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# Intangible cultural heritage, inequalities and participation: who decides on heritage?

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**ABSTRACT**
Ever since the adoption of the Convention for the Safeguarding of the Intangible Cultural Heritage (CSICH) in 2003, indigenous and minority cultural rights have enjoyed increasing recognition. At the same time, they have been exposed to public discourses and homogenising language that might detrimentally affect their right to access and participation in the creation of intangible cultural heritage (ICH) and ultimately cultural life. As a consequence, respective inequalities in ICH enjoyment have come to the fore, being further reinforced by strategies of tourism, commodification and to some extent digitalisation. Calling for adaptability, submission and homogenisation, such external pressures have jeopardised right holders' voices in self-defining their very identities in new institutionalised ICH contexts. The novel 'human dimension' of cultural heritage inherent to ICH is explored by means of two cases, that is Andean Carnival celebrations in Oruro (Bolivia) and Barranquilla (Colombia). In the cases at hand, it is critically examined how marginalised peoples have found their way into a supposedly equalising regime facilitating celebrations of cultural life, religious identities and spiritual practice in decolonising contexts. In the following, these spaces for inclusion are assessed based on indigenous peoples', Afro-descendants' and similarly marginalised groups' eventual share in negotiating their very identities.

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## Introductory remarks

While cultural heritage debates have primarily revolved around material heritage including respective legal regimes, intangible cultural heritage (ICH) has faced difficulties in being adequately recognised in both academic and practice-oriented fields. Other than material heritage, ICH reveals strong dependencies on and interrelations with humankind: so-called 'cultural bearers' transmit ICH elements to future generations, attributing flexible, fluid and dynamic components to the very concept of ICH. The very framework establishing Intangible Cultural Heritage and respective safeguarding mechanisms emerged rather recently, finding its way into a global cultural heritage regime established in the 1970s.

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However, such regime could hardly be considered a forum of 'neutral heritage compilation'; instead, recognition processes are subject to contentious, highly politicised negotiations both at domestic and international levels. Rather, complex decision-making of what constitutes ICH requires us to seek an understanding of cultural practice at local level which eventually enter global recognition processes. Questions of accessing these spaces of negotiation and inherent inequalities demand extending debates beyond the surface of official heritage discourse and list mechanisms; negotiations may be limited to those informed about UNESCO programmes, those knowledgeable of its technicalities, those disposing of sufficient political leverage and ultimately those speaking the language of cultural heritage. Contexts around ICH practices (see art.2(1) CSICH) illustrate one way of tracing said inequalities: socio-political and economic pressures in the form of tourism, selling of indigenous knowledge and similar kinds of exploitation give us a first idea of what is at stake in ICH processes and why safeguarding is challenged in practice. Answers could be found in cultural rights frameworks, providing one way of fulfilling cultural bearers' right to cultural life. Such multidimensional pressures, it is argued, can be best understood by taking specific cases into account.

Carnival celebrations in the Andes are taken as examples to show how indigenous communities[1] have managed (or not) to access and participate in ICH practices despite structural difficulties facilitated by the historical burden of colonisation. This finds reflection in persisting subtle asymmetries which, however, fade away with the establishment of pluralism and diversity in constitutions, institutions and society at large. Similarly, recognition processes underlying the ICH safeguarding regime are not tantamount to equal treatment in daily life and peoples' minds: inequalities as responded to by laws and policies only gradually find reflection in society. In other words, the rather symbolic nature of ICH safeguarding hardly levels up to genuine forms of cultural rights guarantees, leaving related inequalities in accessing such regime largely untouched.

Such specific cultural rights practice as observed in the Andes is illustrative of the transcendental effects of international regimes. While the author had gained deep insights into indigenous peoples' perspectives in the Andean region on several occasions, including in-situ observations, she largely built on secondary sources, most notably rich ethnographic accounts on Carnival as celebrated in Oruro and Barranquilla for the purpose of the present piece. In that sense, the author was familiar with basic rights at stake, participating groups and individuals and overall contexts prior to the commencement of researching and writing; further insights were gained in the context of an interview with the artist Rilda Paco who shared her critical perspectives on current celebrations.

One of the main objectives informing this essay consist in shedding light on ICH by embedding such debates in political-historical developments and by emphasising the rather difficult position of ICH in cultural heritage law more generally. At the same time, the author seeks to gain an understanding on how ICH materialises in practice by identifying additional challenges in the field including tourism-related developments, commodification or digitalisation. Rather than placing a focus on heritage itself, it is demonstrated how ICH practices – as exercised by cultural bearer communities, groups or individuals – become difficult to be lived, maintained and developed in the light of these larger, global or meta developments that concern cases beyond the ones outlined

here. The latter gain particular significance based on an understanding that embraces the 'human dimension' of cultural heritage which concern inter-alia respective inequalities, issues of accessibility in living and interpreting heritage, and participation in the very spaces of negotiation as knowledge authorities. This, it may be argued, becomes particularly apparent in relations between the local and global in the Global South where patterns of neo-colonialism may subject communities to complementary power asymmetries that jeopardise their authoritative voices throughout ICH practices: neo-colonial relations become apparent in a variety of ways, encompassing written versus oral heritage, material versus intangible heritage, disadvantaged regions under the UNESCO umbrella and ultimately competing State alliances played out to the detriment of the Global South.

In an attempt to disentangle such glocalising relations and reveal inherent dilemmas in ICH regimes,[2] two specific contexts are selected: these provide insights into agency in ICH decision-making and the very ways respective dynamics visibilise in the particular case of Carnival celebrations in the Andes. Such cases stand out for a number of reasons. Most essentially, such spaces prove inclusive for pluralism and diversity, for a panoply of indigenous, Afro-descendants and similarly marginalised groups in the light of long-lasting colonial influences. Such conditions essentially qualify the way in which their very identities become articulated in externally recognised forms and forums (elaborated in section 4). Now, the relations between cultural bearers as a heterogenous group and the State become apparent in such ICH recognition processes and thereby allow us to explore their voices. It may thus be asked to what extent cultural bearers shape ICH practices despite multidimensional pressures in such encounters, commonly materialising in the communities.

## From tangible to intangible: ICH and the human dimension

While conceptually pluralistic in nature, intangible cultural heritage has been exposed to a largely arbitrary account of legal drafting processes and ultimately codified recognition practice. This might be traced back to the early beginnings of international heritage law emerging with the 1972 UNESCO World Heritage Convention based on the exclusive premises of tangible heritage and its limiting orbits, reducing heritage to sites and artefacts. Ever since cultural heritage has undergone severe criticism on grounds of its neo-colonial orientation, its prioritisation of written forms of heritage while it would neglect the human dimension of cultural practice. As a result, conceptual equality has been demanded by the Global South and its constituent communities, embracing collectives, groups and individuals, allowing for a conceptual paradigm shift in international cultural heritage law. Such shifts can be traced back to domestic developments and the embracement of ICH laws, policies and public discourses starting with or preceding the adoption of the 1972 instrument: notably Japan and South Korea became known for their active support of oral traditions and strategies to confront the predominant paradigm of material heritage. Following the adoption of the World Heritage Convention, the Republic of Bolivia addressed the UNESCO, expressing her regret about missing references to music and dance, elements that had undergone severe commercialisation.[3] Latin America and Africa could be considered driving forces for the recognition of intangible forms of heritage, initiating with rituals and folklore.[4] These endeavours could be broadly understood as a contestation of an 'increasingly homogenous language of culture and ethics

constituting a global hierarchy of values'.[5] In fact, Global Southern initiatives could be regarded as re-introducing 'the particular' at global stage and in global heritage discourse.

