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la science et la culture

Organización
de las Naciones Unidas
para la Educación,
la Ciencia y la Cultura

Организация
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منظمة الأمم المتحدة
للتربية والعلم والثقافة

联合国教育、
科学及文化组织

Item 7.4 of the provisional agenda

38 C/30
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CONSOLIDATED REPORT ON THE IMPLEMENTATION OF THE 1980 RECOMMENDATION CONCERNING THE STATUS OF THE ARTIST

OUTLINE

Source: 36 C/Resolution 103 and 197 EX/Decision 20 Part III.

Background: In compliance with 36 C/Resolution 103, the Director-General hereby transmits to the General Conference a consolidated report on the implementation of the 1980 Recommendation concerning the Status of the Artist, which has also been examined by the Executive Board at its 197th session.

Purpose: This document presents the status of implementation of this Recommendation and provides information on the measures taken by Member States for its promotion and application.

Decision required: Paragraph 10.

INTRODUCTION

1. Adopted by the UNESCO General Conference in 1980, the Recommendation concerning the Status of the Artist calls upon Member States to improve the professional, social and economic status of artists through the implementation of policies and measures related to training, social security, employment, income and tax conditions, mobility and freedom of expression. It also recognizes the right of artists to be organized in trade unions or professional organizations that can represent and defend the interests of their members.

2. At its 34th session (2007), the General Conference considered that the Recommendation concerning the Status of the Artist should be monitored as a matter of priority (34 C/Resolution 87). In accordance with 177 EX/Decision 35 (I) concerning the monitoring of the implementation of UNESCO conventions and recommendations for which no specific institutional mechanism is provided, the Executive Board followed the multi-stage procedure for the monitoring of the implementation of the 1980 Recommendation concerning the Status of the Artist (hereinafter referred to as “the Recommendation”). At its 36th session, the General Conference examined a consolidated report on implementation of the Recommendation (document 36 C/57) and invited the Director-General to transmit to it at its 38th session the next consolidated report on the implementation (36 C/Resolution 103). In compliance with the timetable for 2014-2017 of work of the Committee on Conventions and Recommendations of the Executive Board (hereinafter referred to as “the CR Committee”) on the implementation of UNESCO standard-setting instruments for whose monitoring the Executive Board is responsible, the present consolidated report was examined by the Board at its 197th session (document 197 EX/20 Part III) and is submitted consequently to the General Conference at its present session.

REPORT

3. Document 197 EX/20 Part III contained in the annex presents to the General Conference the consolidated report prepared by the Secretariat on the implementation of the Recommendation.

4. In his introduction on this point to the CR Committee at the 197th session of the Executive Board, the representative of the Director-General, recalled that document 197 EX/20 Part III provided a consolidated report of the implementation of the 1980 Recommendation concerning the Status of the Artist based on the replies of the 60 Member States that had responded to the survey, and that the full analytic report is available on line.¹ The survey focused on four key areas of digital technologies and the Internet, transnational mobility of artists, social protection, and freedom of artistic expression.

5. The representative of the Director-General then discussed the positive developments the survey responses revealed, such as use of the Recommendation as a reference for ongoing policy development to improve the economic and social status of artists. He also discussed ongoing challenges including the digital divide, how artists often cannot benefit from the opportunities the Internet brings nor protect their work or generate income therein, the need for better social protection for artists and for increased market access and exposure for artists globally. Legislation and facilitating procedures are also needed to improve transnational mobility of artists. Noting that the Recommendation is not included in the Major Programme IV of the 37 C/5 and there is no budget allocated to follow it, he stressed that in pursuing the important synergies between the Recommendation and the 2005 Convention on the Protection and Promotion of the Diversity of Cultural Expressions, the Secretariat is taking action to promote and monitor the Recommendation.

¹ For full analytic report visit <http://en.unesco.org/creativity/monitoring-reporting/status-artist>.

6. During the CR Committee's debate on this item, Members welcomed the report and stressed the importance of the four key issues that the survey focused on. They also particularly supported the actions of the Secretariat to pursue the synergies between the Recommendation and the 2005 Convention.

7. Several Members stressed freedom of artistic expression, highlighting that all 60 survey responses from Member States said there are limits on artistic freedom, while responses from NGOs suggested a worrisome trend of self-censorship, and referred to recent national laws on artistic freedom. Other Members underscored the importance of the Recommendation to promote cultural industries and the role digital technologies will play in the future for these industries as well as for the status of artists. The transnational mobility of artists was also discussed and examples of improved visa regulations for artists to facilitate this mobility were cited.

