Towards a Better Understanding of Community Involvement for Achieving Environmentally Sustainable Development

Janet Blake*

Department of Law, Environmental Sciences Research Institute, Shahid Beheshti University

Abstract

The notion of applying a participatory approach to various areas of both environmental protection and development has gained ground in international policy- and law-making since the adoption of the Rio Declaration in 1992. The Declaration presents the participatory approach as an important procedural aspect of environmental management and decision-making within sustainable development and requires governments to employ it as far as possible. The Declaration also recognises the important and sometimes central role played by local and indigenous communities and their knowledge and practices – their intangible cultural heritage - in ensuring that the use of natural resources is environmentally sustainable. Taken together, these two principles can be understood to require governments to ensure a high degree of local community involvement at all stages of environmental protection (from policy-making to management), an approach endorsed in various environmental treaties adopted in or since 1992. The Convention on Safeguarding Intangible Cultural Heritage adopted by UNESCO in 2003 is the most recent treaty in this area to take this approach and it is interesting both for the way it places the community at the centre of actions for its implementation and also since it establishes an intergovernmental Committee whose main task involves the development of operational directives for this treaty. Since employing a participatory approach that requires the direct involvement of local communities in areas traditionally reserved to government is a complex and difficult question, it is hoped that the future practice of the intergovernmental Committee of the 2003 Convention may provide guidance on this not only for that treaty but also for other environmental treaties. Given the uncertainty surrounding both the identification of these "communities" referred to in environmental treaties and, more problematically, the exact content of their "participation" in environmental protection, I wish here to examine these further in an attempt to give them more clarity.

Keywords: intangible cultural heritage, local and indigenous community, participatory approach, environmental policy-making and management.

به سوی درک بهتری از مشارکت جوامع در رسیدن به توسعه پایدار زیست محیطی

ژانت بلیک*

گروه حقوق محیط زیست، پژوهشکده علوم محیطی، دانشگاه شهید بهشتی

چکیده

از زمان پذیرش اعلامیه ریو در سال ۱۹۹۲ مفهوم کاربرد رویکرد مشارکتی در زمینه‌های مختلف توسعه و حفاظت زیست محیطی در سیاست‌گذاری و قاعده سازی بین المللی پذیرفته شده است. این اعلامیه رویکرد مشارکتی را به عنوان یک آیین مهم در مدیریت محیط زیست و تصمیم‌گیری در توسعه پایدار ارایه می‌کند و حکومت‌ها را تا حد ممکن به بکارگیری این رویکرد ملزم می‌کند. این اعلامیه همچنین نقش مهم و بعضاً محوری ایفا شده توسط جوامع محلی و بومی، اهمیت دانش سنتی و میراث فرهنگی معنوی جوامع یاد شده در تضمین استفاده از منابع طبیعی با داشتن محیط زیـست پایـدار را شناسایی می‌نماید. بـا در نظـر گـرفتن دو اصـل مـذکور ایـن الـزام استنباط می‌شود که حکومت‌ها باید مشارکت با درجه بالای جوامع محلی در تمام مراحل حفاظت از محیط زیست (از سیاست گذاری تا مدیریت) را تضمین نمایدؤ این رویکردی است که در معاهدات متعدد محیط زیستی تصویب شده از سال ۱۹۹۲ پذیرفته شده است. کنوانسیون مصوب یونسکو در مـورد حفاظت از فرهنگ‌های معنوی در سـال ۲۰۰۳ جدیـدترین معاهـده در ایـن زمینه می‌باشد که این رویکرد را برگزیده است. کنوانسیون از این جهت که جوامع را در کانون اقدامات اجرایی خـود قرار داده و همچنین بـه دلیـل تأسـیس کمیتـه میـان – حکـومتی کـه وظیفـه اصـلی آن ایجاد و توسـعه دستورالعمل‌های کاربردی برای معاهده می‌باشد، جالب به نظر می‌رسـد. از آنجا که بکارگیری رویکردی مشارکتی متضمن مشارکت مسـتقیم جوامع محلی در حوزه‌هایی است که به صـورت سـنتی در اختیـار حکومـت بـوده است، تحقق این رویکرد، مسأله پیچیده و دشواری بـه نظر می‌رسـد، امیـد است که عملکرد آتی کمیته میان – حکومتی کنوانسیون سال ۲۰۰۳ راهنمای مناسبی را نه فقط برای این معاهده بلکه همچنین برای سایر معاهدات محیط زیستی ارایه نماید. با توجه به ابهاماتموجود پیرامـون تـشخیص "جـوامعی " که در معاهدات محیط زیستی ذکر شده‌اند و مسأله سـازتر از آن، تـشخیص میزان دقیق "مشارکت" جوامع مذکور در حفاظت از محیط زیست، مطالعه حاضر امیدوار است این مسائل را مورد بررسی بیشتر و عمیق قرار داده تا آنها را شفافتر ارائه نماید.

