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Diversity of Cultural Expressions

1.EXT.IGC

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INTERGOVERNMENTAL COMMITTEE FOR THE PROTECTION AND PROMOTION OF THE DIVERSITY OF CULTURAL EXPRESSIONS

First Extraordinary Session
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Item 3 of the Provisional Agenda: Preparation of operational guidelines for the implementation and application of the provisions of the Convention: measures to promote and to protect cultural expressions (Articles 7, 8 and 17 of the Convention)

In Decision 1.IGC 7 adopted at its first ordinary session, the Committee decided to discuss at its first extraordinary session in June 2008, issues related to, *inter alia*, the elaboration of draft operational guidelines concerning the protection and promotion of cultural expressions (Articles 7, 8 and 17 of the Convention). This document presents in Annex an outline of operational guidelines on Article 7 (Measures to promote cultural expressions), Article 8 (Measures to protect cultural expressions) and Article 17 (International cooperation in situations of serious threat to cultural expressions), which the Committee may wish to use as a basis for its discussions on this item.

Decision required: paragraph 10

1. The Conference of Parties, in Resolution 1.CP 6 adopted at its first session, requested the Intergovernmental Committee for the Protection and Promotion of the Diversity of Cultural Expressions (hereinafter referred to as “the Committee”) to prepare the operational guidelines referred to in subparagraph (c) of Article 22.4 and subparagraph (b) of Article 23.6 of the Convention on the Protection and Promotion of the Diversity of Cultural Expressions (hereinafter referred to as “the Convention”), giving priority attention to, *inter alia*, the provisions of Articles 7, 8 and 11 to 17 of the Convention and to submit at the second ordinary session of the Conference of Parties the results of its work for consideration and approval.

2. In the terminology of UNESCO international legal instruments, “protection” refers to the adoption of measures aimed at preservation, safeguarding and enhancement. That is the sense in which the term is used in various instruments such as the Convention concerning the Protection of the World Cultural and Natural Heritage (1972), the Convention on the Protection of the Underwater Cultural Heritage (2001) and the Convention for the Safeguarding of the Intangible Cultural Heritage (2003). The term “protection” in this context has none of the connotations that it may evoke in the commercial sphere. When used in conjunction with the term “promotion”, it implies the need to keep alive cultural expressions imperilled by the quickening pace of globalization. “Promotion” calls for perpetual regeneration of cultural expressions to ensure that they are not “reified”. Furthermore, the paired terms “promotion and protection” are inseparable. Article 7 of the Convention focuses on promotion and Article 8 on protection; the latter, which reinforces the former, pointedly states that all measures to that end must be taken “in a manner consistent with the provisions of this Convention”, that is, in respect for human rights, fundamental freedoms and existing international treaties. (“Ten Keys to the Convention”, UNESCO, 2005, p. 5)

3. In addition, it must be mentioned that Articles 7 and 8 of the Convention are to be viewed in conjunction with Article 6 (Rights of Parties at the national level), which refers to the right of Parties to the Convention to adopt cultural policy and measures within their territories. These three provisions constitute the basis of a policy framework aimed at protecting and promoting the diversity of cultural expressions. In this light and given the fact that the provision of Article 6 is not included in the group of provisions to which priority attention has been given (Resolution 1.CP 6), the Secretariat, while preparing this document, has taken into account the spirit of Article 6 so as to ensure the consistency and coherence in the elaboration of operational guidelines on Article 6 by the Committee, at a later stage.

4. In accordance with Decision 1. IGC. 7 of the 1st ordinary session of the Committee, the present document comprises in Annex an outline of operational guidelines on Articles 7, 8 and 17 of the Convention, which the Committee may wish to debate with a view to elaborating the draft guidelines to be submitted to the Conference of Parties at its second session in June 2009.

5. For the elaboration of the document, the Secretariat has drawn on existing UNESCO documents, as well as on existing research papers and studies, commissioned especially or for other related purposes.

6. Also, the Secretariat has drawn on advice and contributions of experts in the field of culture and cultural policies from different geographic regions for the purpose of providing specific expert input to the interpretation of the provisions in question. More specifically, the Secretariat has commissioned three experts, to prepare concise overviews on the implementation of Article 7 and Article 8 of the Convention. Two of the overviews bear on Article 7 and present cultural policies and measures from two geographic regions, namely Europe and Latin America. The papers are entitled respectively “Article 7: Measures to promote the diversity of cultural expressions – European Approaches”

(CE/08/1.EXT.IGC/INF. 2), by Danielle Cliche and “Article 7: Measures to promote the diversity of cultural expressions - Latinamerican approaches“(CE/08/1.EXT.IGC/INF.5), by Sylvie Duran. The third overview, by Prof. David Throsby (Australia), bears on the implementation of Article 8 and is entitled “Vulnerability and Threat: Insights for the Implementation of Article 8” (CE/08/1.EXT.IGC/INF. 3). These papers are presented to the Committee as information documents.