8. In his response, the Representative of the Director-General for Culture reiterated that the key elements of the Recommendation are embedded in the principles and Articles of the 2005 Convention and that pursuing synergies between them is the best mechanism for the Secretariat to continue monitoring both instruments, particularly as the Convention governing bodies have decided to include this in their future actions. Regarding survey responses, Member States reported on legislative and other initiatives while NGOs gave a civil society perspective of the challenges artists face, as, for example, with freedom of artistic expression. Best practices were also provided by the survey responses as well as by the Committee Members participating in the debate.

9. After examining document 197 EX/20 Part III and the report of the CR Committee thereon (document 197 EX/49, paragraphs 12 to 19), the Executive Board invited the Director-General to transmit to the General Conference, at its 38th session, this consolidated report on the implementation of this Recommendation, together with the Executive Board's observations.

PROPOSED RESOLUTION

10. After examining this document, the General Conference may wish to adopt the following resolution:

The General Conference,

Recalling 36 C/Resolution 103 and 197 EX/Decision 20 (III),

Having examined document 38 C/30 and its annex,

1. *Notes* that 60 Member States submitted reports in response to the survey sent out by the Secretariat and encourages more Member States to participate in this exercise;
2. *Recalls* that the submission by Member States of periodic reports on the implementation of recommendations adopted by the General Conference is an obligation under Article VIII of UNESCO's Constitution and Article 17 of the Rules of Procedure concerning recommendations to Member States and international conventions covered by the terms of Article IV, paragraph 4, of the Constitution;
3. *Further recalls* that the periodic consultation of Member States on the implementation of the Recommendation is intended to enable the Organization to assess both the extent to which Member States are implementing that instrument and the obstacles that they encounter;

4. *Reaffirms* the importance of the Recommendation, in particular with regard to emerging trends in digital technologies, artistic freedom, the transnational mobility of artists, social protection for artists, as well as the full implementation of the Recommendation by Member States;
5. *Invites* those Member States which have not taken measures to implement the Recommendation to do so, in consultation with artists and their associations, and to provide the required reports on their implementation of the Recommendation;
6. *Invites* the Secretariat to pursue synergies in the monitoring of the Recommendation's implementation with other UNESCO standard setting instruments, in particular the 2005 Convention on the Protection and Promotion of the Diversity of Cultural Expressions;
7. *Invites* the Director-General to transmit to it at its 40th session the next consolidated report on the implementation of this Recommendation and *decides* to inscribe this item in the agenda of the 40th session.



United Nations
Educational, Scientific and
Cultural Organization

Executive Board

Hundred and ninety-seventh session

197 EX/20

Part III

PARIS, 4 August 2015
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IMPLEMENTATION OF STANDARD-SETTING INSTRUMENTS

PART III

APPLICATION OF THE 1980 RECOMMENDATION CONCERNING THE STATUS OF THE ARTIST

SUMMARY

In compliance with 36 C/Resolution 103, 177 EX/Decision 35 (I), 195 EX/Decision 15 and 196 EX/Decision 20, the Director-General submits to the 197th session of the Executive Board the present consolidated report on the implementation of the 1980 Recommendation concerning the Status of the Artist, before its submission to the General Conference at its 38th session.

No financial and administrative implications are anticipated from the proposed decision.

Action expected of the Executive Board: Proposed decision in paragraph 24.

Introduction

1. Adopted by the UNESCO General Conference in 1980, the Recommendation concerning the Status of the Artist calls upon Member States to improve the professional, social and economic status of artists through the implementation of policies and measures related to training, social security, employment, income and tax conditions, mobility and freedom of expression. It also recognizes the right of artists to be organized in trade unions or professional organizations that can represent and defend the interests of their members.
2. At its 34th session (2007), the General Conference considered that the Recommendation concerning the Status of the Artist should be monitored as a matter of priority (34 C/Resolution 87). A consolidated report on implementation was examined by the 187th session of the Board (document 187 EX/20 Part VII) and submitted to the General Conference at its 36th session (document 36 C/57). This document presents the second consolidated report.
3. The financial constraints the Organization faced during the period of the 37 C/5 had an impact over the follow-up on the Recommendation in the past biennium as a minimal budget and human resources were allocated to it. The Conference of Parties of the 2005 *Convention on the Protection and Promotion of the Diversity of Cultural Expressions* (hereafter “2005 Convention”) have examined a transversal analysis on the social and economic status of the artist resulting from information collected through Parties’ quadrennial periodic reports on the implementation of the Convention, and in 2015, the fifth ordinary session of the Conference of Parties included in future activities the development of synergies in the monitoring of the Convention and the Recommendation. The Secretariat pursues these synergies within the larger context of integrating culture into the post-2015 United Nations sustainable development agenda.

