

Does Intangible Cultural Heritage Law Resolve Everything in China?

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***Abstract.** In order to protect intangible cultural heritage (ICH), China enacted the Intangible Cultural Heritage Law of the People's Republic of China on 25th February 2011. This law is the first one that comprehensively covers various sectors of rules related to ICH and it emphasizes an important role of 'protection'. However, although this law is regarded as a landmark for the protection of ICH, most contents of this law mainly refer to public law whereas little content refers to private law. As this law has a strong taste of administration law, it is no helpful for resolving the issues in the protection of private legal rights.*

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1 Introduction

China has abundant intangible cultural heritage (ICH) resources with historical, social, economic and political values. However, ICH resources are disappearing or have disappeared. Even traditional culture is disappearing quickly and is being destroyed by modern lifestyles.

ICH resources have been abused or exploited randomly due to a lack of comprehensive and systematic law in China. A lack of well-defined guidelines and protection laws had led to a steady and prolonged flight of the nation's cultural treasures overseas. In order to strengthen the protection and preservation of ICH, China enacted on 25th February 2011, the Intangible Cultural Heritage Law of the People's Republic of China¹ regarded as a landmark for the protection of ICH. The law entered into force on June 1, 2011. This law is the first one that comprehensively covers various sectors of rules related to ICH, such as investigating ICH in China, systems for representative ICH items and its representative inheritor, transmission and inheritance, and reasonable exploitation based on effective protection. An important role of 'protection' is mentioned in the new law. Compared with previous regulations or opinions, the new law is advanced, taking China from a simple system of identification and management towards a more comprehensive and secure system for the safeguarding and sustainable development of such property.

However, as most rules in the new law are intended to regulate governmental behaviour, the new law actually only provides public law protection to some extent.

2 Past Regulations Related to ICH

The Chinese Government has always been concerned about protecting the country's cultural heritage. Quite a number of policies and measures have been taken to protect ICH, but only to a limited extent prior to the newly enacted Intangible Cultural Heritage Law of the People's Republic of China. As early as 1998, authorities organized nationwide investigations into folk art and ethnic customs, laying an important foundation for the law. China started to collect information on traditional culture in the 1950s. In 2006, 518 items were approved as the first group of national masterpieces of intangible cultural heritage. In 2004, China was enlisted into the UN

¹ *Intangible Cultural Heritage Law of the People's Republic of China 2011.* This law came into force on 1st June 2011.

Intangible Culture Heritage Protection Pact. Acting with a strong sense of obligation, China began speeding up the legislative process.

The constitution of China, *Law on Regional National Autonomy*, sports law and education laws only mention the principle of protection rather than details of the protective measures. The *Regulations for the Protection of the Traditional Arts and Handicrafts* was the first legal rule directly related to ICH, but the regulations only aimed at parts of ICH. Since 2004, in order to save and protect national ICH, China announced a series of administrative regulations.² It can be said that these regulations play a very important role in constructing this new law. However, these regulations have many deficiencies in practice. They are either too principled in some articles or lack regulations in some aspects. More importantly, these regulations only provide rules for certain detailed aspects, resulting in them not playing a role like systematic and comprehensive law. In addition, some regions announced regional rules related to ICH.³ However, the regional rules could only be enforced in limited areas. Furthermore, different regional rules provided different protection criteria and measures, resulting in unbalanced protection for the same ICH in different areas. For example, Southwest China's Yunnan Province in 2010 became the first to enact a local regulation on preserving folk and traditional culture.⁴ Therefore, it is urgent and necessary for China to announce a law that can both systematically and comprehensively provide protection measures and offer a legal effect that covers all of mainland China.

