Trans-border ICH and other challenges that add complexity for implementation of the Convention for Safeguarding Intangible Cultural Heritage.

Dr Susan McIntyre-Tamwoy
Associate Director, Manager International Projects and Research.
President, ICICH, ICOMOS
Introduction

- This project looks at some of the complexities that arise in considering the protection and listing of ICH.
- I will draw on a range of published studies and on recent field work in SE Asia.
- I am particularly interested in issues around the definition of community, the obvious problems of State parties as effective or honest brokers in the protection of ICH of minority ‘communities’, of trans-border ICH including:
  - the recognition of ICH that is not contained within state boundaries because of internal development of culture and practice in different states and regions predating modern national boundaries, and
  - also as a result of more recent diaspora whether voluntary or forced.

- Related to all of the above I will talk briefly about the issue of Free Prior and Informed Consent in relation to the requirement in the convention for State Parties to consult as widely as possible.
Acknowledgements

Some of the ideas developed in the paper arose from a recent study trip to Myanmar, Laos and Thailand as part of a research project being carried out by the IRCI Japan.

Their project: *Safeguarding Intangible Cultural Heritage: How other countries in SE Asia are utilising a mix of legal and non legal mechanisms*, aims to

- analyze the legal systems in the countries of the Greater Mekong region used to safeguard ICH including laws and regulations, policies and good practices, and
- identify possible solutions, by developing a kind of “tool kit for planning legal mechanisms” that will help member states to develop the effective legal systems to safeguard their ICH.
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International Research Centre for Intangible Cultural Heritage in the Asia-Pacific Region (IRCI), Japan

Researcher facilitating this project:
Professor Toshiyuki Kono,
Faculty of Law, Kyushu University, Japan

Researcher in charge at IRCI
Ms Misako Ohnuki,
Deputy-Director-General, IRCI

Current Field Researchers:

Dr Susan McIntyre-Tamwoy
Assoc. Director International Projects & Research, Extent Heritage Pty Ltd.

Ms Katie O’Rourke,
Katie O’Rourke Consulting

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Safeguarding measures aimed at ensuring the viability of the intangible cultural heritage, including the identification, documentation, research, preservation, protection, promotion, enhancement, transmission, particularly through formal and non-formal education, as well as the revitalization of the various aspects of such heritage. (Article 2(3))
The Purposes of the Convention

There are four purposes of the Convention

• (a) to **safeguard** the intangible cultural heritage;
• (b) to **ensure respect** for the intangible cultural heritage of the communities, groups and individuals concerned;
• (c) to **raise awareness** at the local, national and international levels of the importance of the intangible cultural heritage, and of ensuring mutual appreciation thereof;
• (d) to **provide for international cooperation and assistance**. (Article 1)
The function of the list is to ensure better visibility of the intangible cultural heritage and awareness of its significance, and to encourage dialogue which respects cultural diversity.
The measures for Safeguarding required of State parties *(Articles 12 & 13)*

**Inventories & reporting**

- To ensure identification with a view to safeguarding, each State Party shall draw up, in a manner geared to its own situation, one or more inventories of the intangible cultural heritage present in its territory. These inventories shall be regularly updated.
- When each State Party periodically submits its report to the Committee, in accordance with Article 29, it shall provide relevant information on such inventories.

**Other Measures:**

To ensure the safeguarding, development and promotion of the intangible cultural heritage present in its territory, each State Party shall endeavour to:

- (a) adopt a general policy aimed at promoting the function of the intangible cultural heritage in society, and at integrating the safeguarding of such heritage into planning programmes;
- (b) designate or establish one or more competent bodies for the safeguarding of the intangible cultural heritage present in its territory;
- (c) foster scientific, technical and artistic studies, as well as research methodologies, with a view to effective safeguarding of the intangible cultural heritage, in particular the intangible cultural heritage in danger;
- (d) adopt appropriate legal, technical, administrative and financial measures aimed at:
  - (i) fostering the creation or strengthening of institutions for training in the management of the intangible cultural heritage and the transmission of such heritage through forums and spaces intended for the performance or expression thereof;
  - (ii) ensuring access to the intangible cultural heritage while respecting customary practices governing access to specific aspects of such heritage;
  - (iii) establishing documentation institutions for the intangible cultural heritage and facilitating access to them.
A criticism of the ICH Convention has been that it is the State that nominates ICH for safeguarding under the Convention.

Some of the countries in the south east Asian region are the most ethnically diverse in the world.
Whose ICH?

• 2010 Uyghur Meshrep in UNESCO’s List of Intangible Cultural Heritage in Need of Urgent Safeguarding on 17 November 2010.

• And yet the practice of the Meshrep has been banned by Chinese authorities throughout East Turkestan (also known as the Xinjiang Uyghur Autonomous Region of China) since around 1997

Source:
http://unpo.org/article/11954 viewed 21/01/2016
“Law Is a Key to Protecting Intangible Cultural Heritage” – Beijing Review.
Challenges: Community Consent

A key issue under the Convention is the community consent. The convention stops short of requiring ‘consent’ and rather uses the terms ‘participation’ and ‘involvement’.

Article 15 – Participation of communities, groups and individuals

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.
Trans-border issues

Cultural diasporas are common in southeast Asia. For example in the case of Myanmar several of the ethnic groups are found on both sides of the land frontiers surrounding Myanmar:

- the Chin (Mizo) and Naga are also present in India;
- the Kachin, Wa and Shan in China;
- the Karen, Mon and Shan in Thailand;
- and the Rakhine and 'Rohingya' Muslims in Bangladesh.
- The smaller hill communities of the Lahu, Akha and Lisu are even divided across four modern-day borders, being split between Myanmar, China, Laos and Thailand.
Transborder Issues (cont)

• Border issues, as with Laos there are problems of identifying which group holds the ICH over the border areas.

• There is also some ethnic conflict in Thailand particularly in Southern Thailand, made up of Malay Muslim majority areas in the three provinces of Narathiwat, Pattani and Yala and parts of Songkhla province. This area has historically been volatile and prone to periodic outbreaks of insurgencies.
Diasporas – where is the community?

Mapping Diasporas Nov 17th 2011, 14:54 BY THE ECONOMIST
The Khene

- The Khene has been nominated by Lao People’s Republic.
- Some have suggested that this may have been premature as the nomination had not considered the connection with part of the Thai community.
- The nomination of the Khene will be considered in 2016.

https://www.youtube.com/watch?v=Z1LjNDV7wZw
References


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UNESCO nd *Implementing the Convention for Safeguarding ICH*

*UNESCO 2003 Convention for Safeguarding Intangible Cultural Heritage*