL), with a view to safeguarding it. He developed a nomination file, more or less by himself, which he shared with the local population at a relatively late stage of the process. A series of meetings started in the village: most people who were directly involved – such as those whose territory was crossed by the procession – were surprised, suspicious and displeased by the ethnologist’s activities. They were worried that customary rights of way would be permanently established over their land, and were doubtful of the benefit of having tourists join the procession. The villagers thus collectively decided to halt the nomination process. The case was reported extensively in the local press.

Three examples of different community consultation processes used in developing nominations to the Lists of the Convention are given below.

###### Slide 12.

Case study: the Otomí-Chichimecas nomination process (Mexico)

This example is from Case study 12.

The element Places of memory and living traditions of the Otomí-Chichimecas people of Tolimán: the Peña de Bernal, guardian of a sacred territory was inscribed on the RL in 2009.

Key points to note are:

* In the initial information-gathering phase, the authorities appointed representatives from various government agencies to a multidisciplinary commission as part of a project to promote the cultural and natural heritage of the Otomí-Chichimecas people.
* Consultation meetings and an opinion poll were used to engage with the communities and groups concerned.
* Safeguarding proposals were submitted by a wide range of stakeholders, including the community concerned.
* A regional forum and community declaration provided proof of community consent.
* A representative management/safeguarding body was established to assist in implementing the safeguarding plan.

###### Slide 13.

Case study: nominating the Cantu in Paghjella, a male polyphonic singing tradition (France)

This example is from Case study 10.

The Cantu in Paghjella: a secular and liturgical oral tradition of Corsica, France was inscribed on the Urgent Safeguarding List (USL) in 2009.

Key points to note are:

* The value of expert-practitioner meetings: in 2006 practitioners of the element met with Corsican and other experts at a conference to analyse the threats to the element and develop a public safeguarding policy.
* The importance of associations that involve and include practitioners, and their role in inventorying: in 2007, following consultation with the community of practitioners, the Cantu in Paghjella Association was created for ‘the identification, documentation, research, preservation, protection, promotion, enhancement, formal and informal transmission of the Cantu in Paghjella’.
* Practitioners and their organizations were inspired by the Convention.
* Media campaigns to raise awareness: both local and national media informed the public about the element and the need to safeguard it.

###### Slide 14.

Case study: nominating the Mijikenda traditions (Kenya)

This example is from Case study 11.

Traditions and practices associated to the Kayas in the sacred forests of the Mijikenda was inscribed on the USL in 2009.

The case study highlights the ways in which communities have been involved in various processes, including:

* Community consultations: a number of meetings about the nomination were held with Councils of Elders, Kaya conservation groups, women’s groups and youth groups.
* Incorporating community ideas into the safeguarding plan: this included ideas about income generation through bee-keeping and ecotourism, and the recruitment of community guards.
* Community development groups: these were formed to promote community development while safeguarding the tangible and intangible heritage of the Kayas.

###### Slide 15.

Ensuring community participation and consent

Participant’s text Unit 7.7 outlines several issues that should be considered when ensuring community participation and consent in the implementation of the Convention.

Each of the issues identified will be discussed in greater detail in the following few slides.

###### Slide 16.

Identifying the communities concerned

Participant’s text Unit 7.8 outlines some issues that should be considered in the identification of the communities concerned.

Exercise (15 mins): who are my communities?

Participants should discuss the various communities or groups to which they belong, and mention any associated ICH practices. They should also identify some ICH practices they are familiar with and explain who might, in their view, belong to ‘the community concerned’.

###### Slide 17.

Community complexities

Despite all the good intentions of inclusion, it is clear that communities are complex, and factors such as class, gender, age, ethnicity, religion and others can also complicate genuine community participation.

Experiences show that facilitators of participatory processes often have a naïve perception of ‘community’ as being harmonious. As a result, internal dynamics and differences are inadequately understood, despite the fact that an understanding of them is necessary for any participatory process and for different groups in the community to benefit. The myth of a homogenous and inclusive community is often deeply ingrained in the minds of participatory practitioners; what passes as participatory practice therefore hides biases that end up favouring the most influential and articulate members of the community. Communities are in fact not homogenous and not everyone will agree on every issue. In many cases, not all members of a community fully participate in the same set of ICH. Communities and groups often have internal hierarchies, for instance, those based on class, age or gender.

