

A Community Convention? An analysis of Free,
Prior and Informed Consent given under the
2003 *Convention*

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ABSTRACT

When the 2003 *Convention* was drafted a decade ago, one of its aims was to overcome the perceived exclusions and shortcomings of the earlier UNESCO heritage conventions, perceived as not community-driven and often Eurocentric in approach. The intention was to adopt a legally binding instrument, which allowed for stronger representation of heritage expressions of the South, which placed communities and grass-roots initiatives at the centre of its activities, and which would strengthen the recognition of, and support for, heritage practitioners. On the occasion of the *Convention's* tenth anniversary, this paper offers a review of the *Convention's* success rate in community involvement by focusing on two aspects: the degree to which communities were the driving forces or strongly involved partners in the preparation of candidature files for the *Convention's Intangible Heritage Lists* and the way in which their free, prior and informed consent was documented. Based on these findings the paper reflects on potential further improvements towards the *Convention's* aims within the forthcoming nomination cycles.

Keywords

2003 *Convention*, free, prior and informed consent, community involvement, candidature files 2011, *Intangible Cultural Heritage Lists*, tenth anniversary, documentation, grass-roots initiatives, human rights.

Heritage and consent: an introduction

Community involvement in the safeguarding and conservation of heritage expressions, as well as documentation of free prior and informed consent, were not new concepts in the early years of this millennium. However, it was the adoption of the 2003 *Convention for the Safeguarding of the Intangible Cultural Heritage* (henceforth called the 2003 *Convention*), on the 3rd of November 2003 (UNESCO: 2003), which first brought these two concepts together in an international, legally binding instrument.

The concept of free, prior and informed consent had already been introduced into the UN system in 1966, when the UN *International Covenant on Civil and Political Rights* selected as its key prerogative in article 1 that *All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.* (United Nations: 1966, art. 1) Since then the article has been interpreted in the United Nations *Declaration on the Rights of Indigenous Peoples* to imply that *States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.* (United Nations: 2007)

The authors of the Operational Directives of the 2003 *Convention*, since their very first edition (UNESCO: 2008) assumed that the presentation of proposals and the eventual recognition of heritage expressions on the *Intangible Cultural Heritage Lists* of the 2003 *Convention* was an administrative and legislative measure which would affect the communities – not only indigenous communities – concerned, and accordingly they introduced the requirement of the documentation of free, prior and informed consent for the acceptance of listing proposals. Although this mechanism may not be equally suited for every intangible heritage expression – limitations arise in strongly state-controlled environments but also in multinational contexts and among extremely large practitioner communities – it has been integrated as a standard requirement for any nomination proposal presented.

On the occasion of the 2003 *Convention's* 10th anniversary, this paper reviews how this critical requirement, the documentation of free, prior and informed consent, has been utilised and evaluated under the *Convention*, and what has been the role of communities in the preparation of nomination proposals. It could be argued that these two aspects are too narrow a focus to make general assumptions on the role of communities in the context of the *Convention*. However, the authors of this paper suggest that the mechanism of granting free, prior and informed consent has become a key tool of the *Convention*, not only in ensuring successful community participation, but also for successful future safeguarding of the heritage expressions and sustainable development for the practitioner communities. It is therefore assumed that the application of the mechanism can function as an indicator to provide information on the degree to which communities and heritage practitioners identify with the aims and mechanisms of the 2003 *Convention*, the scale of integration of the *Convention's* activities at the grass-roots level, as well as the extent to which heritage practitioners have taken the opportunity to use the *Convention* for their own benefit.

The integration of communities in the 2003 *Convention*

The shift towards a greater emphasis on the involvement of communities in the 2003 *Convention* can be seen as a response to at least three different factors. Firstly, a gradual academic paradigm shift in the field of heritage took place in the 1980s and 1990s. By the time the 2003 *Convention* was negotiated, the concept of heritage had radically changed since the adoption of the earlier UNESCO heritage conventions, such as the *World Heritage Convention* (UNESCO: 1972), and communities were seen as part and parcel of heritage, not only as guardians but also as heritage creators and sustainers. Concurrently, international policy changes can be assumed to have had their influence on the drafting of the 2003 *Convention*, especially during the more than twenty years of constant effort (cf. *United Nations Permanent Forum on Indigenous Issues: 2007*) that finally led to the adoption of the *Declaration on the Rights of Indigenous Peoples* (UNDRIP) in 2007 (United Nations: 2007). The repercussions of UNDRIP, both before and after its adoption, have been felt by many other United Nations bodies and, given the close proximity of its formal adoption and the drafting of the

Operational Directives of the 2003 *Convention*, mutual concepts are not surprising.

