

Peoples' Participation in the Preservation of Intangible Cultural Heritage in Malaysia: The Legal Perspective

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Abstract

Communities, groups, and individuals (or known as CGIs) are the main focus of the international law on intangible cultural heritage preservation, and the Sustainable Development Goals 2030 focuses on community participation. In Malaysia, Articles 5 and 8 of the Federal Constitution provide a general principle on the rights of people to their livelihood and equality. However, the National Heritage Act [Act645] has no specific provisions on community participation. This paper highlights the international law on safeguarding intangible cultural heritage, including from selected foreign nation-state's legislations. The absence of specific provisions on community participation and the rights of the CGIs under the existing law raises the question of the extent of their participation, particularly in decision-making. The paper concludes with the recommendation that the existing law should be amended to include more comprehensive provisions on community participation.

Keywords: Communities, Groups, Individuals, Community Participation, Intangible Cultural Heritage, Law

Introduction

The role of the people, i.e. communities, groups, and individuals (or known as CGIs) are essential in the safeguarding of intangible cultural heritage (ICH) as illustrated in two main international norms i.e. the 2005 Convention for the Protection and Promotion of the Diversity of Cultural Expressions (the 2005 Convention) and the 2003 Convention for the Safeguarding of the Intangible Cultural Heritage (the 2003 ICH Convention). These international laws have been the sources of benchmarking by national legislators to create laws on ICH preservation and achieve the Sustainable Development Goals 2030. These UNESCO-based conventions focus on community participation in the safeguarding of intangible cultural heritage. This paper examines the Federal Constitution which provide general principles on the rights of people and the National Heritage Act (Act 645), i.e. the general law for the preservation of ICH in Malaysia. The paper aims at highlighting national

legislations' provision on peoples' participation in the preservation of intangible cultural heritage compared to the UNESCO conventions. A comparative study with selected foreign legislations is made for benchmarking purposes.

Literature Review

Blake (2006) commentary was further reinforced by Gillman (2010) and Lowenthal, D (1998) when they say that 'to look at heritage from the perspective of groups' means to favour the national interests at stake, which may not always be protective of heritage, or may protect heritage at the expense of other people's heritage. Klückmann, 2016 argued for the analytical value of community for the study of expressive culture that includes intangible cultural heritage. Based on assumptions of practice theory, especially Theodore R. Schatzki, he proposed to understand community as a feeling of 'we-ness that evolves and transpires through bundles of practices and arrangements among participants of these practices. The praxeological perspective allows comparing communities of different types to gain general insights into communities' boundaries and spatial and temporal order. Urbinati had highlighted the role of the bearers of the intangible cultural heritage in implementing the ICH Convention and whether and how the Operational Directives and the practice have developed their role. (Urbinati, 2012). Urbinati questioned 'does the ICH Convention place the bearers of the ICH at the center of its implementation? Moreover, it will be interesting to verify whether anything has been left to be done to improve the role given to the bearers of the ICH. Urbinati also highlighted that "as an ICH has to provide a sense of identity and continuity and to be shared by its bearers, these subjects have to be well delimited and distinguished from the rest of the world. According to Vaivade & Wagener in 2017, social actors play a more significant role in safeguarding ICH by using the term 'legal weapon'. It was proposed that social actors have defended many subjective rights and even fundamental freedoms to protect what they refer to as ICH. It has been found that what happens at the national law level is something that a comparative law study cannot ignore. That makes the analysis even more complex, but it also shows how important it is that such work is carried forward. This paper aims to fill the gap in the absence of a legal discussion on peoples' participation in practicing ICH in Malaysia.

