

# I . Safeguarding System & Policy

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## 1. National Legislations

Although there is still no specific national legislation in Fiji focusing on the protection of intangible cultural heritage (ICH), there are national instruments in place which indirectly can be attributed to provide legal protection.

### 1) Constitution of the Republic of Fiji (2013)

The supreme law of Fiji was passed in 2013 by the President of the Republic of Fiji before the National Elections in 2014. It contained specific provisions that guarantee and strengthen the protection of communally-owned iTaukei, Rotuman and Banaban lands. For Pacific Islanders land and culture are intrinsically linked. The preamble to the constitution specifically mentions the safeguarding of cultures, customs, traditions and language of all Fijians, and the protection of land of the indigenous communities – iTaukei and Rotuman. Excerpt below<sup>1</sup>:

WE, THE PEOPLE OF FIJI,

- *RECOGNISING the indigenous people or the iTaukei, their ownership of iTaukei lands, their unique culture, customs, traditions and language;*
- *RECOGNISING the indigenous people or the Rotuman from the island of Rotuma, their ownership of Rotuman lands, their unique culture, customs, traditions and language;*
- *RECOGNISING the descendants of the indentured labourers from British India and the Pacific Islands, their culture, customs, traditions and language; and*
- *RECOGNISING the descendants of the settlers and immigrants to Fiji, their culture, customs, traditions and language,*

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<sup>1</sup> Extracted from the Republic of Fiji Constitution 2013

Fiji's constitution was revised and amended four times until the current which promotes a unified Fijian society respecting all races, ethnicities and cultures in Fiji. The Constitution of Fiji is under the responsibility of the Office of the Prime Minister of Fiji.

- Responsible Institution:

**Mr. Yogesh Karan**

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- Source of Information:

- Office of the Prime Minister official website<sup>2</sup>
- The Fijian Government official website<sup>3</sup>
- Government of Fiji Gazette Supplement (25th September, 2014)<sup>4</sup>

## **2) Draft Law for the Protection of Traditional Knowledge and Expressions of Culture (TKEC)**

The Ministry of iTaukei Affairs had in 2011 prepared the Traditional Knowledge & Expressions of Culture (TK&EC) draft legislation which is currently being edited and vetted by the Office of the Attorney General in Fiji. The 24 part legislation is directly linked to the safeguarding of intangible cultural heritage of the indigenous people of Fiji. The core of the legislation addresses communal intellectual property and the issue of custodianship of TKEC hence proposes to establish amongst other things, the following:

- The Traditional Knowledge & Expressions of Culture Authority, Fiji
- Fiji Traditional Knowledge & Expressions of Culture Trust Fund
- Principle, Objective, Scope & Criteria of Protection
- Rights to Traditional Knowledge & Expressions of Culture
- Non Customary use & applications for access and use of Traditional Knowledge & Expressions of Culture
- Benefit and sharing agreement

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<sup>2</sup> <http://www.pmooffice.gov.fj/>

<sup>3</sup> <http://www.fiji.gov.fj/Government-Directory/Government-Who-s-Who.aspx>

<sup>4</sup> <http://www.fiji.gov.fj/getattachment/e77a27f9-3351-4d6b-bc2a-c6c9ff84063e/%28Section-92%283%29-FIJI-MINISTERIALASSIGNMENT.aspx>

- Valuation of Traditional Knowledge & Expressions of Culture

The proposed legislation emanates from the Model Law on TKEC which was approved by Culture Ministers in the Pacific in 2002 for countries to either adopt or adapt aspects of the legislation. Through a Regional Traditional Knowledge Action Plan approved and managed by the Pacific Islands Forum Secretariat (PIFS), with technical assistance rendered through a partnership arrangement between the African, Caribbean, Pacific – European Union TradeCom Facility, WIPO, PIFS, Secretariat of the Pacific Community (SPC) and South Pacific Regional Environmental Programme (SPREP), Fiji was able to complete its draft Policy on TKEC including the draft Legislation on TKEC protection.

Should the draft legislation be passed, the Minister responsible for iTaukei Affairs will be responsible for its implementation and management of the Act.

