



## Chapter I

# Implementation of 2003 Convention and International Cooperation



# Implementing the 2003 Convention and Its Safeguarding Measures

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## Abstract

This paper begins by reviewing the current implementation of the 2003 Convention at the international level, notably its ratification status and the inscriptions on its two lists—the Urgent Safeguarding List and the Representative List—as well as on the Register of Best Safeguarding Practices. It then examines how procedures to process nominations and inscriptions on the lists and register have been improved and rationalised since drawing up the first version of the Operational Directives in 2008.

The paper takes note of the significance of the capacity-building activities undertaken by the UNESCO Secretariat. It then addresses the implementation of the Convention at the national level on the basis of the First Periodical Reports on the implementation of the Convention that have recently been submitted to the Committee. Various fundamental issues are brought to light.

Finally, the paper discusses the importance of distributing tasks among the three East-Asian Category 2 Centres for the implementation of the 2003

Convention in the Republic of Korea, the People's Republic of China, and Japan and underscores the significant roles that have been entrusted to the information and networking centre in the Republic of Korea.

The Convention for the Safeguarding of the Intangible Cultural Heritage (henceforth, the 2003 Convention), which was adopted in 2003 and entered into force in 2006, has been implemented swiftly in its inaugural phase. The Convention already has 138 States Parties, and, since its entry into force in 2006, six regular sessions of the Intergovernmental Committee have been held in addition to two extraordinary sessions. The Committee finalised the Operational Directives governing the Convention in 2008, these being fundamental to its implementation, and it has inscribed 232 elements of Intangible Cultural Heritage on two lists: the List of Intangible Cultural Heritage in Need of Urgent Safeguarding (henceforth, the Urgent Safeguarding List) and the Representative List of the Intangible Cultural Heritage of Humanity (henceforth, the Representative List), together with the Register of Best Safeguarding Practices.

In the initial stages of the implementation of the Convention at the international level, the Committee sought to improve the methods by which it was implemented and notably the management of the lists by drawing lessons from experiences gained in the three cycles of inscription since 2009. The Committee rationalised the timetable for the submission of nominations and improved their methods of treatment while also taking steps to ensure that a reasonable number of nominations were evaluated at each session. Particularly concerned about a possible thematic and geographical imbalance among the nominations, the Committee felt there was an urgent need to redress the balance. It, therefore, decided to strengthen capacity-building activities in countries that have few or no nominations due to their lack of financial or technical capacity and expertise.

With regard to the implementation of the Convention at the national level, the Sixth Session of the Committee, held in Bali last week, examined, for the first time, five Periodical Reports on the implementation of the Convention submitted by states that became States Parties in 2004 (Algeria, the Central African Republic, China, Japan, and Mauritius: ITH/11/6.COM/CONF. 206/6).

In this paper, I will discuss the implementation of the 2003 Convention and its safeguarding measures by looking at the following issues.

- i) The implementation of the 2003 Convention at the international level
- ii) The implementation of the 2003 Convention at the national level
- iii) The roles of the Category 2 Centres in the Asia-Pacific region, notably the International Information and Networking Centre for Intangible Cultural Centre in the Asia-Pacific Region under the auspices of UNESCO for the implementation of the 2003 Convention

## I. Implementation of the 2003 Convention at the International Level

### 1. Ratification

For a Convention to be universally implemented, it is crucial for it to be supported by a large number of States Parties. The rate of ratification of the 2003 Convention by the Member States of UNESCO has been much higher than that of any other UNESCO Convention. Its ratification by 30 Member States in just two years and three months has allowed the Convention to enter into force at record speed. This shows the strong interest among Member States in the Intangible Cultural Heritage in general and in the Convention in particular. Today, 26 out of 138 States Parties to the Convention are from the Asia and Pacific Region. The announcement by Palau that it had recently ratified the Convention was warmly welcomed at the last General Conference of UNESCO. A further 23 countries from the Region have also been invited to join the Convention as rapidly as possible.

### 2. Nomination and Inscription

Thus far, 27 elements have been inscribed on the Convention's Urgent Safeguarding List, of which 12 were inscribed in 2009, 4 in 2010 and 11 in 2011. On the Representative List, 232 elements have been inscribed, of which 76 were inscribed

in 2009, 47 in 2010, and 19 in 2011 with a further 90 being added to the List in 2008 from the former Masterpieces of the Oral and Intangible Heritage of Humanity. On the Register of Best Safeguarding Practices, 8 elements have been inscribed of which 3 were inscribed in 2009 and 5 in 2011. The total number of inscribed elements today stands at 267.

