Unit 3

Key concepts in the Convention

participant’s text

* Although many concepts are used in the Convention for the Safeguarding of the Intangible Cultural Heritage[[1]](#footnote-1) and its Operational Directives (ODs); the text of the Convention provides definitions for a few of them. This unit gives non-authoritative explanations and background information for some of the concepts used in the Convention and/or the ODs.
* States Parties to the Convention are free to develop their own policies and regulations for the safeguarding of intangible cultural heritage (ICH) under the Convention. However, it makes sense not to deviate too far from the terminology and definitions used in the Convention, in particular for the reasons that States will need to mention them in the periodic reports, requests and nominations that they submit to the Intergovernmental Committee for the Safeguarding of the Intangible Cultural Heritage and in other correspondence, both to the Committee and to other States Parties with whom they wish to cooperate.

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1989 RECOMMENDATION

UNESCO’s 1989 Recommendation on the Safeguarding of Traditional Culture and Folklore was the first international instrument to highlight the value of non-material cultural heritage and the importance of safeguarding it. The Recommendation was applauded for this reason but also came under severe criticism, culminating in UNESCO and the Smithsonian Institution holding a joint conference in 1999 entitled ‘A Global Assessment of the 1989 Recommendation on the Safeguarding of Traditional Culture and Folklore: Local Empowerment and International Co-operation’.

The Recommendation was criticized: (a) for privileging the role of outside experts, rather than the communities concerned, in ICH safeguarding; (b) for its limited definition (using the term ‘traditional culture and folklore’) of what has later come to be known as ICH; and (c) for references to the ‘universal heritage of humanity’ that deflected attention from the importance of the value of ICH to the communities concerned. It drew too heavily on existing models for tangible heritage conservation, suggesting measures (such as documentation) without paying sufficient attention to the importance of continuing or revitalizing ICH practice.

The conference recommended to governments that they request UNESCO to undertake a study on the feasibility of adopting a new normative instrument for safeguarding traditional culture and folklore. Four years later, the Convention for the Safeguarding of the Intangible Cultural Heritage was adopted; it refers to this Recommendation in its Preamble.[[2]](#footnote-2)

The text of the Recommendation can be found at the following URL:
http://portal.unesco.org/en/ev.php URL\_ID=13141&URL\_DO=DO\_TOPIC&URL\_SECTION=201.html

AMENDING THE CONVENTION AND RELATED TEXTS

Article 39 of the Vienna Convention of the Law of Treaties (1969) rules that ‘a treaty may be amended by agreement between the parties’. Article 38 of the Convention thus explains how the Convention may be amended, but through a complicated and probably lengthy process. Any State Party may propose an amendment by written communication to the Director-General of UNESCO. If within six months after the Director General circulates the amendments to the States Parties, half or more of the States Parties endorse discussion of the proposed amendment, then States Parties will discuss it at the following session of the General Assembly. For amendments to be adopted, a two-thirds majority of the States Parties who take part in the voting is required. After its adoption, an amendment is submitted to the States Parties for ratification, acceptance, approval or accession.

Unlike the Convention’s text, the ODs may be changed, adapted and enlarged more easily. Any change the Committee prepares shall be proposed to (and approved by) the General Assembly, which meets every two years. The first set of ODs was approved in June 2008. Since then, they have been amended and enlarged several times.

Both the General Assembly (Article 4.3) and the Committee (Article 8.2) drew up and adopted their respective Rules of Procedure. The Rules of Procedure may be amended relatively easily.

Refer to Article 38.

AUTHENTICITY

Authenticity is not a concept used in the Convention or its ODs; nor do concepts such as integrity or antiquity find a place there. The Convention defines ICH as living heritage that is transmitted yet constantly recreated; thus, present-day forms of ICH are not considered any less authentic than historical ones. The communities concerned should decide what ICH belongs to their cultural heritage and what does not. Those stakeholders other than the practitioners, such as the State, experts or professional performers, are not required to make judgements on the right way to practise or transmit a particular element.

In this context, it is worthwhile quoting paragraph 8 of the Yamato Declaration, adopted by tangible and intangible heritage experts in Nara (Japan) in 2004:

... considering that intangible cultural heritage is constantly recreated, the term ‘authenticity’ as applied to tangible cultural heritage is not relevant when identifying and safeguarding intangible cultural heritage.

Moreover, in the Ethical Principles for Safeguarding Intangible Cultural Heritage, principle 8 states that “The dynamic and living nature of intangible cultural heritage should be continuously respected. Authenticity and exclusivity should not constitute concerns and obstacles in the safeguarding of intangible cultural heritage.”

BASIC TEXTS

The Basic Texts of the 2003 Convention for the Safeguarding of the Intangible Cultural Heritage[[3]](#footnote-3) is a publication of the Secretariat of the Convention. It includes:

* the text of the Convention;
* the Operational Directives for the implementation of the Convention;
* the Rules of Procedure of the General Assembly;
* the Rules of Procedure of the Intergovernmental Committee;
* the Financial Regulations concerning the ICH Fund; and
* some annexes, in particular the Ethical Principles for Safeguarding Intangible Cultural Heritage.

All of these documents can also be downloaded from the ICH website. Since some of these texts (especially the ODs) are liable to change, it is important always to work with the latest versions.

BUREAU OF THE COMMITTEE

The Bureau of the Intergovernmental Committee is its executive; it includes the Chairperson, the Vice-Chairpersons and the Rapporteur of the Committee (see Rules 12 and 13.1 of the Rules of Procedure of the Committee). At present, it is composed of representatives of six States – one for each of the electoral groups. The Chairperson, assisted by the other members of the Bureau, leads the sessions of the Committee. The Bureau is also mandated to act in the name of the Committee between Committee sessions. According to Rule 12.2, the Bureau coordinates the work of the Committee and performs tasks foreseen in the ODs and any other tasks assigned to it by the Committee. One of these tasks is the evaluation of emergency and preparatory international assistance requests, as well as requests up to US$100,000 (ODs 49–50). The Bureau also deals with nominations to the USL that need to be processed on an extremely urgent basis (OD 32).

CATEGORY 2 CENTRES

Category 2 centres are institutions working under the auspices of UNESCO that coordinate the activities of States on a specific topic across several countries, a broader region or the world. Governments of UNESCO Member States may propose the creation of a category 2 centre; when an agreement is reached between UNESCO and the host State, the centre may be established. Category 2 centres are independent institutions in the sense that they are neither part of State structures in the host country, nor are they part of UNESCO.

OD 88 encourages States Parties ‘to participate in activities … of category 2 centres for intangible cultural heritage’. The first category 2 centre for ICH, the Regional Centre for the Safeguarding of the Intangible Cultural Heritage of Latin America (CRESPIAL), based in Peru, was established in 2006. Since then several agreements have been signed between UNESCO and Algeria, Bulgaria, China, the Islamic Republic of Iran, Japan and the Republic of Korea for the establishment of new category 2 centres working on diverse aspects of ICH safeguarding.

See: <http://www.unesco.org/culture/ich/en/Category2/>

Dividing responsibilities

Since the category 2 centres in China, Japan and the Republic of Korea operate in the same subregion of Asia-Pacific, the three countries agreed to divide responsibilities: China focuses on classroom and field-based training on ICH safeguarding and the implementation of the 2003 Convention; Japan, on research, particularly on practices and methodologies for safeguarding ICH; and the Republic of Korea, on information and networking, particularly through the coordination and dissemination of information on the implementation of the Convention.

The category 2 centre in the Islamic Republic of Iran covers West and Central Asia; it focuses on conducting research for safeguarding and on coordinating activities related to internationally shared ICH, including the preparation of joint nominations for the Lists of the Convention. The category 2 centre in Algiers, Algeria focuses on the safeguarding of ICH in Africa.

Refer to OD 88.

COMMERCIALIZATION

In many cases, the practice and transmission of an ICH element have been integrated into the economic activity of the communities or groups concerned for decades, or even centuries. For example, traditional knowledge and craft may constitute the livelihood of a group of practitioners, or musicians may be remunerated for performing at weddings and so on. Economic values associated with ICH may help to sustain it over time, in the same way that social values do. When trying to revitalize an element, new forms of economic value can be introduced, in particular, if its practice and transmission require a considerable investment in terms of time or means.

