

Heritage and Human Rights

A participation and gender-based
analysis of the work carried out by
the United Nations in the field of
cultural heritage

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Maider Maraña

After earning her degree in History, she completed diverse postgraduate courses in Human Rights, Cultural Management, Museography and International Cooperation. She currently works at the UNESCO Chair on Cultural Landscapes and Heritage at the University of the Basque Country. For many years she has worked for international organisations such as UNESCO, both in Paris as a Specialist on the World Heritage Programme and in Uruguay, for the Culture and Heritage Sector. In addition to working for different organisations as an independent consultant in the field of international cooperation, culture and human rights, she served as Programme Coordinator at UNESCO Etxea (the UNESCO Centre in the Basque Country), working also in the field of Culture and Development at that same organisation. She has taught at a number of different institutions, including the University of Deusto in Bilbao. She has various publications to her name, including *Cultura y Desarrollo. Evolución y perspectivas* [Culture and Development. Evolution and perspectives] (UNESCO Etxea, 2010) and *El futuro de las lenguas. Diversidad frente a uniformidad* [The future of languages. Diversity versus uniformity] (Catarata, 2008). She has lectured in Spain, Finland, Qatar, Switzerland, Paraguay and Uruguay, and while this book was being written, she gave birth to a baby daughter, Malena, who accompanied her throughout the entire process, both inside and outside her belly.



PROLOGUE

Dr. Mikel Mancisidor, DIR GSD
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I cannot sit down to write about heritage without first calling to mind Professor Khaled al-Asaad, who served as head of archaeology at Palmyra, Syria, for over four decades. He was brutally beheaded in the summer of 2015, for refusing to collaborate in the destruction of the heritage to which he had dedicated his life's work.

The scene is painful, but we must force ourselves to watch. The elderly professor on his knees, his hands tied behind his back. The heartless savage standing behind him, holding a handful of his hair in one hand, while brandishing a large machete-like knife in the other. The threats, the gratuitous accusations against which the victim is given no chance to defend himself, the references to a god who can somehow bestow meaning on this meaningless act. What happens next I leave to your imagination. The resulting pool of blood is more fluid and much glossier than in the movies.

Is it bad taste to talk about the value of the heritage destroyed in Palmyra when confronted with this macabre scene? Or when we compare this act of brutality with the death of thousands of others in the region? Or, more generally, is it an outrage to talk about the human right to heritage when we compare this right with a 'true' human right, such as the right to life? Should we be concerned at all with heritage when 6 million refugees have been forced to flee the country? It is right for photos of the destruction of Palmyra to pain us so, while the rest of the world is rocked by the image of Aylan Kurdi washed up on the beach?

To all these questions I would respond that the defence of heritage as a human right is not a luxury, and this work by Maider Marañá can help us understand why.

If heritage were merely an object of cultural consumption, if it were nothing more than something designed for the delicate aesthetic enjoyment of the cultured tourist, if it were simply an object placed in a museum to be admired, if were just a case of getting dolled up, going out to a concert hall and disconnecting after a hard day's work, then of course the critics would be right: heritage would be merely a luxury for the rich and idle, something to be protected only after we have taken care of the important things in life such as hunger, the death penalty, children's literacy, youth unemployment and the hundreds of thousands of refugees who are at this very moment knocking on Europe's collective front doors.

But the cowardly execution of Khaled al-Asaad tells a very different story about the meaning of heritage. It is not the story of a wise old lunatic senselessly protecting his treasure even at the cost of his own life. It is not the story of a few miserable fanatics callously murdering a clearly innocent and defenceless old man.

It is something altogether more profound. It is the story of memory versus vacuum, of identity versus lies, of meaning versus the dark ages. It is the fight for what makes us human in the face of the horror of slavery, ignorance, brute force and despair.

The murder of Khaled al-Asaad was not the settling of a personal score; it was an act of terrorism that sought to destroy heritage in order to impose its model of obscurantism and fanaticism. In the vacuum that remains when stones are turned to dust, the only alternative left is silence, nothingness, oblivion, non-identity and meaninglessness. In other words, all that is left is the absence of any real alternative to total submission.

If history is turned into a vacuum and memory is demolished, then no alternative capable of resisting the horror to come remains.

In Palmyra, therefore, heritage is memory, culture, community, identity, history and language. It is all that which makes us human. And what are human rights if not a reinforced, more universal means of protecting that which makes us human? This is why we must view heritage as a human right and must defend its management from that very perspective.

Maider Marañá reminds us that heritage first began to appear in international law in relation to conflict. From Carthage (*Carthago delenda est*) to Dresden, the destruction of heritage is charged with intent.

The telephone rings and a helpless, nervous voice asks 'Is Paris burning?'. The destruction of Paris fulfilled no military purpose. I would even go so far as to say that it was not even thirst for revenge or hate that motivated Hitler to order its ravaging. Rather, it was the desire to strip the despised enemy of the hallmarks of its identity, of its memory, of its very sense of who it was. France may regain its freedom, but it will never be the same again. The wound inflicted will last forever.

But I will leave the learned quotes to Maider, who uses them so masterfully. I will instead turn to George Clooney (in the vain hope that something may rub off), when he says in *The Monuments Men*: 'You can wipe out an entire generation, you can burn their homes to the ground and somehow they'll still find their way back. But if you destroy their history, you destroy their achievements and it's as if they never existed. That's what Hitler wants and that's exactly what we are fighting for.'

Today, in the field of international law, we understand heritage not only as something to be protected in times of war (*ius in bello*, or, if you prefer, in terms of humanitarian law). Rather, we understand it as one of the keys to personal and collective human development; in short, we view it as a human right.

For this reason, with greater and greater frequency, at the UN Committee on Economic, Social and Rights we are making states accountable not only for the way in which they protect their heritage, but also for the way in which they promote it, the way in which they place it at the service of their citizens, the way in which they make it accessible to all (particularly the more vulnerable members of society), the way in which they protect not just the objects themselves but also their meaning, and the way in which they ensure that the property or custom in question is used to foster the human right of all to participate in cultural life.

In this vital task, Maider Marañña's book will help all stakeholders, starting with UNESCO itself, to work more consistently in the field of heritage from the perspective of Human Rights. It is a task in which the UN Committee on Economic, Social and Cultural rights is ready and eager to collaborate.

And since Maider Marañña's work is excellent and exceptionally clear, the best thing I can do is leave you in her more than capable hands. If she were not a dear and valued friend, I would tell you that Maider is by far the most appropriate person to guide us around this fascinating intersection of heritage, culture, human rights, human development and equality. But since she is a dear and valued friend, I will tell you the exact same thing, only with greater conviction and more pleasure.

Over the last ten years Maider has collaborated actively in some of the key international initiatives that have been carried out in this field. I remember her when she first embarked on her international career at the Dialogue on Cultural Rights

in Fribourg, and I recall her work in initiatives on participation and heritage in Uruguay and in the World Heritage programme at the UNESCO headquarters in Paris. I followed her work as head of culture and development at the UNESCO Centre in the Basque Country (UNESCO Etxea) and her participation in the studies that eventually gave rise to the CESC General Comment on the Right of Everyone to Take Part in Cultural Life. I am certain that I am betraying no confidences when I say that Jaime Marchán, former Chairman of the Committee and Rapporteur of the aforementioned Comment, greatly valued Maider's contributions to the various drafts of this important document that is fundamental to our understanding of culture and human rights.

Maider still has much to offer in relation to these issues. She knows she has my steadfast support, and I hope and trust, dear reader, that she will have yours as well.

Getxo, 15 September 2015



Candombe and its socio-cultural space: a community practice. © UNESCO/Sellanes, 2008

01. Introduction: why focus on heritage from a human rights-based approach?

Cultural heritage is one of the most visible aspects of cultural expression and is the target of many interventions by public and private institutions and civil society groups.

