Ethics in the context of Intangible Cultural Heritage Safeguarding

Manase Kudzai Chiweshe

Table of Contents

1.0 Introduction

The 2003 Convention for the Safeguarding of Intangible Cultural Heritage provides an overarching framework for the discussion around ethics within the sphere of ICH safeguarding activities. This paper is an analysis of ethics within the wider context of operationalizing the 2003 Convention with a specific focus to the southern Africa sub-region. It outlines various definitions and conceptual understanding of ethics within the literature on living heritage safeguarding. The paper also examines the key challenges and complexities related to ethical issues in the arena of ICH and how the 2003 Convention has attempted to provide an ethical framework. It is thus imperative to also question how these principles have been localized and understood especially within southern Africa. Safeguarding of ICH includes important and vital community knowledge which requires a robust framework to protect communities. Ethical considerations in safeguarding practices are about building universally accepted norms of acceptable conduct for all those involved from a human or cultural perspective.[1] It is about understanding that the commitment to communities and their knowledge go beyond the narrow legalistic requirements to encompass a much wider cultural concern for social justice, protection, and respect for persons, communities, and cultures. Ethics are about providing a contextual basis to analyze, document, respond and minimize the impact of disrespect, exploitation or misrepresentations which can be common in the context of safeguarding exercises.

2.0 Background to the 2003 Convention

In providing a background of the 2003 Convention in the context of this paper requires an appreciation of how ethical considerations are an ineffaceable part of the need to safeguard living heritage. Ethical considerations begin from the actual definition of what constitutes living heritage as this process can be fraught with contestations and complexity around meanings. It was thus imperative that in defining ICH, the convention provide a clear, universal and an ambiguous description to ensure clarity in safeguarding practices. The 2003 Convention of the Safeguarding of Intangible Cultural Heritage is an international agreement geared towards the safeguarding, protection, and promotion of intangible cultural heritage. Intangible cultural heritage is defined as:

---

[1] https://ich.unesco.org/en/ethics-and-ich-00866

…the practices, representations, expressions, knowledge, skills – as well as the instruments, objects, artefacts and cultural spaces associated therewith – that communities, groups, in in some cases, individuals recognize as part of their cultural heritage. This intangible cultural heritage, transmitted from generation to generation, 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, thus promoting respect for cultural diversity and human creativity.[2]

The convention thus provides the notion of continuity in its definition of ICH. It is important here to note that the convention is regarded as a binding legal instruments and state parties that sign on to it are obligated to ratify it within their national contexts. The need for a binding legal instrument is explained by van Uytsel (2012:1) for argues that: "The final impetus for adopting a binding legal instrument (i.e., a convention) was the criticism that the existing soft law instruments did not adequately recognize the communities' proper role in the safeguarding process, being the active involvement of the communities." The convention is thus built on the core value of ensuring community participation and ownership of safeguarding practices. Within the convention there are many sections that focus on community participation such as:

- Article 2.1 requiring the recognition of the ICH by the communities, groups, and when appropriate, individuals;
- Article 11 requiring their participation in identifying and defining their ICH; article 12 linking the identification and the inventorying of ICH;
- Article 13 encouraging States Parties to ensure access to ICH while respecting customary practices;
- Article 15 calling upon States Parties to ensure the widest possible participation of communities, groups and, when appropriate, individuals in safeguarding their intangible cultural heritage.[3]

This idea is also the core value of the twelve ethical principles that followed the passing of the convention and guides the work of all stakeholders involved in the living heritage sector.

---

[2] https://www.cni.org/wp-content/uploads/2016/04/CNI_Preserving_McDonough.pdf
[3] https://www.accu.or.jp/ich/en/pdf/b2006Expert.pdf

Ethical principles are therefore in built in the 2003 convention itself as it defines the key processes of inventorying and safeguarding.