Commercialization, or increased interest for and exploitation of the economic value of an element, need not be detrimental to its viability and to the practitioners concerned. When the introduction of new audiences, markets and products becomes a goal in itself, however, this can threaten the viability of the element in its community context, and lead to ‘over-commercialization’.

Do consider the Ethical Principles, in particular number 7: ‘The communities, groups and individuals who create intangible cultural heritage should benefit from the protection of the moral and material interests resulting from such heritage, and particularly from its use, research, documentation, promotion or adaptation by members of the communities or others.’

At its various meetings, the Committee has addressed commercialization as a cross-cutting issue.

Refer to ODs 102(e), 107(m), 116 and 117. Also, see: ITH/12/7.COM/INF.7 Rev

COMMUNITIES, GROUPS AND INDIVIDUALS

The Convention and the Operational Directives repeatedly mention the communities, groups and individuals that practise and transmit ICH. The Preamble of the Convention states that the term ‘communities’ includes ‘indigenous communities’. In a few instances, the Convention speaks only of ‘communities and groups’ (Articles 11(b) and 14(a) (ii)). The ODs also make frequent reference to these terms also using the terms ‘tradition bearers’ and ‘practitioners’ (the latter term is introduced in Article 21(b)).

No definition in the Convention

Communities, groups and individuals are not defined in the Convention. But according to Articles 2.1 and 15, the ‘communities, groups and individuals concerned’ are those people who participate directly or indirectly in the practice and/or transmission of an ICH element (or a set of elements) and/or who consider it to be part of their cultural heritage. According to the Preamble to the Convention, ‘communities, in particular indigenous communities, groups and, in some cases, individuals, play an important role in the production, safeguarding, maintenance and recreation of the intangible cultural heritage, thus helping to enrich cultural diversity and human creativity’.

The Convention does not indicate whether or how to differentiate between ‘communities’ and ‘groups’. Some interpretations treat ‘groups’ as networks of people (such as practitioners, guardians or tradition bearers) within a community, or across communities who have special knowledge of a specific element, or a special role in the transmission or enactment of ICH.

Various ways of defining communities

For the purposes of the implementation of the Convention, States Parties define communities according to various criteria, such as administrative, geographical, occupational, religious or ethnolinguistic criteria. Communities, groups or individuals can also be defined – or define themselves – in relation to a specific ICH element or to a group of such elements.

Communities (and groups) are fluid entities – people can join and leave them; people can also be part of different communities at the same time. Communities are generally not homogeneous and within a community there may be different opinions about matters related to ICH identification, enactment or safeguarding.

CONVENTIONS, RECOMMENDATIONS AND DECLARATIONS

International Conventions are subject to ratification, acceptance, approval or accession by States. They define rules which the States undertake to comply.

UNESCO Recommendations are instruments in which the General Conference of UNESCO formulates principles and norms for the international regulation of any particular question. The General Conference invites Member States to take legislative or other steps to apply the principles and norms within their territories.[[4]](#footnote-4) Recommendations are norms which are not subject to ratification but which Member States are invited to apply.

Declarations, which are also not subject to ratification, are another means of defining norms. Like recommendations, they set forth universal principles to which the community of States wishes to attribute the greatest possible authority and to afford the broadest possible support. For example, the United Nations General Assembly adopted the Universal Declaration of Human Rights, adopted on 10 December 1948. UNESCO has so far adopted 35 Conventions, 32 Recommendations and 13 Declarations.

CULTURAL SPACE

Article 2.1 of the Convention stipulates that for the purposes of this Convention, ICH includes the ‘cultural spaces’ associated with ‘the practices, representations, expressions, knowledge, skills … that communities, groups and, in some cases, individuals recognize as part of their cultural heritage’.

Although cultural space is not defined in the text of the Convention, it may consist of buildings, communal spaces or natural places with which elements of ICH have a special link. They are only part of the definition of ICH in their association with ICH practices and not ICH elements in their own right. They need not have separate tangible heritage value, although sometimes they do.

OD 108 encourages communities to use community centres and associations as ‘cultural spaces in which their intangible cultural heritage is safeguarded through non-formal means’.

See Participant’s text Unit 3: ‘Elements of ICH’.

Refer to Article 2.1; OD 108.

DECONTEXTUALIZATION

The Operational Directives state that ‘All parties are encouraged to take particular care to ensure that awareness-raising actions will not de-contextualize or denaturalize the intangible cultural heritage manifestations or expressions concerned’ (OD 102(a)).

Sometimes parts of ICH practices are ‘packaged’ or abridged for presentation to tourists and other external audiences. Performances may also be timed to coincide with the tourist season rather than with, say, the usual harvest calendar. Such interventions decontextualize ICH and may negatively affect the usual processes of enactment and transmission within the community. Decontextualization may lead to a decline in community interest in the continued practice of their ICH as community members may feel that the elements concerned are losing their meaning and function for them and are no longer theirs. Soon, the elements may no longer conform to the definition of ICH in the Convention.

If a de-contextualizing action is initiated within a community and/or generally welcomed by community members, outsiders may point out the potential problems, but should not try to prevent community members from changing or even abandoning their ICH: that is their right.

Refer to OD 102(a).

DOCUMENTATION AND RESEARCH

Documentation (as a safeguarding measure)

Documentation consists of recording ICH in its current state and variety, through transcription and/or audiovisual means, and collecting documents that relate to it. The recordings and collected documents are often kept in libraries, archives or websites, where interested people, including community members (ODs 85 and 87), may consult them. Access should be regulated in a way that takes relevant customary practices into account (Article 13(d)(ii)).

Some communities and groups have their own forms of documentation of ICH expressions and knowledge such as songbooks, sacred texts, weaving samplers, pattern books, icons or images. In some cases, access to such records is limited and regulated by customary practices, which need to be respected. In many communities today, people are recording their ICH practices and making them available, often online, to each other and to the public in general. Innovative community self-documentation efforts and programmes to repatriate or disseminate archival documents in order to encourage continued creativity are some of the safeguarding strategies being used today (see also OD 87).

Research (as a safeguarding measure)

Research aims to better understand an element (or group of elements) of ICH through an exploration of its forms, its social, cultural and economic functions, its practice, modes of transmission and artistic and aesthetic features, its history and the dynamics of its creation and re-creation. Research may help in designing safeguarding plans for endangered elements of ICH, but initial safeguarding measures that may provide a remedy to obvious problems should not be postponed because of long-lasting historical or comparative studies.

For documentation and research to be considered safeguarding measures, they must: (a) be aimed at furthering the continued practice and transmission of ICH; and (b) be prepared with the participation and consent of the communities concerned. It is not in the spirit of the Convention to use documentation, research or inventorying to establish one fixed authentic or canonical way of performing or enacting ICH.

The chapter of the ODs on sustainable development (Chapter VI) encourages States Parties to ‘foster scientific studies and research methodologies, including those conducted by the communities and groups themselves’ on safeguarding ICH and sustainable development. Areas of research in this chapter include: food security, gender equality, quality education, and preventing and resolving disputes, for example.

Refer to Articles 3, 13(d)(ii) and 13(d)(iii); ODs 85 and 87.

DOMAINS OF ICH

According to Article 2.2 of the Convention, ICH is manifested, among other things (‘*inter alia’*), in the following domains:

(a) oral traditions and expressions, including language as a vehicle of the intangible cultural heritage (e.g. story-telling, oral poetry, songs, proverbs, riddles and epic poems; language registers used when enacting ICH, specific layers of the lexicon that are used in the enactment and transmission of, for instance, handicrafts);

(b) performing arts (e.g. traditional music, dance, theatre);

(c) social practices, rituals and festive events (e.g. practices linked to the agricultural and pastoral cycles, to highlights in the lives of groups and individuals; popular festivities linked to specific places, such as carnivals);

(d) knowledge and practices concerning nature and the universe (e.g. traditional healing, knowledge about herbs and their application, water management systems, star-guided navigation, astrology and greeting ceremonies);

(e) traditional craftsmanship (e.g. the knowledge and skills involved in crafts, from pottery to mask-making and from vernacular architecture to carpet weaving).