Findings

An Overview to Communities, Groups, and Individuals

Bearers of ICH can be communities such as the Malay community, the Chinese community, the Kelantanese community, and so on. The examples of ICH are Makyung, and there are three categories of Makyung based on the observation of the authors. The one recognized by the National Heritage Department (NHD) as National Heritage (which has been recognized as a Masterpieces of the Oral and Intangible of the Communities) (Malaysian community). This category of Makyung retains some of the traditional elements and is modified to a certain extent in taking our prohibited scants and rituals. The second category of Makyung is modified and is called 'Syariah Compliant Makyung' (Kelantanese Malay community). Third, traditional Makyung retains every inch of movement and every single ritual inherited from one generation to another (group and individual).

Groups can be among the performance groups such as Kumpulan Makyung Cahaya Matahari helmed by Che Siti binti Dollah, a veteran individual Makyung actress who is the main custodian of the Makyung in her community in Kelantan. The performers of this group

trace their Makyung lineage back seven generations and are committed to the transmission of the Makyung tradition to succeeding generations.¹

Similarly, in the UNESCO listed ICH, the Wayang Kulit is founded by the late Tok Dalang Abdullah Ibrahim (Dollah Baju Merah), renowned for his dexterity and subtlety as well as his provocative presentation of 'irreverent' Wayang, Kumpulan Wayang Kulit Sri Warisan Pusaka is one of the most accomplished troupes in Malaysia. Now steered by two of Pak Dollah's senior disciples, Tok Dalang Nawi, and master musician, Abdul Rahman bin Dollah, the troupe has performed to great acclaim throughout Kelantan, Malaysia, as well as internationally, to audiences from all levels of society. Dalang Nik Mat Suara Mas was one of the popular Dalang in Wayang Kulit Kelantan who played Hikayat Dewa Sealam Tunggal.

Participatory Role in the International Norms

Basic Texts of the 2003 ICH Convention 2016 Edition provides that within the framework of its safeguarding activities of the ICH, 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. The importance of community participation is also highlighted in the 2005 Convention. The adoption of the 2005 Convention was a milestone in international cultural policy. Recognizing the sovereign right of States to maintain, adopt and implement policies to protect and promote the diversity of cultural expression, both nationally and internationally, the 2005 Convention supports governments and civil society in finding policy solutions for emerging challenges. Based on human rights and fundamental freedoms, the 2005 Convention ultimately provides a new framework for informed, transparent, and participatory systems of governance for culture. The 2005 Convention state that 'parties acknowledge the fundamental role of civil society in protecting and promoting the diversity of cultural expressions. Parties shall encourage the active participation of civil society in their efforts to achieve the objectives of this Convention.'

Complementary to the 2003 ICH Convention, the Operational Directives for the Implementation of the Convention, and national legislative frameworks, 12 Ethical Principles were created and intended to serve as the basis for developing specific codes of ethics and tools adapted to local and sectoral conditions. The first ethical principle is 'communities, groups and, where applicable, individuals should have the primary role in safeguarding their ICH.' The issue of who are communities, groups, and individuals was decided in a meeting organized by the Intangible Heritage Section of UNESCO (ACCU) in Tokyo, March 2006 (ACCU, 2006). In particular, since the 2003 ICH Convention had not provided any definition of these persons, the meeting reviewed the 2003 ICH Convention and wished to define, once and for all, those identified in the said 2003 ICH Convention's preamble and main text as persons involved in ICH, that is, the above-named communities, groups, and individuals. The meeting agreed on the following: 1. Communities are networks of people whose sense of identity or connectedness emerges from a shared historical relationship that is rooted in the practice and transmission of, or engagement with, their ICH; 2. Groups comprise people within or across communities who share characteristics such as skills, experience, and special knowledge, and thus perform specific roles in the present and future practice, re-creation and/or transmission of their ICH as, for example, cultural custodians, practitioners, and,

¹ Communities - Mak Yong — PUSAKA <https://www.pusaka.org/communities-mak-yong>. Accessed on 23rd September 2021 at 9.33 a.m.

where appropriate, apprentices (2006); 3. Individuals are those within or across communities who have distinct skills, knowledge, experience, or other characteristics, and thus perform specific roles in the present and future practices, re-creation and/or transmission of their ICH as, for example, cultural custodians, practitioners, and, where appropriate, apprentices.

