**CONVENTION FOR THE SAFEGUARDING OF THE
INTANGIBLE CULTURAL HERITAGE**

**INTERGOVERNMENTAL COMMITTEE FOR THE
SAFEGUARDING OF THE INTANGIBLE CULTURAL HERITAGE**

**Eleventh session**

**Addis Ababa, Ethiopia**

**28 November to 2 December 2016**

**Item 13 of the Provisional Agenda:**

**Reflection on the transfer of an element from one List to the other
and the removal of an element from a List**

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| **Summary**At its tenth session in 2015, when examining the first transfer request submitted by Viet Nam, the Committee decided to start a general reflection on the transfer of an element from one List to the other and the removal of an element from a List. The present document aims to facilitate such a reflection.**Decision required:** paragraph 17 |

**Background**

1. At the tenth session in November/December 2015, the Secretariat informed the Committee about Viet Nam’s request to transfer the element ‘Xoan singing of Phú Thọ Province, Viet Nam’ from the List of Intangible Cultural Heritage in Need of Urgent Safeguarding (hereinafter ‘the Urgent Safeguarding List’) to the Representative List of the Intangible Cultural Heritage of Humanity (hereinafter ‘the Representative List’). Having treated this request on an exceptional basis, the Committee decided to begin a process of reflection ‘in order to establish clear procedures for the removal of an element from a List and the transfer from one List to the other’ ([Decision 10.COM 19](http://www.unesco.org/culture/ich/en/Decisions/10.COM/19)). The Committee also considered that the Operational Directives for the implementation of the 2003 Convention, which already deal with the transfer and removal of elements, need to be revised.

**Provisions in subchapter I.11 of the current Operational Directives**

1. Paragraph 38 of the Operational Directives, which concerns **transfer**, establishes that an element may not simultaneously be inscribed on the Urgent Safeguarding List and the Representative List. It further prescribes that a ‘State Party may request that an element be transferred from one List to the other’ and that ‘such a request must demonstrate that the element satisfies all of the criteria for the List to which transfer is requested’. Finally, it is foreseen that ‘this request shall be submitted according to the established procedures and deadlines for nominations’.
2. Concerning the **removal** of an element from a List, two paragraphs are included in the Operational Directives: paragraph 39 states that ‘an element shall be removed from the [Urgent Safeguarding List] when the Committee determines, after assessment of the implementation of the safeguarding plan, that the element no longer satisfies one or more criteria for inscription on that list’; paragraph 40 foresees that ‘an element shall be removed from the [Representative List] by the Committee when it determines that it no longer satisfies one or more criteria for inscription on that list’.

**Transfer and removal: interlinked or separate procedures?**

1. One of the main issues to be reflected upon is the relationship between transfer and removal. There seem to be two options: either a removal is required before a transfer can take place, or a transfer has its own, separate procedure.
2. In its [Decision 10.COM 19](http://www.unesco.org/culture/ich/en/Decisions/10.COM/19), the Committee decided, on an exceptional basis, that if Viet Nam were to submit, by the deadline of 31 March 2016, both a report on the status of the inscribed element ‘Xoan singing of Phú Thọ Province, Viet Nam’, which was inscribed on the Urgent Safeguarding List in 2011, and a new nomination for the same element to the Representative List, it would examine them concurrently at its twelfth session in 2017 and then take a decision on the requested transfer. The Committee also decided that an examination of the nomination to the Representative List in the 2017 cycle would only take place should it first decide, after examining the report, on the removal of the element from the Urgent Safeguarding List. In so doing, the Committee considered, in the absence of established procedures that this transfer could not happen without the prior removal of the element from the other list. It is also possible that the Committee, having removed the element from one list, will not want to inscribe it on the other List if all the criteria for that List are not fulfilled. In such eventuality, the element concerned would no longer figure on either List.
3. Subchapter I.11 of the Operational Directives could be interpreted differently, with the two processes of transfer and removal being considered as not necessarily linked. Following this approach, paragraph 38 might then be applied on its own: transfer could take place after the Committee has examined a nomination of an already listed element to the ‘other List’. If that nomination is considered as satisfying all of the criteria of the other List, the Committee can decide to transfer the element from the original to the other List without the need for the prior removal of the element from the original List. The transfer would implicitly include the removal of the element from the original List by virtue of the first sentence of paragraph 38, which states that an element may not simultaneously be inscribed on both Lists. Such a procedure would apply for transfers in either direction.
4. In the same vein, paragraphs 39 (removal from the Urgent Safeguarding List) and 40 (removal from the Representative List) would then also be stand-alone procedures. In both cases, it is up to the Committee to determine whether an element no longer satisfies one or more criteria for inscription and eventually remove it from the List. Paragraph 39 specifies that removal from the Urgent Safeguarding List is possible only ‘after assessment of the implementation of the safeguarding plan’. Paragraph 40 does not indicate any specific conditions for removal from the Representative List.
5. In previous versions of the Operational Directives, the paragraphs on transfer and removal have been presented in different ways. In the 2008 version, the procedures for both removal and transfer are covered twice: once in sub-chapter 1.1, concerning the Urgent Safeguarding List, and once in sub-chapter, 1.2 concerning the Representative List. Removal and transfer seem to be understood as autonomous processes. In the 2010 and 2012 versions of the Operational Directives, transfer and removal are only presented once: sub-chapter I.10 consists of one paragraph that deals with transfers, followed by sub-chapter I.11, consisting of two paragraphs, one for removal from the Urgent Safeguarding List and one for removal from the Representative List. In these versions, too, removal does not seem to be presented as a precondition for transfer. In the 2014 version, transfer and removal are presented for the first time in one sub-chapter, the title of which speaks about ‘transfer’ or ‘removal’, implying that these are understood as separate procedures.

