



United Nations  
Educational, Scientific and  
Cultural Organization



Diversity of  
Cultural Expressions

# FREEDOM & CREATIVITY

Defending art,  
defending diversity

SPECIAL EDITION

2005 Convention Global Report series

# FREEDOM & CREATIVITY

Defending art,  
defending diversity

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**UNESCO-Aschberg Programme  
for Artists and Cultural Professionals**

# Foreword

Two years after the publication of its 2018 Global Report *ReShaping Cultural Policies*, and in preparation for its new edition in 2021, UNESCO has chosen to focus on one of its themes: artistic freedom. This issue is central to the objectives promoted by the 2005 Convention on the Protection and Promotion of the Diversity of Cultural Expressions. UNESCO, in this context, understands artistic freedom as a series of rights under the protection of international law, including the right to create without censorship or intimidation, the right to have one's artistic work supported, distributed and remunerated, and the right of every individual to the protection of his or her economic and social rights.

At a time when the COVID-19 pandemic is disrupting the entire cultural value chain – creation, production, distribution and access – and considerably weakening the status of artists and culture professionals, who most often lack access to conventional social protection mechanisms, this report provides an overview of the challenges encountered and the efforts that governments and civil society are making to maintain sustainable, free and diverse environments for creation, dissemination and access to cultural life.

This was already promoted in UNESCO's 1980 Recommendation concerning the Status of the Artist and was also recalled by UNESCO Member States in the guiding principles of the 2005 Convention: respect for human rights and fundamental freedoms such as freedom of expression, information and communication is an indispensable condition for the protection and promotion of cultural diversity.

This report, produced with the support of the Swedish International Development Cooperation Agency, is the result of research carried out before the current health crisis. Nevertheless, it reveals flaws in artistic freedom that this crisis will only exacerbate, and progress that may be built upon. While legislative efforts are still needed for better protection of artistic freedom, recent years have seen the emergence of a body of case law from which States can draw, as well as a diversification of mechanisms for the protection of artists at risk. Despite the increased awareness of the specificities of artistic work in terms of social protection, equitable remuneration and taxation observed throughout the world, it is clear that the calls for an integrated approach to legislation on the status of the artist have not yet been heard by a majority of States. In the governments' responses to the profound repercussions of the global pandemic on employment, the rights of artists to be seen as workers with their own specificities must not be overlooked. May this report serve to show that in the absence of appropriate legal frameworks, the culture sector will not be better equipped than it is today to respond to future crises.

Artistic freedom also includes the right of citizens to participate in cultural life. This is a key component of the well-being of our societies. The current crisis highlights once again, the power of art and culture to build and maintain social ties under unprecedented constraints. From spontaneous creations shared on the Internet to the many initiatives to provide free access to creations by world-renowned artists, art and culture offer an endless source of generosity and resilience.

However, artists are also undoubtedly the most likely to suffer violations of their fundamental freedoms because their work requires them to connect with their audience. In the current health crisis, artists are not only enduring a financial collapse, but like billions of people around the world, they are giving up some of their fundamental freedoms in order to preserve our health. More than ever, at a time when the COVID-19 pandemic is undermining the economic and social ecosystem of the creative world, their role, which is both creative and critical, is salutary. Let us not forget that artistic freedom is as essential to the flourishing of cultures as it is to the functioning of democratic societies.

Through this report, UNESCO continues its awareness-raising efforts to highlight freedom of artistic expression as a pillar of freedom of expression, and places artists and culture professionals at the heart of cultural policies and the development of cultural and creative industries. This is an essential step in advancing the 2030 Agenda for Sustainable Development, particularly in its ambition to promote decent work and build peaceful and inclusive societies where the fundamental freedoms of all citizens are protected.

**Ernesto Ottone R.**  
Assistant Director-General for Culture, UNESCO

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# Key Findings

- »»» *An ecosystem for the protection of artistic freedom that links the international, regional and national levels is progressively developing in all regions. This includes enhanced responsiveness and increased capacities for monitoring as well as the development of good practices in legislation and jurisprudence.*

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- »»» *Progress in the development or update of status of the artist laws is still slow. Positive developments include the protection of artists in certain cultural subsectors and specific measures on taxation, social benefits and pensions.*

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- »»» *Gender inequality persists throughout the sector; it is reflected in the working conditions of female artists and cultural professionals, leaving them particularly exposed to precariousness and insecurity.*

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- »»» *Artists and cultural workers are increasingly relying on the Internet and social media to promote their work and reach new audiences; this raises new challenges for their fair remuneration and their online safety, challenges that must also be met in an effort to protect and promote the diversity of cultural expressions.*

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- »»» *An increasing number of temporary shelter relocation programmes for artists at risk are being led by governments, universities, civil society organizations and cultural institutions.*

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- »»» *Artists are being increasingly recognized in the promotion and defence of human rights and the notion of cultural rights defenders within the UN system and among civil society actors is being solidified.*



# Introduction

The *ReShaping Cultural Policies* Global Report series is a monitoring and advocacy tool for the implementation of the 2005 Convention on the Protection and Promotion of the Diversity of Cultural Expressions that facilitates information sharing and knowledge production. The series looks at how the Convention has inspired policy change at the global and national level and provides evidence of how its implementation contributes to attaining the United Nations' 2030 Sustainable Development Goals (SDGs). Since the launch of the latest edition of UNESCO's 2018 Global Report *ReShaping Cultural Policies*, artistic freedom has consistently remained in the public eye for a wide variety of reasons. Violations of artistic freedom continue to occur across all continents, ranging from censorship to imprisonment, physical threats and even killings. At the same time, there has also been an increase in knowledge produced for awareness raising and for better tools that address the challenges posed by artistic freedom.

Challenges relate to the individual and collective protection of artists, their contribution to the development of societies and public access to a diverse range of cultural expressions.



*Violations of artistic freedom continue to occur across all continents, ranging from censorship to imprisonment, physical threats and even killings*

In anticipation of the third edition of the Global Report to be published in 2021, this special edition of the Global Report series provides an overview of current advances and challenges to artistic freedom, building on the recommendations put forth in the chapter "Promoting the freedom to imagine and create" in UNESCO's

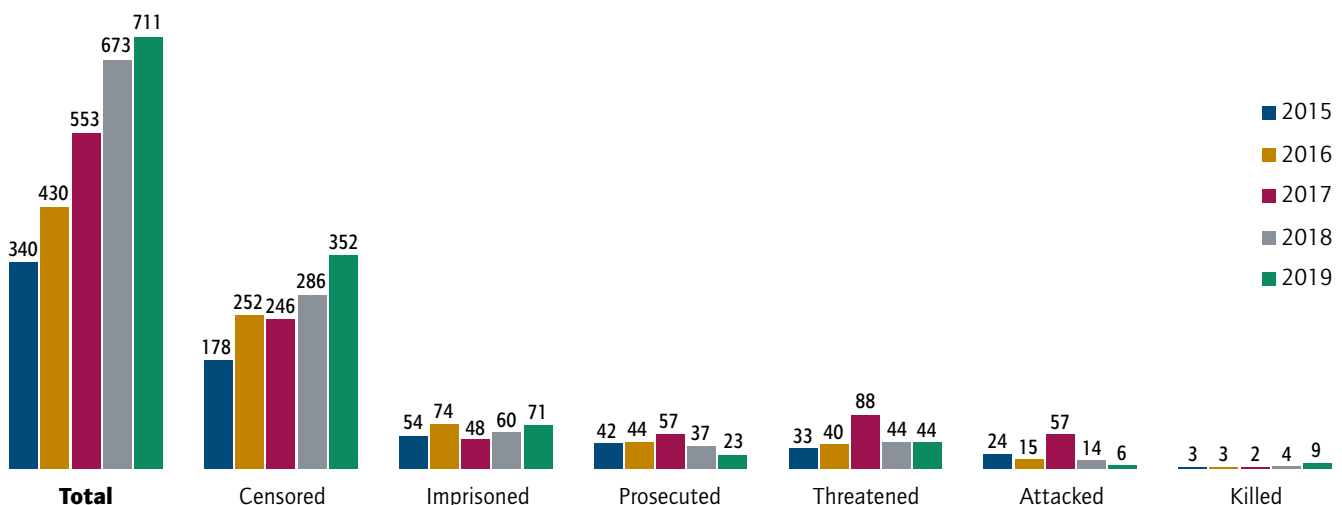
2018 Global Report to assess whether progress has been made, to determine what efforts are still required and what new challenges have emerged.

