

## Suisse

### ***La place de l'artiste dans la société***

*En général, les artistes n'ont pas besoin d'avoir recours à une autre activité, s'ils peuvent bénéficier des allocations de l'assurance chômage en cas d'inactivité. Cependant, plusieurs artistes donnent des cours ou travaillent de manière complémentaire dans l'enseignement.*

*Il n'y a pas eu d'augmentation significative dans l'évolution du financement public de la culture.*

## **CADRE JURIDIQUE et INSTITUTIONNEL**

### **Cadres juridiques dans lesquels les artistes et créateurs peuvent être employés:**

En Suisse, les artistes interprètes dans le domaine du théâtre et de la danse sont rarement fonctionnaires du secteur public. En général, ils sont «salariés» avec un contrat de travail. Ces contrats de travail peuvent être de durée déterminée ou indéterminée (employés fixes). Ils peuvent avoir aussi un statut de «travailleurs indépendants» avec un contrat de prestation de services.

### **Lois régissant ces cadres juridiques**

Le Code des obligations, pour les contrats à durée déterminée et contrats de mandat, Art. 319 et suivants (loi générale pour tous les travailleurs). Certaines associations proposent des contrats de mandat type à leurs membres.

### **Conséquences du cadre juridique appliqué**

Des Conventions Collectives de Travail (CCT) règlent les différents points suivants.

#### **a) En cas de rupture du contrat**

Pour les contrats de durée déterminée, voir pour la Suisse romande la CCT entre l'Union des Théâtres Romands (UTR) et le Syndicat Suisse Romand du Spectacle (SSRS), site Web : [www.ssrs.ch](http://www.ssrs.ch)

Voir aussi le site Web : [www.theaterschaffende.ch](http://www.theaterschaffende.ch) pour des exemples de contrats types en Suisse allemande.

#### **b) Sur le droit de cumuler une fonction permanente d'artiste avec une autre fonction (par exemple d'enseignant).**

Pendant la durée du contrat, l'exercice de toute autre activité est soumise à l'accord préalable de l'employeur, étant entendu que les matins restent libres (pour cette question, voir par exemple : CCT-UTR-SSRS. Art. 11 CCT).

#### **c) Sur les droits de propriété intellectuelle.**

Il n'y a aucune influence du cadre juridique appliqué sur les droits de propriété intellectuelle

#### **d) Sur le droit de se syndiquer.**

Il n'y a aucune influence du cadre juridique appliqué sur le droit de se syndiquer.

## **Recrutement des artistes**

Pour le théâtre et la danse, il n'existe en Suisse pratiquement pas d'agences ou de bureaux de placement des artistes. Mais il en existe pour les artistes de cabaret et de variété.

Les syndicats n'interviennent pas en ce qui concerne le placement des artistes.

## **Autorisation de travail et statut d'artiste « professionnel »**

Il n'existe pas d'autorisation de travail pour les artistes et interprètes du théâtre et de la danse.

Il existe une définition des comédiens professionnels pour la Suisse Romande appliquée par le Syndicat suisse romand du théâtre et l'Union des théâtres romands (voir CCT – UTR- SSRS sur site Web : [www.ssrs.ch](http://www.ssrs.ch) ).

## **Contrats de travail**

### Forme et contenu des contrats

Le contrat oral existe, pour être valable, celui-ci doit préciser la durée et le temps de travail et le montant du salaire. Mais il est plutôt d'usage de faire un contrat écrit.

### Contrats type

Il existe deux Conventions collectives de travail (CCT) qui sont appliquées dans les deux régions linguistiques francophones et alémaniques:

§ Suisse francophone : CCT, Union des théâtres romands (UTR) et Syndicat suisse romand des spectacles (SSRS)

§ Suisse allemande : CCT, Union des théâtres suisses (UTS) et *Schweizerischer Bühnenkünstlerverband* (SBKV)

Ces CCT sont applicables et obligatoires pour les membres de ces associations. Pour les non-syndiqués il existe des contrats types.

### Clauses obligatoires

Pour les clauses obligatoires, voir exemple : CCT UTR-SSRS sur site Web: [www.ssrs.ch](http://www.ssrs.ch)

## **Durée des contrats**

La durée des contrats n'est pas réglementée. Les contrats précaires ou à durée déterminée sont de plus en plus souvent utilisés. Ces contrats ne peuvent pas être interrompus avant leur terme.

## **Durée du travail**

La réglementation de la durée du travail applicable aux artistes est contenue dans les conventions collectives (voir CCT UTR-SSRS sur site Web : [www.ssrs.ch](http://www.ssrs.ch)).

## **Protection de la santé**

Les artistes ayant des contrats à durée indéterminée ou (d'au moins une année, pour la Suisse allemande) sont assurés par l'employeur aussi bien en cas de maladie qu'en cas d'accident. Les artistes ayant des contrats à durée déterminée ne sont en règle générale pas assurés par l'employeur en cas de maladie, ils ont des assurances privées.

Il n'existe pas une réglementation sur la santé spécifique aux artistes.

Les Ordonnances d'application de la Loi sur le travail comportent des articles sur la sécurité et l'hygiène.

Les syndicats et les associations professionnelles ont été consultés et ont le droit de faire des propositions en matière de prévention.

Il n'existe pas de régime spécial pour les artistes souffrant d'un handicap.

### **Inspections administratives des conditions de travail**

Comme pour tous les autres travailleurs : les inspections portent sur la sécurité, la salubrité, le respect du droit du travail, les déclarations sociales. Elles sont effectuées par divers services de l'Etat. Quand des infractions ou des irrégularités sont constatées, les services administratifs peuvent établir des amendes à l'encontre des infracteurs.

### **Formation professionnelle permanente**

En Suisse, la formation professionnelle pour les artistes et interprètes du théâtre et de la danse est assurée dans les modalités suivantes : cursus universitaire, formation continue, recyclage. Elle est financée soit par le travailleur soit par l'Etat, ceci est cependant rare, mais peut se faire par l'intermédiaire d'un organisme comme par exemple par la caisse de chômage. Elle peut être partiellement financée par une organisation professionnelle ou un syndicat.

## **LA PROTECTION SOCIALE**

### **a) Artistes salariés (c'est à dire ceux qui sont employés sous contrat de travail)**

#### **Régimes d'assurance existants**

§ Le privé: Assurance maladie, accident

§ Le public: invalidité, retraite

Pour les salariés toutes ces assurances sont obligatoires. La protection dépend de l'importance des cotisations.

#### **Travailleurs intermittents**

Le statut de travailleur intermittent n'existe pas dans les lois d'assurances sociales.

#### **Obligations juridiques de l'employeur**

Les obligations juridiques de l'employeur sont: déclarations d'emploi pour les étrangers, bulletins de salaire, versement des cotisations sociales (les cotisations sociales sont payées par l'employeur et l'employé).

#### **Salariés sous contrat de travail à durée déterminée (CDD)**

Les salariés sous contrat de travail à durée déterminée sont protégés de la même manière que les salariés sous contrat de travail (CDI) à durée indéterminée, sauf pour la retraite, l'invalidité et la maladie.

#### **Salariés résidant à l'étranger**

Le statut juridique des salariés résidant à l'étranger est le même que celui des artistes vivant en Suisse. Sur ce point on ne constate pas une forme de concurrence déloyale de la part des productions étrangères sur le territoire national.

### **Assurance complémentaire et/ou volontaire**

L'assurance maladie de base est privée et obligatoire; les assurances complémentaires sont aussi privées mais volontaires.

Diverses possibilités d'assurances privées existent dans le domaine de la retraite.

### **Artistes handicapés**

Il n'existe pas une protection sociale particulière à l'intention des artistes souffrant d'un handicap.

### **Aspects administratifs**

Les employeurs et des organismes privés soumis au contrôle de l'Etat dans le cas des assurances maladies ou retraites complémentaires s'occupent de percevoir les cotisations. L'état et les assurances privées sont les organismes chargés de verser les indemnités aux artistes.

Il n'existe pas de société de gestion collective des droits (droit d'auteur ou droits connexes) intervenant dans le financement et la gestion de la protection sociale.