3.0 Conceptual understanding of ethics and their role in ICH safeguarding

Knowing what constitutes ethical behavior in safeguarding exercises is of paramount importance to all those who work and engage communities. This section, therefore, provides a nuanced discussion around an agreed definition of ethics in relation to ICH safeguarding. Resnick (2015) describes ethics as norms for conduct that distinguish between acceptable and unacceptable behaviour.[4] In the context of ICH safeguarding, it is important to emphasize how ethics are a method, procedure, or perspective for deciding how to act and for analysing complex problems and issues that emanate from working with communities. Working with ICH can lead to multiple, complex ethical dilemmas that may negatively impact not only the communities but the research teams in the long run. Lafollette (2007) theorizes that ethics is like most everything else that we strive to be good at; it requires practice and effort. This is true in the context of ethical guideline for inventorying which require building up good practices through repeated implementation of ethical protocols by all stakeholders.

In the context of this paper, the rights based framework is utilised as the conceptual framework to understanding ethics in ICH safeguarding. This framework is built on the understanding that 'the right of access to and enjoyment of cultural heritage is a human right guaranteed by international law, and it must be taken seriously.'[5] Cultural rights are highlighted in multiple international documents including the following:

- *International Covenant on Civil and Political Rights [Article 27]:* 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 other members of their group, to enjoy their own culture, to profess their own religion, or to use their own language.

---

[4] https://www.niehs.nih.gov/research/resources/bioethics/whatis/index.cfm
[5] https://en.unesco.org/news/karima-bennoune-cultural-heritage-human-rights-issue

- *2001 Declaration on Cultural Diversity [Article 4]:* The defence of cultural diversity is an ethical imperative, inseparable from respect for human dignity. It implies a commitment to human rights and fundamental freedoms, in particular the rights of persons belonging to minorities and those of indigenous peoples. No one may invoke cultural diversity to infringe upon human rights guaranteed by international law, nor to limit their scope.

- *2001 Declaration on Cultural Diversity [Article 5]:* Cultural rights are an integral part of human rights, which are universal, indivisible and interdependent. The flourishing of creative diversity requires the full implementation of cultural rights as defined in Article 27 of the Universal Declaration of Human Rights and in Articles 13 and 15 of the International Covenant on Economic, Social and Cultural Rights. All persons have therefore the right to express themselves and to create and disseminate their work in the language of their choice, and particularly in their mother tongue; all persons are entitled to quality education and training that fully respect their cultural identity; and all persons have the right to participate in the cultural life of their choice and conduct their own cultural practices, subject to respect for human rights and fundamental freedoms.

- *International Covenant on Civil and Political Rights (ICCPR) [Article 27]:* n those States in which ethnic, religious or linguistic minorities exist persons belonging to such minorities shall not be denied the right, in community with other members of their group, to enjoy their own culture, to profess their own religion, or to use their own language.

ICH is thus built on this basis of culture as a fundamental human right. This rights based approach allows us to understand the central role of ethical principles in inventorying activities. Ethical principles such as informed consent, participation, justice and respect of peoples and cultures are all part of how culture is understood within a rights discourse. There are however critiques of this rights based approach who claim that such an approach may promote the protection of cultural beliefs that undermine other types of human rights. 2003 Intangible Convention however clarifies this issue by noting:

> For the purposes of this Convention, consideration will be given solely to such intangible cultural heritage as is compatible with existing human rights instruments, as well as with the requirements of mutual respect among communities, groups and individuals, and of sustainable development (UNESCO 2003, Article 2)

Rights based approaches thus in essence inform the ethical principles discussed in this paper. This includes the respect and protection of cultural diversity. Logan (2012) however provide complexity around questions of human rights and ICH highlighting how there are many conflicts that may emerge out of protecting certain practices.

