Unit 7

**involving the communities concerned**

**participant’s text**

This unit is about community participation in the implementation of the Convention for the Safeguarding of the Intangible Cultural Heritage[[1]](#footnote-1) and covers the following topics:

* What the Convention and the ODs say (and do not say) about community participation.
* Why community participation is required.
* When community participation and consent are required.
* Organizing community participation in inventorying, awareness-raising, preparation of nomination files and requests for international assistance.
* Identification of communities and their representatives, obtaining their free, prior and informed consent, protecting their rights and ensuring that they benefit from the implementation of the Convention.

Relevant entries in Participant’s text Unit 3 include: ‘Communities, groups and individuals’, ‘Free, prior and informed consent’, ‘Indigenous communities’ and ‘Intellectual property’.

Examples relevant to this unit can be found in Case studies 9 to13.

7.1 WHAT THE CONVENTION AND THE ODS SAY

Community participation in intangible cultural heritage (ICH) identification, inventorying, management and safeguarding is a central tenet of the Convention (e.g. see Article 11(b) and Article 15). States can involve communities in various activities under the Convention (this is discussed further in Participant’s text, 7.4 below).

However, the Convention and the ODs do not give precise indications about how to identify the relevant communities, groups and individuals. Nor do the Convention and the ODs give much guidance about how to involve them in actions concerning their ICH. This gives considerable leeway to States Parties to respond to their specific situations. It is, for example, equally possible to start by identifying specific ICH elements and then work with the people who practise and transmit them (who would be defined as [part of] ‘the community concerned’); or by first identifying communities and then, together with them, identifying their ICH (see Participant’s text Unit 3: ‘Communities, groups and individuals’).

7.2 WHY COMMUNITY PARTICIPATION?

Intangible heritage does not exist independently from the people (communities, groups and individuals) who create and enact it and who identify with it. The knowledge and skills required for enacting and transmitting ICH are in their minds; the main instruments for enacting it are their bodies. Therefore, safeguarding, which is often defined as ‘ensuring continued practice and transmission’ by the communities, groups and individuals concerned, should not occur without their consent, involvement and commitment. The same applies to the management of ICH elements that are not threatened in any way and thus require no safeguarding interventions to maintain their viability (Article 15).

Thus, any activity concerning any element of ICH that is undertaken in the framework of the implementation of the Convention should take place with the fullest possible participation and the consent of the communities, groups and individuals concerned. None of the activities foreseen under the Convention in the framework of the implementation of the Convention is meant to lead to a change in their stewardship over it.

Before the Convention entered into force, communities all over the world had of course been trying to safeguard ICH elements, with or without outside assistance and with varying degrees of success. In many cases, however, communities have found that safeguarding their ICH has been difficult or impossible, for instance because the appropriate resources were not available, because conditions were not conducive to safeguarding or because it was felt that the element had lost its function for the community.

7.3 COMMUNITY PARTICIPATION IN WHAT?

Community participation should be a central aim in the full continuum of actions undertaken in the framework of the implementation of the Convention: safeguarding of specific ICH elements should ultimately be carried out by the communities, groups and individuals concerned. The ODs call upon States Parties to assist the communities concerned in acquiring or reinforcing the capacities and knowledge essential for safeguarding and managing their ICH where required (see OD 81, 82, 105 (e), and 107 (m), for example).

The requirements for community participation and consent in the Convention and the ODs are shown in Table 1.