With the advent of the 2003 UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage (CSICH), such dualisms would gradually disappear in an attempt to 'marry the two concepts together'.[6] Conversely, academic debates have been identifying arising conceptual interactions in that regard, distinguishing between ICH as independent of or dependent on its material counterparts:[7] such differences may in fact be grounded in the respective disciplines approaching ICH, ranging from legal framework analysis to constructivist accounts of cultural practice. The new instrument would eventually be 'corrective to the World Heritage List',[8] permitting intangible forms to gain equal footing. Indeed, the new instrument has paved the way for a 'dual trajectory',[9] facilitating new negotiations to the point where predominant preservationist heritage language would be largely abandoned, seeking alienation from persisting notions such as 'decay, salvage and loss'.[10] This would give rise to a reinvention of cultural heritage law in an attempt to transcend epistemological boundaries. Bottom-up approaches, pluralistic design, intergenerational transmission processes, community orientation and participatory engagement with cultural bearers are emblematic of this new era.

Critical voices might, however, appreciate the difficulties related to intergovernmental list processes which violate the inclusive idea of the law, including possibilities of non-discriminatory invoking of cultural rights (see forthcoming sections). Relatedly, pluralistic conceptions of the law stand in clear contrast with the arbitrary rationale underlying ICH recognition under the umbrella of UNESCO safeguarding regimes.

This shifted focus also proves transformative for individuals participating in its creation and transmission. The fact that intangible heritage derives its existence from the human skill and performance of a practice, tradition[11] etc. also attributes certain power of interpretation and in a way ownership to cultural bearers. New dynamics may thus come to light where different cultural bearer communities including individuals participate in processes of cultural creation. Other dynamics emerge between official State discourse or other 'official' cultural heritage institutions and the communities performing a practice. Processes of recognition thus play an important part in legitimising one form or the other, in officially adopting one discourse or the other, in integrating one narrative as part of a collective account or the other. This, in turn, inevitably affects the way practicing communities, groups and individuals may exercise their right to participate in cultural life. Questions remain as to who factually enjoys such rights: namely, if access is granted on an equal basis, to what extent due regard is paid to the socio-political, cultural and economic complexities and inequalities in each case.

## Tourism and other pressures on accessing ICH equally

ICH communities are exposed to a number of challenges that are commonly externally induced, tourism being one of such pressures. Far from representing a uniform phenomenon, tourism proves loaded with rather complex interests and agendas which demand ICH elements to be performed in specific ways. This may be exemplified by the way tourism measures cultural resources in terms of their economic value to increase life quality.[12] It further presupposes decisions on what qualifies for cultural heritage or to be worthy to be defined as inter-alia tradition, practice, custom, expression etc.[13] In

that sense, tourism essentially determines how ICH is represented vis-à-vis the outside world beyond cultural bearers' perspectives. ICH representation finds, however, distinguished expression in community discourses and interactions where cultural heritage elements are renegotiated and newly defined. Tourism therefore exposes ICH to bidirectional cultural processes, ultimately influencing ICH transmission.

Under the scope of the international CSICH regime, Member States have come to consider ICH as contributing to tourism-related objectives: most notably, 'exclusiveness' and 'public awareness' extend the ordinary meaning of everyday life practice inherent to ICH.[14] Such direct relation may, however, jeopardise recognition practices as these are made dependent on their distinguished success and popularity. It further exposes communities to popular demands which may be decisive for engaging continuously in certain practice; indigenous peoples' and minorities' right to cultural life exemplifies such vital necessity. Such practice may enter into conflict with tourism and its agendas, being undermined in the process while external practices become 'nostrificated', hence constituting intrinsical parts of a community's cultural heritage.[15] In other words, they undergo integration processes, being subsumed by standards and formalisms subjected to community-wide interpretations. In that sense, intangible forms of cultural heritage differ from material manifestations based on their strong human component intrinsic to every human (cultural) interaction, shaping discourses and recognition practice at all levels. Old established hierarchies thereby persist between intangible and tangible forms, permeating legal history (see preceding section) while finding continuation on the ground. Similar conclusions may be reached on the nature of safeguarding, ranging from the doctrines of mere symbolism to protected sites and artefacts.

Tourism may exert yet other negative impacts on cultural heritage processes. Two contrasting effects come to the fore, associated with the appropriation of perspectives in tourist worlds, namely homogenisation and differentiation: these represent two binary paradigms that relate in harmonising or particularity-oriented ways to intangible forms of heritage, encompassing geographical and other dimensions.[16] Both effects could be considered threats for cultural bearers in their efforts to maintain ICH-related practice. Homogenisation processes, for instance, exert strong pressures on cultural bearers to adapt ICH to popular demands, affecting the very core of some cultural practices, thereby endangering its very continued existence. The concept of differentiation conveys a limiting image of particularities and singularities, attributable to the tourist industry, thus limiting communities' cultural self-determination in deciding on the meaning, significance and visibility of ICH.

Conversely, increasing levels of popularity combined with wider awareness can indeed spur inter-generational transmission processes. In that sense, ICH-related tourism may serve as a facilitating mechanism in a two-way relationship: tourism actively conveys identity-oriented messages, portraying the marginalised whereas cultural bearers fill cultural performances with authenticity and relevance.[17] Ultimately, challenges may (or not) be coped with, depending on how communities have learnt to deal with external demands. A case-study carried out in multicultural Nepal illustrates the interwovenness of mobility in the shape of transmission processes of people*s, goods and news; despite such dynamics, cultural transmission processes would, however, not be interrupted as a result.[18] Similar conclusions can be drawn by observing trading patterns and geopolitical developments in the Andes where connecting points would relate geographically remote

areas while maintaining Aymara identities. The same could not be said about Carnival expressions as discussed in the following section: instead, ICH practices have absorbed traditions emerging in different regions within and across the State's territorial boundaries, finding accommodation under the umbrella of Carnival festivities and processions. Again, continuity of such expressions is qualified by explicit approval of cultural bearer communities, State recognition processes and ultimately the tourist sector.

It remains to be observed how cultural bearers gain voice in such externally shaped processes of ICH recognition. To what extent do we allow bottom-up processes to materialise, considering competing narratives and interpretations of a given ICH element. Is it within cultural bearers' internal decision-making mechanisms or internal discourses adopted by their very own interpretational authorities or jurisdictions where current ICH interpretations are eventually (re-) negotiated? To what extent do cultural bearer communities enjoy equal access to such spaces of interpretation and negotiation?

In that sense, ICH could be considered a 'knowledge resource' that faces challenges of distribution, access and ultimately participation, resembling other resource-related debates. Namely, such decision-making processes might not necessarily consider collective community will, thereby converting to instruments of alienation, assimilation and cultural imposition. Such unequal access to knowledge resources adds to the participation burden that cultural bearers are confronted with, including popular demands, general expectations or agendas driven by tourists, private or public office holders who influence the way ICH is transmitted and shaped in practice. This, in turn, plays an essential role in defining ICH itself and assumes a 'regulating function of participation', most notably by creating distances among cultural bearer communities or by harmonising respective diverging conceptual perceptions including internal pluralisms among practitioners of what ICH may consist of. While cultural bearer communities can hardly be considered homogenous entities, external recognition decisions necessarily legitimate some forms of ICH whereas 'non-authorised' expressions are excluded. In that sense, hierarchies are created among those who gain access to such spaces on the one hand and individuals or groups who do not conform with externally defined, legitimised categories on the other. This proves particularly true for internal vulnerabilities arising in indigenous worlds: particular cleavages may be reproduced in such contexts, adding to existing intersectionalities. Multiplicities of narratives may enter into struggles of recognition, hardly finding adequate accommodation under the umbrella of CSICH and the everyday of heritage discourses. Indigenous community contexts prove particularly emblematic in that sense; pluralistic understandings of cultural practice are clearly embraced more inclusively by existing rights-based regimes rather than heritage frameworks. Most notably, the very nature of heritage regimes remains oriented towards selective recognition practice and dependent on the benevolence of governmental positioning and State sovereign rationale.