کلیـدواژه‌هـا: میـراث فرهنگـی معنـوی، جوامـع محلی و بـومی، رویکـرد مشارکتی، سیاست گذاری و مدیریت محیط زیستی.

* Corresponding author. *E-mail Address*: jeblake_ir@yahoo.com

Introduction

Since the adoption of the Rio Declaration by UNCED in 1992, the idea of fostering participatory approaches in various areas of environmental protection and development has become increasingly important. It has also become increasingly well recognised that the traditional knowledge and practices – the 'intangible cultural heritage' – of local and indigenous communities is a vital element in ensuring sustainable use of environmental resources. (Warren, 1995; Posey, 1998) In the environmental field, for example, there are now half a dozen treaties adopted in the decade between Rio and 2003 that make direct reference to the central role of the local community involvement (or an equivalent formulation) in ensuring a sustainable approach to environmental protection and the preservation of biodiversity.

The most recent of this body of new treaties is the 2003 Convention on the Safeguarding of the Intangible Cultural Heritage ('CICH') adopted by UNESCO's General Conference in October 2003[1] (Blake, 2007) and will be the main focus of discussion here.[2] One of the most notable aspects of this Convention is the central role it gives to the cultural communities (and groups and, in some cases, individuals) associated with intangible cultural heritage ('ICH') previously unseen in international cultural heritage law. This is in response to the very specific character of this heritage which is wholly dependent on the ability and willingness of the cultural group and/or community to continue to maintain it.[3] It also, incidentally, reflects the role of this heritage in fostering environmentally-sustainable practices embedded in the traditional knowledge and know-how of these local communities.

Apart from the central place given to the community and group in defining their ICH in Article 1(1), the Convention also contains specific references to the need for community participation in implementing its provisions. Article 11(b) places the requirement that Parties identify and define the elements of ICH on their territory "with the participation of communities, groups and relevant nongovernmental organizations" and Article 15 places a very direct obligation on Parties to ensure community participation in safeguarding activities and to "involve them actively in its management".[4] This requires Parties to take a participatory approach in relation to a specified set of safeguarding measures[5] and the wording does not allow Parties simply to pay lip-service to the notion of participation but requires them to ensure the active involvement of the community.

It is worth noting in this regard that the CICH is concerned not with the 'protection'[6] but with the 'safeguarding' of ICH, which implies a far broader approach that not only protects ICH from direct threats but also requires of Parties positive actions that contribute to its continuing viability. Since the community is the essential context for this, it must imply the continued capability of the cultural communities themselves to practice and transmit their ICH. Hence, the community is again placed at the centre of this Convention rather than the heritage itself.

The purpose of this essay, then, is to examine more closely the way in which community involvement and participatory approaches to safeguarding ICH are promoted in the 2003 Convention and to compare these with other environmental treaties that also refer to participatory approaches. I also wish to review the usage of the term 'community' and the related terms 'group', 'minority' and 'people' in international law - specifically environmental and human rights law - in order to arrive at a better understanding of who these 'communities' actually are.

