**CONVENTION FOR THE SAFEGUARDING OF THE
INTANGIBLE CULTURAL HERITAGE**

**INTERGOVERNMENTAL COMMITTEE FOR THE
SAFEGUARDING OF THE INTANGIBLE CULTURAL HERITAGE**

**Twelfth session**

**Jeju Island, Republic of Korea**

**4 to 9 December 2017**

**Item 14 of the Provisional Agenda:**

**Reflection on the transfer of an element from one List to the other
and the removal of an element from a List**

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| **Summary**At its tenth session in 2015, when examining the first transfer request submitted by Viet Nam, the Committee decided to start a general reflection on the transfer of an element from one List to the other and the removal of an element from a List. The present document aims to facilitate such a reflection.**Decision required:** paragraph 33 |

1. **Background**
2. At the tenth session of the Committee in November/December 2015, the Secretariat informed the Committee about Viet Nam’s request to transfer the element ‘Xoan singing of Phú Thọ Province, Viet Nam’ from the List of Intangible Cultural Heritage in Need of Urgent Safeguarding (hereinafter ‘the Urgent Safeguarding List’) to the Representative List of the Intangible Cultural Heritage of Humanity (hereinafter ‘the Representative List’). Taking the opportunity to treat this request on an exceptional basis, the Committee decided to begin a process of reflection ‘in order to establish clear procedures for the removal of an element from a List and the transfer from one List to the other’ ([Decision 10.COM 19](http://www.unesco.org/culture/ich/en/Decisions/10.COM/19)). The Committee also considered that the Operational Directives for the implementation of the 2003 Convention, which already address the transfer and removal of elements, needed to be revised.
3. **Provisions in sub-chapter I.11 of the Operational Directives**
4. Paragraph 38 of the Operational Directives, which concerns the **transfer** mechanism, establishes that an element may not simultaneously be inscribed on the Urgent Safeguarding List and the Representative List. It further prescribes that a ‘State Party may request that an element be transferred from one List to the other’ and that ‘such a request must demonstrate that the element satisfies all of the criteria for the List to which the transfer is requested’. Finally, it is foreseen that ‘this request shall be submitted according to the established procedures and deadlines for nominations’.
5. Concerning the **removal** of an element from a List, the Operational Directives include two paragraphs: paragraph 39 states that ‘an element shall be removed from the [Urgent Safeguarding List] when the Committee determines, after assessment of the implementation of the safeguarding plan, that the element no longer satisfies one or more criteria for inscription on that list’; paragraph 40 foresees that ‘an element shall be removed from the [Representative List] by the Committee when it determines that it no longer satisfies one or more criteria for inscription on that list’.
6. **Issues in the current Operational Directives**
7. In their current state, the Operational Directives are somewhat ambiguous concerning the relationship between the transfer and removal of an element: either a removal is required before a transfer can take place, or a transfer has its own separate procedure.

***Option 1: removal and transfer as an interlinked procedure***

1. In the current version of the Operational Directives, transfer and removal are presented in one sub-chapter, the title of which speaks about a ‘transfer’ or a ‘removal’, implying that these are understood as separate procedures.
2. In its [Decision 10.COM 19](http://www.unesco.org/culture/ich/en/Decisions/10.COM/19), the Committee decided, pending the adoption of the relevant procedures by the General Assembly, that it would examine both the report on the status of the element ‘Xoan singing of Phú Thọ Province, Viet Nam’, which was inscribed on the Urgent Safeguarding List in 2011, and the new nomination for the same element to the Representative List concurrently. Following this, it would make a decision on the transfer. The Committee also decided that an examination of the nomination to the Representative List in the 2017 cycle was only to take place should it first decide, after examining the report, that the element could be removed from the Urgent Safeguarding List. In light of this, the Evaluation Body treated the documents according to a literal application of the Operational Directives, with the removal and transfer considered as an interlinked procedure.