- Responsible Institution:

**Mr. Naipote Katonitabua**

- **Ministry:** Ministry of iTaukei Affairs
- **Authority:** Permanent Secretary
- **Telephone:** (679) 3100 909
- **Address:** iTaukei Trust Fund Building Complex (North Wing),87 Queen Elizabeth Drive, Suva

- Source of Information:

**Mrs. Emi Bainimarama**

- **Institution:** iTaukei Institute of Language & Culture, Ministry of iTaukei Affairs
- **Designation:** Acting Director
- **Address:** iTaukei Trust Fund Building Complex (North Wing),87 Queen Elizabeth Drive, Suva
- **Email:** ebainimarama@govnet.gov.fj.

### 3) ITAUKEI LANDS ACT [CAP 133]

In 1880, there established was a Commission set up to primary look into the registration of native lands, its ownership, and the classification of customary roles and migration records of communal units – the former was the Native Lands & Fisheries Commission (now ITAUKEI LANDS & FISHERIES COMMISSION) which still exists and is under the Ministry of iTaukei Affairs. The said Commission pursues its mandated tasks through ITAUKEI AFFAIRS ACT (looking into land boundaries registration & issues) and FISHERIES ACT (addressing fishing boundaries registration & issues).

In essence, the registration process facilitated is similar to inventorying ICH or cultural mapping as information collected to facilitate an entry including land boundary sort includes old stories, lineage, traditional house boundaries and its occupants, totemic plant and animal, kin-relational information etc. The ethnological process involved alluded to in the Act relates that:

“...owners of the land to mark off the boundaries upon the ground where there is no natural boundary by planting lines of trees or placing boundary stones or in any such other way as the Commission may order so that the written description given in the register can be followed without difficulty...”

Furthermore, the boundaries of land and names of owners are required by law to be recorded and surveyed as per Clause 9(1) of the Act. This paved the way for the creation of the “Tukutuku Raraba”<sup>5</sup> and the “Vola-ni-kawa-bula”<sup>6</sup>. The legislation has relevance and is closest to ICH safeguarding or protection mechanism.

The Act is implemented and managed by the Minister responsible for iTaukei Affairs.

- Responsible Institution:

**Mr. Naipote Katonitabua**

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- Source of Information:

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<sup>5</sup> These are general historical/ethnological information regarding a tribe (yavusa), state (vanua), clan (mataqali) &s. It describes migration information (movement of tribes and clan), traditional roles (titularship), totems.

<sup>6</sup> English interpretation: “Native Lands Register”. It is the official register of itaukei or indigenous landowners in Fiji. It shows lineages, family tree of tribes, clan, agnatic relations and access to land.

- <http://www.fijianaffairs.gov.fj/NLFC.html>
- Pacific Islands Legal Information Institute\_Fiji Legislation<sup>7</sup>

#### 4) FISHERIES ACT [CAP 158]

Although the legislation is managed by a different Government Department, clause 3(1) and 14 stipulates the existence of the aforementioned Commission that keeps a register of customary fishing rights owners. The Commission ascertains rightful owners, adjudicates on rightful ownership of fishing rights, and surveying of customary fishing rights boundaries.

Similar to the land register, the fishing boundary register provides for the input and safeguard of ethnological information pertinent to the ownership of the customary fishing boundaries.

The Act is implemented and managed by the Minister responsible for Fisheries.

- Responsible Institution:

**Mr. Samuela Lagataki**

- **Ministry:** Ministry of Fisheries & Forests
- **Authority:** Permanent Secretary
- **Address:** Takayawa Building, 360 Toorak Road, Suva
- **Telephone:** (679) 3301611

- Source of Information:

- Ministry of Fisheries and Forest website<sup>8</sup>
- <http://www.fijianaffairs.gov.fj/NLFC.html>
- Pacific Islands Legal Information Institute\_Fiji Legislation<sup>9</sup>

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<sup>7</sup> [http://www.pacii.org/fj/legis/consol\\_act\\_OK/nla131/](http://www.pacii.org/fj/legis/consol_act_OK/nla131/)

