



## 1. Aim

- The aim of the report is to provide an overview on the progress made hitherto regarding policy issues and challenges identified through a national consultative process on the Arts and Culture policy and legislative review process.




## 2. Introduction and Background

- The Arts and Culture Policy Review Process was initiated by MINMEC in February 2005. Its objectives are:
- To review and evaluate the progress made by the National Department of Arts and Culture (DAC), Provincial Departments of Arts and Culture and Local Departments of Arts and Culture regarding government objectives as set out in the White Paper on Arts and Culture and Heritage (hereafter refers to as White Paper) and related legislation.
- To review and evaluate the progress made by all implementing statutory bodies regarding government objectives as set out in the White Paper.
- To review the effectiveness, efficiency and relevance of the government's policy and legislative frameworks on Arts and Culture.
- To revisit and redefine the core business of the DAC and its role as a strategic policy unit of government on Arts and Culture.
- To review the operational competencies, institutional viability and other factors affecting implementing statutory bodies.
- To assess the relevance and responsiveness of arts and culture policy and legislation to the demands of the 2nd decade of democracy. Formulate new policy options and make recommendations to facilitate effective implementation.



- The Technical Intergovernmental Committee (TIC) established a sub-committee, referred to as the Policy Review Committee that would facilitate the National Policy and Legislative review process and ensure the realization of MINMEC's mandate. The Policy Review Committee (PRC), acting on behalf of the TIC, engaged in a national consultative process and has hitherto held five (5) national consultative forums/for a during the past 12 months.
- The National Consultative process provided a platform to various stakeholders to reflect critically on the current Arts and Culture policies and legislation that has been implemented during the past decade. The various stakeholders consulted included Senior Managers of the National Department of Arts and Culture (DAC), Provincial Governments of Arts and Culture and Institutions that deal with various disciplines such as Heritage, Film and Video, Arts, Performing Arts, Photography and the Arts and Culture business sector. Attempts to engage Local Government institutions through the South African Local Government Association (SALGA) where however not successful as SALGA, though invited, could not attend.



- The National Consultative process provided the stakeholders with an opportunity to identify omissions, duplications and areas of disjuncture between policy and legislation; articulate challenges to be addressed during the second decade of freedom and democracy; formulate new policy options and make recommendations that would facilitate effective implementation of Arts and Culture Policy and Legislation.
- The Policy Review Committee also utilized the service of UNISA in conducting an extensive research process that focuses on the objectives of the National Policy and Legislative review process. These objectives were used as terms of reference for the research process. In an attempt to strengthen the quality of the research product, UNISA researchers were invited to attend the National Consultative For and engaged with various stakeholders.
- The Policy Review Committee assumed the responsibility of managing the research process. A final research product is expected to be submitted by December 2006. A National Policy Review Summit is scheduled to take place in February 2007. The research product will form the basis for discussion at the National Policy Review Summit.



### 3. National Policy Review Process

#### 3.1. Achievements during the past decade

- The National Consultative process identified several achievements made during the past decade of freedom and democracy that have benefited the Arts and Culture sector. They include: The White Paper on Arts, Culture and Heritage launched in July 1996; The Constitution of the Republic of South Africa (Act 108 of 1996); The Bill of Rights (which includes Cultural Rights); The Establishment of the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities (section 185); Schedule 4 and 5 of The Constitution which deals with "functional areas of concurrent national and provincial competence" and "functional area of exclusive provincial, legislative competence" respectively.
- The Establishment of statutory bodies such as The National Arts Council (NAC); National Film and Video Foundation (NFVF) and the National Heritage Council (NHC); Business Arts South Africa (BASA) and The Lottery Fund; new National Cultural Institutes such as The Robben Island Museum, Nelson Mandela Museum and Albert Luthuli Museum, all signify significant progress made. With respect to the Language sector, the establishment of the Pan South African Language Board (PanSALB), The National Language Service (at the DAC), The Provincial Language Committees as well as Language Bodies and Lexicography Units also signify tremendous progress made.



