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Participation in Safeguarding Intangible Cultural Heritage Viewed as a Human Rights Imperative

A paradox lies at the heart of international law for heritage protection and safeguarding that mirrors the tension in human rights law between universal standards and cultural specificities: the act of international regulation implies a set of universal interests through the setting of international standards which are, mostly, intended to be applied in a similar manner across the board.[1] Placing UNESCO's 2003 Convention for the Safeguarding of the Intangible Cultural Heritage (ICH) within an explicit human rights framework,[2] one of the most powerful of these universalizing normative bodies in modern international law, this has set up a potential internal contradiction between global, let alone national, 'heritage value' that is ascribed to ICH elements and the special meaning it holds for bearer and local communities. The aforementioned 'civilizing mission' of international law towards setting universal norms that reflect goals desirable to the international community is demonstrated clearly by two central principles of human rights law, namely equality and non-discrimination, and the fundamental value of human dignity.[3] It is important to appreciate that these concepts, which have acquired the status of unchallenged truths, may also be placed under question. If we do this, as addressing the gender dynamics of safeguarding ICH may well require us to,[4] it sets up a tension between the universalizing (human rights) norm and the values and aspirations of members of communities and groups associated with that ICH. This does not by any means suggest that we have to suspend the

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1   J. Blake, 'Gender Dynamics of Intangible Cultural Heritage: Cross-disciplinarity in International Law', in: V. Negri and I. Schulte-Tenckhoff (eds.), *Mimesis – Towards International Normativity between Mimetism and Dissemination*. Geneva, 2016, p. 211-30.
2   The first recital of the Preamble makes this clear by referring to: "existing international human rights instruments, in particular to the Universal Declaration on Human Rights of 1948, the International Covenant on Economic, Social and Cultural Rights of 1966, and the International Covenant on Civil and Political Rights of 1966."
3   Dignity *has become* the basis for human rights through being declared as such in the Universal Declaration of Human Rights of 1948 and in subsequent instruments, not necessarily because it *is*. Despite this fact, it continues to be a fundamental justification for all the international human rights norms and standards that have been developed since 1945.
4   J. Blake, 'Anthropology in international law: the case of safeguarding intangible cultural heritage', in: J. A.R. Nafziger (ed.), *Comparative Law and Anthropology*. London, 2018, p. 135-52.

universal standards of human rights – the clear violation of which would rule out cultural practices from being counted as ICH for the purposes of the 2003 Convention – but it does suggest the fact of a constant tension that has to be recognized and taken into account. As institutions that often reflect national values and identities, while also serving local inhabitants and communities, museums are therefore situated at the cusp of such tensions. When considering the role museums can play in supporting the participatory approach towards ICH safeguarding that is both a central requirement of the 2003 Convention[5] and is a key procedural principle of human rights. In developing strategies for participatory engagement by and with local communities and their members, museums will therefore have to negotiate these often contradictory requirements.

It should be noted that this paper is written from the perspective of international and human rights law, and makes no claims to specific expertise in museology or related disciplines. As such, its objective and focus is to consider what implications human rights norms – in particular that of participation – alongside developments under the 2003 Intangible Heritage Convention might have for safeguarding ICH through museums. The focus in this paper is placed on the question as to how real participation by various actors and stakeholders – heritage bearers and associated groups and communities, civil society, private sector actors, and others – can be ensured. The human rights context of the development of 2003 Convention is, of course, a significant contextual factor to this question and it raises important challenges as to how the notion of participation promoted by the Convention can be made operational in different societies and contexts.

Community Participation under the 2003 Convention

The 2003 Convention places a requirement on States Parties to develop participatory approaches towards ICH safeguarding explicit, but it fails to elaborate as to how this is to be done. Of course, that is in large part due to the fact that each country is different and the degree to which the kind of 'one-type-fits-all' 'participatory' strategies (that have often been employed in development approaches,[6] for example) will work is so heavily dependent on the political, social, economic, cultural and even environmental context of that country. There is no doubt that the powerful notion of the "heritage

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5   This is made clear in Article 15 to the 2003 Convention. See, M. Jacobs, 'Article 15: Participation of Communities, Groups, and Individuals – CGIs, not Just "the Community", in: J. Blake and L. Lixinski (eds.), *The 2003 UNESCO Intangible Heritage Convention. A Commentary*. Oxford, 2020, p. 273-289; and G. D. Soggetti, 'Article 15: Participation of Communities, Groups, and Individuals – Participation and Democracy', in: J. Blake and L. Lixinski (eds.), *The 2003 UNESCO Intangible Heritage Convention – A Commentary*. Oxford, 2020, p. 274-91 and 291-306, respectively.

6   These are well-critiqued in V. Rao and M. Walton (eds.), *Culture and Public Action*. Stanford, 2004. The chapter by M. Douglas entitled 'Traditional Culture – Let's Hear No More about It' is of particular relevance here.

community" set out in the Faro Convention (2005) of the Council of Europe[7] and its notion of participation that acknowledges "the need to involve everyone in society in the ongoing process of defining and managing cultural heritage" in the Preamble (fifth recital) can operate in the context of pluralistic democracies that exist in most member countries of that Organization. The less ambitious notion of "communities, groups and (…) individuals" who identify with and who create, enact and transmit ICH of the 2003 Convention represents a compromise position whereby the importance of the role of these various actors is recognized but that still reserves a high degree of State control over the process of safeguarding. The notion of "public action" employed in the Faro Convention would be anathema to a large number of the Parties to the 2003 Convention. In addition, this idea of "communities, groups and (…) individuals" employed in the 2003 Convention allows for a diversity of social institutions – ranging from village councils to tribal chiefdoms and beyond, to NGOs, public and state institutions, and even private sector actors – to play a role in the identification and safeguarding of ICH elements. It also, importantly, suggests that the strict limitation to individual rights that has been the classic position of human rights law must acquire a collective dimension where safeguarding ICH is concerned, i.e. where cultural rights are in play.[8]

Given that the 2003 Convention is a normative instrument under the aegis of UNESCO, the Recommendation concerning the Protection and Promotion of Museums and Collections, their Diversity and their Role in Society adopted by UNESCO in 2015 must be seen as a significant document for consideration here. The impact that it could have on how museums contribute towards participatory forms of ICH safeguarding will therefore be examined in this article.

The definition of ICH provided in Article 2(1) of the Convention[9] addresses one of the apparent conundrums associated with the role that museums – traditionally housing collections of objects – can play in safeguarding a predominantly immaterial form of heritage. What this points us to is that it is generally the significance that these objects carry for particular groups, communities and even nations that provides them with heritage value; this, in turn, connects with their power to confirm cultural (and other) identities which are an important element in human dignity, the primary subject of protection of human rights. This also reminds us that the distinction between 'intangible' and 'tangible' heritage is, to a large degree, an instrumental one that does not

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7   Council of Europe Framework Convention on the Value of Cultural Heritage for Society, Faro 27/10/2005. Article 2(b) defines a "heritage community" as consisting of "people who value specific aspects of cultural heritage which they wish, within the framework of public action, to sustain and transmit to future generations."