This classification is not exhaustive – it just provides a possible list of ICH domains. States Parties use various systems to classify ICH elements in inventories: sometimes these systems are close to the one presented in Article 2.2, perhaps including a few domains not mentioned there; sometimes they differ widely from the Convention’s classification system. Additional domains already used by some States Parties to the Convention are ‘traditional play and games’, ‘culinary traditions’, ‘animal husbandry’, ‘pilgrimage’ and ‘places of memory’.

ICH elements often fall under several of these domains. A ritual, for example, may include oral expressions, dance, music and knowledge about nature, and hence belong to four of the domains mentioned in the Convention.

Refer to Article 2.2.

EDUCATION

Education, both formal and non-formal, has always been used for transmitting ICH knowledge, skills and practices. For example, transmission may take place within the family, from parent to child, from master to disciple as part of an initiation rite, or from teacher to pupil in a more or less formal educational setting. When traditional transmission systems become less effective or even obsolete, new ways of transmission may be needed. It is in this context that the Convention suggests resorting to new methods of formal and non-formal education for transmitting ICH-related knowledge and skills.

Article 14 encourages States Parties to use education to ensure ‘recognition of, respect for and enhancement of’ ICH; OD 107 translates this general suggestion of the Convention into many possible actions. The chapter of the ODs on sustainable development addresses quality education and ICH in OD 180.

Refer to Articles 2.3, 13(d)(i) and 14; OD 107.

ELECTORAL GROUP

In order to ensure equitable geographical distribution in the membership of the Committee and its subsidiary bodies, the Committee decided to follow the principle, widely used within UNESCO, of (six) electoral groups as a basis for the distribution of seats. The Intergovernmental Committee has 24 seats and each of the six groups at any moment has at least three seats in the Committee, the remaining six being distributed over the electoral groups in proportion to the numbers of States Parties belonging to these groups (see Rule 13.2(ii) of the Rules of Procedure of the General Assembly). The Evaluation Body is composed of 12 members appointed by the Committee. Each of the 6 electoral groups has two members: one expert and one accredited non-governmental organization. (see OD 27). For further details see ‘Evaluation Body’.

The electoral groups within UNESCO are as follows:

I: Western Europe/North America

II: Eastern Europe

III: Latin America and the Caribbean

IV: Asia and the Pacific

V(a): Sub-Saharan Africa

V(b): Arab States

ELEMENTS OF ICH

The Convention often mentions ICH in general, and sometimes specific elements (or, occasionally, ‘items’) of ICH. Article 11(b), for example, mentions the identification and definition of ‘the various elements of the ICH’ and Article 12.1 refers to their inclusion in inventories; Article 17.3 uses the term ‘item’. The Operational Directives consistently use the term ‘element(s)’.

‘Element’ is not defined in the Convention. From the way the term is used, however, it is clear that elements are easily identifiable manifestations of ICH that the communities concerned recognize as part of their cultural heritage. In fact, ‘element’ is a term used in the Convention to denote each ICH in a neutral and separate manner, regardless of its nature, domain or size. Some of the elements submitted to the Lists of the Convention are very broad, encompassing many practices and expressions that might have been presented as elements in their own right. Some inscribed elements lack a clearly identifiable associated community. A carnival may be spoken about as an element, but a well-defined part of it, such as a procession, could also be considered an element, as long as the community concerned agrees to this.

There is no reason – whether in the Convention or in the ODs – to assume that objects or spaces associated with practices and expressions or skills should be considered ICH elements in their own right.

An open ended intergovernmental working group on the right scale or scope of an element was held in Paris in October 2012 (see document ITH/12/7.COM WG/2).

Refer to Articles 2.1, 11(b) and 17.3; ODs 1-2.

EMBLEM OF THE CONVENTION

Since 2008, the Convention has had its own emblem (also called a logo), which should be used in combination with UNESCO’s logo (OD 125).

The use of both logos is subject to rules (OD 128). Only the Organs and the Secretariat of the Convention have the right to use them without prior authorization. Such authorization may be given to others by the Organs of the Convention and, in specific cases, by the Director-General of UNESCO. The use of the emblem may only be authorized if the project or manifestation concerned is relevant to the Convention’s purposes and in compliance with its principles (OD 134).

The use of the emblem of the Convention may be authorized in connection with patronage and contractual arrangements and partnerships, as well as specific promotional activities. A contractual arrangement can be concluded between UNESCO and outside organizations in the framework of partnerships, co-publication and co-production agreements, or promotional and commercial activities. The two main criteria in assessing any emblem request are:

* Relevance of the proposed association to the Convention’s purposes and objectives; and
* Compliance with the principles of the Convention.

In accordance with the conditions specified in the OD, communities, groups and, if applicable, individuals concerned are encouraged to use the logo of the Convention for their activities and special events to safeguard and promote their ICH inscribed on the lists.

Refer to ODs 124–150.

EVALUation body

Subsidiary and Consultative Bodies

According to Rule 21 of its Rules of Procedure, the ‘Committee may establish such subsidiary bodies as it deems necessary for the conduct of its work’. As of its third session (2008), the Committee established a Subsidiary Body for the examination of nominations for the Representative List.

Article 8.3 states that the Committee may establish, on a temporary basis, ad hoc consultative bodies to assist it in carrying out its tasks. Rule 20 of its Rules of Procedure provides further details on the establishment of such bodies.

The Committee created the first Consultative Body in November 2010 and asked it to evaluate nominations to the Urgent Safeguarding List, proposals to the Register of Best Safeguarding Practices and requests for international assistance greater than US$25,000, and to make recommendations to the Committee for their final examination.

Evaluation Body created

At its eighth session in December 2013, the Committee proposed consolidating the evaluation of all nominations within one single body, to be called the ‘Evaluation Body’ and proposed amendments to the corresponding ODs (ODs 26 to 31). In June 2014, the General Assembly accepted the proposal and decided that on an experimental basis, all nominations shall be evaluated by the ‘Evaluation Body’. The first Evaluation Body was established by the Committee at its ninth session in 2014. The Committee also decided to establish a system of rotation among the seats on the Evaluation Body (2016 to 2019).

**The Evaluation Body is composed of 12 members appointed by the Committee, taking into consideration equitable geographical representation and various domains of ICH. It is comprised of six experts representing States Parties non-Members of the Committee and six representatives of accredited NGOs. The term of office of a member of the Evaluation Body cannot exceed four years, with one quarter of the members renewed every year by the Committee. Candidatures are put forward by the Chairperson of the Electoral Group concerned.

Refer to ODs 26 to 31.

ETHICAL PRINCIPLES FOR SAFEGUARDING INTANGIBLE CULTURAL HERITAGE

At its tenth session, the Intergovernmental Committee endorsed twelve ethical principles for safeguarding intangible cultural heritage ([Decision 10.COM 15.a](http://www.unesco.org/culture/ich/en/decisions/10.COM/15.A)).

The Ethical Principles for Safeguarding Intangible Cultural Heritage were elaborated in the spirit of the 2003 Convention and existing international normative instruments protecting human rights and the rights of indigenous people. They represent a set of overarching aspirational principles that are widely accepted as constituting good practices for governments, organizations and individuals directly or indirectly affecting ICH in order to ensure its viability, thereby recognizing its contribution to peace and sustainable development. For instance, the Ethical Principles emphasize that any activity concerning ICH should take place with the fullest possible participation and the free, prior and informed consent of the communities, groups and individuals concerned.

Complementary to the 2003 Convention, the [Operational Directives](http://www.unesco.org/culture/ich/en/directives) and national legislative frameworks, the Ethical Principles intend to serve as basis for the development of specific codes of ethics and tools adapted to local and sectoral conditions. Such ethical principles could provide guidance to Member States and development actors with concrete ethical procedures applicable to all kinds of activities related to ICH or that could potentially affect its viability.