L'Etat prend en charge les frais de santé ou d'autres indemnités d'ordre social quand un salarié n'est plus protégé par un système d'assurance, à certaines conditions.

### **b) Artistes non-salariés (c'est-à-dire ceux qui ne sont pas employés sous contrat de travail)**

#### **Cadre juridique**

Les «employeurs», c'est-à-dire ceux qui ont recours aux artistes (producteur ou organisateur de spectacles, producteur de disques ou de films, radio ou télévision, galeriste, éditeur, etc.), n'ont pas d'obligations sociales, notamment de paiement de cotisations, quand les artistes ne sont pas sous contrat de travail.

S'assurer auprès d'une caisse maladie, de retraite et d'invalidité est obligatoire pour les artistes non salariés. Ces derniers sont obligés de cotiser pour leur protection sociale, notamment pour maladie, invalidité et retraite. Ils peuvent souscrire à une protection complémentaire, notamment en ce qui concerne la santé et la retraite.

Le statut juridique des artistes non salariés résidant à l'étranger est le même que pour ceux qui vivent en Suisse.

#### **Aspects financiers**

L'utilisateur de services ne paye, ni en pourcentage, ni forfaitairement, aucun montant lié aux cotisations sociales.

En revanche, l'artiste non-salarié doit payer toutes les cotisations.

Les non-salariés n'ont pas de couverture sociale fournie.

#### **Aspects administratifs**

L'Etat, les assurances privées s'occupent de percevoir les cotisations, ainsi que de verser les indemnités aux artistes.

Il n'y a pas de société de gestion collective des droits (droit d'auteur ou droits voisins) intervenant dans le financement et la gestion de la protection sociale.

L'Etat prend en charge les frais de santé ou d'autres indemnités d'ordre social quand un artiste non-salarié n'est pas protégé par un système d'assurance.

## **LE CHOMAGE**

### **Système d'assurance chômage**

La Loi sur l'assurance chômage (LACI, adoptée le 25 juin 1982) établit le système d'assurance chômage appliqué aux artistes.

### **Aspects financiers**

L'importance des allocations touchées varie selon le montant des cotisations versées. La durée du versement des allocations est de 400 jours.

### **Aspects administratifs**

Les employeurs s'occupent de percevoir les cotisations qu'ils reversent ensuite à l'Etat. Les caisses de chômage sous le contrôle de l'Etat s'occupent de verser les indemnités aux artistes.

Il n'y a pas de société de gestion collective des droits (droits d'auteur ou droits voisins, etc.) intervenant dans le financement et la gestion de la protection sociale.

L'Etat prend en charge le versement d'un revenu minimum quand un artiste n'est protégé par aucun système d'assurance, comme pour tout autre travailleur.

## **LES REMUNERATIONS**

L'artiste reçoit son salaire directement.

### **Montant minimum de rémunération**

Il existe un montant minimum de rémunération pour les artistes soumis à une Convention collective de travail (Voir CCT-UTR-SSRS sur site Web : [www.ssrs.ch](http://www.ssrs.ch) ). Les services rendus par les artistes sont rarement gratuits.

### **Revenus provenant des droits de la propriété intellectuelle**

Il existe des sociétés de gestion collective des droits. Les artistes bénéficient-ils d'une répartition effective des droits perçus par les sociétés de gestion collective. Les artistes n'ont pas des difficultés pour récupérer les droits perçus en leur nom par la (ou les) société(s) de gestion collective.

## **LE STATUT FISCAL**

### **Statut fiscal particulier**

En général les artistes ne jouissent pas d'un statut fiscal particulier, mais dans certains cantons, des déductions peuvent être acceptées pour des frais professionnels.

### **Droits d'auteur et système fiscal**

Les droits d'auteur sont traités par le régime fiscal comme tout autre revenu.

### **Exemptions ou dispositions particulières**

Il n'existe pas d'exemptions ou de dispositions particulières en matière de droits d'importation temporaire de produits culturels, ni en matière de droits d'importation de matériel nécessaire à la production culturelle.

Les produits culturels ne jouissent pas d'un régime fiscal particulier, lors de la commercialisation, de l'exportation et de l'importation.

Il n'existe pas d'accords en matière de droits de douane au niveau régional ou interrégional concernant la circulation des produits culturels.

## **LE TRAVAIL CLANDESTIN**

### **Les sanctions**

Les sanctions appliquées pour contrer le travail clandestin sont : amende pour l'employeur, peine d'emprisonnement en cas de récidive. Et expulsion de Suisse du travailleur clandestin.

### **Contrôles et efficacité de la répression**

Bien qu'il existe des contrôles administratifs, la justice ne sanctionne pas efficacement le travail clandestin.

## **LA MOBILITE INTERNATIONALE DES ARTISTES**

### **Promotion de la mobilité**

Il existe des mesures pour encourager la mobilité des artistes dans les domaines suivants:

- § bourses et aides financières à la mobilité des artistes
- § bourses et aides financières à la mobilité des œuvres
- § réseaux d'accueil pour artistes étrangers
- § facilités d'obtention de visas et de permis de séjour
- § facilités pour l'importation et l'exportation des produits culturels.

### **Artistes étrangers**

La seule contrainte imposée aux artistes étrangers pour travailler sur le territoire national est l'obtention d'un permis de travail. Ce cadre juridique est relativement respecté. Les syndicats n'ont pas obtenu des mesures de compensation, notamment en imposant l'emploi de nationaux.

### **Mesures de protectionnisme culturel**

Dans la production audiovisuelle, il existe des mesures de protectionnisme culturel, notamment sur le contenu des programmes de radio ou de télévision (quotas) et le régime fiscal appliqué aux productions de disques et de films.

## **LA REPRESENTATION COLLECTIVE**

### **La liberté syndicale**

La constitution de la République Suisse contient des dispositions légales de protection de la liberté syndicale.

Dans la pratique, la liberté syndicale est égale pour tous les citoyens. Il n'existe aucune forme de pression à l'égard des travailleurs qui veulent se syndiquer.

### **Les prérogatives syndicales**

Les syndicats sont consultés par l'Etat avant les réformes ayant des conséquences sur les activités des artistes.

### **Accords collectifs**

Il existe des conventions collectives par secteur, ainsi que des accords collectifs garantissant un cadre juridique dans les différents secteurs.

### **Le dialogue social**

En Suisse et dans le domaine des artistes et interprètes du théâtre et de la danse, il n'y a pas d'instance spécifique consacrée à la promotion du dialogue social. Il n'existe pas non plus des instances consacrées à la médiation et/ou le recours.

**Source:** *Syndicat suisse romand du spectacle (SSRS), Schweizerischer Bühnenkünstlerverband (SBKV), Vereinigte Theaterschaffenden der Schweiz (VTS), novembre 2003.*

*Syndicat Suisse Romand du Spectacle*, <http://www.ssrs.ch/>

*Schweizerischer Bühnenkünstlerverband*, <http://www.sbkv.com/>

*Vereinigte Theaterschaffende der Schweiz*, <http://www.theaterschaffende.ch/>

## **South Africa**

### **THE POSITION OF THE ARTIST IN SOCIETY**

#### **Actual situation**

There is an oversupply of labour - e.g. there are too few theatres to enable all actors in the country to work consistently throughout the year.

The intermittent and seasonal nature of some industries (e.g. television commercial industry that operates mainly in summer), and the dependence on public funding bodies that administer funds poorly, mean that artists have to find other forms of generating income.

In general, some artists need to resort to another form of gainful employment. There are no figures available for this generally, but recent research into the theatre industry found that less than 25% of actors make their living from theatre alone.

Younger artists may engage in waitressing, modeling and advertising while older artists find supplementary income in teaching, the communications and PR industries and tourism. Many also – often reluctantly – engage in arts administration work that generates some income when they are not working as artists.

#### **The role of the State in improving the conditions of artists**

After the country's first non-racial, democratic elections in 1994, the new government embarked on a progressive consultation process with the arts community regarding the formulation and management of a new arts and culture dispensation. This led to the adoption of the White Paper on Arts, Culture and Heritage in 1996, which today remains the primary policy position of government.