4.0 Why are ethics important in ICH safeguarding?

The importance of ethics in ICH safeguarding cannot be overemphasized. The 2012 document outlining the ethical principles for safeguarding the Intangible Cultural Heritage, includes a paragraph recommending that "communities, groups, local, national, transnational organizations and individuals should carefully assess the direct or indirect, short-term and long-term, potential and definitive impact of any action that may affect the viability of ICH or the communities concerned." This concern is built on the realization that there are multiple courses of action that instead of safeguarding, can actually endanger the short and long term viability of ICH. **There are also multiple cases historically of individuals or outside groups benefiting from ICH at the expense of the community leading to serious challenges around ownership of living heritage.** Archibald (1999:133) in speaking to work involving living heritage argues that:

> …practitioners must ensure that change does not overwhelm continuity. Through remembering we construct identity for ourselves and our communities. Through re-remembering we construct new narratives that underscore mutual obligations, insist upon broad principles of sustainability, requires the creation and preservation of those places and experiences that inspire and provide spiritual sustenance, and recognize the importance of memory itself.

This quote outlines the importance of an ethical approach to the spiritual sustenance and sustainability of a people and their memories. Such an approach places the needs of the community at the forefront of any decisions made around living heritage. In any case, ethics are invaluable in promoting 'the values that are essential to collaborative work, such as

trust, accountability, mutual respect, and fairness.'[6] Working with communities around specific cultural treasurers which may be hidden requires to build a relationship based on ethical values outlined above.

In any case, almost all professions have ethical standards that govern their operations and activities. It is thus not farfetched to expect that within ICH safeguarding there should be an agreed set of values governing the work of various stakeholders involved in the field. In outlining the case for ethics Matthees (2018) argues:

> Do members of cultural groups have special claims to own or control the products of the cultures to which they belong? Is there something morally wrong with employing artistic styles that are distinctive of a culture to which you do not belong? What is the relationship between cultural heritage and group identity? Is there a coherent and morally acceptable sense of cultural group membership in the first place? Is there a universal human heritage to which everyone has a claim? Questions such as these concern the ethics of cultural heritage (or heritage ethics, for short).[7]

These questions provide a context to begin a discussion around how ethical questions are at the heart of the 2003 Convention. Activities of preservation, promotion, and safeguarding often require decision making around multiple areas as outline the quote above. Some specific elements of ICH may be contested or controversial thus require careful consideration based on clear ethical guidelines. Stakeholders in ICH safeguarding need to understand that they are part of a universal movement guided by principles that shape how they relate to work with share community knowledge and practices.

5.0 Ethical principles for the safeguarding of ICH

Since the inception of the convention in 2003, there was a clear need to build a global framework for ethics guarding inventorying, promotion and safeguarding of ICH. For example, the seventh session in 2012, the Intergovernmental Committee for the Safeguarding of Intangible Cultural Heritage had discussions on the increasing concern over the commercialization of intangible cultural heritage.[8] The need for ethics was apparent in

---

[6] https://www.niehs.nih.gov/research/resources/bioethics/whatis/index.cfm
[7] https://plato.stanford.edu/entries/ethics-cultural-heritage/
[8] https://ichcourier.ichcap.org/article/why-safeguarding-ich-needs-codes-of-ethics/

the multiple questions and complexities that emerged out of safeguarding activities. Marc Jacobs (:53) for example outlines some of these questions as follows:

> What is the right thing to do? What is good and what is bad behavior? What is good for the planet on which we live? What is an appropriate balance? Which actions are right or wrong in particular circumstances? Which rules and/ or procedures should we follow? How do you go high, when they go low? To answer these fundamental and practical questions is not always easy.

Between March and April 2015 a team of experts met on Valencia, Spain to discuss and create an ethical blueprint. The meeting came up with twelve ethical principles that were later endorsed the tenth session of the Intergovernmental Committee in Windhoek, Namibia from 30 November to 4 December 2015. Box 1 below provides the full narration of the principles. These principles are built on the 2003 Convention thus UNESCO has argued:

> The Ethical Principles for Safeguarding Intangible Cultural Heritage have been elaborated in the spirit of the 2003 Convention for the Safeguarding of the Intangible Cultural Heritage and existing international normative instruments protecting human rights and the rights of indigenous peoples. They represent a set of overarching aspirational principles that are widely accepted as constituting good practices for governments, organizations, and individuals directly or indirectly affecting intangible cultural heritage in order to ensure its viability, thereby recognizing its contribution to peace and sustainable development.[9]

