



United Nations  
Educational, Scientific and  
Cultural Organization

## **UNESCO's input to the Consultation on the Right to Artistic Freedom**

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There are important intersections between arts and culture, human rights and social justice, and several areas within UNESCO's mandate relate to these intersections and the Right to Artistic Freedom. What is particularly notable from the UNESCO's standpoint is that governments seek support, guidelines and capacity building in order to identify, develop and implement the essential actions that will strengthen their policies and actions. This creates opportunities to inform and advance the right to artistic freedom.

Two initial points:

1. The governance and management of culture should include a stronger framework that anchors the principles of freedom of artistic expression and creative activities in legislation, policy and practice. The UNESCO 2005 Convention on the Protection and Promotion of the Diversity of Cultural Expressions is one avenue, as it reaffirms the right of the Parties to introduce specific policies and measures so that artists can create, produce, and disseminate a diversity of such expressions.
2. The 1980 Recommendation concerning the Status of the Artist promotes important initiatives to improve the social and economic condition for artists, including employment security, appropriate tax action models, healthcare, pensions, mobility schemes, education/capacity building and protection of moral and material rights in their works.

From UNESCO's standpoint, normative instruments in Culture (conventions and recommendations) and related programmes, as well as the initiatives fostering freedom of expression, are the means through which to advance the right to artistic freedom, as demonstrated by the relevant points set out below.

### **UNESCO 1980 Recommendation concerning the Status of the Artist**

The work of artists is at the heart of cultural, social and economic development and the "creative sector", serving both public arts organizations and private cultural and media industries, and accounting for a considerable share of the labor force. However authors, performers and professional artists frequently lack a stable income to sustain themselves and their creative work, as well as related social protections such as insurance. Many are self-employed, or work from project to project. Artists are highly mobile, moving frequently for work as well as creative exchange opportunities. Thus their situation vis-à-vis income, taxes, health care, insurance or pension is often compromised.

In order to provide the socio-economic safeguards to which artists are entitled as people actively engaged in the labor force, the UNESCO General Conference adopted in 1980 the Recommendation concerning the Status of the Artist. This is a standard setting instrument which, though not legally binding, recommends that

national authorities, institutions and organizations, implement specific measures and take legislative steps to improve the status of the artist and foster the participation of artists in contributing to cultural life and development. Governments are to create and sustain not only a climate encouraging freedom of artistic expression, but also the material conditions facilitating the release of this creative talent. Indeed, the Recommendation specifically affirms “the need to improve the social security, labour and tax conditions of the artist, whether employed or self-employed, taking into account the contribution to cultural development which the artist makes”.

For the purposes of the Recommendation, an “Artist” is any person who creates or gives creative expression to, or re-creates works of art ... and who is or asks to be recognized as an artist. This includes creative artists and authors within the meaning of the Universal Copyright Convention and the Berne Convention for the Protection of Literary and Artistic Works, as well as performers and interpreters within the meaning of the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations.

Pursuant to the guiding principles of the Recommendation, States should, *inter alia*:

- extend legal protection concerning work and employment conditions so that they are at internationally recognized standards – for example to ensure access to social security schemes and health insurance, or attain minimum wage, especially when artists are self employed.
- ensure through appropriate legislative means that artists have the freedom and the right to establish trade unions and professional organizations.
- take into account in their taxation system the particular conditions or artists’ work and activity. Some countries, for example, provide self-employed artists with tax exemptions, or deductions from the sale of artistic works.
- promote the free international movement of artists and encourage international exchange by artists. Bilateral and multilateral agreements can facilitate this, for example through special visa status or establishing exchange programmes and touring.
- provide an education designed to nurture artistic talent and vocation.

In 2010 UNESCO sent to all Member States a comprehensive questionnaire to gather information regarding actions taken in each country specific to the 1980 Recommendation. Fifty-five countries replied, and an analysis and summary of this information was presented to the 36<sup>th</sup> session of the UNESCO General Conference in October 2011.

<http://unesdoc.unesco.org/images/0021/002132/213223e.pdf>

### **UNESCO 2005 Convention on the Protection and Promotion of the Diversity of Cultural Expressions**

The 2005 Convention is a legally-binding international agreement that ensures artists, cultural professionals, practitioners and citizens worldwide can create, produce, disseminate and enjoy a broad range of cultural goods, services and activities, including their own. It was adopted because the international community signaled the urgency for the implementation of international law that would recognize the distinctive nature of cultural goods, services and activities as vehicles of identity, values and meaning, and that while cultural goods, services

and activities have important economic value, they are not mere commodities or consumer goods that can only be regarded as objects of trade.

125 States, including the European Union, have ratified the Convention (December 2012). It has important points of convergence with the 1980 Recommendation concerning the Status of the Artist, and generally with the right to artistic freedom. For example:

#### Article 2 – Guiding Principles

##### 1. Principle of respect for human rights and fundamental freedoms

Cultural diversity can be protected and promoted only if human rights and fundamental freedoms, such as freedom of expression, information and communication, as well as the ability of individuals to choose cultural expressions, are guaranteed. No one may invoke the provisions of this Convention in order to infringe human rights and fundamental freedoms as enshrined in the Universal Declaration of Human Rights or guaranteed by international law, or to limit the scope thereof.

#### Article 6 – Rights of parties at the national level

1. Within the framework of its cultural policies and measures as defined in Article 4.6 and taking into account its own particular circumstances and needs, each Party may adopt measures aimed at protecting and promoting the diversity of cultural expressions within its territory.