Participatory Role in Foreign National Legislations

The following discussion analyze the legal framework on peoples' participation in ICH from selected countries to uncover the extent of legal provisions on community participation is made in their legislations.

National Heritage Act of 2005 as Malaysian national law on cultural heritage does not specifically highlight the term people—whether it includes communities, groups and, individuals in safeguarding ICH compared to national foreign legislations such as the 1950 Japan Law for the Protection of Cultural Properties, the Cultural Heritage Protection Act of Korea, the 2011 Intangible Cultural Heritage Law of China, the 1982 Cultural Heritage Law of China, the 2005 Law on National Heritage of Laos and the Philippines National Cultural Heritage Act of 2009. Act 645 mentions the general term 'any person'. It appears that 'any person' may include communities, groups, and individuals as provided in section 47 (1) and section 50. Act 645 also uses the term 'owner' in section 49 (2) without explaining in detail who the owner is. These provisions are general character which may refer to tangible cultural heritage. To be more specific within preservation ICH, Act 645 mentions the term 'custodians' in Section 60 without explaining in its definitional section who the custodians are even though it directs the owners and custodians of an ICH to take all necessary steps to develop, identify, transmit, cause to be performed and facilitate the research on the ICH. A general provision of Section 69 may give the owners and custodians the possession of heritage. Hence, there are no clear procedures and guidelines as to how 'possession' and 'ownership' should be determined if the heritage involves ICH.

Generally, Act 645 requires consultation from owners and custodians in compliance with the guidelines and procedures for 'conservation' ICH. The absence of detailed explanations or descriptions on who is 'any person', 'owner' and 'custodians' in Act 645, particularly in Section 51 (1) which indirectly led to the broad powers on the Minister to decide the 'national status' of ICH and the Commissioner to define and select a particular 'object' as heritage having cultural significance. According to Kua in 1985, this situation has resulted in some unfair advantages to certain communities, groups, and individuals within the Malaysian multi-cultural context and may be a ground for excessive use of power in times of conflict. This may cause unfair advantages to certain communities and violate Articles 5 and 8 of the Federal Constitution.

Unlike legislations in Japan, Korea, Laos, and the Philippines, there is an absence of communities' duty to safeguard ICH under Act 645. For instance, article 6 (2) of the Law for Cultural Heritage Protection Act of Korea (the Korean Heritage Law) requires the general people to faithfully cooperate with the Government and the Local Government to achieve the purpose of protecting ICH under the existing law. Article 4 (4) of the Korean Heritage Law states that the Korean nationals shall actively cooperate in the State's and local governments' measures to preserve and manage cultural heritage. Article 10 (3) of the Korean Heritage Law further states that where the Administrator of the Cultural Heritage Administration or the head of a local government is to conduct an investigation into cultural heritage, other than designated cultural heritage, he or she shall obtain prior consent from the owner or custodian of the relevant cultural heritage. Article 4, Paragraph 2. of the Law for the Protection of

Cultural Properties 1950 (the Japan LPCP of 1950), further extends the role of the people in a more detailed description which is to preserve their 'cultural property' with good care for the public and endeavour to promote its cultural utilisation such as by opening it to public viewing. Article 4, Paragraph 3 of the Japan LPCP of 1950 further states that the ownership is respected by both the government and the local government or other proprietary rights in the enforcement of the present law. In Japan, as provided in Article 73, suppose the bearer has died, or the bearing body has been dissolved or there are changes of name, address, and change its constituent members. In that case, the bearer/heir shall report to the Commissioner for Cultural Affairs within 20 days after the demise and the dissolution. In China, the law promotes the transmission of ICH traditions to new generations through training of personnel and funding of special programs for those designated as "heirs" to ICH.² Article 9 of the Cultural Heritage Preservation Act 1982 of China states that their specified law on ICH provides procedural fairness via an administrative appeal. More interestingly, the 2005 Law on National Heritage of Laos (the 2005 LNH of Laos) goes further to require non-citizens to participate in the protection, conservation, restoration, and rehabilitation of the national heritage. For instance, in Article 5 of the 2005 LNH of Laos, foreigners and even tourists entering the country shall have the same obligation as the citizens to protect and conserve the national heritage.