Culture and Development – Moving Beyond Sustainable Development

First, however, it is useful to consider some of the significant intellectual milestones that have marked out advances in international policy-making in relation to the protection of the environment (as well as other

areas), leading up to and beyond the formulation of the notion of sustainable development. One of the key advances in thinking that has informed much of more recent development theory and related approaches, aimed at realising truly sustainable development, has been the recognition of the role of culture in development. (Leach, 1998)

During the 1960s and 1970s, development was conceived as a purely economic phenomenon whereby growth in a country's GDP was the main, if not sole, indicator of success. Within this picture of development, culture was often regarded as a break on development, (Abraham and Platteau, 2004) particularly the 'traditional cultures' of less developed countries. As a response, theories of development generally supported 'acculturation' policies in which the local community was encouraged to adopt a 'modern' set of cultural values thought to be more in keeping with the objectives of development. In reaction against this in Africa and Latin America, there was an intellectual shift by the 1970s towards the notion of 'endogenous development' in which local and ethnic cultures (and languages) were given greater value within the developmental paradigm. (Arizpe, 2007)

The World Conference on Cultural Policies (1982)[7] proved to be a significant landmark in this paradigm shift by presenting an 'anthropological' view of culture as the way of life and form of social organization of a group, along with their traditions and other cultural manifestations and, most importantly, their socio-cultural and economic contexts. During the UN World Decade for Cultural Development (1987-1997) UNESCO officially highlighted the function of cultural heritage for the community and that its safeguarding "should be regarded as one of the major assets of a multidimensional type of development". (UNESCO, 1990: paragraph 209)

The World Commission on Culture and Development reported in 1995 (WCED, 1996), again stressing the creative and constitutive role played by culture in development - in particular, intangible cultural heritage - and making clear the centrality of the cultural community to this. (*Ibid*: 24)[8] This report made explicit the linkage between the achievement of sustainable development and local know-how and traditional knowledge and practices that ensure sustainable use of natural resources. Such a conception of culture and development would imply the use of bottom-up approaches that are community-driven and exploit this invaluable local know-how and other aspects of intangible cultural heritage for ensuring environmental (and other) sustainability. Here, then, we see the genesis of the participatory approach to environmentally sustainable development and its interaction with culture, in particular ICH.

Taking this further, Sen (2004:4) presents his view of well-being (i.e. human development) as a set of capabilities that people have and that culture is one of these capabilities. This leads us to the idea of a set of capabilities – based on their intangible cultural heritage - that allows groups and local communities, amongst other things, to manage their environment and exploit its natural resources in a sustainable manner. However, we must be careful not to ignore the fact that traditional cultural attitudes may also act as a break on participatory local development where, for example, community leaders may resist threats to established power relationships or capture resources intended for the whole community for themselves. (Abraham and Platteau, 2004) Local community participation in development is, therefore, a two-edged sword that can cut both ways and we must be aware of its pitfalls as well as its great potentials in order to avoid the former while promoting the latter. (Douglas, 2004)

How to Understand 'Communities', 'Groups' and 'Participation' in International Law

The CIHC is not unique as far as international treaties are concerned in making reference to the 'communities', 'groups' or 'participation'. These are notions that already have a currency in the fields of human rights and environmental law, and it is worth

examining their use in these areas both in order to elucidate their meaning for the CICH and other environmental treaties. Generally speaking, it is possible to interpret what 'community' (or its equivalent term) means within the context of a given treaty but it is much more difficult to draw out any general definition of this term that can be applied across the board. The same can be said for the notion of 'participation'. It is therefore valuable to examine how these terms are used in the various texts and, most importantly, to be able to identify what actions/measures are implied by them.

What this brief review of relevant international law will also show is that the CICH has the potential to break new ground in the effort to provide a clear understanding what is meant by 'community' or 'group'[9] – albeit in relation specifically to intangible cultural heritage – and of the nature of their participation in implementing its provisions, especially in terms of their relationship with the State in this. Such an understanding can also help in shedding light on how such references can be interpreted in relation to other environmental treaties. The practice that will develop under the CICH through the work of the Intergovernmental Committee for ICH - established under that Convention to develop operational directives for its implementation - may prove particularly significant here. This Committee, then, has the opportunity to develop this area of international law over the next few years and to inform our understanding of the use of terms such as 'community' and 'participation' within a treaty framework.

