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# **Study on the Implementation of the 2005 UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions for the European Parliament**

## **Introduction**

The Geneva based law firm Germann Avocats and its interdisciplinary research team are completing a study for the European Parliament's Committee on Culture and Education (CULT). The overall objective of the study is to provide a summary of the state of implementation of the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions (2005), in particular in fields where the European Community would be expected to provide leadership or coordination.

This study shall give assistance and long-term guidance to the EU on implementing the UNESCO Convention by carrying out a detailed analysis of the obligations set out by this international treaty. In particular, we shall gather information on the various practices in implementing the UNESCO Convention, from a legal and practical viewpoint, and identify challenges and measures to help achieve the objectives of this instrument.

For these purposes, we drafted three sets of questionnaires. The first questionnaire shall allow us to gather legal data. The second questionnaire shall inform us about the implementation of the UNESCO Convention from the perspective of representatives of civil society. The third questionnaire shall cover the situation from the angle of a selection of regional organizations (African Union, Association of Caribbean States, Association of Southeast Asian States, Commonwealth, Council of Europe, European Union, International Organization of the Francophonie, League of Arab States, and Organization of American States).

## **Expected results from the surveys**

We expect to collect valuable information on public measures that are specifically undertaken to protect and promote cultural diversity on the national level in different jurisdictions. We will obtain rich data, which will allow us to compare regulatory practice in varying economic and political situations. We shall use and compare this information in our subsequent analysis that will eventually provide the basis of our conclusions and recommendations to the European Parliament.

## **Civil society survey**

This questionnaire addresses the implementation of the UNESCO Convention from the perspective of civil society. For this purpose, we invite 14 National Coalitions for Cultural Diversity to reply to our survey. The sample of Coalitions shall reflect

geographical, economic and political diversity. The objective of this questionnaire is to clarify the perception and evaluation by representatives of civil society of the achievements of the UNESCO Convention in their respective countries. The main goal of this survey, beyond an inventory of the current factual situation, shall reside in understanding the various national civil societies' expectations and their demands vis-à-vis regulators.

We will attach the replies to this questionnaire to our study, which will be available over the internet.

For the text of the Convention and other useful documents, please consult:

**[www.unesco.org/culture/en/diversity/convention](http://www.unesco.org/culture/en/diversity/convention)**

## CIVIL SOCIETY QUESTIONNAIRE

### **A General questions**

1 Do you need **assistance** in providing the information requested in this questionnaire?

( ) Yes (X) No

If "Yes", please send a request for assistance to info@germann-avocats.com

2 When did the UNESCO Convention enter into force in your country?

PLEASE INSERT YOUR ANSWER HERE: November 7<sup>th</sup> 2006

3 **Representativity and independence** of your umbrella organization:

3.1 What approximate percentage of all non-governmental individuals and/or organizations professionally engaged in cultural activities, including cultural policies, does your umbrella organization represent in your country?

( X ) Less than 25%

( ) Between 25% and 50%

( ) Between 50% and 75%

( ) More than 75%

3.2 Does your umbrella organization represent a large part of civil society of your country regarding cultural diversity concerns?

( ) Yes (X ) No

Even we have members in Senegal, INCD-Africa is an African organization including many countries.

3.3 Are there other organizations than yours in your country that are not members of your umbrella organization and that represent a large part of civil society in your country regarding cultural diversity concerns?

(X ) Yes ( ) No

If "Yes", please list these organizations:

PLEASE INSERT YOUR ANSWER HERE: Synergie COV, Association Nationale des Musiciens du Sénégal, Association Nationale des Ecrivains du Sénégal, Association

des Journalistes Culturels

3.4 How do you assess the independence of your umbrella organization and its non-governmental members engaged in cultural activities, including cultural policies, vis-à-vis the government of your country?

Full independence

Substantial independence

Fair independence

Little independence

No independence

No comment

3.5 Does the government of your country influence the activities of your umbrella organization and its non-governmental members related to their cultural policies?

