

# IRCI Second International Workshop on the Study of Legal Systems Related to Intangible Cultural Heritage in the Greater Mekong Region

Toyama, Japan 17-19 December 2015

## Welcome Addresses

Ms. Ohnuki, Deputy Director-General, IRCI, welcomed participants and introduced the project in the context of the other projects being undertaken by IRCI. The study of legal systems related to intangible cultural heritage (ICH) in the Greater Mekong region has been conducted by IRCI in collaboration with experts from Kyushu University Graduate School of Law. The objective of the project is to better understand the ways in which the safeguarding of ICH has been formalized or institutionalized through the comparative study of legal mechanisms for ICH safeguarding in the Greater Mekong region, and to identify effective legal approaches to ICH safeguarding. A quantitative survey has already been conducted in nine countries, and the results of this were discussed and reported on in a meeting in December 2014 at Kyushu University. During 2015, qualitative surveys have been conducted to collect more detailed information on three countries, and further such surveys are planned. The purpose of the current meeting was to discuss and review the data already collected in 2014-2015, and to discuss ways of contributing to the drafting of ICH law in the region through comparative study of the relevant legislation in the region.

Ms. Saito, Director of Life-Long Learning & Cultural Assets Office , Toyama Prefectural Government, welcomed the delegates on behalf of the governor. She explained that Toyama Prefecture is a place where local crafts have brought commercial value as well as richness and peace of mind to people's lives, and several elements of local ICH have now been nominated to the UNESCO ICH lists. She hoped that the workshop would help bring further development in the region. She explained some of the natural wonders and history of the Toyama Prefecture. IRCI has had a number of fruitful collaborations with Toyama Prefecture, and she thanked IRCI for organizing the workshop in Toyama.

Participants then introduced themselves.

## Overview of the Questionnaires and Papers Submitted by the Experts: Mr. Steven Van Uytsel (Associate Professor, Kyushu University)

Mr. Van Uytsel explained that the UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage was hard law in form, and soft law in content. He reported on the research that had been done in the Greater Mekong region, the aim being to understand both the non-legal context for ICH safeguarding and at the legal environment, and then using this information to formulate regulatory guidelines (but not model laws). After a quantitative survey of the Greater Mekong region and some other South East Asian countries, qualitative surveys and site visits were used alongside a survey of the legislative process in

Vietnam, Thailand, Laos, Myanmar and Cambodia.

This research has raised questions about:

- whether legislation is needed for ICH safeguarding: to what extent are other measures such as ICH policy sufficient (as in Cambodia)?
- the way in which legislation is drafted: for example, what is the role of experts?
- the role of legislation in promoting (or hindering) ICH safeguarding, and its relationship to existing non-governmental initiatives: to what extent should these be taken into account?
- the relationship between ICH legislation and international law: to what extent should it be consistent with the principles of the Convention?
- the relationship between ICH legislation and other heritage legislation: should it be part of a general heritage law, or separate?
- the relationship between ICH legislation and other legislation (e.g. education): should it be mainstreamed or separate?

### Report of the Field Research Conducted prior to the Workshop: Ms. Susan McIntyre-Tamwoy (Associate Director at Extent Heritage Pty Ltd (formerly AHMS Pty Ltd))

This presentation was based on research in Myanmar, Laos and Thailand, where different levels of legal protection and different ICH safeguarding mechanisms were identified. Myanmar currently has no legal protection for ICH and may welcome assistance in this regard, Laos has tabled amendments to existing legislation (the National Heritage Law of 2005), and Thailand is in the process of developing substantive legislation. States often choose to draft a new piece of legislation for ICH so that budgets are allocated specifically to ICH. Challenges identified in these countries include ring-fencing budgets for ICH work (especially in Laos and Myanmar), developing processes for community engagement and consent, coordinating and integrating ICH-related activities both existing and new, balancing ethnic representation in ICH programmes and inventories, and managing tension between communities about claims to stewardship and cross-border ICH. Inventories and documentation programmes are ongoing in Myanmar and Thailand but have been hampered in Laos because of budgetary constraints and the lack of a database. There is little concern in Laos and Myanmar about theft of intellectual property relating to cultural heritage. More effort needs to be made to monitor the effects of new legislation on existing transmission and practice of ICH.

