



## **Entwürfe der Umsetzungsrichtlinien zur UNESCO-Konvention über den Schutz und die Förderung der Vielfalt kultureller Ausdrucksformen (2005)**

Die erste Vertragsstaatenkonferenz zur UNESCO-Konvention über den Schutz und die Förderung der Vielfalt kultureller Ausdrucksformen (2005) im Juni 2007 hatte den Zwischenstaatlichen Ausschuss beauftragt, vorrangig zu folgenden Themen der Konvention operative Richtlinien auszuarbeiten: Maßnahmen zur Förderung und zum Schutz kultureller Ausdrucksformen (Artikel 7, 8, 17), Rolle der Zivilgesellschaft (Art. 11), Integration von Kultur in nachhaltige Entwicklung (Art. 13), Entwicklungszusammenarbeit (Art. 14), Modalitäten für Partnerschaften (Art. 15), Vorzugsbehandlung für Entwicklungsländer (Art. 16), Verwendung der Mittel des Internationalen Fonds für Kulturelle Vielfalt (Art. 18).

Die Entwürfe der Umsetzungsrichtlinien zur UNESCO-Konvention über die Vielfalt kultureller Ausdrucksformen zu den Artikeln 7,8, 11, 13-18 wurden dementsprechend auf vier Sitzungen des Zwischenstaatlichen Ausschusses (2007-2009) verhandelt und werden der Vertragsparteienkonferenz während ihrer 2. Sitzung (15.-18. Juni 2009) zur Beratung und Verabschiedung vorgelegt.

Im Rahmen des Völkerrechts dienen operative Richtlinien den Vertragsstaaten dazu, die weitere Gestaltung der Umsetzungspraxis zu konkretisieren, die aus der Unterzeichnung einer Konvention resultiert.

*Das vorliegende Dokument umfasst die Entwürfe in englischer Sprache. Unter [http://portal.unesco.org/culture/en/ev.php-URL\\_ID=38216&URL\\_DO=DO\\_TOPIC&URL\\_SECTION=201.html](http://portal.unesco.org/culture/en/ev.php-URL_ID=38216&URL_DO=DO_TOPIC&URL_SECTION=201.html) sind die Texte auch online abrufbar.*

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## **Measures to Promote and Protect Cultural Expressions**

### **Article 7 – Measures to promote cultural expressions**

*1. Parties shall endeavour to create in their territory an environment which encourages individuals and social groups:*

*(a) to create, produce, disseminate, distribute and have access to their own cultural expressions, paying due attention to the special circumstances and needs of women as well as various social groups, including persons belonging to minorities and indigenous peoples;*

*(b) to have access to diverse cultural expressions from within their territory as well as from other countries of the world.*

*2. Parties shall also endeavour to recognize the important contribution of artists, others involved in the creative process, cultural communities, and organizations that support their work, and their central role in nurturing the diversity of cultural expressions.*

### **Principles**

1. Cultural policies and measures developed by Parties to promote the diversity of cultural expressions should:

1.1 Be part of an integrated approach at the appropriate level and in accordance with the constitutional frameworks;

1.2 Be based upon the guiding principles as set forth in Article 2 of the Convention;

1.3 Foster the full participation and engagement of all members of society contributing to the diversity of cultural expressions, particularly persons belonging to minorities, indigenous peoples and women;

1.4 Take into account the provisions of other international legal instruments in the field of culture which are applicable thereto;

1.5 Foster the emergence of a dynamic cultural sector, taking into account all aspects of the cultural activities, goods and services in their diverse modes of creation, production, dissemination, distribution and access, whatever the means and technologies used.

1.6 Aim, more specifically to:

1.6.1 At the stage of creation, support artists and creators in their efforts to create cultural activities, goods and services;

1.6.2 At the stage of production, support the development of cultural activities, goods and services by promoting access to production mechanisms and encouraging the development of cultural enterprises;

1.6.3 At the stage of distribution/dissemination, promote the opportunity of access in the distribution of cultural activities, goods and services through public, private or institutional channels at the national, regional and international level; and

1.6.4 At the stage of access, provide information about available domestic or foreign cultural activities, goods and services by making the appropriate incentives available, and develop the capacity for the public to avail itself of such access.

### **Measures used to facilitate the promotion of cultural expressions (best practices)**

In accordance with the sovereign right of States to formulate and implement cultural policies and adopt measures (Article 5.1 of the Convention), the Parties are encouraged to develop and implement policy instruments and training activities in the field of culture. Such instruments and activities should aim at supporting the creation, production, distribution, dissemination and access to cultural activities, goods and services with the participation of all stakeholders, notably civil society as defined in the Operational Guidelines.

2. These instruments could be related to the following fields:

2.1 Legislative: e.g. establishment of structuring legislation in the cultural field (for example, legislation on broadcasting, copyright, status of the artist, etc.);

2.2 Creation/production/distribution: e.g. creation of cultural organizations mandated to create, produce, present or render access to domestic cultural content;

2.3 Financial support: e.g. development of financial support programmes including tax incentives that provide assistance for the creation, production, distribution and dissemination of domestic cultural activities, goods and services;

2.4 Advocacy and promotion: e.g. participation in exchanges on various international legal instruments to advocate and promote the rights of Parties;

2.5 Export and import strategies: e.g. develop both export-driven (promoting cultural expressions abroad) and import-driven strategies (enabling the distribution of diverse cultural expressions in their respective markets);

2.6 Access strategies: e.g. encourage programmes for economically disadvantaged groups and incentives so as to facilitate their access to cultural goods and services.

3. Bearing in mind the technological changes underway in the field of culture and which have the potential to bring considerable change in matters related to the creation, production, distribution and dissemination of cultural content, Parties are encouraged to promote the following types of intervention:

3.1 Place specific emphasis on measures and policies aimed at promoting the diversity of cultural expressions that are best adapted to the new technological environment; and

3.2 Foster the transfer of information and expertise to help cultural professionals and the cultural industries, with particular regard for youth, to acquire the knowledge and skills required to benefit fully from the perspectives offered by these new technologies.

4. Policy measures and instruments should, wherever possible, be based on existing structures and networks, including grass root communities. These structures should be examined to see how they could be further developed into strategic platforms. At the same time, the development of cultural policies and the establishment of creative industries at the national level could be reinforced through, inter alia, regional approaches, wherever possible.