**Considerations in a larger context**

1. Apart from the above-mentioned procedural issues, the Committee might also wish to discuss some related questions, such as reporting related to the removal procedure, the role of States Parties, the ceiling for the number of nomination files to be treated in a given cycle and the broad context of the 2003 Convention and its mechanisms.
2. Periodic reporting seems to play an important role in the removal procedure of an element from the Urgent Safeguarding List as described in paragraph 39 of the Operational Directives. For elements inscribed on the Urgent Safeguarding List, periodic reports are due every four years; these include information on the status of the element concerned. The form to report on those elements (Form ICH-11) was revised recently so as to include new sections for updating the safeguarding plan proposed in the nomination file. This may facilitate the work of the Committee when it is considering whether or not to remove an element from the Urgent Safeguarding List.
3. For the removal of elements inscribed on the Representative List, paragraph 40 of the Operational Directives does not prescribe how the Committee should proceed. The question is how the Committee would determine that an element no longer satisfies one or more criteria for inscription on the Representative List. The periodic reports may be a source of information in this regard. However, the reports on the elements inscribed on the Representative List are included in the national periodic reports on the implementation of the 2003 Convention at the national level, following a six-year periodicity based on the date of ratification by the State Party (or States Parties) concerned. The different obligations for periodic reporting concerning the two Lists might justify the different procedures that are found in paragraphs 39 and 40. Nevertheless, the provision included in paragraph 39 on the prior assessment of the implementation of the safeguarding plan might also be taken into account in a different way, for instance through a monitoring mission or a separate reporting exercise.
4. Another consideration should be made as to how the transfer and removal procedure may be initiated, as the current Operational Directives present asymmetrical situations. Under paragraph 38, it is a State Party that may request that an element be transferred from one List to the other. In the case of removal, it is the Committee that decides, while paragraphs 39 and 40 are silent about the role of the State Party or States Parties concerned. If the Committee wishes to bring in more clarity on this issue, it may take into account the provision given under Paragraph 80 (e) of the Operational Directives, which encourages the States Parties ‘to create a consultative body or a coordination mechanism to facilitate the participation of communities, groups and, where applicable, individuals, as well as experts, centre of expertise and research institutes, in particular in: […] (e) the removal of an element of intangible cultural heritage from one List or its transfer to the other, as referred to in paragraphs 38-40 of the present Operational Directives’.
5. The issue of the ceiling for the annual number of files that is treated by the Committee also merits reflection. As mentioned above, the right to request a transfer is given to States Parties that have elements inscribed on the Lists of the Convention as stated in paragraph 38. It is impossible to foresee how many requests the Committee might receive every year and whether or not those requests should be considered within the ceiling of files (currently 50 files per cycle) to be examined during a specific cycle. In the case of Viet Nam, the Committee has decided to treat the transfer request above the established overall ceiling for the 2017 cycle. This was decided on an exceptional basis and pending the adoption of relevant procedures by the General Assembly in 2018 (paragraph 7 of [Decision 10.COM 19](http://www.unesco.org/culture/ich/en/Decisions/10.COM/19)). The Committee may wish to discuss this point bearing in mind that this could have a considerable impact on the workload of the Secretariat, the Evaluation Body and the Committee itself.
6. Lastly, although importantly, the issue of the ‘transfer’ or ‘removal’ of elements should be viewed against the background of the purposes of the Lists of the Convention. Under the 2003 Convention, the Representative List and the Urgent Safeguarding List each have distinct and specific objectives as set out under Article 16 and Article 17 respectively and as further elaborated in the Operational Directives. Moreover, as stipulated in paragraph 38 of the Operational Directives, an element may not be simultaneously inscribed on both Lists. The premature transfer or removal of an element might jeopardise the very purpose of the Urgent Safeguarding List and reinforce the already prominent tendency by the States Parties to privilege the Representative List. It would seem pertinent therefore that the Committee consider the broad context of the 2003 Convention and the full range of its mechanisms in order to address both ‘transfer’ and ‘removal’ in a way that is consistent and in line with its intent and purpose. For example, the Committee might also give consideration to the possibility of making better use of Article 18 of the Convention. This promotes those programmes, projects and activities for the safeguarding of the intangible cultural heritage which the Committee considers best reflect the principles and objectives of the 2003 Convention, in case of successful safeguarding efforts which have led to a situation wherein an element considered in need of urgent safeguarding is no longer deemed to be so.

