

For Everyone:

The Role of Living Culture in Identities and Sustainable Community Development

Wednesday 4 November 2015
Summerhall, Edinburgh

Provocation Paper



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Living Culture, Identities and Sustainable Community Development

Taking a Human Rights-based Perspective to Community Participation

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Introduction

This Discussion Paper is strategically situated within two important and interconnected discourses, namely that of human rights (including cultural diversity) and sustainable development which, in particular, provided the policy framework within which the 2003 Convention for Safeguarding Intangible Cultural Heritage (ICH)¹ was developed. This is a vital context for ensuring sustainability of communities and of safeguarding their heritage. Within this human rights/sustainability framework, the primary focus here will be on participation as a (procedural) human right and how the role of communities (and groups and individuals) in safeguarding ICH is perceived under the 2003 Convention. The paper also addresses some of the challenges inherent in this.

In recent years, the field of human rights issues have been introduced more explicitly into the protection of cultural heritage than ever before:² The Human Rights Council (HRC) Report on the right of access to and enjoyment of cultural heritage³ was an important formal recognition of cultural heritage as a proper subject for human rights, opening with the following statement that leaves no question as to the relevance of human rights to cultural heritage protection:

As reflected in international law and practice, the need to preserve/safeguard cultural heritage is a human rights issue. Cultural heritage is important not only in itself, but also in relation to its human dimension, in particular its significance for individuals and communities and their identity and development processes [at paragraph 1].

However, asserting a human right to access to and enjoyment of cultural heritage (including the right of communities, groups and individuals to participate in the safeguarding process) raises some challenging questions: Which and whose cultural heritage deserves protection? Who defines cultural heritage and its significance? How far can/do individuals and communities participate in the interpretation, preservation and safeguarding of cultural heritage? To what extent do they have access to and enjoy it? How can conflicts and competing interests over cultural heritage be resolved? What are the possible limitations on a right to cultural heritage?

The safeguarding intangible cultural heritage now places a duty on States to ensure its viability,⁴ implying the recognition of a wide range of social and cultural rights of bearer communities. This paper will also place under question how far the notion of the 'community' as employed within the framework of the 2003 Convention is appropriately conceived and how much room this conception allows for diversity and even dissent within communities.

As I have mentioned, human rights (including the value of cultural diversity and cultural rights themselves) and sustainability are inextricably linked. Indeed, in recent international policy documents on how sustainable development and the post-2015 development agenda are to be framed, the three fundamental principles of sustainable development are understood as: human rights, equality and sustainability.⁵ In addition to this, and of central relevance to this paper, UNESCO has been working for the past five years or so to place culture much more firmly in this development agenda, not as an adjunct (or even an obstacle to) development but as a key driver of it. This has, to some degree, been successful but there remains much work to be done before culture is accorded its proper place in setting international development goals and their implementation.

All of this, in fact, makes the operation of the 2003 Convention even more relevant since (a) it can contribute to sustainable community development and (b) further the international debate on the role of culture more generally in development. New draft Directives for the 2003 Convention on sustainable development (to be presented to the 10th session of the Intergovernmental Committee for the Convention in Windhoek in late November 2015)⁶ refer to a number of aspects of ICH that show both its breadth as a policy question but also its intimate links with sustainability: food security, health care and quality education for all as part of inclusive social development; knowledge and practices concerning nature and environmental impacts; environmental sustainability through stronger community-based resilience to natural disasters and climate change; income generation through productive employment, decent work and tourism towards sustaining livelihoods and inclusive economic development; and contributing to the peace and security dimension of sustainable development through preventing disputes and post-conflict resolution. In a general sense, the potential of intangible cultural heritage to improve the social and cultural well-being of communities and to lead to innovative and culturally appropriate responses to the development challenges is also recognised.⁷

By contributing to the intellectual, emotional, moral and spiritual wellbeing of people⁸ and by enabling everyone to exercise their human rights (including their cultural rights) culture also contributes to sustainable development. Sustainable development depends upon innovation which, in turn, depends upon the use of knowledge over time such as that embodies in ICH. This draws out an apparent paradox whereby the ability to innovate is often built upon inherited 'traditions', which reminds us that the idea of a 'traditional heritage' is not something stuck in the past but, rather, a set of

skills, know-how, understandings that have been passed on through generations and have acquired new shapes and additional elements over time. In this way, intangible cultural heritage is truly a living heritage and this, in turn, is an essential basis of its potential to contribute in various ways to sustainability of communities and their livelihoods, of the environment and of our human co-existence.

The first section of this paper is intended to be read as the international policy context within which the 2003 Convention was developed, helping to explain the purposes of the treaty and the broad policy approaches required to respond to these.

1. International Policy developments from the 1990s: Towards Heritage as a Component in Sustainability and Strengthening Cultural Diversity

During the early to mid-1990s, important new thinking occurred in international development theory and it is at this time that we observe the evolution of the notion of human development as formulated by the Nobel Prize-winning economist Amartya Sen.⁹ Adopted by UNDP for its *Human Development Reports* series from 1990 onwards, this approach brings development much more in line with human rights.¹⁰ At around the same time, the concept of sustainable development was also being developed, first articulated by the World Commission on Environment and Development¹¹ and further refined and given formal international endorsement with the adoption of the Rio Declaration (on sustainable development)¹² which has had a lasting impact up until now. Among other things, it reflected increasing recognition of the value of local and indigenous cultures and their heritage within national societies as a resource for development¹³ and one of the three 'pillars' of sustainable development is socio-cultural, operating alongside the two central economic and environmental ones.

In 1995, the Report of World Commission on Culture and Development (established by UNESCO) stressed that culture was a constituent element in the development process, not just contingent to it, and noted the key part played by intangible cultural heritage in this.¹⁴ As the Action Plan on Cultural Policies for Development noted in 1998, "sustainable development and the flourishing of culture are interdependent" (Preamble) and that it was necessary "[t]o make cultural policy one of the key components of development strategy" by designing cultural to become one of the key components of "endogenous and sustainable development".¹⁵ Importantly, an explicit connection is made in this document between heritage as a holistic concept (combining tangible and intangible), the inter-action between its cultural and natural elements, the imperative to safeguard it and pass it on to future generations (hopefully in an enhanced condition) and the role of heritage in the formation of group identity.¹⁶

The Millennium Development Goals,¹⁷ unfortunately, failed to include any explicit cultural goal,¹⁸ although those relating to education and health clearly contain important cultural components. More recently, UNESCO has been working to put

culture firmly back into the international development agenda, in particular through the Millennium Development Goals Fund (MDG-F)¹⁹ and its leadership in relation to cultural programmes within it: the 2003 Convention should be seen as part of this general movement. Following the adoption of the 2003 Convention and the Convention on Diversity of Cultural Expressions in 2005,²⁰ UNESCO began to consider more deeply the relationship between cultural heritage, creativity and the sustainability of development. Recently, UNESCO has considered how the objective of sustainable development can be better incorporated into the Convention's operation,²¹ as follows and, in response, the Intangible Cultural Heritage Committee ('ICH Committee') and adopted a Decision at its meeting in Paris in November 2014 to this end. This not only reflects the desire of UNESCO to make the cultural aspects of sustainable development more prominent on the international agenda, but also the need for a much more profound and developed appreciation of what this means in reality for safeguarding ICH.

Recently, the outcome document of the 2012 United Nations Conference on Sustainable Development (Rio+20)²² made direct reference to culture, emphasising that all three dimensions of sustainable development, namely the economic, socio-cultural and environmental dimensions, should all be given importance in UN programming for sustainability. However, it contains only a few, rather modest, references to the role of culture for sustainable development and there is no in-depth discussion of the linkages between culture and development or of the potential contribution of culture to sustainable development.²³ Hence, in May 2013 UNESCO organised an International Congress in Hangzhou (China) on the subject of "Culture: Key to Sustainable Development" with the aim of examining these linkages more profoundly and for providing a sound basis for future policy-making and programming. The Hangzhou Declaration from this meeting called for a specific international development goal focused on culture to be included in the post-2015 UN development agenda to be "based on heritage, diversity, creativity and the transmission of knowledge and [should include] clear targets and indicators that relate culture to all dimensions of sustainable development".²⁴

In addition to emphasising the central role of culture (and heritage) in the development process in order to ensure its sustainability, importantly each of these development approaches has strong human rights dimensions which reflect the need to develop human capacities (as supported by human rights) and social justice. Alongside these new development paradigms cultural rights, long the 'Cinderella' of the human rights family,²⁵ began to receive belated international recognition. In UNESCO, a programme initiated in the late 1990s to codify cultural rights led to the adoption in 2001 of the Universal Declaration on Cultural Diversity: This formed a very significant background for the later adoption of both the 2003 and 2005 Conventions. In a related development, ECOSOC had been working since the early 1990s towards a Declaration on indigenous rights²⁶ and, eventually in 2007 the UN General Assembly adopted the Declaration on Indigenous Peoples' Rights.²⁷

This policy- and law-making on the international level has had a trickle-down effect and led towards recent evolutions in national approaches towards heritage and heritage communities.