For example, even though women and youth may be consulted, their opinions often seem to count less when the final decisions are made. Community-based inventorying recognizes diversity within a community regarding their ICH. It values divergent and different opinions on the basis that there is no single truth, only identification with ICH and opinion. Variability is therefore fundamental to the nature of ICH. In particular, community-based inventorying values the inclusion of youth as part of these multiple voices on ICH and recognizes its key role in the identification and transmission of ICH. Youth should therefore be included in all work relating to ICH. Generally, it is important to resist oversimplifying and over-romanticizing the ‘community’. Instead, it is important to strive to identify and analyse community dynamics that could exclude some groups.

It also must be recognized that any given community is characterized by particular social dynamics. It is therefore important to create an environment and a set of procedures that facilitate participation by diverse community members. The composition of groups, choice of venues, seasons and time could all determine who participates and the level of participation.

Certain critical questions may need to be asked including: Who is who within the community? Who decides who should or should not participate? Who participates and why? Who is left out and why? What needs to be done to ensure equal opportunities are created and there is support for all to participate?

###### Slide 18.

Identifying representatives

Participant’s text Unit 7.9 introduces a discussion about community representation and some of the problems that may arise in this regard.

Note on disputes about the identification of the communities or groups associated with a specific ICH element, or about who should represent them

Where disputes prevent the emergence of a community consensus, outsiders can undertake few actions under the Convention until agreement is reached within the community.

###### Slide 19.

Case study: The Patum of Berga (Spain)

This is included as an example in the Facilitator’s notes only.

Case study: questions of community representation in the safeguarding of the Patum of Berga (Spain)

The Patum is an annual festival in the town of Berga, Catalonia, in north-eastern Spain. Initially proclaimed as a Masterpiece of the Oral and Intangible Heritage of Humanity in 2005, it was inscribed on the RL in 2008. Conflict about the regulation of the festival within the community concerned illustrates the difficulty of identifying community representatives.

The Patum has been performed since at least the early seventeenth century. At its core is a series of dances performed several times during the course of five days in the town’s main square, to the sound of a large drum the Patum. The dances feature different masked and sculpted figures, often engaged in combat. As Dorothy Noyes explains, this contestation is part of what makes the Patum important for the Berguedans:

The Patum is … the collective performance by which Berga struggles to achieve community; and community is all the more valued for being hard-won.[[6]](#footnote-6)

The Patum teaches Berguedans that they will never love one another, but also that no one is ever going away. Or as they say, ‘We won't die united, but we’ll die together.’[[7]](#footnote-7)

In the festival, different groups and factions become involved in the same activity for five days, which forges a sense of community in a town deeply divided by stratifications of gender, class, age and place of origin. The festival continued during the Franco period, but some of its oppositional features were muted. It emerged revitalized from this period. But today, the higher stakes created by the international and national recognition through UNESCO, and the possibility of being able to protect elements of the festival in trademark law, have led to a situation in which contestations within the community are being expressed less often within the festival and more often in discussions about the festival.

One group, the Patronat, has become particularly powerful in controlling the festival. Established in the 1990s, the Patronat has been acting as the representative of the community that practises the Patum, both in promoting the festival and in seeking to register trademarks in some of its distinctive aspects. The Patronat controls some of the material elements of the Patum, such as drums, effigies and costumes, and some of the administrative aspects. However, Noyes argues that the Patronat does not represent everyone who participates in the festival, and its efforts to commercialize and control the event are not supported by all. The Patronat has been accused of excluding some performers and favouring the church-going, middle-class establishment of the town in its activities. From the 1960s to the 1980s, there was much resistance to the festival becoming a commercial event, but in recent years opinion has been divided on this issue, particularly in the musicians’ groups(*comparsa*).

The organization of the festival has always been a matter for debate and dispute. According to Noyes, ‘Historically, certain elements were imposed from above; others were forced in from below and won sufficient popular acceptance that they had to be tolerated by the authorities.’[[8]](#footnote-8) Today, however, these disputes over the function and administration of the festival, and the increased power and authority of the Patronat, have led some community members and performers to stop participating in it. This is unfortunate since the meaning of the festival revolves around its ability to express and manage dissenting voices within the community.

For further information:

* D. Noyes, 2010, ‘Necessity and Freedom in the Tradition Process’, paper delivered (23 Jan.) at the Institute for Advanced Studies on Asia at the University of Tokyo.
* D. Noyes, 2006, ‘The Judgment of Solomon: Global Protections for Tradition and the Problem of Community Ownership’, Cultural Analysis, Vol. 5, pp. 27–56;
* Noyes, D. 2003. *Fire in the Placa: Catalan Festival Politics after Franco*. Philadelphia, University of Pennsylvania Press.