5. Beyond the principles that Parties should endeavour to apply and the measures they are encouraged to implement, Parties are encouraged to communicate better and share information and expertise on the policies, measures, programmes or initiatives that have achieved the best results in the field of culture.

#### **Article 8 – Measures to protect<sup>1</sup> cultural expressions**

*1. Without prejudice to the provisions of Articles 5 and 6, a Party may determine the existence of special situations where cultural expressions on its territory are at risk of extinction, under serious threat, or otherwise in need of urgent safeguarding.*

*2. Parties may take all appropriate measures to protect and preserve cultural expressions in situations referred to in paragraph 1 in a manner consistent with the provisions of this Convention.*

*3. Parties shall report to the Intergovernmental Committee referred to in Article 23 all measures taken to meet the exigencies of the situation and the Committee may make appropriate recommendations.*

#### **Article 17 – International cooperation in situations of serious threat to cultural expressions**

*Parties shall cooperate in providing assistance to each other, and, in particular to developing countries, in situations referred to under Article 8.*

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<sup>1</sup> According to Article 4.7 of the Convention, 'Protection' means the adoption of measures aimed at the preservation, safeguarding and enhancement of the diversity of cultural expressions, and 'Protect' means to adopt such measures.

### **Special situations**

1. The nature of threats to cultural expressions can be inter alia cultural, physical or economic.
2. Parties may take all appropriate measures to protect and preserve cultural expressions within their territories in special situations in conformity with Article 8 of the present Convention.

### **Measures to protect and preserve cultural expressions**

3. Measures taken by the Party under Article 8 (2) will depend on the nature of the ‘special situation’ determined by the Party and may include but will not be limited to: short-term or emergency measures designed to have an immediate effect; reinforcement or amendment of existing policies and measures; new policies and measures; long term strategies; and appeals to international cooperation.
4. Parties should ensure, that the measures taken under Article 8 (2) do not hinder the guiding principles of the Convention nor are, in any other way, inconsistent with the letter and the spirit of the Convention.

### **Reporting to the Committee**

5. Whenever a Party reports to the Intergovernmental Committee under Article 8.3, it should be able to:
  - 5.1 Determine that the situation cannot be subject to action under other UNESCO Conventions;
  - 5.2 Identify the risk or threat to the cultural expression or the urgent safeguarding needed, involving experts, civil society, and including grass root communities as appropriate;
  - 5.3 Demonstrate the source of the threat inter alia with factual data;
  - 5.4 Determine the vulnerability and importance of the cultural expression at risk;
  - 5.5 Determine the nature of the consequences of the risk or threat to the cultural expression, and demonstrate the nature of the cultural consequences;
  - 5.6 Explain the measures taken or proposed to remedy the special situation, including short-term and emergency measures, or long-term strategies;
  - 5.7 If necessary, appeal for international cooperation and assistance.
6. Where a Party has identified a special situation under Article 8 (1) and taken measures under Article 8 (2), the concerned Party will report to the Committee regarding the measures taken. The report should contain the information listed at paragraph 5 of this chapter.
7. The report should be provided to the Committee at least three months before the opening of an ordinary session of the Committee in order to allow for the dissemination of information and consideration of the issue.

### **Role of the Intergovernmental Committee**

8. The Committee will include reports on special situations under Article 8 on the agenda of its ordinary sessions. It will examine the reports and the elements attached thereto.
9. Where a Party has determined a special situation on its territory and brought it to the attention of the Committee, the latter may make recommendations and propose remedial measures to be implemented by the Party concerned, if deemed necessary, in compliance with Article 8 (3) and Article 23 (6) (d).

10. Where a special situation under Article 8 (1) has been determined by a Party, the Committee may also recommend the following appropriate measures:

10.1 Foster the dissemination of information on best practices of Parties in similar situations;

10.2 Inform the Parties of the situation and invite them to take action in order to provide assistance within the framework of Article 17;

10.3 Suggest to the Party concerned that it seek assistance, if needed, from the International Fund for Cultural Diversity. This request should be accompanied by the information and data described in paragraph 5 of this chapter and all other information deemed necessary.

### **Periodical Report**

11. Where a Party has determined a special situation under Article 8 (1) and measures have been taken under Article 8 (2), the Party concerned will include appropriate information about these measures in its periodical report to be provided to UNESCO under Article 9 (a).

### **International cooperation**

12. In accordance with Article 17, the Parties shall cooperate in providing assistance to each other, paying particular attention to developing countries, in situations referred to under Article 8.

13. Cooperation may take various forms: bilateral, regional or multilateral. In this context, Parties may seek assistance from other Parties in accordance with Article 17, and that assistance may be inter alia technical or financial.

14. In addition to the individual action by the Parties concerned to remedy a special situation, coordinated actions by the Parties should be encouraged.

## **Role and Participation of Civil Society**

### **Article 11 – Participation of civil society**

1. The Convention's most explicit provision with regard to civil society is Article 11 (Participation of civil society). Reference to civil society is made, explicitly or implicitly, in several other provisions of the Convention, including Articles 6, 7, 12, 15, 19.

### 2. Article 11 – Participation of civil society

*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.*

### **Definition and roles of civil society**

3. For the purposes of this Convention, civil society means non-governmental organizations, non-profit organizations, professionals in the culture sector and associated sectors, groups that support the work of artists and cultural communities.

4. Civil society plays an essential role in the implementation of the Convention: it brings citizens', associations' and enterprises' concerns to public authorities, monitors policies and programmes implementation, plays a watchdog role, serves as valueguardian and innovator, as well as contributes to the achievement of greater transparency and accountability in governance.

### **Contribution of civil society to the implementation of the provisions of the Convention**

5. Parties should encourage civil society to participate in the implementation of the Convention by associating it by appropriate means on cultural policy-making and by facilitating access to information relating to the protection and promotion of the diversity of cultural expressions, and facilitating the strengthening of capacities in this field. Parties could foresee the provision of ad hoc, flexible and effective mechanisms in this regard.

6. The potential of civil society to act as an innovator and change-agent in the implementation of the Convention should be fully utilised. Parties should encourage civil society to bring new ideas and approaches to the formulation of cultural policies, as well as to the development of innovative cultural processes, practices or programmes that help achieve the objectives of the Convention.