However, because of the historical lack of a firm definition of cultural rights at an international level, today, 60 years after the Universal Declaration of Human Rights and 40 years after the International Covenant on Economic, Social and Cultural Rights, several processes are currently under way within the UN which aim to explore and further clarify what the term *cultural rights* actually means, and what is and is not included in it.

As we shall see, alongside other initiatives stemming from civil society and other stakeholders, these processes which aim to clarify what cultural rights actually encompass have further developed the idea of access to cultural heritage as a human right. However, despite these advances in the field of heritage promotion and the growing international trend towards democratising access, the majority of international conventions in the area of culture, most of which were initiated by UNESCO, do not always seem to work systematically within a human rights-based approach when tackling issues related to the management of cultural (and natural, in the case of some conventions) heritage.

This book analyses how human rights are dealt with in international conventions in the field of culture (particularly heritage), as well as in other United Nations documents and declarations (particularly those issued by UNESCO), with the aim of identifying whether or not cultural heritage has been approached from a rights-based perspective in the implementation of these clearly universal instruments.

It is our opinion that, due to the late development of economic, social and (particularly) cultural rights, cultural heritage, as one of the most visible elements of cultural life, has not always been dealt with from a rights-based approach in international (and sometimes local) efforts to protect it.

Despite the fact that a more in-depth analysis of this issue should necessarily encompass all the UNESCO Conventions that deal with the question of heritage, this work will focus mainly on two such conventions, the Convention concerning the Protection of World Cultural and Natural Heritage (UNESCO, 1972), and the Convention for the Safeguarding of Intangible Cultural Heritage (UNESCO, 2003). The reason for this choice is that, from a heritage perspective, these two conventions have been (and continue to be) the most important ones at an international level and the ones that have been echoed most faithfully in national and local heritage policies. Furthermore, and bearing in mind that the rights-based approach focuses its attention mainly on those groups whose rights are most at risk of violation¹, I have chosen two specific examples to analyse here: indigenous groups and the issue of women's participation, the aim being to illustrate the question of how international conventions can be implemented from a rights-based approach.

02. The situation of cultural rights and heritage

Cultural rights were included in article 27 of the 1948 United Nations Universal Declaration of Human Rights: 'Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.', as well as in article 15.1.a of the 1966 International Covenant on Economic, Social and Cultural Rights: '...the right of everyone to take part in cultural life;'

However, a quick glance at the most important works published in this field, which describe cultural rights as the 'neglected category of human rights' (Janusz Symonides³) or 'the prodigal son of human rights' (Prieto de Pedro³), is sufficient to see that this specific field of human rights has yet to receive the attention it deserves. Thus, despite the increasing presence of culture in national laws all over the world, we should perhaps ask ourselves whether these laws are truly representative of the highly complex phenomenon that is culture? Are processes truly protected or are we talking instead about partial approaches to culture? And another question that it is important to ask from a rights-based perspective: are the cultural rights of everyone really recognised and protected? Or does discrimination exist in relation to access to culture (and heritage)?

In comparison with this prior failure to clearly define cultural rights, we believe that progress is currently being made within

the United Nations, thanks to processes aimed at clarifying the content of these rights.

Firstly, in 2009, General Comment no. 21 was approved in reference to Art. 15.1.a of the International Covenant on Economic, Social and Cultural Rights (ICESCR). The document focuses on the 'Right of everyone to take part in cultural life'⁴ and aims to 'ground' the meaning of the article, providing clear guidance as to what this right actually entails in order to foster greater understanding of how it should be included in and protected by national laws and policies.

That same year, an Independent Expert in the field of Cultural Rights (now known as a Special Rapporteur) was appointed from the United National Human Rights Council with a mandate to examine the means of overcoming current 'obstacles to the promotion and protection of cultural rights'.⁵ What is particularly significant here is that the mandate itself talks about *obstacles* to cultural rights.

Thus, in response to the lack of a clear definition of cultural rights, the aforementioned processes (alongside other projects and initiatives) gave rise to a new situation within the United Nations in relation to the content, scope and effective implementation of cultural rights⁶. Although these concepts will take time to evolve and develop and will require both international and local processes, as we shall see below, the strengthening of cultural rights within the United Nations has already had an impact on the question of how to manage heritage (as one of the most characteristic expressions of culture) from a rights-based approach.



The tradition of carpet-making in Chiprovtsi, Bulgaria. © UNESCO/Historical Museum of the town of Chiprovtsi, 2010

03. UNESCO and its role in protecting heritage

UNESCO, as the only United Nations agency specialising in culture, has always, since its creation in 1946, defended the need to protect heritage from destruction, such as that witnessed during both the 2nd World War and so many other conflicts throughout the world.

Indeed, UNESCO's very first normative instruments focused on the protection of heritage during conflicts, as evident in the adoption in 1954 of the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, and in 1970 of the Convention on the Illicit Trafficking of Cultural Property. The idea of protecting heritage in the event of conflict was further reinforced by UNESCO with its 2003 Declaration concerning the Intentional Destruction of Cultural Heritage, which reaffirmed that 'cultural heritage is an important component of the cultural identity of communities, groups and individuals, and of social cohesion, so that its intentional destruction may have adverse consequences on human dignity and human rights'.¹⁷

In relation to heritage, UNESCO's first actions focused on awareness-raising campaigns and international mobilisations aimed at saving specific items. These actions highlighted the need to enact laws aimed at protecting heritage at an international scale. Emphasis was also placed on the importance of protecting the planet's most exceptional cultural and natural sites against the sudden, radical changes that so often occur in our world.

In 1972, UNESCO adopted the Convention Concerning the Protection of the World Cultural and Natural Heritage. It was a unique document, in that it was the first instrument of its kind to seek to protect heritage at an international scale, rather than seeing it as something to be protected by each state within their own borders. It was also an innovative convention, in that it encompassed both cultural and natural heritage. From a rights-based approach, it is important to remember that, unlike declarations, which represent a moral and ethical commitment by signatory countries, conventions give rise to legal commitments that are binding on those countries that ratify them.

Moving away from its initial view, which was mainly focused on a more *Euro-centred* concept of heritage that was 'biased towards the elite, the monumental, the literate and the ceremonial'.¹⁸, over the years and following numerous effective actions carried out by UNESCO in the field of heritage, the organisation began to explore in more depth both the role played by heritage in social cohesion, and its link to development¹⁹.

In 2003, a major milestone was reached with the drafting of the UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage, in recognition of the special attention required by heritage that is neither monumental nor material.

Another UNESCO document issued in 2001, the Declaration on Cultural Diversity, identified the need to link human

rights and cultural diversity, asserting that 'No one may invoke cultural diversity to infringe upon human rights guaranteed by international law, nor to limit their scope'.¹⁰ If we accept heritage as one of many diverse cultural expressions, then from there it is but a simple step to understanding that its protection should go hand in hand with the defence of human rights. As well as in its own mandate, UNESCO also renewed its commitment to defending human rights in 2003, when it issued the UNESCO Strategy on Human Rights, the aim of which was to mainstream the human rights-based approach throughout all its programmes.

Thus we see that, over the years, UNESCO has drafted a wide range of different legal texts that have fostered the concept of a common World Heritage, which in turn generates an international responsibility to ensure its protection.

04. Normative action in practice

As stated above, the World Heritage Convention of 1972 is today considered to be the most universal legal instrument in the field of heritage¹¹. It has been ratified by 191 States and contains a World Heritage List featuring over 1000 sites¹². World Heritage protection has become one of the most popular and best-known aspects of the United Nations' international scope of action. Furthermore, the broad-ranging and rapid support received by the 2003 Convention attests to the international community's interest in safeguarding cultural heritage.

Just like society itself and our perceptions of heritage, these international conventions have evolved over the years, with UNESCO issuing new implementation guidelines and expanding the scope of the instruments to include civil society and the new challenges identified in the field of heritage management.

Turning our attention to the characteristics of the rights-based approach, it is worth remembering that community participation and its inclusion for empowerment are, along with equality and non-discrimination (including gender equality), key elements in this perspective¹³. We would therefore like to offer a brief analysis of how the Conventions on World Heritage and Intangible Heritage have been implemented, taking into account both participation and non-discrimination as the basic pillars of the rights-based approach.