### Discussion

In the discussion on these presentations it was indicated that there was significant competition between the countries to claim stewardship over ICH through inventorying and nominations. Mr Kono indicated the importance of encouraging states in the region to make multinational nominations, both at the national level and in the Intergovernmental Committee discussions on nominations. Ms McIntyre-Tamwoy suggested that post-listing documentation and safeguarding activities, and consideration of heritage in diaspora communities, may refocus attention on joint safeguarding of cross-border ICH. Mr Van Uytsel indicated that the national stewardship or ownership of ICH is often highlighted in the drafting of national legislation, and this should be discouraged.

### Participant comments regarding the situation in Laos: Mr. Bounyadeth Daopasith

Mr. Daopasith spoke about the legislative process in Laos. Only a government authority or official can initiate legislation. The five-year plan for legislative development is adopted by the National Assembly in their first session and then an annual plan is considered by a standing committee of the National Assembly. This committee will do research to discuss specific pieces of legislation. A law drafting committee then drafts the

legislation or amendments to legislation, with inputs from various organisations and ministries. Public consultation is conducted, and then an impact assessment is made. Comments can then be made on the draft law, when it is published on the website. The primary draft law on ICH has been completed and the government is currently asking for advice on it from legal experts and from provincial offices. ICH is already mentioned in the Constitution (art.21-23 and art.2-12).

#### Participant comments regarding the situation in Myanmar: Ms. Nang Lao Ngin

Myanmar has a tangible cultural heritage law and cultural policy, but not yet an ICH law. The process of drafting ICH law is 2-3 years long. It starts with a draft prepared by legal experts. This is referred to legal experts and the attorney general's office, after approval by the vice president and the President's Office, it goes through Parliamentary committees, public comment, back to Parliament, and then requires further Presidential approval. Myanmar may need assistance with drafting the legislation through the Ministry of Culture. Government agencies and the NGO sector plays an important role in safeguarding ICH in most communities and raising awareness about its importance. Inventorying has been done by the Ministry using the Korean format. Information was collected by the Department of Archaeology and National Museum on 306 elements, and Department of Fine Arts collected information on 299 elements. There are over 130 ethnic groups in Myanmar.

#### Participant comments regarding the situation in Vietnam: Ms. Quach Thuy Quynh

The legislative process in Vietnam is similar to that in Laos. A program is formulated by government, and one ministry or state agency will formulate the first draft with expert opinion. This will be verified by various committees including youth, culture, and so on, again with reference to expert opinion. Then the standing committees of the national assembly will review the draft before the debate (where expert opinions can also be heard). Then the draft will be approved by the President. Experts who can be consulted include researchers and scientists. In the drafting of the 2009 amendments of the cultural heritage law, experts and the media played an important role in amending the draft. Other actors can also have a say including the National Commission for UNESCO, and institutions in the culture sector. Government-funded cultural institutions are important in the development of inventories and nominations.

#### Participant comments regarding the situation in Cambodia: Mr. You Sour Lim

In Cambodia, developing new law takes about 5-6 years. Only government can propose a draft law. The relevant ministry drafts the law with input from NGOs, community representatives and so on. This is submitted to the Council of Ministers and checked by the Jurists' Council and by the Economic, Social and Cultural Council. If the Prime Minister then approves the draft, he sends it to the National Assembly. After going through one of the ten parliamentary committees, the National Assembly may approve the draft and it is then sent to the Senate (upper house) for committee review, before being sent to the King for promulgation. In 2010 Cambodia passed a national decree on Living Human Treasures, but it does not yet have a specific law on ICH.