Finally, in the last decade of the 20th century, a small number of problematic and controversial cases of nominations under the *World Heritage Convention* have increased general concerns about a lack of community involvement in UNESCO heritage initiatives, especially for the heritage expressions of indigenous peoples. Subsequently, creators of the 2003 *Convention* sought to avoid the pitfalls and fall out the earlier *Convention* had faced, while attempting to incorporate newer paradigms and a sound legal reference to the practitioners' right to their work. What has emerged from this process is a convention that is more participatory than any other global heritage instrument to date.

One could even go so far as to describe the 2003 *Convention* as being drafted around the concept of communities and practitioners rather than heritage, especially when taking into account that an abbreviated definition of the key concept of Intangible Cultural Heritage in the *Convention* would read: *The intangible cultural heritage means the practices, representations, expressions, knowledge, skills ... that communities, groups and, in some cases, individuals recognize as part of their cultural heritage.* (UNESCO: 2003, art. 2) With this definition, the heritage practitioners not only give their consent to the recognition of intangible cultural heritage, but become the benchmarks for its definition as such.

The 2003 *Convention* defines a mandate for genuine participation by the heritage practitioner communities, which is not only spelled out in the *Convention* but also embedded in the methodologies, concepts and documents that guide its implementation. These policies confirm the role that community stakeholders have in offering their consent, actively participating in the inventory-taking, in the nomination process itself and in the planning and implementation of the safeguarding practices thereafter. Last but not least, communities are referenced in the criteria applied for inscription of intangible heritage elements on the lists established by the *Convention*. This is most evident in criterion R.4 of the *Representative List of the Intangible Cultural Heritage of Humanity*, and likewise in criterion U.4 of the *List of Intangible Cultural Heritage in Need of Urgent Safeguarding*, and criterion P.5 for the selection of programmes, projects and activities that best reflect the

principles and objectives of the *Convention* (UNESCO: 2012, chapters I.1 to I.3), which reads:

The element has been nominated following the widest possible participation of the community, group or, if applicable, individuals concerned and with their free, prior and informed consent.

The concept of free, prior and informed consent

How is this 'widest possible participation' and 'free, prior and informed consent', required by the above mentioned criteria, established, and how is it documented? Free, prior and informed consent has recently been recognized by a number of intergovernmental organizations, international bodies, conventions and international human rights law (Tamang: 2005, p. 3), however to varying degrees and in varying contexts. The applications of the principle vary and are often not well developed or defined. Likewise, the formulation in its widest possible form leaves room for interpretation. In the form provided for the presentation of candidatures to the *Representative List of the Intangible Cultural Heritage of Humanity* (UNESCO: 2012) (henceforth referred to as the *Representative List*), State Parties are requested to provide responses to three key questions, related to (1) the ways in which the community initiated or participated in the preparation of the nomination, (2) the documentation of free, prior and informed consent given by this community as well as (3) the confirmation that full respect to customary practices governing access to the intangible cultural heritage element has been ensured during the preparation.