The first thing we should bear in mind in this analysis is that the World Heritage Convention contains no specific references to human rights¹⁴. This is partly due to the fact that this international instrument was adopted fairly early on (in 1972), during a time in which the systematic application of the rights-based approach was not yet the norm in international policies. This absence of any specific reference to human rights gives rise to other important questions in the field, such as whether or not said Convention has the mechanisms required to diffuse potential conflicts and/or deal with possible disputes arising between local communities and national authorities in relation to the possible inclusion of a site on the World Heritage List. Or whether a better understanding of human rights would enable the avoidance, or better management, of heritage-related conflicts¹⁵.

Whatever the answers to these questions, the absence of specific references to human rights in the body of the original text by no means precludes the evolution of work in this field¹⁶ from being included in the a posteriori implementation and interpretation of the Convention, as well as in its practical application.

While the key stakeholders involved in the implementation of the World Heritage Convention¹⁷ understand that the instrument has helped advance the protection of natural and cultural heritage throughout the world, they are also aware that, in some cases, the rights and interests of the local communities living in or around the protected World Heritage Sites have been largely ignored¹⁸.

In this sense, a number of different situations have been documented in connection with the inclusion of sites in the famous World Heritage List that have given rise to human rights violations. These include forced displacements of the local population to (ostensibly) protect cultural property in places such as Hue (Vietnam), where residents were displaced as part of the site management policy, thus clearly violating the community's right to housing. Other cases of displacement have been documented in Angkor (Cambodia)¹⁹ and Hampi (India) where, as a result of a drastic rise in tourism, the number of unofficial settlements established by local vendors also rose rapidly. On the grounds of 'conserving the site', these settlements were demolished by the authorities without any prior warning being given to the inhabitants, and one year following their eviction, the residents still had not received any compensation from the government²⁰.

We are all aware that some places (as well as some expressions inscribed in the Intangible Heritage List) are transformed when they are recognised at an international level, becoming tourist-oriented products which no longer fulfil their role as inherent elements of social cohesion. Some experts have even gone so far as to say that some of the development restrictions imposed on sites included on the list may in fact violate the basic rights of the communities living in the region²¹.

At this point it is worth remembering also that the Convention only permits sites to be included on the World Heritage List if their candidature is presented by the State, which may evidently give rise to cases of discrimination against certain communities. Some countries take advantage of this to impose a national identity linked to the socially and politically dominant group or to a specific ethnic group, thereby denying and rendering the cultural rights of other communities invisible. Thus, 'the definition [of what heritage actually is] is linked to the power structures in society'²². Furthermore, over recent years the decision-making process within the World Heritage Committee (the decision-making body of the Convention) has become alarmingly politicised, with rulings becoming less and less based on technical recommendations and increasingly based on political considerations.

Although this work focuses specifically on cultural heritage, we should not overlook the fact that the World Heritage Convention also includes natural heritage, the conservation of which may have as many positive as negative impacts on human rights²³. 'The Millennium Ecosystem Assessment shows that continuous environmental degradation adversely affects both community and individual rights, such as the right to life, health, water, food and non-discrimination.'²⁴, with vulnerable communities being those least able to mobilise themselves to protect against human rights violations.

To gain a more objective view of this issue, it is important to point out that some sites were doubtless included on the World Heritage List due to their link to key historic events in the field of human rights. For example, Thingvellir (Iceland) was included due to its significance as the predecessor of parliamentary democracy, and Robben Island (South Africa) appears



The Island of Gorée (Senegal), the most important slave trade centre on the African coast from the 15th to the 19th century. © UNESCO/Our Place, Pall Stefansson

not only as a symbol of the South African people's right to self-determination, but also as an emblem of tolerance and human dignity. The Island of Gorée (Senegal) was included due to its link with slavery and the Silk Road was inscribed as an example of integration and dialogue between different nations. Some sites are also there to remind us of human rights violations committed in the past, such as the Auschwitz concentration and extermination camp and Hiroshima (Japan). However, for some authors, the fact that, within these *memorialisation* processes which are achieved through international recognition, human rights are still not afforded greater importance during the decision-making process continues to be significant²⁵.

For their part, over recent years key organisations involved in implementing the World Heritage Convention, such as IUCN, ICOMOS and ICCROM (the advisory bodies to the World Heritage Convention), have launched initiatives designed to encourage a more systematic use of the rights-based approach in their World Heritage-related interventions. In addition to the steps taken by these bodies in relation to including the human rights situation in the assessments of the sites proposed for inclusion on the World Heritage List²⁶, a joint project has also been launched involving all three, which aims to identify effective actions to clarify the human rights dimension in the World Heritage field and to promote 'best practices'. The project also seeks to develop and recommend possible tools to help render the human rights work carried out within the field of World Heritage more visible²⁷.

We share these organisations' conviction of the need to find constructive solutions to the problems of the World Heritage process, since when issues linked to the human rights of the affected communities are overlooked, the result tends to be the

emergence of a wide range of different conflicts. Although it is true that, as IUCN, ICOMOS and ICCROM themselves have pointed out, over recent years considerable progress has been made in linking the World Heritage work with a broader set of sustainable development goals, it is still the case that work in this field lacks an explicit, in-depth analysis of the human rights situation.

With the aim of identifying the deficiencies and creating the appropriate tools, case studies are currently being analysed and a set of initial ideas are being developed regarding what should be taken into account when working in the field of cultural heritage. Attention is also being focused on the importance of investing in capacity building and of fostering leadership within the communities themselves, in order to guarantee their real and effective participation in the various processes. It is necessary to clearly identify situations of human rights violation, and to pinpoint the heritage management processes that interact with local communities, an aspect which is generally overlooked when acting in this field.

As we will see later, in connection with the issue of participation, protection processes (from nomination to site management) often progress without any heed whatsoever being paid to rights holders; moreover, rights holders are often confused with collaborating agents in the project.

It is important to keep in mind that there is a risk that this international vision that we are striving for in the field of heritage protection may not actually reflect the values of the local communities involved, giving rise to situations in which local views and interests have been pushed to the sidelines in favour of other conservation priorities. At the same time, work in the field of heritage has not always taken into consideration the need

for and importance of working specifically with more vulnerable groups within the affected communities.

In this sense, adopting a rights-based approach to the international protection of heritage is vital, especially when we bear in mind the influence this has on heritage management at both a local and national level. The question of participation is one of the keys to making headway in this area; however, we should also strive to gain a more accurate idea of which aspects of our heritage project are most directly linked with protecting the community's human rights (including economic, social and cultural rights). Of course, the nomination and inscription processes for new world heritage sites should also be improved as regards transparency and accountability, and within this framework, international organisations such as, in this case, UNESCO, should work to promote these recommendations among their member states, with the aim of fostering the rights-based approach in all international heritage protection actions.

05. The question of participation

As stated earlier, we believe that 'as a fundamental principle of human rights, participation is vital to guaranteeing their protection.'²⁸ Community participation and the question of sustainable heritage used by local communities are issues which have gained both importance and recognition over recent years within the heart of the United Nations. However, UNESCO itself has admitted that: 'the approval of traditional management practices has arrived late to the field of World Heritage.'²⁹

In specific terms, the so-called operational guidelines of the World Heritage Convention (a document that sets out a series of practical application guidelines for said Convention, and which is revised on a regular basis) contain elements that foster the inclusion of the community, such as 'cultural landscapes'³⁰ (identified as those places in which there is a synergy between human action and its adaptation to the natural environment). Indeed, in paragraph 12, the operational guidelines state that any inscription proposals should be prepared 'in collaboration with and the full approval of local communities'³¹.