The Ethical Principles for Safeguarding Intangible Cultural Heritage (in Arabic, Chinese, English, French, Russian and Spanish) are available online and are also published in the Basic Texts:
http://www.unesco.org/culture/ich/en/ethics-and-ich-00866

For examples of codes of ethics and professional codes of conduct, see <http://www.unesco.org/culture/ich/en/examples-of-codes-of-ethics-00868>

For background of the Ethical Principles and how they were elaborated, see <http://www.unesco.org/culture/ich/en/background-of-the-ethical-principles-00867>

See Unit 38 ‘Ethics for Safeguarding Intangible Cultural Heritage’

FREE, PRIOR AND INFORMED CONSENT

When communities, groups or individuals are involved in the development of a nomination file for inscription of an element of their ICH on one of the Lists of the Convention, their free, prior and informed consent is required for both the preparation and the submission of the file (OD 1, U.4 and OD 2, R.4). Without proof of community or group consent (which may take different forms, according to the situation), the Committee is not entitled to inscribe an element on a List of the Convention. Similarly, community or group consent is required when a State Party proposes a safeguarding programme, project or activity for inclusion in the Register of Good Safeguarding Practices (OD 7, P.5).

Furthermore, all parties are encouraged to observe the principle of the community’s free, prior and informed consent when preparing an awareness-raising activity that concerns the ICH of one or more specific groups (OD 101(b)).

What does free, prior and informed consent mean in the context of the Convention?

* ‘Free’ means that no pressure was exerted on community representatives in the process of making a decision (for example, concerning the submission of a nomination file or a proposal).
* ‘Prior’ means that the communities concerned were informed well beforehand and had time for internal consultation and deliberation.
* ‘Informed’ means that they were given all relevant information relating to the planned process, including the likely benefits and any possible negative consequences.

The notion of free, prior and informed consent was originally designed to apply to individuals, but it has now been extended to groups of people in instruments like the Convention on Biological Diversity (CBD), in the ODs of the 2003 Convention and in various World Intellectual Property Organization (WIPO) texts and recommendations.

The Ethical Principles also add the notion of “sustained” consent in EP4: “All interactions with the communities, groups and individuals who create, safeguard, maintain and transmit ICH should be characterized by transparent collaboration, dialogue, negotiation and consultation, and contingent upon their free, prior, sustained and informed consent.” This introduces the idea of following up on consent once it has been obtained, by cultivating and continuing the dialogue with the communities, groups or individuals involved and asking for confirmation and feedback from them.

Refer to ODs 1, 2, 7 and 101(b) and the Ethical Principles, in particular EP4.

GENDER AND ICH

Use of the term ‘gender’ aims at showing that differences often attributed to women and men’s biological natures are, in fact, often the result of their position in a given social structure and the expectations placed on them by society in terms of their behaviour. All ICH expressions carry and transmit values, norms and behaviours related to the roles and relationships of and between gender groups in a given community. In such a way, ICH is a significant context for shaping gender roles and identities and transmitting them. At the same time, access to and participation in specific expressions of ICH are sometimes also determined by gender. Thus while gender norms influence ICH, ICH influences gender norms.

While the text of the Convention for the safeguarding of the ICH is not explicit about gender, the governing bodies request that states ‘pay special attention to the role of gender’ when reporting on the status of elements inscribed on the lists of the Convention. Upon their request, all forms and instructions regarding the international cooperation mechanisms and periodic reporting of states parties on implementing the convention contain references to gender, and the Convention’s Operational Directives make specific reference to gender equality as part of safeguarding ICH and sustainable development at the national level.

As the gender relations and the ICH of a community are constantly evolving within their respective contexts, there can be opportunities to move towards gender equality and to overcome gender-based discrimination through the practice of ICH. An understanding of gender relations and gender-related changes reminds us that decision-making about the transmission and safeguarding of ICH does not take place in a vacuum but is embedded in a larger system of gender and power relations. It is also important to remember that just as ICH varies from community to community, gender conceptions can be equally diverse. There is no one globally universal understanding of gender.

Gender as a concept is closely tied to the core human rights principles of equality and non-discrimination. When considering gender equality and ICH, a human rights perspective concentrates not on the differences between gender roles, but on whether they deny the dignity and well-being of those involved. Only through a careful gender-based analysis can communities recognize whether their ICH is actually discriminatory.

Understanding the mutual relationship between gender and ICH is significant for effective safeguarding in two ways: it can open new avenues to safeguarding and can strengthen steps towards gender equality.

The [UNESCO brochure on Intangible Cultural Heritage and Gender](http://unesdoc.unesco.org/images/0024/002434/243401e.pdf) (2016); Chapter on Gender and Intangible Cultural Heritage in [The UNESCO report on Gender Equality Heritage and Creativity](http://unesdoc.unesco.org/images/0022/002294/229418e.pdf)

Refer to Article 2.1; ODs 181 (a-e); Ninth session of the Intergovernmental Committee; Specific reference to gender and ICH is made in Units 6, 7, 9, and 10.



GENERAL ASSEMBLY

The General Assembly of the States Parties is the sovereign body of the Convention (Article 4): it is not subordinate to UNESCO or to any other body or organization. All States Parties to the Convention are members of the General Assembly, which elects and instructs the Intergovernmental Committee and has the final say in matters of interpretation of the Convention. The General Assembly meets in ordinary session in June every two years at UNESCO Headquarters in Paris, France. Its Rules of Procedure are published in the Basic Texts.

Sessions of the General Assembly

See: <http://www.unesco.org/culture/ich/index.php?lg=en&pg=00008>

IDENTIFICATION AND DEFINITION OF ICH

Article 2.3 of the Convention refers to identification and definition as safeguarding measures. Under the Convention, identification of an ICH element means naming it and briefly describing it in its context and distinguishing it from other elements. If identifying offers a brief description of an ICH element, definition provides a fuller description of it at a specific point in time. Identification and definition of ICH should be undertaken with the participation of the communities and groups concerned, and of relevant NGOs (Article 11(b); ODs 80(a) and 90). Identification and definition follow the recognition by the community, group or individuals concerned of a practice, expression, knowledge or skills as part of their cultural heritage (Article 2.1); they necessarily precede the inclusion of information on a specific element in an inventory of ICH (Article 12.1).

Refer to Articles 2.3 and 11(b); ODs 80(a) and 90.

INDIGENOUS COMMUNITIES

The Preamble of the Convention mentions communities, in particular indigenous communities associated with ICH practices. However, the Convention asserts no rights unique to indigenous communities, while affording them the same rights vis-à-vis their ICH as any other communities.

While there is no official definition of ‘indigenous’ the United Nations system has developed a shared understanding of this term based on the following:

* self-identification as indigenous peoples at the individual level and accepted by the community as their member;
* historical continuity with pre-colonial and/or pre-settler societies;
* strong link to territories and surrounding natural resources;
* distinct social, economic or political systems;
* distinct language, culture and beliefs;
* form non-dominant groups of society;
* resolve to maintain and reproduce their ancestral environments and systems as distinctive peoples and communities.

In September 2007 the General Assembly of the United Nations adopted the Declaration on the Rights of Indigenous Peoples, Article 31.1 relates to cultural heritage and reads as follows:

Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.

Even before the adoption of this Declaration and the 2003 Convention the UN adopted another Convention referring to the traditional knowledge and practices of indigenous, local and other communities, namely the 1992 Convention on Biological Diversity (CBD). It called upon its Contracting Parties, as far as possible and as appropriate to:

… respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity … (Article 8(j)).

It should be noted that most countries in the world have ratified the CBD. A large majority of them have endorsed the 2007 Declaration on the Rights of Indigenous Peoples.

Many indigenous communities reference these legal instruments when claiming political recognition, territorial rights and/or cultural rights within States or across national borders.

INTANGIBLE CULTURAL HERITAGE

Article 2.1 outlines the definition of ICH in the Convention:

The importance of the communities, groups and individuals concerned

Intangible cultural heritage (ICH) is created, enacted and transmitted by people: they hold the ‘knowledge and skills’ required for that enactment and they enact or perform the ‘practices, representations and expressions’ using their bodies.

It is these people – according to the first sentence of the definition above – who should recognize what belongs to their cultural heritage. Others, such as State officials or outside experts, cannot decide for a community that a given expression or practice belongs to their cultural heritage.

Change over time and transmission

ICH elements change over time, responding to new situations, but they are often also practised in a wide variety of ways at any one time. In fact, two consecutive enactments of the same ICH element will not be exactly the same, even when performed by the same people.

ICH is ‘transmitted from generation to generation’ but the Convention does not specify numbers of generations, or what constitutes inter-generational transmission. ‘Generations’, for example, do not necessarily imply a time span of 20 to 25 years. In age-grading systems, or master–apprentice relations, the gap between generations may be much shorter or, occasionally, longer. Children’s games, for example, are usually transmitted, by children, to only slightly younger companions.

