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Study on the Implementation of the 2005 UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions for the European Parliament

BACKGROUND INFORMATION

Introduction

The Geneva based law firm Germann Avocats and its interdisciplinary research team is completing a study for the European Parliament's Committee on Culture and Education (CULT) whose overall objective is to provide a summary of the state of implementation of the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions of 2005, in particular in fields where the European Community would be expected to provide leadership or coordination.

This study shall give assistance and long-term guidance to the EU on implementing the UNESCO Convention by carrying out a detailed analysis of the obligations set out by this international treaty. In particular, we shall gather information on the various practices in implementing the UNESCO Convention, from a legal and practical viewpoint, and identify challenges and measures to help achieve the objectives of this instrument.

For these purposes, we drafted three sets of questionnaires. The first questionnaire shall allow us to gather legal data. The second questionnaire shall inform us about the implementation of the UNESCO Convention from the perspective of representatives of civil society. The third questionnaire shall cover the situation from the angle of a selection of regional and regional organizations, (the ASEAN, the African Union, the Association of Caribbean States, the Commonwealth, the International Organisation of La Francophonie, the Council of Europe, the European Union, UNESCO, WTO and WIPO).

Expected results from the surveys

We expect to collect valuable information on the public measures that are specifically undertaken to protect and promote cultural diversity on the national level in different jurisdictions. We shall obtain insights to compare regulatory practice in a variety of economic and political situations that characterize the selection of countries located in different geographical area. We will obtain data which will allow us to compare regulatory practice in varying economic and political situations. We shall use and compare this information in our subsequent analysis that will eventually provide the basis of our conclusions and recommendations to the European Parliament.

Legal survey

The legal questionnaire will focus on legal aspects of the implementation of the Convention. We send our survey to law firms specializing in international public law in Canada, Brazil, China and Senegal. In Europe, we will directly investigate the legal situation in Italy (as a larger jurisdiction) and Switzerland (as a smaller jurisdiction). In addition, we will send the legal questionnaire to a sample of eight National UNESCO Commissions of EU Member States, which will reflect geographic, political and economic diversity. This legal survey shall allow us to assess the current state of implementation of the UNESCO Convention in these countries in terms of regulations and administrative practice.

We will attach the replies to this questionnaire to our study that will be available over the internet.

For the text of the Convention and other useful documents, please consult:

www.unesco.org/culture/en/diversity/convention

LEGAL QUESTIONNAIRE

A General questions

1 When did the UNESCO Convention **enter into force** in your country?

March 18, 2007.

2 Are those provisions of the UNESCO Convention that are precise and clear directly applicable (“**self-executing**”) in your country?

(x) Yes () No

3 Please list any **non-governmental organizations** that deal with cultural diversity concerns and that represent a substantial part of the stakeholders concerned by cultural policies in your country.

National Coalition for Cultural Diversity.

B Questions on the implementation of the UNESCO Convention so far

*For the purpose of this questionnaire, “**national law**” includes national legislation, regulations, administrative practice and case law that entered into force before or after the entry into force of the UNESCO Convention in your country.*

4 Does your country have national law implementing the UNESCO Convention as of 1 January 2010?

(x) Yes () No

If the answer is “No”, please explain the absence of national law implementing the UNESCO Convention and how this treaty is implemented in your jurisdiction as of 1 January 2010:

The Senegalese implementing national law is recorded by the Law n° 2006-31 as of 07 August 2006.

If the answer is “Yes”:

Please reply to the questions as follows that refer to the legal situation as of 1 January 2010, and specify for each of your replies, where applicable, whether the relevant national law existed already prior to the entry into force of the UNESCO Convention in your country:

4.1 How does your country comply with points 4, 7 and 8 of article 2 of the 2005 UNESCO Convention (“principle of **international solidarity and cooperation**” and “Principle of **equitable access**” and “principle of **openness and balance**”) and with articles 12 to 17 of the 2005 UNESCO Convention (“promotion of international

cooperation”) in its implementing national law?

The Senegalese Law gives no more details. It's a self interpretation for the cultural administration and national cultural policy.

4.2 What **measures** in the sense of articles 6, 7 and 8 of the 2005 UNESCO Convention, including but not limited to measures aimed at protecting and promoting linguistic diversity, were adopted in your country by the implementing national law?