The contribution of civil society could be exercised in the following areas:

- support to Parties, as appropriate, in the elaboration and implementation of cultural policies;
- capacity-building in specific domains linked to the implementation of the Convention and carrying out data collection in the field of the protection and promotion of the diversity of cultural expressions;
- promotion of specific cultural expressions by giving voice to groups such as women, persons belonging to minorities, and indigenous peoples, so as to ensure that all stakeholders' special circumstances and needs are taken into account when formulating cultural policies;
- advocating the widespread ratification of the Convention and its implementation by governments, as well as in assisting Parties to promote the objectives and principles of the Convention in other international forums;
- input in the establishment of periodical reports of Parties, within their field of competence. This input would give more responsibility to civil society and would encourage transparency in the elaboration of the reports;

- cooperation for development at local, national and international levels, by initiating, creating or being associated to innovative partnerships with the public and private sectors as well as with civil society of other regions of the world (Article 15 of the Convention).

### **Contribution of civil society to the work of the organs of the Convention**

7. Civil society is encouraged to contribute to the work of the organs of the Convention according to the modalities to be defined by these organs.

8. The Committee may consult at any time public or private organizations and individuals on specific issues in accordance with Article 23 (7) of the Convention. In such cases, the Committee may invite them to attend a specific meeting of the Committee, regardless of whether the organization or group has been accredited to participate in the sessions of the Committee.

9. Civil society organizations authorised to participate as observers in the Conference of Parties and the Intergovernmental Committee, according to the Rules of Procedure of the respective body, may:

- maintain the dialogue with Parties in an interactive manner with regard to their positive contribution to the implementation of the Convention, preferably, as appropriate, before the sessions of the organs;
- participate in the meetings of these bodies;
- be given the floor by the Chairperson of the respective body;
- submit written contributions relevant to the work of the respective bodies when authorized by the Chairperson, to be circulated to all delegations and observers by the Secretariat to the Convention as information documents.

### **Participation of civil society in the International Fund for Cultural Diversity**

10. The elements concerning this participation are addressed within the framework of the operational guidelines on the use of the resources of the Fund.

## **Integration of culture in sustainable development**

### **Article 13 – Integration of culture in sustainable development**

*Parties shall endeavour to integrate culture in their development policies at all levels for the creation of conditions conducive to sustainable development and, within this framework, foster aspects relating to the protection and promotion of the diversity of cultural expressions.*

#### **General considerations**

1. Sustainable development is ‘development that meets the needs of the present without compromising the ability of future generations to meet their own needs’ (Report of the World Commission on Environment and Development, 1987).
2. The economic, cultural, social and environmental aspects of sustainable development are complementary.
3. Protection, promotion and maintenance of cultural diversity are essential requirements for sustainable development for the benefit of present and future generations (Article 2.6 of the Convention), since they contribute to social and cultural fulfilment, individual and collective well-being, and to the maintenance of creativity and vitality of cultures and institutions.
4. The diversity of cultural expressions must be taken into account in the development process because it contributes to the strengthening of identity and social cohesion and to the building of inclusive societies that uphold the equal dignity of and respect for all cultures.
5. Culture should be integrated into national policies and plans and into international cooperation strategies in order to achieve human development goals<sup>2</sup> and notably poverty reduction.
6. The integration of culture into development policies at all levels (local, national, regional and international) makes it possible to:
  - 6.1 contribute to the protection and promotion of the diversity of cultural expressions;
  - 6.2 foster universal access, participation in and enjoyment of creation and production of cultural expressions, especially for disadvantaged groups;
  - 6.3 realize the full potential and contribution of cultural industries to sustainable development, economic growth and the promotion of decent quality of life through the creation, production, distribution and dissemination of cultural expressions;
  - 6.4 maintain social cohesion, fight violence through cultural activities that promote human rights and the culture of peace and reinforce the sense of social integration of youth;
  - 6.5 reinforce and improve development policies, inter alia, in the sectors of education, tourism, public health, security and urban planning.

#### **Guidelines**

7. Sustainable development is the result of a collection of policies and measures suited to national and local contexts that maintain the harmony of the local cultural ecosystem. For the sake of ownership and harmonization of development policies, when developing such policies, Parties shall endeavour to take into account the following elements.

- 7.1 Since economic, environmental, social and cultural systems are interdependent and cannot be considered separately, sustainable development policies and measures should be formulated, adopted and implemented in concert with all the relevant public authorities in all sectors and at all

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<sup>2</sup> ‘Human development is a process of enlarging people’s choices.’, *Human Development Report*, UNDP, 1990, p.10

levels. Thus effective coordination mechanisms should be established, particularly at the national level.

7.2 Raising awareness among decision makers and their partners of the importance of the cultural dimension of development policies and sensitizing development policy managers from other sectors to cultural issues are essential for achieving the objectives of Article 13.

7.3 The integration of culture into sustainable development policies entails acknowledgment, in particular, of:

7.3.1 the fundamental role of education for sustainable development and the inclusion of culture in the different aspects of educational delivery to foster an understanding and appreciation of diversity and its expressions;

7.3.2 recognition of the needs of women, of the various social groups mentioned in Article 7 of the Convention, and of disadvantaged geographical areas;

7.3.3 the use of new technologies and the expansion of networked communication systems.

### **Measures related to the integration of the diversity of cultural expressions into sustainable development**

8. In order to integrate and foster aspects related to the protection and promotion of the diversity of cultural expressions as elements of their sustainable development policies, Parties are encouraged to:

8.1 provide the necessary conditions for creative abilities to flourish by taking into account the needs of all concerned artists, professionals and practitioners in the cultural sector with special attention to the needs of women, social groups and individuals in disadvantaged geographical areas;

8.2 foster the development of viable cultural industries and in particular of micro, small, and medium enterprises working at the local level;

8.3 encourage long-term investment in the infrastructure, institutions and establishment of legal frameworks necessary for the viability of cultural industries;

8.4 raise awareness among public authorities and their partners, local stakeholders and the various components of society, of the challenges posed by sustainable development and the importance of taking into account its cultural dimension;

8.5 build sustainable technical, budgetary and human capacities in cultural organizations at the local level by, inter alia, facilitating their access to financing;

8.6 facilitate sustained, equitable and universal access to the creation and production of cultural goods, activities and services, particularly for women, youth and vulnerable groups;

8.7 consult and include public authorities responsible for issues related to the diversity of cultural expressions, as well as civil society and representatives of the cultural sector involved in the creation, production, distribution and dissemination of cultural activities, goods and services;

8.8 invite civil society to participate in the identification, elaboration and implementation of development policies and measures related to the cultural sector.