#### International Assistance for the Development of Legal Framework for Cultural Heritage in Bhutan: Mr. Kono Toshiyuki (Professor of Graduate School of Law, Kyushu University)

Mr Kono explained that he had been asked to assist Bhutan in the development of a legal framework for cultural heritage, including a Heritage Bill, Intangible Cultural Heritage Bill and an Archives Bill. In 2010, there was already a Cultural Property Act and an Archives Bill (relevant to old religious documents and how to preserve them). The Archives Bill has been redrafted. Currently work is ongoing on merging the Intangible

Heritage Bill and the Heritage Bill at the request of the Cabinet. Mr Kono explained the schema for safeguarding ICH that has been proposed for the Bill, which creates an ICH Committee, a safeguarding fund and an inventory. Communities interface with local authorities to identify ICH and safeguarding measures; local authorities as well as ministries and governmental institutions interface with the ICH Committee to propose ICH that can be registered and entered on the inventory, and for which safeguarding can be funded if necessary. Some of this ICH is designated as ICH of national importance, that can be nominated to the UNESCO Lists.

## Discussion

Ms Deacon asked whether community consent would be ensured for ICH proposed by government ministries and institutions. Mr Kono said this would be necessary. Ms McIntyre-Tamwoy asked whether ICH of national importance would be managed by central government. Mr Kono said the ownership of the ICH should not be changed. Ms O'Rourke asked what incentive there was to inventory ICH at the local level if there was no funding provided. Mr Kono explained that inventorying could give status to ICH (especially at the higher level) and help to bolster cultural identity in cases where it is not endangered; where it is endangered listing on the inventory could result in financial support.

## Policy development for intangible cultural heritage safeguarding: Ms Harriet Deacon (UNESCO ICH facilitator)

Ms Deacon explained her role developing materials for the UNESCO programme providing policy advice to states on the development of ICH-related policy. Many states believe they have to develop ICH policy. This is not a requirement under the Convention, but it is useful in many cases. There is not a recipe for policy development in the Convention and the Operational Directives. The UNESCO Guidance Note on policy making reviews what some global trends, not just in ICH policy but more broadly in ICH-related policy. This indicates a wide variety of approaches that have been adopted. Analytically it is helpful to consider historical approaches, broader local and regional agreements and national strategies drive certain choices in regard to ICH policy. The existing relationship between state agencies and communities more generally affects to what extent states give control over ICH to communities. Vested interests in existing institutions are an important influence on how ICH is taken up in policy processes and how these policies are implemented. The impact of ICH-related instruments is affected by how ideas such as national importance or national culture are defined, and how culture itself is understood and used as a policy tool. One of the biggest challenges is to develop government policies on ICH without encouraging appropriation, and to encouraging coordination between ministries and agencies working with ICH. In doing this, there have to be incentives for government officials to allow communities to retain control over their ICH. Policy development and implementation has to involve public participation more broadly, as well as representatives from specific communities in relation to their ICH.

## Discussion

In the discussion it was indicated that provision of case studies about the development of ICH-related law can be very useful for other countries, not just in the Greater Mekong Region, to examine when developing their own law. It is difficult to develop a model law which can be used in a wide range of countries. States may find case studies useful to see what choices have been made elsewhere, and versions of laws used elsewhere, as well as an indication of factors to consider in developing legislation, and best practice principles. Case studies should include information about a range of issues (see below). A public interactive website from the research containing such information could be a useful outcome of the project. More

detailed research could be conducted through a study of effects of implementation and barriers to implementation of ICH-related policies.

Some of the issues to be included in the case studies for each country are as follows:

#### **Socio-political, cultural background**

- history, ethnic divisions etc.
- conceptualization of ICH in relation to this politics and history
- how communities are conceptualised (both bottom-up and top-down)

#### **Role of culture in political context**

- existing institutional provisions, activities and power relations
- non-legal mechanisms and incentives for safeguarding

#### **Status of ICH-related law making**

- how ICH policymaking fits within strategic goals
- process of law making including process of amendment
- stakeholder involvement (particularly role of communities)

#### **Other legal mechanisms affecting ICH**

- national instruments: education, health, intellectual property (TK) etc.
- international instruments

#### **Implementation processes and issues**

- activities: inventorying, safeguarding etc.
- promoting community and other stakeholder involvement
- consent mechanisms
- promoting sustainable development
- promoting gender equality
- promoting inter-ministerial communication, relation to local government structures
- incentives for implementation
- success factors (as defined by different stakeholders)

#### **Appendix 1**

List of communications undertaken  
(names of institutions, interviewees, etc.)