Especially the human-oriented character of ICH regimes turns debates on asymmetries and social inequalities an unavoidable reality, demonstrating considerable dependencies on human skills and transmission, and hence the human shaping of cultural heritage. At the same time, such 'human orientation' enables communities to be protected against misappropriations or undermining of their rights to cultural heritage practice. In fact, (intangible) cultural heritage has hitherto been dealt with under the umbrella of cultural diversity and heritage, not international human rights law as such.[19] This may be attributable to the fact that international human rights law mechanism may have

received less attention by concerned communities, heritage ideas keep being reserved for material, non-human heritage, less information is spread, little expertise is developed and supported by the State. The very framing and categorisation of cultural practice as heritage rather than rights proves decisive. This has considerable repercussions for individuals and communities claiming such rights. The merits of inspiring respective shifts in the international legal landscape are discussed in the following sections. It might, however, be important to note here that conceptual distinctions between heritage and cultural rights commonly result in fatalistic categorisations, translations into rigid legal frameworks which risk exclusive access to such rights. Within the scope of international human rights law, cultural heritage issues are hardly addressed at all,[20] requiring debates that use human rights as a starting point.[21]

In fact, jurisprudence developed by treaty monitoring bodies reveals a somewhat hesitant attitude towards adopting minority-specific interpretations, this concerns their very right to practice ICH in particular.[22] Human rights norms have seemingly been re-interpreted and oriented towards cultural rights as well as those rights associated with cultural heritage, constituting a broader problem of 'culturalisation of human rights'.[23] This may be attributed to conceptual reasons; cultural heritage is commonly viewed as part and parcel of the 'safeguarding of human dignity' and the promotion of all human rights including implementing cultural rights.[24] A different position is assumed by the Inter-American human rights system which has embraced an inclusive approach towards indigenous collective rights to maintain and develop cultural practice; this materialises in indigenous procedures related to decision-making, cosmovisions and ways of life, vernacular traditions and customs as well as other forms of communitarian expression of culture.[25] Collective cultural rights have gained a unique position in Inter-American jurisprudence, most notably by means of an expansionist interpretation of neighbouring legal regimes such as civil and political rights,[26] allowing for an extensive margin of appreciation at regional level. Accordingly, both Court and Commission have been able to define cultural rights more closely, bolstered by considerable parallel demands for indigenous collective self-determination, proving virtuous for cultural identity and cultural survival.[27]

In that sense, cultural bearers' equal access to and participation in ICH traditions, practices etc. may well need to be framed and understood in human rights terms, beyond cultural heritage regimes. Human rights regimes would certainly require measures to be adopted that guarantee communities' right to (further) develop ICH practices and to enter into multiagency negotiation processes on what constitutes cultural heritage. All this requires us to understand ICH beyond its immediate framework, by identifying normative foundations elsewhere while embedding ICH practices in international legal standards that ultimately ensure cultural bearers' positions in negotiating ICH.

## Contextualising intangible cultural heritage in the Andes: understanding the local

Contemporary manifestations of Carnival combine understandings of the latter, finding expression as an 'Andean Catholic feast' and Christian symbolism as well as cosmological expressions in the Andes. Orurian Carnival in fact accommodates a multiplicity of principles and practices of reciprocity, symbolic charge, social communion sacred forces[28] and special rituals of the agricultural calendar[29], dances representing different regions in

Bolivia and their cultural particularities and indigeneities, thereby promoting indigenous peoples' distinctive cultural rights. Historically, Orurian Carnival finds its origins in the eighteenth century, blending Carnival festivities and celebrations in the honour of a Virgen attributable to miners in the colonial age, namely the Virgen of Socavón or the Virgen of Candelaria.[30] The Oruro festivity thus serves as an 'exemplary phenomenon of the cultural syncretism of the region' and illustrates liturgical symbiosis'.[31] One of its most prominent manifestations, the so-called Diablada represents the fight between good and evil and units elements originating from Catholicism introduced during the era of conquest and colonisation as well as native rituals.[32]

Apart from the spiritual significance of the feast, the Orurian Carnival sets essential thresholds for obtaining social and political leadership positions in the city inhabited by 220.000 inhabitants, rendering participation a necessary communitarian criterion.[33] Being celebrated on a yearly basis at the beginning of (Catholic) Lent, Orurian Carnival encompasses ten days of celebration; dancers participate in a procession in a 20 h' time frame, including more than 30,000 people and 10,000 musicians.[34] The twentieth century had witnessed different social realities, attributing key roles to campesino-indigenous protagonists, essentially members of committees, working unions, craftsmanship and trading networks; these were not well seen by the urban élites.[35] By contrast, current forms of participation demonstrate higher levels of inclusiveness, spurring indigenous representation while widening the societal scope by opening cultural heritage to the wider public, and hence competing agendas, commercial strategies and exploitation. Participants at the Carnival could in fact be categorised as follows: indigenous peoples, cholos and criollos or blancos, describing different group identities in terms of 'language, lifestyle (including level of education, occupation, and income) and dress'.[36]

Andean Carnival celebrations further demonstrate the significance of disentangling underlying power relations: as a social construction of the West, heritage has facilitated the establishment of a homogenous community in the context of domestic policies in the respective States.[37] In fact, the transformation of the celebration has meant some form of demonisation of Carnival, replacing earlier approaches by the idea of accumulated capital.[38] Till today's day and age colonial impacts are deeply rooted in festive practice. Most notably, it is argued that the very approach embraced, that is, the specific approximation towards festive processes has served to reinforce and legitimise the colonial project in the Andes while introducing hierarchies.[39] Conversely, Carnival festivities have been described as dynamic; the multiplicities of movements inherent to the former would assume the function of a festive decolonising uprising.[40]

Similar to the Orurian Carnival, the Barranquillian festivities have been referred to as a space that distinguished itself by its cultural diversity and ethnic composition; this would derive from the coexistence of indigenous peoples, colonisers and considerable African influence attributable to those who had been enslaved and to their descendants.[41] Indeed, the interplay of modernity and tradition proves fundamental in that regard, the former exercising damaging and excluding impacts on the latter, especially as colonised peoples are concerned.[42] Other competing dualisms and encounters include mercantilism and culture alluding to the influence of cultural industries,[43] life and death and ways of disharmonising the standardised, experiencing the world upside-down.[44] Given the context of long-term violence in Colombia, Barranquillian Carnival has come to be understood as an 'exceptional space of living together, tolerance and cultural diversity'.[45] In the

course of the nineteenth century, Barranquilla attracted migrating populations from the Caribbean due to socio-economic and urban developments,[46] contributing to the Carnival festivities as a plural space. Such pluralistic understanding has come to life in a number of ways, including manifestations of ethnicity and cultural identities, also demonstrating enabling potential for other identities such as LGBTIQ in the specific context of Carnival.[47]

Comparable to the Orurian case, a multiplicity of (social) actors can be identified. This includes 'holders' (portadores) referring to those who live and understand Carnival as part of their everyday life, (re-)creating such cultural manifestations; 'creators' (hacedores) including groups and individuals who keep knowledge and practices alive such as craft workers, traditional musicians, dancers and community chiefs; and 'artists' (artistas del carnaval) being constitutive of folkloric groups comprising musicians, dancers, disguised people or those engaging in oral expression and theatre.[48] Barranquillian Carnival demonstrates similar plural influences and group composition as the Orurian case: these include groups that would formerly constitute colonial societies such as 'native' (nativas/amerindias) and 'transported' ones (aquellas transportadas/ibéricas y africanas), their fusions and diverse forms of celebration.[49] Indigenous peoples and peoples of African descent however encounter difficulties in accessing spaces of negotiation.

