



**Ensuring the Effective Implementation of the
UNESCO Convention on the Protection and Promotion of the
Diversity of Cultural Expressions:**

INCD Comments and Recommendations

June 2008

INCD is an international non-governmental organization bringing together more than 400 members in 76 countries. Through INCD, networks of artists, cultural producers, publishers, broadcasters, academics, heritage institutions and others work together to counter the adverse affects of economic globalization on world cultures and to promote culture-driven development. Since its meeting in 2000, INCD has been in the forefront of the campaign to build support for the convention on cultural diversity. We continue to work for its widespread ratification and effective implementation.

INCD urges States Parties to take into account the following recommendations for the implementation of the Convention.

SECTION 1

**DEFINING CIVIL SOCIETY AND PROVIDING A SUBSTANTIVE ROLE
FOR NON-GOVERNMENTAL ORGANIZATIONS IN THE
CONVENTION IMPLEMENTATION**

The Convention was negotiated, ratified and implemented very rapidly, in part because there was a collaborative campaign involving a number of governments and key civil society organizations. Working together, we promoted understanding and support around the world for the concept and the content. INCD is seeking to build on this collaboration to make the Convention as effective as possible.

The Convention's Article 11 is unique among UNESCO instruments and many others in the UN system. It provides; "Parties acknowledge the fundamental role of civil society in the protection and promotion of the diversity of cultural expressions." States

Parties are obligated to encourage “the active participation of civil society in their efforts to achieve the objectives” of the Convention. Bringing this commitment to life will place UNESCO and this Convention in the forefront of a growing global awareness that civil society participation is a vibrant democratic principle and practice. Convention Parties can benefit from the capabilities of a large number of citizens and non-governmental organizations around the world. INCD believes Parties intend this commitment to exist at both the national and international levels.

Convention Governing Bodies – Rules of Procedure

Both the Conference of Parties and the Intergovernmental Committee have adopted rules which provide a formal place for civil society organizations. Each contemplates extending invitations to “... non-governmental organizations having interests and activities in the field covered by the Convention.” Each also provides that the invitation will be “to participate in its work as observers...”

Defining civil society for purposes of the Convention

According to the London School of Economics, “civil society” refers to voluntary collective action around shared interests, purposes and values. Civil society institutions are distinct from the state, the family and the market, and by their very nature are non-governmental. The Convention is concerned with "cultural expressions," or the work of artists, creators and cultural producers in every medium from traditional crafts, music and dance, to film, television and new media. The cultural sector is a continuum of activities covering the creation, production, distribution, exhibition and preservation of cultural expressions.

Recommendation 1

Recognition under the Rules of Procedure should be extended to non-governmental organizations which bring together individuals, firms, associations, non-governmental institutions, others involved in the cultural continuum and academics who study the sector. Official recognition will be extended by the Director General to civil society organizations for a period of four years, after which a review would be undertaken.

Active engagement of civil society representatives is essential for the Articles dealing with education and public awareness (A10), building partnerships to promote international cooperation (A12.c), cooperating for sustainable development and poverty reduction (A14), collaborative arrangements (A15) and others.

In addition, civil society representatives can provide information and insight to assist parties with respect to the Convention’s principles and to implement the rights and obligations of parties at the national level. This includes measures to protect cultural expressions at risk of extinction (A8 and 23.6.d), measures to promote cultural expressions (A7), and obligations to share information (A9 and 19). Civil society

representatives also have an important role to play in working with Parties to achieve the consultation and coordination anticipated by Article 20.

Rights and Responsibilities of Recognized Organizations

Civil society organizations have a relationship with other UN agencies and other intergovernmental institutions and with the conventions and treaties they administer, in areas such as human rights, the environment, development, intellectual property and trade.

In looking to develop a relationship with civil society that is appropriate to the cultural diversity convention and reflects the uniqueness of Article 11 for UNESCO, INCD urges Parties to meet or exceed best practices in other international instruments in the United Nations system. Given the strong commitment in Article 11, it is appropriate for the relationship between Parties and civil society to set new standards for partnership, collaboration, engagement and openness.

In its review of multilateral environmental, human rights, intellectual property, development and other instruments, INCD has found many examples where civil society groups are fully implicated in the administration processes, including the right to attend, address and make written submissions to governing bodies. A key best practice ensures that NGO participation takes place before member states make a decision or reach a consensus on an agenda topic. NGOs in many forums have the right to participate in a meaningful way at committees and consultative meetings and can play a significant role in program design and administration.