8   This is also recognized in United Nations Committee on Economic, Social and Cultural Rights (CESCR), *General comment no. 21. 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 by the CESCR at its Forty-third session, 21/12/2009. [Doc. E/C.12/GC/21]

9   It includes reference to "the practices, representations, expressions, knowledge, skills – as well as the instruments, objects, artefacts and cultural spaces associated therewith."

necessarily describe *a fact about heritage* but rather a *fact about how we can protect and/or safeguard* it. Hence, we understand that when we focus on ICH – the intangible aspect of heritage – the difference may not be found in what we are safeguarding but rather in how we understand its significance and for whom this significance is primary. This does affect the measures we may take for its safeguarding – including how museums present and interpret this heritage, for example – and who we involve directly in the process.[10] In particular, as ICH is seen as part of a *living* heritage and, so, specific communities (groups and individuals) use these items as part of a knowledge system they hold and practice which, in turn, should form part of the 'story' of any museum exhibition showing them.

Community participation in ICH Safeguarding: A Human Rights Imperative

Human rights and cultural heritage are closely linked, sharing as they do certain objectives and characteristics. For example, they have a shared *temporal character* whereby we select elements of heritage according to the requirements of the present and we entrust them to the future in order to satisfy the needs of unborn future generations.[11] In a similar way, human rights are not just concerned with improving our current living situation, but also seek to create conditions that will help us to create the kind of society we wish for ourselves and our children to live in. At the same time, while human rights support and strengthen human capacities in order to develop an improved society, cultural heritage is now understood to be a cultural, social, economic and even environmental resource that can help individuals and communities to develop their capacities for a better life.

There is no doubt that safeguarding cultural heritage is a human rights issue and objective, founded on the right to participate in cultural life and the fundamental human rights imperative of protecting human dignity.[12] Cultural heritage is important not only as an end in itself, but also for the significance it holds for individuals, groups and communities and their identity/identities.[13] The preservation of cultural identity is essential for supporting the sense of well being and self-respect that lies at the heart of human dignity; safeguarding cultural identity can therefore be said to lie at the heart of human rights itself. Moreover, the respect for the individual and human dignity that is a fundamental component of human rights implies showing respect for cultural differences. As acknowledged in the Preamble to the 2003 Convention (in the second recital) safeguarding ICH serves to preserve cultural diversity and this

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10   If we wish to take an example, an ethnographic museum might hold a collection in which agricultural implements are presented and where the interpretation of these describes how they have traditionally been used, the traditional knowledge surrounding their use, and the materials which they are made of.

11   In this sense, too, it satisfies the core ideas of sustainable development.

12   Which is set out in Article 15 of the *International Covenant on Economic, Social and Cultural Rights* ('ICESCR') from the United Nations, dating from 1966.

13   As recognized in Article 2(1) of the 2003 Convention.

also encourages the mutual respect among communities required by the last part of the definition.[14] A good way to understand this point is to appreciate that the core idea of the Representative List of Intangible Heritage of Humanity (RL) established under the 2003 Convention is predicated on the idea that the inscribed elements are *typical* of examples of ICH and, overall, the RL celebrates the *global diversity* of ICH.

The main source of a right to (to enjoy and to access) cultural heritage in international law is the right to participate in cultural life, as set out in Article 27 of the 1948 Universal Declaration on Human Rights (UDHR, 1948) and Article 15 of the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR).[15] This right of access to and enjoyment of cultural heritage, includes such aspects as the right to create heritage, the use and enjoyment of one's own heritage, access to one's own and to others' heritage and a more general right to cultural development. It is broadly concerned with the ways in which individuals (and communities) express their humanity and give meaning to their existence through the *multiple* heritages they identify with, how individuals (and communities) respond to the external forces affecting their lives and the freedom of individuals (and communities) to create and maintain their cultural heritage and transmit it to future generations. When it is applied to cultural heritage, the right to participate in cultural life as articulated in Article 15 of the ICESCR can be broadly divided into two rights: the right of access and the right of enjoyment. The notion of access covers, in particular, the right of everyone (alone, or in association with others or as a community) "to know and understand his or her own culture and that of others through education and information, and to receive quality education and training with due regard for cultural identity."[16] The work of museums in presenting and interpreting objects and in organizing educational programs is, of course, highly relevant to this.

In analyzing this right more closely, Donders notes that the phrase "take part" in cultural life contains both passive and active elements.[17] The passive elements include having access to cultural life and enjoying its benefits,

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14   The final sentence of Article 2(1) contains the proviso 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 mutual respect among communities, groups and individuals, and of sustainable development."

15   Article 15(1)(a) of the ICESCR (cfr. footnote 12), reads: "1. The States Parties to the present Covenant recognize the right of everyone: (a) To take part in cultural life; [...]".

16   *CESCR General Comment No. 21* (cfr. footnote 8) 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 21/12/2009]. It continues: "Everyone has also the right to learn about forms of expression and dissemination through any technical medium of information or communication, to follow a way of life associated with the use of cultural goods and resources such as land, water, bio-diversity, language or specific institutions, and to benefit from the cultural heritage and the creation of other individuals and communities."

17   Y. Donders, 'The legal framework of the right to take part in cultural life', in: Y. Donders and V. Volodin, (eds.), *Human Rights in Education, Science and Culture – Legal developments and Challenges*. Paris, 2007, p. 256.

without discrimination; and the protection and safeguarding of cultural and artistic heritage. Active elements include the freedom to choose and change one's cultural affiliation or identity and to take part in decision-making processes over cultural life. While the former (passive elements) are generally covered by the traditional activities of museums, the reference to non-discrimination and the more active elements suggest a proactive and participatory role for members of the heritage community associated with museum collections and exhibitions; the governance structures of museums may even need to be reconsidered in order to include such groups in decision-making processes. In view of the people-centered and participatory approach that the 2003 Convention takes with regard to identifying intangible heritage elements (Article 2(1)) and designing and implementing safeguarding plans and policies (Article 15, in particular), this human rights requirement acquires an even greater significance when museums are engaging with intangible heritage.

It is normal to break down the human rights requirements placed on governments[18] into three main types of obligation: (a) the obligation to respect; (b) the obligation to protect; and (c) the obligation to fulfil. Under this schema the *obligation to respect* Article 15 (ICESCR) would include ensuring the right of everyone, individually or in association with others to have access to their own cultural heritage and to that of others; and to take part freely, actively, in an informed way and without discrimination, in any important decision-making process that may impact on his or her way of life and on this right. The *obligation to protect* requires States to take measures to prevent third parties from interfering in the exercise of rights guaranteed by this article, including ensuring that all forms of cultural heritage are respected under all conditions, and that the cultural productions of indigenous peoples,[19] are respected and protected. This clearly has important implications for museums that hold or exhibit tools, objects and cultural products associated with ICH.[20] The *obligation to promote* (falling under the obligation to fulfil) requires States (and related bodies) to provide education and awareness-raising programmes on the need to respect cultural heritage and cultural diversity. One form that this might take – which has been echoed in Article 14 of the 2003 Convention with regard to educational and awareness-raising programmes – involves the inclusion of cultural education in school curricula at every level, and guarantees access for all, without discrimination on grounds of financial or any other status, to museums, libraries, cinemas and theatres and to cultural activities, services and events.[21]

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18   This can also apply to associated social institutions (which include many museums).

19   Including their traditional cosmologies and ecological knowledge, human remains, natural medicines, folklore, rituals, etc. The breadth of indigenous heritage was made clear by the UN Special Rapporteur in E.-I. Daes, *The Protection of the Heritage of Indigenous People*. Geneva, 1997.