---

[9] https://ich.unesco.org/en/ethics-and-ich-00866

Table 1: Ethical Principles for Safeguarding Intangible Cultural Heritage

1. Communities, groups and, where applicable, individuals should have the **primary role** in safeguarding their own intangible cultural heritage.
2. The **right of communities, groups and, where applicable, individuals** to continue the practices, representations, expressions, knowledge and skills necessary to ensure the viability of the intangible cultural heritage should be recognized and respected.
3. **Mutual respect** as well as a respect for and mutual appreciation of intangible cultural heritage, should prevail in interactions between States and between communities, groups and, where applicable, individuals.
4. All 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, and contingent upon their **free, prior, sustained and informed consent**.
5. **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.
6. Each community, group or individual should assess the value of its own intangible cultural heritage and this intangible cultural heritage should **not be subject to external judgements of value or worth**.
7. The communities, groups and individuals who create intangible cultural heritage should **benefit from the protection** of the moral and material interests resulting from such heritage, and particularly from its use, research, documentation, promotion or adaptation by members of the communities or others.
8. The **dynamic and living nature of intangible cultural heritage** should be continuously respected. Authenticity and exclusivity should not constitute concerns and obstacles in the safeguarding of intangible cultural heritage.
9. Communities, groups, local, national and transnational organizations and individuals should carefully assess the direct and indirect, short-term and long-term, potential and definitive **impact** of any action that may affect the viability of intangible cultural heritage or the communities who practise it.
10. Communities, groups and, where applicable, individuals should play a significant role in determining what constitutes **threats to their intangible cultural heritage** including the decontextualization, commodification, and misrepresentation of it and in deciding how to prevent and mitigate such threats.
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.
12. The safeguarding of intangible cultural heritage is of **general interest to humanity** and should, therefore, be undertaken through cooperation among bilateral, sub-regional, regional and international parties; nevertheless, communities, groups and, where applicable, individuals should never be alienated from their own intangible cultural heritage.

These principles provide an important framework for state parties to build country-specific ethical guidelines. A reading of these twelve principles provides 5 key points to consider

especially as state parties begin to operationalize them in their peculiar contexts. These 5 points include:

- Firstly, is the need for participation of all stakeholders and buy-in by everyone of the key issues related to ethical guidelines. Throughout the 12 ethical principles, there is an effort to ensure that stakeholders including communities, groups, local, national and transnational organizations and individuals are involved in the process of implementing and localizing the principles. The over ten years of implementing the convention however has shown that participation remains elusive and problematic. UNESCO's Internal Oversight Services highlights that:

  > Although community participation is at the heart of the 2003 Convention, it has proven to be one of the most challenging aspects in its implementation. Community participation needs to be enhanced in many areas related to the implementation of the Convention, including in inventorying, in the elaboration of safeguarding programmes and projects, and in the preparation of nomination files (UNESCO 2013: 9–10).

- The principles secondly, highlight the need to place the community at the centre of any safeguarding activities. Whilst all stakeholders have a role to play, safeguarding activities should always be for the benefit and driven by communities. As such community voices should be central to avoid external judgments or interpretation of practices. An expert meeting held by UNESCO in 2006 concluded the following steps need to be undertaken to ensure proper community participation in inventorying

  1. requiring proper identification of communities/groups and their representatives,
  2. ensuring that only ICH that is recognised by communities and groups is inventoried, or proposed for listing,
  3. ensuring that the permission of communities and groups is obtained for inventorying,
  4. ensuring the prior consent of communities when involving non community members,
  5. respecting customary practices governing the access to ICH,

6. ensuring the free, prior and informed consent of communities and groups for nominating their ICH for the lists of the Convention.[10]

- The principles are also clear on the involvement of minority and vulnerable groups including women, young people and ethnic minorities. This is important to ensure that all ICH is regarded as important regardless of who practices or own it. The nomination lists should not be evidence of power disparities along gender, generation and ethnic lines within communities.
- Fourthly, the ethics are meant to provide a framework for member states. They are not an imposition but rather a way to provide localized and customized ethical frameworks in their own states.