Stronger collective knowledge on issues related to artistic freedom is developing. The number of violations reported by one of the major international non-governmental organizations advocating for and defending freedom of artistic expression has continued to grow, from 340 in 2015, to 553 in 2017 and 711 in 2019 (Figure 1).<sup>1</sup> The rise in numbers recorded is also a reflection of the growing capacity of artists, cultural workers, trade unions and civil society organizations to monitor artistic freedom and develop tools for intervention.

1. Freemuse, *The State of Artistic Freedom 2020*, available at <https://freemuse.org/news/the-state-of-artistic-freedom-2020/>. This publication is produced annually by Freemuse through analytical examination of documented cases of violation of artistic freedom. The 2020 edition analysed 711 cases which occurred in different cultural sectors in 93 countries throughout the 2019 calendar year.

Figure 1

Attacks on artistic freedom reported by Freemuse, 2015-2019



Source: Freemuse (2016-2020).

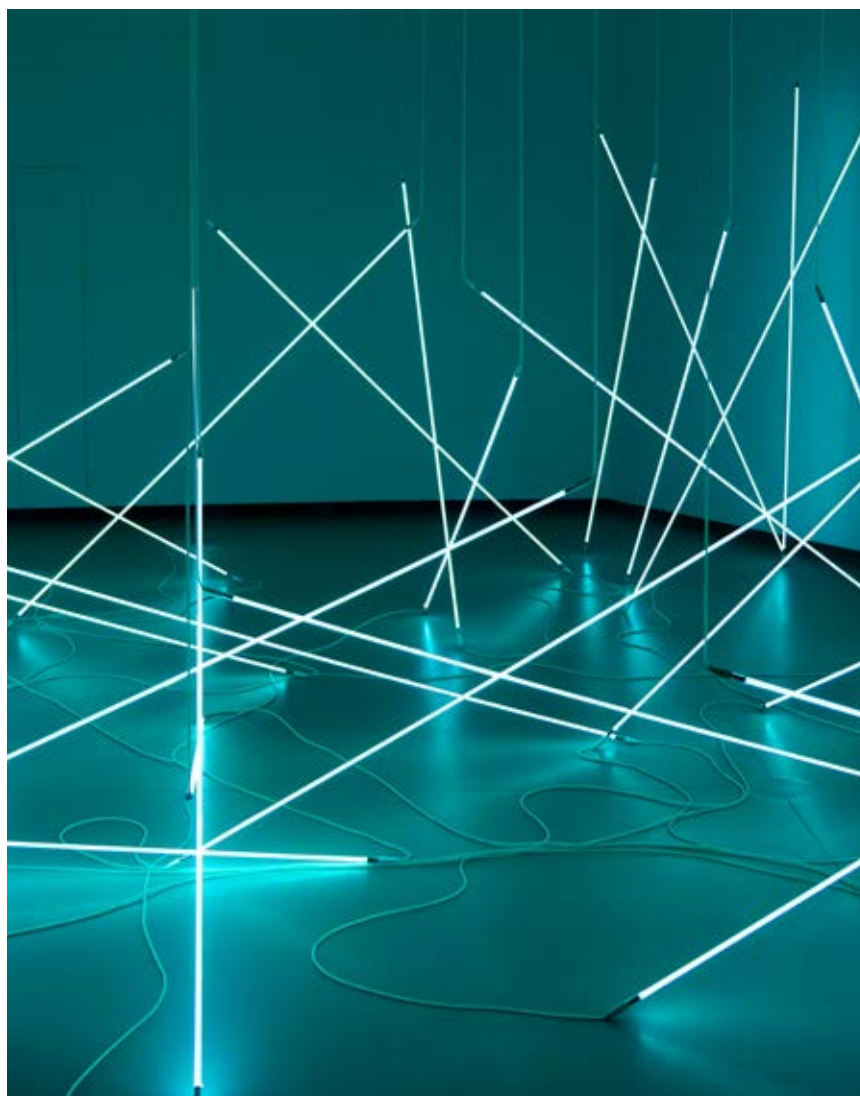
With the adoption by the Conference of Parties to the 2005 Convention on the Protection and Promotion of the Diversity of Cultural Expressions, in June 2019, of a new framework for periodic reporting, 149 Parties are now required to report on artistic freedom in their quadrennial periodic reports. Consequently, in 2020, more than 100 Parties to the 2005 Convention are expected to provide information on policies and measures put in place to protect and promote artistic freedom as a commitment arising from ratification. This information will be valuable for the identification of legislation, policies and mechanisms developed around the world to advance artistic freedom. This reporting mechanism will also reveal valuable information on how partnerships with civil society can support States to protect, fulfil and respect artistic freedom.



*Stronger collective knowledge on issues related to artistic freedom is developing*

This information shall also contribute to enhancing the overall governance of the 2005 Convention and broaden its capacity-development programme to the area of artistic freedom.

The first chapter of this report addresses advances in the legal protection of artistic freedom including legislation that enables or inhibits artistic freedom, policies and case law. The second chapter will concentrate on advancing social and economic rights for artists as part of the recognition of their contribution to creative and dynamic economies and societies. The third chapter will provide an overview of the advances in knowledge, monitoring and access to resources on artistic freedom. Special focus will be given to two issues that have received attention and research: online harassment and the risks of the digital environment for artistic creation and gender-specific challenges.



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### Box 1 • *What is artistic freedom?*

*Artistic freedom is the freedom to imagine, create and distribute diverse cultural expressions free of governmental censorship, political interference or the pressures of non-State actors. It includes the right of all citizens to have access to these works and is essential for the well-being of societies. Artistic freedom embodies a bundle of rights protected under international law.*

*These include:*

- *The right to create without censorship or intimidation;*
- *The right to have artistic work supported, distributed and remunerated;*
- *The right to freedom of movement;*
- *The right to freedom of association;*
- *The right to the protection of social and economic rights;*
- *The right to participate in cultural life.*

Source: *ReShaping Cultural Policies: Advancing creativity for development*, UNESCO, 2018.

## Box 2 • *Main international instruments on artistic freedom*

Article 27 of the **Universal Declaration of Human Rights**: "Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits". (1948)

Article 15.3 of the **International Covenant on Economic, Social and Cultural Rights**: "The States Parties to the present Covenant undertake to respect the freedom indispensable for scientific research and creative activity". (1966)

Article 19.2 of the **International Covenant on civil and political rights**: "Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice". (1966)

Guiding principle 3 of the **UNESCO Recommendation concerning the Status of the Artist**: "Member States, recognizing the essential role of art in the life and development of the individual and of society, accordingly have a duty to protect, defend and assist artists and their freedom of creation. For this purpose, they should take all necessary steps to stimulate artistic creativity and the flowering of talent, in particular by adopting measures to secure greater freedom for artists, without which they cannot fulfil their mission, and to improve their status by acknowledging their right to enjoy the fruits of their work". (1980)

Guiding principle 6 of the **UNESCO Recommendation concerning the Status of the Artist**: "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". (1980)

Article 2.1 of the **UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions**: "Cultural diversity can be protected and promoted only if human rights and fundamental freedoms, such as freedom of expression, information and communication, as well as the ability of individuals to choose cultural expressions, are guaranteed. No one may invoke the provisions of this Convention in order to infringe human rights and fundamental freedoms as enshrined in the Universal Declaration of Human Rights or guaranteed by international law, or to limit the scope thereof". (2005)

Article 7.2 of the **UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions**: "Parties shall also endeavour to recognize the important contribution of artists, others involved in the creative process, cultural communities, and organizations that support their work, and their central role in nurturing the diversity of cultural expressions". (2005)

### **United Nations Sustainable Development Goals and relevant targets**

The 2030 Agenda for Sustainable Development, adopted by all United Nations Member States in 2015, provides a shared blueprint for peace and prosperity for people and the planet, now and into the future. At its heart are the 17 Sustainable Development Goals (SDGs), which are an urgent call for action by all countries – developed and developing – in a global partnership.

Relevant SDGs include:



#### **Goal 5**

**Achieve gender equality and empower all women and girls**

**Target 5.c** • Adopt and strengthen sound policies and enforceable legislation for the promotion of gender equality and the empowerment of all women and girls at all levels.

**Target 5.5** • Ensure women's full and effective participation and equal opportunities for leadership at all levels of decision-making in political, economic and public life.



#### **Goal 16**

**Promote just, peaceful and inclusive societies**

**Target 16.10** • Ensure public access to information and protect fundamental freedoms, in accordance with national legislation and international agreements.



#### **Goal 8**

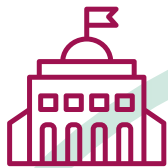
**Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all**

**Target 8.3** • Promote development-oriented policies that support productive activities, decent job creation, entrepreneurship, creativity and innovation, and encourage the formalization and growth of micro-, small- and medium-sized enterprises, including through access to financial services.