Implementation Report

4. In order to prepare this consolidated report, a survey was developed in consultation with international artists associations¹ and was sent by the Director-General in October 2014 to UNESCO Member States and to relevant civil society organizations. Three reminders were sent, resulting in responses received from 58 Member States². The distribution among electoral groups is: 15 from Group I; 11 from Group II; 14 from Group III; four from Group IV; 12 from Group V(a); and two from Group V(b). There were also 55 responses from civil society organizations, which add to the diversity of the data. The full analytic report can be found on the website of the 2005 Convention.
5. Eighty-seven percent of responding Member States reported “the Recommendation is (or has been) a reference for ongoing policy development”, and more than one-half reported it has been used as “the basis for changing one or more policies”. Since the last consolidated report (2011) several Member States have adopted status of the artist laws, including Burkina Faso and Lithuania, and Morocco has built on its comprehensive law³.

¹ Arterial Network; International Affiliation of Writers Guilds; International Authors Forum; International Federation of Actors (FIA); International Federation of Musicians (FIM); International Music Council (IMC); International Theatre Institute; PEN International; UNI Global Union, MEI Division (Media, Entertainment and Arts).

² Andorra; Argentina; Australia; Austria; Belgium-Flemish Community; Botswana; Brazil; Bulgaria; Burkina Faso; Canada; Canada-Québec; Central African Republic; Chile; Columbia; Costa Rica; Croatia; Cuba; Cyprus; Czech Republic; Democratic Republic of the Congo; Denmark; Ecuador; El Salvador; Ethiopia; Finland; France; Guatemala; Hungary; Japan; Kuwait; Latvia; Lithuania; Luxembourg; Madagascar; Mauritius; Mexico; Monaco; Morocco; Namibia; New Zealand; Niger; Nigeria; Paraguay; Peru; Poland; Portugal; Republic of Moldova; Russian Federation; Slovakia; Slovenia; Spain; Sri Lanka; Suriname; Sweden; Togo; Turkey; Venezuela (Bolivarian Republic of); Zimbabwe.

³ Morocco’s Status of the Artist law, for example, defines who is an artist, establishes a requirement for remuneration and a written contract between the artists and engager, ensures that performing artists with term contracts are considered to be employees for purposes of labour laws and social benefits, regulates the work of agents including rates which they may charge, regulates the employment of minors in the arts and entertainment, and provides a basis for extending health care and social protections to artists.

6. While the Recommendation covers a wide range of issues that can affect the social and economic status of the artist, the survey concentrated on the following four significant contemporary issues that are addressed in both the Recommendation and the 2005 Convention: digital technologies and the Internet; transnational mobility of artists; social protection; and freedom of artistic expression.

Digital technologies and the Internet

7. The most significant developments since the Recommendation's adoption in 1980 are the development of the Internet, and digital storage and distribution technologies, which are changing fundamentally the relationship between artists and their audiences, and the economics and relationships in the cultural industries. Internet distribution has enabled some artists to gain new audiences around the world, while some artists experience difficulty protecting their work against unauthorized uses. Piracy is indeed a major challenge.

8. The survey shows that there are few rules regulating the distribution of artistic works on the Internet. There are the European Union directives related to domestic content for on demand services, and policies requiring Internet Service Providers to treat all content equally (Net Neutrality) in Chile and the United States of America and nearing completion in the European Union.

9. With regard to whether there is a competitive advantage for domestic or foreign artistic works sold electronically, several Member States and NGOs highlighted that artists in the global South generally lack the equipment and technical capacity to produce and record their works, and to make them available online, making it difficult for them to compete with foreign artists in this medium. Namibia, Republic of Moldova, Sri Lanka and Suriname also reported that foreign works have an advantage because they are perceived to be of higher value.

10. Most Member States have programmes and funds which enable artists to make their works available electronically. A best practice is to have programmes which specifically target new technologies, and encourage innovation in all sectors and cross collaboration. Argentina, Ecuador, Madagascar, Spain, and Venezuela (Bolivarian Republic of) have developed portals of information about their artists. Botswana has a special Arts and Culture Grant for artists to document, digitize and distribute their works online. The Democratic Republic of the Congo and Togo each have a fund available for artists to create digital works and make them available on the Internet.