9. In order to better evaluate the role of culture in sustainable development, Parties are encouraged to facilitate the elaboration of statistical indicators, the exchange of information and the dissemination and sharing of best practices.

## Cooperation for development

### Article 14 – Cooperation for development

*Parties shall endeavour to support cooperation for sustainable development and poverty reduction, especially in relation to the specific needs of developing countries, in order to foster the emergence of a dynamic cultural sector by, inter alia, the following means:*

*(a) the strengthening of the cultural industries in developing countries through:*

*(i) creating and strengthening cultural production and distribution capacities in developing countries;*

*(ii) facilitating wider access to the global market and international distribution networks for their cultural activities, goods and services;*

*(iii) enabling the emergence of viable local and regional markets;*

*(iv) adopting, where possible, appropriate measures in developed countries with a view to facilitating access to their territory for the cultural activities, goods and services of developing countries;*

*(v) providing support for creative work and facilitating the mobility, to the extent possible, of artists from the developing world;*

*(vi) encouraging appropriate collaboration between developed and developing countries in the areas, inter alia, of music and film;*

*(b) capacity-building through the exchange of information, experience and expertise, as well as the training of human resources in developing countries, in the public and private sector relating to, inter alia, strategic and management capacities, policy development and implementation, promotion and distribution of cultural expressions, small-, medium- and micro-enterprise development, the use of technology, and skills development and transfer;*

*(c) technology transfer through the introduction of appropriate incentive measures for the transfer of technology and know-how, especially in the areas of cultural industries and enterprises;*

*(d) financial support through:*

*(i) the establishment of an International Fund for Cultural Diversity as provided in Article 18;*

*(ii) the provision of official development assistance, as appropriate, including technical assistance, to stimulate and support creativity;*

*(iii) other forms of financial assistance such as low interest loans, grants and other funding mechanisms.*

### Cooperation for development: scope and objectives

1. Article 14 sets out a non-exhaustive list of means and measures intended to foster the emergence of a dynamic cultural sector, to respond to the specific needs of developing countries with regard to the diversity of cultural expressions and to strengthen the link between culture and development:

- measures aimed at strengthening of the cultural industries;
- capacity-building programmes;
- technology transfer;
- financial support.

2. Given the links between articles 14 and 16 (Preferential treatment for developing countries) as well as 18 (International Fund for Cultural Diversity), Parties should apply coherently and consistently the operational guidelines of these three articles.

3. Within the framework of their cooperation activities with developing countries, Parties are also encouraged to develop partnerships as stated in Article 15 of the Convention and with the provisions of Article 16 on preferential treatment.

4. Parties recognize the importance of the International Fund for Cultural Diversity (Article 18) as a multilateral tool for promoting and developing the diversity of cultural expressions in developing countries, underlining however, that the Fund shall not act as a substitute for means and measures used bilaterally or regionally to provide support to these countries.

### **Orientations and measures**

5. Developing countries will endeavour to identify their priorities, specific needs and interests with regard to the protection and promotion of the diversity of cultural expressions and to produce an operational action plan in order to optimize international cooperation.

6. Cooperation for development between Parties and concerned partners may take, inter alia, but not limited to, the forms listed in Article 14 and should foster, in developing countries, an environment conducive to access to and creation, production, distribution/dissemination of cultural activities, goods and services. Paragraphs 6.1 to 6.5 present a non-exhaustive list of measures that could be taken to this end. In the following domains the measures could in particular consist of:

#### **6.1 Strengthening of the cultural industries in developing countries**

6.1.1 setting-up and enhancing support mechanisms, including institutional, regulatory, legal and financial incentives for the production, creation, and distribution/dissemination of cultural activities, goods and services at the local, national and regional levels;

6.1.2 supporting the elaboration of export-oriented strategies for cultural activities, goods and services, while strengthening local enterprises and maximizing benefits for the artists, professionals and cultural practitioners in the cultural sector;

6.1.3 assist in increasing exchanges of cultural activities, goods and services between developed countries and developing countries and amongst the latter, and increase support to distribution networks and systems at the local, national, regional and international levels;

6.1.4 fostering viable local and regional markets for cultural activities, goods and services, in particular through regulatory action and cultural cooperation programmes and activities, as well as through social inclusion and poverty reduction policies that take into consideration the cultural dimension;

6.1.5 facilitating the mobility of artists and other cultural professionals and practitioners from developing countries and their entry into the territory of developed and developing countries through, inter alia, consideration of flexible short-term visa regimes in both developed and developing countries to facilitate such exchanges;

6.1.6 fostering the conclusion of co-production and co-distribution agreements between developed and developing countries and amongst the latter, as well as market access for co-productions.

#### **6.2 Capacity-building through exchange of information and training**

6.2.1 fostering contacts between all concerned artists, professionals and practitioners in the cultural sector and public administrators working in the different fields of the cultural sector of developed and developing countries through networks, cultural exchanges and capacity-building programmes;

6.2.2 supporting the exchange of information on existing and new business models and existing and new forms of promotion and distribution mechanisms on evolving information and communication technologies;

6.2.3 enhancing the entrepreneurial and business competences of professionals working in the cultural industries through management, marketing and financial skills development.

### **6.3 Technology transfer in the areas of cultural industries and enterprises**

6.3.1 regular assessments of evolving technological needs in terms of both physical resources and skills development with the intention of progressively addressing these, notably through international cooperation, in addition to supplying fair and favourable conditions for technology transfer to developing countries;

6.3.2 facilitate access to new information and communication technologies with regards to production and distribution/dissemination and encourage their use;

6.3.3 support dialogue and regular exchanges between information and communication technology experts and governmental and nongovernmental actors of the cultural sector;

6.3.4 take appropriate measures to facilitate joint development of technology for the benefit of developing countries.

### **6.4 Financial support**

6.4.1 integrating the cultural sector within framework plans for official development assistance;

6.4.2 facilitating and supporting the access of micro, small- and mediumsized enterprises, cultural industries, artists, professionals, practitioners of the cultural sector, to sources of public and private funding through appropriate measures, such as subsidies, low-interest loans, guarantee funds, microcredit, technical assistance, tax benefits etc;

6.4.3 encouraging Parties to put in place measures, in particular, fiscal incentives to increase the contribution of the private sector to the development of technological innovations and the culture sector.