On the subject of the Rights and Status of the Artist, the White Paper states: "In the past, publicly-funded institutions and practices allowed, and at times encouraged the exploitation of artists. With the decline in subsidies over the years, the salaries of practitioners, technicians and administrators in arts institutions are unacceptably low. The Ministry will encourage the creation of optimum conditions in which artists may practice their art, and enjoy their right to freedom of expression in a relatively secure working environment and with the same protection enjoyed by other workers. Accordingly, the Ministry will encourage the review of existing legislation... Other acts relating to labour relations, taxation and social security also require interpretation against the particular working conditions of artists".

Nearly ten years after the adoption of the White Paper though, very little has changed with regard to labour relations, taxation, remuneration, social security and the general working conditions of artists. If anything, some would argue that these have declined in the last ten years. Certainly it is not yet the case that "artists...enjoy their right to freedom



of expression in a relatively secure working environment and with the same protection enjoyed by other workers.”

While other workers have seen a drastic improvement in their working conditions, with vulnerable workers such as domestic workers and farm labourers enjoying special attention, artists have not seen very many changes that have provided them with great employment security, nor a social security net, or even minimum wages, making them still completely vulnerable to exploitation.

*- Public funding in the field of culture*

Since 1994, national government has legislated 3 public-funding bodies into existence, i.e. the National Arts Council, the National Film and Video Foundation and the National Heritage Council, all of which are essentially conduits for public funds to their respective sectors.

Most of the nine provinces have established provincial equivalents of the National Arts Council to support provincial arts and culture projects.

While this marks some progress since the apartheid era in that access to public funds has been democratized, political manipulation of the governance and management of these bodies and internal administrative and capacity challenges have undermined the potential of these institutions to develop an environment where artists are free and secure to practice their constitutional right to freedom of creative expression.

Furthermore, the project-by-project nature of funding allocated by these funding bodies – rather than funding in 3-4 year cycles – contributes to a great deal of insecurity within the sector.

A major positive development with respect to funding is the establishment of the National Lottery Distribution Trust Fund which makes substantial grants available to arts and culture projects and institutions. Administrative and capacity challenges also inhibit it from realizing its full potential, but the large amounts allocated to projects allows for longer-term planning, better remuneration of artists, greater employment security and more social benefits.

*- Public funding in the field of education in the various artistic disciplines*

At primary and secondary school levels, new curricula are being introduced that include arts and culture as core learning areas. In the medium term, this will have a positive impact on the development of artists and on the creation of potential markets for the arts. In the short-term, there are major challenges as there is no critical mass of qualified educators to teach these new subjects with many educators being provided with in-service training. The quality of the teaching at the moment is thus questionable.

At tertiary levels, there are numerous excellent state-funded training institutions in theatre, dance, music, visual art, film and creative writing. Private institutions also provide excellent training in these areas.

- *Public funding in the field of centres devoted to the promotion of the living arts*

The national budget for the arts and culture has grown nearly four-fold in the last ten years. The state supports a host of museums, galleries and theatres around the country, although most of these continue to be located in historically resourced, urban centres.

The major deficiency in state support for these institutions is that while it provides funding for their core infrastructure (maintenance of physical buildings, payment of electricity and water, salaries of core staff and management, etc), it does not provide funding for collecting and buying art or for hosting exhibitions or for productions of theatre work, etc.

In all of these areas, there is great potential for the State to play a leading role in improving the conditions of artists, but that potential – and the vision articulated in the government’s own policy document - is not being realized currently.

There is little dialogue between government and employers in the arts and culture industries that is aimed at improving the state of the sector generally, and thus there is little dialogue about improving the state of the working conditions of artists.

- *New technologies*

There is no government programme monitoring and taking corrective action in relation to new technologies and their impact on artists. Any action in this regard is taken within the industry itself and at tertiary educational institutions.

## **LEGAL FRAMEWORK**

### **Legal frameworks within which artists and creators may be employed**

- a. *Public sector employees* : no artists are employed as public sector employees.
- b. *“Salaried employees” with an employment contract* : these generally apply to artists who are employed as members of companies on at least year-long contracts e.g. orchestras, dance companies and opera companies.
- c. *“Freelance workers” with a service provider contract* : this is the primary nature of employment contracts for artists in South Africa.
- d. *Specific status*: there is no legal framework of employment specifically for artists.

There is no obligatory status for the employment of artists. The most common practices are:

- Performing arts (music, opera, dance, theatre) and film: freelance workers with short-term employment contracts. Those who are salaried employees tend to be the staff who administer and work as operational staff within cultural institutions such as theatres, galleries and museums.
- Writers: project-specific commissions or contracts with publishers.
- Visual artists: agency contracts with galleries that market and sell their work.

The uncertain, project-based nature of current arts funding means that it is nearly impossible to employ artists on medium to long-term contracts. Since 1994, there has been a rapid decline in large-scale companies that provided medium-to-long term employment for artists. New performing arts companies that have emerged offer - at best - year-long contracts that are reviewed in the light of the company's success with regard to fundraising in the preceding year.

Subsidised theatres have their core infrastructure funded by government, but not production budgets. This is also a significant contributor to the primary nature of employment in the performing arts which is on short-term, project- or production-specific contracts.

However, most artists are self-employed and generate their own work. Recent research conducted by the Performing Arts Network of South Africa (PANSA) revealed that at least 60% of artists initiate their own work, without this having been commissioned by theatres, festivals or other institutions.

Where salaried employment exists, this is mainly within the performing arts. Since 1994, the trend – strongly brought about by declines in state subsidies and administrative challenges in the distribution of funds that are available – has been away from salaried employment towards self-employment and self-generated work. This is generally the case among writers and visual artists too where salaried employment is very rare.

### **Laws governing this legal framework**

The Labour Relations Act, No 66 of 1995 governs employment. The Basic Conditions of Employment Act, No 75 of 1997 governs the working conditions and social benefits of workers. These laws are applicable to all workers. There are no employment laws specific to cultural workers.

### **Effects of the legal framework applied**

#### **(a) In the event of breach of contract or dismissal**

Chapter 8 of the Labour Relations Act, 1995 deals with dismissals. It prohibits employees from being unfairly dismissed. Unfair dismissal includes the termination of a contract of employment if the employee participated in or supported a legal strike or protest action, or if it is related to the employee's pregnancy, or if it is done on discriminatory grounds such as race, gender, ethnic or social origin, sexual orientation, age, disability, religion, political opinion, language, marital status or family responsibility.

In the case of a dismissal, the employer must prove that the dismissal is fair (fair dismissals are related to the employee's conduct or capacity or to the employer's operational requirements). If there is a dispute about the fairness of a dismissal, such disputes are referred to the Commission for Conciliation, Mediation and Arbitration (CCMA).

If a dismissal is found to be unfair, the employer may be ordered to reinstate the employee or the employer may be ordered to pay compensation to the employee. However, the Labour Relations Act applies to salaried employees, and not to “independent contractors”, a category into which most practicing artists would fall currently.

**(b) On the right to combine a permanent post as artist with another job**

There is no law that prohibits artists from combining permanent with other posts. Many educational institutions attract high profile artists (visual artists, composers, choreographers and writers in particular) to teach at their institutions by making it possible for them to have security of tenure as educators, but provide them with sufficient space, time and resources to create their own work.

**(c) On social welfare.**

Salaried employees generally have access to social benefits such as medical aid, pension schemes and unemployment insurance through their company. Intermittent workers or independent contractors have to take responsibility for these themselves.

**(d) On intellectual property rights.**

Salaried employees generally forfeit their designs and intellectual property to their employer, while independent contractors own their intellectual property unless this is assigned to an employer as part of the contract.

**(e) On the right to form or join a trade union.**

Section 23 of the Constitution of the Republic of South Africa, no 108 of 1996, guarantees freedom of association and the right to engage in collective bargaining. The Labour Relations Act, 1995 gives employees the right to form a trade union or federation of trade unions, and to join such a union. It also gives the right to every trade union member to participate in all the lawful activities of the union, to stand for election, to participate in elections for office-bearers, to be appointed as a trade union representative and to carry out the functions related to being such a representative.

**Recruitment of artists**

This varies from discipline to discipline.