## Renegotiating Carnival in the Andes: celebrating recognition or catalysing exclusion?

One such diverse and pluralistic space of negotiation emerges in the context of Carnival celebrations in the Andes. Such celebrations represent a rather novel expression in the UNESCO history of cultural heritage recognition; as intangible forms of heritage these demonstrably broaden the geographical scope of a hitherto predominantly European understanding of heritage and respective artefacts, finding their origins in the WHC. It could be argued that such heritage exemplifies the turn towards intangibility as codified in the 2003 Convention. That way, ICH categories broadened up cultural heritage both conceptually and legally and eventually embrace accounts oriented towards diversity and pluralism. Carnival celebrations deserve closer observation in that regard, based on the blend of traditions being represented at the event. Encounters of different religions and spiritual practices find expression in the celebrations, at the same time as multiplicities of cultural bearers get to enjoy cultural life, customs and traditions. By recognising 'old' and 'new' forms[50] as well as 'traditional' and 'novel' expressions, marginalised identities might find their way into or co-define a decolonised approach to global culture as expressed in UNESCO lists. In that sense, such ICH mechanisms adopt a rights-enabling function, allowing different identities to enter such instruments and to form a special regime in a plural environment.

As empirical evidence demonstrates, Carnival practices in several world regions exemplify such identity forming processes of recognition. These become particularly articulated in the Andes, responding to historical and persisting (neo-)colonial developments. Of particular relevance are its underling values, to be traced back to Catholic traditions that 'celebrate a state of equality where people are under their masks (…) social classes differentiation dies (…) becomes the main element for ordering models of citizen cohabitation'.[51] In that sense, Latin American Carnival celebrations have commonly responded

to persisting colonial attitudes in societies, allowing for equal engagement in cultural practices as a case study on the Carnival of Barranquilla shows:

> … combines festivities brought by the Spaniards mixed with indigenous ceremonies and African secular rituals. At colonised centers, the dominated ethnicities (indigenous and Africans) used to celebrate by dancing and singing. They used to make fun of their Spaniard's master's customs. In the end, the dominated as well as the dominator join together around the same space and the same party[52]

In that sense, historically marginalised ethnic groups have gained voice in not only entering public spaces while finding equal possibilities to enter them. Such dominated ethnic groups are also exploring opportunities to demand recognition for self-identified group identities in an egalitarian fashion.

It has been argued, however, that performance of blackness remains reduced to the 'regulated time' of Carnival celebrations and would rather reflect a(n) (temporary) 'illusion of racial integration and black pride', articulated in the context of the 'Las Negritas Puloy de Montecristo'[53] performance. Most notably, 'the consciousness of inequality stays dormant and inequality continues being a quotidian practice in a supposedly tri-racial nation that was funded on the principles of mixture'.[54] Conversely, it may be argued that the very public space that is created in Carnival celebrations provides an effective entry point for historically marginalised peoples to gain voice, a form of – albeit – temporary recognition that catalyses general awareness and 'hesitant forms' of communitarian recognition. . In fact, the Las Negritas Puloy of Montecristo performance has been identified as a 'collective custom' while 'becoming an ubiquitous image strongly associated with carnival time itself'.[55] Generally it could be said that Carnival is considered a 'main source of identity'[56] in Barranquilla while participation therein necessarily demands pluralistic structures to be in place, accommodating a multiplicity of demands.. At the same time, such performances represent the struggle for (collective) recognition and resistance described as 'a yearly fight for survival, a fight for continued visibility, for being allowed to perform in the official massive carnival public sphere'.[57]

Different interpretations might, however, also coexist and challenge each other as demonstrated by recent developments at the Carnival of Oruro which brought up discussions on the underlying values and new interpretations developing in concurrent ways. Critics, however, identify hegemonic interests in play and their excluding impact vis-à-vis indigenous peoples.[58] Similar fears are expressed in relation to such values which were promulgated by colonial powers of Europe; these have gained some form of universal presence without being definable and represent a considerable source of authority by means of such vagueness while lacking accountability.[59] It remains to be observed to what extent such hegemonies are traceable in contemporary Carnival practice. It has been argued elsewhere that global hierarchies of value initiated with 'processes of world domination that colonialism began and that international commerce and the international arrangement of power bid fair to complete'.[60] Commercial considerations may indeed challenge or dominate local customs; indigenous identities thereby undergo constant renegotiation subjected to diverging agendas.

Carnival performances in fact integrate a wide range of pluralisms into the yearly festivities, including religious pluralisms. At the same time, on the ground dynamics reveal different meanings attributed to cultural heritage practices; these undergo negotiation

processes and involve particular actors. This concerns not only participants engaged in direct performance of dance and music, but also 'the media, the authorities, the audience, the street-sellers and advertising sponsors'.[61] Such dynamics further include societal impacts of the event, most notably the 'mediatory powers of the festivity and often competing interests at play'.[62] Such tendencies coexist with a 'homogenising cultural discourse produced by authorities'[63], reflecting a common positioning in cultural heritage regimes which explicitly promote and reinforce specific ICH practices. This may, in turn, affect the way individuals, groups and collectivities are able to fully enjoy cultural rights: who gains voice, who is left out, which interpretations dominate in the yearly Carnival festivities? The very right to equal value in the enjoyment of cultural rights bridges the conceptual gaps between universalism and politics of difference: in the case of the Carnival in Oruro, for instance, actors get to challenge ideological processes that limit other identities in being noticeable.[64] These processes could be understood as implying differentiation and superimposition in the light of hierarchical symbolic differences that are attributed to the groups practicing ICH.[65] Indeed, on the ground observations reveal the difficulties associated with allowing different (vulnerable) groups to be included in Carnival practices:

> *… we observed that behind the scenes of the spectacularisation of the nation, indigenous actors and urban indigenous mestizo groups are excluded. They are not allowed to have a say in the management of the parade, their histories are reduced or appropriated (…) their experience of exclusion in a platform that mediates the nation at the level of representation is symptomatic of their erasure from national memory by the mestizaje discourse, itself a reconfiguration of colonial legacies around the correlation between race and social 'worth'.*[66]

The Andean region deserves particular attention here where specific ICH practices have undergone the described processes of recognition (by UNESCO). One such Andean practice in particular has shown to reflect high controversies, but also opportunities in terms of participation and diversity in access; as it has considerably been shaped by the tourist sector. Most notably, this has been the case for the Carnival of Oruro in Bolivia and the Carnival of Barranquilla in Colombia, both recognised as ICH elements inscribed in the UNESCO Representative List of the Intangible Cultural Heritage of Humanity since 2008. Tourism has essentially determined the way Carnival expressions were transmitted from one generation to the other, including broader societal developments. This concerns varying styles of music, texts, customs and dresses as well as chants. In that sense, Carnival has undergone transformations in the course of time, opening up towards diversity in cultural expressions.

At the same time, such cultural expressions have been subjected to pressures, regarded as hampering by individuals, groups or entire communities.[67] This might be explained by the involvement of a panoply of actors in the field, including municipal and other State authorities, religious institutions, civil society organisations in the cultural sector, cultural industries as well as cultural bearers themselves who re-negotiate Carnival practice each year and throughout the extensive preparation processes. However, such materialisations are far from neutral: diverging agendas including strong economic motives such as marketing strategies influence the very creation of Carnival cultures[68] and might thereby jeopardise its realisation in accordance with cultural bearers' ideas.

Touristic developments around ICH in particular have been criticised by local participants for a number of reasons.[69] Celebrations that gain global attention commonly build

on commercialising strategies and touristic ventures. This may be illustrated by the Orurian case where changed dress codes, musical performance and song writing have been criticised for violating indigenous imaginations of celebration. Implications are manifold indeed. Tourism exerts a variety of impacts on local food economies and housing situations that accompany Carnival in the long run. In fact, such developments have caused (social) structural decay, making previously accessible resources difficult to be obtained by the larger public, housing and food in particular. Carnival cultures most notably diverted and transformed local economies. While accommodation prices have gone up, generally benefiting local hotels due to high demands, local populations hardly find affordable living. Such structural changes have increasingly affected housing throughout the year. During the 2018 Carnival celebrations, mass tourism and the increasing size of the event arguably resulted in life threating occurrences such as explosions resulting in deaths or minor physical harm[70] without respective preventive measures or post measures taken to secure people's physical integrity.[71] Such developments also further intensify struggles for the distribution of resources that materialise in the very way Carnival is expressed. This could be exemplified by the way different chants adapt to popular music and words that are not welcomed by traditional knowledge authorities or participants; they seem to give in to popular demands driven by tourism.[72] Similarly, it may affect dress codes that convey a specific conception of gender that proves irreconcilable in terms of indigenous demands and liberal expressions of dressing.