### 3.2. Policy Challenges over the past ten years

#### 3.2.1. Challenges Associated with White Paper objectives

- Both the National Consultative process and the Research Process identified several challenges that are associated with The White Paper on Arts, Culture and Heritage. The White Paper on Arts, Culture and Heritage outlines several objectives to be achieved such as the following:

##### Objective 1

- Locate arts, culture, heritage and literature within the framework of a democratic South Africa.
- Promote the arts, culture, heritage and literature as significant and valuable areas of social and human endeavour in themselves in a democratic post colonial South Africa.
- Set institutional arrangements for the implementation of the new vision.



##### Objective 2

- Develop a framework for the "arms length" relationship which is fundamental to the freedom of expression and ensure accountability when public funding is utilised.
- Establish optimum funding arrangements within existing budget and physical discipline.
- Establish institutional arrangements for the creation, promotion and protection of South African arts, culture, heritage, and the associated practitioners.

##### Objective 3

- Develop a framework for the contribution of arts, culture, heritage and legislature in the economy and industry and for a lifelong learning through books and other resources in libraries.

##### Objective 4

- Set the background to begin to understand ourselves; take stock of existing situation.
- Propose rationalisation in institutional arrangements and funding.
- Propose accessibility to a broader audience (both in participation and in enjoyment but also in geographical terms).



- Stakeholders and researchers are of the view that some of the objectives of The White Paper on arts, culture and heritage are neither clear nor properly formulated. This makes it extremely difficult to assess whether The White Paper is sufficiently responsive to challenges facing the government today, such as job creation, social development, urban renewal and rural development and other similar challenges. The White Paper appears silent on several other issues such as:

- Promoting a robust social development process with a clear strategy aimed at social integration and social cohesion.
- Designing legislation to facilitate the participation and collaboration of public and private sectors in cultural policy development and production.
- Development of cultural policy and management training programme to empower national, provincial and local government officials and stakeholders.
- Linkage of culture to urban regeneration and rural development.
- Developing a clear policy on visual arts.
- Developing a policy on languages beyond the PanSALB act.
- Incorporation of culture into an international agenda through instruments and activities which facilitate the developments and harmonisation of regional and continental cultural policies.



### 3.2.2. Recommendations

- There is a need to revise The White Paper on arts, culture and heritage with a view to have a clear set of objectives that will respond to the current challenges, given the performance of arts and culture in the past decade and its potential contribution to the economy.
- A process of consultation with all stakeholders needs to be undertaken at all levels and in all geographical areas.
- National, provincial and regional workshops could be undertaken in selected topics as well as public hearings involving all communities.
- The issue of culture having a non-funded mandate at local government level needs to be revisited.

### 3.3. Constitution of the Republic of South Africa Act

#### 3.3.1. Challenges of and recommendations on schedule 4 and 5.

- Schedule 4 of the constitution lists cultural matters as a "functional area of concurrent national and provincial legislative competence".
- In terms of part A schedule 4 of the constitution "cultural matters", "tourism" and "urban and rural development" count among the areas in respect of which parliament and provincial legislatures have concurrent legislative competence. Grammatically speaking, "concurrent legislative competence" means simply that schedule 4 allows legislation concerning the functional areas of cultural matters to be enacted in both the national and provincial spheres.
- Clearly provincial government bears some responsibility to promote and develop arts and culture in their defined areas. What is perhaps not so clear is that local government also has some responsibility to promote and develop arts and culture in their defined areas. This has to be made very clear at a policy level.



- Schedule 4 & 5 of the constitution, however, turned to be interpreted differently in the different spheres of government. This turns to obstruct progress in the area of arts and culture as schedules 4 & 5 do not provide a clear sense of a competency and role of local authorities. Occasionally the absence of a clear sense of competency and role of local authorities tends to be interpreted to mean that local authorities are not expected to implement cultural issues. As a result of these views, many local authorities have sidelined culture as an issue of and for development. It appears clear though that challenges related to schedules 4 & 5 cannot be addressed by amending the constitution because this will be difficult.
- The Intergovernmental Fiscal Relations Act and the Intergovernmental Relations Framework Act should be utilised to ensure that the governmental sphere that is closest to the people has the competence to perform functions in the cultural arena.
- The instruction of the constitution to the effect that spheres of the government must not assume any power or function except those conferred on them by the constitution should not be understood to mean that passivity is the best option in the cultural arena. On the contrary, true service or "non interference" in matters that are cultural may imply taking a long overdue action and engaging in manifold activities.