It is important at this juncture to reiterate that these ethical principles are only to '**provide guidance to Member States and development actors** with concrete ethical procedures applicable to all kinds of activities related to intangible cultural heritage or could potentially affect intangible cultural heritage viability.'[11]

6.0 Challenges in implementing ethical standards in ICH safeguarding
6.1 Fluid and contested nature of culture

The first challenge related to the operationalization of the above standards in practice is in regard to the fluid, complex and contested nature of cultural heritage. This complexity leads to challenges in protecting cultural knowledge from commodification or any other processes that may exclude the communities that possess the knowledge. To explain this challenge, Mezey concludes that 'property is fixed, possessed, controlled by its owner, and alienable. Culture is none of these things… culture, which if anything is unfixed, dynamic, and unstable' (Mezey 2007, 2005). It is, therefore, necessary for an ethical framework to respond to these complex dimensions of cultural heritage. The unfixed nature of ICH has also provided complexity with some people claiming that it belongs to everyone and therefore no one in particular (). This has led to calls by some scholars on the need to apply international intellectual property law to intangible heritage as a way of protecting

---

[10] https://www.accu.or.jp/ich/en/pdf/b2006Expert.pdf
[11] https://ichcourier.ichcap.org/article/why-safeguarding-ich-needs-codes-of-ethics/

community ownership especially for things such as songs (Nicholas and Bannister 2004). Matthes (2018) provides multiple objections to this move noting that

> First, one might object that the intellectual property framework functions to commodify intangible cultural heritage, which can have a "tendency to freeze social life in time", and thus offer an artificial and inappropriate approach to traditions and practices that are constantly changing (Brown 2005: 45). Second, general objections to the suitability of legal property protections for cultural heritage, whether tangible or intangible, will carry over to the use of an intellectual property framework for dealing with intangible heritage, either based on the idea that "culture" and "property" are inherently in tension with one another (Mezey 2007), or because the category of property (focused primarily on rights) is inadequate for capturing the breadth of cultural heritage and our duties with respect to it (Prott & O'Keefe 1992). Third, the pull towards thinking of cultural heritage as universally valuable is arguably stronger in the case of intangible heritage than in the case of material heritage. For example, if knowledge aspires to be free to all, then is it acceptable to restrict its flow, even for the sake of guarding against the exploitation of vulnerable indigenous communities (Brown 2005)?[12]

It is thus clear that the unique nature and characteristics of ICH will require localized understandings of the ethical principles to ensure that they respond to unique contextual issues that may arise in safeguarding activities.

6.2 Codes of ethics as legal instruments

The legal enforcement of the Operational Directives and the Ethical Principles has to be understood in the context of how the 2003 Convention has been ratified in individual countries. In themselves the principles are mere guidelines for state partners, therefore, they need to be contextualized and adapted to local specificities. Duvelle thus argues:

> The Committee, therefore, endorsed the twelve ethical principles for safeguarding intangible cultural heritage, encouraging States Party and other national and local organizations to develop, promulgate, and update their own—national or sector-

---

[12] https://plato.stanford.edu/entries/ethics-cultural-heritage/

specific—codes of ethics based on these principles through a participatory process involving communities, groups, and relevant stakeholders.[13]

This shows that whilst the principles are globally accepted, it remains the responsibility and prerogative of the individual states to ensure that they are fully implemented. In many ways, the committee only has the power to 'encourage States Party' and other stakeholders without any instrument to enforce or monitor the progress of individual countries in following the code of ethics. Another major problem is how the ethics and also the Convention itself relate to customary laws spaces such as Africa where ICH is steeped in such legal systems. Lloyd (2009: ii) summarises this challenge by arguing:

> …there is a fundamental inconsistency between the international and national legal frameworks on heritage conservation. The Convention for the Safeguarding of Intangible Cultural Heritage places strong emphasis on community participation. However, legislating at the national level for the safeguarding of ICH to meet State Party obligations established by the Convention results in a top-down approach that largely transposes Western legal norms into non-Western legal contexts. On the one hand the Convention calls for bottom-up community safeguarding measures, which would incorporate local customary laws and values, and on the other it still relies heavily on top-down state legal systems…aspects of customary legal systems are themselves an element of the countries' ICH and as such are the object of safeguarding measures, yet many be in conflict with state legal systems.