Transnational mobility of artists

11. The survey reveals slow progress and continuing impediments to the transnational mobility of artists. This is not just an issue for artists from the Global South. Some successful artists are able to cross borders easily while others may be unable to obtain the necessary visa even if they are established professionals. When artists do tour, they may be confronted with challenges such as withholding taxes, double taxation, lack of benefits, etc.

12. Since the last consolidated report, Austria, Canada, Colombia, Costa Rica, New Zealand, Republic of Moldova, Spain and Turkey reported on new regulations on artist mobility. The European Schengen area is currently considering the issue of facilitating access for artists, and the MERCUSOR ministers have agreed to implement a special artist visa.

13. The majority of survey respondents indicate that public programmes are in place to support their artists working abroad. Niger reported on administrative support available to its artists. Germany established a Touring Artist website that provides information on [visa/residency](#) requirements, taxation, social security, [transport/customs](#) rules, insurance, copyright, etc. Other respondents from Latvia, Nigeria and Republic of Moldova reported that artists must rely primarily on private funds to support their tours, or the foreign entities through which they have been invited. The African Arts Institute suggested that key challenges to the outward movement of artists include

high costs and visa process(es), strict immigration laws, xenophobic sentiments and political and social instability.

14. Regarding double taxation, there are differing approaches. In some Member States artists do not pay domestic tax on income earned abroad (Ethiopia, Niger, Sri Lanka, and Suriname), in others there is no personal income tax, so all income earned by artists is treated equally regardless of where it is earned (Kuwait and Monaco), and in others artists must declare all of their worldwide income and are not entitled to a credit for foreign taxes paid (Botswana). More typically domestic taxes are paid on worldwide income but artists may claim credit for some or all taxes paid abroad, depending on the specific provisions of bilateral tax treaties the Member States have entered into.

Social protection

15. The vast majority of artists work on an independent, contractual or freelance basis and are not employed for purposes of their artistic work. Consequently, there are significant challenges in relation to social security, health insurance, retirement benefits and other social programmes which are available to other workers. This is an area where some Member States have developed innovative measures and successful programmes, and is also an area in which associations of artists have developed parallel measures.

16. For the few artists who are employed, Member States generally report they enjoy the same benefits as other employees. Belgium, France, Monaco, Portugal, Spain, and the United Kingdom of Great Britain and Northern Ireland reported on varying systems whereby artists are subsumed into employment status for purposes of social protection and are covered for social benefits analogous to other workers. Finland and Japan reported that artists are generally covered by the public system, with some special rules. There may occasionally be special conditions for artists, for example, Hungary offers early pensions for dancers, given the average length of their professional careers that is well below the normal retirement age.

17. Many Member States reported that they have parallel state-sponsored schemes which provide benefits to self-employed artists, funded by the artists, those who engage them, and/or by the State. This is the case in Austria, Burkina Faso, Congo, Costa Rica, Croatia, El Salvador, Germany, Guatemala, Italy, Lithuania, Luxembourg, Morocco, Paraguay, Slovakia, Slovenia, and Switzerland. Another variation is “special recognition” systems that benefit individual artists, particularly around pensions (Azerbaijan, Bangladesh, Egypt, Hungary, Ireland, Pakistan, and Sri Lanka). In some countries, the public systems applying to all citizens are supplemented by private schemes operated by associations (Canada, Canada-Québec, Mauritius, Sweden and the United Kingdom of Great Britain and Northern Ireland), or collecting societies that provide some social benefits for their members (Argentina, Mexico).

18. Only eight Member States responding to the survey, the Central African Republic, Chile (outside the audiovisual sector), Costa Rica, Cyprus, Ethiopia, Namibia, Suriname, and Togo, reported that there are no designated social protection arrangements for artists.

Freedom of artistic expression

19. The Recommendation states “Since freedom of expression and communication is the essential prerequisite for all artistic activities, Member States should see that artists are unequivocally accorded the protection provided for in this respect by international and national legislation concerning human rights.”

20. The Member States that responded to the survey reported that freedom of expression is reflected in the Constitution, founding document or other significant public instrument. This is most often formulated in the language of Article 19 of the Universal Declaration of Human Rights. A best practice would be an explicit protection of freedom of artistic expression/creation, and freedom from censorship, provided by law. Some Member States explicitly protect freedom of artistic

expression in the Constitution, including France, Hungary, Japan, the Russian Federation, South Africa, Spain, and Zimbabwe. Others, such as Cuba, Ethiopia, Portugal, Republic of Moldova and Sri Lanka, reported that they provide for freedom of artistic expression in their cultural policy documents. A few Member States, including Andorra, Colombia, Japan, Paraguay, and Peru explicitly provide for freedom from censorship.