The analysis in this paper is focused on the first two aspects reflected under points 4.a and 4.b of the nomination form. Under item 4.a, nominating State Parties are requested to *describe how the community, group or, if applicable, individuals concerned have participated actively in preparing and elaborating the nomination at all stages* (UNESCO: 2012, 4.a). The response is not expected to exceed 500 words, which makes it difficult for authors to provide detailed references to all levels and forms of involvement, but should give an introduction to the general context. Although it is not explicitly mentioned in the question, it can be assumed that 'community or group' refers to the heritage practitioner communities and not to a number

of other stakeholders who are also encouraged to be involved, *including where appropriate local and regional governments, ... NGOs, research institutes, centres of expertise and others* (UNESCO: 2012, 4.a). It seems however, that several nomination dossiers document the participation and also the free, prior and informed consent of the latter institutions, rather than that of the heritage practitioner communities, as will be illustrated below. The documentation of free, prior and informed consent is requested under item 4.b, for which a slightly more detailed explanatory text is provided:

The free, prior and informed consent to the nomination of the element from the community, group or, if applicable, individuals concerned may be demonstrated through written or recorded concurrence, or through other means, according to the legal regimens of the State Party or the infinite variety of communities and groups concerned. The Committee will welcome a broad range of demonstrations or attestations of community consent in preference to standard or uniform declarations. They should be provided in their original language as well as in English or French, if needed. (UNESCO: 2012, 4.b)

It could be concluded from this open request, which allows for all kinds of expressions of consent, that a heritage practitioner community could determine how it would prefer to express the consent it has given. However, what is not outlined is the level of information that would need to be provided to the community to ensure that it is indeed 'informed' consent that is being expressed. The notions of 'free' and 'informed' have traditionally been the most difficult to document and are discussed here in a variety of different contexts.

Some authors see community referenda as the one most legitimate means of establishing full free, prior and informed consent (McGee: 2009), while others distance themselves from official approaches and entrust the verification of free, prior and informed consent to third party, independent auditors named by the communities concerned (Colchester and Ferrari: 2007, p. 14). Most authors, however, still agree that the mechanism is surrounded by a certain amount of ambiguity, not only with regards to what could be considered as the adequate degree of prior information necessary, but also as to what actually constitutes explicit consent (McGee: 2009, p. 591). A general tendency seems to be to move towards policies for the documentation of free, prior and informed

consent in which the communities concerned would initially be asked how, according to their cultural traditions and legal understanding, community consent could be proven, and accordingly they would become partners in the development of a documentation mechanism (cf. Cariño: 2005, p. 29ff). In this context it seems even more interesting to analyse how free, prior and informed consent has been approached in the context of UNESCO, the organisation, which is arguably most concerned with cultural traditions.

Reviewing community participation in the 2011 cycle

The authors have opted to analyse the community participation and documentation of free, prior and informed consent for the 2011 nomination cycle to the *Representative List*, the most recent fully-documented cycle available at the time of writing. The analysis considered not only the submitted nomination forms, but also the subsequent examination by the Subsidiary Body to the Intergovernmental Committee, and ultimately the decision taken by the Intergovernmental Committee to the 2003 *Convention* itself. Key questions considered in this context were, whether the community participation and consent are credibly documented as having truly occurred, or whether what is being presented is rather the authorisation of non-practitioner officials offering their consent on behalf of the actual practitioners. Also under consideration was whether, and in what way, the documentation provided has established that the consent givers are in fact the practitioners who 'own', 'hold' or 'perform' the living heritage expressions to be included on The *Representative List*, as well as the ways in which their communal voices were represented.

Responsibility for the evaluation of performance related to criterion R.4 lies with a Subsidiary Body established to assess nominations for inscription on the *Representative List*. The Subsidiary Body's main objective is to review the files before they are submitted for a final vote at the annual session of the Intergovernmental Committee to the 2003 *Convention*. It is through their careful review of the nomination files that they ascertain whether all the criteria of a nominated element have demonstrably been met, and as such they are, in effect, the 'gatekeepers' to entry onto the *Representative List*. The Committee has appointed distinguished expert and

State Party representatives to conduct this work, based on the assumption that the time required to properly evaluate the nomination forms goes beyond the capacity of all members of the Intergovernmental Committee. The Subsidiary Body's recommendations to the Intergovernmental Committee are, in almost every case, upheld at the final decision about the elements during the Committee Sessions.

In 2011, the working methods employed by the Subsidiary Body and their analysis of the nominations attached, according to their final report, attributed great importance to the issue of community participation and consent at all stages of the nomination process (cf. *Intergovernmental Committee for the Safeguarding of the Intangible Cultural Heritage: 2011*, para. 44f). Therefore, their body of work should be an applicable reference in the search for valid answers to the questions that have been posed above. It is for these reasons that their consensus-based analysis of the nomination forms is also examined in this study.