In terms of the Convention, once the condition of inter-generational transmission within a specific community has been satisfied, it is immaterial whether the practice or expression was first created by this community or adopted and adapted from other communities. It is a fundamental tenet of the Convention that one community’s ICH (or elements thereof) cannot be represented as better, more valuable, more important or more interesting than the ICH of any other community.

Associated objects and spaces

The definition of ICH also includes associated ‘instruments, objects, artefacts and cultural spaces’ (Article 2.1). People may need instruments or objects to perform their ICH and some practices may yield material products. The enactment or the transmission of specific elements of ICH may be linked to specific places. The objects and cultural spaces are, however, only part of the definition of ICH in their *association* with ICH practices and they need not have separate tangible heritage value.

The practices, expressions, knowledge and skills come first: those are the ‘elements’ that, for example, may be inscribed on the Lists of the Convention and safeguarding should concentrate on them.

What is not considered ICH for the purposes of the Convention

Expressions and practices, knowledge and skills that are not recognized by the community concerned as belonging to its cultural heritage, or that are quite recent (i.e. not yet transmitted from generation to generation) or ‘frozen’ (brought to a standstill, prevented from further change) do not comply with the definition of ICH in the Convention.

For ICH to be taken into consideration for the purposes of the Convention, it must be compatible with international human rights instruments, be respectful of others (whether individuals or groups of people or even States) and be compatible with the requirements of sustainable development.

Only such elements may be nominated for inscription on the Lists of the Convention, for example, or be the subject of projects or programmes around which requests for international assistance or proposals for the Register of Good Safeguarding Practices are made. These limitations are in line with UNESCO’s broader objectives of promoting peace, human rights and sustainable development.

Other definitions of ICH

States Parties often use their own definition of ICH when undertaking various activities at the national level, especially when preparing inventories of ICH, which they are allowed to undertake in a manner suited to their own situation. Therefore, there are inventories presenting cultural expressions and practices that have ceased to be practised, and/or ICH elements that may not be taken into consideration for the purposes of the Convention.

States Parties are not encouraged to use a definition of ICH that deviates significantly from the definition used in the Convention, especially where this narrows down (rather than expands) the frame of what is considered ICH and may thus cause tension between States and the communities concerned. When raising awareness about the importance of ICH, States Parties are encouraged to ensure that the examples used respond to the definition in Article 2.1 (OD 101(a)) and that raising awareness about them does not justify any form of discrimination (ODs 101(a), 102(c)).

Refer to Article 2.1.

INTELLECTUAL PROPERTY

States have intellectual property laws: (a) to protect the moral and economic rights of creators in their creations, and the rights of the public in access to those creations; (b) to promote creativity and the dissemination and application of its results; and (c) to encourage fair trading.

Intellectual property rights are ideally regulated in a complementary way at the national, regional and international levels. In the case of World Trade Organization (WTO) Member States, intellectual property rights regimes at the national level are influenced by international agreements such as TRIPS (Trade-Related Aspects of Intellectual Property Rights, 1994). International intellectual property instruments that relate to ICH fall within the field of competence of the World Intellectual Property Organization (WIPO).

Establishing intellectual property rights over ICH

Conventional types of intellectual property rights such as patents, trademarks and copyrights have been used to protect and promote community intellectual property rights in respect of their ICH. Intellectual property rights regimes are usually designed to protect the rights of individuals or companies, however, and may not always be suitable for protecting community rights associated with ICH. Therefore, many countries, often assisted by WIPO, have modified their intellectual property rights regimes at the national level. There have also been regional agreements on intellectual property rights associated with ICH.

It has proved difficult to establish an international legal instrument for protecting intellectual property rights over ICH – the task given to WIPO’s Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore.

See: http:// [www.wipo.int/freepublications/en/tk/913/wipo\_pub\_913.pdf](http://www.wipo.int/freepublications/en/tk/913/wipo_pub_913.pdf).

Community rights and benefits in the Convention

The ODs encourage States Parties to ensure:

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

The rights that communities should enjoy over their ICH are not specified in any detail in the Convention, but the Operational Directives indicate that:

* Communities should be acknowledged and respected as the bearers of their ICH (OD 105(d)); they should not be misrepresented (see OD 102, i.e. their moral rights should be respected).
* Communities should not be pressurized into sharing secret or sacred knowledge about their ICH (see Article 13(d)(ii); ODs 101(c) and 153(b)(iii)), i.e. their right to privacy should be respected.
* The Ethical Principles reinforce these concerns and explicitly mention benefit sharing: “The communities, groups and individuals who create ICH should benefit from the protection of the moral and material interests resulting from such heritage, and particularly from its use, research, documentation, promotion or adaptation by members of the communities or others”.

Many communities or groups are concerned about the intellectual property implications of inventorying and promoting their ICH. OD 81 encourages States Parties to sensitize communities and groups to the importance and value of their ICH, as well as of the Convention, ‘so that the bearers of this heritage may fully benefit’ from the Convention.

The implementation of the Convention should not affect existing obligations of States Parties under international intellectual property rights instruments to which they are already parties (Article 3(b)). This means, among other things, that the Convention does not confer any new intellectual property rights over ICH elements to anyone, nor does it impose any new obligations in this respect on States Parties.

Refer to Article 3(b) and OD 104 and the Ethical Principles, in particular EP7.

INTERGOVERNMENTAL COMMITTEE

Composition of the Committee

The Intergovernmental Committee for the Safeguarding of the Intangible Cultural Heritage – in short, the (Intergovernmental) Committee – is composed of 24 States Parties to the Convention, elected by the General Assembly for four years; every two years the General Assembly renews half of the membership of the Committee. The States Members of the Committee must be represented by ICH experts (Article 6.7).

The States Members of the Intergovernmental Committee are elected according to the principles of equitable geographical representation and rotation. The seats in the Committee are distributed among the six UNESCO electoral groups in proportion to the number of States Parties from each group, it being understood that each group will occupy at least three seats. Under the principle of rotation, States Members may not sit on the Committee for two consecutive terms (Articles 6.1 and 6.6).

See: http://www.unesco.org/culture/ich/index.php?lg=en&pg=00028

The Committee has a Chairperson, one or more Vice-Chairpersons and a Rapporteur, who together form its Bureau; the Committee may create ad hoc consultative Organs and subsidiary bodies.

Mandate of the Committee

The Committee has a mandate to oversee the implementation of the Convention, including the inscription of ICH on the Lists of the Convention and the selection of safeguarding measures for inclusion in the Register of Good Safeguarding Practices. The Committee also prepares the Operational Directives (for approval by the General Assembly) and it manages the ICH Fund, among many other duties. The Committee reports about its activities to the General Assembly.

Meetings of the Committee

The Committee meets in ordinary session once a year at the invitation of one of the States Parties. At the end of each of its ordinary sessions, the Committee elects a new Bureau and decides on the next venue. The new President of the Committee (and the Bureau) is normally a representative of the country selected to host the next session.

See: <http://www.unesco.org/culture/ich/index.php?lg=en&pg=00009>

The Committee’s Rules of Procedure can be found at the same address; they are also published in the Basic Texts.

Refer to Articles 5–8.

INTERNATIONAL, REGIONAL, SUBREGIONAL, LOCAL

International activities (such as cooperation, or the drafting and ratification of legal instruments) occur between two or more States, whatever their relative location. Regional activities (such as cooperation or the drafting and ratification of legal instruments) occur between States in the same region/continent. Subregional activities occur between States in the same subcontinent/subregion. The Convention and the ODs use the term ‘local’ to refer to lower levels than the national one. This can include the provincial and municipal as well as the community level.

INTERNATIONAL ASSISTANCE

International assistance is financial assistance granted by the Committee from the ICH Fund; each State Party may submit requests for such assistance. When examining request, equitable geographic distribution and the special needs of developing countries are taken into account (OD 10).

The Committee may grant international assistance to States Parties for activities aimed at safeguarding ICH. ‘Safeguarding’ may be widely interpreted, also including, for example, inventory-making and capacity building.

International assistance is supplementary to national efforts for safeguarding ICH (ODs 8 and 12 (A.5)).