<sup>8</sup> <http://www.mff.gov.fj/>

<sup>9</sup> [http://www.pacii.org/fj/legis/consol\\_act\\_OK/fa110/](http://www.pacii.org/fj/legis/consol_act_OK/fa110/)

## **5) ITAUKEI AFFAIRS (TIKINA AND VILLAGE COUNCILS) REGULATIONS [section 6 & 9]**

The regulation is a subsidiary of the Fiji Affairs Act [CAP 120] and addresses the formalization of a publication in the indigenous (iTaukei) language addressing historical, ethnological, legal, and other public information that the iTaukei Affairs Board<sup>10</sup> sees befitting for the indigenous people to know and understand. The publication is gazetted in the official government gazette and is widely circulated.

Early and current issues have always addressed intangible cultural heritage information of the indigenous people ranging from traditional installation rituals, herbal and healing practices, stories and legends, and archaeological information.

The regulation is administered by the Minister responsible for iTaukei Affairs.

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**Ministry of iTaukei Affairs**
  - **Name:** Mr. Naipote Katonitabua
  - **Authority:** Permanent Secretary
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  - **Telephone:** (679) 3100 909
- Source of Information:
  - Fijian Affairs(CHAPTER 120, AN ACT TO PROVIDE FOR REGULATION OF FIJI ARRAYS)<sup>11</sup>

## **6) ITAUKEI TRUST FUND ACT (No. 15 of 2004)**

The Act looks into the establishment of a Trust Fund for iTaukei and Rotumans, and to earn income for the purposes of the Fund and for related matters. The purposes of this ACT include two important ICH Safeguarding measures:

- *Clause 4(b) - to provide funding for the undertaking, promotion and sponsoring of programmes on Fijian and Rotuman languages, culture and the study of ethno-geography and ethno-history;*
- *Clause 4(d) - to sponsor research into languages, art and culture of indigenous Fijians and Rotumans and the better understanding and preservation of their heritage;*

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<sup>10</sup> Board that looks into the administration of the indigenous people using what is known as the iTaukei Administration System establishing local governance systems at the provincial, district and village level for indigenous people of Fiji.

<sup>11</sup> <http://itc2.internetfiji.com/docs/Fijian%20Affairs%20Act%20CAP120%20Rev%202006.pdf>

The activities of the Trust Fund has over the years, in terms of ICH sustainability for indigenous Fijian had had encouraged and spearheaded activities such as staging of theatrical dramas of iTaukei life in the indigenous language, publication of literature including audio visual materials on iTaukei practices, legends and famous people and others. This has contributed to increasing publications of iTaukei ICH.

The ACT is implemented and managed by the Minister responsible for iTaukei Affairs.

- Responsible Institution:  
**iTaukei Trust Fund**
  - **Name:** Mr. Isoa Kaloumaira.
  - **Authority:** Chief Executive Officer
  - **Address:** 87 Queen Elizabeth Drive, Suva
  - **Telephone:** (679) 3319637
- Source of Information:
  - iTaukei Trust Fund website<sup>12</sup>
  - ITAUKEI TRUST FUND ACT<sup>13</sup>

## **7) PUBLIC RECORDS ACT [CAP 108] & LIBRARIES (DEPOSIT OF BOOKS) ACT [CAP 109]**

Established in 1954 as the Central Archives of Fiji and the Western Pacific High Commission, the National Archives of Fiji collects and preserves Fiji's documentary heritage. Its collection which contains around a million documents dating from the early 1800s to the present bridges people of the present with information of the past including genealogies, rituals, ceremonies, legends, and practices.

The Public Records Act and Libraries (Deposit of Books) Act are two pivotal legislations governing the consolidation of literature about Fiji and the Pacific encompassing the National Archives collection. The Public Records Act provides for powers by the Archivist to access and make it mandatory that original and/copies of records to be kept with the Archives. The Libraries (Deposit of Books) Act stipulates the depositing of any published materials with the National Archives of Fiji as it is the designated "national library" of Fiji.

The National Archives provides the best of collective memory on Fijian ICH – inclusive of the different ethnic groups that make up of Fiji's multicultural society.