21. All Member States report that there are limitations and challenges to freedom of artistic expression. Some NGOs reported that in some countries freedom of expression is hindered in practice even though there may be laws in place protecting it.

Conclusion

22. While the number of Member States responding to the survey has increased since 2011, the rate of reporting on the implementation of the Recommendation can still improve, most particularly from Asia and the Arab region. The Recommendation is extremely relevant today, particularly with emerging trends in digital technologies, freedom of expression, and transnational mobility, and deserves to be followed up more closely by both governments and civil society.

23. The survey results indicate progress in the status of the artists, but also highlight challenges artists increasingly face. Given the complex and nuanced nature of the issues the Recommendation addresses, the diverse policies and laws being implemented, and the impact of technological change on the world's artists, greater awareness of the Recommendation and best practices of its application are needed in order to enhance its implementation. Member States should continue to develop policies in that respect, notably benefiting of the collaboration with artists and their associations, as well as other relevant NGOs, to help ensure their laws and policies are as supportive as possible for professional artists.

Proposed decision

24. After examining this document, the Executive Board may wish to adopt a decision along the following lines:

The Executive Board,

1. Recalling 36 C/Resolution 103, 177 EX/Decision 35 (I), 195 EX/Decision 15 and 196 EX/Decision 20,
2. Having examined document 197 EX/20 Part III and the report of the Committee on Conventions and Recommendations thereon (197 EX/...),
3. Notes that 58 Member States submitted reports in response to the survey sent out by the Secretariat;
4. Recalls that the submission by Member States of periodic reports on the implementation of recommendations adopted by the General Conference is an obligation under Article VIII of UNESCO's Constitution and Article 17 of the Rules of Procedure concerning recommendations to Member States and international conventions covered by the terms of Article IV, paragraph 4, of the Constitution;
5. Further recalls that the periodic consultation of Member States on the implementation of the Recommendation is intended to enable the Organization to assess both the extent to which Member States are implementing that instrument and the obstacles that they encounter;
6. Reaffirms the importance of the Recommendation, its contemporary relevance, in particular with regard to emerging trends in digital technologies, freedom of expression, the transnational mobility of artists, as well as its implementation by Member States;

7. Recommends that the General Conference invite those Member States which have not taken measures to implement the Recommendation to do so, in consultation with artists and their associations, and to provide the required reports on their implementation of the Recommendation;
8. Further recommends that the Secretariat pursue synergies in the monitoring of the Recommendation's implementation with other UNESCO standard setting instruments, in particular the 2005 Convention on the Protection and Promotion of the Diversity of Cultural Expressions;
9. Invites the Director-General to transmit to the General Conference at its 38th session the report on the implementation of this Recommendation, together with the Executive Board's observations, and any observations or comments that the Director-General may wish to make.

197 EX/Decision 20 (III)

Application of the 1980 Recommendation concerning the Status of the Artist

The Executive Board,

1. Recalling 36 C/Resolution 103, 177 EX/Decision 35 (I), 195 EX/Decision 15 and 196 EX/Decision 20,
2. Having examined document 197 EX/20 Part III and the report of the Committee on Conventions and Recommendations (CR) thereon contained in document 197 EX/49,
3. Notes that 60 Member States submitted reports in response to the survey by the Secretariat;
4. Recalls that the submission by Member States of periodic reports on the implementation of recommendations adopted by the General Conference is an obligation under Article VIII of UNESCO's Constitution and Article 17 of the Rules of Procedure concerning recommendations to Member States and international conventions covered by the terms of Article IV, paragraph 4, of the Constitution;
5. Also recalls that the periodic consultation of Member States on the implementation of the Recommendation is intended to enable the Organization to assess both the extent to which Member States are implementing that instrument, and the obstacles that they encounter;
6. Reaffirms the importance of the Recommendation, in particular with regard to emerging trends in digital technologies, freedom of expression and the transnational mobility of artists, as well as its implementation by Member States;
7. Recommends that the General Conference invite those Member States which have not taken measures to implement the Recommendation to do so, in consultation with artists and their associations, and to provide the required reports on their implementation of the Recommendation;
8. Also recommends that the Secretariat pursue synergies in the monitoring of the Recommendation's implementation with other UNESCO standard-setting instruments, in particular the 2005 Convention on the Protection and Promotion of the Diversity of Cultural Expressions;
9. Invites the Director-General to transmit to the General Conference at its 38th session the report on the implementation of this Recommendation, together with the Executive Board's observations, and any observations or comments that the Director-General may wish to make.