2. Identity, Dignity and Diversity and Intangible Aspects of Heritage

One of the most relevant aspects of cultural heritage for any discussion of human rights is the central role that it plays in the construction of cultural identity, at the level of the local community, region or nation. Regarding this as a human rights question, we need to ask: What does the right to cultural identity consist of? In essence, the right to cultural identity means the right to choose one's cultural identity alone or in community with others. It includes also the right not to have an alien culture imposed on one, the right of each cultural group to preserve, develop and maintain its own specific culture, and the right to positive discrimination in favour of minorities to participate in the cultural life of the wider community.

We should remember that every individual may ascribe to one or more cultural (as well as social, political, professional, gender and even national) identities and often does. A community or group should not impose its cultural identity on an individual who does not wish to identify with it; similarly, no wider society can impose a cultural identity on a community or group from outside. Hence, *self-identification* is also an important aspect of the right to cultural identity. The right to respect for cultural identity is increasingly being seen as of fundamental importance not only to individuals *per se* but also as members of a national or other community to which they belong.²⁸

Thus, the role of cultural heritage in identity-construction works on several levels—that of the individual (who may enjoy multiple identities), the social group or community²⁹ and the people or nation. Even, it is possible to assert that there is also a universal human identity—that of humankind—based on the shared heritage of the 'outstanding' cultural properties of the World Heritage List, for example, or the value of the diversity of different cultural heritages. This, then, suggests a further interesting shared characteristic of human rights with cultural heritage (linked through the notion of identity) that they may both be simultaneously universal and specific in character. It is, of course, on this last level that much international cultural heritage law operates as a positivist system created by sovereign States and based on the principle of international cooperation.

National cultural identity

The essence of 'the nation' is intangible, a psychological sense of belonging of which the twin elements of cultural heritage and language are key constituents³⁰ and may well respond to Anderson's³¹ 'imagined community' by employing pre-modern ethnic

identities and symbolism to shore up a political identity.³² The modern State is thus a territorial entity in which the people and the land are united through a shared landscape, history and memories and where the cultural heritage constitutes the symbolic landscape of the state.³³

This raises some challenging questions with regard to ICH and the role (and rights) of communities with regard to it: we now see some governments putting specific expressions of ICH at the centre of a country's national heritage, with a view of building a national identity around them. This flies in the face of the spirit of the 2003 Convention which regards community (group and individual) identity as more important than national identity with regard to ICH. This fact requires deep reflection on the part of the state authorities who are habituated to determining what shall be accorded recognition as 'national heritage' without having to consult with 'cultural communities'. Now, we are faced with a form of heritage (and an international treaty for its safeguarding) where States Parties are enjoined to involve cultural communities and their members in the identification and safeguarding of intangible heritage. This, then, raises not only questions as to who should determine patrimonial value and the significance of heritage (discussed below) but also *what heritage* is to be chosen as the identity-marker for the country and its various communities.

The disputes that have arisen between parties (in western and north-eastern Asia, in particular) over specific ICH elements inscribed on the Representative List (RL) serve as a perverse illustration of this process: rather than seeking to celebrate the diversity of ICH present in multiple communities in their countries and worldwide, some Parties have sought to stake claims of 'ownership' over such elements as *magham* music (inscribed by Azerbaijan but claimed also by Iran). This not only demonstrates both a serious misunderstanding of the nature of this heritage (and the representative character of the RL) but also draws attention to another complicating factor when identifying ICH for the purposes of national inventorying. Bagpipes and tartan are two of the most common identity-markers of 'Scottishness' (as anyone who has walked down the Canongate in Edinburgh will testify), and yet both have close cousins in several other countries. Of course, the Scottish bagpipe and the historical tartan patterns are 'unique' in some sense, but there are a number of bagpipe-style instruments around the world³⁴ and fabrics in patterns very similar to tartan can be found in Serbia and Turkmenistan.

As a result of the tensions that occur whenever seeking to make claims to the 'origins' of ICH elements (was the game of golf invented in Scotland, Holland or China?) and to emphasise the notion of a shared humanity expressed through this heritage (albeit with culture-specific diversities), UNESCO is now strongly encouraging multinational inscriptions to the RL (such as the Nowrouz Spring Festival and Falconry elements). It does also point to the fact that the national level of identification—usually the one that is most clearly expressed through cultural heritage—may not be the most important

one for ICH which appears to operate simultaneously on local and global (or, at least, regional and sub-regional) levels.

Nominations to the RL (and the Urgent Safeguarding List) of the 2003 Convention will always have a strong state-driven aspect since this is an expression of national sovereignty and the States Parties will always seek to control the process. However, as far as the national identification of ICH elements is concerned, this should be a much more democratic process that gives a voice to all communities (groups and individuals) present on the territory. In the pluralistic, multi-ethnic and democratic country that Scotland is and wishes to be seen as, this then should be a process that ensures the equitable recognition of the ICH of ethnic minorities and migrants. What we seek to celebrate here is the diversity of our society and its cultural inclusiveness, and not to retreat into a fog of mono-cultural paranoia that fails to recognise the strength and vibrancy of a living heritage that is enriched by the recent and not-so-recent additions made by different waves of immigrants to the country. Equally, it should not be an elitist pursuit that ignores popular and mundane forms of heritage: in many cases, the heart of ICH is to be found in the day-to-day culture as lived by ordinary people.

Identity, dignity and cultural diversity

The preservation of cultural identity can be of crucial importance to the well-being and self-respect that lie at the heart of an individual's, and also a community's, human dignity. In this way, safeguarding cultural identity can be said to lie at the heart of human rights itself.³⁵ As the UN Special Rapporteur on cultural rights has noted:

In many aspects, cultural rights are pivotal to the recognition and respect of human dignity, as they protect the development and expression of various world visions—individual and collective—and encompass important freedoms relating to matters of identity.³⁶

The 2003 Convention is the cultural heritage treaty in which the linkage between cultural identity, human dignity and cultural diversity is most clearly made, recognising as it does that respect for individual and collective dignity implies respect for cultural differences. The Istanbul Declaration (2002) adopted in the run-up to the negotiation of the 2003 Intangible Heritage Convention makes this explicit:

... the multiple expressions of intangible cultural heritage [that] constitute the fundamental sources of cultural identity of peoples and communities ... [and] are an essential factor in the preservation of cultural diversity.³⁷

Greater emphasis is now being placed on *cultural diversity as a common good* which Vrdoljak suggests is "encapsulated in a new humanism in which the protection of culture is increasingly conceptualized through the prism of human rights"³⁸ as UNESCO's Declaration on Cultural Diversity (2001) made clear: The defence of cultural

diversity “is an ethical imperative inseparable from respect for human dignity” and requires a commitment to human rights and fundamental freedoms, especially the rights of indigenous peoples and minorities.³⁹

In practice with relation to implementing the 2003 Convention, identifying and giving recognition to ICH elements should not only aim to reflect the diversity of cultural identities within any given country (and internationally). In addition, the potential of ICH to contribute towards social inclusiveness also needs to be given importance. Hence, an ICH element that represents the cultural identity of the dominant group should also open itself up to new-comers: In Catalonia, for example, the Human Towers element (inscribed on the RL) is explicitly described as helping immigrants to be assimilated into the local base culture by the inclusiveness of the practitioner community.

Universalism, globalisation and cultural diversity: a conundrum

There is an apparent contradiction between the universalising mission UNESCO's treaties and the value of cultural diversity.⁴⁰ For example, the World Heritage List established under the 1972 Convention has been criticised as reflecting a 'western' view of 'global' cultural heritage that fails to give sufficient value to other cultural traditions.⁴¹ The 2003 ICH Convention was, therefore, in part aimed at acknowledging forms of heritage with which may be the predominant form of cultural heritage in some countries. Long before the 2003 Convention was adopted, safeguarding intangible cultural heritage (ICH)⁴² has, in reality, been an important issue for the large majority of countries and people around the globe.⁴³ The adoption of the 2003 Convention was, in large part, therefore, addressing the *lack of formal international recognition* hitherto accorded to this reality.