Involvement of the People in Nomination and Registration of Intangible Cultural Heritage

Section 47 of Act 645 provides that community members can immediately notify the Commissioner or other relevant officers of the district where the object was discovered and deliver the object to the Commissioner or other relevant officers. This provision discusses the community members' role to identify items that have cultural heritage significance and inform the Commissioner for further action. Section 50 (1) further provides that any person may apply for an object to be registered as a heritage object. The rights given to the people under these two provisions are limited because the final decision rests with the Commissioner. Under section 60 of Act 645, if a person is recognized as an owner or in possession of the cultural heritage object, including ICH, this person must work together with the relevant bodies to develop, *inter alia*, research on it with the help from the Commissioner for Heritage.

These provisions are similar to the provisions in many countries, such as the 2005 LNH of Laos and the 2001 Law on Cultural Heritage of Vietnam (the 2001 LCHV). In Laos, the 2005 LNH provides a wide scope of the peoples' role. Article 4 of the 2005 LNH of Laos provides that the individual rights of people of Laos on their ICH are specifically highlighted in the State policy on national heritage. Besides, there is a specific provision on the obligations of the citizen. It states that Lao citizens, aliens, and apatrids residing in the territory of the Lao PDR shall have the obligation to participate in the protection, conservation, restoration and rehabilitation of the national heritage. Article 5 further provides that foreigners, and tourists entering the Lao PDR shall have the same obligation to participate in the protection and conservation of the national heritage. Apatrids are defined in the same provision to mean 'persons unable to certify their nationality'. Article 28 of the 2005 LNH of Laos requires registration on heritage possessed by individuals and organizations. Besides that, the 2005 LNH of Laos recognizes that the bearer or holder can be the owner of ICH. In other words, the

² (China Adopts First Law for Intangible Cultural Heritage Protection, ENGLISH NEWS.CN (Feb. 25, 2011).)

bearer or holder can play a role in relation to its ICH. The 2005 LNH of Laos implement a system allowing the bearer or holder to request for the registration of their ICH. The initial step is taken by the holder or the bearer, while the final step on the decision of whether it is registrable ICH is on the government.

Protection, Restoration and Rehabilitation of ICH by the People

Act 645 provides that the Minister may inscribe any object to be a National heritage pursuant to section 67. Section 68 of Act 645 mentions that the public has a role in participating in nominating any object having cultural heritage significance to be declared as a National Heritage. However, these provisions are only persuasive provisions as Act 645 is silent as to the obligatory duty of the public to safeguard ICH. Hence, the public may choose not to nominate certain heritage which is important to the nation. This is a disadvantage to Malaysia's progress in promoting and preserving its cultural heritage at a macro and international level. It was suggested that there is a provision to make it obligatory for the public to preserve cultural heritage. Section 61 of Act 645 does provide for public participation regarding the discovery of underwater cultural heritage but is silent on ICH. The obligation provision should also include public participation regarding the discovery of ICH.