The majority of nominations have been made to the Representative List, and the clear numerical imbalance between the two lists appears to have been caused by a lack of comprehension of the principal purpose of the 2003 Convention, which is ICH safeguarding. However, above all, many states seem to have confused the 2003 Convention with the World Heritage Convention, in which the inscription onto the Endangered List is regarded as a penalty, and therefore a source of shame for the country concerned.

An impressive number of nomination files have been addressed to the Representative List (111 in 2009 and 147 in 2010), which is proof of the enthusiasm of States Parties for the Convention. This overwhelming number of nominations was, however, beyond the capacity of the Secretariat and the Subsidiary Body and Committee to process ‘responsibly and credibly’ (Decision 5.COM 7). A breakdown of the nominations to this list also reveals a significant geographical imbalance between regions. Out of 111 nominations to the list in 2009, 61 (54 percent) were from Asia while only 5 were from the African region, which is made up of 53 countries. Of the 107 nominations expected to be evaluated by the Committee in 2010, 84 (78.5 percent) were submitted by Asian countries while no nomination was submitted from the African region. Out of the 49 nominations processed at the 2011 Session, 30 were from Asian countries (61 percent).

### **3. Improvement to Procedures for Nomination, Examination and Evaluation of Elements and their Inscription on the Lists and Register**

The General Assembly of States Parties to the Convention decided in June 2010, upon the recommendation of the Committee at its 2009 Session, to rationalise the treatment of nominations by adopting a single timetable for the Convention’s four mechanisms: the two lists, the Register of Best Safeguarding Practices, and requests for international assistance over US\$25,000. Under the previous system, each list and request was a different timetable, leading to possible confusion.

During its Fifth Session in November 2010, the Committee decided to establish a Consultative Body, consisting of six specialised NGOs and six individual experts, which would apply a single examination system to nominations to the Urgent Safeguarding List, proposals for the Register of Best Safeguarding Practices, and requests for international assistance (Decision 5.COM 9), each mechanism previously having had a different and cumbersome examination procedures.

It had been found necessary to reduce the excessive number of nominations to the Representative List to guarantee their 'responsible and credible' examination and evaluation by the Committee, Subsidiary Body, and Secretariat. At its Fourth Session in 2010, the Committee, therefore, requested the Secretariat 'to process between thirty-one and fifty-four nominations to the Representative List (for inscription in 2011)... in priority multi-national nominations and those submitted by States Parties that do not have elements inscribed on the Representative List or have few elements inscribed on it' (Decision 5.COM 7).

At its Sixth Session in 2011, the Committee, having extensively discussed the question of the credibility of the Convention, expressed its concerns about the existing mechanism for examining nominations to the Representative List. It expressed its concern that the mechanism for the treatment of nominations currently in force could jeopardise the credibility of the Convention, given that the Subsidiary Body was acting as both judge and judged. The Committee, therefore, decided to replace the Subsidiary Body by the Consultative Body, which is composed of independent experts and NGOs. It thus decided that nominations, proposals, and requests for the four mechanisms should be examined by the same Consultative Body at the same level of scientific rigour.

The same session of the Committee decided that for the 2012 cycle it could evaluate a maximum of 60 nominations for the four mechanisms, taking into account the capacity of the Secretariat, the Subsidiary Body, and the Committee to guarantee equality of treatment for nominations, given that as many as 214 submissions for the four mechanisms had been received by the Secretariat. To ensure geographical balance among the elements nominated to the four mechanisms, the Committee also decided that multinational files, files from states having no element inscribed, no proposals elected, or no international assistance request approved, should be treated in priority. However, it also decided that the Committee should seek to examine, to the extent that this was possible, at least one element from each submitting state.

These improvement measures decided by the Committee will be reflected in amendments to the Operational Directives of the Convention, upon their approval by the General Assembly at its Fourth Session in June 2012.