**Future steps**

1. In paragraph 6 of [Decision 10.COM 19](http://www.unesco.org/culture/ich/en/Decisions/10.COM/19), the Committee has highlighted that the experience gained in the examination of the Vietnamese request can feed into the reflection on the possible proposal for the revision of the Operational Directives; however, this will be possible only during its twelfth session in 2017. Viet Nam has duly submitted both a report on the status of the element in question and a new nomination file for the same element to the Representative List before the statutory deadline of 31 March 2016. These will be evaluated by the Evaluation Body and examined by the Committee only next year during the 2017 cycle. This concrete case will therefore provide some factual elements to further advance in the reflection on transfers and removals.
2. The open-ended intergovernmental working group, which the Committee wished to be held before its twelfth session in 2017 in order to discuss draft operational directives on the transfer and removal procedures (paragraph 10 of [Decision 10.COM 19](http://www.unesco.org/culture/ich/en/Decisions/10.COM/19)), could provide a fundamental contribution to the debate on this topic. However, this meeting will be organized subject to voluntary supplementary contributions to the Intangible Cultural Heritage Fund being received in due course and in any case not later than January 2017. So far, the Secretariat has not received such contribution. If the necessary contributions are received by January 2017, the timing of the Vietnamese request, which will be treated by the Committee at its twelfth session in 2017, means that an open-ended intergovernmental working group held in 2017 would not be able to take into account the experience gained by this exceptional case. Therefore, it is suggested that the open-ended working group be held after the twelfth session of the Committee.
3. The Committee may wish to adopt the following decision:

DRAFT DECISION 11.COM 13

The Committee,

1. Having examined document ITH/16/11.COM/13,
2. Recalling paragraphs 38, 39, 40 and 80 (e) of the Operational Directives,
3. Further recalling Decision [10.COM 19](http://www.unesco.org/culture/ich/en/Decisions/10.COM/19),
4. Noting the debate held at its tenth session on a request received for the first time in the history of the Convention concerning the transfer of an element from the List of Intangible Cultural Heritage in Need of Urgent Safeguarding to the Representative List of the Intangible Cultural Heritage of Humanity,
5. Considering that the request of Viet Nam concerning the element ‘Xoan singing of Phú Thọ Province, Viet Nam’ will be examined by the Committee at its twelfth session in 2017, as an exceptional treatment, and that the experience gained will feed into further reflection on procedures that would clarify the transfer of an element from one List to the other and the removal of an element from a List,
6. Decides to continue the general reflection on this item at its next session in light of the examination of the element ‘Xoan singing of Phú Thọ Province, Viet Nam’;
7. Calls upon States Parties to voluntarily contribute to the Intangible Cultural Heritage Fund in order for the Secretariat to receive in due course, and in any case not later than January 2018, the necessary funds for organizing the open-ended intergovernmental working group to discuss draft operational directives on the procedure for the removal of an element from a List and the transfer of an element from one List to the other; this contribution will have to cover all of the costs of organizing the meeting as well as those of the participation of representatives of developing countries that are parties to the Convention, whether or not they are members of the Committee, but only for persons who are experts in intangible cultural heritage;
8. Requests that the Secretariat, based on the discussions during its present session, the Viet Nam experience at its next session and the conclusions of the open-ended working group, propose a draft text of the amendments to the Operational Directives so that it can examine and submit these amendments to a subsequent session of the General Assembly.