In China, Article 9 of the Intangible Cultural Heritage Law of the People's Republic of China 2011 [the 2011 ICH Law of China] provides that the State shall encourage and support its citizens, legal persons, and other organizations to participate in the work concerning the protection of ICH. Article 10 of the 2011 ICH Law of China provides that the organizations and individuals who make significant contributions to the work concerning the protection of ICH shall be commended and rewarded in accordance with the relevant provisions of the State. Furthermore, Article 14 mentions that the citizens, legal persons, and other organizations may conduct investigations of ICH in accordance with the law. Moreover, Article 20 of the 2011 ICH Law of China states that if a citizen, legal person and other organizations believe that an item of ICH reflects the distinguished traditional culture of the Chinese nation and has significant historical, literary, artistic or scientific value, they may recommend to the people's governments of the provinces, autonomous regions and municipalities directly under the Central Government or the department in charge of culture under the State Council to include the said item in the catalogue of the representative items of ICH at the national level. Article 31 of the 2011 ICH Law of China progresses by having a provision to rule the inheritor's obligations. Article 31 (3).states that representative inheritors are requested to cooperate with the investigation of ICH made by the department in charge of cultural affairs and other relevant administrative authorities. Article 4 of the Provisional Measures on the Accreditation and the Management of Representative Inheritors of National Intangible Cultural Heritage Projects 2008 of China states that, 'Representative inheritors' means those who know well about the knowledge or skills of state ICH item, who are acknowledged as a representative, who have influence in a particular region or area and who positively promote inheritance activities and cultivate talent. 'Representative inheritors' used in the 2011 ICH Law of China may also be termed as 'bearers' in the Japan LPCP of 1950.

Article 71 of the Japan LPCP, 1950.highlights the significant role of 'bearers' in the administration and management of ICH in Japan, including the recognition and eligibility of the 'bearers. One of the illustrations of bearers is 'Urasenke' in Japan tea ceremony. In the ceremony, Urasenke skills are acknowledged by the government, allowing them to innovate and invent the traditional aspects of the ceremony, particularly to the setting of utensils and tables. This innovation in the tea ceremony reflects the inventiveness that defines and

characterises tradition in Japan, as in other parts of the world (Hobsbawm, E., & Ranger, T. (Eds.). (2012)). Moreover, Cang (2008) highlighted the underlying roles of innovator and inventor as the sole creator and the only holder of the right to introduce new things or forms to the tradition. This right is his as the recognised head of his tradition, or *iemoto* in Japanese, and is one of several rights that the *iemoto* are deemed to hold.

Funding of ICH by the Owners/ Custodians/ Bearers

It depends on the Commissioner or the Minister to decide on the financial assistance or funding based on sections 20-22 in Part V of Act 645 of Malaysia. Act 645 has no specific provisions on funding for the purpose of preserving ICH and the involvement of owners/custodians/bearers in budgeting or decision-making. Moreover, the law is silent on funding or assistance to non-listed heritage. The only provision involving the people on funding can be found in a specific provision on conservation of ICH. Section 60 (1) of Act 645 says that the owner or custodian of a heritage object in the form of an ICH shall take all necessary steps to develop, identify, transmit, cause to be performed and facilitate the research on the ICH according to the guidelines and procedures as may be prescribed. Participation of people is made via online programmes and webinars where the federal government invites individuals and groups to discuss. This is one of the ways where the custodian may transmit the ICH knowledge guided by the federal government guidelines. The Intangible Cultural Heritage Guidelines and Procedures Workshop 2017 was conducted as an initiative of the Intangible Heritage Division in discussing the preparation of a guideline and key reference in outlining procedures for protecting ICH in accordance with Act 645. However, so far, the existing guidelines available include the National Heritage Food Guidelines decided in a workshop conducted on the 27-29 August 2019 on the 4-5 November 2018, the NHD had conducted a workshop to refine the Guidelines and Procedures for the Protection of ICH (the national anthem and the Malaysian Flag of Jalur Gemilang).