Spaces for multiplicities and pluralism to be expressed at the Carnivals of Barranquilla and Oruro thereby shrink as pressures for conformity to meet economic goals are exerted on the spaces of creation. Indeed, ICH and its expression as 'living cultures'[73] ultimately demonstrate needs for agency which, in turn, require equal access to spaces of negotiation and respective powers to transform and design such very spaces. A holistic approach to agency thereby requires doing justice to the perceptions of marginalised voices and freedom of expression. Similarly, Carnival has assumed transformative potential as an instrument of social cohesion,[74] enabling multiplicities of expressions to find articulation while being recognised in the public space. Conversely, such phenomena associated with Carnival could be regarded as counter forces and placed in broader debates on cultural recognition and diversity given the importance of Carnival in society at large and its adoption in political discourses. Ultimately, integrating both Carnivals in the UNESCO 'representative lists' has demonstrably contributed to gaining international recognition, adding symbolic meaning to a form of ICH that emerged from the vernacular.

## Intangible cultural heritage in a web of glocalisation, Global South and other amalgams

Local expressions primarily gain recognition in global forums such as UNESCO while being lived and performed in vernacular spaces.[75] In a way, ICH recognition adopts yet another function which concerns reversing or, in a more moderate tone, responding to (neo)colonisation while contesting cultural imposition. In fact, it could be argued that ICH recognition (at global level) represents a direct response to imminent threats in a specific historical context. Colonisation and assimilation prove emblematic in that sense, particularly as to developments in the Global South.[76] At the same time, such developments may be related back to industrial revolutions in Europe that would allow for

scientific shifts while undermining cultural practices.[77] Until today some would argue the global is to be found in the local, for 'the hidden presence of a logic that has seeped in everywhere but is everywhere disguised as difference, heritage, local tradition'.[78] Its colonial ramifications are hence to be appreciated in that light, namely as a hidden presence and its destructive potential for living up to indigenous peoples' self-determination.

A different approach may be required for intangible forms of cultural heritage which have been largely neglected in the light of legal standards that would favour preservationist agendas, facilitating material heritage protection. Conversely, intangible cultural heritage reveals more proneness to flexible formats of recognition: as observed in Maori communities in New Zealand, such forms of recognition would more closely relate to changing (native) identities and contemporary cultures.[79] However, ICH safeguarding needs to be understood in the light of other transversal developments at global level. . Most notably, contemporary pressures that contest cultural practice are manifold. Globalisation, its homogenising power and the promotion of mass culture may undermine local cultural expressions: unemployment and other social structural factors prove to exert detrimental effects on cultural practices; this is in part caused by new industries.[80] Commodification thereby takes a lead role in undermining the significance of heritage and respective (original) cultural bearers.

Technologies might exacerbate this effect by introducing new electronic devices that contribute to blurring the boundaries between heritage and commodity; it is in this context where questions of cultural property and copyrights have been raised as part of the larger digitalisation discourse.[81] Digitalisation also comes with challenges in terms of accessing new digital sources of heritage and the creation thereof: cultural bearer communities may be excluded from decisions on how ICH elements are represented in public forums, and hence how these are perceived and interpreted. By the same token, digitalisation has become an essential means of mediation, providing opportunities to access more contextual information around ICH objects, how they evolve, how they are bought and sold.[82] Videos generated by cultural bearers further add to such forms of representation; these undergo official archiving or listing by offering alternative accounts and tracking of changes.[83] The media further contribute to such processes by capturing cultural (Carnival) expressions and by providing widely accessible pictures. It might be argued that local voices thereby become alienated from broader or mainstream interpretations or accessing such very spaces.

Carnival practices in the Andes also reveal how native identities and their contemporary expressions have been translated into an institutionalised regime where widely accepted rituals and rules allow distinctive and ever evolving dances to be accommodated under the wide umbrella of Carnival. Pluralism and diversity, however, take shape in a wide range of ways, such as bodily performance[84] or as expressed through language, commonly declared a fundamental facet of indigenous identities.[85] Some argue that languages are constitutive of ICH practices themselves, complementing their role as vehicles of culture.[86] Indigenous peoples' shaping of linguistic practices prove fundamental in the light of linguistic imperialism and globalisation, nation-states' language policies and language shifts.[87] Where plurilingual ICH spaces allow for such diversity to materialise, amalgams of contestations may potentially be translated from the local to the global, transforming paradigms of recognition in global forums.

## ICH practices as inequality mitigation tool: ESC rights fulfilment through ICH?

If observed from global eyes, ICH safeguarding could thus contribute to inequality mitigation, under the premise of considering ICH a cultural resource to be distributed and accessed, paying special attention to local populations in the Global South: in fact, Southern peoples have found themselves exposed to the arbitrary effects of global trade regimes, cultural materialism, cultural assimilationism under global pluralistic guise and neo-colonial tendencies. Such rationale has partially found accommodation under the 2003 instrument, devoting its chapter V to international cooperation and assistance for safeguarding purposes. A multiplicity of obligations thus arise on the part of the State that could, if observed, enhance inequality mitigation. Accordingly, cultural bearers' right to practice ICH could encompass a triadic set of obligations such as I) respecting and not interfering with such practice, II) protecting such practice from third party interventions and III) fulfilling positive obligations, including the adoption of measures to enable cultural bearer communities to live and transmit specific cultural practices. This in fact extends the safeguarding regime as promoted by the 2003 UNESCO Convention; most notably human rights obligations complement recognition language.

Safeguarding would thus require States to guarantee rights beyond mere non-discrimination,[88] and instead urge them to establish basic conditions for guaranteeing fulfilment of such rights.[89] When addressing the enjoyment of cultural rights to ICH practices, further inequalities become apparent however: internal differences among cultural communities materialise when accessing negotiations spaces of what is generally considered cultural heritage. However, the focus of the present piece is placed on inequalities arising out of the relationship existing between cultural bearer communities on the one hand and (other) cultural heritage decision-makers on the other hand. Specific vulnerabilities arise where societal inequalities add to the access burden related to entering negotiation spaces. Indigenous peoples and minorities prove particularly affected as illustrated by the above-discussed Carnival in the Andes, constituting at the same time a powerful demonstration of indigenous representations.