20   It implies, among other things, that responsible governmental agencies (at all levels) should have oversight on the activities of museums to ensure that this is properly respected.

21   For more details of these obligations, see: *General Comment No. 21* (cfr. footnote 8) at paragraphs 44-54.

In addition to this universal right, Article 27 of the International Covenant on Civil and Political Rights (1966) ICESCR[22] is another important source that sets out special status rights for members of ethnic, religious and linguistic minorities to enjoy their culture, profess their religion or use their mother language. These rights can also be seen as imposing a duty on the State *not to discriminate* in terms of official recognition of heritage, for example. Of course, the right to access and enjoy cultural heritage (one's own and that of others) frequently requires a range of other human rights to be supported if it is to be exercised. For example, the freedoms of association and expression and the right to education are often essential to being able to access, enjoy and create cultural heritage. Even the right to self-determination (in particular, internal self-determination allowing for control over cultural and other policies) and the right to development can be seen as providing an essential framework for protection of cultural heritage.

International law for the protection of cultural heritage does not respond fully to the requirements of human rights, in particular in the strong reservation of State sovereignty that is preserved in all the main cultural heritage treaties.[23] This has a limiting effect on how far these treaties can truly support individual (and collective) human rights since these latter rights should operate in a space that lies between the Government and its citizens. However, there have been attempts over recent years to give international cultural heritage treaties a stronger human-rights orientation and the 2003 Convention is the treaty that has most strongly expressed this approach to date. This is made clear in its Preamble (first recital) what explicitly mentions the main human rights instruments[24] and the definitional limitation described above. In the 2003 Convention, a twin-pronged approach towards human rights and safeguarding ICH is taken: From a positive sense, protecting human rights is presented as a basic reason for identifying and safeguarding this heritage since it represents what communities, groups and individuals perceive as part of their identity. From a negative viewpoint, the concept of 'ICH' is limited under the 2003 Convention only to heritage that does not contravene international human rights standards. This human rights limitation, however, has caused some difficulties in applying the criteria for inscription of ICH on the international

22   Article 27 of the *International Covenant on Civil and Political Rights* ('ICCPR') from the United Nations, dating from 1966, reads: "In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language."

23   This is discussed in P. Kuruk, 'Cultural Heritage, Traditional Knowledge and Indigenous Rights: An Analysis of the Convention for the Safeguarding of Intangible Cultural Heritage', *Macquarie Journal of International and Comparative Law* 1, 2004, p. 111-134.

24   This paragraph reads: "Referring to existing international human rights instruments, in particular to the Universal Declaration on Human Rights of 1948, the International Covenant on Economic, Social and Cultural Rights of 1966, and the International Covenant on Civil and Political Rights of 1966."

lists of that Convention[25] since much ICH is gender-specific or has other characteristics that appear to contradict human rights values and standards.[26] As a consequence, it is not always easy to determine whether this constitutes a discrimination of one sex or the other. At present, the only way in which this issue can be addressed is for the Intergovernmental Committee of the Convention (through its Evaluation Body) to consider each element proposed for inscription on a case-by-case basis.

Of course, selecting traditional cultural practices indiscriminately for safeguarding as 'ICH' would be contrary to human rights[27] since some clearly contravene human rights standards. This is a highly complex question in human rights theory and is not one that can be explored here in much detail but it is quite straightforward to accept certain traditional practices (such as female infanticide and foot-binding) constitute clear human rights violations. Others fall into a grey area where it is much more difficult to determine whether those particular practices do violate international human rights standards, especially where those are not always universally accepted.[28] Many rituals are traditionally segregated by sex, age or some other factor and certain secret and/or sacred knowledge is only shared with a social group restricted by sex, age, ethnicity and so on. This raises complex questions as to whether we should exclude all of these from the category of ICH on the basis of discrimination against the excluded groups and individuals within the communities concerned. Or should we rather seek to identify the social power relations that underlie them to ascertain if they really harm specific individuals? Such cases also raise further complicated questions, such as: Who should determine what is unacceptable? Who decides if members of a group or community are harmed by a particular practice?

The relevance of this for the main argument of this article is that it illustrates very clearly that taking a human rights approach towards heritage safeguarding, including applying participatory approaches, inevitably raises a number of difficult and uncomfortable questions. We are inevitably led to ask, as a starting point, who defines cultural heritage and its significance and the related question as to which and whose cultural heritage deserves protection. This then forces us to consider how far individuals and communities can truly

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25 Inscription Criterion R.1 requires that an element "constitutes intangible cultural heritage as defined in Article 2 of the Convention", OD I.2.2. This implies that the human rights limitation introduced by the definition given in Article 2(1) is part of the evaluation of the appropriateness of an element for inscription.

26 Although the deliberations have mostly focused on the gender-related issues, these may relate to other dimensions of social identity, such as age, ethnicity, social status. The issue of treatment of animals has also become a controversial one, although it is not strictly a human rights issue and, indeed, does not have any real basis in international law which barely protects animal welfare let alone animal rights.

27 The author discusses this, and the human rights dimensions of traditional cultural practices that may contravene international standards, in more detail in J. Blake, 'Gender and Intangible Heritage: Illustrating the Inter-disciplinary Character of International Law', in: W. Grahn and R. Wilson (eds.), *Gender and Heritage: Performance, Place and Politics Key Issues in Cultural Heritage*. London, 2019.

28 Ibidem.

participate in the interpretation, preservation and safeguarding of the cultural heritage element(s) identified.[29] Implicit in this question are a series of other issues surrounding relative positions of expertise, and how scientific expertise is to be balanced against the expert knowledge of those whose heritage it is.[30] Also, involved in this approach is the challenge as to how conflicts and competing interests over particular ICH elements can be resolved since we should not make the mistake of expecting there always to be a simple and (monolithic) relationship between a specific 'community' and a particular element. Indeed, a human rights-based approach should assume that, even where a group, community or certain individuals can be identified as directly relating to an ICH element, there are likely to be a number of diverse views among them as to how that element should be understood, what significance it has, how it is best safeguarded, and so on. This recognition of what Sunder has termed "cultural dissent"[31] is essential to any approach towards safeguarding that is founded on human rights – as any truly participatory one must be – and it immediately raises the level of complexity of this task significantly. It also implies that a high degree of dialogue, both within the relevant cultural groups and communities and between them and outside agents will have to be engaged in and that the quality of this dialogue – carried out on a basis of equality and with all sides prepared to listen to and learn from each other – is also an essential aspect of participation.[32] Finally, we have to recognize, as seen above, that it may be necessary at times to place limitations on the right to enjoy cultural heritage in order to protect the rights of other members of society.

29 There is now a growing literature on this question. For a detailed analysis of participation under UNESCO's 2003 Convention, see: M. Jacobs, 'Article 15: Participation of Communities, Groups and Individuals – CGIs, Not Just "the community"', in: J. Blake and L. Lixinski (eds.), *The 2003 UNESCO Intangible Heritage Convention: A Commentary*. Oxford, 2020, p. 274-290. See also: N Adell e.a. (eds.), *Between Imagined Communities and Communities of Practice*. Göttingen, 2015; M. Jacobs, J. Neyrinck and A. Van der Zeijden, 'UNESCO, Brokers and Critical Success (F)Actors in Safeguarding Intangible Cultural Heritage', *Volkskunde. Tijdschrift over de cultuur van het dagelijks leven* 115:3, 2014, p. 257-264; and J. Blake, 'Further reflections on community involvement in safeguarding intangible cultural heritage', in: L. Smith and N. Akagawa (eds.), *Safeguarding intangible heritage. Practices and Politics*. London and New York, 2018, p. 17-35.