Based on the examples given above, the owner, custodian, or trustee of ICH can play their role in Malaysia by requesting financial assistance from the government. However, Section 72 (1) of Act 645 in Malaysia may require the Minister to approve any financial assistance to the owner, custodian, or trustee of a 'National Heritage' for compliance with any procedure or guidelines prescribed under subsection (1). This provision explains the importance of 'national' status described in Part X of Act 645 involving sections 68 to 72, on financial allocation for ICH preservation among the communities, groups, and individuals. Section 72 (1), for instance, implies that the Minister and the Commissioner have wide discretionary powers to impose different procedures and guidelines as may be prescribed for the management, conservation, and preservation of different categories of ICH. At present, there are yet no guidelines that have been created for this purpose, and it is questionable as to whether it is a common practice of the Minister to finance the safeguarding of the ICH. Section 72(2) further states that the Minister may approve any financial assistance to the owner, custodian, or trustee of a National Heritage for compliance with any procedure or guidelines prescribed under subsection (1).

Interestingly in China, Article 8 of the Cultural Heritage Preservation Act 1982 of China (the 1982 China Law on Cultural Heritage) prescribes owners or managing agencies (institutions) of public cultural heritage shall budget for and handle the preservation, restoration, management, and conservation of such cultural heritage, and if necessary, the competent authorities may subsidize such budget. Hence, this shows the duty imposed on the owner of ICH.

Article 31 of the 2011 ICH Law of China states that the representative inheritors of the representative items of ICH shall perform the following obligations. (1) Carry out inheritance activities and cultivate talented successors; (2) Properly keep the relevant physical objects and information; (3) Cooperate with the departments in charge of culture and other relevant departments in the investigations of intangible cultural heritage, and (4) Participate in public welfare publicity for intangible cultural heritage. Suppose a representative inheritor of a representative item of intangible cultural heritage does not perform the obligations prescribed in the preceding paragraph without legitimate grounds. In that case, the department in charge of culture may revoke his qualification as the representative inheritor and re-determine the representative inheritor of that item. If the inheritance ability is lost, the department in charge of culture may re-determine the representative inheritor of that item.

Li (2012) suggested that the 2011 ICH Law of China encourages people to get involved in protecting cultural treasures and the protection of the country's intellectual property relating to its cultural heritage. Article 8 of the 1982 China Law on Cultural Heritage provides that the public cultural heritage under this Act are cultural heritages owned by the State, local autonomy bodies, and other public legal entities or state-owned enterprises. Owners or managing agencies (institutions) of public cultural heritage shall budget for and handle the preservation, restoration, management, and conservation of such cultural heritage. If necessary, the competent authorities may subsidize such a budget. The central competent authority shall stipulate the regulation related to subsidization in the preceding paragraph. The central competent authority shall locate exclusive, handsome funds in budgets to undertake an investigation, collection, classification, research, promotion, preservation, conservation, and teaching of the cultural heritage of indigenous people and other relevant matters under this Act. Vice Minister of Culture Wang Wenzhang disclosed that from 2011, the heirs could receive up to 10,000 yuan (1,521 U.S. dollars) from the central budget as financial support for carrying forward the ICH items. Article 8 of the 1982 China Law on Cultural Heritage illustrates the close connection between the government and managing agencies and individuals in budgeting, thus explaining the unity in safeguarding ICH in China. One of the examples of government-sponsored events involving traditional performances is the farmers' dance of China's Korean ethnic group, inscribed in 2009. It is a gathering for community festivals, where members of the Korean ethnic group in Jilin and other provinces in Northeast China take part in the Farmers' dance.

Certification and Incentives to Preservers of ICH

In Malaysia, Act 645 is vague on the certification and incentives to preservers of ICH. The only section 52 which mentions certification is on the 'heritage object' that includes ICH, but not the people preserving it, but section 1 of Act 645 defines national heritage to include a 'living person'. Section 67 (1) further gives the Minister the power to declare any living person as a National Heritage. There are a number of living persons declared as national heritage so far, in 2018, for instance, Omar Bin Md.Hashim was listed as a living heritage for 'Boria'; Dato' Paduka Profesor Madya Dr. Mohd Rosli Bin Saludin for 'Teromba Penglipur Lara'; Razak Bin Senik for 'Rodat'; Tan Chai Puan for 'Gendang 24 Perayaan'; Datuk Mohd Baharim Bin Mohd Sharip @ Hashim for 'Dondang Sayang'; and Norhaiza Bin Noordin for 'Ukiran Kayu Melayu'. In 2015, Saad bin Taib was listed as the living person for Mek Mulung. In previous year of 2012, Puan Mek Jah binti Deris was listed as the living person for Makyung and Eyo Hock Seng as the living person for Wayang Kulit.