**Target 8.5** • By 2030, achieve full and productive employment and decent work for all women and men, including for young people and persons with disabilities, and equal pay for work of equal value.

**Target 8.8** • Protect labour rights and promote safe and secure working environments for all workers, including migrant workers, in particular women migrants, and those in precarious employment.





## GOVERNMENTS

- Implement policies and measures that take freedom of artistic expression and status of the artist into account
- Promote legal reforms for greater protection of artistic freedom
- Ensure transparent funding for the cultural and creative sectors
- Promote visas/mobility schemes for artists
- Issue public statements to support artistic freedom
- Ensure the safety of artists and audiences
- Periodically report on measures taken to protect artistic freedom, based on international commitments



## HIGHER EDUCATION INSTITUTIONS

- Research on artistic freedom
- Integrate training on protected rights into arts curricula
- Develop hosting schemes for artists at risk



## MEDIA

- Gain appropriate knowledge to communicate about artistic freedom
- Train journalists
- Report on violations of artistic freedom



## TRADE UNIONS

- Defend artists/solidarity
- Conduct training sessions on worker's rights
- Advocate for legislative change



*What can you do for artistic freedom?*



## LEGISLATORS

- Repeal/amend laws which curtail artistic freedom
- Adopt protective legislation on freedom of artistic expression and status of the artist



## JUDICIARY

- Develop knowledge through training of judges and lawyers
- Prosecute and conduct fair trials

## 2005 Convention Goal 4



### PROMOTE HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS



#### ARTISTS, CULTURAL PROFESSIONALS AND AUDIENCES

- Organize solidarity campaigns
- Develop guides and conduct training on artistic freedom
- Initiate legal action in cases of violation



#### CITIES AND LOCAL GOVERNMENT

- Host artists at risk
- Issue public statements to support artistic freedom
- Adopt protective local policies



#### INTERNATIONAL AND REGIONAL ORGANIZATIONS

- Conduct training sessions and provide technical and legal assistance
- Research on artistic freedom
- Recognize artists at risk including through human rights defenders schemes, where applicable
- Monitor individual cases of violations of artistic freedom and new legislation that may curtail it



#### EMBASSIES AND FOREIGN CULTURAL CENTRES

- Facilitate visa procedures and artist mobility
- Ensure proper level of information for visa processing centres
- Offer spaces for diverse cultural expressions



#### CIVIL SOCIETY ORGANIZATIONS

- Monitor artistic freedom
- Advocate/lobby for legislative change
- Research on specific issues
- Coordinate solidarity campaigns
- Protect artists at risk including through human rights defenders schemes, where appropriate







## Chapter 1

# *Advancing the legal protection of artistic freedom*





## LEGISLATIVE EFFORTS STILL NEEDED DESPITE POSITIVE DEVELOPMENTS IN THE REPEALING OF BLASPHEMY LAWS

To honour their commitment under international treaties, States are encouraged to incorporate artistic freedom in their national laws and to adopt specific policies and orientations. Interventions and new developments can occur at different levels: executive, legislative and judiciary. There remains room for improvement in all three areas and despite some progress, legislation has continued to be more of a tool to limit artistic freedom than a tool for its promotion and protection. In different contexts, governments and public authorities continue to use their power to curtail artistic expressions instead of creating the conditions for debates on the issues that prompt their intervention. The role of the judiciary in these situations, as a safeguard to the application of the law, and therefore also to the respect for relevant human rights standards adopted by countries, is key in upholding artistic freedom. An overview of recent court cases illustrates that courts have taken decisions touching upon all aspects of artistic freedom to remind States of their commitments under international law. This case law sets important precedents in different areas such as criteria-setting for censorship,<sup>2</sup> illegal funding withdrawals for political motivations,<sup>3</sup> the balance between artistic freedom and the protection of public morals,<sup>4</sup> defamation and the right to satire in cartoons,<sup>5</sup> etc.

2. European Court on Human Rights, Case of Unifaun theatre productions limited and others v. Malta, Application no. 37326/13, 15 May 2018.

3. Regional Court of Warsaw on the Malta Festival Poznan, 25 March 2019. See Helsinki Foundation Litigation Programme at [www.hfhr.pl/en/malta-festival-poznan-case-court-orders-ministry-to-pay-subsidy-of-300000-zloty/](http://www.hfhr.pl/en/malta-festival-poznan-case-court-orders-ministry-to-pay-subsidy-of-300000-zloty/)

4. European Court of Human Rights, Case of Pryanishnikov v. Russian Federation, Application no. 25047/05, 10 September 2019.

5. Supreme Court, Rwanda, Case Re Mugisha, Case RS/INCONST/SPEC 00002/2018/SC, 24 April 2019.

### *Recommendation No. 5 (2018 Global Report)*

**States should consider including the right to freedom of artistic expression as a specific right within law, and to establish systems to monitor and enforce this right.**

There has been no record of specific national legislation on artistic freedom since the adoption of France's law in July 2016.<sup>6</sup> This law proclaimed that "artistic creation is free" and established artistic expressions as public goods. An interesting provision was the amendment of Article 431-1 of the Penal Code stating that "the act of obstructing, in a concerted manner and by means of threats, the exercise of the freedom of artistic creation or the freedom of dissemination of artistic creation shall be punishable by one year's imprisonment and a fine of €15,000".<sup>7</sup> In practice this means that a mob impeding the public's access to a play or a mayor unduly prohibiting the screening of a movie that has received previous authorization from an independent body – cases that are common to artistic freedom censorship – could be breaching artistic freedom and liable for this. As yet, no lawsuits for "obstruction to artistic freedom" have been filed. Such a case would be a major development and a source of inspiration for other countries.

Another direct reference to artistic freedom can be found at the municipal level in the Political Constitution of Mexico City<sup>8</sup> adopted in January 2017, which includes a section on cultural rights (Box 3). This inclusion is part of a larger process for the

6. Law n° 2016-925 of 7 July 2016 on freedom of creation, architecture and heritage, available in French at [www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000032854341&categorieLien=id](http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000032854341&categorieLien=id)

7. Article 431-1 of the French Penal Code, included in the Section "Obstacles to the exercise of the freedoms of expression, work, association, assembly or demonstration" in Chapter "Violations of public peace".

8. Constitución política de la Ciudad de México, 2017, available in Spanish at [www.infodf.org.mx/documentospdf/constitucion\\_cdmx/Constitucion\\_%20Politica\\_CDMX.pdf](http://www.infodf.org.mx/documentospdf/constitucion_cdmx/Constitucion_%20Politica_CDMX.pdf).

recognition of cultural rights in domestic legislation. In 2009, cultural rights were included in the Federal Constitution and in June 2017, Parliament adopted the General Law on Culture and Cultural Rights.<sup>9</sup> Article 7 recognizes respect for creative freedom and cultural expressions as one of the founding principles of Mexico's cultural policy. At the municipal level, Mexico City adopted the Agenda 21 for Culture in 2011 and later the 2007 Fribourg Declaration on Cultural Rights. In 2018, the Law on Culture and Cultural Rights of the Residents and Visitors of Mexico City was adopted.<sup>10</sup> The law obliges the Government of Mexico City to assist every person, group, community or cultural association in the exercise of a series of cultural rights, among which is the right to exercise creative, cultural and artistic freedom, as well as freedom of opinion and information (Article 11.1(i)).

### *Recommendation No. 4 (2018 Global Report)*

**National legislation should be reviewed so as to ensure that laws are framed in such a way that only clear calls for incitement to hatred and or violence can be prosecuted. Blasphemy laws shall be repealed, enabling free exploration of religion without fear of retribution.**

Some progress in the repealing of blasphemy laws is noted in the period examined. Among the States that have repealed blasphemy laws, some have done this in the larger context of repealing outdated legislation (New Zealand), in others, blasphemy laws have been specifically targeted following internal debates and campaigns (Canada, Greece, Ireland).

9. Ley General de Cultura y Derechos Culturales, DOF, 19 July 2017, available in Spanish at [www.diputados.gob.mx/LeyesBiblio/pdf/LGCCDC\\_190617.pdf](http://www.diputados.gob.mx/LeyesBiblio/pdf/LGCCDC_190617.pdf).

10. Ley de Cultura y Derechos Culturales de los Habitantes y Visitantes de la Ciudad de México, 2018, available in Spanish at [www.ordenjuridico.gob.mx/Documentos/Estatal/Ciudad%20de%20Mexico/wo120873.pdf](http://www.ordenjuridico.gob.mx/Documentos/Estatal/Ciudad%20de%20Mexico/wo120873.pdf).