***Option 2: removal and transfer as two separate processes***

1. Notwithstanding the procedure that was applied in this case, sub-chapter I.11 of the Operational Directives could be interpreted with the two processes of a transfer and a removal being considered as separate. Following this approach, paragraph 38 might then be applied on its own: a transfer could take place after the Committee has examined a nomination of an element that is already listed to the ‘other List’. If that nomination is considered as satisfying all of the criteria of the ‘other List’, the Committee could decide to transfer the element from the original to the other List without the need for the prior removal of the element from the original List. The transfer would implicitly include the removal of the element from the original List by virtue of the first sentence of paragraph 38, which states that an element may not simultaneously be inscribed on both Lists. Such a procedure would apply to transfers in either direction. In this scenario, an element would be transferred to a new List irrespective of its status in relation to the criteria of the original List.
2. In the same vein, paragraphs 39 (removal from the Urgent Safeguarding List) and 40 (removal from the Representative List) would then also be stand-alone procedures. In both cases, it is up to the Committee to determine whether an element no longer satisfies one or more criteria for inscription and eventually remove it from the List. Paragraph 39 specifies that removal from the Urgent Safeguarding List is possible only ‘after assessment of the implementation of the safeguarding plan’. This seems to privilege the relevance of one criterion (U.3) over the others, despite the reference to ‘one or more criteria for inscription’, which seems, on the other hand, to imply that all five criteria are to be treated equally. Paragraph 40 does not indicate any specific conditions for the removal of an element from the Representative List.
3. Another consideration should be made as to how the transfer and removal procedure may be initiated, as the current Operational Directives present asymmetrical situations. According to paragraph 38, it is a State Party that may request that an element be transferred from one List to the other. In the case of a removal, it is the Committee that decides, while paragraphs 39 and 40 are silent about the role of the State Party or States Parties concerned. If the Committee wishes to gain more clarity on this issue, it may take into account the provision given under paragraph 80 (e) of the Operational Directives, which encourages States Parties ‘to create a consultative body or a coordination mechanism to facilitate the participation of communities, groups and, where applicable, individuals, as well as experts, centre of expertise and research institutes, in particular in: […] (e) the removal of an element of intangible cultural heritage from one List or its transfer to the other, as referred to in paragraphs 38-40 of the present Operational Directives’.