7. In addition to these information documents, the Secretariat has drawn on the contribution and advice of Francis Nyamnjoh, expert in sociology, anthropology and culture, currently Head of Publications and Communications at the Council for the Development of Social Science Research (CODESRIA) in Dakar, Senegal.

8. Taking into account the need for sharing information, expertise and best practices (Article 19: Exchange, analysis and dissemination of information), the Committee may wish to invite the Parties to the Convention to provide in due time to the Secretariat relevant information on cultural policies and measures to promote cultural expressions, as provided for in Article 7 of the Convention and to request the Secretariat to disseminate it on the Convention’s website.

9. The outline of operational guidelines on Articles 7, 8 and 17 of the Convention is contained in the Annex to the present document.

10. The Committee may wish to adopt the following decision:

DRAFT DECISION 1.EXT.IG 3

The Committee,

1. *Having examined document CE/08/1.EXT.IGC/3,*
2. *Recalling Resolution 1.CP 6 of the Conference of Parties and Decision 1.IGC 7 of the Committee,*
3. *(Option A) Decides that the outline of Operational Guidelines concerning the protection and promotion of cultural expressions (Articles 7, 8 and 17 of the Convention), as annexed to this Decision, will be finalized at its session in December 2008.*
3. *(Option B) Submits for approval to the Conference of Parties the Operational Guidelines concerning the protection and promotion of cultural expressions (Articles 7, 8 and 17 of the Convention), as annexed to this Decision.*

Outline of Operational Guidelines Measures to Promote and Protect Cultural Expressions

Chapter xxx: Measures to promote cultural expressions

Article 7

“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.”

General features

1. An integrated cultural policy strategy as well as appropriate institutional and legal frameworks aimed at the promotion of diverse cultural expressions should:
 - 1.1. foster the emergence of a dynamic cultural sector and be based on the links in the cultural value chain, from creation through production, dissemination and distribution, to access to cultural expressions;
 - 1.2. include policies and measures to encourage the full participation and engagement of all members of society with a diversity of cultural expressions with special attention to be paid to the challenges and barriers faced by women and social groups, such as minorities and individuals.

Principles

2. Cultural policies and measures aimed at the promotion of a diversity of cultural expressions should be based on the principles of equality, openness, balance and sustainability, in compliance with Article 2 of the Convention (Guiding Principles).

Policy-making process

3. Parties should ensure the participation of all stakeholders in the elaboration of cultural policies and measures aimed at the promotion of diverse cultural expressions, including civil society representatives.
4. Parties should ensure an integrated approach to the elaboration of cultural policies and measures, involving participation of different ministries and national institutions. The setting up of inter-ministerial working groups should be favoured, involving the participation of artists, cultural professionals as well as civil society representatives and ensuring the involvement of women and social groups.
5. Policy development should be based on the results of needs assessments and the examination of existing policies and measures in the perspective of cultural value chain analysis, in order to determine priorities for future policies and additional financial resources. Parties should, therefore, encourage and support the setting up of locally - based research infrastructures for the systematic collection and interpretation of policy relevant information, with the participation of all stakeholders including artists, cultural professionals, civil society, as well as the private sector, in particular small and medium enterprises (SME).

6. In the elaboration of cultural policies and measures, Parties should take into account the provisions of other related international legal instruments, in particular the Recommendation concerning the Status of the Artist, the Florence Agreement and its Nairobi protocol, the international legal instruments related to protection of intellectual property rights, etc.

Links in the cultural value chain: policies and measures

7. At the stage of **creation**, Parties should aim to provide support for artists, creators, craftspeople, to produce new works, through a support system, which can include funding arrangements and programmes of the national authorities and/ or the regional or local authorities.
8. Budgets for the direct funding of cultural expressions might be derived directly from the culture budget of governments. Funding could also be based on compensation schemes, such as lotteries or specific taxes when it is granted through arts councils and similar bodies, special funds, endowments or through public-private partnerships.
9. Measures providing direct support for creators and cultural operators may include, but shall not be limited to: individual artists' grants, project grants, residency programmes and mobility schemes, prizes and awards, public commission for new works, support for arts education, festivals, specialized fairs, networks coordinated by either governments or civil society.
10. At the stage of **production**, Parties should aim to support the creation of and access to platforms of production as well as artists wishing to start operating as cultural entrepreneurs, or local production companies wishing to expand their activities in the cultural industries.
11. Measures providing support for production may include, but shall not be limited to: loans, reduced interest rates, bridge financing, investment in the form of seed capital, management support and mentoring programmes for new cultural entrepreneurs.
12. At the stage of **distribution/dissemination**, Parties should aim to provide support and opportunities for artistic works to be distributed in the marketplace as well as through public institutions or channels at the national and international level.
13. Parties should also provide public support for the distribution of artistic works and local cultural productions which may not otherwise succeed in reaching the marketplace.
14. Measures providing support for distribution/dissemination may include, but shall not be limited to: support to public cultural and media institutions, performance and production spaces, reproduction and dissemination facilities, cultural platforms and events, support for the communication or marketing of diverse artistic works and cultural productions.
15. At the stage of **access** to diverse cultural expressions, Parties should aim to increase the society's participation in cultural life as a means to enhance their overall quality of life by providing information to the general public and increasing its awareness of the availability and broad range of cultural expressions, and by offering opportunities for physical access through the provision of adequate infrastructures as well as the capacity to avail themselves of such access.