Paradoxically, the push to preserve cultural diversity (a main basis for the adoption of the 2003 Convention) was also in response to another universalising factor, namely increasing cultural globalisation: As this continues to erode the role of the State by by-passing borders in many areas of economic and cultural activity, it also increases the importance of local expressions of cultural identity in response to global pressures.⁴⁴ Safeguarding this heritage which is rooted in local cultural communities may provide a new means for States to legitimate their role in cultural terms,⁴⁵ being seen to safeguard a sense of local cultural identity within the framework of the State through protecting traditional cultural expressions from loss or exploitation. However, in this they face the dilemma of how to protect the cultural traditions and related identities of vulnerable groups in the face of homogenising cultural influences. This includes, for example, how far elements may change and evolve (including, for example, their modes of transmission) before they lose their core character, pointing to a permanent tension between the notion of a living and dynamic heritage and a tendency to essentialise ICH elements.

3. Collective rights and the Challenges of Relativism

Assigning a priority right of access to the community most closely associated with a given element of cultural heritage introduces a potential tension an individual's right to choose. Should governments (and the international community) apply a human rights 'filter' when officially recognising and safeguarding ICH? To some degree, a filter has been built into the definition of ICH through the requirement any heritage should be compatible with international human rights standards to be safeguarded under the Convention.⁴⁶ However, making decisions as to which ICH elements to leave outside the remit of the Convention's safeguarding framework is an extremely tricky question – if every single ICH element that contravened a strict test of non-discrimination and/or equality were excluded, this would deny the possibility of safeguarding a large proportion of the world's ICH and, consequently, the identity of cultural communities worldwide. In addition, we should expect these determinations to vary from country to country, according to prevailing societal values.

Inevitably, there are questions about the validity of claims to preserve traditional ways of life that may include and even promote non-egalitarian elements.⁴⁷ When such claims are made, they need to be measured against the rights of women, children and others who are often marginalised and disempowered by traditional cultural practices.⁴⁸ It is, therefore, necessary to impose limitations on the right of everyone to take part in cultural life, in particular in the case of harmful practices attributed to customs and traditions that infringe upon other human rights. Such limitations must be proportionate, however, and the least restrictive measures should be taken when there is a choice between various limitations that may be imposed.⁴⁹

The right of individual choice (such as the choice of one's marriage partner or matters of dress or behaviour) may conflict with the norms of the community to which a person belongs. In such cases, the right of an individual to choose is generally given priority in human rights over that of the collective of which they are a member: As a high priority norm, the individual right is seen as a 'trump' which overrides other group-based considerations.⁵⁰ This position was reiterated in 2012 by the seven UN experts who served as special procedures mandate holders, who declared that:

No one may invoke cultural diversity as an excuse to infringe on human rights guaranteed by international law or limit their scope, nor should cultural diversity be taken to support segregation and harmful traditional practices which, in the name of culture, seek to sanctify differences that run counter to the universality, indivisibility and interdependence of human rights.⁵¹

In contrast, however, we can also argue that the interests and well-being of other individual members of the community are highly dependent on the continuance of such practices and can be significantly harmed by allowing such 'cultural dissent'. To decide which traditional cultural practices should be supported and which should not⁵² is thus an extremely complicated matter and we can add to this the question: who is

qualified to make such a decision?⁵³ This is an extremely important question facing those charged with selecting ICH for national recognition and protection, as well as for international inscription. Here, then, we come up against the tension that exists between giving as central a role as possible to 'communities' in the identification of ICH elements for safeguarding and the requirements of human rights standards, in particular of equality and non-discrimination.

The essential problem here is that many traditional cultural practices would appear to discriminate against one section of society or another and it is therefore a challenge to public policy how to determine which of these should not be accepted as 'ICH' for the purposes of safeguarding. As much as there are certain practices that can never be condoned from this stand-point—infanticide, foot-binding, slavery, serious bodily mutilation⁵⁴—but many others lie in a 'grey area' where it is difficult to quantify the degree of harm to individuals.

In particular, it is necessary to realise that some apparently discriminatory practices, often those involving gender-based segregation, may on a deeper analysis, provide social or other benefits to those persons apparently discriminated against.⁵⁵ Hence, it is vital that such issues are addressed on the basis of a participatory and democratic social dialogue, within the community concerned and more broadly, and that a range of voices be heard. There is a need for negotiation between the various stakeholders in order to find ways in which problematic cultural practices may be transformed in order to be officially sanctioned without their significance or meaning being lost. In addition, while promoting the human rights of individuals, we must remember that protecting a community's cultural traditions can be of enormous importance to the well-being and sense of dignity of the majority of its members.

From this analysis it becomes clear that the freedom of individuals to decide whether or not to participate in one or several (cultural) communities and to choose multiple identities is paramount. This may be expressed through choice of marriage partner, sexual orientation, professing a different religion or none at all, dress, behaviour, language, dialect or even accent. These choices can conflict with the dominant views of the community to which such individuals belong and must be taken into account in relation to the role of communities in ICH practice and safeguarding. Since all societies and groups contain important power differentials, the communities associated with specific forms of ICH may well include subordinated and marginalised groups or individuals (such as gender-based groups) and their voices need to be heard as well as those of more dominant members.

5. ICH and sustainable development – A New Safeguarding Paradigm?

Heritage and sustainable development

Despite the efforts of UNESCO in the MDG-F and the Huangzhou Declaration (2013), the place of culture and heritage within the post-2015 development agenda and the recently adopted Sustainable Development Goals⁵⁶ remains rather contingent. Although some of these Goals are related to issues that include important ICH-related aspects (such as food security and sustainable agriculture in Goal 2, education in Goal 4 and sustainable urban development in Goal 11), the international community has failed to take on board the calls by UNESCO (and other stakeholders, including international NGOs) to accept culture's central role in development. As UNESCO noted in 2012:

The post-2015 development agenda should also recognize the specific contribution that culture as a sector, encompassing tangible and intangible heritage, cultural and creative industries and cultural infrastructures, has made towards achieving sustainable development, as evidenced in terms of poverty alleviation, social inclusion and environmental sustainability.⁵⁷

A campaign by various civil society and governmental networks⁵⁸ has made explicit the need for a capability-based approach that involves both human development and human rights, with a multi-dimensional perspective on poverty and exclusion that integrates cultural aspects. They have noted that: 'poverty is not just a question of material conditions, resources and income, but also a lack of capabilities and opportunities, of recognition of the dignity of disadvantaged groups and their contribution to the life of the community and of their creative capacity and perspectives to envisage a better future.'⁵⁹ Recognising, valuing and safeguarding ICH can be an important element in addressing these aspects of poverty and exclusion and can provide communities (and their members) with the capabilities to aspire to a better life and to one with dignity, the primary objective of human rights.

Nowadays, it is common to think of the relationship between culture and sustainable development as a two-fold one.⁶⁰ In this, culture is both a driver and an enabler of sustainable development. As a *driver of sustainable development*, culture is implicitly viewed as a self-standing 'fourth pillar' of sustainable development. It includes not only the idea that culture is a means to or as a resource for the achievement of various development objectives (e.g. social inclusiveness, economic development, poverty alleviation) but also, importantly, the recognition of specific or intrinsic cultural values and expressions (creativity, use of local resources, skills and knowledge). When we view culture as an *enabler of sustainable development* it reflects an understanding that development interventions must be responsive to the cultural context and the particularities of a place and community; this is a human-centred approach to development that not only renders development strategies more effective and sustainable, but one that also takes advantage of the power of culture to transform people's lives.

Sustainable development in the 2003 Convention

The 2003 Convention provides Parties with a framework within which to develop heritage-based policies and programmes related to a wide number of aspects of

government, from tourism to environmental protection, social inclusion and rural development. This broadening out of the conception of the role of cultural heritage in society and, in particular, in the realisation of truly sustainable forms of development, is one of the most significant evolutions in our understanding of cultural heritage protection both as a policy goal and as a policy tool.

Implementation of 2003 Convention over time promises to offer new insights into how heritage can be harnessed for the purposes of social and economic development and, in particular, the sustainable development of communities. In this way, the Convention has contributed towards creating a 'new paradigm' in heritage protection in large part built around the communities that are associated with it. Among other things, this new paradigm shifts the focus of according 'significance' to heritage, redefines the role of non-state actors vis-à-vis state authorities in this process and, even, moves the idea of 'national' heritage away from a purely State-driven concept. Essentially, the new paradigm views cultural heritage as a social, cultural and economic resource that contributes to the development of human capabilities (now understood to be the key to achieving full human development),⁶¹ thus contributing to the development of their communities.