*Repealing blasphemy laws are a means for States to comply with their international human rights obligations*

In all cases, repealing blasphemy laws are a means for States to comply with their international human rights obligations and to provide space for a more open debate on religious and other issues.

In its 2019 report to the Human Rights Council, the United Nations Special Rapporteur on freedom of religion or belief presented the Beirut Declaration on Faith for Rights and its 18 commitments. This declaration calls upon States that still have anti-blasphemy or anti-apostasy laws in force to repeal them. It stresses that such laws stifle the freedom of thought, conscience and religion or belief, as well as healthy dialogue and debates on religious issues. According to the Rapporteur, "The existence of anti-apostasy laws and the violence that they engender may lead individuals to exercise self-censorship which in our interconnected world may have a negative impact of international reach. The range of victims include clerics, teachers, students, writers, reporters, bloggers, painters, musicians, actors, publishers, booksellers, webmasters, politicians, human rights defenders and dissidents, among others. Not only do these laws undermine intellectual and artistic freedom essential for a vibrant society, but they can also impair the communicative freedom essential for the exercise of rights related to freedom of religion or belief" (A/HRC/40/58, paragraph 44).

The freedom to manifest one's religion or belief and freedom of expression are not absolute. Both may be limited in the interest of public safety, order, health and morals, as well as to safeguard the rights and freedoms of others, and, in the case of freedom of expression, national security. However, these limitations are to be considered against a set of criteria, including demonstrated necessity, proportionality and ensuring that it is not destructive of the right itself.

### Box 3 • *Political Constitution of Mexico City*

#### *Article 8 – City of education and knowledge*

##### *D. Cultural Rights*

- 1.** *Every person, group or community has the unrestricted right of access to culture. Art and science are free and all forms of censorship are forbidden. By way of illustration and not limitation, they are entitled to:*
  - a. Choose and have their cultural identity respected, in the diversity of their modes of expression;*
  - b. Know and respect their own culture, as well as the cultures that, in their diversity, constitute the common heritage of humanity;*
  - c. Training that contributes to the free and full development of their cultural identity;*
  - d. Access the cultural heritage that constitutes the expressions of different cultures;*
  - e. Access and participate in cultural life through the activities they freely choose and in public spaces for the exercise of their cultural and artistic expressions, without contravening the regulations on the subject;*
  - f. Exercise their own cultural practices and follow a way of life associated with their traditional forms of knowledge, organization and representation, as long as they do not oppose the principles and provisions of the Political Constitution of the United Mexican States, international treaties and this Constitution;*
  - g. Exercise in freedom their right to undertake cultural and artistic projects, initiatives and proposals;*
  - h. To constitute collective, self-managing, independent and community spaces of art and culture that will have a specific regulation for the strengthening and development of their activities;*
  - i. Exercise creative, cultural and artistic freedom, as well as freedom of opinion and information; and*
  - j. Participate, by democratic means, in the cultural development of the communities to which they belong and in the elaboration, implementation and evaluation of cultural policies.*
- 2.** *Everyone has the right of access to the goods and services provided by the Government of Mexico City in the field of art and culture.*
- 3.** *The authorities shall, within the scope of their respective competences, protect cultural rights. They shall also promote and encourage the development of culture and the arts. Cultural rights may be extended in accordance with the relevant law, which shall also establish the mechanisms and modalities for their enforcement.*
- 4.** *All individuals and communities may, within the framework of democratic governance, take initiatives to ensure respect for cultural rights and develop forms of consultation and participation.*
- 5.** *The cultural heritage, both tangible and intangible, of the communities, groups and individuals of Mexico City is of public interest and utility, and the Government of Mexico City shall therefore guarantee its protection, conservation, research and dissemination.*
- 6.** *The Government of the City shall provide fiscal incentives for the support and promotion of the creation and dissemination of art and culture.*
- 7.** *Cultural groups and communities shall enjoy the right to be recognized in society.*

Source: [www.infodf.org.mx/documentospdf/constitucion\\_cdmx/Constitucion\\_%20Politica\\_CDMX.pdf](http://www.infodf.org.mx/documentospdf/constitucion_cdmx/Constitucion_%20Politica_CDMX.pdf)

Protection of expression has motivated the repeal of article 140 of Denmark's Penal Code in June 2017. The Law dated back from 1683 and there had been very few trials under the law in the past century concerning artistic freedom. For instance, in the case of the 2005 cartoons published in the Danish newspaper *Jyllandsposten*, the National Prosecutor had decided not to prosecute. In a similar way, Section 296 of Canada's Criminal Code which remained a threat against satire and criticism was repealed, despite never being used in practice. In New Zealand the repeal of "blasphemous libel" took place as part of a package of measures to remove "anachronistic" laws under the Crimes Amendment adopted in 2019 (Section 123 of New Zealand's code). The offense of blasphemous libel had not been prosecuted since 1922, and was considered to raise potential conflict with the Bill of Rights Act 1990 that sets out the rights and fundamental freedoms of anyone subject to New Zealand law. The Justice Minister considered that this obsolete provision had no place in a modern society, which protects freedom of expression. "The continued existence of this offence on the statute books was out of place with New Zealand's position as a bastion of human rights, including recognizing freedom of expression and religious tolerance for all faiths", stated Justice Minister Andrew Little.

In Greece, the "blasphemy" law had been used to persecute individuals and groups for portraying, mocking or insulting the Orthodox religion in the form of art or on social media outlets. Human rights groups had campaigned for the abolition of the "blasphemy" law and it was removed from the Constitution in 2019 as part of a package of measures. In 2012 and 2013, several artists had been tried in court on blasphemy charges for three Christian-themed cartoons that were displayed in a private Athens art gallery. The gallery owner, who was a co-defendant, was acquitted of all charges.

In Ireland, the Constitution provided that "the publication or utterance of blasphemous, seditious, or indecent matter is an offence which shall be punishable in accordance with law."

This provision was repealed in January 2020 following a referendum on the Blasphemy (Abolition of Offences and Related Matters) Act. In this case, an intervention by a well-known comedian (Stephen Fry) on an Irish television programme prompted a complaint and an inquiry by the Irish police and led to the referendum. "... By removing this provision from our Constitution, we can send a strong message to the world that laws against blasphemy do not reflect Irish values and that we do not believe such laws should exist", declared the Irish Minister for Justice and Equality, Charlie Flanagan, TD.



*In applying defamation or anti-terrorist laws, States are encouraged to balance artistic freedom and the need for public debate before engaging in prosecution or filing complaints against artists*

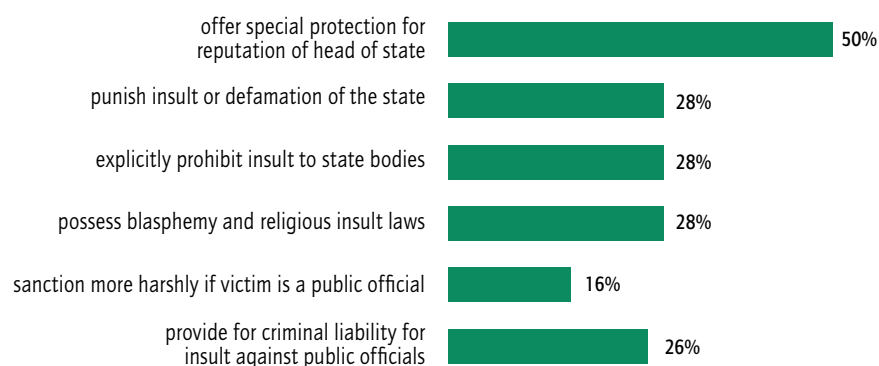
Other laws of a more general scope also affect artistic freedom, such as counter-terrorism laws. Terrorism constitutes a serious threat to human rights and democracy, and State action is required to prevent and effectively sanction terrorist acts. However, the misuse of anti-terrorism legislation is increasingly being used to curtail artistic expression.

Anti-terrorism legislation is being used against musicians and writers for provocative statements or lyrics, who are then sentenced to prison terms for offences such as "encouragement of terrorism" or for "praising", "glorifying", and "justifying" terrorism. States are encouraged to assess the human rights impact of counter-terrorism measures. Offences that are not clearly defined or too wide may lead to unnecessary or disproportionate restrictions to the right to freedom of expression. The United Nations Special Rapporteur on counter terrorism and human rights has expressed concern over the adoption of laws that are too wide in their scope. Before adopting any new counter-terrorism measures, Member States should pay attention to existing human rights standards and notably ensure that these measures are compatible with Article 19 of the International Covenant on Civil and Political Rights which guarantee the right to freedom of expression.