### **The role of the Secretariat**

7. Given the role of UNESCO with regard to cooperation for development, Parties shall encourage the Secretariat to support and sustain the implementation and follow-up of the provisions of Article 14. This support will notably consist in collecting information on best practices regarding cooperation for development to the benefit of the Parties.

## **Modalities for Partnerships**

### **Article 15 – Collaborative arrangements**

1. The Convention's most explicit provision with regard to partnerships is Article 15 (Collaborative arrangements). Reference to partnerships is made, explicitly or implicitly, in other provisions of the Convention, more particularly in Article 12 (Promotion of international cooperation).

### 2. Article 15 – Collaborative arrangements

*Parties shall encourage the development of partnerships, between and within the public and private sectors and non-profit organizations, in order to cooperate with developing countries in the enhancement of their capacities in the protection and promotion of the diversity of cultural expressions. These innovative partnerships shall, according to the practical needs of developing countries, emphasize the further development of infrastructure, human resources and policies, as well as the exchange of cultural activities, goods and services.*

### **Definition and features of partnerships**

3. Partnerships are voluntary collaborative arrangements between two or more organizations from different parts of society, such as governmental authorities (at the local and national levels) and authorities (at the regional and international levels) and civil society – including the private sector, the media, academia, artists and artistic groups, etc., in which the risks and benefits are shared between the partners and the modalities of functioning, such as decision-making or allocation of resources, are agreed upon collectively by them.

4. The major principles underpinning successful partnerships include equity, transparency, mutual benefit, responsibility and complementarity.

### **The objectives and scope of partnerships**

5. Partnerships aim at, but are not limited to, value-added activities seeking to accomplish the following objectives:

- 5.1 Capacity-building of professionals and of public sector officials in the culture - and associated sectors;
- 5.2 Institution building for cultural practitioners and professionals and associated sectors;
- 5.3 Cultural policy elaboration and advocacy;
- 5.4 Fostering and mainstreaming protection and promotion of diversity of cultural expressions;
- 5.5 Protection of cultural goods and services and cultural expressions deemed at risk in accordance with Article 8 of the Convention;
- 5.6 Creating and nurturing local, national and regional markets;
- 5.7 Accessing international markets and other appropriate assistance regarding aspects related to the flow of cultural goods and services and cultural exchanges.

6. In conformity with Article 15, partnerships initiated under the Convention should be in accordance with the needs of developing countries, Parties to the Convention:

- 6.1 In order to take forward these collaborative arrangements in the interests of developing countries, they may wish, as far as possible, to undertake an analysis of these needs in consultation with stakeholders from the relevant cultural industries and sectors, and where appropriate, in collaboration with national, regional and international partners, in order to identify cultural expressions or areas in greatest need of attention;
- 6.2 Needs assessment should include analytical, statistical and quality data, and lead to the formulation of a strategy with focused priorities and set objectives, to allow for proper monitoring;

6.3 Partnerships should build, as much as possible, on existing and potential structures and networks with and amongst the public sector and the civil society, including non-governmental organizations, non-profit organizations, and the private sector.

### **The Partnering Process**

7. For the establishment of a partnership, four stages are to be taken into consideration.

7.1 Creation and relationship building:

Parties take into consideration the assessment of the needs and the identification of partners and priority areas regarding development and investment. Parties and partners take into consideration an equitable distribution of resources, roles and responsibilities for the participation and establishment of the necessary means of communication.

7.2 Implementing, managing and maintaining:

Parties should ensure a concrete and effective implementation of the partnerships. Partnerships should build as much as possible on existing or potential structures and networks with and amongst civil society, including non-governmental organizations and the private sector.

7.3 Reviewing, evaluating, revising, and sharing best practices:

Parties encourage partners to examine and evaluate the effectiveness of the partnership, particularly at the following three levels: (1) partnership as such, (2) their own role in the partnership, and (3) the results or aim of this partnership. Taking into account the acquired experience and their individual and collective evaluation, the partners then consider revising or amending the partnership or the initial project, in light of, inter alia, the costs of the partnership. Parties are encouraged to share best practices, identified from reviews conducted on successful partnerships.

7.4 Sustaining outcomes:

Needs assessment should include analytical, statistical and quality data, and lead to the formulation of a strategy with focused priorities and set objectives, to allow for proper monitoring and sustaining of the outcomes.

### **The role of the UNESCO Secretariat**

8. The UNESCO Secretariat, basing itself in particular on the Global Alliance for Cultural Diversity which is its platform for developing public-private partnerships in support of cultural industries, should play a role of facilitator and motivator on an international level, by:

8.1 promoting inter-sectorial partnerships among various stakeholders;

8.2 providing information on existing and prospective partners in the public and private sectors as well as the non-profit sector (including data on needs, projects and case studies of best practices), as well as links to useful management tools, particularly through its website;

9. Headquarters and Field Offices share responsibility in relation to their respective mandates. They are encouraged to utilise the capacities and networks of National Commissions for UNESCO in the promotion of their objectives in this regard;

10. In addition, the Secretariat elaborates and submits innovative projects to donors in the fields covered by the Convention.

# Preferential Treatment for Developing Countries

## Article 16 – Preferential Treatment for Developing Countries

*Article 16 – Preferential treatment for developing countries:*

*Developed countries shall facilitate cultural 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 from developing countries.*

### 1. Introduction

1.1 In the light of the strategic objectives of the Convention, Article 16 sets the goal of facilitating cultural exchanges between developed and developing countries. Preferential treatment to be granted by developed to developing countries, through appropriate legal and institutional frameworks, is the tool prescribed by Article 16 to achieve, inter alia, the emergence of a dynamic cultural sector in developing countries and wider and more balanced cultural exchanges.

1.2 Article 16 is to be interpreted and applied in relation to the Convention as a whole. Parties should seek complementarities and synergies with all relevant provisions of the Convention and the various operational guidelines.

1.3 The principles and spirit of cooperation should govern the relations between all Parties in the efficient implementation of preferential treatment within the meaning of Article 16.