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<sup>12</sup> <http://www.itaukeitrustfund.com.fj/>

<sup>13</sup> <http://www.itaukeitrustfund.com.fj/wp-content/uploads/2014/05/Act1.pdf>

The ACTs are managed and implemented by the Minister responsible for the National Archives of Fiji (in this case the Minister for Education, Heritage & Arts)

- Responsible Institution:

**National Archives of Fiji**

- **Name:** Mr. Opeta Alefai
  - **Authority:** Archivist/Director Archives
  - **Address:** 25 Carnovan Street, Suva
  - **Telephone:** (679) 3301144
- Source of Information:
    - National Archives of Fiji<sup>14</sup>.
    - LAW OF FIJI(CHAPTER 108)<sup>15</sup>
    - LAW OF FIJI(CHAPTER 109)<sup>16</sup>

## **8) PRESERVATION OF OBJECTS OF ARCHAEOLOGICAL AND PALAEO- LOGICAL INTEREST ACT [CAP 264]**

While the provisions of the POAPI Act looks at tangible heritage, the core of activities to substantiate on the existence of these “object” are rooted in the stories and oral traditions associated with artifacts, places, monuments and sites.

The legislation came into force in 1940 and concerns have been raised by the Fiji Museum its archaic nature calling for revisions so that it touches basis with problems and issues faced in the current century.

The collection of oral traditions from historical sites and artifacts consolidated are securely kept at the Fiji Museum to assist in provision of information to owners, government, courts and interested individuals. These data on ICH of indigenous peoples and other communities in Fiji cannot be accessed without the consent of the custodians of information because of the sensitivity of cultural information archived.

The Act is managed and implemented by the Minister responsible for the Fiji Museum (in this case, it is the Minister for Education, Heritage & Arts)

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<sup>14</sup> <http://www.archives.gov.fj/>

<sup>15</sup> [http://www.archives.gov.fj/images/Cap\\_108.pdf](http://www.archives.gov.fj/images/Cap_108.pdf)

<sup>16</sup> [http://www.archives.gov.fj/images/Cap\\_109.pdf](http://www.archives.gov.fj/images/Cap_109.pdf)



- Responsible Institution:  
**Fiji Museum**
  - **Name:** Adi Meretui Ratanabuabua
  - **Authority:** Acting Director
  - **Address:** Cakobau Road, Suva
  - **Telephone:** (679) 3315944
- Source of Information:
  - Fiji Museum<sup>17</sup>
  - Preservation of Objects of Archaeological and Palaeontological Interest Act(LAWS OF FIJI)<sup>18</sup>

## 9) ROTUMA BILL (Bill No.6 of 2015)

The law that directly relates to the Rotumans as a specific and minority group in Fiji including the Rotuma Island is called the Rotuma Bill 2015 which was established in 2015 under the charge of the Office of the Prime Minister.

Section 5 of the Bill relates to ICH in defining one of the functions of the Council which is to “consider matters that affect or are likely to affect Rotuman customs, including issues relating to traditional protocol, traditional processes of resolving disputes within the Rotuman community and general matters relating to the roles of traditional leaders...”.<sup>19</sup>

This excerpt of the Bill relates to the safeguarding of Rotuman intangible cultural heritage and should this bill become an Act it will be implemented and managed by the Office of the Prime Minister.

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  - **Name:** Mr. Yogesh Karan
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<sup>17</sup> <http://www.fjimuseum.org.fj/>

<sup>18</sup> [http://www.paclii.org/fj/legis/consol\\_act/pooooapia632/index.html](http://www.paclii.org/fj/legis/consol_act/pooooapia632/index.html)

<sup>19</sup> [www.parliament.gov.fj/getattachment/Bills/Bill-No-6-Rotuma.pdf.aspx](http://www.parliament.gov.fj/getattachment/Bills/Bill-No-6-Rotuma.pdf.aspx)

- Source of Information:

**Malahaha District Association**

- **Name:** Mr. Isimeli Konrote
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**Think Tank Council of Rotuma**