<http://www.unesco.org/culture/ich/en/RL/00156>

###### Slide 20.

Methods and purposes of community participation

Participant’s text Unit 7.10 discusses ways of ensuring community participation in different activities.

###### Slide 21.

Obtaining free, prior and informed consent

Participant’s text Unit 7.11 discusses possible ways of obtaining free, prior and informed consent and what to do when it is denied.

Note on objections to inscription of elements on the Lists of the Convention

The Committee has received objections from members of communities about elements being evaluated for inscription, but nevertheless inscribed these elements on the Lists of the Convention. In doing so, they followed the recommendations of the experts and/or the previous Subsidiary and Consultative Bodies who, having read the relevant letters, had seen no reason to change their recommendations. The Committee has adopted guidelines for the treatment of correspondence from the public or other concerned parties with regard to nominations.

Note on the limitations of free, prior and informed consent

The process of obtaining free, prior and informed consent for interventions regarding ICH cannot by itself guarantee that a community’s rights have been protected, or ensure an equitable relationship between communities and outsiders, although it may be used as a way of building trust and common understanding between them. G. Dutfield has commented: ‘Prior informed consent should be part of a broader regulatory framework’ and ‘emphasizing prior informed consent over other [regulatory] approaches may be unhelpful’.[[9]](#footnote-9)

###### Slide 22.

Protecting the rights of communities

Participant’s text Unit 7.12 introduces the idea that the rights of communities concerned should be protected in the safeguarding of their ICH, and that they should benefit from it, a topic that is taken up again in Participant’s text Units 7 and 9.

See Case study 13 on the Laura Aboriginal Dance and Cultural Festival.

Note on intellectual property rights in relation to ICH

Intellectual property (IP), very broadly, means the legal rights that result from intellectual activity in the industrial, scientific, literary and artistic fields. For example, an author is entitled to receive royalties from the publication and sale of a novel, or from it being turned into a film. States have laws to protect intellectual property for two main reasons:

* to protect the moral and economic rights of creators in their creations (e.g. to allow the author of a novel to be acknowledged and rewarded as the author of that novel) and the rights of the public in access to those creations; and
* to promote creativity and the dissemination and application of its results (e.g. if an author is rewarded for writing a book, he/she may be more likely to do so: sharing knowledge is beneficial to society) and to encourage fair trade that would contribute to economic and social development (i.e. making sure that the rewards of writing the book go at least partly to the author).[[10]](#footnote-10)

Intellectual property rights (IPR) are usually conferred on individuals or companies; special regulations are required for conferring such rights on communities. This has been done in a number of States, but it is not a simple task. The Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore of the World Intellectual Property Organization (WIPO) has been working towards the establishment of an international legal instrument for protecting IPR over ICH for some time because of the complexity of the task. Some considerations in modifying existing IP regimes have been that intellectual property rights over ICH should be inalienable rights (i.e. they cannot be conferred on others outside the community concerned) and that (unlike copyright or patents) they should not expire automatically after a period of time (i.e. they should be given in perpetuity). Questions arise as to whether the community-held IPR must be exclusive rights, whether rights can be re-established over information already in the public domain, and how to define ICH for the purposes of the new IP regime.

If no such rights are provided in law, then the agencies working with communities should be encouraged to assist them to mobilize other legal and social mechanisms to allow them to benefit from the use of their ICH as far as possible.

Where ICH practices are promoted through awareness-raising or commercialized:

the focus of attention should be on the empowerment of those who want to use their traditional knowledge and resources to improve their livelihood. Empowering communities in this way may mean recognizing that for them, indigenous knowledge systems may have not just commercial value but also cultural and symbolic value.[[11]](#footnote-11)

On this issue, see ODs 101(d), 102(d) and 104.

Example of the impact of activities that may threaten the rights of communities in regard to their ICH

Participants may be asked to imagine that a television programme is being made about a specific form of traditional medicinal therapy used in a small regional community (previously unknown to the rest of the world): it will then be broadcast to the whole country. An undesirable result would be the use of this information to create a new commercial product based on this therapy, without consultation with or consent by the community concerned. Such activities would not constitute awareness-raising as advocated by the Convention. The product might be patented by commercial interests and manufactured in another part of the country, with profits accruing to these commercial companies alone. This would not benefit the small regional community or those who had the original knowledge about the remedy; it might, in fact, threaten the livelihoods of people in the community and their transmission of ICH. If anticipated, the situation can be avoided or addressed promptly when it arises; community rights and interests could be protected.

###### Slide 23.

Ensuring that communities benefit

Participant’s text Unit 7.12 discusses the importance of ensuring that the communities concerned benefit from the implementation of the Convention.