#### **4. Capacity Building**

Thanks to the decision of the Committee to give the highest priority to strengthening capacities for implementing the Convention at the national level and to authorise the General Assembly of the States Parties (2010) to use the Intangible Cultural Heritage Fund to develop capacity-building activities worldwide, the Secretariat has been able to finalise guidelines and manuals for use on training courses on the following topics, to be organised in order of priority: (i) ratification, (ii) implementation of the Convention at the national level, (iii) community-based inventorying, and (iv) drafting nominations to the Urgent Safeguarding List. Between January and April 2011, six UNESCO ‘training of trainers’ workshops were held in Beijing, Harare, Libreville, Sofia, Havana, and Abu Dhabi. The purpose of the workshops, attended by a network of sixty-five regional experts as well as UNESCO staff responsible for culture in different regional offices, was to familiarise those attending with the above-mentioned guidelines and manuals. As a follow-up to these workshops, a number of national training courses are currently being organised worldwide, giving priority to the first and second topics, which are the ratification of the Convention and its national implementation.

## **II. Implementation of the Convention at the National Level**

The Convention obliges States Parties to submit reports to the Committee on the legislative, regulatory, and other measures taken to implement it (Article 29). The Operational Directives stipulate that States Parties should submit such Periodical Reports every six years, and that these should contain information not only on the implementation of the Convention but also on the status of elements inscribed on the Representative List. Accordingly, the seven states that ratified the Convention in

2004 were expected to submit their reports to the Sixth Session of the Committee in 2011. Out of these seven countries, five—Algeria, the Central African Republic, China, Japan, and Mauritius—have submitted reports. These revealed the points described below.

First, with respect to institutional capacities, different countries have been adopting different approaches, including a centralised approach (China and Algeria) and a decentralised approach (Japan). State funding, however, seems to play a crucial role in both centralised and decentralised approaches.

Second, when viewed from a legal point of view, it is interesting to note that those countries (Japan and Algeria) whose laws on ICH date from before the adoption of the Convention have not modified their legislation to adapt it to the Convention's requirements.

Third, lacunae in human resources for ICH management have been generally observed, and there is a need for further training. Countries seem to have satisfactory facilities regarding documentation.

Fourth, different approaches have been identified in the methods countries used when drawing up inventories. These include national inventories (Japan, China, and Mauritius), territorial inventories (Algeria), and thematically structured inventories (Mauritius) as well as those using a geographical structure (Algeria), an ethnic one (the Central African Republic), or both (China). In developing their inventories, countries seem to have encountered difficulties in securing the full participation of the communities concerned when obtaining the consent of bearers/practitioners and ensuring respect of customary practices relating to accessing certain aspects of ICH and the availability of data collected.

Fifth, most countries have promoted transmission activities by recognising tradition bearers, who are granted incentives for transmitting their know-how to the young. Some countries (China and Algeria) integrate ICH into school curricula. An interesting example was reported from Japan, where distinct modes of transmission applied to different genres of ICH: a non-formal mode of transmission for folklore and a formal mode of transmission for professional institutions.

It is also worth noting that safeguarding tangible elements linked to ICH, such as cultural and natural spaces (rainforests for the Aka Pygmies), places of memory (Mauritius), tools, instruments, costumes, masks, and raw materials, were generally considered pivotal to ICH safeguarding.

Forms of bilateral, regional, and international cooperation have also begun



to be promoted, including the recent establishment of Category 2 Centres in the Republic of Korea, China, and Japan.

The reports submitted by the five countries mentioned above on the status of elements inscribed on the Representative List indicate the difficulties these countries have experienced in maintaining the viability of ICH. They reveal that the viability of transmission mechanisms can be a more valid indicator of an element's viability than the number of bearers/practitioners (Japan). The viability of ICH in general has been challenged by socio-economic and environmental changes, such as changes in intergenerational relations, increased urbanisation, rural exodus, emigration, and the weakening of traditional methods of transmission. While international recognition can increase group cohesion, the pride of the community concerned and respect for minority cultures, raising awareness of the need to safeguard ICH and the desire to do so, such recognition can also attract unsuitable public attention, generating excessive commercialisation and a lack of respect for customary practices. Japan (Koshikijima No Toshidon) and the Central African Republic (Aka Polyphony) reported measures to mitigate risks arising from excessive media or public attention, such as regulating the access of tourists and researchers or banning photography and filming.

In some cases, efforts have been deployed to increase the visibility of elements following their international recognition. China has promoted traditional crafts (Xuan papermaking and calligraphy) among the general public, for example, in order to increase recognition of the value of the craftsmanship.