Table 1. Requirements for community participation and consent in the Convention and the Operational Directives

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Task | Community participation required or recommended | Community consent required or recommended | Article | OD |
| Identifying and definingtheir ICH | Required | Required by implication | 2.1, 11(b) | 80 |
| Inventorying their ICH | Strongly recommended(Required for nominated elements in forms ICH-01 and ICH-02) | Strongly recommended | 12, 15 | 80 |
| Raising awareness about their ICH | Strongly recommended  | Free, prior and informed consent required | 15 | 81, 101(b), 105, 107, 108 |
| Safeguarding and management of their ICH | Strongly recommended |  | 15 | 79-83, 85-87, 89  |
| Commercial activities relating to ICH | Strongly recommended |  | 15 | 104, 116, 107(m), 117 |
| Nominations of elements | Required | Proof of free, prior, and informed consent required | 15 | 1, 2, 24, 80(d) |
| Elaboration and implementation of safeguarding and management measures | Strongly recommended(Required for nominated elements in forms ICH-01 and ICH-02) | Required by implication (forms ICH-01 and-02) | 15 | 1, 2, 80, 157, 162 |
| International assistance requests | Required for the preparation of the files |  | 15 | 12, 24 |
| Proposals for selection as best safeguarding practices | Required | Required by implication (communities concerned must have agreed to the dissemination of best safeguarding practices) |  | 7, 24 |
| Preparation of periodic reports | Strongly recommended |  | 15 | 157, 160 |
| Representation in consultative Organs and coordination mechanisms  | Strongly recommended |  |  | 79, 80, 86, 105(e) |

Only awareness-raising about ICH in general may be done without the direct involvement of the communities and groups concerned; even then, the involvement of a consultative body or a coordination mechanism, as proposed in OD 80, is recommended.

#### Guidelines for and documentation of community participation

In implementing the Convention at the national level, it is important to develop guidelines for organizing and enabling the participation of the communities concerned, and guidelines for those who will work with them. In view of the requirements of nomination files and the periodic reporting obligations of States Parties, it is also useful to document how community participation has been achieved in implementing the Convention:

* Who has taken the initiative in inventorying, nominating, safeguarding or submitting a request?
* How were relevant communities, groups and individuals identified?
* How were representatives of these groups identified?
* How have been communities and/or their representatives involved?
* How was their consent obtained and recorded?
* How has community participation affected the process of inventorying, nominating, safeguarding or submitting a request?

7.4 COMMUNITY PARTICIPATION IN INVENTORYING THEIR ICH

Inventorying is discussed in Participant’s text Unit 6.

Involving communities in identifying, defining and inventorying their ICH should not just be undertaken to comply with the Convention (Articles 2, 11) or the ODs (OD 1, 2, 80 and 153(a)), but it should also be used to build relationships within communities, and between communities, the State and other agencies for the future promotion, management and safeguarding of ICH. Proof of the involvement of communities in inventorying is required if elements are nominated to the Lists of the Convention (Forms ICH-01 and ICH-02) and in the periodic reports to the Committee (Form ICH-10).

For ideas about how inventorying can be done, see Case study 9, on how the Subanem community in Zamboanga Peninsula in the Philippines documented their indigenous knowledge about local plants.

Case studies 6–8, also provide examples of community-based inventorying.

7.5 COMMUNITY PARTICIPATION IN AWARENES-RAISING

Awareness-raising is discussed in Participant’s text Unit 5.

States Parties are encouraged to ensure community participation in, and their consent to, awareness-raising about their own ICH (OD 101(b)). This can help to ensure that communities and/or their ICH are not misrepresented in awareness-raising activities. There is an extended discussion about free, prior and informed consent below.

States Parties are also encouraged to ensure that the communities concerned benefit from awareness-raising about their ICH (OD 101(d)) and that their rights are protected in the process (OD 104). This is discussed further under Participant’s text Unit 7.7 below.

Case study 4 – the ‘Indians as Seen by Indians’ project in Brazil – provides an example of community involvement in awareness-raising.

7.6 COMMUNITY PARTICIPATION IN NOMINATIONS AND INTERNATIONAL ASSISTANCE REQUESTS

Proposals to nominate elements of ICH to the Lists of the Convention can only be sent to the Committee with the participation and consent of the communities concerned (OD 1(U.4), OD 2 (R.4)). The nomination forms request proof that:

* the element was recognized by the community concerned (forms ICH-01 and ICH-02, section 1);
* the community concerned participated in the inventorying of the element (forms ICH-01 and ICH-02, section 5);
* the community concerned was involved in the preparation of the file (forms ICH-01 and ICH-02, section 4(a));
* respect for customary practices governing access to the element has been observed (forms ICH-01 and ICH-02, section 4(c));
* the community concerned provided their free, prior and informed consent to the submission of the nomination (forms ICH-01 and ICH-02, section 4(b)); and
* the community concerned will be fully involved in the execution of the safeguarding/management measures that are proposed in the nomination file (form ICH-01, section 3(b) – a question about this is also included in form ICH-02 section 3(b)).