Yes  No

If "Yes", please describe this influence:

PLEASE INSERT YOUR ANSWER HERE:

If "No", please indicate how these activities are protected from governmental influence.

PLEASE INSERT YOUR ANSWER HERE: We have our intern governance and have the right to do all our activities without the influence of the government. We don't get any fund from the government and we are try to realize our activities without government's money.

3.6 Do you qualify your umbrella organization as a "non-governmental organization" in your country?

Yes  No

3.7 How do you assess the independence of your umbrella organization and its members engaged in cultural activities vis-à-vis private corporations that have a dominant position in the market of cultural goods and services of your country?

Full independence

Substantial independence

Fair independence

Little independence

No independence

No comment

3.8 Do private corporations that have a dominant position in the market of cultural goods and services of your country influence the activities of your umbrella organization and/or its members related to their cultural policies?

Yes  No

If "Yes", please describe this influence:

PLEASE INSERT YOUR ANSWER HERE:

If "No", please indicate how these activities are protected from such influence.

PLEASE INSERT YOUR ANSWER HERE: Cultural environment in Senegal is free and the informal sector is very big inside the cultural and art sector.

3.9 Are there organizations other than yours that deal with cultural diversity concerns and that represent private corporations having a dominant position in the market of cultural goods and services of your country?

Yes  No

If "Yes", please list these organizations:

PLEASE INSERT YOUR ANSWER HERE:

3.10 Did your organization or another organization recently assess the situation of cultural diversity in your country?

Yes  No

If "Yes", please indicate the author, title, scope, place and date of this assessment and specify where written documentation on this assessment, if any, can be consulted:

**PLEASE INSERT YOUR ANSWER HERE: INCD CALLS FOR A RENEWED COMMITMENT TO THE GLOBAL CULTURAL DIVERSITY MOVEMENT AND A NEW FOCUS FOR THE WORK**

There are many challenges in our world: economic inequality and poverty; environmental degradation; cultural misunderstandings that lead to conflict; threats to human rights. As the world emerges from an economic recession that has battered economies of the north and south, rich and poor, there is a leadership vacuum in the global arts and cultural community. The voice of arts and culture is largely absent from the significant discussions of our times.

But there is also a tremendous opportunity for our community to contribute to a new global dialogue and to make our world a better and safer place.

INCD invites and challenges key governments, civil society organizations, international cultural institutions, and citizens to join together to fill this vacuum and to realize this potential.

What we need are actions that will:

- Invigorate arts and cultural production in every society, to bring about the next renaissance of storytelling, music, visual arts and dance, in every form and in every medium.
- Permit artists, cultural producers and our works to flow freely around the world, to entertain, inform, challenge and enlighten people everywhere.
- Ensure the voice of arts and culture is present and strong.

### **We must utilize the UNESCO Convention and go beyond it**

The UNESCO cultural diversity convention is only one small step towards the institutionalization of an effective cultural diversity policy framework. It is merely a tool that must be wielded by civil society and governments.

Future work on raising awareness and promoting the ratification of the Convention must be directed at bringing it to life.

We challenge UNESCO and the member states of the Convention to work together to make it effective.

### **We must work together to achieve broad objectives**

In this new approach to promoting global cultural diversity, there are many other things that need to be done, including to:

- Encourage cultural policies nationally, regionally and internationally, including implementation and resources to make them effective.
- Integrate cultural development into sustainable development strategies and Poverty Reduction Strategy Papers.
- Ensure that the International Fund for Cultural Diversity has substantial resources and a mandate to support concrete projects.
- Promote south-south cultural exchanges.
- Launch a global dialogue about culture and the human security agenda.
- Implement preferential treatment for artists, cultural producers and their works from developing countries and preferential access to developed countries.
- As trade negotiations are renewed in the coming months, ensure that the agreements respect the principles of the Convention.
- Work to preserve threatened languages and cultures, including those of indigenous peoples.
- Implement Fair Trade campaign for cultural goods.