Before the Implementation of the Convention, the senegalese cultural administration provides a wide variety of measures for the promotion of national linguistic diversity. What's more, a special department exist within the minister of culture and the departement of education.

4.3 How is article 11 of the 2005 UNESCO Convention (“**participation of civil society**”) regulated in the implementing national law?

The terme Civil Society in the cultural sector is not yet approved, but many cultural associations and organizations are invited by the minister of culture around the table. Regarding the UNESCO Convention, the national coalition for cultural diversity and the national commission for UNESCO are the first partners of the minister of culture.

4.4 How are articles 20 and 21 of the 2005 UNESCO Convention (“**relationship to other treaties**” and “**international consultation and coordination**”) regulated in the implementing national law?

They don't exist a gap or conflict between the articles 20 and 21 of the UNESCO Convention and other treaties. The Senegal engages its sovereignty to promote cultural diversity and cultural goods in the negotiations of the future trade. Many committees of cooperation move forward the Senegalese negociators with UNESCO, the IOF, the AU, the ECOWAS and the United Nations, regarding international trade.

4.5 How does your country assess and insure the compliance of its efforts to implement the UNESCO Convention with respect to its **human rights obligations**?

The Senegal has ratified all human rights treaties. For the implementation of the UNESCO Convention, the Senegal recently invites the international community to declare the slavery “crime of the humanity”. This action is in process.

*As a complement to your replies to questions 4.1 to 4.5, please provide a copy of, or references to, your country’s implementing **national law**, if any, together with related commentaries and web site addresses where such national law and related documentation may be found.[See references to the Annexe]*

5 Does your country intend to ask for a contribution to one or more own projects from the **international fund** for cultural diversity according to article 18 of the UNESCO Convention for the purpose of implementing the UNESCO Convention on the national level?

(x) Yes () No

If yes, please describe the project(s) for which your country will ask for funding:

n.a.

6 Is your country affected by **special situations** contemplated under articles 8, 12 para. 1, 17 and 23, point 1 of the UNESCO Convention (“special situations where cultural expressions on its territory are at risk of extinction, under serious threat, or otherwise in need of urgent safeguarding”)?

Yes () No (x)

If “Yes”, please describe these special situations, and the measures that your country adopts to redress these situations?

The Senegal is not yet in this case, but it takes measures to promote the cultural expressions on its territory by the broadcasting of the most representatives dialects in the public media. The members of government are often invited to communicate in one of the national dialects. The Senegalese official language is the French.

7 What **institutional measures**, if any, does your government take to facilitate dialogue and coordinate action between culture and trade ministries and other relevant ministries (e.g. foreign affairs ministry) on the national level in order to meet the objectives of the UNESCO Convention?

The Senegalese administration invites, before the ratification of any treatie, a special intergovernmental committee with the minister of trade, including the minister of economy and the minister of culture.

8 How does your country contribute to meet the objectives of the UNESCO Convention on the **regional and international levels** (e.g. coordination and collaboration with regional organizations, promotion of exchanges between National UNESCO Commissions, involvement in negotiating the operational Guidelines of the UNESCO Convention, activities within the Intergovernmental Committee)?

The Senegal is very involved in the promotion of the UNESCO Convention. The Senegal is a current member of the Intergovernmental committee of UNESCO and the national coalition office is an active member of the International Federation of Coalitions for Cultural Diversity. The Senegal is well represented in all the regional and international summit on the culture. As a core member of the ECOWAS, the Senegal is developing a large cultural partnerships in the West Africa, including the International Organization of the Francophony.

C Questions on the further implementation of the UNESCO Convention

To reply to the following questions, you may consult with the competent agency within the Ministry of Culture of your country, or with your national contact point for the UNESCO Convention (articles 9, letter b, and 28) as listed in www.unesco.org/culture/fr/diversity/convention/3igc/3IGC_INF6_Points_de_contact_des_Parties.pdf

9 Which **major problems**, if any, related to the implementation of the UNESCO Convention does your country identify so far?

The major problem related is the effective Implementation of the UNESCO Convention it self, in terms of action and law interpretation.

10 Which **best practices** related to the implementation of the UNESCO Convention does your country identify so far?

The international cooperation in the cultural affairs maybe considered as a good pratice as well as the place and the protection of cultural minorities around the world.