Another tool designed to foster participation is the existence of the strategic convention objective focused on 'Community'³². In 2007, the World Heritage Committee included 'Community' as a key element for the future of the Convention and stated that it understood that 'Heritage protection without community involvement and commitment is an invitation to failure;' and that 'Heritage protection, should, wherever possible, reconcile the needs of human communities, as humanity needs to be at the heart of conservation.'³³ To this end, throughout the approved document, the Committee argues for the inclusion of community as a key element for achieving human development goals. For our part, we would like to add that community involvement is one of the keys to a rights-based approach to heritage management.

Frequently, however, despite that stated in the guidelines designed to aid the practical implementation of the World Heritage Convention in the various signatory states, we find data attesting to the low level of social participation in many actions. By way of example, it has been found that 83% of European states claim not to engage in public consultation when selecting new candidates to be included on the World Heritage List, and only 48% say that the local population has participated in some way in the generation of these nominations³⁴. Forging links between communities and the heritage protection project is therefore very difficult, or almost impossible, and this circumstance prevents the heritage site from being managed consistently with the rights-based approach.

Placing the emphasis firmly on the local community also fosters a rapprochement between the macrosystem of world heritage and the diverse community levels³⁵, i.e. between the local and the global spheres³⁶. And indeed, we need to understand that, according to the Convention, the notion of World Heritage is based on the sites' *exceptional universal value*, a

value that may not always coincide with the meaning that said sites hold for their local communities³⁷.

For its part, UNESCO took advantage of the 40th anniversary celebrations of the World Heritage Convention, held in 2012, to defend the importance of community involvement. The chosen slogan was 'World heritage and sustainable development: the role of local communities', which alone attests to the organisation's desire to foster the participation-based approach.

As we shall see in the examples given below, fostering community involvement is one of the major challenges facing heritage management from the rights-based approach. This same thought was echoed by UNESCO itself when, in 2003, it stated in its Convention on Intangible Cultural Heritage that any candidature being nominated for inclusion on the Intangible Heritage List must necessarily have the support of the communities in which the cultural expression in question occurs, and said communities must participate in all subsequent processes and share in any resulting benefits³⁸. This condition does not appear in the 1972 World Heritage Convention. While this reference to community involvement in the body of the international normative instrument itself does not always guarantee its systematic implementation at a local level, it does attest to a concern over those (very widespread) methods that seek to manage heritage without involving the local community. It is worth underscoring the fact that the 2003 Convention, unlike the 1972 one, also includes specific references to the 1948 Universal Declaration of Human Rights and various international human rights conventions.

The approval of the 2003 Convention has resulted in intangible heritage today encompassing a variety of cultural expressions existing in cultural minorities, such as afro-descendant communities or indigenous groups, which had been rendered invisible in the past or had simply not been internationally recognised as part of the planet's culture. This recognition has triggered important processes of cultural self-esteem in minority communities and fostered a great deal of development in relation to heritage.

One highly illustrative example of this is Candombe, an expression found in the afro-descendant communities of Uruguay and Argentina, which was included on the List of Intangible Cultural Heritage in 2009. The result of this recognition was the increased visibility of the cultural contribution made by the afro community, a group with which 10.6% of the population of Uruguay claims to identify³⁹.

06. The case of indigenous peoples and the World Heritage Convention.

A good example of the question of heritage protection linked to human rights is the situation of indigenous communities. For many years now, there have been calls for a greater degree of involvement of these communities in World Heritage actions, and cases exist in which strong pressure and harsh sanctions have been brought to bear over indigenous populations with the aim of forcing them to abandon their lands in order to enable a site to be inscribed on the World Heritage List⁴⁰. Such situations constitute clear cases of injustice and human right violations.

There are also cases in which sites were inscribed on the list without these local populations being consulted, resulting in restrictions being imposed on them which interfered with their traditional hunter-gather lifestyle or customary land use⁴¹. One of the errors that led to the overlooking of these populations and their rights in the application of the Convention was the inclusion of some of their ancestral lands on the List as natural sites (with no human presence), a clear denial of the existence of these groups, their cultural characteristics and the way in which they relate to their natural environment⁴².

It is not hard to see how a lack of participation can have serious consequences for the life and rights of indigenous communities, especially as regards their rights to their ancestral lands and their ability to engage in certain activities for human development, in accordance with their right to self-determination⁴³, as established by different United Nations mechanisms. In this sense, it is worth highlighting that 'In accordance with international human rights law, the involvement of and engagement with indigenous communities in the implementation of the Convention and in managing World Heritage sites requires a fundamentally different framework and must be based on different principles from the engagement with other local communities.'⁴⁴.

We subscribe to what S. Disko says when he asserts that 'Considering that an underlying purpose of the World Heritage Convention is to contribute to the protection of the world's cultural heritage, it is surprising – to say the least – that the World Heritage Committee has not been more proactive in ensuring respect for indigenous peoples' rights in World Heritage areas'⁴⁵. This same author reminds us that in 2005, the United Nations Assembly itself asked UNESCO to establish mechanisms to rectify this situation.

For their part, in 2011 a collection of indigenous groups submitted a petition to the United Nations Permanent Forum on Indigenous Issues lamenting the scarce efforts made to ensure adequate participation of their communities in the World Heritage system. The petition stated that the engagement of indigenous communities in the inscription of process of various sites

had been almost non-existent⁴⁶. This initiative is not the only one of its kind, and in 2001 another association of indigenous groups also submitted a similar proposal to the World Heritage Committee, which was unfortunately not approved⁴⁷.

It is clear that UNESCO itself is taking steps to ensure a greater involvement of indigenous communities in the implementation of the 1972 Convention, identifying and acknowledging the clear and permanent link between World Heritage Sites and indigenous peoples, and admitting that the issue is both



Qhapaq Ñan, Andean Road System. © UNESCO/Proyecto QÑ-Bolivia, 2011

sensitive and complex, for both historical and cultural reasons. But it is only recently that indigenous people have, little by little, achieved the recognition not only of their rights, but also of the role they have played in the sustainable management of the lands they live in, and the contribution they can make to efforts aimed at ensuring their sustainable conservation⁴⁸.

Indigenous leaders have also stated that some instruments do exist within the framework of the World Heritage Convention that support the inclusion and participation of indigenous groups. One such instrument is the existence of the category 'cultural landscapes' and the recognition of the role played by communities in achieving the Convention's strategic aims, as outlined above.

In 2011, the World Heritage Committee encouraged 'States Parties to involve indigenous peoples and local communities in decision making, monitoring and evaluation of the state of conservation of the properties and their Outstanding Universal Value and link the direct community benefits to protection outcomes, and to respect the rights of indigenous peoples when nominating, managing and reporting on World Heritage sites in indigenous peoples' territories';⁴⁹.

In 2012, representatives of indigenous people met in Denmark with specialists from UNESCO to draft a declaration in which they called for the implementation of the World Heritage Convention to be more in keeping with the indigenous rights outlined in the United Nations Declaration on the Rights of Indigenous People. They also called (among other things) for indigenous people to be considered to be rights holders in questions of heritage, rather than merely stakeholders, and urged those concerned to ensure their real, effective participation in the decision-making bodies of the Convention⁵⁰.

Regarding the question of indigenous groups, it should be remembered that other normative texts published by UNESCO have also played a key role in increasing the visibility of these communities. In 2001, the UNESCO Declaration on Cultural Diversity attached special importance to the traditional knowledge of indigenous peoples, something that was also recognised by the Convention for the Safeguarding of the Intangible Cultural Heritage in 2003⁵¹.



Xtaxgakget Makgaxtlawana: the Centre for Indigenous Arts and its contribution to safeguarding the intangible cultural heritage of the Totonac people of Veracruz, Mexico. © UNESCO/ Tajin Summit, 2010

07. Women's rights and the international protection of heritage

It is becoming increasingly evident that participation in cultural life is a reflection of the inequalities present in society itself, particularly (although not exclusively) gender inequalities in relation to access to heritage and cultural expressions. If we look at the relationship between gender, culture and human rights, we are forced to admit that we often see culture being used to justify gender inequality and discrimination⁵², with the fact that 'equality between men and women is an integral part of fundamental human rights and, therefore, an indispensable condition in any sustainable development process that puts humans first and foremost' often being overlooked⁵³.