The Act requires the Minister to impose different procedures and guidelines as may be prescribed for the management, conservation, and preservation of different categories of National Heritage, but there is nowhere in the Act requires the Minister or the Commissioner to give certification or incentives for the communities, groups, and individuals except in section 51 and 52 when it says that the Commissioner shall issue a certificate of registration to the owner who applied for registration of an object having cultural heritage significance. Section 52 (2) of Act 645 states that upon the heritage object being ceased to be registered as a heritage object, the owner of the object must surrender the certificate of registration to the Commissioner within three months from the date of such cessation. Again, this provision is too general. Firstly, Act 645 gives the Commissioner wide power to cease registration on the grounds that the Minister or the Commissioner may also decide. Secondly, the registration certificate focuses on the object and not the preservers/ custodian/ bearers /owners or even the living persons declared by the Minister. It is now suggested that there is a need to include 'certification' of ICH preservers, acknowledging the preservers by giving them incentives along with the processes of preserving ICH.

The impact of having clarity in the definition of communities, groups, and individuals to preserve and safeguard ICH within a society is evident in the 1982 China Law on Cultural Heritage. Article 93 of the 1982 China Law on Cultural Heritage requires the central competent authority to issue certificates to renowned preservers of intangible cultural heritage and grant them incentives for recordation, preservation, revitalization, practice, and promotion of such ICH. It is naturally motivating for the preservers to keep on preserving their ICH upon receiving such accreditation and incentives. Article 93 of the 1982 China Law on Cultural Heritage mentions that the central competent authority imposes regulations for registration criteria of various types of ICH and accreditation of preservers, the terms for revision or revocation of registration, the review procedures, the rules for numbering preservers, issuance of certificates and assistance, and other compliance requirements. The specification of law as seen in the China legal framework gives legal incentives to custodians/preservers of ICH from among the CGIs and these specific provisions are seen as indirect guarantee to the survival of the ICH in China. In a way, it is a positive approach towards safeguarding ICH when the custodians of ICH are acknowledged.

Article 93 of the 2011 ICH Law of China provides a 'certification' measure to acknowledge the importance of ICH preservers' roles (custodians/owners/bearers). 'Certification' and 'certificate of registration' denote different meanings. The 2011 ICH Law of China clearly mentions that the central competent authority may issue certificates to renowned preservers of ICH and grant them incentives for recordation, preservation, revitalization, practice, and promotion of such ICH. The regulations for registration as provided in Article 93 set criteria of various types of ICH and accreditation of preservers, the terms for revision or revocation of registration, the review procedures, the rules for numbering preservers, issuance of certificates and assistance, and on the role of preservers in the Administration of ICH Preservation. Certification here illustrates the comprehensive registration process which provides conditions for preservers.

Recommendations and Conclusion

The role of communities, groups, and individuals (or known as CGIs) is already highlighted in the 12 Ethical Principles, guiding the 2003 UNESCO Convention for the Safeguarding of Intangible Cultural Heritage. Its essential elements have also been outlined in a number of international norms. As a response to the international laws created to give protection to the

CGIs, a number of States have amended and created new laws that prescribe the role of the people, including Malaysia. However, in Malaysia, some improvements should be made to Act 645 to ensure that the Malaysian CGIs are given clear guides on their part to participate in the safeguarding efforts to safeguard ICH. It is also recommended that the existing law should be amended to include more comprehensive provisions on community participation in line with Articles 5 and 8 of the Federal Constitution.

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