***Application of the two options to the different types of transfer***

1. Based on these two different interpretations of the current Operational Directives and their respective implications for the future of the listing mechanisms, one logical way forward could be to treat the various types of transfers in a different way due to the distinct nature of the Lists and the Register of the Convention.
2. For the transfer of elements from the Urgent Safeguarding List to the Representative List or the Register of Good Safeguarding Practices, considering the transfer and removal as an interlinked procedure could be deemed more adequate (option 1). It would indeed be logical to first evaluate whether the element is still in need of urgent safeguarding and hence examine its possible removal from the Urgent Safeguarding List before considering its transfer to the Representative List, while ensuring the consent of the communities concerned for the transfer.
3. For the transfer of elements from the Representative List to the Urgent Safeguarding List, considering the transfer and removal as two separate processes could be deemed more adequate (option 2). It would indeed seem logical for the transfer of an element from the Representative List to the Urgent Safeguarding List not to require the evaluation of the conformity of a file with the criteria of the Representative List, but rather the assessment of the file against the criteria of the Urgent Safeguarding List, while ensuring the consent of the communities concerned for the transfer.
4. **Lessons learnt from the evaluation of the request submitted by Viet Nam for the transfer of ‘Xoan singing of Phú Thọ Province, Viet Nam’ from the Urgent Safeguarding List to the Representative List**
5. Based on the procedure identified by the Committee in its [Decision 10.COM 19](http://www.unesco.org/culture/ich/en/Decisions/10.COM/19) (see paragraph 6 of the present document), the first experience by the Evaluation Body of evaluating a transfer request has led to a number of observations and considerations that could feed the debate of the Committee on this issue. Details on the evaluation can be found in documents [ITH/17/12.COM/11](https://ich.unesco.org/doc/src/ITH-17-12.COM-11-EN.docx) and [ITH/17/12.COM/11.c](https://ich.unesco.org/doc/src/ITH-17-12.COM-11.c-EN.docx).
6. A criterion-by-criterion evaluation of the status of the element inscribed on the Urgent Safeguarding List against the criteria for inscription on the Urgent Safeguarding List, as described in paragraph 1 of the Operational Directives, was deemed inadequate by the Evaluation Body. More specifically, in their current formulation, the five criteria were not considered suitable to assess whether an element should remain on or be removed from the Urgent Safeguarding List. It became clear that the criteria had been formulated to examine the possible inscription of an element on the Urgent Safeguarding List and are therefore not adequately formulated for the purpose of examining whether an element could be removed from the List.
7. This first experience shows that a new set of criteria would need to be devised for the specific purpose of examining a request for the removal of an element from the Urgent Safeguarding List. The core of the evaluation should focus on the assessment of the implementation of the safeguarding plan included in the initial nomination file and on the consent of the communities for the removal of the element from the Urgent Safeguarding List. In addition, the evaluation should check that the nature of the element has not been distorted due to the implementation of the safeguarding plan and whether the inventory in which the element is included has been updated or is planned to be updated to reflect the evolving status of the element.
8. The sequence in which the criteria were considered was also deemed inadequate and the Evaluation Body therefore suggested that, in the future, it should: (i) first evaluate the implementation of the safeguarding plan and ensure that the nature of the element has not been distorted; (ii) then ensure that the communities who had consented to the inscription of the element concerned on the Urgent Safeguarding List also consent to its removal; and (iii) finally evaluate whether the threats identified still jeopardize the viability of the element, so as to ascertain whether the element is still in need of urgent safeguarding.
9. In this first experience of evaluating a transfer request, the evaluation of the status of an element inscribed on the Urgent Safeguarding List was based on the quadrennial report on the status of the element prepared and submitted by the State Party. However, this tool was considered inadequate, as the quadrennial report on the status of the element does not provide sufficient information to assess whether an element is still in need of urgent safeguarding. Based on this observation, a new form would be needed to allow submitting States to demonstrate the effectiveness of the implementation of the safeguarding plan described in the nomination file submitted at the time of inscription. This new form would also require submitting States to provide evidence of the consent of the same community that supported the initial inscription of the element to have the element removed from the Urgent Safeguarding List. Such a form would also require a new assessment of the status of the element after the implementation of the safeguarding plan, including an evaluation of the threats to its viability identified at the time of inscription.
10. Concerning the transfer of the element to the Representative List, the consent of the same community – or an enlarged community including the initial community – for the transfer to the Representative List was considered as critical, in light of the very different purposes of the two Lists established under the Convention.
11. **Considerations in a larger context**
12. Apart from the above-mentioned procedural issues and based on the first experience by the Evaluation Body of evaluating a transfer request, the Committee might also wish to discuss some related broader questions, such as reporting related to the removal procedure, the role of communities in the process and the broad context of the 2003 Convention and its mechanisms.

***Purposes of the Urgent Safeguarding List and Representative List***

1. The transfer request submitted by Viet Nam and examined by the Committee at the present session also raises the need for a deeper reflection about the nature of the listing system and the purposes of the Lists of the Convention. It would seem pertinent for the Committee to consider the broad context of the 2003 Convention and the full range of its mechanisms in order to address both ‘transfer’ and ‘removal’ in a way that is consistent and in line with its intent and purpose. Under the 2003 Convention, the Representative List and the Urgent Safeguarding List each have distinct and specific objectives, as set out under Articles 16 and 17 respectively, and as further elaborated in the Operational Directives. Moreover, as stipulated in paragraph 38 of the Operational Directives, an element may not be simultaneously inscribed on both Lists. The premature transfer or removal of an element might jeopardize the very purpose of the Urgent Safeguarding List and reinforce the already prominent tendency by States Parties to favour the Representative List. In this regard, the Committee might want to reflect on the prominence of the Representative List and whether it fulfils its intended purpose to raise awareness about intangible cultural heritage in general.
2. While the experience of the 2017 cycle gave some insights about the difficulties experienced in examining a request for the transfer of an element from the Urgent Safeguarding List to the Representative List within the framework of the current Operational Directives, the Committee might also want to consider the possibility of the transfer of an element from the Representative List to the Urgent Safeguarding List. In this regard, the Committee may wish to reflect on the appropriateness of the criteria of the Representative List, should it ever receive such transfer request, and it may consider whether such transfer would follow the same procedures as a transfer from the Urgent Safeguarding List to the Representative List.
3. Discussions about the transfer of elements from one List to another raise concerns regarding the risk of turning the listing mechanisms of the 2003 Convention into a sister model of the listing system established under the 1972 Convention concerning the Protection of the World Cultural and Natural Heritage. If a transfer to the Representative List constitutes an indicator of achievement for elements previously inscribed on the Urgent Safeguarding List, this could lead to a major change in the dynamic of both Lists. This trend should be carefully considered in light of the different purposes and raison d’être of the two Conventions and their respective lists.