### **New global arts and culture leadership**

We need to rebuild a dynamic cultural diversity movement with broad objectives.

- INCD will work with the International Federation of Coalitions for Cultural Diversity and other NGOs to develop a new and contemporary agenda.
- Civil society will look to engage with a revitalized network of culture ministers. Such a network should be led by countries of the south, have an agenda to expand global cultural rights, and be a forum through which culture ministers can participate in the emerging global debates.
- Civil society calls on IFACCA, UNESCO, UNCTAD and others to embrace and to encourage this movement as essential to achieving their objectives.

## **B Questions on the implementation of the UNESCO Convention so far**

*For the purpose of this questionnaire, "national law" includes national legislation, regulations, administrative practice and case law that entered into force before or after the entry into force of the UNESCO Convention in your country.*

4 Does your country have national law implementing the UNESCO Convention as of 1 January 2010?

( ) Yes ( X) No

If the answer is "No", please explain the absence of national law implementing the UNESCO Convention and how this treaty is implemented in your jurisdiction as of 1 January 2010:

PLEASE INSERT YOUR ANSWER HERE: I don't know why but there is no national law implementing the UNESCO Convention in my connaissance.

If the answer is "Yes":

Please reply to the questions as follows that refer to the legal situation as of 1 January 2010, and specify for each of your replies, where applicable, whether the relevant national law existed already prior to the entry into force of the UNESCO Convention in your country:

4.1 What **measures** in the sense of articles 6, 7 and 8 of the 2005 UNESCO Convention, including but not limited to measures aimed at protecting and promoting linguistic diversity, were adopted in your country by the implementing national law?

PLEASE INSERT YOUR ANSWER HERE: Any, but it exist a promotion of national languages without a real political policy.

4.2 How is article 11 of the 2005 UNESCO Convention ("**participation of civil society**") regulated in the implementing national law?

PLEASE INSERT YOUR ANSWER HERE: Very little participation.

4.3 How does your organization assess your country's compliance with **human rights obligations** when implementing the UNESCO Convention?

PLEASE INSERT YOUR ANSWER HERE: The country's compliance with human rights is acceptable.

*As a complement to your replies to questions 4.1 to 4.3, please provide a copy of, or references to, your country's implementing **national law**, if any, together with related commentaries and web site addresses where such national law and related documentation may be found.*

5 Does your country or your organization or any of its members intend to ask for a contribution to one or more own projects from the **international fund** for cultural diversity according to article 18 of the UNESCO Convention for the purpose of implementing the UNESCO Convention on the national level?

( X ) Yes ( ) No ( ) Confidential

If "Yes", please describe the project(s) for which your country or your organization will ask for funding:

PLEASE INSERT YOUR ANSWER HERE: INCD is an international non-governmental organization bringing together more than 400 members in 76 countries. Networks of artists, cultural producers, publishers, broadcasters, academics, heritage institutions and others are working together through INCD to counter the adverse affects of economic globalization on world cultures and to promote culture-driven development. Since its first international meeting in 2000, INCD has been in the forefront of the campaign to build support for the convention on cultural diversity.

#### **Our Vision for the Convention**

INCD is working to achieve the following vision for the Convention through effective implementation of its provisions.

1. The Convention is the primary international instrument for states on matters concerning trade in cultural goods and services. It provides both the focus and a forum for efforts to ensure that other commitments, obligations and instruments which touch directly and indirectly on these matters are fully coherent with the Convention's objectives and principles.
2. The Convention acts as a positive tool to encourage appropriate policies in each country to promote local artists and cultural producers.
3. Culture is integrated into sustainable development strategies. Developed countries provide and facilitate the support, programs, funding, access and knowledge transfer needed to assist developing countries to realize the potential of their artists and cultural industries.