30 L. Lixinski in *International Heritage Law for Communities – Exclusion and Re-Imagination*. Oxford, 2019 at p. 88 reminds us that "the incipient possibilities for community-oriented approaches with respect to museums as well is a means to engage stakeholders in a way in which they are not just consumers of culture but, in fact, produce heritage as well, and can control its meanings in a way that would otherwise not be possible."

31 M. Sunder, 'Cultural Dissent', *Stanford Law Review* 54, 2001, p. 495.

32 With regard to eliminating female genital cutting, Tobin calls for a multifaceted approach designed through dialogue with the communities that tolerate harmful practices in order to achieve the effective elimination of such harmful practices. J. Tobin, 'The International Obligation to Abolish Traditional Practices Harmful to Children's Health: What Does It Mean and Require of States?', *Human Rights Law Review* 9:3, 2009, p. 373-396.

Taking a Participatory Approach

One of the most innovative aspects of the 2003 Convention is the highly participatory approach it requires towards safeguarding ICH, with as full involvement as possible of the related communities, groups and individuals in the management and safeguarding of heritage, including in its identification. Participation is, essentially, a procedural principle of human rights that has become applied also in other areas of international law, such as in environmental and cultural heritage law.

The most explicit requirement for participation in safeguarding ICH is found in Article 15 of the Convention.[33] Despite the somewhat 'soft' language used here of "endeavour to ensure", this does set out a strong encouragement for States Parties to find appropriate ways for the "communities, groups and … individuals" of the 2003 Convention (henceforth 'CGIs') to be fully involved in all stages of safeguarding. It should also be remembered that the definition of ICH that underpins the whole Convention is one in which it is defined with direct reference to the CGIs that create and transmit it[34]; hence, the notion of participation is wholly inseparable from that of ICH safeguarding. In addition, Article 11(b) requires that identifying and inventorying ICH elements – both of which should be seen as fundamental safeguarding actions – should be done "with the participation of communities, groups and relevant non-governmental organizations." This is very significant since identifying what is to be regarded as having 'heritage value' as part of the national heritage has traditionally always been a right solely exercised by the State. By extending this to the heritage bearers, it turns on its head the paradigm of heritage protection and even of identifying national identity.

Although the question as to *how* such an approach should operate was not set out in the Convention itself, and the Intergovernmental Committee has been developing Operational Directives (OD) since 2008 for the implementation of the Convention. In 2010, new directives for more effective community participation in the measures taken for indentifying and safeguarding ICH were adopted.[35] Thus far, these have mostly been limited to actions taken at the national level, although community involvement in international actions (such as international inscriptions and periodic reporting) may become stronger in the future. However, we can say that the traditional state-driven and top-down paradigm of heritage identification and safeguarding has been significantly reversed by this treaty. This has the potential to serve as an extremely important step towards *democratizing the process of heritage safeguarding*

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33 It requires that "Within the framework of its safeguarding activities of the intangible cultural heritage, each State Party shall endeavour to ensure the widest possible participation of communities, groups and, where appropriate, individuals that create, maintain and transmit such heritage, and to involve them actively in its management."

34 Under Article 2(1), ICH is defined in part with reference to the community, groups and individuals that self-identify as its bearers, noting that it "is constantly recreated by communities and groups in response to their environment, their interaction with nature and their history, and provides them with a sense of identity and continuity."

35 Operational Directives 79-99. [Henceforth, 'Operational Directive(s)' will be abbreviated as 'OD'].

from the beginning to the end, perhaps the most essentially human rights approach possible. However, since the pluralistic and democratic systems that are required fully to underpin such an approach are not well developed in many countries and regions around the world, this remains a challenge for a number of States Parties to the Convention

Community-based participatory strategies for ICH safeguarding are still a work in progress in many States Parties,[36] although a number have now made significant strides in involving communities, especially through applying community-based inventorying strategies. This has been supported by the Global Capacity-building Programme[37] operated by the Convention Secretariat in UNESCO and also the mechanism for providing international assistance to States Parties under the Convention has contributed towards this.[38] Some recent examples of international assistance provided to States Parties under the 2003 Convention illustrate this development: US$ 213,260 was granted to Albania in 2019 for a project on "Community based Inventory of ICH in Albania with a view to safeguarding and transmitting to future generations" and US$ 99,886 was granted to the Lao People's Democratic Republic in 2019 for a project on "Capacity-building for safeguarding intangible cultural heritage through creation of community-based inventory for Luang Prabang." A project was undertaken by Colombia in 2018 with an international assistance grant of US$ 99,950 granted in 2018 entitled "My Heritage, My Region: strategy for capacity-building in social management of the intangible cultural heritage in two departments of the Colombian Orinoco region." This fourteen month project, implemented by a CSO, was aimed at building community and stakeholder capacities in managing the ICH in the Orinoco region of the country. Overall, its objective was to ensure a larger and more prominent role for social and institutional actors in ICH safeguarding in that region.[39]

The work of the ICH Committee in preparing new Operational Directives over time[40] has also played an important role in developing and encouraging participatory strategies. This demonstrates the value of having a flexibly treaty with a set of broad principles and obligations set out in the main text that can be reinterpreted and updated by the Committee over time through the OD. Of course, this still locates the power to make such changes in the hands of the 24 States Parties that make up the membership of the Committee, but experience suggests that other voices, from NGOs that are accredited to the Committee and experts acting as consultants to the Secretariat (who are often tasked with preparing reports and other documents which serve as the basis for such

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36 As noted by H. Deacon and C. Bortolotto, 'Charting A Way Forward: Existing Research and Future Directions for ICH Research Related to the Intangible Heritage Convention', in: IRCI, *The First ICH-Researchers Forum. The Implementation of UNESCO's 2003 Convention. FINAL REPORT*. Tokyo, 2010, p. 39.

37 More details of this are available online at: *Global capacity-building programme*, https://ich.unesco.org/en/capacity-building (17/06/2020).

38 This is provided for in Articles 20-24 of the Convention.

39 Details of international assistance can be found online at: *Requesting international assistance*, https://ich.unesco.org/en/requesting-assistance-00039 (17/06/2020).

40 The original Operational Directives adopted in 2008 have subsequently been revised and added to in 2010, 2012, 2014, 2016, 2018 and 2019.

developments), are being heard and having some influence on this process. Although ensuring real participation in the intergovernmental processes will always be challenging, there does appear to be a pressure building up on States Parties to demonstrate real attempts to involve CGIs in various aspects of implementing the Convention.