3. Improvements

The Intangible Cultural Heritage Law of the People's Republic of China is expected to ensure the better preservation of the country's cultural legacies. The primary target of China's heritage protection efforts used to be tangible items including all artefacts and historic relics. The enactment of this new law means that for the first time Chinese traditional cultural practices now have legal protection. The new law will encourage the collection and sorting of different areas of China's cultural heritage, the provision of funds for people involved in protecting cultural treasures and the protection of the country's intellectual property relating to its cultural heritage. The law is responsible for the traditional cultural expressions and practices of China's various ethnic groups, which have been handed down through generations. It specifically covers traditional oral literature, performing arts, craftsmanship, medicine and folk customs. Under the legal framework, the country will in particular assist protection efforts in ethnic minority and remote areas.

The new law is a vast improvement.

Firstly, the definition in the new law is more in line with that in the *Convention for the Safeguarding of Intangible Cultural Heritages*.⁵ Article 2 defines that the mentioned intangible cultural heritages refer to various traditional cultural expressions that are transmitted from generation to generation and that are recognised as part

² *Opinions on Strengthening the Work for the Administration on the Protection of World Cultural Heritages of China 2004; Opinions of the General Office of the State Council on Strengthening the Protection of Chinese Intangible Cultural Heritages 2005; Interim Measures for Declaration and Appraisal of National Masterpieces of Intangible Cultural Heritages 2005; Administrative Measures for the Protection of World Culture Heritages 2006; Provisional Measures on Management of Special Funds for National Intangible Cultural Heritages 2006; Notice on Improving the Protection of Intangible Cultural Heritages of Time-honored Brands 2007; Management Measures on Marks of Chinese Intangible Cultural Heritages 2007; Provisional Measures on the Accreditation and the Management of Representative Inheritors of National Intangible Cultural Heritage Projects 2008.* Law Info China <<http://eproxy.lib.tsinghua.edu.cn/rewriter/CHINALAWINFO>> on 2nd October 2010.

³ *Regulations on the Protection of National Folk Traditional Culture of Yunnan Province 2000; Regulations on the Protection of National Folk Culture of Guizhou Province 2003; Regulations on the Protection of the National Folk Culture of Fujian Province 2005; Regulations on the Protection of the National Folk Culture of Zhuang Nationality Autonomous Region of Guangxi 2006; Regulations on the Protection of the Intangible Cultural Heritage of Jiangsu Province 2006; Regulations on the Protection of the Intangible Cultural Heritage of Hui Nationality Autonomous Region of Ningxia 2006; Regulations on the Protection of the Intangible Cultural Heritage of Zhejiang Province 2007; the Regulations on the Protection of the Intangible Cultural Heritage of Uigur Nationality Autonomous Region of Xinjiang 2008.* The Intangible Cultural Heritage in China <http://www.ihchina.cn/inc/faguiwenjian.jsp?submenu=13_01_03> on 16th September 2010.

⁴ *Supra* at note 1

⁵ *Convention for the Safeguarding of the Intangible Cultural Heritage*, opened for signature 17th October 2003, Art 2(1) (entered into force 20th April 2006).

of cultural heritage, and objects and cultural spaces associated with traditional cultural expressions.⁶ The definition of the new law is more encompassing than before, covering more things represented within Chinese ICH, such as traditional medicine, traditional calendar, traditional sports and traditional carnivals.

Secondly, a two-level protection system is clearly defined in the new law. China has established a two-level inventory system for representative ICH items at both national and regional levels.⁷ The two-level inventory system plays an important role in protecting work. According to the different levels, the governments can better allocate resources, plan different protective measures and provide suitable protection to the variety of ICH. The appraisal process of representative ICH items reflects both expert opinion and public suggestions.⁸ Meanwhile, the two-level protection plan system was established with its function being to place ICH into specific plans based on different level of representative ICH items accredited by the inventory system. A two-level protection system does not only result in a library for a wide range of representative ICH items being built but is also effective for governments to integrate resources and protect ICH according to its different levels.