Finally, the first round of periodical reporting also raised other important and various issues at stake. Only a few reporting countries seemed to be concerned with the protection of the intellectual property rights (IPRs) of ICH bearers and practitioners, for example, when compiling documentation and recordings for inventorying or preparing nominations and promotional activities. Though the protection of IPRs is not within the mandate of the 2003 Convention, it is an obligation of States Parties that are party to any international instrument related to IPRs (Article 3(b) of the Convention and Paragraph 104 of the Operational Directives).

A further worrying trend that appeared in the reports was that many States Parties seemed to understand ICH as being a component of national identity. This is contrary to the Convention, which aims to promote cultural diversity.

### III. Roles of Category 2 Centres in the Asia-Pacific Region

At its 35th Session in 2009, the UNESCO General Conference approved the establishment of three Category 2 Centres in the Republic of Korea, China, and Japan under the auspices of the UNESCO to promote regional cooperation in ICH safeguarding. These three Centres have complementary mandates: the Centre in the Republic of Korea is responsible for information and networking, that in China for training, and that in Japan for promoting research into practices and methodologies for safeguarding the endangered Intangible Cultural Heritage in the Asia-Pacific Region.

I was privileged enough to undertake a feasibility study for establishing two of these three Centres, those in the Republic of Korea and China. Prior to the study, the Republic of Korea and China had submitted requests to the UNESCO Executive Board at its 179th Session (April 2008) to establish Category 2 Centres for ICH safeguarding in their respective countries. Japan had also announced its intention to propose establishing in Japan a third such Centre at the same Session. The UNESCO Executive Board, wanting to understand why two such Centres having the same purposes and functions were to be established in the East Asian sub-region, requested the Director-General to carry out a feasibility study, ‘indicating clearly the specialisations of both Centres’ (179EX/44 and 179 EX/46). In 2008, representatives of the Republic of Korea, China, and Japan met to define the forms of cooperation and respective specialisations of the three Centres.

Looking back on the procedure behind the creation of the three Centres, it is impossible to deny their importance in carrying out their designated specialisations. Although the three Centres have more or less the same objectives—(i) to promote the 2003 Convention, (ii) to increase the participation of communities, (iii) to enhance capacities for ICH safeguarding the Intangible Cultural Heritage, and (iv) to foster regional and international cooperation—their specific functions are different.

The Information and Networking Centre in Korea has numerous functions, including:

- (1) to establish an information system to ensure the effective management of ICH data through the construction of a database to support the ICH identification and documentation, to conserve and digitise archival materials, and to support the development of meta-data standards;
- (2) to use accumulated ICH data for dissemination, to produce and publish informational and promotional materials and to promote the protection of the IPRs of ICH bearers and practitioners who are included in documentation and recordings carried out for inventorying, nomination, and informational materials;
- (3) to build networks among the communities, groups, and individuals concerned to reinforce ICH transmission and dissemination, notably by organising public events and meetings (of communities, groups, and individuals) at the regional and international levels; and
- (4) to strengthen international and regional networks for exchanging knowledge and information.

All these functions need to be carried out fully to ensure the successful implementation of the 2003 Convention. However, the first round of periodical reporting revealed that measures to promote the protection of IPRs of practitioners and creators included in documentation and informational materials had not always been observed among the reporting States Parties. It is now up to the Korean Category 2 Centre to play a leading role in this domain.

## IV. Conclusion

Eight years after its adoption, the Convention for the Safeguarding of the Intangible Cultural Heritage is passing from an initial experimental phase to a second developmental phase. Capacity-building activities have been solidly established by the UNESCO Secretariat, and the Sixth Session of the Intergovernmental

Committee, which closed in Bali yesterday, finalised amendments to the methods of processing nominations to the Convention's two lists, proposals to the Register of Best Safeguarding Practices and requests for international assistance above US\$25,000. The Committee has inscribed a total of eleven elements on the Urgent Safeguarding List, nineteen on the Representative List, and five on the Register of Best Safeguarding Practices. Problems identified in the first and second cycle of inscriptions in 2009 and 2010, such as a possible thematic or geographical imbalance among the lists and the inscribed elements, seem to be being progressively resolved. We may now consider that implementing the Convention at the international level is on the right track.

The next urgent task that needs to be tackled is strengthening Convention implementation at the national level. In this respect, the International Information and Networking Centre for Intangible Cultural Heritage in the Asia-Pacific Region under the auspices of UNESCO in Korea could play a significant role by establishing an effective information system that would link the countries of the Asian-Pacific region. This would provide pivotal support to the countries of the region in fostering activities for ICH safeguarding.