Some examples of best practices:

1. Decision 1996/31 of the United Nations Economic and Social Council establishes the right of non-governmental organizations to make written statements, “which shall be circulated by the Secretary-General of the United Nations to the members of the Council.” This right to make written submissions exists in many other institutions.
2. Under these ECOSOC guidelines, NGOs have a right to propose that items of special interest be placed on the provisional agenda of meetings.
3. At UNAIDS, NGOs select five representatives (and five alternates) to serve on the Programming Coordinating Board, with the right to participate fully in the deliberations and the development of consensus on all issues. These members are precluded only from any formal votes or negotiations. Travel and expenses of NGO delegates are reimbursed from the PCB budget.

4. At the International Fund for Agricultural Development, ongoing consultative arrangements ensure that NGOs play a significant role, and can influence program design, delivery, implementation and evaluation. NGOs may also apply directly for project funding.
5. During the World Summit on the Information Society negotiating process, civil society representatives had an opportunity to speak at the beginning of the discussion of each Chapter. At WIPO, civil society representatives regularly speak before Parties work to develop a consensus.

Both UNAIDS and IFAD are governed by UN decisions respecting consultation with civil society that are far less robust than the provisions of Article 11, such as ECOSOC Decision 1996/31.

INCD notes that civil society is a very broad umbrella. In our field, it includes groups with diverse views on key issues. For example, some groups are concerned primarily about promoting the rights of artists; others are interested in the business of culture; still others are focused on promoting culture-driven development. Some groups believe copyright is essential for cultural diversity; others believe equally strongly that copyright is an impediment. Parties must not assume that all civil society organizations with an interest and activities in the field covered by the Convention will share a perspective on the issues before the body. There must be scope for all civil society views to be canvassed on issues.

Recommendation 2

Recognized non-governmental organizations shall have the following rights:

- to attend the Conference of Parties and the Intergovernmental Committee
- to propose that items of special interest be placed on the provisional agenda of the IC
- to speak at an appropriate time on each agenda topic, subject only to the responsibility of the Chair to ensure that the work can be carried out expeditiously
- to submit a written statement relevant to the work of the Conference or the IC, which shall, subject to rules established by the secretariat, be circulated to all members by the Director-General.

Recommendation 3

When establishing a working committee to consider any aspect of the Convention, the Conference of Parties or the Intergovernmental Committee may invite one or more representatives of NGOs to serve on the Committee.

Recommendation 4

On any committee established to oversee implementation of the International Fund for Cultural Diversity, two representatives of NGOs shall be elected by and from all civil society organizations to which official recognition has been granted. These delegates shall have voice and vote at all sessions of the Committee.

INCD notes that States Parties have agreed to seek funds for the IFCD from private sector sources. Providing a decision-making role for the relevant non-governmental organizations will facilitate this effort.

Recommendation 5

Civil society organizations shall have the right to apply directly, and without State sponsorship, for funding from the International Fund.

This is particularly important for international organization which may develop regional and global projects where it is difficult to determine in advance which States may have a direct interest in the project.

Finally, INCD urges Parties to create an extra-budgetary fund to support delegates from NGOs with limited resources and to ensure NGO representation on working committees. NGOs from developing countries will generally not have resources to bring delegates to meetings that are most likely to take place in Paris. Similarly, International NGOs operate on restricted budgets which can prohibit them from bringing their members from developing countries to the important meetings and activities. Parties will be invited to make a contribution to the fund.

SECTION 2

ISSUES BEING CONSIDERED BY THE INCP WORKING GROUP ON CULTURAL DIVERSITY AND GLOBALIZATION AND SUBSEQUENTLY BY THE INTERGOVERNMENTAL COMMITTEE

Article 7 – Creating a positive environment for cultural diversity

This Article obligates Parties to establish a positive environment in their own country which encourages people and groups to be involved in the cultural continuum. The environment will also allow people and groups to have access to cultural expressions from local and international artists and cultural producers.

To give effect to this Article,

- Each Party should establish a collaborative working relationship with local and national civil society organizations.
- Secretariat to circulate contemporary information about best practices on the status of the artist.
- Secretariat to research and make available information about best practices in relation to cultural exchanges, capacity building projects and South-South and South-to-North movement of cultural goods and services.
- Intergovernmental Committee to consider the proposals below for a Cultural Passport and a Fair Trade certification system for cultural goods and services.