#### **Working to Encourage Widespread Ratification of the Convention**

INCD continues to work to encourage more countries to ratify the Convention, with the additional goal of bringing more balance to the geographical, linguistic and economic profile of the parties. INCD believes a minimum of 70-85 parties are necessary to ensure the effective launch of the Convention governing bodies. INCD members in a number of countries report that the ratification process is well underway and we expect the number of accessions will continue to grow in the coming weeks.



INCD urges current Convention parties and UNESCO to continue to work to increase the number of ratifications. In this connection, delegates from throughout Africa attending the March 2007 ARTERIAL Conference on Vitalising African Cultural Assets in Dakar, Senegal embraced the Convention as a tool that can assist African countries to address the weaknesses in their cultural sector. Delegates called on networks in Africa to advocate for its widespread ratification and to work together through INCD, and urged that popular educational materials be published and distributed. INCD is seeking the necessary resources to provide an accessible citizen's guide for use in Africa and elsewhere.

### **Conference of Parties**

The UNESCO Director General has called the first meeting of the Conference of Parties, the Convention's highest governing body, for 18-20 June 2007. INCD has been advised by the secretariat that NGOs will be invited to attend the meeting as observers. While INCD had urged a later date for this meeting, in order to permit the broadest possible base of member countries for purposes of electing a balanced Intergovernmental Committee, this position is now moot.

The Conference of Parties will be asked to approve:

- its own rules of procedure
- the modalities of and then to elect members of the Intergovernmental Committee
- the mandate of the Intergovernmental Committee;
- the rules, commitments and the types of projects that will be funded by the International Fund for Cultural Diversity.

In approaching these decisions, INCD urges all States Parties and UNESCO:

1. **To provide a formal place for civil society representatives at the Conference of Parties and at the Intergovernmental Committee.** To give meaning to Article 11, civil society representatives should be given appropriate opportunities to participate actively in the implementation of the Convention. This includes the right to attend and make representations to the Conference of Parties and to the Intergovernmental Committee. Active engagement of civil society representatives is essential for Articles 10, 12c, 14, 15 and others, and will assist parties to ensure the effectiveness of the International Fund for Cultural Diversity. In addition, civil society representatives can provide information and insight to assist parties to implement Articles 2, 5, 7, 8, 9, 19, 20 and others.
2. **To provide in the mandate of the Intergovernmental Committee a responsibility to monitor how trade, investment and other international instruments, as well as ongoing and future negotiations, may have an impact on the diversity of cultural expressions.** This follows from the responsibility assigned under Article 23.6.e. It is essential to ensure that parties can fulfill their commitments in Articles 20.1.b and 21 to foster mutual supportiveness, to take into account the relevant provisions of this Convention when interpreting and applying other international obligations, and most importantly, to promote the objectives and principles of this Convention in other forums.
3. **To provide in the mandate of the Intergovernmental Committee a responsibility to research, propose, encourage and monitor measures to promote international cooperation and development.** A critical part of the Convention is its provisions concerning promotion of international cooperation, integration of culture in sustainable development, cooperation for development and preferential treatment for developing countries. In order to

make these provisions effective, it is necessary to provide information about current best practices, models for new forms of collaboration and concepts for new initiatives. This work would logically fall to the IC, with the necessary support from the UNESCO secretariat.