Thirdly, the most advanced progress on representative inheritors⁹ is to rule the inheritor's obligations. In Article 31, representative inheritors are requested to cooperate with the investigation of intangible cultural heritage made by the department in charge of cultural affairs and other relevant administrative authorities,¹⁰ which can help governments save more governmental resources, understand the situation of local ICH more accurately, collect more real materials and conduct other necessary preparation work; the appropriate preservation of relevant objects and materials¹¹ could guarantee ICH being preserved safely and completely; holding succession activities and cultivating talent¹² can guarantee continual succession; participating in the non-profit publicity of intangible cultural heritage¹³ directly embodies the original purpose of establish the representative inheritors system.

Finally, the new law always mentions 'protection', which can be reflected in the following sections: 1) the investigation of ICH in China by both foreign organisations and individuals is strongly restricted,¹⁴ with the

⁶ *Intangible Cultural Heritage Law of the People's Republic of China 2011*, Art 2.

⁷ *Ibid*, Art 18: the State Council shall establish lists of national-level representative intangible cultural heritage which embodies the Chinese Nation's extraordinary traditional culture and reflects China's history, literature, arts and science; and shall protect intangible cultural heritage. The People's Governments of provincial or autonomous regions or municipalities shall establish lists of local representative intangible cultural heritage which embodies the Chinese nation's extraordinary traditional culture and reflects its history, literature, arts and science in their administrative regions; and shall protect intangible cultural heritage.

⁸ *Ibid*, Art 20: any citizen, legal person, or other organisations may file a suggestion to the department in charge of the cultural affairs of the State Council or to the People's Government of the province, municipality, or autonomous region if he or she believes that a kind of intangible cultural heritage represents the excellent traditional culture of the Chinese Nation and has extraordinary value in history, literature, arts and science. Art 22: the State Council department in charge of cultural affairs should establish an expert appraisal team and expert appraisal committee for appraisal work.

⁹ Inheritors can be classified into three types: (a) the inheritors who are members of the indigenous communities or nations with folklore. They create, originate, develop, and practice folklore in their communities or nations or groups. This type of inheritor is the most basic and common inheritor. From this perspective, these inheritors are both the holders and the inheritors. They also have ownership of the folklore; (b) the inheritors who are not the members of the indigenous communities or nations with folklore. They transmit and develop the folklore through their performances, speaking or re-creation. This type of inheritor cannot be regarded as the holder because they could only have ownership related to their performances and re-creation of the folklore, rather than ownership of the folklore; (c) the government organs and other social organisations or social groups who save folklore to maintain the development of folklore by the identity of the inheritors. YuYe Huang, *Legal Protection of Folklore* (2007) 179. 'Representative inheritors' means those who know well about the knowledge or skills of state intangible cultural heritages item, who are acknowledged as representative, who have influence in a particular region or area and who positively promote inheritance activities and cultivate talent. *Provisional Measures on the Accreditation and the Management of Representative Inheritors of National Intangible Cultural Heritage Projects 2008*, Art 4.

¹⁰ *Intangible Cultural Heritage Law of the People's Republic of China 2011*, Art 31 (3).

¹¹ *Ibid*, Art 31 (2).

¹² *Ibid*, Art 31 (1).

¹³ *Ibid*, Art 31 (4).

¹⁴ *Ibid*, Art 15: overseas organisations or individuals shall be approved by the departments in charge of the cultural affairs of the People's Government of the province, autonomous region, or municipality when investigating intangible cultural heritages in China; if the investigations are conducted in two or more provinces or autonomous regions or municipal cities, their investigations shall be approved by the department in charge of the cultural affairs of the State Council; after the investigation is finished...shall submit the

purpose of completely supervising the investigation activities of overseas individuals and organisations in China from the beginning to the end to avoid their illegal actions during investigations, such as stealing cultural relics or opening secret traditional skills abroad; 2) encouraging the public to participate in protection¹⁵ to help build a public protection consciousness towards ICH and achieve the goal of the protection; 3) the ICH fund is involved in the governmental budget¹⁶ to safeguard stable financial supports for ICH protection work; 4) policies on reasonable exploitation based on effective protection¹⁷ to balance protection and exploitation to safeguard the protection and sustainable development of ICH.