### 2. Role of Parties

2.1 Article 16 creates an obligation for developed countries in favour of developing countries with regard to:

- c) artists and other cultural professionals and practitioners;
- d) cultural goods and services.

2.2 Developed countries shall therefore play a pro-active role by putting in place national policies and measures at the appropriate institutional level, as well as multilateral, regional and bilateral frameworks and mechanisms to implement and operationalize Article 16.

2.3 Developed countries are encouraged to provide opportunities, to developing countries, which are beneficiaries in the preferential treatment framework and schemes, to articulate their own needs and priorities, which should be duly taken into account when putting in place such frameworks and schemes. Developing countries are encouraged to put in place national policies for the efficient implementation of preferential treatment, it being understood that the implementation of the preferential treatment is not conditional on the implementation of these national policies. Towards this end developed countries should also assist in putting in place national policies and measures in developing countries beneficiaries to enable them to benefit from an efficient implementation of preferential treatment frameworks and schemes.

2.4 Whereas Article 16 does not provide an obligation for developing countries to offer preferential treatment to other developing countries, developing countries are encouraged to offer a preferential treatment to other developing countries, in the framework of South-South Cooperation.

### 3. Institutional and legal frameworks

3.1 Preferential treatment as defined by Article 16 is wider than the narrow trade meaning. It is to be understood as having both a cultural and a trade component.

3.2. Legal and institutional frameworks that could be used by the Parties are organized, as the cases may be, around the following dimensions:

- the cultural dimension;
- the trade dimension;
- a combination of the trade and cultural dimensions.

3.3. Cultural dimension

3.3.1. Cultural cooperation, in the context of sustainable development, is a core element of preferential treatment within the meaning of Article 16 of the Convention. Parties are therefore encouraged to develop their existing cultural cooperation arrangements and put in place mechanisms of cultural cooperation that expand and diversify their bilateral, regional and multilateral exchange agreements and programmes.

3.3.2. In the light of the Convention's provisions (articles 6, 7, 12 and 14) related to national policies as well as those related to international cooperation and cooperation for development and in conformity with their respective operational guidelines, measures that shall be developed, through cultural cooperation mechanisms for preferential treatment, may include but are not limited to:

a) with regard to artists and other cultural professionals and practitioners from developing countries:

- i) providing support and expertise to developing countries for the development of policies and measures aimed at nurturing and supporting artists and others involved in the creative process;
- ii) sharing of information on existing legal frameworks and on best practices;
- iii) capacity-building, notably by means of training, exchanges and orientation activities (for example, residencies for artists and cultural professionals) to help them integrate professional networks of developed countries;
- iv) taking measures to facilitate the mobility of artists, other cultural professionals and practitioners, and, in particular, to favour those from developing countries who need to travel to developed countries for professional reasons. These measures should include, in conformity with the applicable provisions in this respect, for example: simplification of procedures for issue of visas regarding entry, stay and temporary travel; lower cost of visas;
- v) funding arrangements and resource-sharing, including supporting access to cultural resources of developed countries;
- vi) encouraging the creation of networks between civil society actors in developed and developing countries, including partnerships for development;
- vii) providing specific fiscal incentives for artists and other cultural professionals and practitioners from developing countries within the framework of their activities related to the present Convention.

b) with regard to cultural goods and services from developing countries:

- i) providing support and expertise to developing countries for the elaboration of policies and measures related to the creation, production, distribution and dissemination of domestic cultural goods and services;
- ii) providing special fiscal measures and incentives for cultural enterprises from developing countries, such as tax credits and double taxation avoidance agreements;
- iii) providing technical assistance, including equipment acquisition, technology transfer and expertise;
- iv) improving access of cultural goods and services of developing countries through specific support and assistance schemes for the distribution and dissemination of such goods and services to the markets of developed countries, notably through coproduction and co-distribution agreements or support to domestic initiatives in this regard.
- v) providing financial aid which may take the form of direct or indirect assistance
- vi) facilitating the participation of developing countries in cultural and trade events to promote various cultural goods and services from developing countries;
- vii) encouraging the presence and the initiatives, as well as the investment of cultural enterprises from developing countries in developed countries through e.g. information services, assistance or appropriate measures of fiscal or legal nature;

- viii) fostering private sector investment in the cultural industries of developing countries;
- ix) fostering the access of cultural goods and services from developing countries through facilitating temporary importation of the necessary technical material and equipment for the purposes of cultural creation, production and distribution from developing countries;
- x) ensuring that development aid public policies of developed countries also give adequate attention to cultural sector development projects in developing countries.

#### 3.4. Trade dimension

3.4.1. Multilateral, regional and bilateral frameworks and mechanisms belonging to the field of trade can be used by Parties to implement preferential treatment in the field of culture.

3.4.2. Parties to the Convention that have concluded multilateral, regional and/or bilateral trade agreements may take into account the provisions of these agreements and the respective mechanisms provided by them with a view to offering preferential treatment in favour of developing countries within the meaning of Article 16.

3.4.3. When making use of such frameworks and provisions for preferential treatment, Parties shall take into account the relevant provisions of the Convention, pursuant to its article 20.

#### 3.5. Combination of the trade and cultural dimensions

3.5.1. Parties may develop and implement specific agreements bringing together trade and cultural dimensions which concern notably cultural goods and services, and/or artists and other cultural professionals and practitioners (e.g. Florence Agreement and its Nairobi Protocol).

### **4. National policies and measures for the efficient implementation of preferential treatment in developing countries**

4.1. In light of the articles of the Convention related to national policies and to cooperation for development (articles 6, 7 and 14), developing countries are encouraged to implement, where possible, policies and measures designed to enhance their benefit from preferential treatment. Such policies and measures may include, but are not limited to:

4.1.1 fostering an enabling environment for the emergence and development of a cultural sector and cultural industries at national level;

4.1.2 enhancing the production and provision of cultural activities, goods and services;

4.1.3 providing strategic support to their domestic cultural sectors and cultural industries;

4.1.4 capacity-building and strengthening of competences, in terms of both artistic and entrepreneurial skills in the cultural field;

4.1.5. actively seeking knowledge and expertise in the areas of enhancement and dissemination of all cultural expressions.

### **5. Role of civil society**

5.1. In the light of Article 11 of the Convention concerning the participation of civil society and in conformity with the respective operational guidelines, civil society should be encouraged to play an active role with respect to the implementation of Article 16.