The impact of such laws is increased fear of retribution and self-censorship by artists. Artists have continued to be prosecuted for defamation actions and imprisoned despite the recognition both by the United Nations and by regional organizations such as the Organization for Security and Cooperation in Europe (OSCE) or the Inter-American Commission that the use of objects, such as flags or symbols, representing the State, government bodies and public authorities of all kinds should not lead to defamation actions.

Figure 2

Percentage of OSCE countries that:



Source: Organization for Security and Cooperation in Europe (OSCE), 2017.





States should refrain from using the legislative arsenal against artists, in particular criminal defamation, for insulting the Head of State or State symbols. The reason for this, as recognized by the OSCE, which published a report in 2017 examining the existence of criminal defamation and insult laws in the 57 participating States (Figure 2)<sup>11</sup> is that “there is widespread agreement among courts, international standard-setting bodies, and civil society organizations that defamation laws should reflect the concept that public officials must be more, not less, tolerant of criticism than private persons”.<sup>12</sup>

As an illustration of this, in April 2019, Rwanda’s Supreme Court ordered the removal of Article 233 from the Penal Code<sup>13</sup>, considering that penalizing humiliation of national authorities or persons in charge of public services violated constitutionally protected freedoms, in particular freedom of expression and freedom of the press. It is interesting to note that the article mentioned humiliation either verbally, by gestures or threats or in writings or cartoons, therefore touching upon artistic forms of expression. The Court further justified the removal of this article by the fact that persons expressing their opinions through articles or other types of writing should not risk prosecution “if the criticized leader is not pleased with the opinion or information”.

In applying defamation or anti-terrorist laws, States are encouraged to balance artistic freedom and the need for public debate before engaging in prosecution or filing complaints against artists. Due consideration should be given to the contribution of artistic expressions to their societies.

*I do know that when an artist must take risks to continue expressing herself, to continue realizing article 27 for all of us, it can take an unimaginable toll on her or him, and her family and friends and colleagues, are all affected as well. And the effects may last for a very long time. This is why my respect for those of you who have walked this gauntlet is so profound and I am determined to stand with you.*

**Karima Bennoune**

UN Special Rapporteur in the field of cultural rights,  
Safe Havens 2018 Conference, Malmö, Sweden.

In the context of artistic expressions taking place in public spaces and as recalled by the Special Rapporteur in the field of cultural rights in the report issued in October 2019 on cultural rights and public spaces, security issues, while legitimate, should not be a burden on artists. “States have a positive obligation to facilitate and protect cultural events as peaceful assemblies and legitimate exercises of the right to take part in cultural life.” This means that “dialogue with organizers about the security requirements for cultural activities in public spaces should be a priority in order to avoid negative consequences for cultural expressions and interactions between artists and their audience.”<sup>14</sup>

States have an important role to play when ensuring the diversity of cultural expressions in public spaces.

**Recommendation No. 3  
(2018 Global Report)**

**Governments should publicly condemn, and prosecute, perpetrators of violence and threats against artists, audiences and cultural workers, so as to ensure that violators do not enjoy impunity.**

14. <https://undocs.org/en/A/74/255>

11. Albania, Andorra, Armenia, Austria, Azerbaijan, Belarus, Belgium, Bosnia and Herzegovina, Bulgaria, Canada, Croatia, Cyprus, Czechia, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Holy See, Hungary, Iceland, Ireland, Italy, Kazakhstan, Kyrgyzstan, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Republic of Moldova, Monaco, Mongolia, Montenegro, Netherlands, North Macedonia, Norway, Poland, Portugal, Romania, Russian Federation, San Marino, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, Tajikistan, Turkey, Turkmenistan, Ukraine, United Kingdom of Great Britain and Northern Ireland, United States of America and Uzbekistan.

12. OSCE, Defamation and Insult Laws in the OSCE Region: a Comparative Study, March 2017, p.12.

13. Supreme Court, Rwanda, Case Re Mugisha, Case RS/INCONST/SPEC 00002/2018/SC, 24 April 2019.



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## AN EMERGING CORPUS OF CASE LAW TO UPHOLD ARTISTIC FREEDOM IN COURTS

Finding examples of State or non-State actors making the case for a restriction of artistic freedom is relatively easy. Finding examples of commitments to artistic freedom is rather more difficult. Media and organizations monitoring artistic freedom report on violations, however they do not always have the capacity to follow up on or provide the full story once attention is focused on another urgent situation. Nor do they necessarily have the capacity to prepare court cases to defend access to artwork or artists.

When confronted with controversial art works that can offend part of their constituencies, authorities may be tempted to ask for the removal of the artwork and exercise censorship without taking due consideration of their obligations. They act based on political considerations but their actions can be a breach of their legal obligations.

Public intervention can send offended communities the wrong message, namely that through their sometimes violent action – this can include threats to museum staff, physical assault on audiences and altercations with police – they can obtain censorship. While expressing their understanding on potential offense, it is very important for authorities to uphold the principle of artistic freedom as a means to protect diverse cultural expressions (Box 4 and Box 5). This situation is well known to public authorities in many countries and has increased with the use of social media to mobilize groups against certain art works. Protecting artistic freedom in these circumstances may entail adding information on the exhibition or organizing a debate.

One good practice is for cultural institutions to anticipate potential controversies when dealing with issues that can divide opinions by preparing a press dossier that explains the artistic intention. This was done at Opera La Monnaie in Brussels in October 2019 in relation to the opera Joan of Arc

by Romeo Castellucci.<sup>15</sup> It also helps for media to have a larger picture and analysis rather than focusing on the artists and the controversy. In another case, the city council of Madrid took to the social media platform, Twitter, to protest the censorship at a contemporary art exhibition of a piece considered to be politically controversial.<sup>16</sup>

Accepting a variety of narratives and world views in the programming of national museums and cultural institutions is also part of the State's role of promoting and protecting artistic freedom. As in previous years, there have been instances of dismissals, withdrawals of funding or threats to do so, politically motivated termination of contracts and orchestrated media campaigns that put tremendous pressure on directors and personnel in a number of countries. This climate of intimidation has led several directors to step down. In one instance, a festival took legal action as its contractual funding was removed by the Ministry of Culture following the appointment of the festival's curator. The court ruled that the refusal of the subsidy on these grounds was illegal.<sup>17</sup> Echoing this type of pressure, the International Council of Museums (ICOM) adopted a statement on the independence of museums in Paris in March 2018: "Regardless of their funding source or governance model, museums should maintain control of the content and integrity of their programmes, exhibitions and activities. Income-generating activities should not compromise the standards of the institution or of its public (Principle 1.10 of the ICOM Code of Ethics).

### Box 4 • *A regime of strengthened freedom*

*Orelsan, a French rapper was prosecuted following complaints by several women's groups on the basis of violent and degrading lyrics against women. The Appeals Court did not convict the singer on the basis of artistic freedom. It gave consideration to the need for diversity of artistic expressions in a democracy, even those that may be considered offensive.*

*"The field of artistic creation is the fruit of the creator's imagination and is therefore subject to a regime of strengthened freedom so as not to invest the judge with a power of censorship that would be exercised in the name of a necessarily subjective morality of such a nature as to prohibit modes of expression, which are often in the minority, but which are also the reflection of a living society and have their place in a democracy. This regime of strengthened freedom must take account of the style of artistic creation in question, since rap may be perceived by some as a mode of expression that is by nature brutal, provocative, vulgar and even violent, as it is intended to reflect a disillusioned and rebellious generation."*

*"Moreover, rap is not the only artistic movement that expresses, in extremely brutal terms, violence between boys and girls. Cinema has given wide coverage to this issue in recent years and it would be a serious attack on creative freedom to try to ban these forms of expression. To punish such forms of expression as public insult crimes on the grounds of gender discrimination or of incitement to violence, hatred and discrimination against women would be tantamount to censoring any form of artistic creation inspired by a generation's discomfort, distress and sense of abandonment, in violation of the principle of freedom of expression."*

Versailles Court of Appeal, 8th Chamber, 18 February 2016, 15/02687.

15. "We respect the opinions of others, but we ask them to show the same respect for us. *La Monnaie* fully supports the production of Romeo Castellucci. More importantly, we believe it is a show that must not be missed. We will take the appropriate security measures to ensure that the public can enjoy the performances without disturbance." (original in French) Communiqué du Théâtre Royal de la Monnaie, 28 October 2019.

16. "As a member of IFEMA - Feria de Madrid, the City Council rejects the withdrawal of any work of art, a decision taken without our knowledge. We have asked for an extraordinary meeting to change this decision. We, with the freedom of expression and artistic freedom" (original in Spanish), Twitter, Rita Maestre, spokesperson of Madrid's municipality, 21 February 2018.