In response, the Committee on Economic, Social and Cultural Rights established diversity provisions that would grant special rights to cultural and linguistic minorities. Namely, States are called upon to adopt 'appropriate measures or programmes to support minorities or other communities, including migrant communities, in their efforts to preserve their culture' (para.52(f)).[90] Conceptually, the use of the 'preservationist' discourse resembles material heritage language; again, this might demonstrate the openness towards community-driven interpretations that may differ in the extent to which cultural practice is maintained and developed or not. The Committee further elaborates on minority – majority divides that commonly impact on the possibilities of accessing ICH; these might reflect structural discrimination and underrepresentation of persons in public life and as to peoples' right to participate in cultural life (para.52(g)). Taking consideration of the broader picture of societal developments and interactions between people*s, the Committee also establishes the State obligation to take appropriate measures to 'create conditions conducive to a constructive intercultural relationship between individuals and groups based on mutual respect, understanding and tolerance' (para.52(h)). In fact, ethnic, cultural, religious or language minorities face the everyday burden of hate speech and other discriminatory conduct: targeting minorities as collectives has become

an acceptable formula of homogenising identity politics in the light of passive legislative and executive orders.[91]

Closer approximations to guaranteeing inclusive enjoyment of rights are reached by the Special Rapporteur in the field of cultural rights who establishes far-reaching State obligations towards indigenous peoples, including indigenous peoples' right to 'self-determination and to maintain, control, protect and develop cultural heritage'.[92] While indigenous peoples' self-determination and collective development find legal expression elsewhere (see ICCPR, ICESCR, Common Art.1), the document provides a nuanced account of the right to live, maintain and develop cultural heritage practice. Most notably, respective autonomies shine through a distinct conceptualisation of such specific rights: emblematic of these are inter-alia obligations to 'define and steward cultural heritage' and to 'respect and protect cultural productions of indigenous peoples'; the obligation to fulfil remains unspecified, yet enjoys general application.[93]

Indigenous peoples are also attributed special roles in protecting ICH at large in the 'production, safeguarding, maintenance and recreation'[94] of heritage including obtaining their free, prior and informed consent in relation to any measures affecting them; this may also imply limiting access for the general public to specific indigenous or religious sites. Such negative obligations, however, fall short of doing justice to indigenous demands for geo-political autonomies that may prove crucial for transmitting cultural heritage. Similarly, indigenous peoples' distinct positions find mentioning in neighbouring regimes; indigenous guardianship exemplifies such special legal status, finding recognition in environmental (see e.g. Convention on Biological Diversity) and cosmovision-oriented frameworks.[95] Conversely, comprehensive protection becomes articulated under the umbrella of the UN Declaration on the Rights of Indigenous Peoples (UNDRIPS) which considers both the right to access and enjoyment of cultural heritage an individual and collective right.[96] Final recommendations, however, fail to stipulate rights that would be tailored to indigenous and minorities' specific needs – instead general human rights-based approaches are embraced and positive measures are to be adopted, responding to all people irrespective of gender while paying due regard to socio-economic inequalities and disabilities.[97] Indigenous peoples' and minorities' particular cultural rights of collective nature find only hesitant entrance into IHRL; diversity and pluralism-oriented obligations including positive measures remain at the legal periphery.[98]

Long-established inequalities in ICH regimes thereby find mitigation in cultural rights frameworks. These could, as a consequence, be understood as mechanisms to deal with inequalities, arising out of asymmetric power relations among cultural bearers/rights holders, duty bearers and other decision-making parties. In fact, rising social inequalities in the cultural heritage sector have been associated with 'almost exclusive access by the élite'.[99] Accessing common decision-making spaces do thus qualify and are key to enjoying cultural heritage practice. Such practice has proven relevant to multiplicities of contexts, including assuming specific functions in broader societal processes. Most notably, ICH has been considered a tool of conflict resolution and prevention, eventually to socially restore society.[100] Broader dimensions of (societal) cohesion have been attributed to ICH by way of solving 'problems of increasing fragmentation, conflict, and inequality between different social and ethnic groups'.[101] Respective (responsive) measures, it has been enhanced, can 'build strong relationships among diverse individuals and groups (…) contribute to the cultural and socio-economic development of specific geographical locations'.[102]

Cultural rights to practice ICH – including, yet going beyond safeguarding – could thus be regarded as social glue between different indigenous groups participating in Carnival celebrations which take place in said geographical locations. In that sense, relationships between cultural bearer communities receive further cultural, collective significance for avoiding inequalities among practicing groups. Shedding further light on the mechanisms underlying ICH, it could be maintained that measures aimed at cohesion would 'seek to recognise and celebrate diversity and yet also associate a sense of belonging with a social context, which provides meaning and identity to members'.[103] Carnival celebrations in the Andes might qualify for such denomination of 'social contexts', allowing multiple identities to be accommodated in a broader framework of ICH recognition while enhancing diversity in group identities, expressions and ultimately interpretations of what ICH constitutes at local level.

## Final remarks: rearticulating Intangible Cultural Heritage as a Human Right

Cultural heritage discourses have largely evolved in a fragmented international legal scenery. This paper draws clear lines of conceptual demarcations and ultimately rights regimes as far as intangible cultural heritage or practice are concerned. While ICH regimes have managed to emancipate and free themselves from the conservationist, preservationist approach assumed by (tangible) cultural heritage standards, such regimes fall short of addressing victim-oriented legal venues. The general framing of CSICH suggests a participatory, community-based understanding of cultural heritage, yet the list safeguarding system remains subjected to largely arbitrary selection and negotiation processes among States. This, in turn, influences the way cultural practice may I) assume conceptual shape, being dependent on approval by inter-governmental assemblies and II) the extent to which such practices are framed in legal protection standards, in other words, if such standards fall within safeguarding or human rights claims frameworks. International specialised mechanisms in particular have hence further defined cultural heritage under the umbrella of ESCR or specific regimes regulating participation in cultural life, collective cultural rights, indigenous peoples' or minority rights standards and so forth. Accessing such standards has been key to legal struggles and seems to be addressed more inclusively under the umbrella of human rights rather than ICH frameworks. The significance of framing cultural rights in collective terms further attributes importance to locating such rights under the umbrella of human rights where some progress has been made to translate e.g. collective land claims into international law. In that sense, the re-articulation of ICH as a human right becomes an inevitable undertaking and provides for multiplicities of conditions to be explored that surround cultural practice and may exert inequality mitigating impacts. The particular context of Carnival celebrations in Oruro and Barranquilla are illustrative of such potential amidst competing political-economic interests that may limit plural on-the-ground practice in entering domestic heritage discourses. The nuances of legal procedures may in that sense prove helpful in carving out the legal potential of granting cultural rights oriented towards pluralism and diversity. While cultural rights regimes thus establish fruitful ground for ICH to find articulation, the distinctive nature of the latter may not always be paid tribute to. Coexisting legal regimes, degrees of specialisations and ultimately fragmentation thus remain one of the main challenges indigenous peoples and minorities are facing today in practicing and developing intangible cultural heritage.

## Notes

1. Communities are defined following definitions established by the Convention on the Safeguarding of Intangible Cultural Heritage 'communities, groups and where applicable individuals' as any cultural bearer group such as local communities or larger communities encompassing groups (not limited to single jurisdictions) engaging in the same or similar ICH practices.
2. The term 'ICH regimes' refers to the international legal framework and related regulatory and governmental mechanisms putting into effect intangible cultural heritage; this may happen at different levels and spaces.
3. Vladimar Tr. Hafstein, 'Protection as Dispossession: Government in the Vernacular', in *Cultural Heritage in Transit: Intangible Rights as Human Rights*, ed. Deborah Kapchan (Philadelphia: University of Pennsylvania Press, 2014).
4. Mounir Bouchenaki, 'The Interdependency of the Tangible and Intangible Cultural Heritage', Keynote Address by the Assistant Director General for Culture, UNESCO at the 14th General Assembly and Scientific Symposium of the International Council on Monuments and Sites (ICOMOS) (2003)

   Desirée Campagna, 'Implementing the Human Right to Take Part in Cultural Life: Trends and Perspectives of Inclusive Cultural Empowerment', *Peace Human Rights Governance* 1, no. 2 (2017): 169–93.