'Communities' and 'Groups' in International Law

One of areas in which such terms referring to human collectivities have been most widely used is in the field of human rights law and it is therefore helpful in our search for better understanding of these terms to review their use in this area of law. From a brief survey of the use of the terms 'people', 'group', 'minority' and 'community' in international human

rights law, it becomes clear that they are to a high degree interchangeable that there is no absolute and agreed meaning for any of them. Even the term 'people', despite its associated legal baggage of the right to self-determination,[10] has no agreed meaning (Brownlie, 1988) although it is clear under international law what the requirements are for a people to be capable of claiming self-determination. (Cassese, 1995)[11] Hence, the way in which we understand and use these terms is, to a large degree, context-dependent. What is important, then, is to determine the parameters in which we are working in order to help us to understand their meaning for the purposes of the CICH and other environmental treaties in which they are employed.

If we look at one of the most developed areas of human rights law in relation to communities, the law relating to minorities' rights of which Article 27 of the ICCPR[12] is the classic exposition, the definition of the 'minorities' in question relies both on objective criteria (such as ethnicity, language etc.) and the subjective one of self-identification or 'solidarity'. (Thornberry, 1991; Capotorti, 1976) This raises an interesting question – can a group that has no consciousness of itself as a group or a community be said to 'exist' legally, despite the existence of objective criteria that sets it apart from other elements in a State's population? In other words, is it primarily their sense of distinct cultural identity (and their desire to preserve it) that gives minorities this cultural right? This would seem closely related to the way in which the relationship between the community and its ICH is presented in Article 2(1) of the CICH. Of relevance to environmental treaties that refer to "indigenous and local communities", is that the 1989 ILO Convention on Tribal and Indigenous Peoples[13] also places high importance on self-identification as a criterion for determining the groups to which the Convention applies.[14]

Article 27 carefully avoids any direct reference to minorities themselves as holders of the right, but refers rather to <u>members of</u> minorities who exercise the

rights "in community with" other members. Hence, the right attaches to individuals but, logically, can only be exercised within the community context. This reflects an attempt to balance the individual character of human rights with the fact that these rights can only be exercised within the context of an existing and viable community.[15] The recently adopted UN Declaration on the Rights of Indigenous Peoples[16] makes more explicit the collective nature of the rights in question while, in the context of the African Union, there has been work on developing a model law on community rights in relation to genetic resources.[17] It seems highly appropriate here that the former should relate to indigenous communities (often the communities of importance in environmental treaties) and the latter should relate to plant genetic resources, an area that implicates both environmental protection and traditional knowledge (ICH).

Although it is possible to identify certain different nuances in meaning between 'communities', 'groups' and 'minorities', much is dependent on the context of the instrument in which they are used. The same can be said for the way in which these terms are used in the environmental treaties. The 1992 CBD,[18] for example, talks in Article 8(j) of preserving and maintaining the "knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles".[19] Although it gives an extensive set of definitions for terms used in the Convention text – 17 in all from "biological diversity" to "genetic resources" and "habitat" – it does not attempt to define the indigenous and local communities that are referred to in the treaty. This is interesting since, not only is 'community' itself uncertain in meaning but also 'local' and 'indigenous' are not really clear in their content, despite the existence of a UN definition of the former. (Martinez Cobo, 1976; Anaya, 1996). Equally, the 2001 FAO treaty on plant genetic resources[20] refers to the contribution of "indigenous and local communities and farmers" to conserving plant genetic resources, again without seeking to define who these 'communities' are.

As a result, we are left to interpret these formulations in terms of their application in each particular instrument as well as in the wider context of international law. Of course, we understand that these are communities primarily defined by their specific knowledge/know-how and their way of life that gives them a privileged role in preserving biological diversity and ensuring the environmental sustainability of the use of the plant genetic resources in question. They are, therefore, 'cultural' communities whose definition is largely based on their knowledge systems and cultural practices in exactly the same way as the cultural communities of the CICH also are. However, if we wish governments to take seriously their obligations with regard to community involvement and participation under these treaties it must be made clearer how the communities in question are to be identified (and who their representatives are) and what the relationship between them and the government authorities should be.