4. A Special Legal System for ICH?

Most of the articles in new law are intended to regulate the governments' responsibilities but contain few words concerning relevant private civil and commercial relationships arising from ICH.

4.1 *Strong Taste of Administration Law*

Although the new law contains rules encouraging the public to attend ICH work, its role is limited in the area of education, research and publicity related to ICH.¹⁸ The new law promotes local governments into the dominant seat at every stage of ICH protection work and more strongly emphasises governmental responsibilities.

The rules in the new law mainly aim to regulate administrative behaviours by government official and departments at all levels. Firstly, the new law rules that government bodies at or above county level are the main organiser for ICH investigation, records and setting up files, the main supervisor responsible for overseas investigation of ICH in China and relevant exploitation, the main executor for setting up a protection plan for ICH and creating ICH publicity for the public, and the only organiser and main supervisor responsible for the appraisal of representative ICH items and their representative inheritors. On the one hand, the above rules in the new law establish a leading role for government bodies during in the whole protection of the ICH; on the other hand, however, the above rules actually also require government bodies to have compulsory legal responsibilities for the protection. Secondly, the rules related to legal liabilities are mainly administrative punishments. Article 38 and article 39 mention the administrative punishments for any staff from relevant government organs or authorities who violate the law.¹⁹ For overseas organisations or individuals who violate the law, the department

investigation report, duplicates of the materials and pictures of objects obtained in the investigations...overseas organisations shall cooperate with Chinese ICH academic and research institutions when investigating in China.

¹⁵ Ibid, Art 8: The People's Governments at county level or above shall promote the dissemination of the protection of intangible cultural heritage and improve the social protective consciousness of intangible cultural heritage; Art 33: the State encourages scientific technology research related to intangible cultural heritage and research on preservation methods and protection approaches related to intangible cultural heritage; encourages activities such as records, collection and publications related to intangible cultural heritage; Art 34: the schools shall provide education referring to intangible cultural heritage according to the regulation by the department in charge of educational affairs of the State Council; Art 35: institutions related to public culture such as libraries, cultural centres, museums and science museums; ICH academic and research institutions; protection institutions; arts performance groups with governmental funds and business performances organisations; etc. shall collect and research academic communications referring to intangible cultural heritage, and conduct publicity and exhibitions related to intangible cultural heritage projects, according to their work or services; Art36: the State encourages and supports citizens, legal persons and other organisations to build exhibition places and succession places for intangible cultural heritage and do the relevant activities based on law.

¹⁶ Ibid, Art 6: The People's Governments at or above county level shall include expenses for the protection and the preservation of intangible cultural heritages into the governmental budget. The State shall support the protection of intangible cultural heritage in minority areas, remote areas and poor areas.

¹⁷ Ibid, Art 37: the State encourages and supports to play special advantages of intangible cultural heritage resources, and advocates reasonable exploitation of the representative project of intangible cultural heritage and reasonable exploitation of cultural products and cultural services with regional features, nationality features and potential markets, under the premise of effective protection. Anyone who exploits representative intangible cultural heritage items shall support representative inheritors to organize succession activities and protect objects and places being the components of this intangible cultural heritage project. The People's Government at county level or above shall support institutions that reasonably exploit representative intangible cultural heritage items. These institutions shall enjoy tax preference according to the law.

¹⁸ Ibid, Art 20, 33, 34, 35, 36.

¹⁹ Ibid, Art 38: where any staff of departments in charge of cultural affairs or other authorities who engage in the preservation and the protection of intangible cultural heritage neglects his duties, abuses his powers, or practices fraud for personal gain, shall be

of cultural affairs in government bodies are responsible for giving relevant administrative warnings or punishments.²⁰ Moreover, if anyone's violation constitutes a crime, the new law rules that they will be subject to criminal liabilities.²¹ The above rules illustrate that the new law does not only requires that government bodies have the main role managing and supervising the protection of the ICH all the time but also set up relevant liabilities for those who violate the law from an administrative law perspective. Therefore, there is a strong suggestion that the new law is more like an administrative law specifically for the protection of ICH.