### 3.4. Institutional Autonomy (Arms-Length)

- The Arms Length principle gives state agencies operational autonomy and protects them from government interference. This principle raises the question of accountability as there is lack of clarity on obligations and responsibilities of both parties.
- Questions that are being asked include whether or not the principle of autonomy is still relevant in the current context given the amount of financial resources and other forms of material support by government provided to these state agencies.
- Other challenges related to the application of this principle involve the appointment dates of board members which are not in line with the budgeting and reporting cycle. This also includes ensuring appropriate induction of councils on the PFMA and other government requirements; ensuring that performance agreements exist between councils and the CEO's and that the programme of action implemented by these state agencies respond adequately to the broad government programme of action and priorities.



### 3.5. Legislative frameworks.

#### 3.5.1. The Pan South African Language Board – Relationship with DAC.

- PanSALB is the implementing agency with regard to the promotion and development of official languages in South Africa as well as to promote and ensure respect for languages commonly used by South African communities.
- PanSALB is a statutory body but is also constituted under section 6 subsection 5 of the constitution. It is not included among the institutions established to support constitutional democracy in chapter 9 of the constitution. However the PanSALB Act contains provisions similar to provisions in chapter 9 on the independence and impartiality of the agency.
- In terms of section 4 subsection 2 of the PanSALB Act, no organ of state, member or employee of an organ of state or any other person may interfere with the board, or any of its members or a person so appointed.
- PanSALB submits its reports to Parliament. In practice, The Minister determines its budget. The interpretation of the PanSALB Act and the role of the DAC on language development has given rise to a problematic relationship between PanSALB and the DAC.
- In terms of the constitution the national and provincial spheres of government have concurred powers in respect of language policy and the regulation of official languages. The provisions of section 6 of the constitution expressly confer legislative competence upon the provincial legislatures.



#### 3.5.2. Other challenges of the Legislative Framework.

- The challenges related to the Legislative Framework are two-fold. They include: arts and culture areas that are not legislated and legislation that needs technical amendments. Currently the mandate for the legacy project emanates from Cabinet and there is no coherent policy. The DAC manages museums based on clustering based on geographical considerations and not on core mandate.
- SAHRA is established under section 11 of the National Heritage Resources Act and Provincial Heritage Resources Agencies are established under Section 23 of the same act. However, there is no clarity on their relationship.
- To overcome some of these challenges the DAC has identified numerous essential and urgent technical amendments to the legislation administered by the Department. These amendments will address aligning the Department's legislation with legislation like PFMA etc. It will also address inconsistencies in the appointment and remuneration of the Councils of institutions. The National Language Service has requested that the Language Professions Council Bill be placed on the legislative Programme. It intends to regulate the accreditation and monitoring of language practitioners in the translation and interpreting disciplines.



### 3.6. Funding and the financing model

- Funding is a complex and evolving system which is also diverse, uncoordinated and confusing. The financing model of arts, culture and heritage therefore has to be responsive to several cardinal issues including the disbursements of revenue; decision making processes on arts and culture programmes that have to be funded as well as the control mechanisms that have to be exercised by the DAC in ensuring that the funding allocation and expenditure or investment are ad idem with Government objectives.
- Funding for the sector should be tailor made for the department but must be influenced by the PFMA principles. It should be based on multi-year planning and institutions that can generate funding should be incentivised whilst individuals and companies that make donations to the sector should get tax incentives. At institutional level effective public finance management should be the responsibility of the entities and their respective Boards.



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#### 4. Conclusion and Way forward

- The policy Review Committee wishes the Portfolio Committee to note the progress made in the Policy Review Process. To take note of the fact that a National Policy Review Summit is scheduled for February 2007 as per TIC resolution. That the Portfolio Committee also notes that a final research report reflecting the policy issues mentioned will be submitted to the Policy Review Committee in December 2006 and this will also constitute the basis of discussion at the National Policy Review Summit.
- That the Heritage promotion branch is also engaged on a legislative process focusing upon heritage sector.



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