

**Briefing on the UNESCO Convention
on the Protection and Promotion of the Diversity of Cultural Expressions**



The Department of Arts & Culture
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Introduction

***One of UNESCO's prime objectives is
"TO PROMOTE THE FREE FLOW OF IDEAS BY WORD
AND IMAGE," while "PRESERVING THE
INDEPENDENCE, INTEGRITY AND FRUITFUL
DIVERSITY OF THE CULTURES".***

UNESCO Constitution, Article 1

***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.***

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Background on the Adoption of the Convention

- ***In 2003 Member States requested the Organisation to pursue normative action to defend human creativity;***
- ***2 years of intense negotiations;***
- ***Independent and government experts;***
- ***South Africa played a critical role by chairing a working group of ± 50 countries;***

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Cont ...

Background on the Adoption of the Convention

- ***Reinforces the idea already included in the UNESCO Universal Declaration on Cultural Diversity;***
- ***Cultural Diversity must be considered as a 'common heritage of humanity' and its 'defense as an ethical imperative, inseparable from respect for human dignity';***
- ***20 October 2005 the convention was adopted by majority vote at the 33rd session of the UNESCO General Conference***
- ***148 votes for; 2 votes against and 4 abstentions;***

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Cont ...

Background on the Adoption of the Convention

- ***The Convention is the 1st normative int'l instrument that deals with the protection and promotion of cultural diversity on a global scale;***
- ***South Africa fully supports the Convention;***
- ***This instrument will enter into force 3 months after the date of deposit of the 30th instrument of ratification;***

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Cont ..

Background on the Adoption of the Convention

- ***Some countries, e.g. the US see the convention as a threat to WTO negotiations;***
- ***They contend that because of its broad definition category of cultural goods and services, the Convention will have serious implications for the WTO agreements and for int'l trade on audiovisual goods and services;***
- ***Article 20 refers to the relationship to other instruments, recognizes the relationship to other treaties which is mutual supportiveness, complementarily and non-subordination;***
- ***One of the strongest outcomes of the Convention is the promotion of the role of culture as central to sustainable development***

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Aims of the Convention

- *To create conditions for cultures to flourish and to interact freely in a mutually beneficial manner;*
- *To give recognition to the distinctive nature of cultural activities, goods and services as vehicles of identity, values and meaning;*
- *To identify new arrangements for international cooperation, which is the cornerstone to the Convention;*
- *To reaffirm the sovereign rights of States to maintain, adopt and implement policies and measures that they deem appropriate for the protection and promotion of the diversity of cultural expressions on their territory, while ensuring the free flow of ideas and works.*

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Guiding Principles of the Convention

- *No measure or policy designed to protect and promote the diversity of cultural expressions shall infringe human rights and fundamental freedoms, such as freedom of expression, information and communication, as well as the ability of individuals to choose the cultural expressions;*
- *Openness and balance ensures that when States adopt measures in support of the diversity of cultural expressions, they should seek to promote, in an appropriate manner, openness to other cultures in the world;*
- *Complementarity of economic and cultural aspects of development, and that of sustainable development, which figures prominently in the Convention;*
- *Equitable access to a rich and diversified range of cultural expressions and access for all cultures to appropriate means of expression and dissemination.*

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Africa & Diaspora Conference

The Conference aimed at advocating for the urgent ratification of the convention and a position on the implementation of the international convention on the protection of the diversity of cultural expressions by:

- Regional policy co-ordination;
- Role of Cultural Industries in Africa and the Diaspora;
- Pro-active engagement of the international fund on cultural diversity;
- Innovative bilateral partnerships on cultural diversity;
- Integration of the role of cultural diversity in regional strategies;
- The role of culture in effecting social cohesion and social justice.⁹

Implication for SA and the rest of the developing world

The realization of this Convention is very important for the developing world!

Why should South Africa ratify?

- 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 e.g. IBSA
- Facilitate technology transfer and know-how to the developing world;
- Culture can be mainstreamed both nationally and internationally for the development of our region and the entire developing world. ¹⁰

Conclusion

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.

The Convention address the issues related to cultural activities, goods and services because of socio-cultural impacts.

Cultural Diversity is a rich and vibrant whole that continually looks to the past for expressions that will determine its future.

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TITLE AND PREAMBLE

Title

- Includes the words "protection" and "promotion"
- Focus on the diversity of cultural expressions

Preamble

- Affirms that CD is a defining characteristic of humanity
- CD forms a common heritage of humanity
- CD is a mainspring for sustainable development
- CD is indispensable for peace and security
- CD is important for the full realization of human rights and fundamental freedoms in UD HR
- Culture as a strategic element in national and international development policies and international development cooperation (UN MD 2000-Poverty)

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PREAMBLE cont...