Refer to Articles 20–24.For further details on international assistance, see Unit 12.

INTERNATIONAL COOPERATION

The first objective of the Convention is ‘to safeguard the ICH’ (Article 1(a)), which ‘the international community’ should achieve, according to the Preamble of the Convention, ‘in a spirit of cooperation and mutual assistance’. In line with this, one of the objectives of the Convention is ‘to provide for international cooperation and assistance’ (Article 1(d)). Articles 19–24 of the Convention contain provisions concerning international cooperation and assistance. The ODs also encourage the States Parties to work together as much as possible (see, for example, ODs 13–15 and 86–88). The Ethical Principles expand this to cooperation among bilateral, subregional, regional and international parties and other actors, while also reinforcing the central role of communities, groups and individuals (see, for example, EP 9 and EP 12) in all safeguarding activities.

Article 19.1 explains what is meant by ‘international cooperation’:

For the purposes of the Convention, international cooperation includes, among other things, the exchange of information and experience, joint initiatives, and the establishment of a mechanism of assistance to States Parties in their efforts to safeguard the intangible cultural heritage.

The Register of Good Safeguarding Practices is a mechanism for the exchange of safeguarding experiences between the States Parties.

The Convention and the Operational Directives insist on international cooperation between the States Parties on all possible levels. The ODs specifically encourage cooperation for safeguarding internationally shared heritage; they also encourage cooperation between communities, groups, experts, specialized organizations and institutions of different States Parties (OD 86).

Refer to Preamble; Articles 1 and 19–24; ODs 86–88 and the Ethical Principles, in particular EP 9 and EP 12.

INTERNATIONAL HUMAN RIGHTS INSTRUMENTS

Article 2.1 states that under the Convention, ICH can only be taken into account when it is compatible with the requirements of ‘existing international human rights instruments’.

The Convention mentions a number of international human rights instruments in its Preamble:

Referring to existing international human rights instruments, in particular to the Universal Declaration on Human Rights of 1948, the International Covenant on Economic, Social and Cultural Rights of 1966, and the International Covenant on Civil and Political Rights of 1966 …

There are of course other human rights instruments, not specifically mentioned in the Convention, that are relevant in this respect such as the widely endorsed UN Declaration on the Rights of Indigenous Peoples (2007).

Refer to Article 2.1.

INVENTORYING

Article 12 of the Convention requires States Parties to draw up one or more inventories of the ICH present in their territory. Inventorying, or inventory-making, involves collecting and presenting information on ICH elements in a systematic way. The States Parties may organize ICH inventories in whatever manner seems most appropriate to them. ICH inventories should be comprehensive and regularly updated. Inventorying should be preceded by the identification and definition of elements in close cooperation with the communities and groups concerned and relevant NGOs (Article 11(b)).

The Convention requires inventorying to contribute to safeguarding, which suggests that creating inventories should involve assessing and indicating the viability of elements. Inventories may also contribute to awareness raising, one of the main objectives of the Convention. The drawing up of inventories will remain a work-in-progress in most States Parties.

An inventory can be disseminated as a paper list, a multimedia database or another type of publication. At the request of the communities concerned, access to certain types of information may be restricted in conformity with Article 13(d)(ii).

Refer to Articles 11(b), 12 and 13(d)(ii).

LIVING HUMAN TREASURES

Since 1993, Living Human Treasures systems have been created in over 15 States. The systems differ widely from country to country, but most recognize key practitioners of ICH and reward them in some way in order to encourage the transmission of their skills and knowledge to others. States usually select such people on the basis of their outstanding accomplishments and their willingness to convey their knowledge and skills to others.

Some of the systems have yielded good results, but today UNESCO does not promote the system since in the spirit of the 2003 Convention, the focus of projects to safeguard ICH should be on transmission in a broader sense, not just on transmission between ‘excellent’ masters and their apprentices. Projects should also focus more on the knowledge and skills involved rather than on individuals who happen to have these skills at any one time. It should be noted that persons cannot be inscribed on the Lists of the Convention, but their skills or knowledge could be inscribed as an element.

UNESCO’s website has guidelines on Living Human Treasure systems and more information on Living Human Treasure systems in a number of countries:
<http://www.unesco.org/culture/ich/doc/src/00031-EN.pdf>

http://www.unesco.org/culture/ich/index.php?lg=en&pg=00061

MASTERPIECES

In 1997 UNESCO began a programme called the Proclamation of Masterpieces of the Oral and Intangible Heritage of Humanity. Three rounds of proclamations (2001, 2003 and 2005) yielded a total of 90 Masterpieces. The Masterpieces programme raised awareness about ICH by highlighting specific elements thereof. It was an instructive exercise in listing ICH internationally. Influenced by the 1989 Recommendation and by World Heritage thinking, however, the criteria for proclamation and the terminology adopted in the Masterpieces programme introduced hierarchies between elements of ICH (some are considered Masterpieces, others are not).

The Masterpieces programme came to an end with the entry into force of the 2003 Convention, in conformity with Article 31 of the Convention. The government experts who prepared the text of the Convention explicitly rejected the idea of establishing a hierarchy between any two elements of ICH and the use of the term ‘Masterpieces’ in the Convention’s Lists. In November 2008 all 90 elements formerly proclaimed as Masterpieces were incorporated in the Representative List and were no longer referred to as Masterpieces.

Interestingly, one of the criteria used in the Masterpieces programme was that the viability of nominated elements had to be threatened in one way or another; one of the criteria for inscription on the RL is that the element’s viability is not seriously threatened.

Refer to Article 31.

OBLIGATIONS UNDER THE CONVENTION

By ratifying the Convention, States accept various obligations and they agree to undertake (or to endeavour to undertake) various tasks in pursuit of the aims of the Convention.

States Parties’ main obligation is to take measures to safeguard the ICH present in their territory in general, and to allow, encourage and assist communities in safeguarding specific elements of their ICH (Article 11(a) and 15). States Parties also have to identify and inventory the ICH present in their territory, with full involvement of the communities concerned (Articles 11(b) and 12.1). On the international level, States Parties have a few administrative and financial obligations too, paying a contribution to the ICH Fund (Article 26.1) and reporting (period reports) on their activities under the Convention (Article 29)*.*

Some obligations are also presented in the ODs:

OD 24 Submitting States Parties shall involve the communities, groups and, where applicable, individuals concerned in the preparation of their [nomination] files.

OD 81 States Parties shall take necessary measures to raise the awareness of communities, groups and, where applicable, individuals regarding 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 82 In conformity with the provisions of Articles 11-15 of the Convention, States Parties shall undertake appropriate measures to ensure capacity building of communities, groups and, where applicable, individuals.

 (Emphasis added)

Many ODs contain strong recommendations, for instance about how to involve various stakeholders in safeguarding and inventorying ICH, or in raising awareness about it.

The Ethical Principles not only refocus attention on Article 15, but also emphasize that mutual respect, as well as a respect for and mutual appreciation of ICH (see EP3), should prevail in interactions between States and communities, groups and individuals. The Ethical Principles also recognize that the safeguarding of ICH is of general interest to humanity and should therefore be undertaken through cooperation among bilateral, subregional, regional and international parties; nevertheless, communities, groups and individuals should never be alienated from their own ICH (see EP12).

In undertaking activities under UNESCO’s Conventions, States exercise national sovereignty: UNESCO cannot intervene in matters that are ‘essentially within their domestic jurisdiction’ (Article 1.3 of the UNESCO Constitution).

Refer to Articles 11-15, 26 and 29 and EP 3 and EP 12.

OPERATIONAL DIRECTIVES

The Operational Directives (ODs) are guidelines that are meant to help States Parties to implement the Convention. The Committee prepares the ODs for approval by the General Assembly (Article 7(e)). The ODs include regulations and procedures for submitting, examining and evaluating nominations for the Lists and the Register of the Convention and assistance requests to ICH Fund. The ODs also recommend ways in which States might organize safeguarding the ICH present in their territory in general (elaborating Articles 13–15) and raising awareness (elaborating Article 14).

Unlike the Convention, the ODs may be changed and enlarged relatively easily; any change proposed by the Committee must be approved by the General Assembly. The ODs are thus likely to remain a work-in-progress. The first set of ODs was approved in June 2008; they were amended in 2010, 2012, 2014 and 2016. It is therefore important to ensure that when implementing the Convention, the latest version of the ODs is consulted.