- Craft: crafters work as individuals or in co-operatives and are contracted by retail outlets to produce particular products.
- Dance: compared with other performing arts disciplines, there are numerous professional dance companies offering salaried employment. Dancers are hired either after completing a training programme with the dance company or after an audition.
- Film: Actors are hired through casting agents.
- Literature: Publishers develop relationships with particular writers and enter into contractual arrangements with them to produce a single book or a range of books depending on the popularity of the writer.
- Music: Record companies sign up musicians and manage their careers. Independent promoters have a range of musicians contracted to them, and whom they promote through live concerts and other events.

- Theatre: Actors are hired through artist agents or are directly contracted if they do not have agents.
- Visual arts: Visual artists are generally associated with particular galleries who promote and sell their work. They are not employed or hired by these but may be commissioned by them to do work, and may be paid an advance to do so.

#### Status of intermediaries

There are at least 15 artist agencies nationally that serve as employment brokers for actors. This work includes theatre, voice-overs for television and radio commercials, films and television series, serving as Programme Directors (MCs) at high profile functions, etc. The primary function of these agencies is to serve as a contact and fee-broker between the artist and the potential employer.

Casting agents operate in the film and television commercial world, and they contact artist agencies to provide actors according to a particular brief, who are then auditioned and selected by the directors of these films or commercials.

#### Their mode of remuneration

Generally, artist agencies take a percentage of the fee paid to the artist for a particular job.

For theatre, artists' agencies will take between 0-15% of the fee as commission (0% in the cases of some agencies as theatre remuneration is considered to be so low as to not be worth it), while for film and commercials, agencies generally take 15% of the fee.

Galleries take between 40% and 50% - and sometimes more - of the price of works sold by artists through their galleries.

There are few arts-related trade unions at the moment, and those that exist are relatively weak. Generally, where they exist, they essentially represent and advise their members on contractual issues and do not seek to secure work for their members.

#### **Professional status**

There is no system to recognize "professional" artists. Barriers to entry to the creative industries are non-existent with those trained at tertiary institutions competing on equal terms with those who have had no formal training, or limited training in non-formal institutions or training through in-service opportunities.

Historically, given the apartheid divides and the discrimination against black people within the arts too, notions of "professional" and "other" artists have tended to be divisive along racial lines with "professional" referring essentially to white, trained artists and "community" artists referring to black, generally un- or undertrained artists.

There is the beginnings of a shift towards understanding "professional" as a reference to all those who seek to make their living within the arts, whether in a mainstream or community-based context, whether as trained individuals or simply as talented artists with little or no training.

There is no body or authority that confirms such status, although, in practice, theatres, festivals and funding bodies do tend to distinguish between applications from professional and from non-professional or amateur groups and practitioners.

## **Work contracts**

### Form and content of contracts

The Basic Conditions of Employment Act, 1997 require an employer to provide the following in writing at the time of employment:

- i) the full name and address of the employer
- ii) the name and occupation of the employee, or a brief description of the work for which the employee is employed
- iii) the place at which the employee is required to work
- iv) the date on which the employee will begin work
- v) the employee's working hours
- vi) the employee's wages
- vii) the rate of pay for overtime
- viii) any cash payments or payment in kind that the employee is entitled to
- ix) the frequency with which remuneration will be made
- x) what deductions will be made from the employee's remuneration
- xi) the period of notice required for the termination of services, or if employment is for a specific period, the date on which the employment will end
- xii) a list of documents that form part of the contract of the employment

The above applies to salaried employees in the arts e.g. members of dance groups, orchestras and opera companies on at least year-long contracts.

Contracts between independent contractors (essentially artists who work intermittently) and theatres, festivals, galleries, publishers, etc are not mandatory in terms of any law. In practice, however, written contracts are the primary means used to secure and define the nature of services and remuneration between artists and their intermittent employers.

Where contracts are exclusive, they are

- i) to ensure that a particular film company or theatre have exclusive production rights to a particular script for a period ranging from 1-3 years
- ii) to ensure that a gallery is the exclusive agent for a particular artist until this is terminated by one of the parties
- iii) to ensure that a publisher has right of first refusal to the works of a particular author

Generally though, in some cases e.g. film and theatre, it is the creative product to which producing agents have exclusivity, while in visual arts, publishing and music, it is the artist to which the producing agent has exclusivity.

### Model contracts

A model contract for theatre workers was drafted by the Theatre Managements of South Africa (TMSA) and the Performing Arts Workers Equity (PAWE). The South African Scriptwriters Association (SASWA) has devised a standard contract that its members can use as a basis for negotiation. Various employers e.g. festivals, broadcasters, publishers, promoters, etc use their own contracts devised by their legal departments or agents to suit the particular circumstances of the employer.

### Mandatory clauses

There are no mandatory clauses as required in any law for independent contractors. However, various clauses in contracts can be challenged in terms of existing laws where appropriate.

### **Duration of contracts**

The length of contracts is determined by two main factors

- i) for intermittent workers, by the length of the project and
- ii) for salaried employees, by the availability of funding from year to year.

There is no agency or authority to monitor contracts and their consistency with labour law, or the country's Constitution or other laws pertaining to the industry.

Short-term, casual contracts and fixed-term contracts are the primary forms of contracts used as this is the primary nature of the work provided.

Some contracts – particularly in the performing arts – have an “early termination” clause that allows the producer to end the contract prior to the scheduled end of the season, if it becomes clear that the production is not doing good business. In such cases, producers may terminate the contract with sufficient (at least 7 days) warning, without having to compensate the performers.

Theoretically, a contract that is terminated by either party unfairly or on reasonable grounds is subject to legal action by the aggrieved party in terms of contractual law. However, in practice, this seldom happens given the relatively small industry, and given the nature of the relationships between parties within the arts industry. What tends to happen is that an artist that terminates a contract early is blacklisted by the management, and is barred from working at the theatre. Should a producer terminate a contract early, artists are reluctant to challenge this as they do not have the financial means to take legal action; unions are relatively weak and do not enjoy the support of artists, and artists fear that challenging the producer may lead to their being blacklisted for future productions.

The growing trend – since 1994 at least - is towards casualisation, freelance work and independent contracting. Salaried employment is increasingly the exception.

### **Duration of work**

This varies from discipline to discipline, but generally, it is project -or production-specific.

There are no regulations governing the duration of work applicable to artists. Currently, employer organizations are not compelled to join an industry bargaining council to facilitate collective agreements.

There are few, if any, collective agreements within the arts. Collective agreements were negotiated earlier between the Performing Arts Workers Equity (PAWE) and the public broadcaster, SABC as well as the Theatre Managements of South Africa (in 2000), but with the demise of the union, it is not clear whether these agreements have any standing currently, or whether they are enforceable. Where they are adhered to, it would be because of historical usage rather than current enforceability.

### **Health care and safety regulations**

#### General health care and safety regulations

The Occupational Health and Safety Act, No 85 of 1993 and the Compensation for Occupational Injuries and Diseases Act, No 130 of 1993 cover artists in the same way as they would apply to other workers.

The Occupational Health and Safety Act of 1993 is primarily concerned with the physical environment and structure where an employee fulfils her/his duties. The employer is required to ensure that this environment is hygienic and safe.

Independent contractors are covered by Section 9 of this Act that states “every employer shall conduct his undertakings in such a manner as to ensure, as far as is reasonably practicable, that persons other than those in his employment who may be directly affected by his activities are not thereby exposed to hazards to their health or safety.”

The Compensation for Occupational Injuries and Diseases Act, 1993 provides for the compensation of employees who are injured in accidents that arise out of, or during the course of employment or who contract diseases related to their occupation. All employers are required to register with the Compensation Fund created in terms of this Act, and administered by the Compensation Commissioner.

This Act covers salaried employees, but excludes independent contractors from its provisions.

There are no health regulations specific to artists.

Since a near-fatal accident in which a leading actress fell five stories at one of the country's largest theatres before 1994, there has been a greater awareness of the need for safety. Notices warning the public and workers of possible dangers have been more in evidence since then.

The preventive measures adopted by employers are mainly educational and take the form of warning signs. Preventive measures are not negotiated with trade unions as these are generally non-existent currently.



### Artists with disabilities

While there are various initiatives to highlight disability within and through the arts, there is no particular regime protecting or advancing the rights of artists with disabilities.

