

Community Involvement in Safeguarding ICH – Sustainable Development and Participation

By Janet Blake¹

In this presentation, I wish to consider the important role played by ICH in “achieving truly sustainable development”² and link this to an important element in the notion of sustainable development - the requirement for participatory approaches to development. By examining the nature of this requirement and its expression in various international treaties and other texts, I hope to provide some basis for considering the nature of community participation or involvement in safeguarding ICH.

Sustainable development as expressed in the Rio Declaration³ comprises both substantive and procedural elements and the latter contain an international obligation on governments to operate in certain ways. One of these is the requirement placed on States to take a participatory approach to development issues. Principle 22 specifically refers to the vital role of “indigenous people and their communities, and other local communities” in environmental management and development and a concomitant requirement on States to “recognise and duly support their identity, culture and interests and enable their effective participation in the achievement of sustainable development”.

The various international treaties that make reference to participation by indigenous and local communities are inspired by Principle 22. The 1992 CBD,⁴ for example, in relation to Article 8(j) undertakes *inter alia* to establish mechanisms to ensure effective participation by indigenous and local communities in decision-making and policy planning. These mechanisms will be examined further below. According to the 1994 CCD,⁵ Parties should be guided by the need to ensure that decisions on the design and implementation of programmes “are taken with the participation of populations and local communities”.⁶ The 2001 FAO treaty states that the right to participate in national level decision-making regarding PGRs is fundamental to realising Farmers’ Rights.⁷ The 1989 ILO Convention recognises the right of indigenous people to decide their own development priorities “as it affects their lives, beliefs, institutions and spiritual well-being”.⁸

What specific approaches to ensure the participation of indigenous and local communities can we identify from these and other instruments?

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² Istanbul Declaration

³ Final Declaration of the UN Conference on the Environment and Development (UNCED) (Rio de Janeiro, 1992).

⁴ UN Convention on Biological Diversity (1992).

⁵ UN Convention to Combat Desertification (1994).

⁶ Art.3 (a).

⁷ Art. 9.2(c).

⁸ Art.7(1).

In relation to Article 8(j) of the CBD, the following broad approaches are identified:

- Establishing local-specific systems for classifying knowledge and procedures for acquiring and sharing it, based on customary law.
- Recognising the need to address the needs not only of the community but also of its members.
- Prior informed consent for access to, acquisition and use of knowledge.
- Mutually agreed terms (MATS) for the above and in planning and management of the resource, reflecting mutual respect and understanding.
- Full and equal participation and partnership in planning and management.
- Creating local implementation and incentive measures.
- Establishing access and benefit-sharing agreements (ABS).
- The right of non-disclosure of confidential information.
- The right to review research and authorise its dissemination and community or joint ownership of copyright on publications based on traditional knowledge research.

A FAO report related to the CCD notes “of prime importance is the participation of the local people” and makes the following proposals:

- Institutional, legislative and infrastructure constraints should be eliminated to facilitate co-management of development and collective community decisions.
- A variety of technological models and decision-making tools should be provided to cope with local diversities.

The Mataatua Declaration (1993) on indigenous intellectual and cultural property (ICP) sets out certain recommendations that may be worth considering:

1. Indigenous communities should define their ICP for themselves.
2. Develop a Code of Ethics for external users when recording their traditional knowledge.
3. Prioritise establishment of indigenous education, research and training centres to promote traditional knowledge.
4. Develop and maintain customary practices for the protection, preservation and revitalisation of ICP.
5. Assess existing legislative and institutional structures for their effectiveness in protecting ICP.
6. Establish an appropriate body with mechanisms for managing, safeguarding and consulting on ICP.

Finally, of course, the existing models of the Masterpieces proclamations and the 1972 World Heritage Conventions must be taken account of, both of which address the issue of community involvement in management and related areas. The Procedure for Submission and Evaluation of Candidature Files for proclamations contains several useful points which are, in brief:

- A candidature file must be prepared as far as possible by persons belonging to the communities concerned or, at least, have the guaranteed participation of members of the community. (Paragraph 11)

- In preparing candidature files, the right of access of the community to its own ICH and protection of the custodians of the tradition (i.e. confidentiality of data) should be guaranteed. (Paragraph 13)
- The Jury, in its evaluation, should focus *inter alia* on the involvement of the community and recognised practitioners of the tradition in the action, revitalisation and protection plan. (Paragraph 18)
- Where the bodies referred to in the candidacy are not “directly representative of the community concerned or the performers/practitioners and/or custodians” of the ICH in question their “support and collaboration” must be clearly demonstrated. (Paragraph 24 (a))
- The action plan should include, as far as possible, “substantial and active participation from the community concerned or the performers/practitioners and/or custodians” of the ICH in question “in the design and application of strategies and mechanisms aimed at safeguarding and preserving” it. (Paragraph 24 (b))

Further relevant considerations might be: measures taken to raise the awareness of members of the community concerned of the importance of safeguarding the ICH concerned; the benefits to be derived by the community concerned from the safeguarding measures; the measures taken within the local community for safeguarding ICH; and the existence of local democratic structures that can ensure full participation.

Implementation of the 1972 WHC has provided certain examples of cultural properties that are managed with the active participation of local/indigenous communities, of which Uluru in Australia is the best known example. The 2005 version of the Operational Guidelines to the 1972 WHC also includes a few references to community involvement and participation in the process of nomination and management planning. It notes (at 110) that an effective “management system” depends on the type and needs of the property nominated and “may vary according to different cultural perspectives, the resources available and other factors. They may incorporate traditional practices etc.” In order to reflect the aforementioned diversity, it should demonstrate “a thorough shared understanding of the property by all stakeholders” and “the involvement of partners and stakeholders.” (at 111) In relation to nominations of cultural landscapes, “nominations should be prepared in collaboration with and the full approval of local communities”. (Annex 3 at a.12)

The Operational Guidelines also sets out the Global Strategy for World Cultural and Natural Heritage of which “the primary goal is to ensure that the necessary skills are developed by a wide range of actors for better implementation of the Convention”. This signals a crucial element in ensuring participation and community involvement in the various aspects of safeguarding – capacity-building in the communities in order to equip them to undertake these roles effectively.