17. Regional Court of Warsaw on the Malta Festival Poznan, 25 March 2019. See Helsinki Foundation Litigation Programme at [www.hfhr.pl/en/malta-festival-poznan-case-court-orders-ministry-to-pay-subsidy-of-300000-zloty/](http://www.hfhr.pl/en/malta-festival-poznan-case-court-orders-ministry-to-pay-subsidy-of-300000-zloty/)

### Box 5 • High Court upholding artistic freedom in Kenya

In a statement issued in April 2018, the Kenya Film Classification Board restricted the exhibition and distribution of *Rafiki*, a film by Wanuri Kahiu in the Republic of Kenya. The restriction was imposed due to its homosexual theme as homosexuality contravenes Kenya's Laws, namely Article 45 of the Constitution and the Penal Code that criminalizes homosexual behaviour. As *Rafiki* was selected for a prize in a foreign country, and needed to be screened, a petition was filed in the High Court. The Court issued a conservatory order suspending the restriction. In its ruling it provided very interesting developments on artistic freedom.

*"From the contents of the above documents it is clear to this court that the reason for the ban on the film was because of its gay theme. This court wishes to clarify that the matter before it for determination is not whether homosexuality is right or wrong, moral or immoral. The matter before this court is the determination of whether an artist or a filmmaker can, in exercising his or her right to freedom of expression and artistic creativity, make a film depicting gay theme. The undisputed fact is that gayism or the practice of homosexuality did not begin with the film "Rafiki". This is a subject that has sparked debate and controversy in many countries including Kenya where the same is not legalized. In effect therefore, homosexuality is an issue that is a reality in the society and the question which then arises is whether a film should be restricted merely because it depicts a gay theme. My answer to the above question is in the negative because one of the reasons for artistic creativity is to stir the society's conscience even on very vexing topics such as homosexuality."*

High Court of Kenya, Petition N°313 of 2018, 21 September 2018, paragraph 60.



*The judiciary is an important element of the ecosystem for the protection of artistic freedom*

The high level professional and institutional integrity and autonomy of museums should not be jeopardized by financial or political interests.<sup>18</sup>

All States are also confronted with requests from different groups to limit artistic freedom based on offense or on the basis of protecting morals. Public morals are understood as moral standards enforced in a society, yet it remains a highly subjective notion, liable to wide interpretation, both within and outside a society. The European Court of Human Rights recently ruled that failure to grant a film reproduction licence amounted to a violation because domestic courts failed to weigh "the impact which the refusal of a film reproduction licence would have on the applicant's ability to distribute the films for which he had distribution certificates or on his freedom of expression in general".<sup>19</sup> The Court therefore considers that while it can be legitimate for States to protect "public morals" they also have the responsibility to give consideration to artistic freedom and make an informed decision. The domestic courts failed to recognize that the case involved a conflict between the right to freedom of expression and the need to protect public morals and the rights of others, and failed to perform a balancing exercise between them.

A corpus of case law is available for States on upholding artistic freedom. Indeed, the judiciary is an important element of the ecosystem for the protection of artistic freedom.

18. ICOM Statement on the independence of museums Paris, 27 March 2018, available at [https://icom.museum/wp-content/uploads/2018/09/CP\\_StatementIndependenceofmuseums\\_EN.pdf](https://icom.museum/wp-content/uploads/2018/09/CP_StatementIndependenceofmuseums_EN.pdf).

19. *Pryanishnikov v Russian Federation* (application N°25047/05) 10 September 2019, para 62.



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### Box 6 • Expanding the network of cities of refuge to Africa

In February 2019, AfricanDefenders launched the Ubuntu Hub Cities, an Africa based relocation programme for human rights defenders including artists.

*"In designing the concept of Ubuntu Hub Cities, we wanted to challenge the notion that African human rights defenders (HRDs) cannot be protected within their own continent," Hassan Shire, Chairperson of AfricanDefenders*

*There are currently six Hub Cities (Figure 3): Johannesburg, Pretoria, Cape Town, Kampala, Abidjan and Tunis, with plans to expand to Addis Ababa, Accra and possibly Dakar for the next cycle. In Kampala, for instance, four filmmakers and three artists from Sudan were hosted during the uprising. They went back to their country after their temporary relocation to contribute in the rebuilding of their democracy (A young writer from Cameroon detained at the beginning of the Southern Cameroon crisis in 2016 was relocated to Kampala after his release in 2018).*

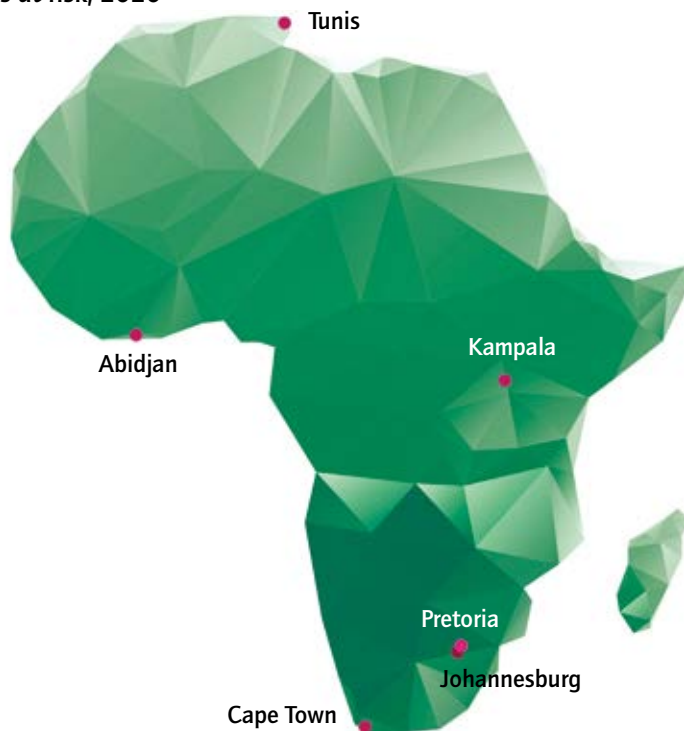
*This experience which is open to all persons promoting universally recognized rights and values and in a peaceful way is very interesting as it can enable African artists at risk to temporarily relocate and continue their work in a safe working environment, while enriching their experience through professional or educational opportunities. At the same time, it may also contribute to promoting artistic freedom at the national level. Cities provide opportunities for economic, social and cultural integration for the relocated HRDs and support in other areas such as immigration and education. The hosts are usually from sub-regional networks or national coalitions that have expertise in providing protection services to at-risk human rights defenders.*

*This initiative responds to the idea that the regional level facilitates visa issues, issues related to cultural displacement, stigmatization, language barriers and integration.*

Source: <https://africandefenders.org/what-we-do/hub-cities/>

Figure 3

#### Ubuntu Hub Cities: Relocation programme for African human rights defenders at risk, 2020



By guaranteeing the various rights protected under international law that are grouped under artistic freedom, the judiciary ensures one of the indispensable conditions for the diversity of cultural expressions, namely the freedom and diversity of those who create, produce, disseminate and distribute them. Each case sets important precedents that can be used for the benefit of other artists and the protection of artistic expressions. In many countries, lawyers are not trained and prepared to address issues related to artistic freedom and defend an artist or a cultural centre, for instance. Civil society initiatives that aim at supporting lawyers to prepare their briefs based on previous experience in other countries are a good practice. The training of judges and lawyers is also a good practice as it helps the judiciary to make informed decisions. Research on artists at risk conducted in 2018 showed that artists have little understanding of legal issues and that access to legal assistance and legal representation is one of their main requests.<sup>20</sup> In many instances, the artist will be defended by an appointed lawyer or public defender (appointed by the Court) that may not be a specialist of international human rights and artistic freedom. Artists at Risk Connection (ARC) and Avant-Garde Lawyers for example have collaborated to provide legal counselling and be part of the teams of lawyers representing artists in different countries. In 2020, these two organizations joined Columbia University's Global Freedom of Expression Initiative, to organize an Art Law Forum which is to become an annual interdisciplinary gathering bringing together artists and art-interested legal professionals, including academics, judges, and lawyers, to collectively discuss how the law can be used to protect and expand the space for artistic expression. Such civil society initiatives aimed at bridging the gap between legal professionals and artists need further support to promote a better overall understanding of the use of the law to justify the restriction of creative activities and its potential to protect artists and enhance artistic freedom.