- **Name:** Mr. Fatiaki Misau
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## **10) BANABAN SETTLEMENT ACT [CAP 123]<sup>20</sup>**

The Act is specific to the people of Banaban Island or that that reside on Rabi Island and who by definition in the legislation refers to:

former indigenous inhabitants of Ocean Island and such other persons as may now or hereafter be accepted as members of the Banaban community in accordance with Banaban custom; and includes any member of a race indigenous to Micronesia and Polynesia who is ordinarily resident on Rabi Island;

The Banaban Council of Elders is given powers to make regulations pertinent to the “performance of communal works and other communal activities”. Communal works or activities are an aspect or element of ICH of these indigenous people from Ocean Island. It pertains to villages or communities of people working collaboratively with no financial incentive to undertake cultural and social obligations of a particular village or community. Everyone contributes one way or another, in whatever form, and within their own capabilities.

The said legislation is implemented and managed by the Office of the Prime Minister, Fiji.

- Responsible Institution:

**Office of the Prime Minister**

- **Name:** Mr. Yogesh Karan
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<sup>20</sup> [http://www.paclii.org/fj/legis/consol\\_act/bsa172/](http://www.paclii.org/fj/legis/consol_act/bsa172/)

- Source of Information:

#### **Elder of the Banaban Community**

- **Name:** Mrs. Rubena Karakaua
- **Designation:** Retired School Principal
- **Email:** rkarakaua@gmail.com
- **Telephone:** (679) 9458372

#### **Think Tank Council of Rotuma**

- **Name:** Mr. Teekana Timeon
- **Designation:** Resource Person
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#### **Suva Banaban Community**

- **Name:** Mr. Aren Baoa
- **Designation:** Freelance TV/Video/Producer & Chairman
- **Email:** baoa.aren@gmail.com
- **Telephone:** (679) 9774347

### **11) DRAFT KIOA COMMUNITY BY-LAWS**

For the descendants of Tuvalu settled on Kioa island in the north of Fiji, the 'Kioa Community By-Laws' is currently being drafted by the administrative Kioa Island Council which reports to the Prime Minister's Office. The council was established in 1972 although Kioa as an island settlement for the people from Tuvalu was bought in 1947.

The 'Kioa Community By-Laws' reiterates the importance of "traditional laws" that are included in the new version of the by-laws and that the 'Kioa island Council' revised the by-laws "under the framework of its traditional by-laws which includes appropriate disciplinary measures on minor offences."<sup>21</sup> In another mention, item '14. Dress Code' under 'Offences' relate to ICH in prescribing "accepted dress code"<sup>22</sup>.

Should the draft by-laws come into force, the Office of the Prime Minister will be responsible for its administration

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<sup>21</sup> Kioa Community By-Laws, p. 4

<sup>22</sup> Kioa Community By-Laws, p.11

- Responsible Institution:  
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- Source of Information:  
**Kioa Island Council**
  - **Name:** Mr. Samalu Taitai
  - **Designation:** Former Representative
  - **Telephone:** (679) 8693390**FCC**
  - **Name:** Mr. Manu Tuinanumea
  - **Designation:** Chairman/Retired Teacher
  - **Email:** manubishop@gmail.com
  - **Telephone:** (679) 9952261**Rev. Seimisi Nimo**
  - **Designation:** Retire Minister of Religion
  - **Email:** seiminimo@gmail.com
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## **2. Cultural Policy**

A lot of policies that have direct and indirect impact on the safeguarding of the intangible cultural heritage of Fijians are still in draft form awaiting further consultation before finalization. The Policy Unit of the Department of Heritage & Arts is working closely with stakeholders to pursue this important task.

### **1) DRAFT NATIONAL CULTURAL POLICY FOR FIJI**

Fiji's cultural policy titled 'National Cultural Policy of Fiji' is being drafted and the launch is expected to be in 2016. In its draft status, information within has not been divulged. The policy as a national document is expected to encompass the cultural information of all ethnic groups in Fiji.

It is envisaged that a component of the policy will touch briefly on intangible cultural heritage aspects of culture. A detailed elaboration of ICH and its use will be outlined in the draft ICH framework outlined below.