#### **Appendix 2**

List of relevant literature related to each country

### **ICH Management System in the Local Governments & Good Practices of ICH Revitalization in Takaoka City: Ms. Ohnuki Misako, IRCI**

Ms. Ohnuki explained the history of traditional crafts in Takaoka and active involvement of the artisans in for the revitalization, on the basis of her field study conducted in the past few years. There are three characteristics found in the city's ICH promotion activities; strong support by the municipal government, promotion of ICH through compulsory education, young craftsmen's active involvement for revitalization. Takaoka City developed as a castle town from 1609, and during this period seven experienced metal casters from a neighbouring region and some lacquerware makers were invited to settle in the town. The metal casters were licensed as professionals and given special tax concessions to encourage them to practice their craft in the town. Later, the licensing system fell apart and the craft of metal casting was open to all. In the Meiji era arts and crafts from Takaoka were promoted as part of local industry, and presented their wares

in European exhibitions. The municipality promotes teaching of arts and crafts in the elementary and middle school curriculum, using the expertise of professional crafters.

#### [Presentations by Local Government Officials on ICH Management, Safeguarding and Policy Making:](#)

##### [ICH management and promotion in Toyama: Mr. Miyazaki Ichiro \(Director, Business Management Assistance Division, Toyama Prefectural Government\)](#)

Mr. Miyazaki explained that the Takaoka Mikurumayama Festival had been nominated to the UNESCO Representative List of Intangible Cultural Heritage of Humanity; completion of Mikurumayama Kaikan (Festival Floats Hall) was expected in 2015, which will help safeguard this element. The promotion of ICH elements in the area is part of a broader strategy of cultural heritage promotion, and sustainable development. Kanaya-machi, Home of Takaoka Copperware and Cast Metal was designated an Important Preservation District for Groups of Traditional Buildings in 2012. The Historic Villages of Gokayama is a World Heritage Site where there is a famous restaurant awarded three Michelin stars. In Inami, home of the Inami Betsuin Zuisen-ji (Temple), woodcarvers work in the many studios in the town surrounding the gate of the temple. Design innovation is promoted through the Toyama Design Center. Design Wave in Toyama, a Toyama product design competition running for 25 years, encourages fine new talents to work in Japanese industry. A Toyama Traditional Crafts Promotional Exhibition was held recently in Milan, Italy to promote local crafts, some traditional and some new versions of traditional crafts.

##### [Management and Issues of the Protection of Intangible Cultural Heritage in Toyama Prefecture: Ms. Sakai Yoko \(Manager of Cultural Properties, Life-long Learning & Cultural Assets Office, Toyama Prefectural Board of Education\)](#)

Ms Sakai explained how the system of designating intangible cultural properties works in Japan. The Ministry of Education, Culture, Sports, Science and Technology (Agency for Cultural Affairs) identifies State-designated cultural properties under the Law for the Protection of Cultural Properties. The Prefectural Board of Education identifies Prefecture-designated cultural properties and Municipal-designated cultural properties under the Ordinance for the Protection of Cultural Properties. The designated ICH is related to local cultural festivals, as well as daily life, craft production and commerce and industry. In research in Toyama Prefecture (1987-1988), 150 traditional jobs and techniques were recorded. Problems faced by these industries include lack of successors and aging of craftsmen, lack of financial resources in local governments to support them, and lack of knowledge about the special value of the crafts. Toyama Prefecture has therefore funded successor training projects and tool purchasing, research and recording of techniques and also demonstrations at elementary and middle schools.