After the Bonn Guidelines on Access to Genetic Resources and Fair and Equitable Sharing of the Benefits Arising out of their Utilization (2002) were developed, other guidelines and protocols are being prepared to assist in the implementation of the Convention on Biological Diversity (CBD). This may encourage and guide the development of similar tools in the field of intangible heritage.[[12]](#footnote-12)

The following ODs are particularly relevant in this respect.

OD 81 States Parties shall take necessary measures to raise the awareness of communities, groups and, where applicable, individuals to the importance and value of their intangible cultural heritage, as well as of the Convention, so that the bearers of this heritage may fully benefit from this standard-setting instrument.

OD 101(d) The communities, groups and, where appropriate, individuals concerned shall benefit from the actions taken to raise awareness about their intangible cultural heritage.

OD 116 Commercial activities that can emerge from certain forms of intangible cultural heritage and trade in cultural goods and services related to intangible cultural heritage … should not, however, threaten the viability of the intangible cultural heritage, and all appropriate measures should be taken to ensure that the communities concerned are their primary beneficiaries. …

Optional exercise one (1 hour 30 mins): role play on community participation in safeguarding

Role plays can be useful in workshops like this one, but require careful preparation by the facilitator if they are to be successful. They should be tailored to the context and experience of participants, and they should also be carefully designed to achieve specific outcomes linked to the subject matter of the workshop. Role plays can deepen participants’ understanding of the variety of positions and debates in the field, and of how to maximize beneficial outcomes from interactions (both positive and negative) between different stakeholders in the implementation of the Convention.

The following role play exercise is merely a suggestion that can be adapted by the facilitator. The suggested roles of stakeholders may change depending on the ICH element selected for discussion, the background of participants and their interests.

Suggested exercise

This role play simulates a meeting aimed at assessing community willingness to support the idea of safeguarding an element of their ICH with outside assistance.

The role play may help participants to gain a deeper understanding of factors affecting community attitudes towards safeguarding their ICH and their interactions with other stakeholders. It may also help participants to think about the attitudes and motivations of other stakeholders in the safeguarding process.

Before the role play begins, the facilitator should brief participants on the nature and viability of the element chosen for the discussion and assign roles to all participants. They are then given time to prepare (about 30 mins) through discussion in two groups – one for community members and one for other stakeholders.

A meeting is convened by the provincial administration to discuss the following agenda:

* Are community members represented in the meeting considering the safeguarding of the ICH element to be necessary and desirable?
* What would be the best way to collect and reflect on opinions of other community members on this issue and how to develop safeguarding measures for the element?
* Should the community support the government in its efforts to seek financial assistance from the ICH Fund to support the implementation of the safeguarding measures?

It may be assumed that the meeting is a follow up to an awareness-raising programme in which community members have been informed about the Convention and the implications of safeguarding under it. The meeting is chaired by the facilitator, who plays the role of a director of the provincial administration, responsible for culture and heritage. After the role play, participants (guided by the facilitator) could be asked to evaluate the meeting and discuss what they have learned from the exercise.

The element

The ICH element could be chosen to fit the experiences of participants; or it could, for example, be a celebratory festivity involving dancing and singing that has been practised at the end of the harvest period in the rural community for many generations, but is now threatened by several factors: the mechanization of agriculture, lack of space and time, or the migration of young people to towns. Such an element might be included in a provincial heritage inventory. Safeguarding the element might include: awareness-raising; teaching the dances and songs to the children of the villages concerned through voluntary after-school classes; promoting the element in tourist information; paying the musicians; and encouraging young people to return to the rural areas at the end of the harvest to participate in the festivity.

Roles for participants

Different roles may be chosen depending on the element selected: the roles given here are simply suggestions. Some participants should be asked to act as community representatives while the other participants could be given roles as other stakeholders.

Community members could include the following roles:

* an older practitioner who has lost interest in enacting the element;
* a younger practitioner who has been involved in a documentation project with a researcher;
* a community member who is unhappy about the slow delivery of services to the community by government;
* a schoolteacher, working in the community school, who feels that the practice of ICH traditions will not help the children advance in the world;
* a representative of a local cultural organization who is eager to have the element revitalized;
* a young person interested in preserving his/her culture but concerned about prospects for future employment; and
* the local hotel owner, keen on attracting more tourists and running for mayor.

Other stakeholders represented at the meeting could include the following roles:

* an employee of an NGO promoting sustainable development in rural areas through cultural events;
* a representative of an NGO promoting arts teaching in rural areas who would like the element adapted to be more marketable to tourists;
* an official from the National Ministry of Culture who is interested in maximizing community participation in safeguarding the element; and
* a researcher from the capital who is interested in inventorying and researching the element.