For submissions of proposals to the Register of Best Safeguarding Practices proof is to be given that the proposed activity has been implemented with the participation of the community concerned (where applicable), and that the nomination has been submitted with their consent (OD 7 (P.5), form ICH-03, section 5). Proof is also to be provided that the community concerned (if applicable) is willing to cooperate in the dissemination of the selected best practice (OD 7 (P.7), form ICH-03, section 7).

For international assistance requests that directly concern the ICH of one or more specific communities (apart from preparatory assistance requests), proof is to be given that the communities concerned participated in the preparation of the request and will be involved in the activities for which financial assistance is requested, as well as in the evaluation and follow-up of these activities (OD 12 (A.1), form ICH-04, section 15). Formal proof of community consent is not required in requests for financial assistance. In the case of preparatory assistance requests some information is required on how the communities concerned have been (or will be) involved in preparing the nomination and giving their consent (forms ICH-05 and ICH-06, sections 9 and 10 respectively).

Nominations are discussed in detail in Participant’s text Unit 11.

Examples of community involvement in nominations are provided in Case studies 10–12.

7.7 ENSURING COMMUNITY PARTICIPATION AND CONSENT

Ensuring community participation in activities concerning their ICH, and assisting them in safeguarding it, requires informed discussion among community members about the various interests and perspectives of the community concerned and of other stakeholders. This can be followed by discussions with these other stakeholders, including experts and government agencies.

In the process, careful attention should be paid to the following questions:

* How the communities concerned are identified?
* Who represents those communities and with what mandate?
* How communities can be informed about and involved in activities concerning their ICH?
* How communities can inform other stakeholders about these activities?
* How communities can be assisted in preparing safeguarding measures, or how these can be prepared with their full involvement?
* Who has the capacities and mandates for implementing the safeguarding measures and who should be tasked with that. (If the main responsibility does not lie within the community, why not?)?
* Who monitors the implementation of safeguarding measures?
* Who ensures that the communities concerned and other stakeholders remain properly informed of the progress of safeguarding measures?

7.8 IDENTIFYING THE COMMUNITIES CONCERNED

Most States Parties are already working with communities on the implementation of the Convention in some way.

There are many ways of identifying communities and their ICH. The communities, groups or individuals concerned are often defined as those people who are directly or indirectly involved in the enactment and transmission of one or more ICH element(s) and who consider it to be part of their heritage. Many States Parties also define communities in terms of ethnolinguistic affiliations, location (urban or rural, or by administrative region), common beliefs or practices, or common history.

The process of identifying communities is usually far from simple, however:

* Communities often unite not just around historical relationships (including shared heritage), but also around current political and economic challenges and goals. People usually have several kinds of social and cultural affiliations through different networks, and these affiliations can change over time.
* Communities are not homogenous and not everyone will agree on every issue. In many cases, not all members of a community fully participate in the same set of ICH. Communities and groups often have internal hierarchies, for instance those based on class, age or gender.
* The community or group, and hence the practice of the ICH element, may be scattered across a wide geographical area, or even across countries located at some distance from each other.

People within a community can have different roles vis-à-vis the proposed element:

* There may be small groups of skilled practitioners, tradition bearers, knowledge bearers and so on, who play a more direct and/or specialized role in the practice and transmission of the element, such as puppeteers, performers, musicians, shamans, master woodworkers, etc.
* The community concerned may also include large numbers of indirect participants, e.g. interactive audiences at rituals or festive events, or people who assist in the preparations for performances or festivals. Understanding and responsive audiences are often essential for the meaningful enactment of an element. Recognizing the role of indirect participants, especially young people, and raising awareness among them about ICH contributes to the viability of ICH into the future if they come to appreciate and value it.