### **2) DRAFT NATIONAL FRAMEWORK FOR THE IMPLEMENTATION OF THE 2003 CONVENTION FOR THE SAFEGUARDING OF INTANGIBLE CULTURAL HERITAGE IN FIJI.**

The National Framework is an action plan specifically focused on the implementation of the 2003 Convention for ICH Safeguarding at the national level. There are specific priority areas which Fiji will need to pursue as part of its obligations as a state party to the Convention.

These measures emulate Articles 11-19; 23 of the 2003 Convention for ICH safeguarding.

### **3) DRAFT NATIONAL CULTURE & EDUCATION STRATEGY FOR FIJI**

A 'Fiji Culture and Education Strategy 2015-2020'<sup>23</sup> is being prepared by the Department of National Heritage and Arts (DNHA) to guide the curriculum developers in the Ministry of Education in the incorporation of the relevant aspects of culture in the different subjects learnt in schools. The aim is to renew the policy every five years. In this case the DNHA works closely with the Curriculum Advisory Services so that curriculum mapping exercises are carried out to ascertain

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<sup>23</sup> Fiji Culture and Education Foundation Strategy 2015-2020. Ministry of Education, Heritage and Arts Fiji, 2015

areas where new topics related to culture could be incorporated or broaden current topics to include cultural information and learning materials.

Intangible cultural heritage features fervently in comparison to tangible cultural heritage. The proposal extends beyond mainstreaming to include the recognition of practitioners of Fijian ICH to teach and transmit knowledge and skills in schools, and the implementation of cultural programs, festivals and exhibitions in districts and at the national level.

### **3. Responsible Fijian governmental organization**

The Department of Heritage and Arts of the Ministry of Education is responsible for all the policies and frameworks above. This is pursued through the Policy Unit under the supervision of Mr. Sipiriano Nemani, the Principal Policy and Convention Officer.

The office and officer can be contacted on telephone (679) 3316955, fax (679) 3310357, or email [snemani@govnet.gov.fj](mailto:snemani@govnet.gov.fj)

### **4. Current changes in safeguarding policies and systems**

The culture sector in Fiji has expanded since 2010. This is immediately after the ratification by Fiji of the 2003 Convention for the Safeguarding of ICH. Hence, much is owed to convention and the enormous process and consultation pursued at the national level by those who were at the helm of culture sector decision making in Fiji.

Prior work had always focused on the development of a legislation to enhance the protection of Traditional Knowledge and Expressions of Culture of the iTaukei people. Fijian government equates TKEC with ICH as the two are inseparable in terms of application at the national level; however it is the context with which the 2003 Convention is set and the principles of the Regional Model Law on TKEC which differentiates the two.

With changing times and new initiatives implemented, the focus of work changed with more community-based initiatives pertinent to ICH safeguarding earmarked while drafting and vetting of the TKEC draft Law takes its course. The National Cultural Policy which will be the overarching document that streamlines activities in the culture sector is now the focus and it is our fervent hope that the document will be finalized sooner.

Similarly, while work on the 2003 Convention at the national level is rife (some indirectly through activities implemented by non-culture sector stakeholders), government has seen the need to set a guiding document that will assist culture sector stakeholders in Fiji implement the 2003 Convention proper and non-culture sector stakeholders appreciate and work collaboratively with the sector in implementing relevant projects at the community level.

The Living Human Treasures System introduced by UNESCO and funded by the Korean-Funds-in-Trust is an excellent platform to recognize bearers of ICH. There are plans to pursue this program with the indigenous community first before dwelling on the rest however, the draft National Culture & Education Strategy has introduced a new concept to further this goal of recognizing those in society who are endowed with wisdom, traditional skills and knowledge to be recognized and appreciated through the “Adjunct Fellowship” Program proposed. The program will allow ICH bearers or practitioners to access schools and be given a space to transmit the knowledge and skills to younger generation.

The Department of Heritage & Arts has now established a secretariat for implementation of the 2003 Convention for ICH at the national level. Personnel and finances have been provided by government to implement this important activity which now coordinates all ICH subsector activities in the country.