   Jessika Eichler, 'Intangible Cultural Heritage under Pressure? Examining Vulnerabilities in ICH Regimes – Minorities, Indigenous Peoples and Refugees', ifa Edition Culture and Foreign Policy (2020).
5. Michael Herzfeld, *The Body Impolitic: Artisans and Artifice in the Global Hierarchy of Value* (Chicago and London: The University of Chicago Press, 2004).
6. Laurajane Smith, *Uses of Heritage* (London: Routledge, 2006).
7. Lucas Lixinski, 'Selecting Heritage: The Interplay of Art, Politics and Identity', *The European Journal of International Law* 22, no. 1 (2011): 81–100.
8. Richard Kurin, 'Safeguarding Intangible Cultural Heritage in the 2003 UNESCO Convention: A Critical Appraisal', *Museum international* 56 (2004): 1–2.
9. Máiréad Nic Craith and Ulrich Kockel, '(Re-)Building Heritage: Integrating Tangible and Intangible', in *A Companion to Heritage Studies*, ed. William Logan, Máiréad Nic Craith and Ulrich Kockel (Chichester: John Wiley & Sons Inc., 2016).
10. Marilena Alivizatou, *Intangible Heritage and the Museum: New Perspectives On Cultural Preservation* (Walnut Creek: Left Coast Press, Inc, 2012).
11. 'Traditions' are to be interpreted in broad ways, steered towards cultural bearers' understandings, allowing the shaping and construction of traditions 'from below'. The Convention for the Safeguarding of Intangible Cultural Heritage specifies 'ICH traditions' in the particular cases of 'oral traditions and expressions', 'traditional craftsmanship' and 'traditional knowledge and skills'
12. Kurt Luger and Karlheinz Wöhler, 'Immaterielles Kulturerbe und touristisches Potenzial: Einleitung', in: *Kulturelles Erbe und Tourismus: Rituale, Traditionen, Inszenierungen*, ed. Kurt Luger and Karlheinz Wöhler (Innsbruck: Studienverlag Ges.m.b.H, 2010).
13. Ibid.
14. Maria Walcher, 'Das immaterielle Kulturerbe: Chancen und Herausforderungen aus der Sicht der Nationalagentur der Österreichischen UNESCO-Kommission', in *Kulturelles Erbe und Tourismus: Rituale, Traditionen, Inszenierungen*, ed. Kurt Lunger and Karlheinz Wöhler (Innsbruck: Studienverlag Ges.m.b.H, 2010).
15. Burkhard Schnepel, 'Kulturerbe im Zeitalter des Massentourismus. Eine programmatische Einführung', in *Kultur all inclusive: Identität, Tradition und Kulturerbe im Zeitalter des Massentourismus,* ed. Burkhard Schnepel, Felix Girke and Eva-Maria Knoll (Bielefeld: transcript Verlag, 2013).
16. Hasso Spode, 'Homogenisierung und Differenzierung. Zur Ambivalenz touristischer Chronotopie-Konstruktion' in *Kultur all inclusive: Identität, Tradition und Kulturerbe im Zeitalter*

*des Massentourismus,* ed. Burkhard Schnepel, Felix Girke and Eva-Maria Knoll (Bielefeld: transcript Verlag, 2013).

17. Felix Girke and Eva-Maria Knoll, 'Drohung und Verheißung. Vorwort zum Wechselspiel von Identität, Tradition und Kulturerbe im Zeitalter des Massentourismus', in *Kultur all inclusive: Identität, Tradition und Kulturerbe im Zeitalter des Massentourismus,* ed. Burkhard Schnepel, Felix Girke and Eva Maria Knoll (Bielefeld: transcript Verlag, 2013).
18. Susan Høivik, 'Local Culture: Is Tourism the Enemy? Some Observations from the Nepal Himalaya', in: *Kulturelles Erbe und Tourismus: Rituale, Traditionen, Inszenierungen*, ed. Kurt Luger and Karlheinz Wöhler (Innsbruck: Studienverlag Ges.m.b.H, 2010).
19. Silvia Borelli and Federico Lenzerini, 'Foreword', *Cultural Heritage, Cultural Rights, Cultural Diversity: New Developments in International Law*, ed. Silvia Borelli and Federico Lenzerini (Leiden: Brill Publishing, 2012).

    Andrea Durbach and Lucas Lixinski, 'Introduction', in *Heritage, Culture and Rights: Challenging Legal Discourses*, ed. Andrea Durbach and Lucas Lixinski (Oxford and Portland, Oregon: Hart Publishing, 2017).
20. Janet Blake, 'Taking a Human Rights Approach to Cultural Heritage Protection', *Heritage & Society* 4, no. 2 (2011): 199–238.
21. Helaine Silverman and D. Fairchild Ruggles, *Cultural Heritage and Human Rights* (New York: Springer, 2007).
22. Cultural heritage might find expression in majority-oriented State religions and respective education schemes that undermine religious or non-faith minorities: **Human Rights Committee (2004). Communication No. 1155/2003**. Other cultural heritage contexts may relate to indigenous peoples' right to access their very own justice systems and courts (legal pluralism) and non-interference with their ancestral burial grounds related to communal land rights and the very cultural traditions underlying communal land regimes: **Human Rights Committee (1997). Communication No. 549/1993**. Individual opinions on the case reveal the importance of establishing human rights protection beyond negative obligations and to carve out the cultural component of such violations going beyond the right to privacy and family. Most notably, it identifies breaches of further reaching State obligations including religious and ethnic minorities' (and other members of their group) right to 'enjoy their own culture or to practice their own religion': **Individual Opinion by Committee members David Kretzmer and Thomas Buergenthal, cosigned by Nisuke Ando and Lord Colville (dissenting)**

    Some insights into indigenous collective rights to maintain and develop specific cultural practice may be gained by the following communications that were declared inadmissible: **Human Rights Committee (1989). Communication No. 358/1989** and **Human Rights Committee (2000). Communication No. 822/1998.**
23. Jakubowski, A. Introduction. In: Jakubowski, A. (ed.) *Cultural Rights as Collective Rights: An International Law Perspective*. (Leiden & Boston: Brill Nijhoff, 2016).
24. Ibid,
25. see in particular: Mayagna (Sumo) Awas Tingni Community v. Nicaragua; Yakye Axa Community v. Paraguay; Yatama v. Nicaragua; Moiwana Community v. Suriname; Sawhoyamaxa Indigenous Community v. Paraguay; Saramaka People v. Suriname; Xákmok Kásek Indigenous Community v. Paraguay; Kichwa Indigenous People of Sarayaku v. Ecuador; Norín Catrimán y Otros v. Chile; Indigenous Kuna Peoples of Madungandí and Emberá and their Members v. Panama
26. Hausler, K. (2016). Collective Cultural Rights in the Inter-American Human Rights System. In: Jakubowski, A. (ed.) *Cultural Rights as Collective Rights: An International Law Perspective*. Leiden & Boston: Brill Nijhoff.
27. Ibid.
28. Ibid.

    Xavier Albó and Matías Preiswerk, *Los Señores del Gran Poder* (La Paz: Centro de Teología Popular, 1986).