### **Administrative inspections**

The physical conditions of employment of artists are subject to the same inspection as other workers, and there is no special inspection regime for the working conditions of artists.

The Basic Conditions of Employment Act, 1997 provides for the appointment of labour inspectors to “promote, monitor and enforce compliance with an employment law”. This entitles a labour inspector to investigate any complaint relating to any labour-related law (including hygiene, safety, social welfare, etc), and to issue compliance order where the employer undertakes to institute corrective action if necessary.

The Act states that the Minister (of Labour) may appoint any person in the public service as a labour inspector, or designate any person in the public service, or any person appointed as a designated agent of a bargaining council to act as a labour inspector.

On completion of an investigation, the labour inspector may issue a compliance order to, or obtain a written undertaking from the employer who has breached a labour law, to take corrective action.

*Laws or regulations governing these matters:* The Basic Conditions of Employment Act, 1997, the Occupational Health and Safety Act, 1993 and the Compensation for Occupational Injuries and Diseases Act, 1993 are the principal laws governing these matters.

### **Vocational training**

Access to lifelong vocational training for artists is not the subject of a particular law or regulation or policy. There is access to such training at all levels, but this is largely provided on the initiative of the training institution, or by the industry, or at the initiative of the artist rather than as an injunction from the State.

- *university courses*

Undergraduate and post-graduate courses in particular disciplines, as well as supplementary courses in administration, marketing, etc are offered.

- *continuing training*

This takes place within the company or institution if the artist is a salaried employee, or the employee is sent on courses available outside the company.

- *retraining or refresher courses*

These are mainly provided by the industry for members of that particular institution e.g. an Actor's Centre or paid for by the artist when an ad hoc course is made available.

- *training paid for by the employer*

The Skills Levy Act requires employers to submit a percentage of their monthly salary bill to the National Skills Fund to provide for further training of employees within that industry. While the arts industries have few companies that qualify to pay this levy, the

Department of Arts and Culture and the Department of Labour have negotiated an amount of funding that goes to the arts industries for training purposes.

- *state-funded training*

This is done mainly through the Departments of Education (at public training institutions) and Labour (through Sector Education and Training Authorities) rather than the Department for Arts and Culture.

- *training financed by a professional organisation/trade union*

Bursaries are offered by various industry organisations, or training courses are offered on a regular or ad hoc basis by member-based, representative organisations e.g. advanced script-writing courses, workshops on marketing creative products, sessions on fund-raising, etc.

## **SOCIAL WELFARE (EXCLUDING EMPLOYMENT)**

### **a) Salaried artists (those with an employment contract)**

#### **Legal framework**

Existing insurance regimes (sickness, maternity, invalidity, retirement...)

The Unemployment Insurance Act establishes a Fund that provides for salaried staff during times of sickness and maternity, up to a maximum of six months. Employers and employees are to contribute equal amounts to this fund on a weekly or monthly basis. There is no national medical insurance scheme or national pension scheme. These benefits are employer-specific and are generally pursued through private medical aid schemes and provident fund schemes.

To enjoy effective social welfare provision, salaried artists need to be salaried employees, and their employers need to participate in adequate private medical and pension schemes.

Most private provident or medical aid schemes provide options for the kind of cover employees want or can afford. The benefits are directly related to the regular contributions.

Provision for welfare or benefits during periods of unemployment or inactivity

Some private pension and medical aid schemes provide for benefits for contributors for a limited period of unemployment. Employees who have contributed to the Unemployment Fund would be entitled to an unemployment grant for up to six months.

The status of intermittent worker

Intermittent workers are regarded as casual workers or as independent contractors.

Legal obligations of the employer (employment statements, wage slips...)

An employer is obliged to give an employee the following information in writing on each day the employee is paid: the employer's name and address, the employee's name and occupation, the period for which payment is made, the employee's remuneration in

money, the amount and purpose of any deduction made from the remuneration, the actual amount paid to the employee and any information relating to overtime.

#### Social welfare cover and fixed-term contracts

This depends on the nature and terms of the contract, and the length of the contract. For some salaried employees with fixed-term contracts, it may be that they enjoy the same benefits on a pro rata basis as salaried employees with open-ended contracts. For others, they may have fewer benefits e.g. the employer won't contribute to a pension scheme, but will make a contribution to a medical aid scheme. Or, the fixed term employee may have a contract resembling that of an independent contractor where no benefits are paid, but remuneration levels are higher than for salaried employees as fixed-term contractors will be required to make their own arrangements with regard to pension, medical aid and other insurances.

#### Salaried employees residing abroad

The responsibilities of the company to the employee would be the same as if the employee were working in the national territory.

#### Additional and/or voluntary insurance

Employees and independent contractors have a range of additional, voluntary private sector insurances to choose from for health, retirement, life cover and professional incapacity reasons.

#### Supplementary insurance

Except for unemployment insurance for salaried employees, social welfare cover is not obligatory, and certainly not for artists, most of whom are independent contractors. Recent research found that less than 25% of actors had some form of pension scheme and less than 50% had access to medical insurance. Generally, artists are obliged to make their own arrangements in this regard.

#### Social welfare cover for artists with disabilities

More than 6,5 million South Africans currently receive some form of welfare grant from the State including old age grants, disability grants, war veterans grants, foster child grants, child support grants, social relief, etc. There is no special social welfare cover for artists with disabilities, but artists with disabilities may apply for social welfare cover as any citizen.

*Law or regulations governing these matters:* The Basic Conditions of Employment Act, 1997 and the Social Assistance Act, No 13 of 2004 govern these areas.

### **Financial aspects**

Percentage (in relation to salary) of social security contributions paid by the employer

Employers pay up to 5% of the employee's salary to pension or provident fund schemes and 1% to unemployment insurance.

Percentage (in relation to salary) of social security contributions paid by the employee

The employee pays a matching amount to that of the employer.

The contributions the employer/employee must pay are set as a percentage of the weekly, fortnightly or monthly salary.

Scale of the social welfare cover

Most social welfare for artists will be covered by private schemes, and this varies according to the choice – and affordability – on the part of the artist.

### **Administrative aspects**

Body responsible for collecting contributions (State, a body under State control, trade union, private enterprise, etc.)

Generally, the private sector collects pension and medical aid contributions while the State – through the SA Revenue Service – collects unemployment insurance fund contributions.

The private sector or the State depending on the benefit is responsible for paying benefits to artists.

Health costs and other welfare benefits when a salaried employee is no longer protected by an insurance scheme

The State provides public hospitals for people who are unable to pay for private medical care and employees described above may apply for a social grant should they be eligible for such assistance.

### **b) Non-salaried workers (those without an employment contract)**

#### **Legal framework**

Obligations of “employers” and non-salaried artists

No obligations.

Additional insurance

They are responsible entirely for whatever insurances they wish to have.

Legal status of salaried employees resident abroad

They do not have any legal status as artists, merely the same status as citizens of their country.

Obligations of service users having their corporate headquarters abroad

They do not have any obligations to non-salaried artists other than what is agreed in a contract between them and the artists.

### **Financial aspects**

Social contributions (as a percentage of salary or as a fixed sum) for the non-salaried artists

Not applicable.

Social cover provided for non-salaried artists

The scale is relative to the private insurance options selected and paid for by the artist.

### **Administrative aspects**

Body responsible for collecting contributions (State, a body under State control, trade union, private enterprise, etc.)

The artist pays it directly to the private sector company providing the cover.

The private sector company is responsible for paying benefits to artists.

Health costs and other welfare benefits when a salaried employee is no longer protected by an insurance scheme

The State provides public hospitals for people who are unable to pay for private medical care and employees described above may apply for a social grant should they be eligible for such assistance.

## **UNEMPLOYMENT**

### **Statistics on the average duration of total unemployment**

Information not available.

### **Statistics on the average duration of unemployment per month for intermittent workers**

Recent research conducted into the theatre industry indicated that actors work for an average of just less than 6 months per year.

### **Unemployment insurance system**

There is no unemployment insurance system particular to artists. The Unemployment Insurance Act, No 63 of 2001 applies to all workers except government employees, but specifically excludes “independent contractors”, a category into which most artists would fall.