4.2 Little Help for Private Rights

The entire body of the new law regulates the government and public institutions' responsibilities. Only the section concerning supplementary provisions mentions a cohesive article on private law. Article 44 rules that relevant laws and administrative regulations shall apply to the exploitation of intangible cultural heritage if referring to intellectual property.²² Apart from this, no article mentions the issue of resolving legal relationship in private law. However, an administrative law can only protect its subject from a public law perspective, but it cannot assist private legal rights.

Although Article 44 connects the new law with intellectual property law, it does not actually have a practical function in private legal protection now. The reason for this is that there are actually few rules related to ICH in the current intellectual property system in China. More importantly, there are natural conflicts between the design of the current intellectual property system and the character of ICH.

The current Copyright Law²³ announced in 2010 only provides legal protection for specific authors whose work is a derivative work of ICH, but can do nothing for the groups who hold ICH. It still has only one rule about ICH, which is '*Regulations for the protection of copyright in expressions of folklore shall be established separately by the State Council*'.²⁴ Actually, it says nothing about the issue of collective rights. However, the issue of collective rights is the most important part when constructing a comprehensive legal protection system for legal relationship of private law. The ICH refers to:

various traditional cultural expressions transmitted from generation to generation and being recognized as part of cultural heritage, and objects and cultural spaces associated with traditional cultural expressions, which include: traditional oral literature and relevant languages; traditional arts, calligraphy, music, dances, drama, Quyi and acrobatics; traditional technology, medicines and calendars; traditional courtesy, festivals and folk customs; traditional sports and carnivals; other intangible cultural heritage.²⁵

Due to ICH being transmitted from generation to generation, it has a special character: its birth is not only the result of one or two persons' intellectual labour, but the result of a group of people's creation. The above group's creation never stopped, but continues. More and more people transmit the ICH and contribute

imposed an administrative sanction in accordance with the law; Art 39: where any staff from the departments in charge of cultural affairs or other authorities who engage in the preservation and the protection of intangible cultural heritage infringes the customs of the investigated subjects and results in serious consequences, they will be imposed with an administrative sanction in accordance with the law.

²⁰ Ibid, Art 41: where overseas organisations violate article 15 of the law, the departments in charge of cultural affairs shall order them to correct, warn and confiscated illegal earnings, objects and materials obtained during the investigations; in serious cases, they shall be imposed with a penalty of not less than 100,000 yuan but not more than 500,000 yuan. If overseas individuals violate article 15 of this law, the departments in charge of cultural affairs shall order them to correct them, warn them and confiscate illegal earnings, objects and materials obtained during the investigations; in serious cases, they shall be imposed with a penalty of not less than 10,000 yuan but not more than 50,000 yuan.

²¹ Ibid, Art 42.

²² Ibid, Art 44.

²³ Copyright Law of the People's Republic of China 2010.

²⁴ Ibid, Art 6.

²⁵ Intangible Cultural Heritage Law of the People's Republic of China 2011, Art 2.

intellectual labour in the transmission. The content of ICH becomes richer and more complicated due to a number of people's continual creative and intellectual contributions. Furthermore, ICH has been normally transmitted for a very long time, some of which may have been transmitted for hundreds of years. Hence, it is unfair to accredit one or two persons as the authors, and more importantly it is impossible to know all the authors' names due to the time length. Due to this, it is fairer to decide that the author of certain ICH is a group, who hold and transmit certain ICH from generation to generation. The members of this group can be called the holders. Therefore, the rights of the holders belong to a kind of collective rights. All holders in this group are the creators of certain ICH, with any of them able to enjoy legal rights from ICH, but none of them exclusively enjoying those rights. The collective rights belong to all members of this group. The copyright law only protects work with specific authors. Only a person with authorship of a work can claim his or her copyright once an infringement occurs. In a case the creators of ICH are normally a group in which some creators are known but some may be not known, it is not possible to achieve the standard of specific authors in copyright law. Thus, the first question is that whether a group can be the right holder of copyright law. Yet, the current copyright law does not have the rules related to this aspect.