Analysis of criterion 4 in the nomination files

In the 2011 cycle analysed by this study, forty-nine nomination files were examined by the Subsidiary Body. According to its report, of those forty-nine nominations, the initial examination reports showed divergent opinions for forty-five, or 92% of the total. (*Intergovernmental Committee for the Safeguarding of the Intangible Cultural Heritage: 2011*, para. 13) However, at the end of their deliberations in September 2011, the Body had reached consensus agreement on all the recommendations to be reviewed and voted on by the Committee. When judging the overall participation of communities and the documentation of free, prior and informed consent, the Subsidiary Body acknowledged a number of difficulties:

It was frustrating to the Body members to find that the reference community on one page was not the same as the reference community on the previous page or the one that followed. And if communities are difficult to define, it is all the more difficult to determine who represents those communities.... With regard to the free, prior and informed consent to be demonstrated in section 4.b, the Body often found it difficult to identify who the signatories were. (Intergovernmental Committee

for the Safeguarding of the Intangible Cultural Heritage: 2011, para. 44)

Based on the fact that communities, and their signatories, have not always been readily identified and concurrent throughout the nomination files, the authors considered seeking nomination files that were indicated as successful submissions to review the success of the *Convention*. In this selection, the authors followed the Subsidiary Body which identified seven nomination files as worthy of recognition and as commendable examples for State-Parties to follow for future nominations. These are:

Colombia: Traditional knowledge of the jaguar shamans of Yuruparí (13.9); Croatia: Nijemo Kolo, silent circle dance of the Dalmatian hinterland (13.11); Cyprus: Tsiattista (13.12); Czech Republic: Ride of the Kings in the south-east of the Czech Republic (13.13); Mexico: Mariachi, string music, song and trumpet (13.30); Peru: Pilgrimage to the sanctuary of the Lord of Qoyllurit'i (13.38), and Portugal: Fado, urban popular song of Portugal (13.39) (cf. Intergovernmental Committee for the Safeguarding of the Intangible Cultural Heritage: 2011, para. 71)

It seemed fitting to give these files the most thoughtful review, as they were clearly considered as exemplary. In the following section criteria 4.a and 4.b of these seven nomination files and their accompanying consent forms (all of which are available to the public on UNESCO's *Intangible Heritage* webpage) will be examined and compared to analyse the techniques and mechanisms for community participation and the documentation of prior, informed consent.

Colombia: traditional knowledge of the jaguar shamans of Yuruparí (13.9)

This nomination demonstrates the participation of many (perhaps even all) of the river communities covered by the file. It therefore seems quite appropriate that this should happen to be the first of the files recommended by the Subsidiary Body. The nomination file was prepared by representatives of the practitioner communities and in a way, the complete file could be considered an expression of informed consent. Some excerpts below may illustrate the strong community role:

The decision by ACAIPI [Association of Captains and Traditional Indigenous Authorities of the Pira Parana] to nominate our traditional knowledge for inclusion in the Representative List of Intangible Cultural Heritage is the result of a process of collective analysis about our culture and the need to put in place proposals that come from within the communities and respond to the needs that we ourselves have identified. ... We see inclusion in the Representative List of Intangible Cultural Heritage as an opportunity to strengthen our local processes in education, health, environment, territorial management and governance; it is a social pact that we have made with ourselves, which reinforces the path that we have already travelled but also opens doors to other entities that have demonstrated interest and commitment to recognising and protecting the value of ancestral knowledge. (Intergovernmental Committee for the Safeguarding of the Intangible Cultural Heritage: 2011, section 4a)

Likewise for the documentation of their free, prior and informed consent, the community grouped under the ACAIPI submitted the extensive minutes of seven community meetings, indicating the host community,

... the different localities along the river, the communities that participated, the ethnic groups that were present, the dates; also the coordinators and those responsible for compiling, classifying, systematising, translating and editing the opinions and proposals of participants. (Intergovernmental Committee for the Safeguarding of the Intangible Cultural Heritage: 2011, section 4.b)

The minutes of the meetings are detailed, and outline the full progress of the discussions as well as the general support expressed for the candidature.