4. **To assign responsibility to the Convention Secretariat to develop a framework and ongoing timetable for the collection of appropriate statistics and data.** Implementing the Convention and making informed decisions requires parties to have a common base of statistics and data. For example, the commitment of developing countries in Article 16 to facilitate cultural exchanges and provide “preferential treatment” cannot be implemented without authoritative information about the nature and extend of existing exchanges. Progress must also be tracked over time. Similarly, parties need a framework for preparing their Article 9 reports which permits them to address fully the nature of the measures they have in place pursuant to Articles 5-8, 10, 12-15, 17 and others, and ensures that these reports are comparable.
5. **To ensure that each party makes the maximum possible contribution of new resources to the International Fund for Cultural Diversity.** UNESCO’s Global Alliance for Cultural Diversity brings together public agencies and private sector firms and organizations to turn creativity in developing countries into sustainable cultural industries and thus to support economic development and job creation. INCD supports the UNESCO decision to merge responsibility for the Global Alliance into the Convention secretariat. The coming into force of the Convention provides an opportunity and a significant responsibility on States Parties to make a concrete commitment of new financial resources to support these efforts. INCD also believes that civil society organizations can assist UNESCO and the Conference of Parties to shape the new Fund and to ensure its seamless integration with the Global Alliance.

#### **Intergovernmental Committee**

The Intergovernmental Committee, which is the operational body of the Convention, has important responsibilities to member states. Twenty-four States Parties will be elected to serve on the IC at the Conference of Parties.

INCD urges all States Parties and UNESCO:

1. **To call an early meeting of the Intergovernmental Committee, ideally before the end of 2007.** The Convention was negotiated, finalized and ratified in a very short timeframe, demonstrating widespread interest in its potential. This momentum must continue. Particularly given that the full complement of 24 members will be elected at the June 2007 Conference, INCD believes there is every reason to convene an early first meeting of the Intergovernmental Committee.
2. **To ensure that the Intergovernmental Committee invites NGO participants to all of its meetings and events.** The speedy development of this Convention was the result of a collaborative campaign, involving governments and civil society organizations, which built understanding and support around the world. This work continues. The civil society organizations in the cultural diversity movement can bring to the IC the perspective of artists, cultural producers, publishers, academics, broadcasters, heritage institutions and others who have, in words of Article 11, “a fundamental role ... in protecting and promoting the diversity of cultural expressions.” In accordance with the authority it has under Article 23.7 to invite civil society participants, INCD anticipates that both it, and other organizations, will be given an appropriate and formal role in the IC meetings and events.

3. **To make the necessary connections to ensure that threatened languages and cultures, including those of indigenous peoples, are given special attention.** Article 23.6.d assigns responsibility to the IC to develop a framework for consideration of matters arising from Article 8, concerning the protection of forms of cultural expression under risk of extinction. Given the global nature of the challenges, the IC must establish appropriate links with aboriginal communities and first nations where cultural expressions are most vulnerable. INCD has many links to communities in the Americas and Europe and looks forward to collaborating with the IC in the implementation of this important provision.

#### **Member States to integrate Convention provisions in bilateral agreements**

The Convention acknowledges it is addressing issues that are also addressed in other bilateral and multilateral instruments, including matters of human rights, trade in cultural goods and services, and international cooperation.

As part of their obligation under Article 21 to promote the principles and objectives of the Convention in other international forums, INCD urges States Parties to address relevant issues in their own bilateral and multilateral agreements and treaties, including development cooperation agreements, and trade and investment agreements, and similar relationships. INCD believes it is appropriate for each party:

- to urge its partners to ratify and join the Convention;
- to formalize a dialogue about cultural policies; and
- to seek and make specific commitments in relation to Articles 14, 15 and 17 in development agreements; and
- to seek and make specific commitments in relation to Article 16. This is a positive obligation on developing countries to “facilitate exchanges with developing countries by granting, through the appropriate institutional and legal frameworks, preferential treatment to artists and other cultural professionals and practitioners, as well as cultural goods and services.” The specific forms of these exchanges can perhaps best be determined on a bilateral and multilateral basis as appropriate.

6 Is your country affected by **special situations** contemplated under articles 8, 12 para. 1, 17 and 23, point 1 of the UNESCO Convention (“special situations where cultural expressions on its territory are at risk of extinction, under serious threat, or otherwise in need of urgent safeguarding”)?

Yes ( ) / No (X )

If yes, please describe these special situations, and the measures that your country adopts to address these situations?

#### **D Identification of respondent to this questionnaire**

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