Besides, current Copyright Law protects work for certain duration, normally during the lifetime of the author and fifty years after their death. However, the creation of ICH is a continuing process, which is never stopped. Even if the old creators died, more other members of this group learn and inherit the traditional skill or knowledge related to ICH. In the inheritance process, these members may contribute their intellectual labour so as to develop ICH. In other words, there is always new creation in certain ICH. Hence, it is impossible to judge authors' lifetimes and when they died. In other words, authors of ICH are always 'alive'. Therefore, the rules of current Copyright Law are not applicable for ICH.

In addition, the Copyright Law cannot protect recorders' rights. The recorders of ICH are those who honestly record knowledge, skill and development related to ICH. Some of them may conduct some intellectual labour when recording.²⁶ Nevertheless, their intellectual labour does not achieve the lowest threshold of what the Copyright Law requires: originality. However, their contributions should be respected. They also should have some rights but the Copyright Law offers nothing in this regard.

Definitely, the trademark law need not have a requirement that the registrant should be specific person. This is because the collective mark and certification mark in the trademark law requires that the registrant should be an organisation, association or other institution. The issue, however, is whether the qualification of this organisation, association or other institution represents a certain group as a whole.

Because the characteristics of ICH do not match the rules set up in the intellectual property system, it is difficult to use this system to achieve the purpose of ICH protection. Unfortunately, the new law also does not provide detailed rules to resolve this gap.

Actually, the new law provides detailed rules about representative inheritors, who are the most relevant stakeholders with regards to ICH protection besides government bodies. It mentions the representative inheritor's obligations, which are the transmission and cultivation of talent, preservation of objects and documents related to ICH, cooperation with ICH investigations made by the department of cultural affairs and other relevant institutions, and the attendance of public publicity related to ICH.²⁷ However, all of the above are not private civil obligations. Although the new law has rules that require government bodies at or above county level to support the representative inheritor in both financial and other resources, it says nothing about the representative inheritor's private rights being civil and commercial. Fortunately, nearly all representative inheritors can protect their private legal rights through intellectual property law. In fact, those accredited representative inheritors normally do not only honestly transmit ICH, but also contribute intellectual labour when transmission. Therefore, they create work that derivate from ICH. Due to achieving the standard of originality

²⁶ For example, some folk songs may have different versions or lyrics or lyrical omissions due to oral transmission. The recorders shall unify the different versions of the songs or lyrics, or even add some lyrics to omitted parts when recording and collecting. They provide intellectual labour in their behaviour when unifying different versions of songs and lyrics, and through adding lyrics.

²⁷ Ibid, Art 31.

stated in Copyright Law, these ICH works can be regarded as general work that is protected by Copyright Law. It is no problem for the representative inheritors to claim their relevant rights based on law when encountering infringements.

However, the representative inheritor mentioned here only aims at individual inheritors rather than group inheritance. As a matter of fact, there are many ICHs transmitted by local groups. These groups may be family villages as a whole, all residents in a certain area or certain minority or other groups. Some ICHs can accredit certain people as representative inheritors in the above groups. For example, a traditional handmade skill may be held by a group. All members of this group hold this skill, but some members' skill may be more masterful so that other members can learn from them. These members with masterful skills can be accredited as the representative inheritors. However, some ICHs may depend on a group's power when making or performing. A typical example is some folk dances that can only be performed by multiple persons, rather than one or two persons alone.²⁸ Generally, these kinds of dances are transmitted in villages in one area or in a family village. For the above ICH expressions, it seems unreasonable to accredit certain people as representative inheritors. Nevertheless, the new law intentionally ignores the phenomenon of group inheritance.