More roles could be invented, depending on the number of participants. Each participant should develop a few reasons for supporting or opposing the idea of safeguarding the element, some opinions on how best to gauge broader community opinion, and an attitude towards assistance from government, researchers or NGOs.

Optional exercise two (1 hour 30 mins): plan an advocacy strategy to promote or prevent the nomination of an element to one of the Convention’s Lists

Community members may decide that they wish to support or oppose a process, suggested by the Ministry of Education and Culture, for nominating an element of their ICH to the Convention’s Lists. The setting for this exercise is a meeting in a provincial government institution, chaired by a provincial governor, to decide whether or not to nominate the element. The facilitator should provide the participants with information about the ICH element at stake (preferably one well known to the participants or one already discussed during the workshop).

Participants may be given the following roles (others may be invented as needed):

* representatives of a community that has decided that it does (or does not) wish a specific element of its ICH to be nominated to one of the Lists of the Convention;
* representatives from NGOs, research institutes and official agencies who are keen to see the nomination process proceed (though some of them may express reservations); and
* a representative of the provincial government, who chairs the meeting and tries to be neutral, but is in favour as the nomination is advocated by the Heritage Department of the Ministry of Education and Culture.

Those who play the roles of community representatives should plan a ten-minute speech (or two or three shorter speeches), explaining why they feel it would be better to submit (or not to submit) a nomination file. If the proposal is opposed, for example, they could refer to community concerns about increased tourism disturbing rituals or damaging sacred sites where ICH practices are performed, concerns about controlling access to secret or sacred knowledge, or any other objections they want to raise. One of the participants may take a contrary view.

Those who take the roles of representatives of NGOs, institutes or agencies should prepare short speeches explaining why they think the nomination should proceed (or express reservations). While taking community concerns into account, they try to convince community members to agree with them.

Once the speeches have been prepared (30 mins max.), the actual meeting takes place: the chair will give the floor first to the community representatives and then to the representatives of NGOs, institutes or agencies. A final discussion and a conclusion by the chair end the meeting.

After the role play, participants (guided by the facilitator) could be asked to evaluate the meeting and discuss what they have learned from the exercise.

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. . International Cooperative Biodiversity Groups (ICBG) is a program established in the USA under the National Institute of Health, National Science Foundation and USAID in 1993 to promote collaborative research between American universities and research institutions in countries that harbor unique genetic resources in the form of biodiversity. The basic aim of the program is to benefit both the host community and the global scientific community by discovering and researching the possibilities for new solutions to human health problems based on previously unexplored genetic resources. [↑](#footnote-ref-3)
4. . The full title of the project is the ‘Drug Discovery and Biodiversity among the Maya of Mexico’, but it is usually referred to as the ‘ICBG Maya bioprospecting project’ or the ICBG Maya project. [↑](#footnote-ref-4)
5. . An ICBG group led by [ethnobiologist](https://en.wikipedia.org/wiki/Ethnobiologist) Dr [Brent Berlin](https://en.wikipedia.org/wiki/Brent_Berlin). [↑](#footnote-ref-5)
6. . Noyes, ‘The Judgment of Solomon’, op.cit., pp. 27–56. [↑](#footnote-ref-6)
7. . Noyes, ‘Necessity and Freedom’, op. cit., [↑](#footnote-ref-7)
8. . Noyes, ‘The Judgment of Solomon’, op. cit., pp. 27–56. [↑](#footnote-ref-8)
9. . G. Dutfield, ‘Prior Informed Consent and Traditional Knowledge in a Multicultural World’, in T. Kono (ed.), 2009, Intangible Cultural Heritage and Intellectual Property. Communities, Cultural Diversity and Sustainable Development, Antwerp-Oxford-Portland, Intersentia, pp. 261–82. [↑](#footnote-ref-9)
10. . From WIPO introduction to intellectual property. See: http://www.wipo.int/export/sites/www/about-ip/en/iprm/pdf/ch1.pdf [↑](#footnote-ref-10)
11. . S. Vermeylen, 2008, ‘From Life Force to Slimming Aid: Exploring Views on the Commodification of Traditional Medicinal Knowledge’, Applied Geography, Vol. 28, No. 3, pp. 224–35.   
    http://eprints.lancs.ac.uk/28093/1/commodification\_of\_traditional\_knowledge.pdf [↑](#footnote-ref-11)
12. . See <http://www.cbd.int/abs/information-kit/> [↑](#footnote-ref-12)