- Culture takes diverse forms across time and space and that diversity is embodied in the uniqueness and plurality of identities
- Importance of traditional knowledge as a source of intangible and material wealth especially the knowledge systems of indigenous peoples
- Need to take special measures to protect the diversity of cultural expressions especially those threatened by possibility of extinction or serious impairment
- Importance of culture for social cohesion and enhancement of status and role of women in society
- CD is strengthened by free flow of ideas nurtured by constant exchanges and interaction between cultures

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PREAMBLE cont...

- Freedom of thought, expression and information and diversity of media enable cultural expressions to flourish within societies
- Importance of traditional cultural expressions
- Linguistic diversity is a fundamental element of CD and reaffirming fundamental role of education
- Vitality of cultures including that of minorities and indigenous peoples
- Vital role of cultural interaction and creativity

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PREAMBLE cont...

- Importance of intellectual property rights
- Cultural activities, goods and services have both an economic and a cultural nature
- Opportunity and threat of globalization
- UNESCO's mandate to ensure respect for CD and recommend international agreements to promote free flow of ideas by word and image
- Reference to other international instruments and in particular Universal Declaration on CD 2001

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ARTICLE 1: OBJECTIVES

- Promote and protect the diversity of CEs
- Create conditions for cultures to flourish
- Encourage dialogue among cultures for intercultural respect and culture of peace
- Foster interculturality to develop cultural interaction in the spirit of building bridges among peoples
- Promote respect for the diversity of CEs and raise awareness of its value at all levels

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ARTICLE 1: OBJECTIVES cont...

- Reaffirm the importance of the link between culture and development and to support all actions and at all levels for this
- Give recognition to the distinctive nature of cultural activities, goods and services as vehicles of identity, values and meaning
- Reaffirm the sovereign rights of States to maintain, adopt and implement policies and measures
- Strengthen international cooperation and solidarity in a spirit of partnerships

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ARTICLE 2: GUIDING PRINCIPLES

- Respect for human rights & fundamental freedoms
- Sovereignty
- Equal dignity of and respect for all cultures
- International solidarity and cooperation
- Complementarity of economic and cultural aspects of development
- Sustainable development
- Equitable access
- Openness and balance

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PART II: ARTICLE 3 :SCOPE OF APPLICATION

Convention shall apply to policies and measures adopted by the Parties related to the protection and promotion of the diversity of cultural expressions

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ARTICLE 4: DEFINITIONS

- Cultural Diversity refers to the manifold ways in which cultures of groups and societies find expression
- Cultural content refer to symbolic meaning, artistic dimension and cultural values that originate from or express cultural identities
- Cultural expressions are those expressions that result from the creativity of individuals, groups and societies and that have cultural content
- Cultural activities, goods and services embody or convey cultural expressions, irrespective of the commercial value they may have is clearly understood, but addition of activities is problematic unless adequately defined.

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MEASURES cont...

- Measures aimed at providing domestic independent cultural industries & activities in the informal sector effective access to the means of production, dissemination and distribution of cultural activities, goods and services
- Measures aimed at providing public financial assistance
- Measures at encouraging non profit orgs , public and private institutions, artists and other cultural practitioners to develop and promote the free exchange and circulation of ideas , and stimulate both the creative and entrepreneurial spirit

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MEASURES cont...

- Measures aimed at establishing and supporting public institutions
- Measures aimed at nurturing and supporting artists and others involved in the creation of cultural expressions
- Measures aimed at enhancing diversity of the media, including through public service broadcasting

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ARTICLE 7:

MEASURES TO PROMOTE CULTURAL EXPRESSIONS

- Parties shall endeavour to create in their territory an environment which encourages individuals and social groups to
 - create, produce, disseminate and have access to their own cultural expressions esp the needs of women minorities and indigenous peoples
 - have access to diverse cultural expressions from within their territory as well as from other countries
- Parties shall also endeavour to recognize the important contribution of artists, creative artists and cultural communities and orgs

ARTICLE 8:

MEASURES TO PROTECT CULTURAL EXPRESSIONS

- Subject to 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
- Parties may take measures to protect and preserve cultural expressions above
- Parties shall report all measures taken to the Intergovernmental Committee which may make appropriate recommendations