5.2 Civil society in order to facilitate the implementation of Article 16 may, without being limited to:

5.2.1 contribute to needs assessment and provide information, advice and innovative ideas regarding elaboration, improvement and efficient application of preferential treatment frameworks and schemes;

5.2.2 provide, upon request by the competent authorities, consultative information on visa requests of artists and other cultural professionals and practitioners from developing countries;

5.2.3 provide feedback to the Parties and in its capacity as observer, to the organs of the Convention, concerning difficulties and challenges in the implementation of Article 16, notably in the field;

5.2.4 engage and play an innovative and pro-active role in the field of research on the implementation and the monitoring process of Article 16 at the national level.

## **6. Coordination**

6.1 In view of the effective implementation of preferential treatment under Article 16 Parties are invited to adopt consistent policies and approaches in the trade and cultural spheres. Parties are furthermore invited to seek close coordination between the national authorities responsible for culture and trade as well as other public authorities concerned, in developed and developing countries alike.

## **7. Monitoring and exchange of information**

7.1 Monitoring of the implementation of the Convention, including Article 16, shall be ensured through the application of Article 9 of the Convention (Information-sharing and transparency), in particular through the periodical reporting obligations of the Parties.

7.2 Developed countries, in accordance with the modalities (to be) defined by the operational guidelines on Article 9 of the Convention, will illustrate in their periodical reports to UNESCO, every four years, how the obligations under Article 16 have been implemented. The information provided will be examined by the Committee and the Conference of Parties.

7.3 Parties should put in place mechanisms and measures facilitating and enhancing the exchange of information and sharing of expertise and best practices, as provided for by Article 19 of the Convention (exchange, analysis and dissemination of information).

7.4 Parties recognize the important role of research for the efficient implementation of preferential treatment under Article 16. Research should be conducted by the largest number of partners, where possible. To this end, Parties shall seek to compile and share the results of any relevant research relating to article 16.

## **The use of the resources of the International Fund for cultural diversity**

### **Article 18 – International Fund for Cultural Diversity**

1. *An International Fund for Cultural Diversity, hereinafter referred to as “the Fund”, is hereby established.*
2. *The Fund shall consist of funds-in-trust established in accordance with the Financial Regulations of UNESCO.*
3. *The resources of the Fund shall consist of:*
  - (a) *voluntary contributions made by Parties;*
  - (b) *funds appropriated for this purpose by the General Conference of UNESCO;*
  - (c) *contributions, gifts or bequests by other States; organizations and programmes of the United Nations system, other regional or international organizations; and public or private bodies or individuals;*
  - (d) *any interest due on resources of the Fund;*
  - (e) *funds raised through collections and receipts from events organized for the benefit of the Fund;*
  - (f) *any other resources authorized by the Fund’s regulations.*
4. *The use of resources of the Fund shall be decided by the Intergovernmental Committee on the basis of guidelines determined by the Conference of Parties referred to in Article 22.*
5. *The Intergovernmental Committee may accept contributions and other forms of assistance for general and specific purposes relating to specific projects, provided that those projects have been approved by it.*
6. *No political, economic or other conditions that are incompatible with the objectives of this Convention may be attached to contributions made to the Fund.*
7. *Parties shall endeavour to provide voluntary contributions on a regular basis towards the implementation of this Convention.*

### **Objectives and general aspects**

1. The purpose of the Fund is to finance projects and activities decided by the Committee on the basis of guidelines determined by the Conference of Parties, notably to support cooperation for sustainable development and poverty reduction in order to foster the emergence of a dynamic cultural sector in developing countries, in accordance with Article 14 of the Convention (Article 3 of the Financial Regulations of the Fund).
2. The Fund will be managed as a Special Account pursuant to Article 1.1 of its Financial Regulations and, given its multi-donor nature, cannot receive tied or earmarked contributions.
3. Use of the Fund’s resources must be consistent with the spirit and provisions of the Convention. Pursuant to articles 18.3 (a) and 18.7, Parties shall endeavour to provide voluntary contributions on an annual basis. The Committee encourages Parties to provide contributions on an annual basis, the amount being at least equal to 1% of their contribution to UNESCO budget. The resources of the Fund will be used in favour of developing and least-developed countries. Public development aid which is not tied may be used to finance the activities of the Fund for projects and programmes decided by the Committee in accordance with the provisions governing UNESCO Special Accounts.
4. In managing the Fund, the Committee shall ensure that the use of the resources:
  - 4.1 meets the programmatic priorities established by the Committee;
  - 4.2 meets the needs and priorities of beneficiary developing countries, especially least-developed countries, including, inter alia, promotion of South-South and North-South-South cooperation;
  - 4.3 contributes to achieving concrete and sustainable results as well as structural impacts, where appropriate, in the cultural field;

- 4.4 respects the principle of ownership by the beneficiaries;
- 4.5 respects, to the extent possible, an equitable geographic distribution of the resources of the Fund and gives priority to States Parties who have not yet benefited or who have benefited the least from these resources;
- 4.6 satisfies the principle of financial accountability, as understood within the UN system;
- 4.7 satisfies the need for funds to be spent principally on programmes and ensuring minimum overhead costs;
- 4.8 avoids spreading resources too thinly or supporting sporadic activities;
- 4.9 complements other international funds covering similar fields without, however, compromising the Fund's possibility to provide funding to projects that have already received or could receive financial assistance from a third party.

5. These guidelines will apply during a pilot phase lasting 36 months from the date of their approval by the Conference of Parties. During this phase, effective management mechanisms will be put in place and tested in accordance with the administrative and financial regulations of UNESCO. An evaluation of these mechanisms, their results and the effectiveness of the management of the Fund will be carried out six months before the end of the pilot phase. The findings of this evaluation will be submitted to the Committee with a view to a possible revision of the guidelines.

### **Fields of activity**

6. The use of the Fund may take the form of legal, technical, financial or material support, or the form of expertise, and will be allocated:

6.1 For programmes/projects:

- 6.1.1 introducing cultural policies, where appropriate, and strengthening the corresponding institutional infrastructure;
- 6.1.2 capacity-building;
- 6.1.3 strengthening of the existing cultural industries;
- 6.1.4 creating new cultural industries.

6.2 for special situations as laid down in articles 8 and 17 of the Convention and the operational guidelines relating to them.