In addition, the new law also does not mention other inheritors being closely related to ICH transmission, such as recorders. It also has no rules referring to third party utilisation.

A comprehensive special law for ICH should have rules regulating the behaviour of government bodies and other public institutions from a public law perspective, but should also rule on the rights and obligations of all beneficiaries and other users. Nevertheless, the new law only resolves the issue when there is no comprehensive and unified law to protect ICH and does not pay attention to resolve the deficiencies in the intellectual property system to protect ICH.

Furthermore, the definition of ICH in the new law describes six ICH categories,²⁹ which actually embraces traditional knowledge (TK) and traditional cultural expressions (TCEs). Yet, the new law uses a legal term 'ICH' rather than using the terms TK and TCEs, for the purpose of covering all traditional cultural expressions, related objects and cultural spaces. The term ICH used in the new law is referenced by the *Convention for the Safeguarding of the Intangible Cultural Heritage* constructed by the United Nations Educational, Scientific and Cultural Organisation (UNESCO). In fact, however, the use of the very wide ranging term, ICH, is not applicable when setting up detailed rules later concerning private law areas to specifically protect certain ICH categories. After all, the legislation for TK is not completely the same as that of TCEs. Furthermore, most international documents and drafts made by WIPO also do not use the term ICH but adapt a more specific classification such as TK and TCEs.³⁰ Therefore, if the new law tries to add more content related to private law in the future, the term ICH used in the new law may be not particularly suitable anymore. It seems that a better approach would be to construct special laws for TK and TCEs from the point of view of private law. The model for special laws is similar to the current intellectual property system. The special laws should have rules that are cohesive with the new law. In this case, the new law and special laws would construct a comprehensive protection system for ICH in relation to both public law and private law protection. Therefore, the new law only resolves part of the public law protection issues and is far away from achieving comprehensive protection of ICH.

²⁸ For example, the Tongliang dragon dance in Chongqing City in China is generally a group dance. It can be divided into several styles, with most of them requiring being performed by more than 10 people. Thus, it is not possible for one or two persons to perform the dance alone.

²⁹ Ibid, Art 2.

³⁰ The WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC) is undertaking text-based negotiations for the objective of reaching agreement on text about an international legal instrument (or instruments) that will ensure the effective protection of traditional knowledge (TK), traditional cultural expressions (TCEs)/folklore and genetic resources. World Intellectual Property Organisation <<http://www.wipo.int/tk/en/igc/>>.

5. Conclusion

The Intangible Cultural Heritage Law is a milestone in China's protection of its intangible cultural heritage. The law is intended to better preserve the nations' traditions of historic, literary, artistic or scientific value. The intangible cultural heritage draft law as a whole focuses on creating government mechanisms for cataloguing, protecting, and promoting intangible cultural heritage. Concerning the issue of the protection of ICH, it includes significant content referring to law, economics, society and even politics. Despite some potentially beneficial aspects of the law, special protection system for ICH should not only embrace administrative rules to safeguard against government behaviour, but should also include relevant civil and commercial legal rules as a safeguard for rights holders. Moreover, the new law should have more specific rules for the purpose of resolving gaps, such as natural conflicts. It is regrettable that there is no rule in relation to this in the new law and that there is only a special administrative law for ICH.

With one of the world's few continuous civilization histories, China has a wealth of intangible cultural heritage. Laws and regulations must be enacted to safeguard China's cultural security. The Intangible Cultural Heritage Law is a timely remedy. The legislation is expected to ensure the better preservation of the country's cultural legacies. The enactment of the intangible cultural heritage law will help raise awareness among the local governments and individuals of how to better preserve their precious cultural legacies.

However, there are still problems and loopholes. The announcement of the new law is just an initial step in the right direction and more than likely the easiest one for now.

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