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ARTICLE 9: INFORMATION SHARING AND TRANSPARENCY

- Parties shall provide appropriate information in reports to UNESCO every four years on measures taken in their territory and at international level
- Designate a point of contact responsible for information sharing
- Share and exchange information

ARTICLE 10: EDUCATION AND PUBLIC AWARENESS

- Parties shall encourage and promote understanding of the importance objectives of Convention thro educational and greater public awareness programmes
- Cooperate with other parties and international and regional organisations in achieving the purpose of article
- Endeavour to encourage creativity and strengthen production capacities by establishing educational, training and exchange programmes

ARTICLE 11: PARTICIPATION OF CIVIL SOCIETY

- Parties acknowledge the fundamental role of civil society and shall encourage active participation of civil society

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ARTICLE 12: PROMOTION OF INTERNATIONAL COOPERATION

- Parties shall endeavour to strengthen their bilateral, regional and international cooperation for the creation of conditions conducive to the promotion of the diversity of cultural expressions esp vulnerable cultural expressions in order to : Generally acceptable
- Facilitate dialogue among Parties on cultural policy
- Enhance public sector strategic and management capacities in cultural public sector institutions thro cultural exchanges and sharing of best practices
- Reinforce partnerships with and among civil society, ngos and private sector
- Promote the use of new technologies, encourage partnerships to enhance information sharing and cultural understanding
- Encourage the conclusion of co production and co distribution agreements

ARTICLE 13: INTEGRATION OF CULTURE IN SUSTAINABLE DEVELOPMENT

- Parties shall endeavour to integrate culture in their development policies at all levels

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ARTICLE 14: COOPERATION FOR DEVELOPMENT

- Parties shall endeavour to support cooperation for sustainable development and poverty reduction esp in relation to the specific needs of developing countries in order to foster the emergence of a dynamic cultural sector by the ffg means:
- strengthening of cultural industries in developing countries thro;
- Creating and strengthening cultural production and distribution capacities in developing countries
- Facilitating wider access to the global market and international distribution networks
- Enabling the emergence of viable local and regional markets
- Adopting measures in developed countries for access in their territory for the cultural goods and services of developing countries
- Providing support for creative work and facilitating the mobility of artists from the developed world
- Encouraging appropriate collaboration between developed and developing countries of music and film
- Capacity building
- Technology transfer
- Financial support thro International Fund for CD, official development assistance and other forms of financial assistance such as low interest loans, grants and other funding mechanisms

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ARTICLE 15: COLLOBORATIVE ARRANGEMENTS

- Parties shall encourage the development of partnerships in all sectors in order to cooperate with developing countries including further development of infrastructure, human resources and policies

ARTICLE 16: PREFERENTIAL TREATMENT FOR DEVELOPING COUNTRIES

- Developed countries shall facilitate cultural exchanges with developing countries by granting thro 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

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 in Article 8

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ARTICLE 18: INTERNATIONAL FUND FOR CD

- The Fund shall consist of funds –in –trust established in accordance with the Financial Regulations of UNESCO
- Resources of Fund shall consist of :
 - Voluntary contributions made by Parties
 - Funds appropriated for this purpose by the General Conference of UNESCO
 - Contributions, gifts or bequests by other States; organizations and programmes of the United Nations system, other regional or international organisations; and public or private bodies or individuals
 - Any interest due on resources of the Fund
 - Funds raised thro collections and receipts from events organizes for the benefits of the Fund
 - Any other resources authorized by the Funds regulations

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

- The Intergovernmental Committee may accept contributions and other forms of assistance for general and specific purposes
- No political, economic or other conditions that are incompatible with the objectives of this Convention may be attached to contributions made to the Fund
- Parties shall endeavour to provide voluntary contributions on a regular basis towards the implementation of this Convention

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ARTICLE 19: EXCHANGE, ANALYSIS AND DISSEMINATION OF INFORMATION

- Parties agree to exchange information and share expertise concerning data collection and statistics
- UNESCO shall facilitate, through the use of existing mechanisms within the Secretariat, the collection, analysis and dissemination of all relevant information, stats and best practices
- UNESCO shall establish and update a data bank on different sectors and orgs involved in the area of cultural expressions
- To facilitate the collection of data, UNESCO shall pay particular attention to capacity building and strengthening of expertise for Parties that submit a request for assistance
- The collection of information identified in this Article shall complement the information collected under the provisions of Article 9
- Cultural Observatory concept?