Community Involvement in Development and Participation in International Law

A similar participatory approach to that of the CICH may be found in other Conventions dealing with sustainable environmental protection,[21] and it is therefore useful to consider in brief how these notions have developed and operate in contemporary international law. The linkage between participation as expressed in the CICH with the other environmental treaties is made even stronger by the international community's recognition of the important role played by ICH in "achieving truly sustainable development" (UNESCO, 2002: paragraphs 3 and7)[22] as well as the fact that the definition of ICH[23] limits it, *inter alia*, to that which is compatible with sustainable development. Hence, it is connected directly to the requirement of for a participatory approach for achieving sustainable development (UNCED, 1992: Principle 10).

I wish to examine the nature of this requirement and how it is expressed in various international treaties

and other texts. By doing so, I will seek to throw some light on the nature of community participation and involvement in environmental protection, to identify in general terms the elements that make up this participation and to understand better what this means for in the national policy-making framework.

Sustainable development as expressed in the Rio Declaration[24] comprises both substantive and procedural elements and the latter contain an international obligation on governments to operate in certain ways. (Freestone and Boyle, 2000) Principle 10 places the requirement on States to take a participatory approach to development issues. Principle 22 specifically refers to the vital role of "indigenous people and their communities, and other local communities" in environmental management and development and a concomitant requirement on States to "recognise and duly support their identity, culture and interests and enable their effective participation in the achievement of sustainable development".[25]

Taken together, these two principles have provided the inspiration for the various international treaties that make reference to participation by indigenous and local communities. The 1992 UN Convention on Biological Diversity,[26] for example, makes one of the most explicit references in Article 8(j) to the participatory role of local and indigenous communities' knowledge and practices for preserving biodiversity.[27] In relation to this article, Parties undertake *inter alia* to establish mechanisms to ensure effective participation by indigenous and local communities in decision-making and policy planning. If we seek to add flesh in terms of actual, specific measures to be taken to the bones presented in Article 8(j) of the CBD, the following broad approaches can be identified:

- Establishing local-specific systems for classifying knowledge and procedures for acquiring and sharing it, based on customary law.
- Recognising the importance of addressing the needs not only of the community but also of its individual members.

- Ensuring free prior informed consent for access to, acquisition and use of knowledge.
- Establishing mutually agreed terms (MATS) for the above and in planning and management of the resource, reflecting mutual respect and understanding.
- Full and equal participation and partnership in planning and management.
- Creating local implementation and incentive measures.
- Establishing access and benefit-sharing agreements (ABS).
- The right of non-disclosure of confidential information.
- The right to review research and authorise its dissemination and community or joint ownership of copyright on publications based on traditional knowledge research.

According to the 1994 Convention to Combat Desertification,[28] Parties should be guided by the need to ensure that decisions on the design and implementation of programmes "are taken with the participation of populations and local communities". (Article 3(a)) It contains further provisions that elaborate on this that set out the following actions to be taken by governments:[29]

- Develop a spirit of partnership and co-operation at all levels of government, communities, NGOs and landholders to gain a better understanding of the problems.
- Make public any national action plans developed within the Convention framework.
- In addressing the underlying causes of desertification, pay particular attention to socio-economic factors.
- Promote awareness and facilitate participation of local populations, particularly women and youth, with the support of NGOs, in efforts to combat desertification.
- National action plans should provide for effective participation of NGOs and local populations at the local, national and regional levels in policy

planning, decision-making and implementation and review of national action programmes.

An FAO report on the implementation of the 1994 CCD notes that "of prime importance is the participation of the local people". It makes the following proposals in this regard:

1. Institutional, legislative and infrastructure constraints should be eliminated to facilitate the co-management of development and collective community decisions.