The 2003 Convention recognises in its Preamble the importance of the intangible cultural heritage as "a mainspring of cultural diversity" and a "guarantee of truly sustainable development" and the definition of ICH in Article 2 makes clear that "...consideration will be given solely to such intangible cultural heritage as is compatible with existing international human rights instruments, as well as with the requirements of ... sustainable development." However, the Convention does not actually explain what does and does not make ICH compatible with sustainable development, how we can maximise the benefits from these or what is the relationship between ICH safeguarding measures and other policy strategies for sustainable development. Thus far, for example, the Convention's Operational Directives address sustainability only with regard to one actor (media) and one discreet area of activity (tourism).⁶² They fail to explain how ICH can foster sustainable development or how safeguarding measures may relate to other national policies to foster sustainable development.

One key way in which ICH mirrors the sustainable development agenda is in its cross-sectoral character: It covers the activities of a number of non-cultural sectors (health, agriculture, food security, education, environmental protection, tourism, disaster prevention and mitigation, conflict resolution etc.). Thus, effective safeguarding of ICH requires a similarly horizontal cooperation between governmental bodies and regional and local authorities as do the procedural aspects of sustainable development. As with achieving the 'joined-up Government' required by the sustainable development model, cooperating across governmental sectors and integrating ICH into development policies and legislation in areas unrelated to culture is a major challenge facing many States Parties. In addition, the importance given to community (and group)

participation in safeguarding ICH in the 2003 Convention responds directly to a procedural principle of both sustainable development and human rights. Therefore, it will also be important that the design of such models takes account of the social, cultural and other contexts in which they are to be applied and the needs of the various stakeholders involved.

How the 2003 Convention can contribute to sustainability

In general terms, then, we can say that ICH has the potential to be a driver of development through cultural industries, sustainable cultural tourism and other forms of income generation as well providing social benefits such as health care, improved education (and curriculum content) and reduced unemployment. Traditional knowledge and practices relevant for sustainable development cover a broad spectrum and include those related to medicinal and pharmacological knowledge, agricultural practices, crafts skills, food production and preparation, weather patterns and conflict prevention/resolution. Moreover, the role played by ICH in constructing communities' identities gives it a power to respond to the socio-cultural challenges faced by people living in multi-cultural societies, strengthening their capacities and allowing development to be more equitable and sustainable.

Different countries implement the Convention and set related policies within a wide variety of different social, cultural, political, geographical, and environmental contexts and this leads to a diversity of policy approaches and measures chosen. Such variations range from Mongolia with its vast steppes and traditionally nomadic population to the Principality of Monaco. Federal states face a particular challenge in building a coherent and evenly spread institutional approach to ICH safeguarding given their distinct levels of government. The three linguistic regions of Belgium, for example, have very different levels of engagement with ICH safeguarding, with the Flemish-speaking part providing an international model of good practice. At an even more devolved level, regional and local authorities (in centralised States) can play a pivotal role in safeguarding ICH elements and their wider physical and social environments.

The integration of ICH into non-cultural areas of government policy, predominantly in development-oriented ones is a significant aspect of the policy-making for ICH safeguarding. It has become a priority line of action within the national development planning in several Parties over the past ten years or so and the 2012 and 2013 Periodic Reporting cycles of States Parties to the Convention⁶³ showed that almost 75% of the 41 reporting countries had established some kind of new ICH safeguarding policy; twenty-four sought to integrate ICH safeguarding into other policy areas, mostly development-oriented.⁶⁴

The potential contribution that ICH can make to local economies, especially through handicrafts and tourism, is a basis for policy-making in many countries, including through strategic programmes to support crafts industries and marketing/distribution

skills. However, cultural tourism models built around ICH elements that avoid their distortion or other damage to the cultural community remain to be developed and issues still surround the commodification of ICH-related handicrafts. ICH safeguarding is also commonly integrated into rural development policies providing funding for communities with known ICH elements and preserving the traditional rural landscape, for example, while the potential of ICH for urban regeneration has been less well considered up to now.

The fact that safeguarding ICH places quite new requirements on policy-makers and sets them challenges not previously seen in the field of heritage protection also means that the responses to these are fairly varied. Both the *diversity of approaches* towards policy-making and *the degree to which the regulation of this heritage is becoming devolved* to 'lower' political levels are striking aspects of the Convention's implementation in a number of Parties; this will, surely, have an impact on cultural heritage protection more broadly in the future.

The role of NGOs and other non-state actors in ICH safeguarding

An issue requiring further consideration relates to the relative roles of important stakeholders, including central and regional government agencies, practitioner associations, academic institutions, national artistic academies, local (non-bearer) communities, individuals etc. NGOs can play an important role in this as the mediators and "bridges" between various actors. Many specialised NGOs not only have an excellent understanding of the Convention and relevant expertise which situates them well to play a role in the implementation of the Convention. This can operate both at local and national levels and they have great potential to provide a bridge between local communities and Government.

Specific actions by NGOs have included:

- Explaining the Convention and its principles to communities
- Conducting research projects on ICH (often in partnership with local communities)
- Developing inventories of ICH in communities
- Participating in the preparation of nomination files to the Convention's Lists
- Engaging in the organisation of capacity building workshops
- Defending the specific interests of local communities
- Acting legal representatives of local communities in contracts with Governmental bodies
- Providing advice to governmental bodies and the Intergovernmental Committee for the Convention.

Local government authorities are also potentially key actors and can play a vital role in facilitating ICH safeguarding (providing suitable spaces, financing and/or the associated tangible elements such as costumes and musical instruments). Another

actor whose role requires serious consideration is the private sector, whether acting alone or in partnership with public institutions. The potential benefits to communities and their heritage of partnerships with private sector that can contribute to their sustainable development are significant. However, it is also necessary to identify and avoid pitfalls such as misappropriation or distortion of the heritage, damage to the physical environment or the abusive exploitation of the cultural community. This is an area in which the experience of the 2005 Convention, which sets out much more explicitly the relative roles of stakeholders and potential public/private partnerships, can be of great interest.⁶⁵

6. Sustainability through community participation in safeguarding ICH

Community participation/involvement in safeguarding ICH is, of course, a key aspect of the 2003 Convention⁶⁶ that sets it apart from other cultural heritage treaties. It is also an essential part of ensuring that ICH-related development is truly sustainable, by responding to a central procedural requirement of sustainability. Although most Parties have made efforts to ensure community involvement in inventorying and, up to some point, safeguarding in general, the degree of actual participation may differ widely: This ranges from Flanders (Belgium), where much policy development has been driven by two NGOs and is undertaken in cooperation with a wide variety of stakeholders, to Parties where the community 'involvement' is much more superficial and may simply involve consultations with selected community representatives and even, in some cases, establishment of state-sponsored "NGOs" specifically for the purposes of ICH identification and management. In a wholly different context, there are few NGOs related to ICH in Mali, possibly reflecting the fact that other forms of traditional community structures exist to fulfil this role.⁶⁷

A participatory approach to cultural heritage protection requires a shift in the policy- and decision-making model from (in most cases) a strictly top-down one to one that allows for the inclusion of a range of different voices and that is more participatory in character.⁶⁸ The significance of this shift should not be underestimated since it has deep implications for how governments relate to cultural communities – both minority and majority. Moreover, it will also impact on the way in which 'national' cultural heritage is identified and its significance is defined. The meaningful participation of both individuals and communities in the identification of, access to and management of this cultural heritage is also essential as a guarantee of their human rights.⁶⁹ From this perspective, it is also vital that the non-dominant (migrant and other minority) groups in the national society have an appropriate space in the ICH safeguarding project.

The definition of "groups" we take for the Convention hangs on "shared characteristics" which are predominantly seen as directly related to the ICH element (skills and know-how, modes of transmission etc.) but which might also include social

groups based on gender-based self-identification, for example, or a shared interest in body art. Would the wearing of tattoos among urban youth qualify them to be a group for the purposes of the Convention? If not, would the same approach be applied to the permanent body and face marking of Maori in New Zealand? From this, we see that there is a lot of room for development in the understanding we have of the full range of groups and communities associated with ICH.