It would seem, from the OD on participation adopted by the Committee in 2010 that there is a desire to encourage this. In these, States Parties are encouraged "to establish functional and complementary cooperation among communities, groups and, where applicable, individuals who create, maintain and transmit intangible cultural heritage, as well as experts, centres of expertise and research institutes."[41] The inclusion here of reference to experts and research institutes is significant since it would suggest a potential role for museum-based specialists to be an active part of this "functional and complementary cooperation" and would seem to offer governments an extremely helpful institutional basis for this. The following paragraph encourages Parties "to create a consultative body or a coordination mechanism to facilitate the participation of communities, groups and, where applicable, individuals, as well as experts, centres of expertise and research institutes", in safeguarding activities. These activities[42] referred to include: identification and definition of the different elements of intangible cultural heritage present on their territories; drawing up inventories; elaboration and implementation of programs, projects and activities; and preparation of nomination files for inscription on the Lists. Again, we can see that museums can be very helpful as partners (with both governmental and non-governmental actors) in a consultative body or a coordination mechanism. Indeed, beyond membership of such a body or mechanism, they may in some contexts provide a basis for developing this. If these measures are taken seriously and are implemented as intended, they will go some way towards establishing a relatively full and meaningful participation by various non-state actors and stakeholders in safeguarding ICH. In particular, establishing long-term channels for communication, consultation and cooperation between governmental and non-governmental bodies and actors is an essential prerequisite for any real participatory mechanism.

The sensitization of CGIs about the value of their ICH, the importance of safeguarding it and promoting the Convention among them is understood as an essential safeguarding action for States Parties to undertake. This is particularly true in cases where bearers are stigmatized or feel that their ICH makes them seem less 'sophisticated' or less members of the 'respectable' strata of society. Parties are also encouraged to support and build CGIs' safeguarding capacities and, by this, to enable them to become fully and effectively involved in this process.[43] Museums, in particular those embedded in the local community, are obviously a key social institution that can support this process through the provision of spaces and facilitators for capacity

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41   OD 76 which refers to Article 11(b) and in the spirit of Article 15.
42   According to the definition of "safeguarding" provided in Article 2(3).
43   OD 80-82.

building. Without doubt, their potential role in awareness-raising about ICH and its significance (to its bearers, but also to the wider society) and combating stigma that may be experienced by ethnic and cultural minorities can be very important. Examples include the Migration Museum in London which has staged a number of events, exhibitions and education workshops at venues across the UK since 2013, exploring the central role that migration has played in making the country what it is today, including through a far-reaching nationwide education programme and a knowledge-sharing network of museums and galleries across the UK. Current exhibitions include *Keepsakes* which explores the nature and importance of personal keepsakes in telling migration stories, *100 Images of Migration* presenting a collection of diverse images that tell a compelling story about what migration means to people across the UK, and *Room to Breathe* which presents an immersive exhibition with stories from generations of new arrivals to Britain, through the medium of audio, films, photographs and personal objects.[44] The programme *Multaka: Museum as Meeting Point – Refugees as Guides in Berlin Museums* has trained Syrian and Iraqi refugees since 2015 to become museum guides, so that they can then provide free guided tours for Syrian and Iraqi refugees of the Museum of Islamic Art, the Museum of Ancient Middle Eastern Art, the Museum of Byzantine Art and the Sculpture Collection of the German Historical Museum since November 2015. As guides, they encourage the visitors to observe and interpret the objects and become active participants through considering their own history. This, then, aims to facilitate access for refugees to museums, to help them to find social and cultural points of connection and to increase their participation in the public sphere.[45]

It is clear, then, that finding new and inclusive ways to present and interpret ICH in museums must be associated with developing a community-based conception of the museum. This requires imagination and is something that is most likely to spring from establishing a real dialogue among relevant actors and stakeholders among whom CGIs must, naturally, play a central role.[46]

Another implementing measure proposed in the 2010 OD which is relevant to the role that museums can play in supporting participation is strengthening CGI participation through facilitating access to research findings.[47] They may also serve as a valuable base for establishing networks of communities, experts, centers of expertise and research institutes to develop joint approaches and in sharing ICH-related documentation relating to ICH located in another State.[48] On the intergovernmental level, the Committee may consult with "experts, centers of expertise and research institutes, as well as regional centres active in

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44 Available online at: *Migration Museum,* https://www.migrationmuseum.org (19/06/2020).

45 Available online at: *Multaka: Museums as Meeting Point - Refugees as Guides in Berlin Museums*, https://www.betterplace.org/en/projects/39889-multaka-museums-as-meeting-point-refugees-as-guides-in-berlin-museums (19/06/2020), and (in German) *Multaka: Treffpunkt Museum,* https://www.freunde-islamische-kunst-pergamonmuseum.de/index.php?multaka-treffpunkt-museum (19/06/2020).

46 Several of the cases provided by the videos filmed during the *Intangible Cultural Heritage and Museums Project* (available as part of the project's Toolkit) are excellent examples of how this can be done.

47 OD 86.

48 OD 87-88.

the domains covered by the Convention" and private persons "with recognized competence in the field of intangible cultural heritage" on specific matters and "in order to sustain an interactive dialogue."[49] Although not used thus far by the Committee, this is a further possible way in which museums and museum-based experts might help in the future to drive ICH safeguarding policy. Since museums have a strong potential for acting as an interface between local and bearer communities and state authorities[50], whether at the national or international level, this is an important space for them to be active. In addition, unlike most NGOs, many museums can enjoy a degree of authority on the national (or local) level, and even international recognition, that uniquely situates them to pursue this possibility.

How far all of this can and will be put into practice depends greatly on how democratic the political contexts in which safeguarding is taking place are. It could be argued that this explicit reference to CGI involvement in safeguarding ICH, based on the principle of consultation, acts as a counter-weight to the generally state-centric approach of the 2003 Convention.[51] Despite this, we should remember that some UNESCO Member States negotiating the Convention were reluctant to allow the high degree of involvement in identifying ICH and in implementing and designing safeguarding measures that this provision implies.[52] Either way, it is unavoidable that official safeguarding measures will inevitably have direct impacts on social and cultural processes since ICH elements are an intrinsic part of how CGIs (and the wider local society) live. Museums, as institutions that occupy a space lying between state and/or local authorities and CGIs are well-placed to help to mitigate the negative results of such impacts.

As noted in the section above, a diversity of voices from within CGIs has to be listened to in order to achieve truly participatory approaches to safeguarding.[53] In Parties which genuinely attempt to implement these Directives, as we would hope EU Member States will, this could contribute significantly towards developing meaningful forms of involvement by CGIs in *all stages* of the safeguarding process. However, it remains wholly at the discretion of States Parties how far they allow for CGI participation in the identification and safeguarding of ICH elements. This would suggest, therefore, that museums may also have a further important role to play in sharing experiences and

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49   OD 84 and 89.

50   In the good governance model, museums, like research institutes, universities and other centres of expertise, occupy a middle ground between governmental bodies and civil society and can therefore act as mediators between the two sides if direct communication channels are not well-established.

51   Cfr. Kuruk, *Cultural Heritage*, p. 126: "the danger posed by...granting each state the right to subjectively specify the scope and content of cultural property includes the right to exclude property from protection that others outside the state might find more culturally valuable..."

52   J. Blake, *Commentary on the UNESCO Convention on the Safeguarding of Intangible Cultural Heritage*. Leicester, 2007, p.76. In the pre-draft text for the Convention presented to the intergovernmental negotiators in 2002, Article 10*bis* provided for a Scientific Committee, comprising non-governmental experts, to oversee the treaty's implementation; this quickly became the purely intergovernmental committee established under Arts.4-8 of the 2003 Convention.

53   Sunder, *Cultural Dissent*, p. 495.

good practices with other museums through their professional associations and other forms of networks. Given that museum institutions often wield a significant degree of influence in some of the more authoritarian and less open countries, this type of cross-fertilization has the potential to be very powerful over time. They need to remind their Ministries of Culture that UNESCO Member States did not commit themselves to operate a centralized and state-driven approach towards ICH identification, inventorying and safeguarding when they ratified the 2003 Convention.