2. A variety of technological models and decision-making tools should be provided to cope with local diversities.

The 2001 FAO treaty states clearly that the right to participate in national level decision-making regarding plant genetic resources is fundamental to realising Farmers' Rights[30] while the 1989 ILO Convention[31] recognises the right of indigenous people to decide their own development priorities "as it affects their lives, beliefs, institutions and spiritual well-being".[32]

It is far too early to identify what specific approaches or measures may be recommended by the ICH Committee as regards community participation and involvement in the safeguarding and management of ICH. However, there are certain indications we can rely on.

The World Heritage Committee (of the 1972 Convention) has over recent years revised the Operational Guidelines to that Convention in such a way as to recognise better the importance of local community involvement in the design and implementation of management plans for listed sites. (Luxen, 2000) The 2005 version of the Operational Guidelines, for example, includes certain references to community involvement and participation in the process of nomination and management planning. It notes (UNESCO, 2005:110) that an effective management system should demonstrate "a thorough shared understanding of the property by all stakeholders" and "the involvement of partners and

stakeholders". (2005:111) Candidacies for cultural landscapes "should be prepared in collaboration with and the full approval of local communities". (Annex 3 at paragraph12) The Operational Guidelines also set out the Global Strategy for World Cultural and Natural Heritage of which "the primary goal is to ensure that the necessary skills are developed by a wide range of actors for better implementation of the Convention". This signals a crucial element in ensuring participation and community involvement in the various aspects of safeguarding – capacity-building in the communities in order to equip them to undertake these roles effectively.[33]

A model of UNESCO operational practice can be found in the proclamation of Masterpieces of Oral and Intangible Heritage (1998-2003) The Guidelines for candidatures for the proclamation of Masterpieces contain several relevant points. (UNESCO, 2001) For example, a candidature file must have the guaranteed participation of members of the community. (Paragraph 11) and the involvement of the community in the action, revitalisation and protection plan is an important selection criterion. (Paragraph 18) Moreover, the action plan for safeguarding should include, as far as possible, "substantial and active participation from the community concerned … in the design and application of strategies and mechanisms aimed at safeguarding and preserving" it. (Paragraph 24 (b)) Interestingly, among further relevant considerations, are measures taken to raise the awareness of members of the community concerned of the importance of safeguarding the ICH and the requirement for existence of local democratic structures that can ensure full participation.

Some Issues Relating to Community Participation and Involvement

As noted above, by entering into the area of community (and group) participation and its "active involvement" in the safeguarding and managing of ICH, the CICH is navigating relatively uncharted waters and faces some complex and difficult

questions. These new legal parameters created by the CICH will have a significant impact on the formulation and implementation of national policies in the cultural heritage field. (Arantes, 2007) The following section attempts to address the questions these raise, but recognises that it is very early in terms of the Convention's operation to be definitive on these matters.

A fundamental point to make is that the relationship between the community and the ICH resource is vital to this and needs to be clarified before further steps can be taken. An exact parallel may be drawn here between the ICH resource and any other environmental resource that requires a participatory approach that involves the local community to ensure its sustainable use and conservation. This is not simple given that the potential for conflict exists here both within and between cultural communities over who should identify and manage the resource. (Deacon *et al.*, 2004:42) This then brings into play the question of who should represent the community and, as Arizpe points out (2007), the cultural 'gate-keepers' in a community can play either a positive or a negative role in this.

Sen (2004) notes that the local community may face difficult decisions concerning development plans and what is crucial is that people the ability to participate in public debate on matters concerning choices affecting their way of life and use of resources. The success (or otherwise) of a participatory approach to environmental protection and sustainable resource use will greatly depend on how well-developed the channels of communication between government and local communities are. In a highly centralised system such as Iran (and many other States), this is a problematic business and much work is needed to develop effective lines of communication. The task of fully implementing the participatory element of the CICH and other environmental treaties will present many Parties with a great challenge, one made greater by the fact that there is no clear consensus on the exact meaning and extent of

'participation' even in the relatively better explored area of participatory development. If, for example, it implies the meaningful involvement of local and indigenous communities in environmental protection and resource use, it could range anywhere from simple information dissemination to project planning and facilitating of local people's own initiatives. (Albro, 2007)