The Unemployment Insurance Act requires both the employer and the contributor each to contribute 1% of the earnings of the contributor to the Unemployment Fund. Some employers in the arts do deduct UIF contributions from the earnings of artists – even for intermittent workers - while others do not. For salaried employees, the Act is more clearly applicable.

## **Financial aspects**

### Scale and duration of the unemployment benefits

45% of the last weekly or monthly remuneration received will be paid during a period of unemployment for up to 26 weeks.

### Conditions of entitlement to unemployment benefits

The person seeking unemployment benefits must not be in receipt of a state pension or any benefit from a State Compensation Fund. S/he must also be registered as a work-seeker at a labour centre, and must be capable and available for work.

There is no social welfare cover specific for artists during the period of unemployment.

*Law or regulations governing these matters:* The Unemployment Insurance Act, No 63 of 2001

## **Administrative aspects**

### Body responsible for collecting contributions

The South African Revenue Service (SARS) is responsible for collecting contributions.

The Unemployment Insurance Fund (to which SARS channels the contributions) is responsible for paying unemployment benefits.

The State does not undertake to pay a minimum income when an artist is not covered by any insurance scheme.

*Law or regulations governing these matters:* The administrative aspects of unemployment benefits are regulated by the Unemployment Insurance Act, No 63 of 2001.

## **REMUNERATION**

Salaries are paid directly to artists.

Remuneration is generally in the form of cash.

*Law or regulations governing these matters:* The Labour Relations Act No 66 of 1995, and the Basic Conditions of Employment Act, No 75 of 1997 govern the remuneration of workers.

### **Minimum level of remuneration (by service, by week, by month)**

There are no legislated – or generally agreed (between unions and employer organizations) – minimum wages for artists.

Historically, artists have often rendered their services for free of charge, particularly those engaged in the struggle against apartheid. While this is still happening, it is less

frequent, although the value of artists' work is still deemed to be relatively low in remuneration terms.

*Law or regulations governing these matters:* There is no law or regulation governing the remuneration of artists or minimum wages for artists.

### **Remuneration and intellectual property rights**

#### Societies for collective rights management

There are several collecting societies including the South African Music Rights Organisation (SAMRO), Dramatic, Artistic and Literary Rights Organisation (DALRO), SA Recording Rights Association Ltd (SARRAL) and the National Organisation for Reproduction Rights in Music in Southern Africa (NORM).

Generally, artists do benefit from these collecting societies.

Problems in receiving rights collected in the name of artists by the collective management societies.

There have often been problems between artists and some of the collective rights societies, with musicians sometimes marching in protest against the poor services rendered by some of these societies.

*Law or regulations governing these matters:* The Copyright Act No 98 of 1978 and the Performers Protection Act of 1967 govern these matters.

## **TAX STATUS AND TAX ADVANTAGES**

### **Tax Status**

Artists do not have a tax status related to their positions as artists. The majority of artists who would fall into the category of "independent contractors" would have a similar status to other self-employed or other workers whose income fluctuates. In these cases, artists would have the status of "provisional tax payers". Provisional taxpayers are required to self-assess their income and pay tax on this income within six months of this income having been earned. The South African Revenue Service assesses tax returns after the close of the tax year, and if insufficient tax has been paid by the provisional taxpayer, s/he is required to pay the outstanding amount as well as interest levied on this amount.

### **Royalties and tax system**

According to the Performing Arts Workers Equity Report, royalties on copyright are taxed at a rate of 30%.

### **Exemptions or special provisions on cultural products**

There are special provisions for temporary imports in that 50% duty is payable when the goods enter the country, and this is refunded when the goods leave the country. However, this applies generally as opposed to cultural products in particular.

There are no exemptions or special provisions regarding import duties on equipment and materials required for cultural production. Specific items might be exempted or have rebates, but this would need to be tested against a list of such items that enjoy such rebates.

### **Special tax regime for cultural products**

There is no special tax regime for cultural products.

The importing of industrial equipment for the construction, mining, beverage and other industries is exempt from duty or enjoys significant rebates, but this is not the case with the creative industries at the moment.

*Law or regulations governing these matters:* The Customs Act No 91 of 1964 governs import duties.

## **ILLEGAL WORK**

### **Scale of illegal work**

Without the formal registration of artists and with the possibility of many artists being paid in cash without the exchange of invoices and receipts, it is not possible to determine the extent of income that is not officially declared.

There is no law preventing anyone from working in more than one job. However, the consequences of undeclared income include fines and possible jail terms.

### **Control and sanctions**

Anyone found guilty of tax evasion is liable to a fine and/or a prison term in terms of the Income Tax Act, No 52 of 1962.

The South African Revenue Service (SARS) has become increasingly efficient in collecting tax. Recently, SARS drew attention to the fact that many musicians were not paying tax. SARS certainly has the capacity – and the will - to undertake administrative checks.

For an artist, any form of penalty – particularly a fine of some financial magnitude – would be an effective deterrent to tax evasion. In theory then, not declaring taxable income is effectively penalized by the judicial system, but in practice, there is little information to prove that such penalties – or the potential for these – have encouraged artists to be more diligent in declaring their taxable income.



## **INTERNATIONAL MOBILITY OF ARTISTS**

### **Measures to promote mobility**

#### a. official recognition of foreign diplomats in the artistic professions

There is no official recognition of foreign diplomats in the artistic professions, but there is official recognition of foreign diplomats as cultural attaches to facilitate cultural exchange among other things between their countries and South Africa.

#### b. fellowships and financial aid

The Department of Arts and Culture manages 42 international agreements with countries abroad which provide for partnerships in a range of areas with these countries. Included in these agreements, are commitments to facilitate exchange of artists, and the Department provides funds for South African artists to travel abroad. Numerous countries – principally the Netherlands, Sweden, United Kingdom, Switzerland and France – have developed direct relationships through their agencies within the country with arts and cultural institutions in South Africa and provide fellowships and financial aid to develop local projects, and to facilitate travel by South African artists abroad.

#### c. fellowships and financial aid to promote the mobility of works

The South African government and the National Film and Video Foundation fund a South African presence at numerous international film festivals to ensure the distribution of local films abroad. The Department of Trade and Industry and its provincial equivalents also assist in the distribution of South African craft to international markets. With the emphasis on four creative industries in particular – craft, film, publishing and contemporary music – funds have been made available to develop these industries and to help with the export of goods abroad.

#### d. networks catering for foreign artists

The international agreements referred to above oblige South Africa to host foreign artists but many of the institutions catering for visits and fellowships by foreign artists are non-government organizations and agencies who have developed direct relationships with counterparts abroad. It is common practice for foreign artists to undertake residencies and fellowships in South Africa.

#### e. facilities for obtaining visas and residence permits

There is no special facility to ease the obtaining of visas, work permits and residence permits for artists. They have to go through similar processes as other foreign workers. Often though, these are speeded up if the foreign artist is invited by, or can prove a relationship with a local cultural organization or institution. Many foreign artists travel on a tourist visa.

#### f. facilitating the import/ export of cultural products

The Department of Trade and Industry provides assistance in the exporting of creative products (For more information, see [www.dti.gov.za](http://www.dti.gov.za) ).

## **Legal framework**

The Department of Arts and Culture manages 42 international agreements that would relate to the mobility of artists. Details of these may be found on the department's website: [www.dac.gov.za](http://www.dac.gov.za)

### *- Legal requirements of producers and impresarios in matters of social welfare for artists working temporarily abroad*

There are no legal requirements other than those agreed to in the contract between the producer and the artist.

### *- Provisions of national laws in regard to foreign artists*

There are no provisions in laws that specifically deal with the treatment of foreign artists other than to exclude foreign artists from social benefit provisions for local workers, e.g. Unemployment Insurance or to determine the form in which they are taxed.

### *- Protection of national artists*

There are no such provisions at the moment. This is one of the key concerns of local artists i.e. that foreign artists are brought in to play the parts of South Africans in movies about local themes, without obliging producers to use a certain number of local artists. Where local artists are used, it is the prerogative of producers rather than a legal or regulatory obligation. This is particularly the case in film. In television, there are quotas that are set for the employment of South African artists and technicians.