The aforementioned HRC Report makes the significant point that there are that allow us to take into consideration the diverse interests of individuals and groups differing degrees or levels of distinctions access to and enjoyment of cultural heritage according to their relationship with specific cultural heritages.⁷⁰ It proposes a priority of access and enjoyment to cultural heritage should be assigned according to their relationship with the heritage. First are the 'source communities' made up of individuals and communities who are the custodians/bearers of a specific cultural heritage. Second are other individuals and communities who consider the cultural heritage in question to be an integral part of the life of their broader community, but who may not be actively involved in it. In a third place are scientists and artists and the general public, when accessing the cultural heritage of others.⁷¹ To this list we might then add the international community (acting on behalf of humanity) and regional or sub-regional groupings.

Such an approach leaves space for the most closely concerned cultural community to participate directly in identification, inventorying and safeguarding their heritage.⁷² We must, of course, acknowledge here sensitivities surrounding granting access to secret and/or sacred heritage and very vulnerable heritage sites. Since community participation in the framework of the 2003 Convention takes a human rights-oriented approach, it would run wholly counter to that intention if this were to stifle the voices of the weaker and of marginalised members of these communities (women, children, migrants, indigenous persons, persons with disabilities, members gender-based minorities, etc.).

Community participation and the 2003 Convention

The 2003 Convention, places at its centre the duty of the Parties to ensure the involvement of groups and communities, as well as individuals, in identifying, safeguarding and managing their own cultural heritage. This is clear from the definition of ICH given in Article 2(1)⁷³ and in Article 11(b) a requirement is placed on Parties identify and define the elements of ICH on their territory "with the participation of communities, groups and relevant nongovernmental organizations" (applying also to inventory-making under Article 12). The importance of this should not be understated since the identification of ICH is not only fundamental to its safeguarding but it also addresses a profound political issue as to which and whose ICH is to be given value by the process.

Article 15 makes the most explicit statement of the participatory nature of safeguarding ICH under the Convention, enjoining Parties to “endeavour to ensure the widest possible participation of communities, groups and, where appropriate, individuals that create, maintain and transmit such heritage [in safeguarding ICH], and to involve them actively in its management”. This, then, requires Parties to take an *effective* participatory approach towards the range of activities described as “safeguarding” in Article 2(3) as well as “to involve them actively in its management”.

Importantly, the notion of safeguarding used in the Convention implies a far broader approach than traditionally understood by protection, requiring Parties to take positive actions that contribute to its continuing viability. These include (1) the measures specified in Article 2(3) (identification, documentation, research, preservation, protection, promotion, enhancement, transmission, particularly through formal and non-formal education and revitalization) and (2) creating and supporting the conditions within which it can continue to be created, maintained and transmitted. Since the community is the essential context for this, this places safeguarding firmly in a human rights context whereby various economic, social and political rights of bearer communities (groups and individuals) will need to be guaranteed in order to secure the continuing viability of their related ICH.

Since assigning significance to heritage—even the action of identifying something as heritage in the first place—is a politically important action, a participatory approach to safeguarding ICH can help to democratise the process by which we give value to heritage, assigning a larger role to local people and communities.⁷⁴ Moreover, the explicit references in the 2003 Convention to community involvement in safeguarding ICH is a potentially balancing factor to the power of the State to determine what is ‘heritage’.⁷⁵

However, there is nothing in the text of the 2003 Convention to specify *how* communities can effectively influence government policy: Unless they are encouraged to do so by the State, they cannot easily initiate safeguarding measures of their own or block State-sponsored programmes to which they are opposed. The mechanisms for ensuring real and effective community participation in the operation of the Convention are weak and require further fleshing out. Moreover, the Convention’s provisions regarding community involvement raise important questions about ‘ownership’ of that heritage and also of the process by which it is to be given official recognition.

In view of this lack of clarity as to the measures needed to ensure more effective community participation in identifying and safeguarding ICH, the Intergovernmental Committee has developed some new provisions in the Operational Directives (guiding implementation of the Convention).⁷⁶ States Parties are encouraged to facilitate the participation of communities, groups (and, where applicable, individuals) as well as experts, centres of expertise and research institutes, in particular in: (a) identification

and definition of the different elements of intangible cultural heritage present on their territories; (b) drawing up inventories; (c) design and implementation of programmes, projects and activities; (d) preparation of nomination files for inscription on the Lists; and (e) removal of an ICH element from one (international) List or its transfer to the others. The last two are particularly interesting since they relate to international aspects of safeguarding, previously reserved entirely to Governments. Parties are also encouraged to create a consultative body or a coordination mechanism to facilitate the participation in safeguarding activities of communities, groups and, where applicable, individuals, as well as experts, centres of expertise and research institutes.⁷⁷

If this guidance is taken seriously, it will go a long way towards ensuring meaningful community involvement in all stages of the process both of safeguarding and nomination of ICH. It remains, however, wholly discretionary on the part of each country how far they apply this and the degree to which they do will no doubt reflect factors relating to their economic and political circumstances and systems.

Community regeneration: The case of urban ICH

The question of how 'living' cultural heritage traditions and practices and their associated know-how and material elements are impacted by being introduced into an urban context and, even, how they may themselves impact upon the social and physical fabric of the urban setting is less well considered than ICH in non-urban contexts.⁷⁸ This is an increasingly important question given the general tendency towards urbanisation which has become a major challenge facing many Parties to the Convention and for setting cultural and other policies (including, for example, local government frameworks). With 54% of the world's population already living in urban environments this will reach 66% by 2050 (adding another 2.5 billion people to current urban populations),⁷⁹ the potential that ICH has for bettering the lives of urban dwellers is an extremely significant one. Notably, as much as 90% of this growth will be in Asia and Africa, regions in which intangible elements constitute a large proportion of their heritage.

In countries around the world and in all regions, ICH elements have disappeared as a consequence of a shift towards urban living, while others may continue in modified contexts and forms (e.g. through concerts, festivals, publications etc.) and it remains open to question whether this is a positive or a negative evolution. Rural-to-urban migration obviously has a growing impact on ICH and it is necessary to develop new and creative approaches towards ICH safeguarding that minimise the negative impacts of urbanisation while tapping into its potential to contribute to social relations. In view of the long-term global trend towards urbanisation, this is an important issue to be addressed with regard to ICH safeguarding. Moreover, with the industrialisation and urbanisation of societies, traditional modes of transmission are becoming devalued within the communities that have traditionally maintained them and young people prefer to gain a formal certificate or degree.⁸⁰

The living traditions, know-how and cultural practices that make up ICH also have the potential to help urban communities, especially internal and external migrants, to strengthen their sense of identity and to build bridges with other communities.⁸¹ ICH can also equip rural-to-urban migrants with the necessary tools to live better in urban settings and to overcome a sense of social and/or cultural dislocation. The Tango in Argentina and Uruguay,⁸² for example, is a purely urban form that represents the heritage of very specific social groups: It was created by the urban lower classes in Buenos Aires and Montevideo comprising a mix of European immigrants, descendents of African slaves and *criollos* (the natives of the region), representing a fusion of a wide range of customs, beliefs and rituals that became transformed into a distinctive cultural identity. The Fado of Portugal, inscribed on the Representative List of the 2003 Convention as an “urban popular song” is practised both professionally in concert halls and small ‘Fado houses’ and is also sung by amateurs in numerous grass-root associations in Lisbon.⁸³ Thus we see the different social groups and associations involved in these urban forms of ICH and their potential for social cohesion and integration and economic development.

Given that the process of identifying, giving significance to and safeguarding ICH under the Convention remains a primarily state-driven process (in spite of the more prominent role given to communities, groups and individuals),⁸⁴ it is important to consider whether the urban ICH currently being recognised represents the full extent of this heritage or should be expanded to include, for example, more popular and contemporary forms of heritage (such as graffiti, wall art or tattooing). In addition, it is very important that migrant and immigrant forms of ICH be accorded recognition and valued since this can greatly enhance the standing of such communities in the wider society and lead to greater social as well as, potentially, economic sustainability.

Clearly, municipal and local authorities play a key role in providing infrastructural, administrative and financial support for the practice and enactment of urban forms of ICH, often operating through local museums, libraries and cultural centres. This support may be in the form of providing: spaces for rehearsals, performances, training and other ICH-related activities; travel expenses for ICH exponents and groups; provision of or support for informal and further education; and folk costumes, musical instruments, technical equipment (as well as storage space for these). This help is also often given in the form of collaboration with NGOs, experts and the private sector.