In assessing participatory development approaches, Alkire (2004) notes that external actors such as experts and government officials (who may well be the same people) have a role to play in supporting informed community participation by providing information, countering local patterns of domination and handing over decision-making to local people. Ascribing 'ownership' of the participatory management process is also very important since it is not uncommon for academics and other specialists to regard the community participation approach as 'belonging' to them. To avoid this, clear ground rules need to be established as to how the different actors should work together in the tasks of planning, designing, implementing and managing projects and when this is to be done solely by the community and when professionals can assist in this. Involvement of the community from the start of this process is essential to ensure that they have a sense of ownership and will co-operate fully in later implementation and management measures. It should also be recognised that there may be a multiplicity of stakeholders in such cases all of whom need to be taken account of. (Alkire, 2004) Finally, it is important that the 'experts' recognise that the local community may have a privileged knowledge and understanding of their immediate environment and the sustainable use of its resources.

Furthermore, the new national policy approach required by provisions calling for local community participation in implementation of a treaty will lead to a fundamental shift in the relative position of the governmental agencies involved in environmental preservation, particularly vis-à-vis the new role of

local communities in project design and management. The significance of this should not be underestimated since it has, up until now, been the prerogative of the State to decide on policy and environmental protection measures with the environment viewed as a national heritage that the government should preserve in the role of a trustee. There is therefore a need to build a State/community partnership that is both bottom-up and top-down, with the role of government understood primarily as a supportive one (for the provision of finances and expertise). However, such a partnership is not easily constructed and this process will involve complex and often difficult negotiations in which 'mediators' that are both internal and external to the local communities will play an important intermediary role. (Arantes, 2007) These mediators may include: community representatives, office bearers and cultural or resource custodians; technical and administrative personnel of government institutions; independent experts and political activists involved in the institutional practices; and entrepreneurs seeking to develop business opportunities related to the environmental resource.

Conclusion

As this article has shown, there has been since the 1980's a significant shift in the development paradigm towards recognising the key role that culture has to play and, consequently, the importance of involving the local (and/or indigenous) community in development planning and management. This shift has been formalised in the Rio Declaration (1992) and the notion of sustainable development set forth in that document and is reflected in a number of international environmental treaties, including the 2003 CICH.

However, this new approach will present governments with a challenging and difficult new regulatory environment in which many of their fundamental preconceptions about how they should operate will have to change. The newly promoted role of local communities in areas traditionally reserved to government, particularly in policy- and decision-

making as well as project management, will require States to redefine their relationship with these groups. In order to do so, however, they must know how to identify the local communities in question and be able to define the terms on which they negotiate their participation. To further complicate this matter, as this article makes clear, there is a multiplicity of stakeholders whose interests need to be taken account of and it is not always easy to identify the appropriate representatives of the community.

The work of the intergovernmental Committee of the CICH in dealing with such thorny issues is going to be important not only for the implementation of that Convention but to inform Parties to other environmental treaties as to how they can put into practice the requirement for a participatory approach to environmental protection.

Notes

1- Convention for the Safeguarding of the Intangible Cultural Heritage (UNESCO, 17 October 2003), online: <http://unesdoc.unesco.org/images/0013/001325/132540e.pdf>. It entered into force on 20 April 2006 with its 30th ratification and, by October 2007, had secured 87 ratifications.

2- The UNESCO Convention on the World's Cultural and Natural Heritage (adopted 16 Nov. 1972), on which the 2003 Convention was broadly modelled, is the other main cultural heritage Convention in the environmental field.

3- As emphasised in the definition of ICH given in Article 1(1) of the Convention: "The "intangible cultural heritage" means the practices, representations, expressions, knowledge, skills – as well as the instruments, objects, artefacts and cultural spaces associated therewith – *that communities, groups and, in some cases, individuals recognise as part of their cultural heritage*. This intangible cultural heritage, transmitted from generation to generation, *is constantly recreated by communities and groups*

in response to their environment, their interaction with nature and their history, and provides them with a sense of identity and continuity, thus promoting respect for cultural diversity and human creativity..." (My emphasis)

4-Art.15 reads: "Within the framework of its safeguarding activities of the intangible cultural heritage, each State Party shall endeavour to ensure the widest possible participation of communities, groups and, where appropriate, individuals that create, maintain and transmit such heritage, and to involve them actively in its management".