16. Measures providing support for access to cultural expressions should concern cultural goods, services and activities originating in the territory of the respective Party and those originating in other countries and regions. Parties should aim to develop both export-driven strategies (promoting cultural expressions abroad) and import-driven strategies (enabling the distribution of diverse cultural expressions in their respective markets).
17. Measures providing support for access to diverse cultural expressions may include, but shall not be limited to: awareness-raising about cultural activities and providing knowledge skills to participate in them (through educational institutions, local community art centres, etc.); and financial incentives (e.g. reduced ticket prices or free entrance, support to subtitling or dubbing of films to help overcome language barriers).
18. Parties should not neglect the importance of each element of the value chain and aim to establish an equitable balance between support measures and funding resources for the different links of the cultural value chain.

Individuals and social groups

19. In the elaboration of cultural policies and measures across the cultural value chain (creation, production, distribution, dissemination, access) aimed at promoting diverse cultural expressions, Parties should pay due attention to: including measures aimed at individuals and groups in order to provide support for their cultural expressions/artistic works and their access to distribution channels or spaces; increasing public awareness of these expressions/works; and promoting their involvement, representation within the governance and management of cultural institutions, including decision-making positions.
20. Measures to promote the cultural expressions of women, minorities and indigenous people are to be understood as those that address the exclusion of their artistic works from mainstream cultural spaces and institutions, support their participation in decision-making processes and their upward mobility within institutional hierarchies.
21. Such measures may include but will not be limited to: targeted direct financial support for their artistic works/cultural expressions through grants, support for the distribution of their artistic works/cultural expressions via e.g. museums and galleries, film festivals or book fairs; public and private media channels; the introduction of special awards to specifically recognize their works at different stages of their careers; mentoring programmes for younger professionals within cultural industry companies; training centres to provide freelance artists and producers with new entrepreneurial skills.

Chapter xxx: Measures to protect¹ cultural expressions - special situations

Article 8:

“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:

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

Special situations

1. The nature of threats to cultural expressions can be cultural, physical or economic.
2. In order for a Party to apply measures under Article 8, a situation where cultural expressions on its territory are at risk, under serious threat, or otherwise in need of urgent safeguarding, must be **special**.
3. Parties should determine whether the situation in consideration is **special** by reference to the particular threat, the vulnerability of the cultural expression in question and the value attached to it.
4. In determining the existence of a special situation under Article 8 (1), Parties should take into account the nature of the consequences of a particular threat. Cultural consequences should prevail in taking a decision. Purely economic consequences should not be regarded as sufficient ground for applying Article 8, unlike the adverse cultural effects that an economic threat may have.
5. In determining the existence of a special situation under Article 8 (1) Parties should collect and analyse empirical evidence concerning the source of the threat and the harm it is likely to cause the cultural expressions. Such evidence may include, but will not be limited to cultural indicators, factual data concerning the source of the threat and data demonstrating the incapacity to meet the threat.

Appropriate measures

6. 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; appeals to international cooperation.

¹ 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.

7. 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

8. Where a special situation under Article 8 (1) has been determined by a Party and measures have been taken under Article 8 (2), Parties will report to the Committee.
9. The report should contain information concerning the circumstances under which the special situation under Article 8 has been invoked. It should be accompanied by the evidence described in paragraph 5 of this chapter. In addition, the report should provide detailed information to the Committee concerning the measures taken by the Party and their expected impact on remedying the special situation.
10. 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. .
11. 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. It may make recommendations, if deemed necessary, in compliance with Article 8 (3) and Article 23 (6) (d).
12. Where a special situation under Article 8 (1) has been determined by a Party, the Party may apply for assistance to the International Fund for Cultural Diversity. The request should be accompanied by the information and data described in paragraph 9 of this chapter. Further details are specified in Chapter XXXX International Fund for Cultural diversity (IFCD)
13. Where a special situation under Article 8 (1) has been determined by a Party and measures have been taken under Article 8 (2), Parties will include appropriate information about these in their periodical report to be provided to UNESCO under Article 9 (a).

International cooperation

14. In situations of serious threat to cultural expressions as referred to under Article 8, the Parties shall cooperate in providing assistance to each other, and in particular to developing countries (Article 17 of the Convention).