Many of the Parties reporting to the ICH Intergovernmental Committee have noted impacts on ICH transmission that relate directly or indirectly to social evolutions related to urbanisation. Lithuania, for example, has observed for some time a general decline in traditional culture, due to the transformation of agricultural technologies and working methods, demographic changes, the urbanisation of society and, more generally, the processes of globalisation.⁸⁵ As a consequence, many ICH elements have disappeared while others have been transferred to the urban context and

continue in the frame of modified contexts and forms: through organised concerts, festivals, stage activities etc. rather than more informal and impromptu forms of performance: It is left open to question whether this as a positive or a negative evolution and is one that deserves further research.

Conclusion

The intersection between human rights and sustainable development is a vital one for ensuring the sustainability of communities through safeguarding their heritage. Indeed, of all the cultural heritage treaties, UNESCO's 2003 Convention is the most clearly situated within the human rights, equality and sustainability nexus now understood as the basis for achieving truly sustainable development. As a living heritage ICH enjoys the potential to contribute in many different ways to the sustainability of communities, their livelihoods and the environment in which they live. As an illustration of ICH in community development, today's tendency towards urbanisation is examined. Due to the shift towards urban living, ICH elements may die off, traditional modes of transmission are becoming eroded or lost and some elements may continue in modified contexts and forms. It remains open to question whether this is a positive or a negative evolution and we need to develop new approaches towards safeguarding ICH that has migrated from rural to urban environments. In particular, we need to learn how to exploit the potential of ICH to enhance social cohesion in urban settings and to provide recent migrants with a sense of identity and even social status.

The first section of this paper explores how the adoption of the 2003 Convention has answered directly to important international policy goals relating, in particular, to development and human rights and to the aspirations of many non-European States which felt their heritage had been afforded insufficient recognition. It also represents a highly significant broadening out of the conception of the role of cultural heritage in society that will, surely, have an impact on cultural heritage protection more broadly in the future. ICH is a heritage that is, first and foremost, of significance to local communities and other sub-national social groups, many of whom may have traditionally suffered various forms of social, economic and political exclusion. Granting official recognition for their heritage, then, can be empowering for such groups (including ethnic and gender-based minorities, migrants, lower castes and others) and can be a powerful force for their social integration and for better social cohesion in general.

The central role that the 2003 Convention gives to communities and to their participation in all stages of safeguarding ICH responds to a fundamental procedural aspect of both human rights and sustainable development and, so, provides an important basis for responding to both these requirements. The notion of the "community" as employed in the Convention is, however, placed under question here and the importance of allowing for diversity and even dissent within communities is

noted. As this paper has also sought to demonstrate, ICH is a form of heritage that profoundly speaks to the sense of identity of individuals, groups and communities and its safeguarding therefore plays an important role in protecting human dignity. It should be remembered that each individual is free to choose their cultural (social, political, professional, gender etc.) identities and these should not be imposed on them by any group or community. This fact can create a tension between individual and collective cultural rights with regard to ICH safeguarding of which we need to be aware and which raises many challenges for government agents and other actors involved in this.

To achieve a truly participatory approach to cultural heritage protection involves a shift in the policy- and decision-making approach towards a model that allows for the full and active participation of a variety of social actors and which will have serious implications for the relationships between government agencies and cultural communities. Taking a participatory approach to safeguarding ICH can also help to democratise the process by which we assign value to heritage, allowing local people and communities to identify ICH elements of significance to them and affecting how we identify 'national' cultural heritage. Such a participatory approach also extends greatly the range of stakeholders with a direct in-put into the safeguarding process (including central and regional government agencies, bearers, practitioner associations, NGOs, academic institutions, national artistic academies, local non-bearer communities, individuals etc.) and their relative roles still need to be better understood. NGOs, local authorities and the private sector are three actors which can make a serious contribution to ICH safeguarding in different ways and this potential needs to be better harnessed and the types of partnerships they can make with both state bodies and communities more clearly identified.

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¹ Convention for the Safeguarding of the Intangible Cultural Heritage (UNESCO, 17 October 2003), online: <<http://unesdoc.unesco.org/images/0013/001325/132540e.pdf>>.

² With the adoption of the Universal Declaration on Cultural Diversity (UNESCO, 2001) and the International Convention for the Safeguarding of the Intangible Cultural Heritage (UNESCO, 2003).

³ Human Rights Council (2011) *Report of the Independent Expert in the Field of Cultural Rights*, Farida Shaheed Human Rights Council Seventeenth session Agenda item 3, 21 March 2011 [UN Doc. A/HR/C/17/38].

⁴ In Article 1 of the 2003 UNESCO Convention on Safeguarding the Intangible Cultural Heritage that sets out the purposes of the Convention.

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- ⁵ See: United Nations (2015) *Realizing the Future We Want for All*, the report of the UN System Task Team on the Post-2015 UN Development Agenda. Available online at: www.un.org/en/development/desa/policy/untaskteam_undf/report.shtml (accessed 14 October 2015).
- ⁶ A first set of draft Operational Directives on Safeguarding intangible cultural heritage and sustainable development were submitted by the Secretariat to the Intergovernmental Committee at its 9th session in 2014 (ITH/14/9.COM/13.b). In its Decision 9.COM 13.b, the Committee decided to examine a revised draft at its 10th session in November 2015 and then submit it for adoption to the sixth session of the General Assembly in 2016.
- ⁷ Ibid.
- ⁸ As indicated in the Universal Declaration on Cultural Diversity (UNESCO, 2001) at Article 3.
- ⁹ Amartya Sen (1999) *Development as Freedom*, Oxford: Oxford University Press. See also: United Nations Development Programme (UNDP) (1994) *Human Development Report*, New York: United Nations Development Programme; and UNESCO (2000) *Change in Continuity – Concepts and Tools for a Cultural Approach to Development*, Paris: UNESCO. (UNDP, 1994; UNESCO, 2000)
- ¹⁰ UNESCO (2000) *Change in Continuity* cited at n.9.
- ¹¹ This is expressed as “development that meets the needs of the present without compromising the ability of future generations to meet their own needs”. World Commission on Environment and Development (WCED) (1987) *Our Common Future*, New York: Oxford University Press.
- ¹² United Nations Conference on Environment and Development (UNCED) (1992) *Final Report and Declaration*, New York: United Nations.
- ¹³ The Biological Diversity Convention adopted at UNCED in Rio in 1992 at the same time as the Rio Declaration also gave a prominent position to “local and indigenous knowledge, practices and innovations” in ensuring environmental sustainability (at Art. 8(j)). UNESCO (1990) in *The Third Medium-Term Plan (1990-95)* (25C/4) recognised at paragraph 215 that cultural heritage was “a living culture of the people” the safeguarding of which “should be regarded as one of the major assets of a multidimensional type of development”.
- ¹⁴ World Commission on Culture and Development (WCCD) (1995) *Our Creative Diversity*, Paris: UNESCO.
- ¹⁵ Objective 1 of (UNESCO, 1998).
- ¹⁶ Objective 3 calls on Member States to renew the traditional conception of heritage to include “all natural and cultural elements, tangible or intangible, which are inherited or newly created. Through these elements social groups recognize their identity and commit themselves to pass it on to future generations in a better and enriched form”.
- ¹⁷ United Nations (2000) *Millennium Declaration*, New York: United Nations, September 2000.
- ¹⁸ Philip Alston (2005) ‘Ships Passing in the Night: The Current State of the Human Rights and Development Debate Seen through the Lens of the Millennium Development Goals,’ *Human Rights Quarterly*, 27:755.
- ¹⁹ United Nations (2006) *Millennium Development Goals Fund (MDG-F)*, information available online at: <http://www.mdgfund.org> (accessed 12 March 2015).
- ²⁰ UNESCO *Convention on the Protection and Promotion of the Diversity of Cultural Expressions*, published in UNESCO *Records of the General Conference*, 33rd session, Paris, 3-21 October 2005, Vol.I, at 83.
- ²¹ Barbara Torggler and Ekaterina Sediakina-Rivière (consultant: Janet Blake) (2013) *Evaluation of UNESCO’s Standard-setting Work of the Culture Sector: Part I – 2003 Convention for the Safeguarding of the Intangible Cultural Heritage*, Paris: UNESCO. Recommendation 3 is to “Enhance cooperation with sustainable development experts for integrating ICH into non-cultural legislation and policy, and for other work related to ICH and sustainable development and Recommendation 5 to “Cooperate with sustainable development experts when supporting State Parties with the integration of ICH into non-cultural legislation and policy, and with other work related to ICH and sustainable development”.
- ²² *The Future We Want*, outcome document of the Rio+20 Document summit held in Rio de Janeiro in 2012, available online at: <http://www.un.org/en/sustainablefuture/> [accessed 22 October 2015].
- ²³ Ibid at p. 13.
- ²⁴ UNESCO (2013) *Hangzhou Declaration: Placing Culture at the Heart of Sustainable Development Policies*, adopted in Hangzhou, People’s Republic of China, on 17 May 2013. Text available online at: <http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/images/FinalHangzhouDeclaration20130517.pdf> (accessed 14 October 2015).
- ²⁵ Janusz Symonides (1998) ‘Cultural rights: a Neglected Category of Human Rights,’ *International Social Science Journal* 50: 559–71.
- ²⁶ Erica-Irene Daes (1997) *The Protection of the Heritage of Indigenous People*, Geneva/New York: United Nations.
- ²⁷ United Nations General Assembly (UNGA) (2007) Declaration on the Rights of Indigenous Peoples (United Nations, 2007) available online at: www.un.org/esa/socdev/unpfi/documents/DRIPS_en.pdf (accessed 14 October 2015).