Article 8 – Forms of cultural expression at risk of extinction

This Article addresses the need to safeguard forms of cultural expressions that are at risk of extinction.

To give effect to this Article,

- Intergovernmental Committee and secretariat should develop a collaborative working partnership with the *Convention for the Safeguarding of the Intangible Cultural Heritage*, since the governing bodies of that Treaty are developing mechanisms to identify threatened cultures. There is also a direct relationship between the threats to intangible cultural heritage and the cultural expressions that arise from that culture.
- Parties should encourage and collaborate with all efforts to preserve languages, since these are the foundation of many forms of cultural expressions.

Article 15 - Collaborative arrangements with developing countries

This Article provides that Parties will develop new and innovative partnerships between the public and private sectors and NGOs to develop the capacity of developing countries, particularly in the areas of infrastructure, human resources and policies.

- Parties should develop new reciprocal learning exchange models that acknowledge that all participants benefit from learning about how others approach similar problems.
- Parties should be encouraged to integrate culture into their Poverty Reduction Strategy Papers, since development of the arts and cultural industries can be a positive form of economic development.
- Parties should ensure that public sector development agencies establish support for cultural projects as a priority, particularly in the areas of infrastructure and capacity building.

Article 16 – Preferential treatment for developing countries

INCD supports the proposal to engage experts to look at how to give meaning to the commitment in Article 16 to provide preferential treatment for developing countries. The IC should also study and recommend the development of the following measures in collaboration with other institutions and agencies in both the public and private sectors, as these would be substantive initiatives:

- **Cultural Passport.** A cultural passport, granted to artists and other cultural professionals and practitioners from developing countries, would facilitate access to developed countries and guarantee identical legal rights to local citizens when the holder is undertaking artistic work in that territory.
- **Fair Trade Certification for Cultural Goods and Services.** This would, for example, ensure that music CDs and films imported into other countries are produced under appropriate conditions, including that the artists have been properly contracted and paid, and have appropriate protection of their intellectual property rights.

Article 17 – International cooperation to support threatened cultures

- The Intergovernmental Committee should develop a partnership with the UN Permanent Forum on Indigenous Issues to ensure that the particular challenges facing indigenous/aboriginal/first nations' cultures are considered.
- This is an area where civil society organizations can be helpful to Parties since they may be aware of particular challenges before they are known to a wider community and to governments.

Article 18 - International Fund for Cultural Diversity

- Substantial new resources should be made available by all Parties.
- Civil society projects, particularly those developed regionally and those developed by international NGOs with an interest and activities in the field, should have direct access to support from the Fund.

Article 20/21 – Relations with Other Instruments and Consultation

At its first meeting, the Intergovernmental Committee directed that a separate chapter in the Operational Guidelines would be devoted to the Articles which deal with the relationship of the Convention to other treaties, and the commitment to promote the objectives and principles of the Convention in other international forums.

To give effect to this decision:

- Parties should provide in the mandate of the Intergovernmental Committee a responsibility to monitor how trade, investment and other international treaties and other instruments, as well as ongoing and future negotiations, may affect the diversity of cultural expressions.
- Parties should assign responsibility to the Convention secretariat to research and prepare regular reports on these issues.

SECTION 3

BILATERAL RELATIONSHIPS

As part of their obligation under Article 21 to promote the principles and objectives of the Convention in other international forums, INCD urges States Parties to reinforce the Convention provisions in their own bilateral relationships.

INCD believes it is appropriate for each Party to urge its partners to ratify and join the Convention; to formalize a dialogue about cultural policies; to seek and make specific commitments in relation to Articles 14, 15 and 17 in development agreements; and to seek and make specific commitments in relation to Article 16 to provide preferential treatment.

Examples of the kinds of bilateral cooperation that would make the Convention come to life include the following:

- A. Public policy instruments can be enhanced by reciprocal learning exchanges between experts from developing and developed countries.
- B. Develop more artists-in-residence programs in all cultural sectors, including music, cinema, publishing and visual arts, in order to increase the potential of artistic talents.
- C. Share information technologies and best practices for their use to develop the cultural industries.
- D. Encourage co-production and co-distribution agreements.
- E. Provide support (financial and human resources) for training and professional development in the cultural sector.