Implementing the Convention is in itself part of a learning process shared across the international community. The 2003 Convention presents a novel conception of heritage and a radically revised paradigm for its protection/safeguarding; this will require a lot more experience and sharing of good practice for locally appropriate participatory approaches to develop. As much as Parties can learn a lot from each other, there is no doubt that local specificities – not only at the national level but also in terms of traditional cultural practices and social institutions – mean that what is a good practice in one country may require substantial revision to be useful in other places. Essentially, the implementation of the 2003 Convention on the ground in its 180 States Parties is somewhat akin to experimentation in a laboratory in which museums can serve both as petri dishes and as investigators.

When considering the role that museums can play in supporting participatory approaches to ICH safeguarding, it is important to recognize the wide diversity of persons and groups with interests in ICH safeguarding and their different rights and duties with regard to this heritage. The periodic reporting by States Parties during 2012-2014 threw up the fact that a number of different actors serve as important vectors for implementing ICH safeguarding policies and measures. These actors and institutions include local authorities, community centres, non-governmental organizations active in the field of ICH, cultural associations and the private sector.[54]

In addition, museums can be pivotal actors in helping to integrate ICH into society and policies for achieving sustainable communities. This is a complex picture and it is important to be able to identify the relative roles and rights of each. In her 2011 report, the UN Special Rapporteur on Cultural Rights provided a very useful exposition of the breakdown of different actors and stakeholders and their diverse interests in cultural heritage.[55] Shaheed noted that they comprise a broad range with varying degrees of rights to enjoy and access heritage that increase according to their proximity to the heritage element in question. Hence, those who create, practice, perform, maintain and transmit an ICH element can seen to have the strongest rights in it, followed by other members of the local community who are not bearers themselves. After these, we might identify NGOs active in safeguarding the element and supporting its

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54   B. Torggler and E. Sediakina-Rivière, *Evaluation of UNESCO's Standard-setting Work of the Culture Sector, Part I – 2003 Convention for the Safeguarding of the Intangible Cultural Heritage.* Paris, 2014.

55   Human Rights Council, *Report of the independent expert in the field of cultural rights, Farida Shaheed,* Seventeenth session Agenda item 3, 21/03/2011. [UN Doc. A/HR/C/17/38] It can be helpful to visualize these relationships as the concentric circles created in water by dropping a pebble into it.

bearer community, then local government actors, museums, cultural centres, and so on. Scientific experts and researchers (and their institutions) are also likely to fall into this circle of relationship with the element. Following these, we might find regional and national bodies and communities and, finally, the international community or humanity that is also perceived in the 2003 Convention as having a 'common interest' in ICH safeguarding.

A particular actor that may be more difficult to situate within this picture is the private sector which, as we know, may often plan activities that can threaten to commodify or misappropriate ICH elements, but which also has the potential to play an important role in its safeguarding.[56] National museums and those established by local authorities may potentially play a valuable role in mediating the relationship between private sector actors and others with interests in ICH elements, since they enjoy a degree of 'official' authority while having one foot in the commercial sector.[57]

In the OD to the 2003 Convention, we find references to 'museums' in two paragraphs in Chapter IV on awareness-raising in a section on the role of "community centres and associations, museums, archives and other similar entities." The first of these refers to their role on the national level while the second addresses the role they can play in the international aspects of the Convention. The role envisaged for museums (along with schools, community centres, archives, libraries, similar entities) on the international level[58] is a fairly limited one, namely to disseminate information about the List of Intangible Cultural Heritage in Need of Urgent Safeguarding (USL), the RL and the Register of Good Safeguarding Practices (RGSP).

On the national level, counted along with research institutes, centres of expertise, archives, libraries, documentation centres and similar entities, museums are understood to "play an important role in collecting, documenting, archiving and conserving data on intangible cultural heritage, as well as in providing information and raising awareness about its importance. In order to enhance their awareness-raising functions about intangible cultural Heritage, they are encouraged to:

(a) involve practitioners and bearers of intangible cultural heritage when organizing exhibitions, lectures, seminars, debates and training on their heritage;

(b) introduce and develop participatory approaches to presenting intangible cultural heritage as living heritage in constant evolution;

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56   OD 102 refers to "the misappropriation or abuse of the knowledge and skills" of CGIs and "over-commercialization" resulting from unsustainable tourism.

57   Since many museums also need to raise money from museum shops, cafes and restaurants, etc. The Museum of Tomorrow in Rio de Janeiro (cfr. footnote 75) is a good example of a successful partnership between public power, civil society and private sector actors: It is overseen by Rio's Secretary of Culture and, originally conceived by Roberto Marinho Foundation it is currently managed by the Instituto de Desenvolvimento e Gestão and is sponsored by a wide network of partner sponsors (including Shell, IBM, IRB-Brasil RE, Engie, Grupo Globo and CCR).

58   OD 119.

(c) focus on the continuous recreation and transmission of knowledge and skills necessary for safeguarding intangible cultural heritage, rather than on the objects that are associated with it;

(d) employ, when appropriate, information and communication technologies to communicate the meaning and value of intangible cultural heritage;

(e) involve practitioners and bearers in their management, putting in place participatory systems for local development."[59]

The first of these is self-explanatory and we would hope that it is becoming a standard approach towards presenting ICH in museums and for museums when providing training on ICH and its safeguarding. The encouragement to "introduce and develop participatory approaches to presenting intangible cultural heritage as living heritage in constant evolution" not only enjoins museums to develop new participatory approaches (which we have seen above is not a simple task), but is asking them to find ways to exhibit and interpret a form of heritage that is both living and constantly evolving; in contrast to the static character of most museum collections, as well, this clearly presents a challenge and will require the development of innovative approaches. Without doubt, close involvement of ICH practitioners and bearers will prove to be a sine qua non of such an exercise. Again, the exhortation in sub-paragraph (c) to focus on "continuous recreation and transmission of knowledge and skills" necessary to ICH and not on the associated objects is asking for a fundamental reconsideration not only of what museums *do* but what museums *are*.[60] The requirement in (d) to use ICTs to "communicate the meaning and value of meaning" of ICH is less of a challenge for museums that are already using ICTs quite extensively, though there remains the need to consider how this can be done appropriately for ICH. One aspect of this, for example, will be the area of the intellectual property vested in any resultant fixation of ICH elements which may prove more complex than in the case of most museum collections.

Finally, museums are being asked to "involve practitioners and bearers in their management, putting in place participatory systems for local development." Without doubt, involving CGIs in the management of exhibitions, lectures, seminars, debates and training courses that take place in museums will be more or less challenging depending on the size and existing management structures of the museums in question. There is no doubt that museums – of whatever size and kind – that have already instituted an effective and equal dialogue with the CGIs will be much better placed to fulfil this requirement, and such channels of communication and dialogue must be seen as an essential first step in this. Following this, is the additional encouragement that museums will put in place "participatory systems for local development" as part of this management approach. This is a very big ask and

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59 OD 109.