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- ²⁸ Most commonly framed in relation to the rights of cultural minorities and indigenous people within unitary States.
- ²⁹ Here, a social group might be a gender-based one with shared cultural elements while a community is usually a larger entity, based on linguistic, ethnic and/or religious affiliations.
- ³⁰ William Connor (1994) 'A Nation is a Nation, is a State, is an Ethnic Group, is a ...' ch.7 in John Hutchinson and Anthony D. Smith (eds.) *Nationalism*, Oxford: Oxford University Press at pp. 34-6.
- ³¹ Benedict Anderson (1994) 'Imagined communities,' in J. Hutchinson and A.D. Smith (eds.) *Nationalism* Oxford: Oxford University Press at pp. 89-95.
- ³² Eric Hobsbawm (1994) 'The Nation as an Invented Tradition' ch.12 pp. in John Hutchinson and Anthony D. Smith (eds.) *Nationalism*, Oxford: Oxford University Press at 76-82. An example of such nation-building on the basis of a mythological link with the past is the false identification of the (post-Ottoman) modern Republic of Turkey (founded by Mustafa Kemal Atatürk in 1923) with ancient Anatolia and the Hittites
- ³³ Anthony D. Smith (1994) 'The Origins of Nations' ch.22 in John Hutchinson and Anthony D. Smith (eds.) *Nationalism*, Oxford: Oxford University Press at pp. 147-154. This is a fact explicitly recognised in many, if not most, national cultural heritage statutes and often in national Constitutions.
- ³⁴ Forms of bagpipes have been inscribed on the Serbian and Iranian national ICH lists, for example.
- ³⁵ Eugene Kamenka (1988) 'Human rights: peoples' rights,' in James Crawford (ed.) *The Rights of Peoples* Oxford: Clarendon Press at pp.127-40 explained this relationship as follows: '... the importance to human beings of the sense of identity, given not so much by material improvement, but by customs and traditions, by historical identification, by religion ... [That sense of identity] is, for most people, essential to their dignity and self-confidence, values that underlie in part the concept of human rights itself'.
- ³⁶ Human Rights Council (2010) "Report of the independent expert in the field of cultural rights (Farida Shaheed)" submitted pursuant to resolution 10/23 of the Human Rights Council, adopted at the 14th session of the Human Rights Council, 22 March 2010 [Doc. A/HRC/14/36].
- ³⁷ *Intangible Cultural Heritage – a Mirror of Cultural Diversity*, Final Declaration of the 3rd Round Table of Ministers of Culture, Istanbul, 16-17 Sept.2002 at Para.1.
- ³⁸ Ana Filipa Vrdoljak (2014) 'Human Rights and Cultural Heritage in International Law' in Federico Lenzerini and Ana Filipa Vrdoljak (eds.) *International Law and Common Goods—Normative Perspectives on Human Rights, Culture and Nature*, New York: Hart Publishing.
- ³⁹ Article 4.
- ⁴⁰ William S. Logan 'Cultural Diversity, Cultural Heritage and Human Rights: Towards Heritage Management as Human Rights-based Cultural Practice,' *International Journal of Heritage Studies - Special Issue on World Heritage and Human Rights: Preserving our Common Dignity through Rights Based Approaches*, vol. 18, no. 3 (2012): pp. 231-44.
- ⁴¹ In response, the Global Strategy for the World Heritage List was introduced in 1994. See: Sophia Labadi (2005) 'A review of the Global Strategy for a balanced, representative and credible World Heritage List 1994-2004' *Conservation and Management of Archaeological Sites*, 7(2): 89-102. Available online at: <http://www.maneyonline.com/doi/abs/10.1179/135050305793137477> (accessed 14 October 2015).
- ⁴² Several terms have been used, some more appropriately than others, to cover this aspect of heritage, such as 'traditional culture', 'folklore', 'traditional folk culture', 'popular culture', 'living culture' etc.
- ⁴³ For example, Bolivia had proposed, during its negotiation, that the 1972 Convention should cover tangible and intangible cultural heritage as well as natural heritage.
- ⁴⁴ Lynn Meskell (1998) 'Introduction: Archaeology Matters,' in Lynn Meskell (ed.) *Archaeology Under Fire* London: Routledge, pp.1-12 notes at p.8 "the contradictory tendencies of globalisation and localisation existing side by side."
- ⁴⁵ Much as the monumental cultural and archaeological heritage have traditionally been employed by States to foster a sense of national cultural identity that legitimizes the State itself.
- ⁴⁶ The relevant part of Article 2(1) reads: "This intangible cultural heritage ... is constantly recreated by communities and ... provides them with a sense of identity and continuity For the purposes of this Convention, consideration will be given solely to such intangible cultural heritage as is compatible with existing international human rights instruments, as well as with the requirements of mutual respect among communities, groups and individuals, and of sustainable development. Moreover, the criteria for inscription of elements on the Representative and Urgent Safeguarding Lists of the Convention share the common criterion 1, as follows: "The element constitutes intangible cultural heritage as defined in Article 2 of the Convention".
- ⁴⁷ As discussed in Janet Blake (2014) 'Gender and Intangible Cultural Heritage', in UNESCO *Gender Equality—Heritage and Creativity*, Paris: UNESCO.
- ⁴⁸ Article 5 of Convention on the Elimination of All Forms of Discrimination against Women (UN, 1979) [1249 UNTS 13; reprinted in 19 I.L.M. 33 (1980)] clearly states that States Parties "shall take all appropriate measures to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination

of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.”

⁴⁹ Committee on Economic, Social and Cultural Rights (CESCR) General Comment 21 on *The right of everyone to take part in cultural life (art. 15, para. 1 (a), of the International Covenant on Economic, Social and Cultural Rights)* adopted at the Forty-third session of the Committee on Economic, Social and Cultural Rights 2–20 November 2009 [Doc. E/C.12/GC/21 of 21 December 2009] at paragraph 19.

⁵⁰ To use Richard Dworkin’s terminology from *Law’s Empire*, London: Fontana (1986), in which he suggests that individual human rights act as a ‘trump’ card that defeats all other rights in such a situation. For more on this, see: James W. Nickel (2007) *Making Sense of Human Rights*, 2nd ed. London: Blackwell Publishing.

⁵¹ Statement by a group of United Nations experts on the World Day on Cultural Diversity for Dialogue and Development, 21 May 2010 cited in Human Rights Council (2012) cited n.36 which reflects the position taken in the General Comment to Article 27 of the ICCPR.

⁵² Yvonne Donders (2007) ‘The legal framework of the right to take part in cultural life’ in Yvonne Donders and Vladimir Volodin (eds.) *Human Rights in Education, Science and Culture – Legal developments and Challenges* Paris: UNESCO Publishing 231-272 at p.241 suggests that “an appropriate criterion could be that cultural practices should not be in conflict with the value of human dignity”. This would, however, require a common understanding of human dignity.

⁵³ In Human Rights Council (2010) cited n.36 at para.36, Shaheed suggests a national-level identification process founded upon a legal framework that indicates the principles on the basis of which cultural rights may be limited.

⁵⁴ Male circumcision is a notable exception to this rule in the human rights literature, while tattooing and tribal scarring may be seen as questionable practices.