Alivizatou (2008:47) further notes:

> As such, the international organisation is faced with the paradoxical challenge of reconciling its universalistic vision, rooted in the respect and protection of human rights, with the particularities and plurality of the world's different cultures. While this contradiction has been assessed critically by anthropologists, what remains to be seen is how ICH balances between 'cultural relativism' and 'global ethics' as a new heritage discourse.

These challenges State Parties to clarify the legal standing of the ethical principles in relation to their own peculiar contexts. This will require specific processes related:

---

[13] https://ichcourier.ichcap.org/article/why-safeguarding-ich-needs-codes-of-ethics/

1. review of national constitution noting what is provided in terms of broad and specific actions related to working with and collecting community knowledge;

2. providing specific laws within criminal codes that can be enforced guided by the ethical principles.

3. propagating specific policies related to localizing the ethical principles and ensuring that they become codified into state laws and that they are in line with already existing laws as well as traditional norms, values and belief systems.

6.3 Who enforces ethics?

Creating an ethical framework requires a clear outline on the enforcement procedures to be followed. Enforcement of ethics requires a clear body mandated to respond to any issues that arise in safeguarding activities. Ethics that are not backed by a clear enforcement framework will largely remain on paper. Ezigbo (2012:232) defines ethics as, 'Ethics are moral principles of conduct used to govern the decision making and behaviour of an individual or a group of individuals.' They are in essence guiding principles and not legally binding laws that have clear criminal enforcement from state apparatus such as the police. When ethics simply provide a basis on deciding whether an action is right or wrong, they occupy a moral rather than a legal realm. Ethics therefore need to be backed by sanctions that clearly outline an enforcement framework and penalties that accrue from breaking the ethical codes. Gilman (2005:4) further argues that, 'Ethics codes or codes of conduct seldom provide detailed, specific prohibitions. Rather, they are broader sets of principles that are designed to inform specific laws or government actions.' This is also true in the case of the Ethical Principles for Safeguarding Intangible Cultural Heritage. They provide a set of principles which state parties need to use in informing specific laws and policies in their countries. Gilman (2005:23) concludes that:

> Statutory and regulatory devices will sometimes add "weight" to a code in the sense that it will be taken seriously. However, that weight has less to do with the law as much as it is related to the implementation of the code. Institutions that both interpret and enforce the code are essential ingredients. A good legal foundation is important if it is clear, concise and enforceable.

Ethical codes in the context of safeguarding ICH should however avoid a strictly legalistic approach in its framing but rather promote grassroots driven participatory approach that leads to enforceable laws. There are however other scholars who are wary of overly depending on state involvement in inventorying activities. Alivizatou (2008:48) for example warns that, '…state involvement could lead to the 'formalisation' and the 'bureaucratisation' of ICH and the subsequent alienation of the communities.'

7.0 Other international and regional instruments on ethics in safeguarding ICH
7.1 Global Code of Ethics for Tourism (Article 4)

Beyond the 2003 Convection, there are multiple regional and international instruments that outline various ethical principles related to ICH. These instruments also provide a framework for our analysis of the global effort to create an agreed position of ethical behaviour in ICH safeguarding. The Global Code of Ethics for Tourism in its fourth Article:

> …prescribes the protection of natural, artistic, archaeological and cultural heritage, to allow traditional cultural products, crafts and folklore to survive and flourish, rather than causing them to degenerate and become standardised. Intangible cultural heritage must be thoughtfully managed if it is to flourish in an increasingly globalized world. Only true partnerships between communities and the tourism and heritage sectors, built on a genuine appreciation for the aspirations and values of all parties, can ensure its survival.[14]

The principle of partnerships and respect for local communities is thus an important part of the global code of ethics. This relates to number 2, 3 and 12 of the ethical principles for the safeguarding of ICH. The role of the communities and the need to ensure survival and protection of ICH is also central to this code of ethics.