## **Proportion of artists of foreign nationality working on the national territory**

These statistics are difficult to obtain as many foreign artists travel on tourist visas. Furthermore, work in the film and commercial industries is seasonal so that there are more foreign artists in summer than in winter.

## **Constraints imposed on foreign artists wishing to work on the national territory**

There are no constraints.

There are no compensation measures in place. After 1994, a Consultative Committee was established comprising representatives from major cultural organizations, professional bodies and unions to consider the applications for work permits from foreign artists. They would advise the Department of Home Affairs on such applications and could impose certain requirements on the foreign artist e.g. to conduct workshops with local artists, etc. However, this committee was abolished by the Department of Home Affairs, and there are currently no mechanisms in place to monitor the entry of foreign artists, nor to exact any form of compensation.

## **Cultural protectionism measures**

Regulations regarding local content quotas are in place and are applied by the Independent Communications Authority of South Africa (ICASA). ICASA awards licenses to television and radio stations and stipulates for each station the local content

provisions of the licence. At the moment, television stations are required to broadcast at least 40% of their programmes that are made in South Africa.

*Law or regulations governing these matters:* The Independent Communication Authority of South Africa Act No 13 of 2000.

## **COLLECTIVE REPRESENTATION**

### **Trade union freedom**

Section 23 of the Constitution of the Republic of South Africa, 1996 and the Labour Relations Act, 1995 guarantee the right of individuals to form, join and participate in the legal activities of trade unions.

South Africa has a vibrant trade union movement that played a major role in the struggle against apartheid. The major trade union federation – the Congress of South African Trade Unions (COSATU) – is a political alliance partner of the ruling party, the African National Congress (ANC). There are at least three other national trade union federations that adopt a more politically independent stance.

The Performing Arts Workers Equity (PAWE) is a member of COSATU, but it is relatively weak. In accordance with COSATU's policy that there be one union representing one industry, PAWE and the Musicians Union of South Africa (MUSA) are in the process of merging to form one union – the Creative Workers Union of South Africa (CWUSA) - to represent the entertainment industry. This initiative is relatively new, and it will be a while before the union has developed sufficient credibility and national membership to be a force.

All public sector workers may belong to trade unions except workers who are employed by the National Defence Force, the National Intelligence Agency and the South African Secret Service.

In terms of the Labour Relations Act, it is illegal to prevent or pressurize a worker from forming or joining a trade union.

### **Union prerogatives**

Section 8 of the Labour Relations Act, 1995 states that trade unions have the right to determine their constitution and rules, to hold elections for its office-bearers, to plan and organize its administration and lawful activities and to join and participate in the activities of national and international federations of trade unions.

#### Consultations of the Unions by the State

On issues of economic policy, government has created a forum for business, the unions and government to meet and discuss matters of mutual concern before policy is adopted and implemented. In the arts sector, no such forum exists. If there is consultation with the arts sector, it is on an ad hoc basis. After the initial close consultation between

government and the arts sector around new cultural policies (post-1994), the last 8 years have been characterised by a lack of consultation, and even hostility on the part of government towards organisations formed by artists, particularly those that have challenged it on various issues.

At provincial levels, the situation is more nuanced in that provincial government departments responsible for arts and culture have engaged constructively with artist organisations around policy and strategic matters.

#### Main activities of unions over the past five years and current demands

The three unions that exist are relatively new, e.g. the SA Script Writers Association (SASWA), or in decline, e.g. the Performing Arts Workers Equity (PAWE), or in consultation around the establishment of a new union. Much of the last five years have been taken up with vision, capacity, funding and administrative challenges within the unions themselves.

Other NGOs within the arts sector have been more active than unions in the defence of the rights of workers, largely as a consequence of the ineffectiveness of the unions.

In the last five years, the primary concerns of these NGOs have included:

- i) monitoring the management of policy and projects by government and public funding bodies and intervening where necessary to protect their members' interests
- ii) offering training courses for their members to help them to be effective within the unfolding conditions e.g. how to draft budgets, devising publicity and marketing campaigns, fund-raising to the private sector, etc.
- iii) gathering and distributing information through regular newsletters to keep members informed of developments within the sector
- iv) hosting forums, competitions and events to develop the sector but also to provide opportunities for members to have outlets for their creative work
- v) building internal capacity through training, leadership seminars, mentorships, etc.
- vi) undertaking research into the creative industries as a basis for reflecting on the gains made in the last eleven years, and setting a vision and strategies for further development of the sector in the next five years

The current trade unions are not engaged in ancillary activities at the moment. The most active trade union is the SA Script Writers Association that runs regular training courses in scriptwriting and related fields for its members.

*Law or regulations governing these matters:* Trade union matters are governed by the Labour Relations Act, 1995.

#### **Collective agreements**

The Labour Relations Act, 1995 provides for the establishment of Bargaining Councils in which registered trade unions and registered employer organisations within a particular

industry participate in order to debate and conclude collective agreements for their sector. There are no examples of significant social benefits obtained through collective agreements.

There are no collective agreements per sector. Mainly because there are no unions or employer bodies per sector. Again the main problem is articulated in the research document produced by the Performing Arts Workers Equity in 2000 where it states "...as the (Labour Relations Act) excludes self-employed workers/independent contractors, they would be...excluded from the ambit of collective agreements concluded in terms of the Act. The situation at present is that most performing arts workers labour under individual contracts which are generally prejudicial to their interests." The same would hold true for artists in other areas such as the visual arts, literature, film, etc.

There are no collective agreements ensuring a legal framework in the different sectors.

### **Promotion of social dialogue**

There are no bodies that exist specifically for the promotion of social dialogue. Public discourse and debate around the arts have been largely absent in the last eight years since the adoption of the White Paper on Arts, Culture and Heritage. It is an irony that now that freedom of creative expression and freedom to debate and express opinions are constitutionally guaranteed (whereas they were restricted under apartheid), there has been a decline in the substance, range and regularity of public discourse around the arts.

Where social dialogue takes place, it is on an ad hoc basis as the consequence of the programmes or initiatives of non-government organisations operating in the creative industries.

Status of such bodies : The bodies engaged in, or promoting social dialogue around arts-related issues are mainly non-government organisations.

### Mediation and/or appeals

The Labour Relations Act, 1995 establishes the Commission for Conciliation, Mediation and Arbitration (CCMA) for labour-related disputes. Public funding bodies have their own mechanisms for appeal, but there are no bodies that exist primarily for the resolution of general disputes within the cultural sector.

Status of such bodies : The CCMA is a public body.

It is considered to be of huge importance to other industries, but it has little, if any, practical significance within the cultural sector at the moment.

## **CONTINUING TRAINING, RESEARCH AND FINANCIAL AID**

### **List of professional schools and institutions**

#### a. visual arts: painting, sculpture, graphic arts, photography and multi-media

Cape Peninsula University of Technology

Durban Institute of Technology

Rhodes University

University of Cape Town

University of Fort Hare

University of Free State

University of Johannesburg

University of KwaZulu Natal

University of North West

University of Pretoria

University of Stellenbosch

University of Witwatersrand

These are all public university-based institutions with strong academic and technical components to their courses. The courses generally include painting, sculpture, graphic arts, photography and multi-media, although different institutions may emphasise some of these more than others, and some may exclude a few of these subjects altogether.