In 2014, UNESCO published a report on gender and culture, which identified the issue as a global challenge⁵⁴. Heritage is, without doubt, a subjective concept defined by our own concept of gender (in the terms used by UNESCO in the document, it is a *gendered concept*). The heritage that we identify as worth

conserving in a specific time and place is necessarily influenced or conditioned by gender relations within society. If we apply the gender perspective to heritage, then we see the different ways people have of experiencing heritage and contributing to its transmission and reinterpretation for future generations⁵⁵.

That which we value and recognise as heritage is therefore conditioned by the power dynamics in our societies, including gender, and it is not uncommon to find androcentric interpretations of what heritage actually means in our communities. Cultural and heritage spaces are often segregated according to gender (there are some sites, for example, that have clearly differentiated spaces for men and women). And insofar as heritage is a question of choice, it evolves in accordance with its social context.

The inclusion of social and ritual practices as a domain of intangible culture to be protected by the international community has triggered a number of different controversies, since it is seen from some feminist perspectives as an opportunity to strengthen and legitimise practices which are harmful to women and girls⁵⁶. Moghadam and Bagheritari argue that the cultural rights of women are not fully protected in the Convention for the Safeguarding of the Intangible Cultural Heritage⁵⁷.



Pujllay and Ayarichi, music and dances of the Yampara culture, Bolivia. © UNESCO/Martínez, 2010

UNESCO itself has acknowledged that, within the variety of different culture-related actions, special attention should be paid to the question of gender equality in the context of protecting expressions of intangible cultural heritage. Women do not always form part of the groups who identify, document and design policies linked to intangible heritage, although they are often, as women, considered to play a key role in transmitting said cultural values to future generations. The example of storytelling is particularly illustrative of this, since because it is women who mostly keep oral history, stories and legends alive in our societies, this cultural practice has often been marginalised due to the fact that it is considered a 'feminine' cultural practice⁵⁸.

The role of women as important bearers of meaning for different cultural groups stands in stark contrast to their lack of influence in relevant decision-making processes and the limited opportunities they are given to foster the development of their cultural life⁵⁹. Thus, women do not have the same opportunities as men to contribute to cultural life within the field of creative arts, and in some cases expressions of intangible culture carried out mainly by women are marginalised.

In short, the 2003 Convention, which focuses on safeguarding intangible heritage, may be 'vulnerable to manipulation or dismissal of women's participation and rights, because of the tension between cultural rights and gender equality, the gender-neutral language of the Convention and the Declaration, and the fact that neither CEDAW nor any other women's instrument is mentioned.'⁶⁰

Returning to the World Heritage Convention, it should be borne in mind that its interpretation has gradually evolved and is no longer limited to the strict protection of nature or the identification of monumental heritage. Over recent years, a wide variety of different sites have been inscribed on the list, either as cultural landscapes or sacred sites linked to nature, and these sites often hold important meaning for the lives of the local population. Thus, it is now more necessary than ever to take into account the relationship between heritage and gender⁶¹, since as outlined above, there is a pressing need to ensure the active participation of the local population and communities in the management of their own cultural properties.

One of the most controversial issues related to the World Heritage List and gender is, for example, the existence of sites such as Mount Athos (Greece) or the Sacred Sites in the Kii Mount Range (Japan), all or part of which are closed off to women. In this sense, it is important to take the gender equality issue into account in relation to future inscriptions, for example.

Furthermore, similarly to that described earlier in relation to sites linked to historical events in the struggle to defend human rights, the World Heritage List also contains very few sites which are directly related to the history and lives of women. Here, it is important to remember the existence of the Global Strategy for a Representative, Balanced and Credible World Heritage List⁶², which was approved by UNESCO in 1994 and which aims to foster a more balanced representation of different civilisations and cultural properties on said list, avoiding the

over-representation of some aspects and the marginalisation of other cultural contributions. The gender issue should also be taken into consideration within the parameters of this strategy.

When considering the examples outlined above, we should always bear in mind that it is not merely a case of identifying the different gender-dependent ways of relating to heritage; rather, it is a question of analysing how the interpretation, transmission, conservation, protection and management of heritage may help foster gender equality. This, in short, should be the ultimate aim of our work. Opening up heritage management to both women and men, under equal conditions, may have a clear, decisive effect on social norms regarding gender, as well as on gender stereotypes, for example⁶³. In this sense, we should remember that one of the areas of the heritage management cycle in which women generally tend to be more marginalised is the decision-making process.

Gender is ignored in heritage discourse, and every time gender issues are mentioned, it is usually with the aim of reducing them to 'women's issues', as if men had no gender at all. We should also be aware that when we say we want to adopt a gender perspective in relation to heritage, rather than focus on the different roles assigned to each sex, we should analyse whether these diverse roles are focused on power relations, whether they give rise to domination and whether they are humiliating for part of the population. So, when we talk about gender-based discrimination in relation to heritage, we should take care not to fall into the trap of adopting overly-simplistic stances focused solely on the sexual segregation of cultural practices⁶⁴. Rather, we should use the gender perspective as a means of transforming the situation and fostering the inclusion of those suffering from discrimination in their communities.

Linked to this, and as we will see later in relation to the work carried out by the Special Rapporteur in the field of Cultural Rights, we should remember that there are limits to each individual's right to take part in cultural life, particularly in those cases in which practices that are often attributed to tradition violate the human rights of others.

08. Participation and gender in other United Nations mechanisms linked to human rights and heritage

With the aim of finding effective formulas for the systemic implementation of a rights-based approach to UNESCO Conventions in the field of heritage, we believe it is important to analyse other United Nations mechanisms that deal with the issue of human rights and heritage.

Within this framework, we would first like to refer to General Comment no. 21 issued by the Committee on Economic, Social and Cultural Rights, which upon analysing what is actually encompassed by the term *right to participate in cultural life*, talks about cultural heritage in terms of human rights (paragraph 15c). It also identifies special groups which are at particular risk of having their right to participate in cultural life violated, and state that special attention should be paid to these groups by duty bearers⁶⁵. The groups identified include (among others) indigenous peoples and women, on which our analysis focuses in this document.

In relation to women, the Committee states in its Comment that 'Ensuring the equal right of men and women to the enjoyment of economic, social and cultural rights is a mandatory and immediate obligation of States parties. [Implementing the Covenant requires] the elimination of institutional and legal obstacles as well as those based on negative practices, including those attributed to customs and traditions, that prevent women from participating fully in cultural life (...)' (par. 25).

A little later, in paragraph 37, the Comment states that 'Indigenous peoples have the right to act collectively to ensure respect for their right to maintain, control, protect and develop their cultural heritage (...). States parties should respect the principle of free, prior and informed consent of indigenous peoples in all matters covered by their specific rights.'

We would like to highlight the fact that this General Comment also mentions the right to cultural heritage as one of the States' obligations, pointing out that 'In many instances, the obligations to respect and to protect freedoms, cultural heritage and diversity are interconnected.'. This idea of the link between cultural freedom and diversity was also mentioned by the UNDP Human Development Report in 2004⁶⁶, although this falls beyond the scope of this particular analysis.

Finally, paragraph 50 of the General Comment is also key to establishing the right to heritage in both peacetime and times of war, and for future generations, since it highlights the importance of protecting the cultural heritage of all groups and communities.

A detailed analysis of this General Comment provides many perspectives and ideas that are relevant to our aim of implementing heritage Conventions from a rights-based approach.

For example, we believe it is important to highlight the importance of the fact that the Committee talks about cultural freedom in this Comment. In the words of the Rapporteur himself, it 'characterises the right to participate in cultural life as a freedom: a freedom which implies, firstly, that the State should abstain from interfering, and secondly, that it should take positive measures to facilitate an atmosphere in which the individual can freely express and exercise their cultural aspirations.'⁶⁷. Identifying this right as a freedom may be important when analysing, for example, the situation of women (and other social groups) in relation to their cultural rights. Moreover, the Comment places special emphasis on non-discrimination and equal treatment, key questions in the effort to manage culture and heritage from a rights-based perspective.