7.2 The ICOMOS[15] Charter for the Interpretation and Presentation of Cultural Heritage Sites

This charter was ratified at the 16th General Assembly of ICOMOS in 2008. It has 6 principles which are further elaborated with specific points under each. These principles outline a

---

[14] http://ethics.unwto.org/en/content/tourism-and-intangible-cultural-heritage
[15] International Council on Monuments and Sites

broad plan that ensures the protection of cultural heritage studies. Cultural heritage sites also have an ICH component thus the principles also relate to the protection of this living heritage. In any case, the ICH ethical guidelines provided earlier in this paper in many ways correspond to the ICOMOS Charter. For example, principle six talks of inclusiveness and outlines that: 'The Interpretation and Presentation of cultural heritage sites must be the result of meaningful collaboration between heritage professionals, host and associated communities, and other stakeholders.' [16] This is also contained across the ICH ethical principles which speak about the need for mutual respect, community participation and stakeholder engagement in ICH safeguarding and promotion activities.

7.3 ICOM Code of Ethics for Museums

Whilst this code relates directly to the work concerning tangible cultural heritage it does provide important lessons for those seeking to provide an ethical framework to ICH safeguarding activities. The code addresses museum-related ethical issues around acquisition procedures, compliance with legislation, management of resources, security, returns, and restitution. ICOM also has a Standing Committee on Ethics (ETHCOM) is dedicated to handling museums' ethical issues that are brought to its attention.[17] ICH practitioners can learn from this example and also work towards some kind of standing committee on ethics whether at national, regional or international levels.

8.0 Recommendations for incorporating ethics in ICH safeguarding in the sub-region

- State parties through the National Intangible Cultural Heritage Committees should initiate a wide-ranging and participatory process aimed at localizing the Ethical Principles for Safeguarding Intangible Cultural Heritage. The process should include all the relevant stakeholders especially community representatives at the grassroots. Such a process should aim at creating an ethics advisory committee in each state where all stakeholders are represented including communities. This builds on the recommendation provided by UNESCO experts at a meeting in Tokyo who:

---

[16] https://www.icomos.org/charters/interpretation_e.pdf
[17] https://icom.museum/en/activities/standards-guidelines/code-of-ethics/

…proposed the establishment of advisory or consultative bodies that would comprise practitioners and other tradition bearers, researchers, NGOs, civil society, local representatives and relevant others, as well as the establishment of local support teams including community representatives, cultural practitioners and others with specific skills and knowledge in training and capacity building.[18]

- Wide-ranging advocacy and training campaigns supported by and SAICH Platform and UNESCO across the sub-region to ensure that the importance of ethics is understood and shared by all stakeholders. There is thus need to develop training materials to sensitize governments, communities, groups, and other relevant stakeholders on the importance of ethical concerns in the safeguarding of intangible cultural heritage and to guide governments, communities, groups, and other relevant stakeholders in developing specific codes and tools of ethics.

- The safeguarding of ICH should be conducted according to the highest possible standards and the results of such activities should normally be made available in the public domain. State parties should therefore codify and institutionalize means of ensuring that information if inventorying activities.

- State parties need to establish international cooperation not only at the institutional level but also, wherever appropriate, at the level of communities in order to develop joint activities, such as international meetings or roundtables for community members/activists to exchange and discuss their experiences in transmitting and safeguarding ICH. SAICH Platform can be an important vehicle for this cross national and international peer learning exercises to promote ethical principles in inventorying exercises.

- Box below outlines some recommended ethical guideline for nomination lists outlined by the Expert Meeting on Community Involvement in Safeguarding Intangible Cultural Heritage: Towards the Implementation of the 2003 Convention conducted 13-15 March 2006 in Tokyo, Japan.

