

EXPLANATORY MEMORANDUM

RATIFICATION OF THE CONVENTION ON THE PROTECTION AND PROMOTION OF THE DIVERSITY OF CULTURAL EXPRESSION

1. PURPOSE

The purpose of this Memorandum is to inform Parliament on the implications of the Convention on the Protection and Promotion of the Diversity of Cultural Expressions and to request that it ratifies the Convention.

2. OVERVIEW

UNESCO adopted the Universal Declaration on Cultural Diversity in November 2001. In doing so, the international community affirmed that respect for cultural diversity and intercultural dialogue is a key contributor to development and peace.

In October 2003, the 32nd UNESCO General Conference asked the Director General, Mr Koïchiro Matsuura, to present a draft convention by October 2005 on protecting and promoting the diversity of cultural content and artistic expression. Such a convention would be a legally binding instrument that would create rights and responsibilities for all states and legitimize their right to conserve or develop national policies to support the production and circulation of cultural content.

Mr Matsuura unveiled the first draft of the Convention on the Diversity of Cultural Expression in 2004 and three subsequent meetings of intergovernmental experts followed to negotiate the content of the Convention. At the third and final such meeting held from 25 May to 4 June

2005, an agreed text was finalized for submission to the UNESCO General Conference in October 2005 for adoption.

On 20 October 2005 the convention on the protection and promotion of the diversity of cultural expression was adopted by majority vote. A copy of the convention is attached at Annexure A.

The Convention on the Protection and Promotion of the Diversity of Cultural Expressions is receiving high profile attention internationally due to its ground breaking nature. This convention is the first normative international instrument that deals with the protection and promotion of cultural diversity internationally. Sectors such as the trade sector are taking note as the instrument has implications regarding the trade of cultural goods and services and the cross cutting nature of culture in several other sectors.

The Convention represents a contribution to a world order based on sustainable development and intercultural dialogue. It is a new pillar of world governance. This instrument should play a comparable role in terms of cultural diversity and at the same prescriptive level as the World Intellectual Property Organization conventions and the World Trade Organisation, World Health Organization and multilateral environmental agreements in their respective areas. By affirming the right to diversity this Convention is a fundamental instrument of international cultural law. The Convention enshrines common rules, principles and reference points in terms of global cultural diversity.

South Africa played a critical role in placing the Convention on the UNESCO agenda in subsequent meetings by chairing a working group of approximately fifty countries, in re-working the International Cooperation section of the Convention, as well as developing positions on Preferential Treatment for developing countries and giving input to the concepts of cultural goods and services. The International Cooperation section of the Convention is the

section that will determine the benefits that developing countries will derive from the ratification of this Convention.

The Preamble of the Convention (paragraph 19) notes that *"while the processes of globalization, which have been facilitated by the rapid development of information and communication technologies, afford unprecedented conditions for enhanced interaction between cultures, they all represent a challenge for cultural diversity, namely in view of risks of imbalances between the rich and poor countries"*.

Therefore the Convention promotes the exchange of cultural goods and services between developed and developing countries and specifically better access to the global market for the cultural goods and services of developing countries.

One of the strongest outcomes of the Convention is the promotion of the role of culture as central to sustainable development. This necessitates that culture be mainstreamed in terms of national government and internationally for the development of our region i.e. Culture's role in and contribution to the economic and social sectors must be examined and streamlined. In practical terms, our cultural industries have the potential to become one of the strongest contributors to the GDP, and to alleviate poverty. Culture will also become a focus area for Development Assistance.

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.

The Convention responds to an existing need to actively protect and promote the diversity of cultural expressions in the face of the accelerated pace of globalization. Nearly everywhere languages are falling into disuse, traditions

are being forgotten and vulnerable cultures are being marginalized, if not wiped out, threatened by various factors. This development provokes an imbalance in the flow of cultural goods and services such as music, films, crafts and books, for example and adversely impacts on the social and economic development of many developing countries. The Convention addresses the issues related to cultural activities, goods and services because of their socio-cultural impacts.

The Department of Arts and Culture also organized a National Conference on Cultural Diversity in partnership with UNISA and the South African National Commission for UNESCO in November 2004. The purpose of the conference was to consult with civil society on issues of cultural diversity.

In August 2004 the office of the Chief State Law Advisers commented on the preliminary draft of the Convention and in their view the convention creates very few legally binding obligations on State Parties but instead it sets out a policy orientation towards promoting and protecting cultural diversity. Article 20 expressly provides that nothing in the convention shall be interpreted as modifying rights and obligations of the Parties in relation to any other treaties to which they are Parties. For this reason the convention is not in conflict with South Africa's other international obligations and is therefore satisfactory from an international law point of view.

3. FINANCIAL IMPLICATIONS

There are no direct financial implications.

4. CONSTITUTIONAL IMPLICATIONS

As a multilateral Convention requiring ratification this Convention falls within the ambit of section 231(2) of the Constitution of the Republic of South Africa,

2006. Cabinet thus referred the Convention to Parliament for ratification.

cultural goods and services.

- * The establishment of financial support mechanisms for the developing world.

Co-ordinate relevant central, state and regional coordination, and countries).

CONTACT PERSON

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South Africa played a critical role in placing the Convention on the UNESCO agenda in subsequent meetings by chairing a working group of approximately fifty countries, in re-working the International Cooperation section of the Convention, as well as developing positions on Preferential Treatment for developing countries and giving input to the concepts of cultural goods and services. The International Cooperation section of the Convention is the

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1996. Consequently both Houses of Parliament must approve ratification, before South Africa deposits its Instrument of Ratification with the Depository. The Chief State Law Advisers of the Department of Justice and Foreign Affairs (International Law) have certified that the Convention are not in conflict with the South African domestic law and since the Convention has already been adopted by the General Conference of UNESCO on 20 October 2005, they have refrained from indicating any amendments as regards to the drafting form and style of the Convention.

Cabinet has approved the ratification of the Convention on the Protection and Promotion of the Diversity of Cultural Expressions by South Africa on 17 May 2006. Cabinet thus referred the Convention to Parliament for ratification.

5. CONCLUSION

The Convention will enter into force three months after thirty (30) documents of ratification, acceptance or accession will have been submitted to the Director-General of UNESCO (Article 29).

The realization of this Convention is very important for the developing world as it will make provision for:

- Measures to be taken to balance the current imbalances in the trade of cultural goods and services;
- The establishment of financial support mechanisms for the developing world;
- Capacity building for the cultural industries and other areas of the cultural sector in the developing world;
- Facilitate strong south-south and regional cooperation; and
- Facilitate technology transfer and know how to the developing world.

To date 13 countries has ratified (6 African countries and 7 European countries).

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