Another process we consider to be vital within the field of heritage and human rights is the work by the United Nations Special Rapporteur in the field of cultural rights, Farida Shaheed. Right from the very first report she submitted to the Human Rights Council in 2010, Farida Shaheed underscored the question of liberty and the importance of access to heritage and participation in its interpretation, as well as the reformulation of its contents. In relation to the right to participate, or not participate (par. 6), she states: 'power differentials must be taken into consideration, as they impact on the ability of individuals and groups to effectively contribute to the identification, development and interpretation of (...) a shared cultural heritage.'⁶⁸. The question of the right 'not to participate' may be a key factor in protecting women rights, for example.

Another key point in her report is the reflection quoted below, which to our mind is the cornerstone for protecting our heritage from a rights-based perspective: 'Although States have the obligation to respect and protect cultural heritage in all its forms, the challenge is not so much to preserve cultural goods and practices as they are, which may be inappropriate in certain circumstances, but preserve the conditions which have enabled these goods and practices to be created and developed.'⁶⁹. In short, in a number of the documents she has drafted over recent years, the Rapporteur has reiterated the fact that her mandate does not refer to the protection of culture and heritage per se, but rather to the analysis and protection of the conditions that permit everyone, with no discrimination, to access, participate in and contribute to cultural life in an ongoing and non-discriminate way.

Following her first report, the Special Rapporteur identified the need to clarify the dimensions of the right to heritage, and proceeded to dedicate an entire annual report to this issue. In 2011, she investigated the right of access to and enjoyment of cultural heritage in international human rights law, 'stressing the need for a human rights-based approach to cultural heritage matters.'⁷⁰. In this document, she revisited and explored in more detail the idea expressed the previous year when she stated that 'Considering access to and enjoyment of cultural heritage as a human right is a necessary and complementary approach to the preservation/safeguard of cultural heritage. Beyond preserving/safeguarding an object or a manifestation



Know-how of cultivating mastic on the Island of Chios, Greece. © UNESCO/Stratis Voyatzis, 2009

in itself, it obliges one to take into account the rights of individuals and communities in relation to such object or manifestation and, in particular, to connect cultural heritage with its source of production.⁷¹ She therefore states that in order to ensure the effective participation of the community and to take the human dimension of cultural heritage into account, we should adopt a new perspective, identifying and protecting those goods that have meaning for people and communities.

This report by the Rapporteur is so detailed and important to understanding the dimensions of human rights in the field of heritage that we believe it responds to many of the needs identified throughout the course of this work. In paragraph 9, it offers a list of human rights issues related to cultural heritage, including the significance of heritage, which cultural heritage deserves protection, the extent to which people participate and how they have access to and enjoy it, and possible limitations to the right to cultural heritage. It also includes a series of recommendations that attach immense importance to community participation, highlighting especially indigenous peoples among those groups requiring special attention (see par. 10). The report mentions human rights violations committed in the field of heritage, such as cultural assimilation, the generation of controversies and conflicts, the forced displacement of populations, the intentional destruction of heritage or acting in the field of heritage without the participation or consent of the affected communities.

Within the list of possible limitations identified by the Rapporteur in her report, we find that ‘some practices, which are part of cultural heritage, may infringe upon human rights. International instruments clearly state that practices contrary to human rights cannot be justified with a plea for the preservation/safeguard of cultural heritage, cultural diversity or cultural rights.’⁷² This point is key to approaching heritage from a gender-based and rights-based perspective, as analysed above. We should remember that the General Comment also refers to the question of *negative practices*⁷³. The Special Rapporteur (the mandate changed from ‘Independent Expert’ to ‘Special Rapporteur’ at the end of the first 3 years of her work) dedicated her 2012 annual report to the issue of women’s rights in relation to cultural rights. In this report she recommends States to (among other things) ‘review the following issues so as to assess the level of implementation, or non-implementation, of the cultural rights of women (...) on the basis of equality with men’, demanding that they provide a response to, among other issues, ‘restrictions on women wishing to undertake any form of art and self-expression, to enter cultural heritage sites or premises, to participate in cultural events or ceremonies and to engage in interpreting and applying particular texts, rituals or customs.’⁷⁴

In this debate we should also remember article 5 of the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), which calls on States Parties to take ‘all appropriate measures to modify the social and cultural pat-

terms of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women;⁷⁵

In short, and returning to the underlying issue of this work, we can say that the reports drafted by the Special Rapporteur clearly assert that international heritage protection instruments (including the Conventions analysed here) have not always worked from a rights-based perspective, and have not always adhered to the principle of non-discrimination.

If we focus specifically on the work carried out by the Special Rapporteur in the field of cultural rights and women's rights, her report from the year 2012 is particularly illustrative⁷⁶. In this report, the Rapporteur reminds us of the importance of people's ability to 'decide', and points out that just as individuals have the right to participate, they also have the right *not* to participate, a key issue to bear in mind when promoting women's participation under equal conditions. Article 25 states that 'Participation covers not only the right of individuals to act freely, to choose one's own identity and to manifest one's own cultural practices, but also the right not to participate in specific traditions, customs and practices, particularly those that infringe on human rights and dignity.' And indeed, it is still the case that when women try to exercise

their right not to participate in certain customs and to interpret, amend and reform the nature of their cultural communities, they usually come up against opposition that is out of all proportion. As the Rapporteur herself states in her report: 'Preserving the existence and cohesion of a specific cultural community, national or subnational, should not be achieved to the detriment of one group within the community, such as women (...) Combating cultural practices detrimental to human rights, far from jeopardizing the existence and cohesion of a specific cultural community, stimulates discussion that facilitates a reorientation of culture towards embracing human rights.'

As we have seen, participation in cultural life is often a reflection of the inequalities present in society itself, and gender inequalities in relation to access to culture may exist in these expressions also. Often, women's full participation in cultural life is impaired by the systematic negation of their political, economic, social, civil and other legal rights.

One of the concepts linked to the question of participation is that of autonomy. In this sense, we should bear in mind at all times that even when women are fully empowered to enjoy and exercise their economic, social and cultural rights as autonomous individuals, they still come up against obstacles when they attempt to participate effectively and on equal terms in cultural life.



Indonesian batik: the techniques, symbolism and culture surrounding hand-dyed cotton and silk. © UNESCO/Batik Museum Institute, Pekalongan, 2008

Moreover, some women suffer not only from gender discrimination, but also from other overlapping discriminations due to their origin or ethnic group, for example. The conceptual fragility of the theoretical framework of cultural rights makes the political articulation of a practical agenda that would enable women from cultural or ethnic minorities to exercise their right to enjoy a full, autonomous cultural life and to reap the benefits of culture in their environment particularly difficult⁷⁷.



Window on Diversity Workshop in Vitoria - Gasteiz. © UNESCO Etxea/B. Guzmán, 2015

09. Conclusions

Why is it important to adopt a rights-based approach to heritage? Heritage (including recognition at an international scale) is not a luxury item but rather an important element in the development and identity of the local community where it is located⁷⁸.

Thanks to the clarification of cultural rights over recent years, and diverse publications over recent decades, it is now clear that 'the right to cultural heritage is an integral part of human rights considering the irreplaceable nature of the tangible and intangible legacy it constitutes, and that it is threatened in a world which is in constant transformation. This right carries duties and responsibilities for individuals and communities as well as for institutions and states. To protect this right today is to preserve the rights of future generations.'⁷⁹

For its part, the United Nations has highlighted the importance of considering access to and enjoyment of heritage a human right. UNESCO has established that heritage should be a 'tool for reconciliation', and has undertaken to 'promote participatory and inclusive policies and measures that concomitantly address the requirements of conservation and development and foster social cohesion, (...) and peace by raising awareness of a shared heritage and a common past.'⁸⁰ We should not forget that, as early on as 1997, the United Nations was a pioneer in the practical application of the rights-based approach in its programmes, but that nevertheless, there is still much work to be done before we can talk about the true integration of the human rights-based approach in all dimensions of the system.⁸¹

Beyond preserving and safeguarding an object or a manifestation in itself, the human rights-based approach obliges us to take into account the rights of individuals and communities in relation to this object or manifestation and, in particular, reminds us to connect cultural heritage with its source of production: people. It is therefore a case of determining how to make cultural and heritage practices more inclusive and compatible at all times with internationally-recognised and acknowledged human rights.