11 What are the **expectations** of your country regarding the further implementation of the UNESCO Convention

11.1 in the best case scenario?

In the best case scenario, the expectations turn around the financial support of cultural projects.

11.2 in the worst case scenario?

In the worst case scenario, an ineffective convention.

11.3 in the most likely scenario?

A nother roundtable project and a new battle for a new convention.

11 From the perspective of your country, what will be the **priorities** when implementing the UNESCO Convention in the near future?

The submission for the grants provided by the UNESCO Convention's fund.

13 Which concrete actions in terms of **legal and policy measures** does your country contemplate to take in order to implement the UNESCO Convention in the near future?

It's not necessary to take a new policy measures or legal initiative, for the implementation of the UNESCO Convention.

14 If you have **further comments** on the questions of this survey or **additional information** that is useful for assessing the implementation of the UNESCO Convention in your country, please state them here:

Minister of Culture

3ème étage Building Administratif BP 4001 - DAKAR
Téléphone : 849 73 11 - 822 43 03 -
fax : 822 16 38,
www.culture.gouv.sn

The National Commission for UNESCO

Immeuble Freyssline et Fils (4e étage)
34, avenue du Président Lamine Gueye prolongée
DAKAR Sénégal
Adresse postale B.P. 11522 - Dakar Peytavin
Téléphone (221) 33 822 57 30
Fax (221) 33 821 89 30
www.unesco.sn

Professional Organizations

- Artistes Comédiens du Théâtre Sénégalais (ARCOTS)
- Association des Animateurs et Conseillers culturels
- Association des Conteurs et Artistes de la Parole Leeboon Ci Leer
- Association des Couturiers et Stylistes des HLM
- Association des Ecrivains du Sénégal
- Association des Editeurs en Langues nationales
- Association des Femmes Photographes du Sénégal (AFPS)
- Association des Jeunes Stylistes et Créateurs du Sénégal
- Association des Managers
- Association des Métiers de la Musique (AMS)
- Association Nationale des Artistes Plasticiens du Sénégal (ANAPS)
- Association des Producteurs de Musique Sénégalaise
- Association Sénégalaise des Bibliothécaires, Archivistes et Documentalistes (ASBAD)
- Cadre Interprofessionnel des Producteurs et Promoteurs de Spectacles du Sénégal (CIPEPS)
- Coalition nationale pour la Diversité culturelle
- Collectif des Artistes du Sénégal (CARTIS/CSA)
- Couturiers et Créateurs Associés du Sénégal (CCA)

D Identification of respondent to this questionnaire

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Position (title) within the organization: Owner, Expert Consultant

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Date and place: Paris, February, 01st, 2010.

ANNEXE

*The copy and the references to, Senegal's implementing **national law***

JOURNAL OFFICIEL DU SENEGAL

Loi n° 2006-31 du 7 août 2006

Loi n° 2006-31 du 7 août 2006 autorisant le Président de la République à ratifier la Convention sur la Protection et la Promotion de la Diversité des Expressions culturelles, adoptée le 20 octobre 2005, par la 33eme Conférence générale de l'Organisation des Nation unies pour l'Education, la Science et la Culture (UNESCO)

EXPOSE DES MOTIFS

L'accélération du processus de mondialisation ayant fait surgir de nouveaux enjeux pour la diversité culturelle, les Etats membres de l'UNESCO ont décidé d'y répondre par la voie normative en adoptant en 2001, la Déclaration universelle de l'UNESCO sur la diversité culturelle et son Plan d'action. C'est dans ce contexte que les Etats membres ont souhaité élaborer un instrument normatif contraignant sur la diversité culturelle. Ainsi, la Convention sur la protection et la promotion de la diversité des expressions culturelles a été adoptée le 20 octobre 2005, par l'UNESCO à l'occasion de sa 33eme Conférence générale. La Convention vise à accorder aux Etats la possibilité d'adopter des politiques et des mesures pour assurer la protection et la promotion de la diversité des expressions culturelles.