For the ODs see: http://www.unesco.org/culture/ich/en/directives/

Refer to Article 7(e) and all ODs.

PRESERVATION AND PROTECTION

Article 2.3 refers to preservation and protection as safeguarding measures. In the context of the Convention, preservation of ICH might mean the efforts of communities, groups and tradition bearers to maintain continuity in the practice of that heritage over time. It does not imply that there is no change in the practice or values of the element over time.

Protection might refer to deliberate measures – often adopted by official bodies – to defend ICH or particular elements from threats to their continued practice or enactment. The term ‘protection’ is more commonly used in relation to tangible heritage; objects and spaces associated with ICH practices might indeed require protection (Article 14(c)).

Refer to Articles 2.3 and 14(c) and EP 8.

PROMOTION AND ENHANCEMENT

Promotion and enhancement are awareness-raising tools that aim to increase the value attached to heritage both within and outside the communities concerned: promotion by drawing public attention, in a positive way, to aspects of ICH; and enhancement by promoting the status and function of ICH.

Refer to Articles 2.3, 13 and 14(a) and EP 1, 4, 6, 7, 9, 10 and 12.

RAISING Awareness

Raising awareness involves encouraging people, including those within the communities concerned, to recognize the value of ICH, to respect it and, where possible, to take measures to ensure its viability. It also includes raising awareness about the Convention. This may be done by giving ICH increased visibility through mass media and official cultural institutions with the participation of the communities concerned. Various actors, including the State, the communities concerned, the media, NGOs and other organizations, educators and the private sector can all play a role in raising awareness.

Raising awareness is mentioned in Article 1 of the Convention as one of its main purposes. Article 16 indicates that a major objective of the Representative List of the Convention is ‘to ensure better visibility of the ICH and awareness of its importance’.

Refer to Articles 1 and 16; ODs 100–150.

RATIFICATION, ACCEPTANCE, APPROVAL OR ACCESSION

Ratification is ‘the international act ... whereby a State establishes on the international plane its consent to be bound by a treaty’ (Article 2.1(b) of the Vienna Convention on the Law of Treaties). Acceptance, approval and accession have the same legal effects as ratification. Member States of UNESCO can ratify, approve or accept the Convention; accession is only to be used by non-Member States of UNESCO. For any State submitting an instrument of ratification, acceptance, approval or accession in good order, the Convention enters into force three months after the deposit (duly acknowledged) of its instrument of ratification.

Countries wishing to ratify the 2003 Convention need to deposit an instrument of ratification (or of acceptance, approval or accession) with the Director-General of UNESCO. By depositing their instrument of ratification, etc. they accept the obligations expressed in it and they agree to try to undertake various other tasks in pursuit of the safeguarding of ICH both locally and internationally.

Some States have made declarations or reservations when they deposited their instrument of ratification (see Article 26.2) – most often to communicate that they did not wish to be bound by Article 26.1 of the Convention concerning ‘contributions to the Fund’.

See:  http://portal.unesco.org/en/ev.php-URL\_ID=17716&URL\_DO=DO\_TOPIC&URL\_SECTION=201.html

Refer to Articles 32-35.

RESPECT

Respect for ICH entails understanding its importance and value in its cultural context and appreciating its role in the community or group concerned.

Encouraging mutual respect for each other’s ICH is one of the objectives of the Convention – this may promote the viability of ICH (see Article 1(b)). The viability of ICH may be seriously threatened when it is ignored or treated with disdain in the media, in political, educational or religious discourse or by community or group members themselves.

Refer to Articles 1(b) and 14(a); OD 107 and the Ethical Principles, in particular EP 3, 5, 6, 8, 10 and 11

REVITALIZATION

Article 2.3 of the Convention refers to revitalization as a safeguarding measure. Revitalization of ICH means the strengthening of ICH practices and expressions that are seriously threatened. Revitalization is only an appropriate measure when the ICH demonstrates at least some degree of vitality within the community or group concerned and has not ceased to be living ICH. Under the Convention, restoring and strengthening ICH that is weak and endangered – i.e. revitalization – is welcomed as a fundamental safeguarding measure; the resurrection of extinct elements, also called revival, falls outside the scope of the Convention.

Refer to Article 2.3 and the Ethical Principles, in particular EP 1, 2, 4, 6, 7, 8, 9, 10 and 12.

REVIVAL

See ‘Revitalization’

RISKS

See ‘Threats and risks’

RULES OF PROCEDURE

Both the General Assembly and the Committee have elaborated and adopted Rules of Procedure, as foreseen in Articles 4.3 and 8.2 respectively. These Rules are published in the Basic Textsand may be downloaded from the ICH website. The Rules are relatively easily amended, compared to the Convention’s text.

Both sets of Rules include information on the conduct of the sessions of the two Organs (participation, order of speaking, voting, etc.), elections of a Chairperson and Vice-Chairpersons, working languages, etc. The Rules of the General Assembly include regulations for the election of the members of the Intergovernmental Committee. The Rules of the Committee include rules for the creation of consultative and subsidiary bodies. Rule 9.2 of the Committee’s Rules indicate that all States Parties may propose questions to be dealt with by the Committee at its regular sessions.

SAFEGUARDING AND SAFEGUARDING MEASURES

Article 2.3 of the Convention defines safeguarding as ‘measures aimed at ensuring the viability of the ICH’, i.e. its continued practice and transmission, and the maintenance of the values and functions it has for the groups or communities concerned.

Safeguarding measures are deliberate actions intended to ensure the continued viability of ICH that is threatened in some way. Members of these communities often initiate safeguarding measures themselves. State agencies, local authorities, NGOs, research, documentation or other institutions and/ or researchers may also take the initiative. Safeguarding measures should not, however, be developed or implemented without the widest possible participation of the communities, groups or individuals concerned (Article 15).

The preparation of safeguarding measures or plans should start with an analysis of the factors that threaten the enactment and/or transmission of the element concerned. The Ethical Principles underlines that communities, groups and individuals should play a significant role in determining what constitutes threats to their ICH and in deciding how to prevent and mitigate such threats (see EP 10). Safeguarding measures are to be elaborated for nominations of elements for inscription on the Urgent Safeguarding List (OD 1, criterion U.3). Nominations to the Representative List should contain measures that ‘may protect and promote’ the nominated element (OD 2, criterion R.3). Programmes, projects and activities nominated to the Register of Good Safeguarding Practices (Article 18) must have demonstrated their efficacy in contributing to the viability of the ICH concerned (OD 7, criterion P.4), and they should be able to serve as a model for other safeguarding activities (OD 7, criterion P.6).

According to Article 2.3 of the Convention, safeguarding measures may include ‘identification, documentation, research, preservation, protection, promotion, enhancement, transmission, particularly through formal and non-formal education, as well as the revitalization’ of ICH. Article 11(b) adds the definition of ICH to this list of safeguarding measures; Article 12.1 adds inventory-making. Capacity building (for safeguarding: Article 13(d)(i) and 14(a)(iii)), education (Article 14(a)(i), (ii) and (v)) and awareness-raising (Article 14(a)(i) and Article 1(c)) are more general measures mentioned in the Convention and the ODs.

All these concepts are discussed in this unit.

Refer to Articles 2.3, 11(a), 12.1 and 15; ODs 1, 2 and 7 and the Ethical Principles, in particular EP 1 and 4.

SHARED OR CROSS-BORDER HERITAGE

Many elements of ICH are located in more than one State because of the often arbitrary demarcation of national borders, and because of migration and nomadism. The States concerned may be adjacent, but they do not have to be. One of the aims of the Convention is to ‘provide for international cooperation and assistance’ (Article 1(d)), including ‘joint initiatives’ (Article 19). The Operational Directives encourage the submission of joint nominations for shared heritage so that elements may be better safeguarded and community engagement may be more holistically applied (see, for example, ODs 13–15). The ICH website has an online resource for States Parties to communicate their intention to submit possible multinational nominations (<http://www.unesco.org/culture/ich/index.php?lg=en&pg=00560>).

ICH shared across national borders, or cross-border heritage, can be the subject of joint inventorying activities, joint safeguarding actions and multi-national nominations to the Convention’s Lists.