20. Research conducted by International Arts Rights Advisors (IARA) at the request of Artists at Risk Connection (ARC).



The Strategic Litigation Programme of the Helsinki Foundation for Human Rights or the International Art/Law Network at the University of Sussex are other examples. Through this work, these organizations are also implementing one of the recommendations of the report of the UN Special Rapporteur in the field of cultural rights regarding support to cultural rights defenders: the provision of free legal assistance to cultural rights defenders facing legal proceedings for their work (in the cases where artists are considered as cultural rights defenders).

### A DIVERSIFICATION OF MECHANISMS TO PROTECT ARTISTS IN DANGER

One way that States can express their support to artistic freedom is through engagement in programmes for the relocation of artists at risks. Many initiatives, large and small, have been taken by non-governmental organizations, cultural centres, universities and individuals to provide temporary relocation for artists at risk and artists that have had to leave their countries for fear of repression. These safe havens give artists the opportunity to be away from danger but also to continue creating. Another important area of State intervention in this context is visa granting. All measures taken by States to facilitate visas for artists are encouraged. Finally, States can also support artists through the mechanisms in place to support human rights defenders.

### TEMPORARY RELOCATION SCHEMES

Temporary relocation continues to be a necessity for artists at risk. A recent report by the Martin Roth-Initiative recommends advocacy for visa reform and the continued expansion of shelter city networks. "Geographically, temporary relocation initiatives exist in every part of the world and the community of practice connecting providers of relocation is increasingly global."<sup>21</sup>

21. *Temporary Shelter and Relocation Initiatives*, ifa Edition Culture and Foreign Policy a Martin Roth-Initiative Publication, Maik Müller (ed.), 2019.



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Networks of this kind consist of large-scale initiatives such as the International Cities of Refuge Network (ICORN), comprising 70 cities, or the Shelter City Network of 14 cities established by Justice and Peace Netherlands. It is complemented by several smaller scale initiatives by civil society organizations, arts centres, universities and others. Some are fully private initiatives occasionally supported by States, while others are part of public policies. One recent example is the *Programme national d'Aide à l'Accueil en Urgence des Scientifiques en Exil*, PAUSE, (National Programme for the Emergency) launched by the French Secretary of State for Higher Education and Research in January 2017 to support universities and public research bodies in welcoming

foreign researchers who are threatened due to the political situation in their countries. The programme was expanded to include the cultural sector in 2019 and provides grants worth €20,000 to €60,000 to host a cultural worker at risk.

Another good practice for reference in this field is the Handbook for Swedish Cities of Refuge<sup>22</sup> published in 2019 within the ICORN network, which provides advice and information on how to become a city of refuge. A new positive development is also the expansion of the network of cities of refuge to Africa (Box 6).

22. [www.kulturradet.se/globalassets/start/i-fokus/internationalt/internationalt-dokument/the-handbook-for-swedish-cities-of-refuge.pdf](http://www.kulturradet.se/globalassets/start/i-fokus/internationalt/internationalt-dokument/the-handbook-for-swedish-cities-of-refuge.pdf)



## RECOGNIZING ARTISTS AS CULTURAL RIGHTS DEFENDERS

### *Recommendation No. 6 (2018 Global Report)*

**Initiatives that engage UN mechanisms and Member States with the promotion and protection of freedom of artistic expression should be strengthened, including through a UN plan of action on the safety of artists.**

Artists who are targeted because of their work can benefit from the protection granted to human rights defenders according to the United Nations 1999 Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, even when they do not self-define as such. The “statute” of human rights defender is not based on a category. A person is not a human rights defender because he or she is a lawyer, an activist, an academic or an artist. Everyone can be a human rights defender because “everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels” (Article 1). Therefore, an artist whose work promotes the realization of human rights can be protected as a human rights defender (Box 7).

“Cultural and artistic initiatives can also advocate for values of diversity, secularism, inclusion, tolerance, gender equality, human rights and peace through the themes they choose to address”. In her report on the contribution of cultural initiatives to creating and developing right-respecting societies issued in January 2018, the UN Special Rapporteur in the field of cultural rights explained that “in some contexts (...) merely engaging

### **Box 7 • *Towards a United Nations framework for the protection of artists? Protecting cultural rights defenders***

*In March 2019, at the 40th session of the Human Rights Council, Artists at Risk Connection (ARC), PEN America, PEN International, Freemuse, and Avant-Garde Lawyers made a joint statement\* encouraging support to United Nations efforts to develop a framework for the protection of artists. The 2020 report presented at the 43rd session of the Human Rights Council by the Special Rapporteur in the field of cultural rights is a first response to this call. It is devoted to cultural rights defenders who defend the rights of artistic expression and scientific freedom, among others. Her report does not create a new category but considers cultural rights defenders as a subcategory of human rights defenders. It aims at raising their profile and recognizing their commonalities and specificities. The final objective being the protection of artists, cultural workers and cultural institutions that face the same challenges and risks as journalists and other human rights defenders.*

*Being recognized as human rights defenders can have added value in terms of funding, support and protection and is therefore important. Even if not all artists are human rights defenders or selfdefine as such, the report allows light to be shed on their important contribution to their societies and the need for protection.*

*Research by civil society organizations has also shown that when in exile, for instance, artists face the same challenges as other exiled human rights defenders and in practice, several human rights organizations include artists in their programmes. At the same session of the Human Rights Council, a coalition of 12 civil society organizations read a joint statement arguing that cultural rights defenders had defended more than 25 other human rights, including those of indigenous peoples, minorities, refugees and migrants, women and LGBTQI persons.*

*In her recommendations, the Special Rapporteur urges States to adopt rights-based cultural policies that include the work of cultural rights defenders and protection for them. She also recommends recognition and support by States of the positive role of dissent through cultural and creative expressions. States should ensure that cultural dissenters are protected and not depicted as alien to their society.*

\*Viewable on <http://webtv.un.org/watch/clustered-id-sr-on-privacy-cultural-rights-12th-meeting-40th-regular-session-human-rights-council/6008879505001/>.

in artistic and cultural practice can have deep meaning for and an impact on human rights, regardless of the specific content or aims.”<sup>23</sup>

This statement means that in some contexts being an artist, for instance a woman artist, can be extremely difficult and a human right statement per se, that deserves protection.

23. A/HRC/37/55, Report of the Special Rapporteur in the field of cultural rights, *The contribution of cultural initiatives to creating and developing right-respecting societies*, 4 January 2018. Available at [www.ohchr.org/EN/Issues/CulturalRights/Pages/RightRespectingSocieties.aspx](http://www.ohchr.org/EN/Issues/CulturalRights/Pages/RightRespectingSocieties.aspx), paragraphs 30 and 6.

It is important that artists can be considered as human rights defenders because this has practical implications in terms of access to relocation schemes, support and funding. For instance, under the European Union Guidelines on Human Rights Defenders, European Union Member States are encouraged to act in third countries through regular meetings of EU mission diplomats with human rights defenders, trial observation when appropriate and advocacy for protection.<sup>24</sup>

24. European Union Guidelines on Human Rights Defenders adopted by the Council of the European Union in 2004 and updated in 2008.



*The combination of regional and international efforts is an effective manner to maintain momentum for artistic freedom and encourage States to fulfil their obligations*

The UN Special Rapporteur in the field of cultural rights also recalled that the arts, together with cultural heritage and practices, “are resources for marshalling attention to urgent concerns, addressing conflicts, reconciling former enemies, resisting oppression, memorializing the past, and imagining and giving substance to a more rights-friendly future”.<sup>25</sup> The contribution of artists in contexts such as Afghanistan, Colombia and Pakistan addressing difficult issues such as violence, including gender-based violence, fundamentalism, peace and justice, as highlighted by the Special Rapporteur, is proof of that. She reminds governments and intergovernmental authorities that they should provide support for these kinds of actions and that “this entails accepting that some of these artistic and cultural works will inevitably be critical of the Government and of society, and sometimes of aspects of cultural and religious practices, and requires that Government refrain from trying to control, censor or orient these works. States must also respect and ensure the human rights of the artists and cultural practitioners working in these areas”.<sup>26</sup> Further research will be carried out on the contribution of artists to human rights and dignity amongst the most vulnerable, through the UNESCO Art Lab: Dialogue with World Artists for Human Rights<sup>27</sup> that aims at identifying and encouraging such practices with other United Nations actors.