29. William Rowe and Vivian Schelling, *Memory and Modernity. Popular Culture in Latin America* (London/New York: Verso, 1991).
30. Max Meier, 'La transformación del mito de Wari en las fiestas mestizas de Oruro y Puno en el Altiplano peruano-boliviano: la Diablada y la construcción de nuevas identidades regionales', Mitologías hoy 2 (2014): 61–72.
31. Ximena Córdova, *Carnival in Oruro (Bolivia): The Festive and the 'Eclipse' of the Indian in the Transmission of National Memory.* PhD Thesis. (Newcastle: Newcastle University, School of Modern Languages, 2012).
32. Mercedes Mariano and María Luz Endere 'Carnavales y patrimonios: diálogos sobre identidades y espacios de participación', *Memorias: Revista Digital de Arqueología e Historia desde el Caribe* 13, no. 32 (2017): 10–41.
33. Max Meier (2014). *Op.cit.*
34. Mercedes Mariano and María Luz Endere (2017). *Op.cit.*
35. Max Meier (2014). *Op.cit.*
36. Cynthia Lecount, 'Carnival in Bolivia: Devils Dancing for the Virgin', *Western Folklore* 58, no. 3/4 (1999): 231–52.
    See also: Ximena Córdova (2012). *Op. cit.*
37. Mercedes Mariano and María Luz Endere. (2017). *Op.cit.*
38. Javier R. Romero Flores, 'Colonialidad y dinámica festiva: Legitimación de la modernidad/colonialidad en el carnaval de Oruro', *T'inkazos*, 31 (2012): 137–56.
39. Javier Reynaldo Romero Flores, 'Pasos hacia una Descolonización de lo Festivo', *Tabula Rasa*, no. 22 (2015): 103–22.
40. Ibid.
41. Mercedes Mariano and María Luz Endere. (2017). *Op.cit.*
42. Carlos de Oro, 'Las paradojas de la preservación de las tradiciones del carnaval de Barranquilla en medio del mercantilismo, la globalización y el desarrollo cultural', *Revista Brasileira do Caribe* X, no. 20 (2010): 401–22.
43. Carlos de Oro (2019). *Op.cit.*
44. Ligia Cantillo Barrios, 'Género y Carnaval en Barranquilla', *Revista Amauta* 24 (2014): 151–73.
45. Mercedes Mariano and María Luz Endere. (2017). *Op.cit.*
46. Ligia Cantillo Barrios (2014). *Op.cit.*
47. Danny Armando González Cueto & Francisco A. Zurian, 'Espacios homosociales en el Carnaval de Barranquilla: entre la crónica literaria y la novela autobiográfica' Chasqui, Revista Latinoamericana de Comunicación, agosto -noviembre (2017), no. 135: 105–22.
48. Mercedes Mariano and María Luz Endere. (2017). *Op.cit.*
49. Joseania Miranda Freitas, 'Las raíces africanas del Carnaval de Barranquilla' Revista Brasileira do Caribe X, no. 20 (2010): 423–45.
50. Intangible Cultural Heritage is by its very nature adaptable and flexible, following developments in cultural bearer communities; notably, CSICH recognises changes of ICH practices that transcend notions of time and paying due regard to fluid transmission processes and thereby intergenerational changes in how ICH practices are interpreted respectively.
51. Angélica Lascar, 'To the Rescue of Traditions: Emotional Design and Cultural Values: A Case Study Based on Barranquilla's Carnival', *Journal of Arts and Humanities* 3, no. 4. (2014): 77–87.
52. Ibid.
53. Mónica Margarita Gontovnik Hobrecht, 'Performance como historia: las Negritas Puloy en el Carnaval de Barranquilla', Memorias: Revista Digital de Arqueología e Historia desde el Caribe 13, no, 32 (2017): 149–77.
54. Monica Margarita Gontovnik Hobrecht, 'Performing race in the Barranquilla Carnival: The Case of the Negritas Puloy de Montecristo', *Social Identities: Journal for the Study of Race, Nation and Culture* (2018): 1–17.
55. Ibid.
56. Ibid.

57. Ibid.
58. Ximena Córdova (2012). *Op. cit.*
59. Michael Herzfeld (2004). *Op.cit.*
60. Ibid.
61. Ibid.
62. David M. Guss, *The Festive State: Race, Ethnicity, and Nationalism as Cultural Performance* (Berkeley: University of California Press, 2000).
    Ximena Córdova (2012). *Op. cit.*
63. Ximena Córdova (2012). *Op. cit.*
64. Ibid.
    Charles Taylor, 'The Politics of Recognition', in *Multiculturalism*, ed. Amy Gutman (New Jersey: Princeton University Press, 1992).
65. Ximena Córdova (2012). *Op. cit.*
66. Ibid.
67. Extreme forms may include forms of racial discrimination that manifest themselves where large-scale agro-industrial projects place additional burdens on the enjoyment of cultural rights, in this case affecting Afro-Colombian Palenque communities (see Maria Fernanda Escallon, 'The Formation of Heritage Elites: Talking Rights and Practicing Privileges in an Afro-Colombian Community', in Heritage in Action: Making the Past in the Present, ed. Emma Waterton, Steve Watson and Helaine Silverman (London: Springer, 2017).
68. Garth L. Green, 'Come to Life': Authenticity, Value, and the Carnival as Cultural Commodity in Trinidad and Tobago', *Identities: Global Studies in Culture and Power* 14: 203–24.
69. Several in-depth interviews have been conducted, identifying particular vulnerable groups in practicing, maintaining and developing intangible cultural heritage practice, for further details see: Eichler, J. (2020). Intangible Cultural Heritage under Pressure? Examining Vulnerabilities in ICH Regimes – Minorities, Indigenous Peoples and Refugees. *ifa Edition Culture and Foreign Policy*.
70. Periódico Digital Erbol. (2018). Oruro: 8 muertos y 40 heridos por explosión de una garrafa. https://anteriorportal.erbol.com.bo/noticia/seguridad/10022018/oruro_8_muertos_y_40_heridos_por_explosion_de_una_garrafa
71. CNN Español (2018). Explosión en Carnaval de Oruro en Bolivia deja ocho muertos y decenas de heridos. https://cnnespanol.cnn.com/2018/02/11/explosion-en-carnaval-de-oruro-en-bolivia-deja-ocho-muertos-y-decenas-de-heridos/
72. For a contextual portrayal of the dangers related to tourism and their detrimental impact on ICH practice, revise the Urgent Safeguarding List: https://ich.unesco.org/en/lists?text=&type[]=00003&multinational=3&display1=inscriptionID#tabs
73. See Brazilian, Swiss and Canadian contexts for further debates and respective domestic discourse on living culture.
74. Ibid. see also: Birgit Bräuchler, 'Immaterielles Kulturerbe als Friedensstifter', *Sociologus* 61, no. 1 (2011): 91115.
75. See further discussions on the concept of vernacularisation in Sally Engle Merry, 'Translating Human Rights and Local Activism: Mapping the Middle', *American Anthropologist* 108, no. 1 (2006): pp. 38–51.
76. Linda Tuhiwai Smith, *Decolonizing Methodologies: Research and Indigenous Peoples* (London and New York: Zed Books, 1999).
77. Pierre Nora, 'Between Memory and History: Les Lieux de Memoire', *Representations* 26, no. spring (1989): 7–24.
78. Michael Herzfeld (2004). *Op.cit.*
79. Marilena Alivizatou, 'The Paradoxes of Intangible Heritage', in *Safeguarding Intangible Cultural Heritage*, ed. Michele L. Stefano, Peter David and Gerard Corsane (Woolbridge: The Boydell Press, 2014).
80. Michele L. Stefano, Peter David and Gerard Corsane, 'Touching the Intangible: An Introduction', in *Safeguarding Intangible Cultural Heritage*, ed. Michele L. Stefano, Peter David and Gerard Corsane (Woolbridge: The Boydell Press, 2014).

81. Maurice Mugabowagahunde, 'African Indigenous Heritage in Colonial and Postcolonial Museums: The Case of the Batwa of Africa's Great Lake Region', in *A Companion to Heritage Studies*, ed. William Logan, Máiréad Nic Craith and Ulrich Kockel (Chichester: John Wiley & Sons Inc., 2016).
82. William Logan, Máiréad Nic Craith, and Ulrich Kockel, 'The New Heritage Studies: Origins and Evolution, Problems and Prospects', in *A Companion to Heritage Studies*, ed. William Logan, Máiréad Nic Craith ,and Ulrich Kockel (Chichester: John Wiley & Sons Inc., 2016).
83. Sheenagh Pietrobruno, 'Between narratives and lists: performing digital intangible heritage through global media', *International Journal of Heritage Studies* 20, no. 7 (2014): 7–8.
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## Notes on contributor

*Jessika Eichler* has developed an interdisciplinary, social science approach towards indigenous peoples' rights combining international law and socio-political studies including their theoretical and empirical underpinnings. She draws on on-the-ground research in the Andes and Bolivia in particular shedding light on prior consultation processes as enjoyed by indigenous collectives, individuals and subgroups. Cultural rights play an important part in such participatory regimes having sparked her interest in indigenous peoples' cultural and spiritual rights as essential parts of such regimes.