In relation to the UNESCO Conventions, we subscribe to that stated by the Human Rights Council's Special Rapporteur, namely that 'Although UNESCO instruments do not generally specify the rights of individuals and/or communities to cultural heritage, several entry points in the instruments themselves, or developed through practice, invite the adoption of a human rights-based approach.'⁸² This is the point where our work begins, and where we believe we should strengthen our efforts to ensure a comprehensive application of a rights-based approach in our actions to protect heritage at an international level.

We should be aware that, although some progress is being made in this sense, it is not always easy to apply rights-based logic to this kind of heritage object, and since the Conventions we are talking about are extremely well-known at an international level, many countries are hesitant to recognise and deal with

situations of conflict and issues related to the possible negative impact on local communities⁸³. Indeed, we still lack detailed, in-depth and verified information about the true situation of human rights in relation to international heritage protection.

In this sense, it is important to note that different types of heritage give rise to different types of questions linked to human rights. Managing intangible heritage involves dealing with living heritage, which only exists to the extent that people express themselves. The protection of physical sites, on the other hand, necessarily requires other approaches in relation to protecting the heritage rights of the local community.

In order to foster the heritage-human rights binomial, a 'formal adoption and consistent application of a human rights-based approach' would be a way of ensuring the participation of the community, and would ensure that any differences 'are resolved in a fair, balanced, and non-discriminatory way.'⁸⁴ This in turn would guarantee that the rights of communities are not infringed on and would enhance the credibility of the International Heritage Lists.

We therefore believe that although the Convention Concerning the Protection of the World Cultural and Natural Heritage and the Convention for the Safeguarding of the Intangible Cultural Heritage 'do not necessarily have a human rights approach to cultural heritage, in recent years, a shift has taken place from the preservation/safeguard of cultural heritage as such, based on its outstanding value for humanity, to the protection of cultural heritage as being of crucial value for individuals and communities in relation to their cultural identity.'⁸⁵ However, there is still much work to be done before we can talk about a systematic application of the rights-based approach to the implementation of these Conventions.

Participation, inclusion for empowerment and non-discrimination are key factors for this approach. But whereas community involvement has for years now been considered a vital component of any public action development proposal, the accountability of the authorities in this matter has yet to be systematised⁸⁶.

Thus, it is clear that community involvement in the management of their own heritage should be a basic part of any action. However, it is just those most basic aspects that often tend to be overlooked, both consciously and unconsciously⁸⁷. We therefore believe that the development of a detailed policy, a follow-up process and the monitoring of in-situ practices would, in this sense [i.e. in relation to community involvement], constitute a major step forward.⁸⁸ Measures designed to ensure the fair redistribution of any benefits derived from heritage⁸⁹ should also be included here, along with steps to ensure the participation, under equal conditions, of all interested parties. Specific human rights indicators should be identified for these monitoring and protection processes, since the establishment of follow-up and accountability mechanisms forms part of States' obligations to rights-holders⁹⁰.

It is not hard to see how a lack of participation can have serious consequences for the life and rights of indigenous communities, especially as regards their rights to their ancestral lands



Mapoyo oral tradition, Venezuela. © UNESCO/Centro de la Diversidad, 2013

and their ability to engage in certain activities for human development, in accordance with their right to self-determination⁹¹, as established by different United Nations mechanisms.

We would like to point out that when we talk about participation we are referring to effective, transformational involvement, rather than simple public consultations or referendums among the local population. Participation is not consultation: it must offer real opportunities to participate and influence the agenda, the process and the implementation of development activities⁹². This transformational participation aims to empower members of the local community so that they become aware of and are able to use their capacity to make decisions regarding their own future and the development of their community; it also aims to promote a more democratic society. The objective is to 'involve communities in meaningful ways in decisions about their future (...). The issue is one of democratic governance and the democratisation of heritage discourses and management';⁹³.

In relation to the interpretation of heritage, we would like to point out that we understand interpretation as a process rather than a finished product. This process of interpreting heritage by the community fosters the right of everyone to participate freely in the cultural life of the community⁹⁴. Moreover, these interpretations of heritage by local communities themselves are important because they generate processes of 'reinterpretation', thus fostering the recognition of situations linked to memory and reconciliation in response to past human rights violations⁹⁵.

In connection with the above, we should not forget that the protection of heritage and sites linked to human rights can serve as a tool for human rights education and the promotion of a culture of peace, since 'Even though sites of conscience and memory still represent only a miniscule number on the World Heritage list, they are of global importance due to their ability to keep important memories of war, human rights abuses or other injustices alive and therefore contribute through their symbolic power to the enhancement of peace and dialogue.'⁹⁶.

An indispensable step in this field is to improve the capacities of heritage managers in relation to the recognition of the human rights of the different communities present in the region⁹⁷, since those who work to protect heritage from a technical perspective are rarely aware of the political, economic and social implications of their activities. It is often forgotten that the only reason heritage conservation as a cultural process has any meaning at all is that it is relevant for people. In this sense, 'heritage should be considered a cultural practice rather than as a purely technical issue.'⁹⁸.

Another determining factor would be the understanding of those responsible for heritage management that when resolving conflicts related to heritage, it is important to apply the human rights framework rather than try to hide or simply ignore said conflicts and their origins, since as stated above, this only leads to sustained situations of human rights violation and gives rise to discrimination against vulnerable populations in many different communities throughout the world.

Given the interdependence and indivisibility of human rights, we should be aware that the right to heritage is linked to other human rights, such as the right to non-discrimination, the right to life, the right to freedom of movement and residence, the right to property, the right to an adequate standard of living, the rights of minorities, freedom of association, the right to health, the right to self-determination of peoples and the right to access information, etc.⁹⁹ All these rights must be rendered visible and included in our management.

In order to translate the right to heritage into specific measures and policies, we should always consider the right to have the authentic testimony of cultural heritage, respected as an express right to better understand one's heritage and that of others, the right to wise and appropriate use of heritage, the right to participate in decisions affecting heritage and the cultural values it embodies and the right to form associations for the protection and promotion of cultural heritage¹⁰⁰.

Other key questions may include promoting state and non-state actors' obligations to secure and protect the substantive rights of all those potentially affected by programmes, and to ensure the prior assessment of any conservation programme (including the conservation of natural areas) in order to identify how they affect human rights¹⁰¹, in accordance with the principle of 'conservation with justice'¹⁰².

Thus, in its concept 'conservation with justice', the international NGO IUCN includes key points for heritage management from a rights-based approach, including accountability and good governance. We should strive to ensure participation, free consent, use of conflict-resolution mechanisms and monitoring, as well as, in short, to guarantee respect for human rights throughout the entire heritage protection process.

We must, also, needless to say, ensure reasoned decision-making, based on this prior assessment of the implications of our management and projects for human rights. Within this framework, in order to ensure a rights-based approach to heritage management which includes both accountability and good governance, it is vital to incorporate monitoring and assessment tools focused on accountability, and to support the improvement of governance frameworks and procedures that can secure the rights of local people in the context of conservation and sustainable resource use¹⁰³.

Providing the signatory states to the Conventions (i.e. duty bearers) with detailed guidelines and specific requirements in the field of human rights would ensure the participation of local communities in the different stages of the tangible and intangible world heritage protection processes that concern them.