It seemed obvious to the authors that great care and effort went into the documentation of free, prior and informed consent in this nomination file. The attached consent form (eighty pages) submitted in its original hand-written form, is organised, extensive and clear. Furthermore, in keeping with the tenets of the principles of consent documentation, it is transparent. Not only have hundreds of community members' signatures been collected, but their opinions, dialogues and concerns have been recorded as well. The community voice has been demonstrated with outstanding clarity in this

nomination file and it can indeed act as a guiding example for future nominations.

Croatia: Nuemo Kolo, silent circle dance of the Dalmatian hinterland (13.11)

In comparison with the Columbian file, the information provided in section 4 of this file is not quite as striking. The dancers themselves remain unidentified as a community, which is related exclusively to the dancing clubs of which they are members, as in the State Party's view *cultural clubs are the initiators of many manifestations*, various events and workshops, and are *the organisers of rural cultural life in cooperation with tourism offices active in the area (Intergovernmental Committee for the Safeguarding of the Intangible Cultural Heritage: 2011, section C)*. Unfortunately, little information is provided as to how these clubs – and the heritage practitioners within them – were involved in the different stages of preparing and elaborating the nomination

The consent attachments include formal documents on official letterheads with the signatures of five individuals, three of whom are governmental (the Head of the Municipality of Muc, the Mayor of the Town of Vrlika, and the Head of the Administration of Sibenik and Knin County) and two are related to cultural associations (the President of the Cultural Association of Bedem and the Head of the Cultural Association of Zvona Zagore Mirlovic). Despite these letters documenting the consent of dance clubs, it remains unclear what the relationship is between the governmental representatives, cultural associations and clubs. Likewise, it is not explained why the dance clubs, or ideally their members, did not provide any form of free, prior and informed consent. Finally, the letters refer to two consenting clubs which had not been identified among the practitioner community described in earlier sections of the nomination file, and some of the letters enclosed endorsed the nomination but did not specifically provide consent. According to some international guidelines, the documentation would not have been sufficient to illustrate the consent of the heritage practitioners, and the authors of this paper find it difficult to agree fully with the Subsidiary Body's decision to designate this nomination file as 'exemplary' for future nominations, at least not with reference to its response in section 4.

Cyprus: *Tsiattista* poetic duelling (13.12)

In this nomination file a number of communities are referred to, but not named, and are said to be represented by fifteen cultural and folklore societies as well as the Municipality of Larnaca, defined as having been 'very instrumental' in organising festivals for *Tsiattista*. The nomination file outlines their involvement as follows:

This proposal was prepared with the close cooperation of the communities (Larnaca Municipality, local authorities of the Kokkinochoria villages), groups (cultural associations, ...and individuals who are either active practitioners of the element who come mostly from villages in the districts of Larnaca and Famagousta, or dedicated researchers of the subject who studied the element for years ... They were all very enthusiastic about the nomination of 'Tsiattista' for inclusion in the ICH Representative List. (Intergovernmental Committee for the Safeguarding of the Intangible Cultural Heritage: 2011, section 4.a)

Unfortunately, further proof of this collaborative effort is missing, as the consent attachment does not contain references to community consultations or the aforementioned interviews. It is also surprising that the 'active practitioners' mentioned did not document individual free, prior and informed consent, but were presumably represented by the cultural societies and the Municipality. In the attached consent letters, fourteen bodies expressed their consent, among them the Dancing Group of Pyrga, the Dancing School 'Athanasia', the Larnaca Municipality, the Cultural and Folkloric Societies 'Vasilizia', 'Livadion Larnakas', 'Aradippos', 'ELEFTHERI' and 'Uvadia', as well as the Mayor of Larnaca as an individual. It is obvious that true care was taken to gain the consent of many stakeholders, however it is not specified how the bodies granting consent relate to the heritage expression or to its practitioners. For example, one could ask why dancing clubs are granting consent to an oral tradition which is predominantly poetry and does not seem to contain any elements of dance, or whether the Mayor himself is in fact a practitioner. In their review the authors concluded that the letters provided did not demonstrate whether the heritage practitioners were represented by these consenting groups, and accordingly, whether or not they consented to the listing of this expression.