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PART V: RELATIONSHIP TO OTHER INSTRUMENTS

ARTICLE 20: RELATIONSHIP TO OTHER INSTRUMENTS

- Parties recognize that they shall perform in good faith their obligations under this Convention and all other treaties to which they are parties
- Without subordinating this Convention to any other treaty the Parties shall:
 - Foster mutual supportiveness between this Convention and the other treaties to which they are parties; and
 - When interpreting and applying the other treaties to which they are parties or when interpreting into other international obligations, Parties shall take into account the relevant provisions of this Convention.
 - Nothing in this Convention shall be interpreted as modifying rights and obligations of the Parties under any other treaties to which they are parties

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**ARTICLE 20: RELATIONSHIP TO OTHER
INSTRUMENTS - CONTINUED**

- No hierarchy of importance of international instruments nor of rights
- This Convention should not be subservient to other instruments such as trade agreements (WTO) and Intellectual Property (IP) agreements such as TRIPS.

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**ARTICLE 21: INTERNATIONAL CONSULTATION
AND COORDINATION**

- Parties undertake to promote the objectives and principles of this Convention in other international for a
- Parties shall consult each other, as appropriate, bearing in mind these objectives and principles

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PART VI: ORGANS OF THE CONVENTION

ARTICLE 22: CONFERENCE OF PARTIES

- This concept replaces that of 'General Conference'
- Shall be the plenary and supreme body of this Convention
- Shall adopt its own rules of procedure
- Functions shall include
 - Election of the Members of the Intergovernmental Committee
 - Receive and examine reports of the Parties to this Convention transmitted by the Intergovernmental Committee
 - Approve the operational guidelines prepared by the IC
 - Take whatever other measures it may consider necessary to further the objectives of this Convention

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PART VI: ORGANS OF THE CONVENTION

ARTICLE 23: INTERGOVERNMENTAL COMMITTEE(I GC)

- The modalities of the inter-governmental committee are consistent with those of other conventions such as World Heritage Site Convention
- Composed of representatives of 18 States Parties to this Convention, elected for a term of four years by the Conference of Parties
- Meet annually
- Shall function under the authority and guidance of and be accountable to the Conference of Parties
- Members of the IGC shall be increased to 24 once the number of Parties to this Convention reaches 50
- Election of Members of IGC shall be based on the principles of equitable geographical representation as well as rotation
- Functions shall be to :
 - Promote the objectives of this Convention and to encourage and monitor the implementation thereof
 - Prepare and submit the operational guidelines for approval by CoP
 - Transmit reports with its comments and summary of contents to CoP
 - Make appropriate recommendations for vulnerable or threatened cultural expressions
 - Establish procedures and other mechanisms for consultation
 - Perform any other tasks required by CoP

ARTICLE 24: UNESCO SECRETARIAT

- Shall assist the organs of this Convention in preparation of agenda of meetings and report on implementation

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PART VII: FINAL CLAUSES

ARTICLE 25: SETTLEMENT OF DISPUTES

- Dispute settlement mechanisms of negotiation, good offices of, or mediation by a third party, Conciliation
- Or the International Court of Justice (ICJ)
- Standard UNESCO procedures

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PART VII: FINAL CLAUSES

ARTICLE 26: RATIFICATION, ACCEPTANCE, APPROVAL OR ACCESSION BY MEMBER STATES

- This Convention shall be subject to ratification, acceptance, approval or accession by Member States of UNESCO in accordance with their respective constitutional procedures
- Instruments shall be deposited with the DG of UNESCO

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- Upon becoming Parties to this Convention, each Party shall designate a point of contact Standard

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months after the date of deposit of the 30th
instrument of ratification

CONSTITUTIONAL SYSTEMS

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ARTICLE 31: DENUNCIATION

- Any Party to this Convention may denounce this Convention
- Notified by an instrument in writing deposited with the DG of UNESCO
- Denunciation shall take effect 12 months after receipt of instrument
- It shall not affect the financial obligations of the Party denouncing the Convention until the date on which the withdrawal takes effect

ARTICLE 32: DEPOSITORY FUNCTIONS

- The DG of UNESCO is the depository of this Convention
- Shall inform the Member States all instruments of ratification or denunciation

ARTICLE 33: AMENDMENTS

Two-thirds majority of Parties present and voting is required

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ARTICLE 34 : AUTHORITATIVE TEXTS

- Arabic, Chinese, English, French, Russian and Spanish are the authoritative texts
- All 6 texts being equally authoritative

ARTICLE 35: REGISTRATION

- In conformity with Article 102 of the Charter of the UN, this Convention shall be registered with the Secretariat of the UN at the request of the DG of UNESCO

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