6.3 for preparatory assistance. Such assistance may be requested to identify the specific needs of developing countries that are Parties to the Convention and to prepare their requests for assistance.

6.4 for assistance for participation, within the limits of funding decided by the Committee. This assistance may cover:

- 6.4.1 the cost of participation of public or private organizations or individuals from developing countries invited by the Committee to its meetings for consultation on specific issues in conformity with Article 23.7 of the Convention;
- 6.4.2 the cost of participation at the meetings of the organs of the Convention by government experts from least-developed countries that are members of the Committee, upon their request.

6.5 for the evaluation of programmes/projects by an expert panel, to be constituted by the Committee, before their submission for examination to the Committee.

7. Programmes/projects and requests aimed at offsetting a deficit, repaying a debt or paying interest or relating solely to the production of cultural expressions will not be eligible for assistance from the Fund.

8. At each of its sessions, on the basis of the funds available in the Special Account, the Committee will draw up a budget for each of the above-mentioned types of assistance.

## **Beneficiaries**

### 9. Entitled to benefit from the Fund:

#### 9.1 For programmes and projects:

9.1.1 all developing countries which are Parties to the Convention;

9.1.2 all State Parties to the Convention which have determined the existence of special situations on their territory in conformity with articles 8 and 17 of the Convention and related operational guidelines;

9.1.3 non-governmental organizations coming from developing countries that are Parties to the Convention, which meet the definition of civil society and criteria regulating admission of its representatives at meetings of organs of the Convention as mentioned in the operational guidelines relating to the role and participation of civil society;

9.1.4 international non-governmental organizations, which meet the definition of civil society and criteria regulating admission of its representatives at meetings of organs of the Convention as mentioned in the operational guidelines relating to the role and participation of civil society, and which present projects with impact at the sub-regional, regional or inter-regional level;

9.1.5 micro, small and medium enterprises of the private sector active in the cultural field of developing countries that are Parties to the Convention, to the limit of available funds from contributions provided by the private sector, in full conformity with the domestic laws of the Parties concerned;

9.1.6 representatives of vulnerable groups and other social groups identified in the Convention.

#### 9.2 For participatory assistance:

9.2.1 public or private organisations or individuals from developing countries, in conformity with Article 23.7 of the Convention;

9.2.2 governmental experts from least-developed countries, which are members of the Committee.

#### 9.3 For preparatory assistance:

9.3.1 developing countries, in conformity with paragraph 6.3 of the present operational guidelines.

## **Procedure for the submission of funding requests**

10. Funding requests are sent to the Secretariat of the Convention in French or English on the appropriate forms.

11. Funding requests are submitted to the Secretariat of the Convention:

11.1 Through the National Commissions or other official channels designated by the States Parties:

11.1.1 for their own requests;

11.1.2 for special situations;

11.1.3 for national NGOs;

11.1.4 for the private sector active in the cultural field;

11.1.5 for vulnerable and other social groups identified in the Convention.

11.2 directly for INGOs whose programmes/projects are supported in writing by the States Parties beneficiaries concerned.

12. Requests for funding shall include:

12.1 a brief summary of the programme/project;

12.2 a programme/project outline (title, objectives, activities and expected results including the cultural and social impact, beneficiaries, and a commitment to submit a report on the execution of the programme/project);

- 12.3 the name and address of the entity or representative that will hold financial and administrative responsibility for implementation of the programme/project;
- 12.4 a work schedule and time frame;
- 12.5 a detailed budget, including the amount of funding sought from the Fund, as well as other sources of financing. Partial self-financing should be encouraged to the extent possible;
- 12.6 any information relating to the status of completion of earlier funding requests from the Fund.

13. All funding requests must reach the Secretariat of the Convention by 30 June each year to enable their evaluation by the Committee at its ordinary session before the end of the year.

14. Requests for assistance for participation (6.4.2) must reach the Secretariat of the Convention at least two months before each Committee meeting. These requests will be subjected to a technical evaluation by the Chairperson and the Secretariat subject to the approved budget.

### **Selection and approval of requests**

15. Requests are selected as follows.

15.1 at the national level, the National Commissions or other official channels designated by the Parties shall ensure that projects are relevant, meet the country's needs, and have been subject to consultation among stakeholders;

15.2 upon receiving the requests, the UNESCO Secretariat will perform a technical evaluation to ensure that the applications are complete and therefore admissible;

15.3 an expert panel will be appointed for a two-year period by the Committee, drawn from a database of experts proposed by States Parties. The panel will be selected on the basis of criteria of equitable geographical distribution, representation, as well as complementarity of expertise. It will be responsible, after a technical examination of the programmes/projects, for preparing recommendations for the Committee in view of the examination of the programmes/projects by it. As a rule, the experts will consult electronically.

16. To facilitate the decision-making of the Committee, the recommendations of the expert panel will be accompanied by a detailed presentation, including:

16.1 a brief summary of the programme/project presented in the request;

16.2 the potential impact and expected results;

16.3 an opinion on the amount to be financed from the Fund;

16.4 the relevance/appropriateness of the programme/project to the objectives of the Convention as well as to the fields of activity of the Fund (paragraphs 4 to 7 included);

16.5 an assessment of the feasibility of the programme/project proposed, the relevance and effectiveness of its modalities of execution, as well as the expected structural impacts, where appropriate.

### **Evaluation**

17. Any programme/project may be evaluated ex-post facto at the request of the Committee with regard to its efficiency, and the achievement of its objectives relative to the resources spent. Evaluation of funded programmes/projects should present lessons learned, as well as the impact of these programmes/projects on cultural policies. The evaluation should showcase how experience gained could benefit other projects, with a view to compiling a knowledge base of best practices. Evaluation should be undertaken systematically for programmes/projects submitted in the pilot phase of implementation of these guidelines (see paragraph 5 above).

**Reporting**

18. The applicants shall submit a mandatory descriptive, analytical and financial report on the execution of the programme/project and the realization of expected results. The report must be presented to the Secretariat six months after the conclusion of the project/programme as foreseen within the time frame. No financial contributions for new projects will be allocated to applicants who have not submitted this report.

19. Under the Financial Regulations applicable to the Special Account for the Fund, the UNESCO Comptroller is responsible for maintaining the Fund's accounting records and submitting the annual accounts to the UNESCO External Auditor for audit.