Czech Republic: Ride of the Kings in the south-east of the Czech Republic (13.13)

The nomination file of the Ride of the Kings identifies the residents of the towns of Hluk and Kunovice and of the villages of Skoronice and Vlčnov as the practitioner communities, as well as the participants in the festival.

In these communities 'The Ride of the Kings' is performed by young men - the Riders ... the King (a selected boy of 10 -15 years of age), family members of the King and of the Riders, horsemen and horse handlers. The residents of these communities also participate in the ceremony and they are addressed by short rhyming chants of the riders. Usually local people familiar with the local traditions and crafts, in particular women of all ages, are involved in the preparation of horse decorations, ceremonial costumes and other attributes associated with this rite. (Intergovernmental Committee for the Safeguarding of the Intangible Cultural Heritage: 2011, section C)

Surprisingly, in section 4 of the nomination document, the authors noticed a considerable change of community, which expressed its consent in *that the mayors were invited to express their consent* (on behalf of the residents) *with the application for listing* (Intergovernmental Committee for the Safeguarding of the Intangible Cultural Heritage: 2011, section 4.a). Yet the document assures us that local residents were continuously and actively involved in the preparation of the nomination file in that they *provided necessary data as respondents in surveys, lent iconographic documents from their private archives and took part in the presentation of the rite.* (Intergovernmental Committee for the Safeguarding of the Intangible Cultural Heritage: 2011, section 4.a)

It does seem that there was a genuine contribution by the practitioners, as is also summarised in the last (somewhat amusing) sentence: *These communities have in general very limited budgets therefore locals are very sensitive about public spending and they can show their dissatisfaction very loudly.* (Intergovernmental Committee for the Safeguarding of the Intangible Cultural Heritage: 2011, section 4.a) However, when moving on to section 4.b no proof of this participation is given, and consent is only expressed through formalised decisions of the town councils and documented by summaries of the decisions taken at these meetings.

So, it seems that these councils (i.e. local government) voted among themselves and made a legal resolution for the nomination of the element. Interestingly, this was not a public vote. However, to see the redeeming consent of 'relevant local communities', one is directed to the appendix. This form of documentation surprised the authors in the context of a nomination which, judging by all the other texts provided, had drawn extensively on assistance by individuals from the communities and yet, the Town of Hluk, which has a population of 4,432, consented by the stroke of the mayor's pen. Similarly, the mayors of the Town of Kunovice, Village of Skoronice and Village of Vlčnov also signed letters of consent on behalf of all residents. The authors remain surprised that this formal and highly bureaucratic expression of consent has been recommended as 'exemplary', given that any direct documented reference to the practitioner communities identified is lacking. Is the gap between officials and local communities perhaps too great for the officials to conceive of asking for individual proof of participation, or do the officials consider themselves as the elected and legitimate spokespersons, including for matters related to free, prior and informed consent?

Mexico, Mariachi, string music, song and trumpet (13.30)

Carefully crafted, this file demonstrates that its compilation was a major undertaking for its Mexican authors. One thing an assessor would immediately notice is that the communities identified are clearly named and identical in all sections of the nomination. Yet, a slight confusion arises, when in the initial introduction, the 'core zone' of the community is said to be located in a certain area, consisting of Jalisco, Nayarit, Colima and Michoacán, – an apparent appropriation of World Heritage terminology – which is corrected in later parts of the file which explicitly refer to specific communities.