Les objectifs de cette Convention sont :

- * de protéger et promouvoir la diversité des expressions culturelles ;
- * de créer les conditions permettant aux cultures de s'épanouir et interagir librement de manière à s'enrichir mutuellement ;
- * d'encourager le dialogue entre les cultures afin d'instaurer des échanges culturels plus intenses et équilibrés dans le monde en faveur du respect interculturel et d'une culture de la paix ;
- * de stimuler l'interculturalité afin de développer l'interaction culturelle dans l'esprit de bâtir des passerelles entre les peuples ;
- * de promouvoir le respect de la diversité des expressions culturelles et la prise de conscience de sa valeur au niveau local, national et international ;
- * de réaffirmer l'importance du lien entre culture et développement pour tous les pays, en particulier les pays en développement, et d'encourager les actions menées aux plans national et international pour que soit reconnue la véritable valeur de ce lien ;
- * de reconnaître la nature spécifique des activités, biens et services culturels en tant que porteur d'identité, de valeurs et de sens ;
- * réaffirmer le droit souverain des Etats de conserver, adopter et mettre en œuvre les politiques et mesures appropriées pour la protection et la promotion de la diversité des expressions culturelles sur leur territoire ;
- * de renforcer la coopération et la solidarité internationale dans un esprit de partenariat afin, notamment, d'accroître les capacités des pays en développement de protéger et promouvoir la

diversité des expressions culturelles. Dans le cadre de la mise en œuvre de la Convention, il est institué une Conférence des Parties qui est l'organe plénier et suprême de cet instrument international et un Comité intergouvernemental pour la protection et la promotion de la diversité des expressions culturelles composé de représentants de 18 Etats Parties à la Convention, élus pour quatre ans par la Conférence des Parties auxquels s'ajoute, en tant que troisième organe, le Secrétariat de l'UNESCO.

La Convention consacre deux enjeux fondamentaux :

la reconnaissance de la nature spécifique des biens et services culturels et le droit souverain pour chaque Etat de définir sa propre politique culturelle. Il s'agit d'ériger un principe en droit international selon lequel la culture ne peut être assimilée à un simple objet de commerce en raison de l'identité qui la sous-tend et des valeurs qu'elle véhicule. En outre, la Convention établit un dispositif de coopération internationale à travers le soutien à la création et au développement des industries culturelles des pays en développement. A ce sujet, il est créé un « Fonds international pour la diversité culturelle » dont les ressources sont constituées par les contributions volontaires des Etats, les fonds alloués à cette fin par la Conférence générale de l'UNESCO, les versements, dons ou legs reçus par les Etats et les partenaires au développement, tout intérêt dû sur les ressources du Fonds, le produit des collectes et les recettes de manifestations organisées au profit du Fonds et toutes autres ressources autorisées par le règlement du Fonds. En vue d'éviter tout conflit avec les Accords de l'Organisation mondiale du Commerce (OMC), le texte introduit les principes de non subordination, de soutien mutuel et de complémentarité avec les autres traités multilatéraux. Tout Etat qui devient Partie à la présente Convention, désigne un « point de contact » chargé du partage de l'information relative à cet Accord. La Convention entrera en vigueur trois mois après la date du dépôt du trentième instrument de ratification, d'acceptation, d'approbation ou d'adhésion, mais uniquement à l'égard des Etats ou des organisations d'intégration économique régionale qui auront déposé leurs instruments respectifs de ratification, d'acceptation, d'approbation ou d'adhésion. Elle entrera en vigueur pour toute autre Partie trois mois après le dépôt de son instrument de ratification, d'acceptation, d'approbation ou d'adhésion. Compte tenu de l'importance de cette Convention, le Sénégal qui a beaucoup contribué à l'élaboration de ce texte, gagnerait une position avantageuse en Afrique en procédant rapidement à sa ratification et en incitant les autres pays africains à suivre son exemple. Telle est l'économie du présent projet de loi.

L'Assemblée nationale a adopté, en sa séance du vendredi 21 juillet 2006 ;

Le Président de la République promulgue la loi dont la teneur suit :

Article unique. - Le Président de la République est autorisé à ratifier la Convention sur la Protection et la Promotion des expressions culturelles, adoptée par la 33eme Conférence générale de l'Organisation des Nations unies pour l'Education, la Science et la Culture (UNESCO). La présente loi sera exécutée comme loi de l'Etat.

Fait à Dakar, le 7 août 2006.

Abdoulaye WADE.

Par le Président de la République

Le Premier Ministre,

Macky SALL.