2. Such measures may include the following:

(e) measures aimed at encouraging non-profit organizations, as well as public and private institutions and artists and other cultural professionals, to develop and promote the free exchange and circulation of ideas, cultural expressions and cultural activities, goods and services, and to stimulate both the creative and entrepreneurial spirit in their activities;

(g) measures aimed at nurturing and supporting artists and others involved in the creation of 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;

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

These key features of the 2005 Convention directly impact on national and local policies within each Party, and in turn with the right to artistic freedom and expression. Parties have expressed the desire for support in devising and implementing relevant policies and practices, and through the 2005 Convention, UNESCO is working with many stakeholders in this connection. Notably the status of the artist and the right to artistic expression can be reinforced as legislation is strengthened and as specific awareness of these issues is raised. Particular initiatives include:

❖ The International Fund for Cultural Diversity (IFCD)

Under the 2005 Convention, this multi-donor fund was established to promote the emergence of a dynamic cultural sector through projects and activities facilitating the introduction of new cultural policies and cultural industries. Forty-eight projects from thirty-six developing countries are benefitting from the IFCD. The projects are diverse, from support to a vocational school in Argentina, to fostering an audio-visual market in Cameroon.

❖ Technical Assistance in Cultural Governance

The EU strongly supports the UNESCO 2005 Convention and has provided funding for the creation of an expert facility to respond to the specific needs and priorities of developing countries regarding strengthening their systems of governance for culture, both at national and local level. For example In Malawi a National Cultural Policy was established in 2005, which notably proposed the establishment of a National Arts Council. Following a request to the expert facility, a technical mission of two experts worked with the Government on a legislation review that led to recommendations to increase the scope of the legislation and define areas of action and priorities therein. In Burkina Faso, their Outline Act on Education and a National Cultural Policy calls for the promotion of artistic and cultural education. Thus the Ministry of Culture and Tourism is working to include artistic and cultural modules in school curricula, in collaboration with the Ministry of Education. Following a request to the expert facility, an expert mission was undertaken to provide assistance to the relevant Ministries in the development of a strategy and action plan to make the integration of art and culture modules into school curricula a reality.

❖ Capacity Building in Africa

Africa is a strong supporter of the 2005 Convention, boasting a high ratification rate. Many countries in the region are already pursuing different initiatives aimed at translating the Convention's articles and principles into national policies and programmes. To help countries in their efforts, UNESCO has launched a Pilot Capacity-Building Programme which provides countries with the tools, capacities and expertise they need to implement the Convention and to develop effective policies for their cultural and creative sectors. The Programme centres around four key axes:

1. Training key stakeholders
2. Developing local expertise
3. Knowledge exchange, analysis and information-sharing platform
4. Targeted needs-based interventions

❖ Working with Partners

UNESOC works with or exchanges information with a variety of non-governmental stakeholders supporting the rights of artists and artistic freedom. For example a recent and useful network is the ARTSFEX, which was officially launched in October 2012. It is the first international civil society network actively concerned with the right of artists to freedom of expression as well as with issues relating to human rights and freedoms generally. Artsfex aims to promote, protect and defend artistic freedom of expression, as well as freedom of assembly, thought, and opinion in and across all art disciplines, globally.

## **Freedom of Expression**

UNESCO's mandate as set out in its 1945 Constitution specifically calls on the Organization to "promote the free flow of ideas by word and image". UNESCO promotes freedom of expression and freedom of the press as a basic human right, through sensitization and monitoring activities. It also fosters media independence and pluralism as prerequisites and major factors of democratization by providing advisory services on media legislation and sensitizing governments, parliamentarians and other decision-makers.

UNESCO works with its Member States and institutions, academics and the public and private sectors to promote the free flow of ideas by word and image, freedom of expression, and cultural and linguistic diversity, both offline and online. Initiatives include regional expert meetings and workshops, guidelines and publications, and expert technical missions. For example:

- The Tunisian National Constituent Assembly (NCA), the body responsible for drafting a new Tunisian constitution after the fall of the Ben Ali regime, welcomed international experts, provided by UNESCO, in July 2012, for presentations of different models of constitutions guaranteeing freedom of expression, freedom of the press and the right of access to information.
- In 2011, UNESCO published "Freedom of connection, freedom of expression: the changing legal and regulatory ecology shaping the Internet". This report provides a new perspective on the social and political dynamics behind the threats to expression. It develops a conceptual framework on the 'ecology of freedom of expression' for discussing the broad context of policy and practice that should be taken into consideration in discussions of this issue.
- With the support of UNESCO, the Association of Media Development in South Sudan (AMDISS) in collaboration with Article 19-Eastern Africa, held a two-day consultative meeting on freedom of expression draft laws in Juba in September 2012. This meeting brought together over 50 representatives of journalists, media organizations, governments, civil society organizations, diplomatic missions and development partners. The meeting follows a consultative process in the development of the laws: the Right to Information Bill 2012, the Broadcasting Corporation Bill 2012 and the Media Authority Bill 2012. It aimed to enhance the level of participation and engagement of multiple stakeholders to help entrench freedoms of information and expression in the legislative framework of South Sudan.

Since 2000, more than 500 journalists and media workers have been killed worldwide, and many more were wounded or injured while carrying out their professional responsibilities. UNESCO's flagship activities in this area include the World Press Freedom Day celebration. In 1993, the United Nations General Assembly declared May 3 to be World Press Freedom Day, and UNESCO has since taken the lead in celebrating the event every year.