Then, there are numerous private institutions that provide training in the visual and graphic arts, including:

AAA School of Advertising

Arts and Media Access Centre

Centre for Animation and Design

FUBA Academy of the Arts

Inscape Design College

Johannesburg Art School

Market Photography Workshop

Ruth Prowse Art School

Further information may be obtained at [www.globalartinfo.com](http://www.globalartinfo.com)

#### b. performing arts: drama, street theatre, puppet theatre, circus

City Varsity

Durban Institute of Technology

Rhodes University

Tshwane Institute of Technology

University of Cape Town

University of Free State

University of KwaZulu Natal

University of Pretoria

University of Stellenbosch

University of Witwatersrand

These are university-based institutions. Private institutions include:

National School of the Arts

SA School of Motion Pictures and Live Performance

c. film and audiovisual media

City Varsity

SA School of Motion Pictures and Live Performance

University of Cape Town

University of Witwatersrand

d. dance and choreography

National School of the Arts

Rhodes University

Tshwane Institute of Technology

University of Cape Town

Private or community-based training programmes include:

Dance for All

Jazzart Dance Theatre training programme

Johannesburg Dance Foundation

Moving into dance

e. literature

University of Cape Town: Creative Writing Course (Masters programme)

University of Potchefstroom: Writing School

f. music: classical, opera, jazz, variety, traditional, etc

Rhodes University (African music and classical music)

University of Cape Town (African, jazz, opera and classical music)

University of Free State (classical music)

University of KwaZulu Natal (African, jazz, opera and classical music)

University of Pretoria (classical music)

University of Stellenbosch (classical music)

University of Witwatersrand (African and classical music)

University of Zululand (African music)

**Training to artists in administration**

Some institutions integrate administration training into their courses, but generally, there is a dearth of institutions offering courses specifically in arts administration. Institutions that do include the University of Witwatersrand, University of Potchefstroom and the University of Pretoria.

### **Grants for training**

Public funding bodies offer bursaries for training. These include the National Arts Council (for training in dance, theatre, literature, music, opera and visual arts) and the National Film and Video Foundation (for training in the audio visual industries). The Arts and Culture Trust, a private sector body to fund the arts, also provides bursaries to training institutions to distribute to students in need.

A range of private bursaries and grants attached to particularly tertiary institutions are available for students to apply for at those institutions.

### **Programmes to promote research**

The National Research Foundation (NRF) is a publicly funded body that promotes research generally. Academic staff and institutions may apply to this body to fund their research.

The Human Sciences Research Council (HSRC) is another publicly-funded body that does research in a range of areas. Until recently, it had a “cultural observatory” where research was undertaken by staff of the HSRC, but this unit was shut down early in 2005.

There are few, if any, programmes that directly promote research in the arts. Research in this area is undertaken on an ad hoc basis rather than on the basis of a co-ordinated, programmatic approach. Tertiary institutions encourage – and in fact, require – their staff to produce academic articles, but the content of these is left to the staff person to decide.

### **Resources available to promote knowledge of copyright and neighbouring rights among artists**

There is very poor knowledge among artists generally of copyright and neighbouring rights issues which renders them and their work vulnerable to exploitation. Seminars are held and information sheets are distributed from time to time, but there is no regular mechanism for informing artists about copyright.

Various organisations such as the Publishers Association of South Africa (PASA) and the Drama and Literary Rights Organisation (DALRO) have information about copyright on their websites or at their offices.

## **ORGANISATIONS**

### **a. Non-governmental organisations working in the cultural sector**

See professional associations below. Alternatively, see [www.artslink.co.za](http://www.artslink.co.za).

### **b. Federations and trade unions**

Musicians Union of South Africa (MUSA): [musicianssa@telkomsa.net](mailto:musicianssa@telkomsa.net)

Performing Arts Workers Equity (PAWE): (in process of merging with MUSA, so no website or e-mail address) Tel: 27-11-403 6234



South African Script Writers Association SASWA: [www.saswa.org.za](http://www.saswa.org.za)

**c. Professional associations**

i. Craft

Cape Craft and Design Institute: [www.capecraftanddesign.org.za](http://www.capecraftanddesign.org.za)

National Craft Council: [www.craftscouncil.co.za](http://www.craftscouncil.co.za)

ii. Dance

Performing Arts Network of South Africa (PANSAs): [www.artslink.co.za/pansa](http://www.artslink.co.za/pansa)

iii. Film

Commercial Producers Association of Southern Africa: [www.cpassa.org](http://www.cpassa.org)

Independent Casting Directors Association of South Africa: [casting@icon.co.za](mailto:casting@icon.co.za)

Independent Producers Organisation of South Africa: Tel: 27-11-719 4023

Personal Managers Association (PMA): [www.pmatalent.co.za](http://www.pmatalent.co.za)

South African Guild of Editors: [tclayton@mweb.co.za](mailto:tclayton@mweb.co.za)

iv. Literature

Centre for the Book: [www.centreforthebook.org.za](http://www.centreforthebook.org.za)

Publishers Association of South Africa (PASA): [www.publishsa.co.za](http://www.publishsa.co.za)

The Writers Network: [www.thewritersnetwork.org](http://www.thewritersnetwork.org)

v. Music

Recording Industry of South Africa: [www.risa.org.za](http://www.risa.org.za)

South Africa Music Promoters Association (SAMPA): [info@sampa.org.za](mailto:info@sampa.org.za)

South African Roadies Association: [nyathelaf@saroadies.co.za](mailto:nyathelaf@saroadies.co.za)

vi. Theatre

Performing Arts Network of South Africa: [www.artslink.co.za/pansa](http://www.artslink.co.za/pansa)

Theatre Managements of South Africa: [info@tmsa.org.za](mailto:info@tmsa.org.za)

vii. Visual arts

Visual Arts Network of South Africa (VANSA): [one@intekom.co.za](mailto:one@intekom.co.za)

**d. Copyright management societies**

Dramatic, Artistic and Literary Rights Organisation (DALRO): [www.dalro.co.za](http://www.dalro.co.za)

National Organisation for Reproduction Rights in Southern Africa Ltd (NORM):  
[www.norm.co.za](http://www.norm.co.za)

Southern African Music Rights Organisation (SAMRO): [www.samro.org.za](http://www.samro.org.za)

**e. Ministries, councils and other government agencies responsible for culture**

Department of Arts and Culture (national): [www.dac.gov.za](http://www.dac.gov.za)

To contact provincial departments of arts and culture, see [www.gov.za](http://www.gov.za)

**f. Funds and foundations working in the cultural sector**

Business and Arts South Africa: [www.basa.org.za](http://www.basa.org.za)

National Arts Council: [www.nac.org.za](http://www.nac.org.za)  
National Film and Video Foundation [www.nfvf.org.za](http://www.nfvf.org.za)  
National Lottery Distribution Trust Fund: [www.nlb.org.za](http://www.nlb.org.za)

## **SPECIALIST DOCUMENTATION SOURCES**

Human Sciences Research Council: [www.hsrc.ac.za](http://www.hsrc.ac.za)  
National Library of South Africa : [www.nlsa.ac.za](http://www.nlsa.ac.za)  
[www.artslink.co.za](http://www.artslink.co.za)

## **REGISTER OF ARTISTS AND CULTURAL PROFESSIONALS**

There is no national register of artists and cultural professionals. Within some sectors, there are (hard copy) directories of companies, institutions and key individuals operating within those sectors. These are done by private companies.

The National Film and Video Foundation has a directory of independent film-makers on its website [www.nfvf.co.za](http://www.nfvf.co.za)

The National Arts Council's mandate includes the compilation and maintenance of a national database of artists, but thus far, it has not been done.

Various organisations like the Performing Arts Network of South Africa (PANSA) have researched and compiled databases of performing artists, but a lack of resources means that these cannot be maintained.

[www.artslink.co.za](http://www.artslink.co.za) provides a service to list key events, institutions and artists around the country.

### **Sources:**

This research was conducted using the following publications and sources:

*A Benevolent Fund for Artists: an investigation into mechanisms to protect artists*, prepared by Creativity Avril Joffe, commissioned by the Arts and Culture Trust for the Department of Arts and Culture, 31 March 2005

*Basic Conditions of Services Act*,

*Labour Relations Act, No 66 of 1995*

*New Legislation for the Performing Arts*, PAWE Research Document, published in April 2000

*The South African Art Information Directory 2005*, edited by Gabriel Clark-Brown

*The South African Handbook on Arts and Culture 2002/2003*, compiled by Mike van Graan and Tammy Ballantyne

*Toward an understanding of the South African Theatre Industry*, compiled by the Performing Arts Network of South Africa, November 2005

Annual Report of the Department of Arts and Culture 2004/5

*Whole Lot Directory '05* published by TWL Publishing

Websites:

[www.artslink.co.za](http://www.artslink.co.za)

[www.gov.za](http://www.gov.za)

[www.icasa.org.za](http://www.icasa.org.za)

[www.dti.gov.za](http://www.dti.gov.za)

[www.dac.gov.za](http://www.dac.gov.za)