#### Guidance on the identification of communities

States Parties often ask for guidance on the identification of communities, which UNESCO cannot provide. Neither the Convention nor the ODs indicate to States Parties how to define or identify the communities or, for that matter, the groups and individuals concerned.

Each State Party will choose the approach that it deems most suitable, taking into account its laws, regulations and demographic policies. What is clear, however, is that outsiders should not identify the communities concerned in a top-down process, without consultation or consent of the people concerned. It would be in the spirit of the Convention (and in accordance with principles of other international legal instruments) to follow the ways in which communities identify and define themselves.

UNESCO may refer to Article 8(j) of the Convention on Biological Diversity (CBD), to which all States Parties to the Intangible Heritage Convention are also Parties, and to the Declaration on the Rights of Indigenous Peoples, which was adopted in 2007 by the General Assembly of the United Nations and endorsed by over 150 States. States that have subscribed to these texts through ratification or endorsement have already recognized specific ways of working with communities, including local and indigenous communities.

The term ‘communities’ as used in the Convention explicitly covers indigenous communities (see Preamble of the Convention; Participant’s text Unit 3 ‘Indigenous communities’).

Exploring a number of actual examples and case studies can demonstrate various ways of identifying: (a) the potential communities concerned and how to ensure their participation; (b) some of the problems that may arise in doing so; and (c) perhaps how to avoid some of these problems. It is also instructive to visit the ICH website that gives the Lists of the Convention, as the documentation presented in the nomination file for each inscribed element includes a description of the community concerned and, annexed to it, evidence of the consent of community representatives.

7.9 IDENTIFYING REPRESENTATIVES

Because States Parties have to work intensively with communities concerned, often over a long period, it is important to identify mandated (or at least, widely accepted) representatives or representative bodies. It is seldom possible for all members of a community who are directly involved in the practice and/or transmission of an element to be asked their opinion and to personally give (or deny) consent.

The membership of communities associated with ICH practices, whether small or large, is often not well defined. Moreover, although some communities have structures that assign clear functions to some of their members, other communities lack such structures or have structures that are not recognized by a State’s administration.

Where strong community bodies, associations or representatives already exist in a community and are accepted by the community in general, the process of identifying representatives who can speak in the name of the community is relatively straightforward. Even so, there may be tensions within communities over the choice of representatives and over their role and mandate.

Identifying representatives is more difficult where community organization is informal or weak, or not suitable for mobilizing communities in ways that are appropriate for the purpose of implementing the Convention. In some countries, such as Mexico and Australia, cooperative bodies and community boards have been established on a wide scale to assist in both heritage management and interaction with outside agencies. Outsiders may encourage the formation of community organizations, whether formal or informal, or the selection of community representatives mandated to participate in discussions on ICH safeguarding. However, it should be noted that community organizations controlled or represented by outsiders may not always adequately represent a community for the purposes of ICH safeguarding. States Parties should discourage misrepresentation of any kind. OD 105 (e) thus encourages the States Parties to ‘promote and support the establishment of community associations, and foster the exchange of information among them’.

#### Disputes and disagreements

There may be disputes within and between communities about the identification of the community associated with a specific ICH element or about its viability, function and appropriate management. People may debate whether a specific ICH element is associated with only one narrowly defined community or a much larger group of people.

There may also be disputes about who can speak for the communities and groups concerned. For example, some performers of a specific ICH form in a community may come to believe that they are the only legitimate performers.

Documentation of only one group performing or enacting a specific ICH element for an inventory may encourage such a view. Other performers within that community may dispute the privileged status of the documented group.

Community NGOs and experts from the communities themselves may help in finding solutions to such problems. Although the process can be rather time-consuming, it is necessary to obtain community participation and consent for most activities under the Convention; not doing so might eventually turn out to be counter-productive.