Some examples of local community involvement in World Heritage site management already exist. We could mention, for example, the exemplary cases of indigenous peoples in Lapland and South Africa¹⁰⁴, where local communities have become interpreters of their own heritage, guiding actions and participating directly in the decision-making process. Other examples of local community involvement, not necessarily linked to indigenous populations, may provide examples of practical measures that can be applied to other contexts (such as

cultural landscapes linked to agriculture, such as in the coffee cultural landscape of Colombia¹⁰⁵ or the agave landscape in Mexico; agricultural heritage is also an example of heritage management that stems from the local sphere, from the evolution of the way in which local communities grow their food, but at the same time it is global in nature, since agriculture is a universal response by human societies to their own basic needs and their natural environment¹⁰⁶. These examples can also be considered role models, for the same reasons as above. For its part, as seen earlier, the Convention for the Safeguarding of the Intangible Cultural Heritage seeks to foster the involvement of local communities in the management of this kind of heritage.

We would like to point out that these interpretations of heritage by local communities and/or indigenous peoples themselves are often important because they generate processes of 'reinterpretation', thus fostering the recognition of processes linked to memory and reconciliation in response to past human rights violations¹⁰⁷.

It is also important to remember that dealing with the question of communities and their rights in relation to heritage management requires long-term processes rather than quick-fix solutions and short-term approaches¹⁰⁸. In order to guarantee effective participation, we should also acknowledge the specific characteristics of the communities in question (see the example



Bailes Chinos are brotherhoods of musicians who express their faith through music, dance and singing in the context of commemoration festivities in Chile. © UNESCO/Manuel Morales Requena, 2009

of indigenous groups¹⁰⁹ and, specifically, the particular characteristics of indigenous groups living in voluntary isolation¹¹⁰). We should, of course, be aware that inclusion on the World Heritage List may bring as many benefits as negative consequences, all of which should be analysed and weighed¹¹¹.

We would also like to highlight the fact that we view participation itself not as the desired ultimate outcome, but rather as one of the keys to achieving said outcome, which focuses rather on the protection of heritage from a rights-based perspective and the defence of everyone's right to heritage under equal conditions.

Important issues from a rights-based approach to heritage protection and community involvement (particularly, although not exclusively in relation to indigenous groups) include the need to identify legitimate representatives, the need to gain a thorough understanding of said group's decision-making mechanisms, accountability to the community through effective mechanisms, the provision of key documents and the dissemination of the results¹¹².

When making recommendations for implementing a rights-based approach in relation to heritage conventions, we believe UNESCO should include mechanisms for allowing the participation of diverse UN human rights figures (such as the Human Rights Council's Special Rapporteur in the field of cultural rights and the Committee of the International Covenant on Economic, Social and Cultural) in the decision-making bodies of both Con-

ventions (1972 and 2003). Moreover, and in specific cases, we believe it would be a good idea to have the support of (among others) the United Nations Permanent Forum on Indigenous Issues¹¹³, and the CEDAW committee. The adoption, in 2007, of the United Nations Declaration on the Rights of Indigenous Peoples provided both a reason and an opportunity for the World Heritage Committee to review its relationship with indigenous communities¹¹⁴. At the same time, in order to ensure the participation of women in the implementation processes of any international covenant or agreement for heritage protection, in addition to existing human rights documents, attention should also be paid to those international instruments which are explicitly dedicated to analysing and protecting women's rights¹¹⁵.

Bearing in mind all the data presented throughout the course of this work, we believe that the advice and participation of these specialist human rights bodies, as well as those focusing specifically on indigenous issues or women's rights (in reference to the two groups analysed in more detail in this document) would be vital to adopting a rights-based approach to heritage protection actions carried out by the United Nations in general, and by UNESCO specifically.

We should also add that the promotion of these cultural expressions and of cultural freedom may become a tool for promoting gender equality and the effective participation of women. We therefore believe that the clarification and promotion of cultural rights may constitute an area in which to foster the empowerment



Lavash, the preparation, meaning and appearance of traditional bread as an expression of culture in Armenia. © UNESCO/Ruzanna Tsatryan, 2013



The Argentinean and Uruguayan tradition of the Tango. © UNESCO/Ministry of Culture, Buenos Aires, 2008

of both women and minority communities or groups suffering from discrimination. Moreover, 'In many aspects, cultural rights are pivotal to the recognition and respect of human dignity, as they protect the development and expression of various world visions — individual and collective — and encompass important freedoms relating to matters of identity. (...) In addition, cultural rights are essential tools for development, peace and the eradication of poverty, and for building social cohesion, as well as mutual respect and understanding between individuals and groups, in all their diversity.'¹¹⁶.

In the words of the UN Special Rapporteur in the field of cultural rights, we should not forget that 'no social group has suffered greater violation of its human rights in the name of culture than women and that it is inconceivable that a number of such practices would be justified if they were predicated upon another protected classification such as race.'¹¹⁷.

It is clear that in order to put an end to discrimination against women, there must be an agreement that culture cannot be a justification for inequality. Thus, any international document (including conventions and declarations) in the cultural field must take into account not only human rights instruments, but also those instruments focused specifically on women's rights¹¹⁸. Today, we have documents that analyse women's rights from a holistic standpoint, such as the CEDAW Convention, which should be a key point of reference for any international, regional or local work in the field of cultural rights.

We should particularly highlight women's right to access, participate in and contribute to all aspects of cultural life. This includes the 'right to actively engage in identifying and interpreting cultural heritage and to decide which cultural traditions, values or practices are to be kept, reoriented, modified or discarded.'¹¹⁹. We should also guarantee that women have the same opportunities as men to represent their cultural communities. Moreover, we should make the contribution made by women and girls to the cultural development of their communities more visible, as an indispensable first step towards the specification and protection of their right to participate in cultural life.

Of course, we should not forget that fostering community involvement in cultural expressions from a gender-based approach is not just about fostering women's participation; rather, it requires more holistic and sustainable strategies and visions which will enable us to move towards more effective participation on an equal basis for everyone.

In this sense, we believe that cultural rights may be an instrument for empowerment, as well as for defending human rights, particularly the rights of women. In order to exercise their cultural rights, women must be able to participate in and make decisions regarding all the cultural issues affecting their society, on an equal basis with men; to this end, given the intrinsic relationship that exists between all rights, we need to guarantee their other human rights (freedom of movement, opinion and

expression, freedom of religion or belief, freedom of association and economic rights, etc.). The materialisation of cultural rights, including the right to transform cultures, is pivotal for making the human rights of women effective at a more general level, since gender equality cannot be attained unless we also overcome those obstacles that we have internalised in our cultural lives.

In short, and in accordance with that stated by the Special Rapporteur, we would like to reiterate that cultural rights are agents of empowerment, since they give people control over the course of their lives, which contributes to their enjoyment of other rights also.

We should not forget that fostering community involvement in cultural and heritage expressions from a gender-based approach is not just about fostering women's participation; rather, it requires more overarching strategies and visions which will enable us to move towards more effective participation on an equal basis for everyone. To our mind, rendering women and specific social groups and cultural communities more visible is a vital first step on the road towards the ultimate goal of equality and the full participation of these individuals in cultural expressions.

In light of all that outlined above, we firmly believe that the adoption of a rights-based approach to the implementation of the UNESCO World Heritage Convention and the Convention for the Safeguarding of the Intangible Cultural Heritage, as part of the United Nations system, would foster the necessary inclusion and participation of all social groups in the management of their heritage. We also believe that cultural rights, including the right to heritage, may constitute key instruments for empowerment, as well as for defending human rights, particularly for those groups suffering the most severe violations of their right to access, participate in and contribute to cultural heritage.

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For many years now, leading figures from the academic and social fields, as well as diverse intergovernmental and civil society organisations have been exploring the role of culture in development, and the actions that may serve to foster its practical application. This publication aims to bring together the numerous initiatives that currently exist in the field of culture and development, providing an overview of the subject for those interested in learning more about what exactly people mean when they talk about this binomial.

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