***Link between the Urgent Safeguarding List and the Register of Good Safeguarding Practices***

1. The Committee might also give consideration to the possibility of making better use of the Register of Good Safeguarding Practices (Article 18 of the Convention). This Register is intended to promote those programmes, projects and activities for the safeguarding of the intangible cultural heritage that the Committee considers best reflect the principles and objectives of the 2003 Convention. In case of successful safeguarding efforts that have led to a situation wherein an element considered in need of urgent safeguarding is no longer deemed to be so, the removal of this element from the Urgent Safeguarding List followed by the selection of its successful safeguarding process for the Register of Good Safeguarding Practices could be considered as a logical outcome.

***Link between the Urgent Safeguarding List and International Assistance***

1. The evaluation of the transfer submitted by Viet Nam also highlighted the importance of the effective implementation of the safeguarding plan for elements inscribed on the Urgent Safeguarding List. This consideration should lead to reinforcing the existing combined mechanism allowing States Parties to nominate elements to the Urgent Safeguarding List and simultaneously request International Assistance to support the implementation of the proposed safeguarding plan (Form ICH-01bis). The use of this combined mechanism would facilitate and systematize the assessment of the status of an inscribed element after a certain period of time through the monitoring and reporting procedures embedded in the International Assistance mechanism.

***Periodic reporting***

1. Based on paragraph 39 of the Operational Directives, periodic reporting seems to play an important role in the procedure relating to the removal of an element from the Urgent Safeguarding List. For elements inscribed on the Urgent Safeguarding List, periodic reports are due every four years; these include information on the status of the element concerned. The form for reporting on such elements (Form ICH-11) was in fact revised so as to include new sections for updating the safeguarding plan proposed in the nomination file. However, the evaluation of the transfer request submitted by Viet Nam has shown that the periodic report – in its current form – is not an adequate tool for the purpose of examining a removal request and does not facilitate the work of the Committee when it is considering whether or not to remove an element from the Urgent Safeguarding List. This issue of the adequacy of the periodic reporting form should be considered in light of the recommendation from the Evaluation Body to create a new form dedicated to the transfer and removal procedures (see paragraph 17 of this document). In addition, it should be noted that the provision included in paragraph 39 of the Operational Directives on the prior assessment of the implementation of the safeguarding plan might also be taken into account in a different way, for instance through a monitoring mission or a separate reporting exercise.
2. For the removal of elements inscribed on the Representative List, paragraph 40 of the Operational Directives does not prescribe how the Committee should proceed. The question concerns how the Committee would determine that an element no longer satisfies one or more criteria for inscription on the Representative List. The periodic reports may be a source of information in this regard. However, the reports on elements inscribed on the Representative List are included in the national periodic reports on the implementation of the 2003 Convention at the national level, following a six-year periodicity based on the date of ratification by the State Party (or States Parties) concerned. The different obligations for periodic reporting concerning the two Lists might justify the different procedures found in paragraphs 39 and 40.