The mechanism used for documenting free, prior and informed consent in this nomination was the organisation of a meeting to which *all parties involved in the research, promotion, teaching, performance and preservation of mariachi music in [the] country and abroad* (Intergovernmental Committee for the Safeguarding of the Intangible Cultural Heritage: 2011, section 4.b) were invited. The information meeting was also attended

by mayors and officials, the directors of regional Mariachi schools, the Director of Folk Cultures, Ministry of Culture, promoters of Mariachi music, the Manager of the National Mariachi Ensemble, professors and researchers, individual musicians, (including one Mariachi musician of more than seventy years), and other prominent Mariachi teachers, even including an independent Mariachi music collector. Approximately fifty practitioners or individuals closely related to the safeguarding of the tradition were requested to sign a prepared consent form. By signing the form, the signatories declared that they:

...understand the objectives and commitments ... have actively participated in preparing the candidacy, ... agree to carry out and invigilate, to the extent of [their] possibilities, the adequate execution of the safeguard measures and commitments proposed [and] declare their free consent to the presentation of the candidacy of "El Mariachi" nomination for the UNESCO Intangible Cultural Heritage Representative List. (Intergovernmental Committee for the Safeguarding of the Intangible Cultural Heritage: 2011, section 4.b)

Peru: pilgrimage to the sanctuary of the Lord of Qoyllurit'i (13.38)

The approach selected to illustrate conformity with criterion 4 in this nomination file is once more based on a series of meetings with community representatives. Initially the document introduces the concerned practitioner communities in a clear and consistent fashion, including the introduction of two main bodies, one of which represents eight pilgrim nations and the other a brotherhood. Both organisations are said to be closely related and to collaborate in supporting and sustaining the heritage expression.

Under section 4.b, the State Party submitted minutes of these meetings which were signed by the attending representatives of each pilgrim organisation. What differentiates this expression of consent from previous examples is that the minutes of the meetings, apart from recording the general support for listing, also outline specific short- and long-term safeguarding measures, which have also been committed and consented to. The authors considered that the documentation of free, prior and informed consent in this file was well-rounded, and that it established proof of community-based

participation, both in the preparation of the file but also in plans towards safeguarding the heritage expression.

Portugal: Fado, urban popular song (13.39)

This nomination file is perhaps one of the gems in the crown of the seven recommended nominations and speaks for itself. Community participation – despite certain challenges given the sheer size of the practitioner community – was spelled out in no uncertain terms with 263 pages of consent attachments. Already, the identification of the practitioner community is unambiguous, although not a community that seems easy to capture.

Fado is a genre widely practiced by various communities in Lisbon, represented by numerous neighbourhood associations and other grass-root groups as well as by individual agents such as artists (singers and musicians), authors (composers and poets), instrument makers, book and record publishers and other leading exponents of the genre's practice. (Intergovernmental Committee for the Safeguarding of the Intangible Cultural Heritage: 2011, section C)

The documentation also explains in much detail how the different practitioner groups were involved at different stages of the nomination process, including through meetings, workshops, public debates and interviews but also in close consultation with individual practitioners with particular knowledge about the heritage element. Research contained in the nomination file reflects five years of intense effort, data collection and community definition and consultation. The nomination was ultimately prepared by practitioners and experts, headed by a Scientific Committee of three experts, and supported by a Consulting Committee of six

... leading recognized exponents of Fado practice (Carlos do Carmo, Vicente da Câmara, Gilberto Grácio, Daniel Gouveia, António Chaínho, Luísa Amaro) or representatives of grass-root associations (Luís Penedo, from the Academia da Guitarra Portuguesa e do Fado, and Luís de Castro and Julieta Estrela, from the Associação Portuguesa dos Amigos do Fado). (Intergovernmental Committee for the Safeguarding of the Intangible Cultural Heritage: 2011)

As mentioned above, the 263 pages of free, prior and

informed consent documentation provided as an attachment to the file are a remarkable example of participative preparation, not only in quantity but also in quality, with the first four pages containing eighty-five signatures of Fado musicians and singers, and a further 200 pages adding letters authored by musicians and singers in support of the nomination. Needless to say, the Portuguese seem to have been inspired to demonstrate their capability in documenting *the widest possible participation of the community... concerned* (UNESCO: 2012) and they did not take this responsibility lightly.