60 As we have seen in the video clips prepared by the *Intangible Cultural Heritage and Museums Project* showing various new ways of presenting ICH and museums, these may be very different from our traditional conception of the museum.

it is likely that only some museums that are particularly well-embedded in the local culture and society will be in a position to achieve this fully.[61] However, what all of this suggests is that our idea of what a museum is will undergo a radical reconsideration in order to address the specific requirements of ICH and that, over time, we will see new types of museum emerging to answer to these.

Ensuring a function for ICH in society

Experience of the periodic reports submitted by States Parties during the 2012 to 2019 reporting cycles suggests that one of the most challenging aspects of implementation to report on relates to the requirement to "adopt a general policy aimed at promoting the function of the intangible cultural heritage in society."[62] This relates, in part, to setting policies at the macro level, but it also relates to a notion that ICH elements and their safeguarding should operate at a local level to contribute towards building sustainable communities and towards micro level social and economic benefits. It is at this micro level that museums, in particular those developed around specific ICH elements and community museums, have the potential to make a valuable contribution.

If we analyse Chapter VI concerning sustainable development that was added to the OD in 2016,[63] it can help us to understand the kinds of interventions that museums might make in this regard. The "dynamic nature of intangible cultural heritage in both urban and rural contexts"[64] is presented as an essential aspect of its importance to sustainable development, and we have seen above (with reference to Chapter IV of the OD) that this has certain important implications for how they operate. A further general point is that, with regard to specific measures aimed at enjoying the benefits of ICH safeguarding in the various aspects of sustainable development,[65] undertaking research and studies is a commonly proposed measure. Clearly, museums are in a strong position to undertake such research and studies and/or to disseminate their findings. Another aspect in which a role could be envisaged

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61   The Casa Lussu museum described in T. Nikolić Đerić e.a. (eds.), *Museums and Intangible Cultural Heritage: Towards a Third Space in the Heritage Sector. A Companion to Discover Transformative Heritage Practices for the 21st Century.* Bruges, 2020, p. 59 is an excellent case where this approach is already being put into action.

62   Article 13(a).

63   Chapter VI on "Safeguarding intangible cultural heritage and sustainable development at the national level" added to the Operational Directives for the Implementation of the Convention for the Safeguarding of the Intangible Cultural Heritage by the Committee at its sixth session (UNESCO Headquarters, Paris, 30 May to 1 June 2016). It contains OD 170-197.

64   OD 170.

65   These are in brief: food security; health care; 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; tourism towards sustaining livelihoods and inclusive economic development; and contributing to peace and security through preventing disputes and post-conflict resolution.

for museums – especially in view of the ethical codes that already exist – is that they can help to ensure that development plans, policies and programs "respect ethical considerations" and do not "negatively affect the viability" of ICH or "de-contextualize or denaturalize that heritage."[66] However, this does beg the question as to whether current museum codes from national, regional or international professional bodies[67] and networks sufficiently take account of the specific ethical requirements of ICH safeguarding.

For example, the Ethical Principles for Safeguarding Intangible Cultural Heritage[68] set out as the first principle that "communities, groups and, where applicable, individuals should have the **primary role** in safeguarding their own intangible cultural heritage." This would, of course, suggest a fundamental recalibration of the relationship between museums and the CGIs of ICH elements exhibited and other related activities. The fourth principle is also highly relevant to how museums interact with CGIs, stating that "(a)ll interactions with the communities, groups and, where applicable, individuals who create, safeguard, maintain and transmit intangible cultural heritage should be characterized by **transparent** collaboration, dialogue, negotiation and consultation." This would imply a degree of partnership and equality in participatory approaches that is difficult to achieve, and also emphasizes the importance of dialogue and negotiation. Principle 5 has potential to impact directly on museums whose collections include items associated with ICH: **"Access** of communities, groups and individuals to the instruments, objects, artefacts, cultural and natural spaces and places of memory whose existence is necessary for expressing the intangible cultural heritage should be ensured, including in situations of armed conflict. Customary practices governing access to intangible cultural heritage should be fully respected, even where these may limit broader public access."

This would go further in terms of recognizing the rights of "source communities" than museum codes of ethics generally do. The requirement in Principle 8 that CGIs who create ICH "should **benefit from the protection** of the moral and material interests resulting from such heritage, and particularly from its use, research, documentation, promotion …" will clearly have important implications for how museums interpret and present ICH and related research findings. Principle 9 again emphasizes that "(t)he **dynamic and living nature of intangible cultural heritage** should be continuously respected" which

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66 OD 171.

67 The latest version of the Museums Association in the UK whose Code of Ethics was adopted on 5/11/2015, following an eighteen month consultation process during 2014-2015 and includes a section on "Public Engagement"; in the latest version of ICOM's *Code of Ethics for Museums* (2017) under the rubric "Respect for Communities", 6.5 on Contemporary Communities states that, "(w)here museum activities involve a contemporary community or its heritage, acquisitions should only be made based on informed and mutual consent without exploitation of the owner or informants. Respect for the wishes of the community involved should be paramount."

68 Adopted by the ICH Committee in 2015 in Decision 10.COM 15.a.

has been considered above with regard to the OD.[69] Principle 10 reiterates the warning against the dangers of "decontextualization, commodification and misrepresentation" of ICH which is obviously relevant for museums presenting ICH (and its exponents) in exhibitions. Avoiding these potential pitfalls does suggest again the need for a real and equal dialogue with CGIs. The importance of museums reflecting the diversity of the communities and social groups that they serve and whose heritage is displayed in their exhibitions is strongly set out in principle 11: **"Cultural diversity** and the identities of communities, groups and individuals should be fully respected. In the respect of values recognized by communities, groups and individuals and sensitivity to cultural norms, specific attention to **gender** equality, **youth** involvement and **respect for ethnic identities** should be included in the design and implementation of safeguarding measures."

An interesting issue is introduced in principle 12 which characterizes safeguarding ICH as "of general interest to humanity." This does not, however, support the notion of the "world museum" as a form of global heritage in itself, but rather suggests that more transfrontier and transnational cooperation and networking over shared ICH elements is encouraged. Again, this is a principle with potentially fundamental impacts on how museums view their role regionally and internationally, while still balancing the rights of local CGIs.

Continuing with the analysis of Chapter VI of the OD, we see the introduction of the notion of "inclusive social development"[70] which is obviously one that should be given prominence by museums seeking to ensure that their engagement with ICH and its CGIs really contributes towards sustainable local development. Various elements are included in this idea, including sustainable food security, quality health care, quality education for all, gender equality and access to safe water and sanitation. Although some of these may appear rather tangential to the role of museums, they do signal that museums are able to bring out these aspects of the ICH they present and may even seek to give prominence to ICH elements that respond to specific local needs. In addition, museums' educational activities can support quality education for all, and their role in supporting transmission can be important to supporting ICH that itself feeds into achieving inclusive social development goals. Interestingly, one of the requirements of this is that people are free "to choose their own value systems" and museums can certainly be crucial in presenting and giving value to these value systems.[71]

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69 The additional requirement in this principle that "(a)uthenticity and exclusivity should not constitute concerns and obstacles" to safeguarding ICH might prove challenging for ethnographic museums.

70 OD 177.

71 OD 180 extends these ideas, setting out a goal for States Parties to "endeavour, by all appropriate means, to ensure recognition of, respect for and enhancement of the intangible cultural heritage in society, emphasizing its particular role in transmitting values and life skills and contributing to sustainable development, in particular through specific educational and training programmes within the communities and groups concerned and through non-formal means of transmitting knowledge."