##### [Protection and Conservation of Intangible Cultural Properties in Takaoka City: Mr. Himi Tessyo \(Superintendent, Takaoka Board of Education\)](#)

Mr. Himi discussed the 'intangible cultural properties' (i.e. ICH elements registered on the national or municipal inventory) in the municipality of Takaoka, including the municipal criteria for designation and how the properties are safeguarded. One of the intangible folk cultural properties designated at the national level is the Mikurumayama Festival at Takaoka Mikurumayama. This festival has been performed for 400 years, and includes the Yoshibe Festival on 3 April, the bringing out of the floats on April 30 and a parade on 1 May. Community organisations safeguarding the Festival include the Takaoka Mikurumayama preservation Society (established in 1954) and the Takaoka Regional Cultural Properties Restoration Society (established in 2008). Mr. Himi also discussed other aspects of registered ICH in Takaoka including the advanced



technique of metal casting held by expert craftsman Komin Oozawa. Mr. Himi explained that national or prefectural designation of ICH increased local pride in safeguarding of ICH, gave publicity to the local area and helped to secure funds and technical assistance for safeguarding. Municipal designation of ICH can also be used to ensure that ICH not designated at national or prefectural levels is not forgotten, and can be safeguarded. An example of this is the Spring Rite and Festival at Fushiki Shrine, which is designated by the municipality as an intangible folk cultural property. The municipality works closely with community organisations to safeguard the ICH.

### [Protecting Intangible Culture by Controlling Tangible Materials - Yamahoko Events of the Gion Festival in Kyoto as an Example: Mr. Murakami Tadayoshi \(Specialist for Cultural Properties, Cultural Properties Protection Section, Cultural City Development Office, Culture and Citizens Affairs Bureau, Municipality of Kyoto\)](#)

Mr. Murakami explained the history of Japanese law for the protection of cultural properties from 1950 to 2004. One of the benefits of designation is the availability of subsidies. In the case of restoration work on the floats for the Gion Matsuri Yamahoko float procession, the national authorities contributed half of the 45 million Yen cost, while the Prefecture, Municipality and Conservation Association each contributed one sixth of the cost. Other work where the costs were shared among these stakeholders included the creation of a new float and small repairs to existing floats. Innovative additions, such as the incorporation of dragon's eyes made out of a new material (Crescent Vert) developed by Kyocera, a local company, were used to update the tapestry hangings for the floats while retaining their spirit and historic elegance. The 'Council on Creation of New Ornaments and Others for Yamahoko of the Gion Festival' helps to decide on the incorporation of such new ideas.

### [Field Visit to Craft Studio in the Communities of Takaoka:](#)

#### [Traditional Craft Revitalization in the Community of Takaoka: Mr. Nousaku Katsuji \(Craftsman, Traditional Metal Casting, President and CEO of NOUSAKU CORPORATION\)](#)

Mr Nousaku initially worked as a journalist but married into a family of metalworkers at Nousaku Corporation (founded 1916, established 1967). He is a leader in local metalware production, as he has kept traditional methods of production while updating traditional products, and pioneered new methods of casting. He updated the factory's famous bell (which was not so widely used any more) into a wind chime, and a bell-shaped vase which has been popular with European luxury design clients. Other products, such as chopstick rests, have been repurposed in the European market and used as biscuit holders on the side of coffee cups. He introduced the use of pure tin in various products, such as vase supports or beer cups where bendability is required. There is a need for 100% tin products in surgical tools and bone splints, because of its antibacterial qualities and flexibility. Within the Takaoka area he does not sue those who copy his designs, as he promotes sharing among local industries. The group was able to tour the factory and see how the casting is done.

#### [Mr. Musashigawa Takeshi \(Traditional Takaoka Lacquerware craftsman, Musashigawa Studio\)](#)

Mr. Musashigawa is a young craftsman who practices the art of lacquerware as his father did before him. Lacquerware making in the region dates back to the 17<sup>th</sup> century when it was used in armour, cabinets and trays for the castle in Takaoka City. Later production methods such as overglazing of black lacquerware were introduced from China, and gold inlay painting were introduced. Painting on the dark lacquer base to make coloured lacquerware, and using finely-ground mother of pearl in the lacquerware decorations are more

recent innovations. The group was able to see a wide range of examples of fine local lacquerware and to speak to the craftspeople in the studio.

### Discussion and closure

In the closing discussion, the delegates reviewed the work plan for the continuation of the research on legal systems related to Intangible Cultural Heritage in the Greater Mekong Region. Ms Ohnuki thanked everyone for attending the workshop, and Mr Kono, as chair, closed the meeting.