---

[18] https://www.accu.or.jp/ich/en/pdf/b2006Expert.pdf

> **Guidelines recommended for nominations to the Representative List**
> Assuming that this List will be managed with the use of a sunset clause, it is proposed that
> - ICH elements proposed for nomination to the Representative List should:
> - emanate from a national inventory or inventories as referred to in article 12 of the Convention, and be included in a national tentative list;
> - be submitted with materials documenting the following –
>   - the ICH has been adequately identified with the involvement of relevant communities, groups and, where appropriate, individuals;
>   - assessment of likely consequences for the ICH of inscription on the List and measures for mitigation of any negative impact,
>   - free and prior informed consent by the community for the ICH to be nominated, e.g. in a "Memorandum of Understanding",
>   - involvement of relevant communities, groups and, where appropriate, individuals in all phases of the process of documenting ICH,
>   - description by the community of the significance of the ICH with support, where appropriate, from other relevant parties,
>   - an explanation of the selection criteria and adjudication process used to determine the State Party's nomination of ICH elements to the Representative list,
>   - that ethical procedures and protocols, as identified in the inventory process, have been followed,
>   - a sustainable action plan for the safeguarding of the ICH,
>   - level of endangerment.
> - The Representative List should be chosen from nominations of ICH that have been identified and are being safeguarded using best practices following an adequate sustainable safeguarding plan (under articles 13, 14, 16 and 18);
> - The element proposed contributes to the diversity of the Representative List.[19]

9.0 Conclusion

This paper has provided an overview of ethical principles involved in inventorying exercises. It has built on multiple international literature on the key role of ethics in the safeguarding of ICH. It provides the basis for arguing state parties to institutionalize and promote ethical systems building on the guidelines provided by UNESCO. The paper used a rights based approach to show how the ethical principles outlined by UNESCO are built on the need to respect cultural diversity and the need to safeguard, promote and preserve ICH as part of a people's heritage. Beyond the complexities and debates around ethics in ICH safeguarding, the paper has provided recommendations for nation states to initiate ethical principles.

---

[19] https://www.accu.or.jp/ich/en/pdf/b2006Expert.pdf

10.0 References

Alivizatou, M. 2008. Contextualising Intangible Cultural Heritage in Heritage Studies and Museology, *International Journal of Intangible Heritage,* 3: 44-54

Archibald, R.R. 1999. *A Place to Remember Using History to Build Community.* Walnut Creek, CA: AltaMira Press,

Ezigbo, C.A. 2012. Assessing Enforcement of Ethical Principles in the Work Place. *International Journal of Business and Social Science* 3 (22): 231-241

Gilman, S. 2005. *Ethics Codes and Codes of Conduct as Tools for Promoting an Ethical and Professional Public Service: Comparative Successes and Lessons.* Washington: World Bank

Lafollette, H. 2007. *The Practice of Ethics.* Malden, ME: Blackwell Publishing

Lloyd, G. 2009. *The Safeguarding of Intangible Cultural Heritage: Law and Policy: A Case Study of Angkor.* PhD. Thesis University of Sydney

Logan, W. 2012. Cultural diversity, cultural heritage and human rights: Towards heritage management as human rights-based cultural practice, *International Journal of Heritage Studies,* DOI:10.1080/13527258.2011.637573

Matthes, Erich Hatala, "The Ethics of Cultural Heritage ", The Stanford Encyclopedia of Philosophy (Fall 2018 Edition), Edward N. Zalta (ed.)
https://plato.stanford.edu/archives/fall2018/entries/ethics-cultural-heritage/

Nicholas, G.P. and Bannister, K.P. 2004. Copyrighting the Past? Emerging Intellectual Property Rights Issues in Archaeology. *Current Anthropology,* 45(3): 327–250

UNESCO. 2013. *Report on the evaluation by the Internal Oversight Service of UNESCO's standard-setting work of the Culture Sector and the related audit of the working methods of*

Cultural Conventions, Intergovernmental Committee for the Safeguarding of the Intangible Cultural Heritage, Eighth session Baku, Azerbaijan, 2 to 7 December 2013 (ITH/13/8.COM/5.c).

Van Uytsel, S. (2012) "*Philosophies Behind the Intangible Cultural Heritage Convention: Equality in Heritage Protection, Community Recognition and Cultural Diversity*". SSRN´s eLibrary. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2001835