In view of the place that museums have on many tourism itineraries and in presenting, interpreting and explaining local heritage and sites to tourists, they can be key partners with States Parties in ensuring that CGIs are "the primary beneficiaries of any tourism associated with their own" ICH and in "promoting their lead role in managing such tourism."[72] and "ensure that the viability, social functions and cultural meanings of that heritage are in no way diminished or threatened by such tourism."[73] Museums are well-placed to ensure not only that the identity of local CGIs is supported in the way in which their ICH is presented to tourists, but also build respect for their identities and values so that when tourists visit the places that they live in they do so in a respectful manner that does not disrupt their lives.

Museums can also help to "conserve and protect those natural spaces whose existence is necessary for expressing the intangible cultural heritage"[74] by drawing out explicitly the links between ICH practices and performances (and the associated objects) and the natural spaces and resources essential to these in the way they interpret them. It is even possible for museums to play a central role in encouraging community-based resilience to natural disasters and climate change.[75] The OD also explicitly recognize the potential of ICH and its safeguarding "to foster peaceful, just and inclusive societies"[76] and to contribute to "social cohesion, overcoming all forms of discrimination and strengthening the social fabric of communities and groups in an inclusive way."[77] This not only includes the contribution that ICH can make towards the prevention of disputes and peaceful conflict resolution[78] but also in supporting post-conflict reconciliation and the recovery of CGIs after conflicts.[79] Although much of this lies beyond the remit of most museums, for those museums that have peace (or conflict) as a primary object[80] and museums that are operating in conditions of conflict or in post-conflict societies this is an issue of importance which may encourage them to rethink their collections and

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72   OD 187 (b) (i).

73   OD 187 (b) (ii).

74   OD 189 (c) (Ii).

75   OD Section V.3.3. Examples of museums worldwide dedicated to educating the public about climate change include: the Jockey Club Museum of Climate Change which aims to contribute towards positive changes in knowledge, attitudes and behaviour in relation to climate change throughout Hong Kong and beyond, available online at: *Jockey Club Museum of Climate Change,* https://www.mocc.cuhk.edu.hk/en-gb/ (20/06/2020); and the Museum of Tomorrow sited at Rio de Janeiro's harbour which was established in 2015 and explores the opportunities and challenges which humanity will be forced to tackle in the coming decades from the perspective of sustainability and cooperation, available online at: *Museu do Amanhã*, https://museudoamanha.org.br/en/about-the-museum (20/06/2020); and The Climate Museum (New York) whose mission is to inspire action on the climate crisis through programming across the arts and sciences that deepens understanding, builds connections, and advances just solutions, available online at: *The Climate Museum,* https://climatemuseum.org (20/06/2020).

76   OD 192.

77   OD 194.

78   OD 195.

79   OD 196.

80   Such as the Museum of Peace in Tehran, or museums established to memorialize previous conflicts.

how they present and interpret these. With regard to strengthening social cohesions and confronting various forms of discrimination, the potential of museums is easier to see. In this regard, the work of museums in highlighting minority heritages (of refugees, ethnic and religious minorities, heritage of gender-based minorities, etc.), the heritage of Indigenous peoples, and slave heritage among others is of course important.[81]

When looking at the question of what museums can contribute towards safeguarding ICH and taking a participatory approach towards this, the UNESCO Recommendation concerning the Protection and Promotion of Museums and Collections, their Diversity and their Role in Society (2015)[82] is also an important document. An important departure, this Recommendation aims to place the museum at the forefront of the paradigm shift occurring in international cultural policy- and law-making towards a less state-driven model. It defines heritage as "a set of tangible and intangible values, and expressions that people select and identify, independently of ownership, as a reflection and expression of their identities, beliefs, knowledge and traditions, and living environment." The emphasis on *values* rather than on objects (even for tangible heritage) shows a clear influence from the conception of ICH, and the idea that heritage expresses people's identities beliefs, knowledge and traditions, and living environment owes a lot to the definition of ICH given in Article 2(1) of the 2003 Convention; this is particularly obvious in the emphasis on self-identification and on the idea that heritage is created in response to the environmental constraints that people face.[83]

From this, we see that the understanding of the heritage represented through museum collections has evolved greatly, with an emphasis not only on the intangible character of much of what is now considered as heritage but also, significantly, its contemporary character as a living tradition, something based on traditions passed on through generations but with a contemporary role and meaning for each one. According to the Recommendation, museums are "spaces for cultural transmission, intercultural dialogue, learning, discussion and training, also *play an important role in education (formal, informal, and lifelong learning), social cohesion and sustainable development*" [emphasis added]. This can be seen to mirror closely the core notions of safeguarding ICH and the understanding expressed in the 2003 Convention that ICH contributes both to social cohesion and "truly sustainable development."[84] Moreover, ICH is presented in the Convention as a "well-spring of cultural diversity"[85] and this idea is again mirrored in the Recommendation as follows: "The diversity

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81 OD 197 (a) also makes reference to the need for States Parties to "ensure respect for the intangible cultural heritage of indigenous peoples, migrants, immigrants and refugees, people of different ages and genders, persons with disabilities, and members of vulnerable groups in their safeguarding efforts" as part of social inclusion and cohesion.

82 Adopted 17/11/2015. Available online at: http://portal.unesco.org/en/ev.php-URL_ID=49357&URL_DO=DO_TOPIC&URL_SECTION=201.html.

83 A museum collection is defined as "an assemblage of natural and cultural properties, tangible and intangible, past and present."

84 Second recital of the Preamble.

85 Ibidem.

of museums and the heritage of which they are custodians constitutes their greatest value."[86]

Conclusion

Tensions associated with the dual global and local character of heritage have become evident in the implementation of the 2003 Convention. This treaty requires us to reconsider the role of CGIs in safeguarding ICH and to propose new mechanisms for their partnership with state bodies in this. A key question, then, is the way in which this paradigm shift is being played out on the ground and, in particular, what roles museums can play in supporting more community-driven approaches to heritage safeguarding. From the above, we can see that museums will have to continue to reflect upon their place in society, how they engage with local communities and groups and how they can expand their range of activities accordingly. As we have seen, this question has been addressed by the States Parties to the 2003 Convention (in the ODs) and many museums are already thinking deeply and creatively about the challenges this presents.

Local museums are central to safeguarding specific ICH elements, often working in cooperation with bearers, and can provide communities with the educational, social and spatial capacities necessary to participate effectively in ICH safeguarding.[87] This is not without its challenges, however, especially given a tendency in ethnographic museums that often hold collections of ICH to emphasize documentation and recording of ICH over seeking to enhance the function of ICH within society and the community.[88] Moreover, the requirements of ICH as a living heritage means that museums have to re-consider how (and whether) to hold the tangible elements associated with ICH – masks, musical instruments, costumes, looms, cooking utensils etc. – or not in order not to restrict their use by the ICH holders.[89]

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86   2015 Recommendation at paragraph 23.

87   UNESCO, *Examination of the Reports of States Parties on the Implementation of the Convention and on the Current Status of all Elements Inscribed on the Representative List*. Paris, 2013.

88   UNESCO, *Examination of the Reports of States Parties on the Implementation of the Convention and on the Current Status of all Elements Inscribed on the Representative List*. Paris, 2012.

89   The utensils required for performing the Jongmyo element in South Korea are held in a local museum and released to the community for use when this periodic element is performed.