Refer to Article 1(d); ODs 13–15.

STATES PARTIES

Article 2.4 defines the States Parties to the 2003 Convention as States which are bound by it and among which it is in force. Article 32.1 provides that States Members of UNESCO may ratify, accept, or approve the Convention. The Convention is also ‘open to accession by all States not Members of UNESCO that are invited by the General Conference of UNESCO to accede to it’ (Article 33).

States become parties to the Convention three months after they deposit (duly acknowledged) their instruments of ratification with the Director-General of UNESCO.

The Convention is 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’ (Article 33.2). When using the expression ‘States Parties’, the Convention also refers to such territories (Article 2.5).

So far only States Members have ratified the Convention.

Refer to Articles 2, 32–34.

SUBSIDIARY BODy

According to Rule 21 of its Rules of Procedure, the ‘Committee may establish such subsidiary bodies as it deems necessary for the conduct of its work’. The subsidiary bodies have consisted of representatives from six States Members of the Intergovernmental Committee.

The first two subsidiary bodies

At its second session (2007), the Committee created a subsidiary body to prepare a document on the participation of communities or their representatives, practitioners, experts, centres of expertise and research institutes in the implementation of the Convention (Decision 2.COM 8).[[5]](#footnote-5) This body ceased to exist after its report had been presented at the second extraordinary session of the Committee (Decision 2.EXT.COM 6; 2008).

At the same session, the Committee created a subsidiary body to guide the Secretariat in the organization of a competition for the creation of an emblem of the Convention and to examine and preselect the proposals received (Decision 2.COM 13). This second subsidiary body ceased to exist after its report had been presented at the third extraordinary session of the Committee (2008).

Subsidiary bodies created temporarily for examining nominations

As of its third session (2008), the Committee established a subsidiary body at each of its sessions for the examination of nominations for the Representative List; those bodies had a mandate for two years and ceased to exist at the corresponding session of the Committee. At that session a new subsidiary body was created to fulfil the same function for the next round of examinations of nomination files for the representative list.

The reports from the subsidiary bodies summarizing their discussions and their reflections on their evaluation task are available on the websites of the Committee meetings in question and are substantial documents that have provoked extensive discussion in the Committee.

At its eighth session in December 2013, the Committee proposed consolidating the evaluation of all nominations within one single body, to be called the ‘Evaluation Body’ ([Decision 8.COM 13.d](http://www.unesco.org/culture/ich/doc/src/ITH-13-8.COM-Decisions-EN.doc)) and proposed amendments of the corresponding ODs (ODs 26-31). In June 2014, the General Assembly accepted the proposal and decided that on an experimental basis, the evaluation of all nominations shall be accomplished by the Evaluation Body (Resolution 5.GA 5.1). The first Evaluation Body was established in 2014 (see more under ‘Evaluation Body’).

SUSTAINABLE DEVELOPMENT

The concept of ‘sustainable development’ is at the heart of the Convention, whose preamble recognizes ‘the importance of the intangible cultural heritage as a mainspring of cultural diversity and a guarantee of sustainable development’. ICH elements that are not compatible with the requirements of sustainable development are not taken into account for the purposes of the implementation of the Convention at the international level (Article 2.1).

Sustainable development, as defined by the Brundtland Commission (1987), is ‘development that meets the needs of the present without compromising the ability of future generations to meet their own needs’.[[6]](#footnote-6) Sustainable development does not just mean sustainable economic development of the people concerned: it involves the simultaneous pursuit of the interlinked goals of economic prosperity, environmental quality and social equity.[[7]](#footnote-7)

This role of ‘guarantee of sustainable development’ is carried out largely through the social and cultural purposes that communities assign to their ICH. ICH can, for example, contribute to social cohesion or to intellectual or spiritual well-being, to education, to food security, to income generation, and even to health. In this way, the ICH of each community contributes, via the social and cultural role it plays, to development itself. Preserving and safeguarding a community's living heritage thus promotes development, which takes into account the identity, values and aspirations of that same community.

ODs contain a detailed chapter called ‘Safeguarding intangible cultural heritage and sustainable development at the national level’, which includes a whole diversity of issues related to the subject. Recognizing ICH as a strategic resource to enable sustainable development, the chapter calls upon the states to take into account the principles of the Convention when elaborating development plans, policies and programmes which might affect viability of ICH on their territories, as well as provides recommendations on specific domains of development that are correlated with intangible cultural heritage and its safeguarding.

The practice of certain ICH elements may contribute to sustainable social and economic development. Sustainable development in a community or region may also enhance the viability of ICH practices there.

Refer to Article 2.1 and Chapter VI of the ODs on sustainable development. For further information on sustainable development, see Unit 8.

THREATS AND RISKS

Current problems hampering the enactment and transmission of an element are threats to its viability. Possible future threats to the enactment and transmission of an element are described as risks. Threats and risks to the viability of an element must be identified in order to develop safeguarding measures (ODs 1–2) or to determine the effectiveness of safeguarding activities (OD 7, P.4). The Ethical Principles emphasize that communities, groups and individuals should play a significant role in determining what constitutes threats to their ICH including the decontextualization, commodification and misrepresentation of it and in deciding how to prevent and mitigate such threats (EP 10). Hence threat and risk assessment is to be carried out with the participation of the practitioners and other tradition bearers concerned, for example when preparing information about the viability of an element in the framework of inventory-making or the preparation of a nomination to a List of the Convention.

Inscription on the Lists of the Convention may help to promote safeguarding activities that address threats and risks to viability. The second criterion for inscription on the Urgent Safeguarding List provides for States Parties to make a distinction between an ‘urgent need’ and an ‘extremely urgent need’ for safeguarding (ODs 1 and 32). Inscription on a List of the Convention may in itself involve certain risks that can be foreseen and, if necessary, dealt with in a management or safeguarding plan.

Refer to Preamble; Article 14(b); ODs 1, 2 and 7 and the Ethical Principles, in particular EP 9 and 10.

TRANSMISSION

Transmission of ICH occurs when practitioners and other tradition bearers within a community or group pass on ICH-related practices, skills, knowledge and ideas to others with a view to their future enactment. Traditional forms of transmission may be more or less formal. Formal means of transmission may include long processes of initiation and apprenticeship with a master. When traditional forms of transmission are broken or weakened, the very viability of the ICH element is at stake and safeguarding measures may be developed to reinforce or revitalize transmission.

These measures could enhance the existing transmission process or develop new ways of transmission. This may include introducing more formalized or professionalized modes of transmission, for example in schools (see Participant’s text Unit 3: ‘Education’).

Since safeguarding measures are deliberate actions to reinforce the viability of an ICH element, activities that are part of the continued practice and transmission of a viable element within a community would not be considered safeguarding measures.

Refer to Article 2.3.

VIABILITY

The Convention defines safeguarding as ‘measures aimed at ensuring the viability of the ICH’. The viability of an ICH element is its potential to continue to be enacted and transmitted and to remain significant to the community or group concerned. Threats and risks to the viability of an element include anything that prevents or may prevent enactment or transmission.

Refer to Article 2.3

1. 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. 2. This summary draws on an excellent discussion of the Recommendation in J. Blake, 2001, Developing a New Standard-setting Instrument for the Safeguarding of Intangible Cultural Heritage: Elements for Consideration, Paris, UNESCO. Available at: http://unesdoc.unesco.org/images/0012/001237/123744e.pdf [↑](#footnote-ref-2)
3. . 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-3)
4. 6. Article 1 (b) of the Rules of Procedure concerning recommendations to Member States and international conventions covered by the terms of Article IV, paragraph 4, of the UNESCO Constitution. [↑](#footnote-ref-4)
5. 7. Decision 2.COM 8 = the eighth decision of the second session of the Committee. [↑](#footnote-ref-5)
6. 8. World Commission on Environment and Development (the Brundtland Commission), 1987, Our Common Future, Oxford, Oxford University Press. [↑](#footnote-ref-6)
7. 9. A. M. Hasna, 2007, ‘Dimensions of Sustainability’, Journal of Engineering for Sustainable Development: Energy, Environment, and Health, Vol. 2, No. 1, pp. 47–57. [↑](#footnote-ref-7)