***Involvement of communities in the process***

1. Community consent should be a key consideration in the evaluation of requests for the transfer of an element from one mechanism to another, as communities are in the best position to evaluate the status of the elements. However, uncertainty remains as to how communities can participate in this process beyond the provision of consent letters. Possibilities for the active and more direct involvement of communities in the process should be further explored.
2. **Future steps**
3. The examination of the transfer request submitted by Viet Nam has highlighted a number of procedural and technical issues outlined above but is also raising more fundamental issues linked to the core of the Convention that may instigate an in-depth reflection on the future of the listing system.
4. As already acknowledged in [Decision 10.COM 19](http://www.unesco.org/culture/ich/en/Decisions/10.COM/19), should the Committee wish to examine other removal and transfer requests in the future, a revision of the Operational Directives is indispensable to clarify a number of issues mentioned in Sections C, D and E of the present document, including the definition of the body initiating the procedure and the link between removal and transfer. The issue of the ceiling for the number of files treated by the Committee also merits reflection, as the possible increase in the number of requests the Committee will receive every year and whether or not those requests should be considered within the ceiling of files (currently fifty files per cycle) could have a considerable impact on the workload of the Secretariat, the Evaluation Body and the Committee itself.
5. From an operational point of view, new forms would also need to be prepared for each of the removal and transfer possibilities. While the creation of clear and more established procedures, new criteria and forms and the revision of the Operational Directives could indeed allow for the transfer of elements and hence solve the issue of transfer requests in the short term, the Committee may wish to keep in mind that the transfer of elements from one List to another is more than a mere technical issue and that it could have far-ranging ramifications for the Convention and the core purposes of its mechanisms in the future.
6. In light of the above observations, it appears that it would be premature for the Committee to examine other potential removal and transfer requests before clear procedures and methodologies have been established and included in the Operational Directives and before operational tools for the implementation of these procedures have been created.
7. The open-ended intergovernmental working group, which the Committee initially wished to be held before its twelfth session in 2017 in order to discuss draft operational directives on the transfer and removal procedures (paragraph 10 of [Decision 10.COM 19](http://www.unesco.org/culture/ich/en/Decisions/10.COM/19)), could not be convened, as no voluntary supplementary contribution to the Intangible Cultural Heritage Fund has yet been received for this purpose. This open-ended intergovernmental working group would provide a fundamental contribution to the debate on this topic, but would also constitute an important opportunity to reflect on larger issues described in Section E of the present document.
8. The Committee may wish to adopt the following decision:

DRAFT DECISION 12.COM 14

The Committee,

1. Having examined document ITH/17/12.COM/14,
2. Recalling paragraphs 38, 39, 40 and 80 (e) of the Operational Directives,
3. Further recalling Decisions [10.COM 19](https://ich.unesco.org/en/Decisions/10.COM/19), 12.COM 11, 12.COM 11.c and document [ITH/17/12.COM/11](https://ich.unesco.org/doc/src/ITH-17-12.COM-11-EN.docx),
4. Takes note of the observations and recommendations from the first experience of evaluating a request for the transfer of an element;
5. Recognizes that a revision of the Operational Directives is necessary in order to establish clear and specific procedures, criteria and forms for the removal of an element from a List and the transfer from one List to the other;
6. Acknowledges, on the basis of its debate at the twelfth session, that the issue of the transfer of an element from one List to the other and the removal of an element from a List raises fundamental questions linked to the intent and purpose of the Convention and its listing mechanisms;
7. Invites States Parties to refrain from submitting requests for the transfer of an element from one List to the other and the removal of an element from a List until clear procedures have been created and the Operational Directives have subsequently been revised;
8. Decides to convene an open-ended intergovernmental working group, to be held before the fourteenth session of the Committee in 2019, to reflect *inter alia* on the procedures for the removal of an element from a List and the transfer from one List to the other, on the nature and purposes of the Lists and the Register established under the Convention and on the relevance of the various criteria for each of these mechanisms; this meeting would be organized on the condition that voluntary supplementary contributions to the Intangible Cultural Heritage Fund are received in due course, and in any case not later than January 2019, in order to cover all of the costs of organizing the meeting and the costs of the participation of representatives of developing countries that are Parties to the Convention, whether or not they are members of the Committee, but only for persons who are experts in intangible cultural heritage.