⁵⁵ This is discussed in detail in Janet Blake and Nasser Ali Azimi (2007) ‘Women, gender and intangible cultural heritage,’ in Janet Blake (ed.) *Safeguarding Intangible Cultural Heritage*, Leicester: Institute of Art and Law pp. 175-198.

⁵⁶ The United Nations Sustainable Development 2015 adopted the new *2030 Agenda for Sustainable Development* Summit on 25 September which includes the 17 sustainable development goals. For more on these, see: <http://www.undp.org/content/undp/en/home/mdgoverview/post-2015-development-agenda/> (accessed 14 October 2015).

⁵⁷ A ‘thematic think piece’ presented by UNESCO to the UN System Task Team on the Post-2015 UN Development Agenda: UNESCO (2012). *Culture: a driver and an enabler of sustainable development*, Thematic Think Piece, available at <https://en.unesco.org/post2015/sites/post2015/files/Think%20Piece%20Culture.pdf> [accessed 14 October 2015].

⁵⁸ Nine international civil society and governmental networks (including the Committee on Culture of United Cities and Local Governments (UCLG), the International Federation of Coalitions for Cultural Diversity (IFCCD), Culture Action Europe, ICOMOS and the International Federation of Library Associations and Institutions (IFLA)) joined forces in the ‘Culture 2015 Goal’ campaign, which has called for the inclusion of culture in the SDGs. See: <http://www.culture2015goal.net> [accessed 14 October 2015].

⁵⁹ IFACCA, UCLG, IFCCD and IFACCA (2013). *Culture as a Goal in the Post-2015 Development Agenda*, p. 6. Available at <http://www.culture2015goal.net/index.php/docman/2015goals/1-cultureasgoal-eng> [accessed 14 October 2015]

⁶⁰ UNESCO (2012) cited n.70.

⁶¹ This notion has been recognised by the Faro Convention (2005) which defines cultural heritage as “... a *group of resources* inherited from the past which people identify, independently of ownership, as a reflection and expression of their constantly evolving values, beliefs, knowledge and traditions”. Council of Europe Framework Convention on the Value of Cultural Heritage for Society (Faro Convention) (2005), available online: conventions.coe.int/Treaty/en/Treaties/Html/199.htm. On the capability approach to development, see: Arjun Appadurai (2004) ‘The Capacity to Aspire: Culture and the Terms of Recognition’ in Vijayendra Rao and Michael Walton (eds.) *Culture and Public Action*, Washington and Palo Alto: The World Bank and Stanford University Press.

⁶² The Operational Directives (as revised in the 2014 version) simply encourage the media “... to contribute to raising awareness about the importance of the intangible cultural heritage as a means to foster social cohesion, sustainable development and prevention of conflict, in preference to focusing only on its aesthetic or entertainment aspects...” and urge States Parties to manage tourism in a sustainable way that does not put the concerned ICH at risk.

⁶³ The Periodic Reports submitted thus far to the Intergovernmental Committee of the Convention (in the 2011-2014 reporting cycles) are available online in French and English at:

⁶⁴ Torggler and Sediakina-Rivière cited n.21.

⁶⁵ The Convention on Promotion and Protection of the Diversity of Cultural Expressions (UNESCO, 2005) that focuses on cultural goods and service and the cultural industries.

⁶⁶ Specifically provided for in Articles 11(b), 12 and 15, but also made clear in the definition of ICH (Art. 2(1)) whereby the community is defined in relation to its ICH and vice versa.

⁶⁷ As stated by Mali in its Periodic report submitted to the Seventh session of the Intergovernmental Committee for the Safeguarding of the Intangible Cultural Heritage, UNESCO Headquarters, December 2012. This and other Periodic Reports are available on the UNESCO website at:
<http://www.unesco.org/culture/ich/index.php?lg=en&pg=00460>.

⁶⁸ Antonio Arantes (2007) 'Cultural diversity and the politics of difference in safeguarding Intangible Cultural Heritage,' ch.6 in Janet Blake (ed.) *Safeguarding Intangible Cultural Heritage – Challenges and Approaches* Leicester: Institute of Art and Law.

⁶⁹ Human Rights Council (2010) cited n.36 at paragraph 79.

⁷⁰ Ibid at paragraph 61 notes: "However, varying degrees of access and enjoyment may be recognized, taking into consideration the diverse interests of individuals and communities depending on their relationship to specific cultural heritages". The right to take part/participate in cultural life is expressed in Article 15 (1) of the International Covenant on Economic, Social and Cultural Rights.

⁷¹ Ibid at paragraph 62.

⁷² As required by Articles 11, 12 and 15 of the Convention.

⁷³ "Intangible cultural heritage" is defined in Art. 2(1) with direct reference to the "communities, groups and individuals" to which it belongs: "means the practices, representations, expressions, knowledge, skills – as well as the instruments, objects, artefacts and cultural spaces associated therewith – *that communities, groups and, in some cases, individuals recognise as part of their cultural heritage*. This intangible cultural heritage ... provides them with a sense of identity and continuity, thus promoting respect for cultural diversity and human creativity..." (Emphasis added).

⁷⁴ Assigning significance to heritage is often a very contentious question as Deacon, Harriet and Olwen Beasley (2007) make clear in 'Safeguarding Intangible Heritage Values under the World Heritage Convention: Auschwitz, Hiroshima and Robben Island' in Janet Blake (ed.) *Safeguarding Intangible Cultural Heritage—Challenges and Approaches* edited by (UK: Institute of Art & Law, 2007).

⁷⁵ See: Laurajane Smith (2007) *The Uses of Heritage*, New York: Routledge on the concept of Authorised Heritage Discourse (AHD).

⁷⁶ Chapter III of the *Directives* sets out guidelines for States to ensure participation in the implementation of the Convention at paragraphs 79-89, addressing 'Participation of communities, groups and, where applicable, individuals, as well as experts, centres of expertise and research institutes'). *Operational Directives for the Implementation of the Convention for the Safeguarding of the Intangible Cultural Heritage*, adopted by the General Assembly of the States Parties to the Convention at its second session (UNESCO Headquarters, Paris, 16 to 19 June 2008), amended at its third session (UNESCO Headquarters, Paris, 22 to 24 June 2010), its fourth session (UNESCO Headquarters, Paris, 4 to 8 June 2012) and its fifth session (UNESCO Headquarters, Paris, 2 to 4 June 2014).

⁷⁷ Ibid at paragraph 80.

⁷⁸ This may be slowly changing. For example, Maharana of Mewar Charitable Foundation and UNESCO New Delhi held the *Second International Conference on Living Heritage* on 13 to 16 March 2014 in City Palace, Udaipur, Rajasthan and chose as its main theme various approaches towards the promotion of living heritage and its integration in urban space and structures. The conference programme is available online at: <http://www.eternalmewar.in/WLHF/Index.shtml>

⁷⁹ UN Department of Economic Affairs, Population Division (2014); World Urbanization Prospects. The 2014 Revision. Available at: <http://esa.un.org/unpd/wup/FinalReport/WUP2014-Report.pdf>

⁸⁰ This is not always the case and the children of migrant Chanka communities to big cities in Peru show great interest in performing the Scissors Dance. Periodic Report submitted by Peru to the Intergovernmental Committee in December 2012.

⁸¹ As noted by Croatia in its Periodic Report no.00787/Croatia adopted by the Intergovernmental Committee for the Safeguarding of the Intangible Cultural Heritage at its seventh session held in Paris, France, December 2012.

⁸² Inscribed on the Representative List of the Intangible Cultural Heritage of Humanity (RL) by Argentina and Uruguay in 2009. It was judged to fulfil criterion R.1 since it is "considered one of the main manifestations of identity for the inhabitants of the Río de la Plata region". Information available online at: <http://www.unesco.org/culture/ich/index.php?lg=en&pg=00011&RL=00258> [accessed 25 April 2014].

⁸³ Nomination file no. 00563 for Inscription on the Representative List of the Intangible Cultural Heritage of Humanity in 2011 adopted by the Intergovernmental Committee in November 2011. The nomination file also mentions that Fado is "a practice deeply ingrained in the daily life of the local communities in the older neighbourhoods of Lisbon, such as Alcântara, Alfama, Bairro Alto, Bica, Madragoa, Mouraria and others. It was also carried into other cities of Portugal as well as into the Portuguese migrant communities abroad".

⁸⁴ Under Arts. 11(b) and 15 in particular.

⁸⁵ Periodic Report no. 00779/Lithuania adopted by the Intergovernmental Committee for the Safeguarding of the Intangible Cultural Heritage at its seventh session which was held in Paris in December 2012.