7.10 METHODS OF COMMUNITY PARTICIPATION

The methods of community participation and decision-making will differ depending on the requirements and organizational structure of the communities concerned, the available resources, the nature of the ICH elements concerned, the task at hand, the funds available and the local or national regulations.

Capacity building and informational workshops, meetings and consultations, polls, press releases and media campaigns involving communities or their representatives can be organized with different stakeholders, for purposes such as:

* providing information about the Convention;
* raising awareness about ICH, both in general and in respect of specific elements;
* identifying and defining elements of ICH;
* identifying values and functions associated with specific elements;
* identifying threats, if any, faced by specific elements;
* facilitating communication within the community or group;
* facilitating communication between the communities concerned and outside experts, government agencies and NGOs;
* gauging community interest in safeguarding their ICH or part of it;
* determining commitment within the community for safeguarding;
* deciding whether or not to safeguard one or more ICH elements;
* capacity building within the community concerned;
* sharing skills in ICH safeguarding;
* developing safeguarding plans;
* lobbying for support for safeguarding;
* evaluating ongoing safeguarding actions;
* deciding whether or not to nominate a specific element; and
* developing nominations and international assistance requests.

7.11 OBTAINING FREE, PRIOR AND INFORMED CONSENT

See Participant’s text Unit 3 for a discussion of this concept.

The free, prior and informed consent of the communities concerned is required for the development and submission of nomination files to the Convention’s Lists, which must include a description of their full participation in the preparation and the future implementation of the safeguarding measures proposed in the file. Community consent is also required when a State Party nominates a practice for selection as a best safeguarding practice (OD 7, P.5) or when it prepares an awareness-raising activity that concerns the ICH of one or more specific groups (OD 101(b)). Because identification, inventorying and safeguarding activities under the Convention require community participation, community consent is implicitly required for these activities too, but apart from nomination forms and periodic reports, there is no formal mechanism through which this can be monitored.

The Convention and ODs currently give no guidance on the procedure to be followed by States Parties in obtaining consents, nor are there criteria the Committee may use to check the adequacy of the procedures followed. Furthermore, they give no guidance on what to do if disputes arise within communities about the granting of consent for safeguarding and other activities concerning their ICH. The manner in which consent is reached may thus differ from one case to another. States Parties may submit nomination files with written consents, or consents given via audio or video materials. The latter mode of consent may be preferable when the communities concerned feel more comfortable with verbal consent.

#### Denial of consent

If the community concerned generally agrees that they will not consent to an action proposed under the implementation of the Convention (such as a nomination or inclusion in an inventory), then the action should simply be cancelled. In Brazil for instance, there were various cases of communities not wishing elements of their ICH to be included in the national inventory; in spite of the work already done it was agreed that the elements would not be included.

#### Disagreements within communities

A problem may arise when some people in the community are not willing to give consent, whereas others are. Where significant disagreements arise within the communities concerned, it is best to wait until a resolution is reached before proceeding with any activities where community consent is explicitly or implicitly required, i.e. identification, inventorying, nomination, safeguarding and awareness-raising. It should be noted that communities, groups and individuals can at any time withdraw their consent for the nomination or inscription of an element on the Convention’s Lists.

7.12 PROTECTING THE RIGHTS OF COMMUNITIES
AND ENSURING THEY BENEFIT

See the discussion on intellectual property rights in Participant’s text Unit 3.

OD 81 encourages States Parties to sensitize communities 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 ODs also encourage States Parties to ensure:

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

The nature of the benefits accruing to communities from the practice and transmission of their ICH are varied and will not be discussed here.

Participant’s text Unit 8 discusses the question of income gained from raising awareness about the ICH of a region or town (e.g. from increased tourism) or from commercialization of crafts and knowledge held by the community.

Some countries have already developed national legislation to protect the intellectual property (IP) rights of communities over their ICH (sometimes termed traditional expressions or folklore).

More information about protecting intellectual property rights associated with ICH at the national, regional and international levels can be found in Participant’s text Unit 10.

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)