5- Set out in Article 2(3) in the definition of "safeguarding".

6- The standard term used, for example, in the titles to most of UNESCO's cultural heritage Conventions. Only the 1989 Recommendation on Safeguarding Traditional Culture and Folklore (the precursor to the CICH) uses the latter term.

7- World Conference on Cultural Policies (MONDIACULT), Mexico City, 6 Aug.1982. It reads, "in its widest sense, culture may now be said to be the whole complex of distinctive spiritual, material, intellectual and emotional features that characterize a society or social group. It includes not only arts and letters, but modes of life … value systems, traditions and beliefs."

8- "People, however, are not self-contained atoms; they work together, co-operate compete and interact in many ways. It is culture that connects them with one another and makes the development of the individual possible. It is in this sense that all forms of development, including human development, ultimately are determined by cultural factors."

9- To be clarified by the ICH Committee when defining the criteria for inscription of ICH on the Lists.

10-The right of peoples to self-determination is expressed in joint Article 1 of the International Covenant on Civil and Political Rights (UN,

Geneva, 16 December 1966) and the International Covenant on Economic, Social and Cultural Rights (UN, Geneva, 16 December 1966).

11- Under the Treaty of Montevideo (1936), these are a sufficient population, control over a territory, the ability to establish political institutions and to enter into relations with other States.

12- International Covenant on Civil and Political Rights (1966).

13- Convention No.169 Concerning Tribal and Indigenous Peoples in Independent Territories. Available online at:

14- Art.1(2) refers to "Self-identification as indigenous or tribal" as a "fundamental criterion" for this.

15- The Human Rights Committee's Commentary on this article accepts that this gives the rights in question a quasi collective character.

16- UN Declaration on the Rights of Indigenous Peoples (adopted UN General Assembly, 13 September 2007).

17- OAU Model Legislation on Community Rights and Access to Genetic Resources.

18- UN Convention on Biological Diversity (UN, 1992).

19- Article 8 requires each Contracting Party, as far as possible: "(j) Subject to its national legislation, respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustained use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge."

20- International Treaty on Plant Genetic Resources for Food and Agriculture (FAO, 2001)

21- Primarily, the UN Convention on Biological Diversity (1992) and the UN Convention to Combat Desertification (1994).

22- They read as follows: "3. In order to ensure the sustainability of this process [of safeguarding ICH] governments have the duty to take measures facilitating the democratic participation of all stakeholders" and "7 (iv) Consider that it is appropriate and necessary, within this framework, in close collaboration with the practitioners and bearers of all expressions of intangible cultural heritage, to consult and involve all the stakeholders …"

23- Cited *supra* n.3.

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

25- Principle 10 reads: "Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment … and the opportunity to participate in the decision-making processes …" Principle 22 reads: "Indigenous people and their communities, and other local communities, have a vital role in environmental management and development because of their knowledge and traditional practices. States should recognise and duly support their identity, culture and interests and enable their effective participation in the achievement of sustainable development."

26- Cited *supra* n.20.

27- Article text cited *supra* n.21.

28- UN Convention to Combat Desertification "cited". 21.

29- Mostly in Arts. 3, 5 and 10.

30- Article 9(2) reads; "Parties should take measures to protect and promote Farmers' Rights, such as … (c) the right to participate in making decisions, at the national level, on matters related to the conservation and sustainable use of plant genetic resources for food and agriculture."

31- Both cited in the previous section.

32- Article 7(1) reads: "The peoples concerned shall have the right to decide their own priorities for the process of development as it affects their lives, beliefs, institutions and spiritual well-being and the lands they occupy or otherwise use, and to exercise control, to the extent possible, over their own economic, social and cultural development. In addition, they shall participate in the formulation, implementation and evaluation of plans and programmes for national and regional development which may affect them directly."

33- The CICH also addresses this need in Art.14 that concerns awareness-raising, capacity-building and education concerning ICH, mostly in the cultural community itself.

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