Summary, successes and suggestions for the future

The analysis of the Fado nomination closes this review of the seven recommended nomination files of the 2011 cycle. It can be summarised by saying that these were as varied in their style of nomination processes as they were in the documentation of free, prior and informed consent. Some based this documentation on public community meetings, while others used local legislative measures. At least three of the seven examples provided ample proof of community and practitioner participation and consent, while surprisingly, at least two others did not. This last fact seems critical considering that all seven nominations have been recommended as reference examples for State Parties embarking on the preparation of new nominations. Ideally, to be recommended as a reference, these files should have demonstrated high quality at every juncture. However, criterion 4 is only one section of the nomination form and the Subsidiary Body probably based its recommendations on the overall quality of the nomination files, considering these files to be overall the best examples of the 2011 cycle. Yet, this fact left the authors wondering what the remaining nomination files inscribed during the same cycle contained as documentation of free, prior and informed consent.

All seven 'highly recommended' nominations were inscribed during the meeting of the Intergovernmental Committee, as were all the other recommendations for inscription given by the Subsidiary Body. (cf. *Intergovernmental Committee for the Safeguarding of the Intangible Cultural Heritage: 2011*) Have the Committee's final decisions reflected free, prior and informed community participation and consent? Has

the review in this paper confirmed that the *Convention's* key aim, to place communities at the centre of its activities, is being achieved successfully? The authors hesitate to provide a response to these questions, given that some of the examples studied would deserve a wholehearted affirmative response, while others of the 'recommended examples' did not fully satisfy international standards applied in similar contexts. It seems that in some cases the authors compiling the nominations did not have previous experience in the process of documenting free, prior and informed consent, and it could be recommended that these aspects be further emphasised in training and capacity building activities for the preparation of future nominations. The authors would even argue that free, prior and informed consent should be required at all stages of the recognition of intangible cultural heritage, including the compilation of national inventories, and not only for the purpose of UNESCO listing proposals. Therefore, it may even be advisable to separate the aspect of 'free, prior and informed consent' from the training activities in the context of nominations, and offer separate programmes or workshops exclusively dedicated to this mechanism.

A brief review of the remaining inscriptions of the 2011 cycle, which did not receive distinction as recommendable examples, confirms the necessity of further training in this direction. It appears that a few oversights must have occurred in the work of the Subsidiary Body as in some rare cases, files recommended for inscription cannot be said to demonstrate the free, prior and informed consent of heritage practitioners, even when evaluated with the most supportive of intentions. Another approach to future improvements would ideally be to establish the precise standards required for the documentation of free, prior and informed consent and apply these consistently to prevent similar lapses. In addition, the recurrent lack of clarity regarding the background of signatories and their relation to the heritage element needs to be addressed, perhaps through a revision of the nomination format or the explanatory text provided. An explanatory note could, for example, highlight the need to describe who a consenting party is, who they represent, how they are legitimised, what their relation is to the heritage element, as well as why their consent is considered to be needed in the nomination file.

The authors would like to address another

recommendation to State Parties preparing future nominations. Despite the fact, that the provision in the nomination format is one of the most open existing in the context of free, prior and informed consent documentations, in particular with regard to the different ways and media through which consent can be documented, all the nominations analysed only did so by means of written documents. The authors believe that audio-visual media as well as other forms of new media, provide a variety of different portals for the documentation of community consent, some of which are more likely to capture expressions of broad participatory consent than formal written documentation does. State Parties should be encouraged not only to be ambitious, but also to be creative in designing the format they wish to use for documenting the free, prior and informed consent of heritage practitioners.

One more question posed in the introductory chapter remains for the final paragraphs of this article, that is the question of whether the application of community consent mechanisms in the 2003 *Convention* can be considered a success story. Although several problematic areas were identified in this analysis, it is not the purpose of this article to imply that community participation and consent are in any way failed ventures, or that the mechanism of free, prior and informed consent as utilised in the 2003 *Convention* should not be replicated. This analysis managed to illustrate merely one aspect of a far larger context of community-based initiatives under the 2003 *Convention*, concerning not only nominations and consent, but also safeguarding measures which some of the community initiatives fostered and endorsed. The basic tenets behind community participation and the introduction of free, prior and informed consent in the 2003 *Convention* are surely worthy of being continued and further developed and modified for future application, to ensure that the 2003 *Convention* is truly what its authors intended, an initiative which places communities and grass-roots heritage practitioners at the centre of its activities and strengthens their recognition and support. 🇩🇪

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