25. A/HRC/37/55, Report of the Special Rapporteur in the field of cultural rights, 4 January 2018, paragraph 2.

26. Ibid, paragraph 32.

27. Art-Lab for Human Rights and Dialogue: [en.unesco.org/themes/learning-live-together/art-lab](http://en.unesco.org/themes/learning-live-together/art-lab)

Following a workshop organized jointly by the Office of the High Commissioner for Human Rights (OHCHR), the Office of the United Nations High Commissioner for Refugees (UNHCR) and UNESCO in Geneva in February 2020 with committed artists, cultural rights experts and arts foundations involved with the most disadvantaged, three key work streams emerged: 1) raising awareness of the transformative power of the arts among UN agencies that work with refugees, migrants, underprivileged and marginalized peoples; 2) consolidating of the Art Lab platform to ensure the identification and sharing of good practices and tools which could serve the purpose of Art-Lab; 3) elaborating advocacy and training tools to mainstream arts and culture for cultural, humanitarian and development operators (UN and others) and the conduct of pilots in fragile contexts.



*Organizations and institutions supporting artists and those supporting human rights defenders are increasingly working together*

As a positive sign of progressive recognition of artists and cultural workers as cultural defenders, organizations and institutions supporting artists and those supporting human rights defenders are increasingly working together. The Barcelona Guidelines on Wellbeing and Temporary International Relocation of Human Rights Defenders at Risk, adopted in October 2019, are a concrete example as they make specific reference to artists in their introduction: “Human rights defenders come from diverse backgrounds and can include artists [...]”.<sup>28</sup>

28. Available at [www.hrdhub.org/wellbeing](http://www.hrdhub.org/wellbeing).

These guidelines were published as a collaboration between the York Centre for Applied Human Rights, Justice and Peace Netherlands, ICORN network, Martin Roth-Initiative and the New School. They set out principles on the collective approach to well-being in temporary relocation initiatives and provide guidance on good practices.

Recognition of artistic freedom and the challenges faced by artists and cultural workers also translates into more visibility in regional fora. Two debates on artistic freedom were hosted at the European Parliament in October 2018 and in January 2020 in the context of research carried out by Freemuse. The most recent of these meetings, “Towards a New Agenda on Freedom of Artistic Expression”, hosted by members of parliament and organized by the association Culture Action Europe was the occasion for an exchange of views with members of parliament around artistic freedom in Europe. Other debates have been hosted by the Inter-American Commission on Human Rights (IACHR) regarding *desacato* laws (insult laws) or new legislation impairing artistic freedom. The combination of regional and international efforts is an effective manner to maintain momentum for artistic freedom and encourage States to fulfil their obligations.



## Chapter 2

# *Advancing the social and economic rights of artists*





The need for a framework to create and sustain a climate encouraging freedom of artistic expression and the material conditions facilitating the release of this creative talent were at the origin of the Recommendation concerning the Status of the Artist adopted in 1980. This recommendation calls on 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. Its objectives have further been reinforced through the adoption of the 2005 Convention on the Protection and Promotion of the Diversity of Cultural Expressions.

In 2018, the global quadrennial survey on the implementation of the 1980 Recommendation concerning the Status of the Artist was launched by UNESCO. The survey was designed to capture what UNESCO Member States are doing to address challenges artists and cultural professionals are facing in three areas: the digital environment, transnational mobility, and human rights and fundamental freedoms, including social and economic rights, gender equality and freedom of artistic expression. The results of this survey and further research have been published in the UNESCO *Policy and Research* series under the title *Culture and working conditions for artists*,<sup>29</sup> issued in November 2019. Some progress is noted in travel and work opportunities for artists through multilateral and regional economic agreements, on the promotion of gender equality and equal pay, on the revision of copyright laws to adapt to the digital environment and on the extension of social benefits to artists. However, the calls for integrated approaches to status of the artist legislation that will involve different ministries, including labour, social affairs, education, culture, foreign affairs, communication, justice, taxation and domestic affairs, have not yet been heard by a majority of States.

29. *Culture and working conditions for artists: Implementing the 1980 Recommendation concerning the Status of the Artist*, UNESCO Policy & Research series, 2019, available at <https://unesdoc.unesco.org/ark:/48223/pf0000371790>.

### Recommendation No. 1 (2018 Global Report)

**The promotion and protection of artistic freedom, including initiatives for the recognition of the status of the artist, should be central to all aspects of cultural policy.**

## A NASCENT BUT PROMISING LEGAL ENVIRONMENT

### STATUS OF THE ARTIST LAWS

The expected adoption of status of the artist laws in Africa has not occurred despite promising signs in several countries such as Djibouti, Gabon, Mauritius or Senegal. In Gabon, for instance, the law has been under consideration since 2015. In April 2019, the Senate adopted the Law but by the end of the year it had not yet been promulgated.<sup>30</sup> In Djibouti, there was a national consultation in 2016 with 11 recommendations presented to the President, but it seems there has been no progress since. It had been planned that 60 artists would benefit from the national social security fund (*Caisse nationale de sécurité sociale*), however such measures do not appear to have materialized. In Mauritius, as a result of the Government's clear commitment to stimulate and invest in the cultural and creative industries, the Minister of Finance and Economic Development declared in his budget speech for 2016/2017, the introduction of a status of the artist bill in the National Assembly. In spite of extensive consultation processes with the different cultural sector players and between the different ministries involved, the law is not yet passed.

30. [gabonactu.com](http://gabonactu.com), *Les artistes inondent la toile pour réclamer leur droit d'auteur*, (Artists Flood the Web to Claim Copyright), November 2019.

In Costa Rica, since 2009, a bill on artists and related professions seems to have remained in draft form.<sup>31</sup> The text itself recognizes, however, that in terms of social security, the current pension system and the tax obligations of the Costa Rican Social Security Fund were not designed for the diversity of professions covered by artistic activity, in areas such as benefits, insurance for disability, risks, health, care, invalidity, maternity and so forth. The Ministry of Culture and Youth of Costa Rica, taking advantage of the decision of the Costa Rican Social Security Fund in 2016 to explore new formulas for special schemes that would allow the protection of groups that are difficult to insure, such as agricultural workers, coffee pickers, micro-entrepreneurs and domestic workers, is currently, with the support of UNESCO, undertaking consultations with the cultural sector to submit a consensus proposal to the Social Security Fund.



*Artists are often not in a position to negotiate for the recognition of their work, including through remuneration, and need the support of trade unions and other actors*

Artists are often not in a position to negotiate for the recognition of their work, including through remuneration, and need the support of trade unions and other actors. The adoption of status of the artist laws touches upon technical issues such as taxation, pension and social security schemes, and requires strong inter-ministerial coordination. Recognizing these challenges, UNESCO and other actors can provide support to States engaged in this endeavour.

31. Proyecto de Ley del artista y oficios conexos (Draft Law on the Artist and Related Professions), Expediente N° 17.521, 2009, [www.imprentanacional.go.cr/pub/2009/10/30/COMP\\_30\\_10\\_2009.html#\\_Toc244583490](http://www.imprentanacional.go.cr/pub/2009/10/30/COMP_30_10_2009.html#_Toc244583490)



As indicated in the recent report on working conditions, “a number of States report that they are currently developing status of the artist laws, including Bolivia, Comoros, Cyprus, Djibouti, Namibia and South Sudan”. However, “details of timing and the scope of the laws remain to be determined”<sup>32</sup>.

Since the last Global Report *ReShaping Cultural Policies* was published in 2018, one of the most positive advances in the field of the status of the artist can be found in Spain with the report of the parliamentary sub-commission for the elaboration of an Artist’s Statute, approved by consensus by the Congress of Deputies. Despite not having legal force, its more than 75 proposals and recommendations to improve the status of the artist and other cultural professionals do have moral force as they were endorsed by the elected representatives. The measures focus on the three main problems identified by representatives of the cultural sector: taxation, labour and social security protection; and compatibility between retirement benefits and income from copyright. The purpose of the report, as explained in its introductory section, is to adapt the regulatory regime applicable to the specialties of artistic work, which is characterized by a stronger intermittency, heterogeneity and instability than in other sectors. It considers “a context in which the working environment is changing rapidly, and especially cultural work, in which sometimes the cultural vocation seems to be misunderstood. It is necessary to strive for the professionalization of cultural sectors, and ensure that they are not discriminated against by tax, labour and social security regulations. It is therefore about improving material conditions, drawing attention to the importance of culture and clearly stating that authors and cultural professionals deserve fair remuneration and to be protected to the same extent as other workers are”.<sup>33</sup>

***For some years, Arterial Network has been contributing to monitoring the status of the artist through Artwatch Africa. In Africa, progress towards the establishment of trade unions for artists is still a long way away. Despite successes in certain African countries, in addition to the issues of precariousness and legal conditions for artists, their protection against repression and their security is at stake in countries where democracy is fragile. Artists’ and cultural operators’ social security and fair remuneration should be a priority in the governance of the 2005 Convention on the Protection and Promotion of the Diversity of Cultural Expressions.***

**Limam Kane, alias Monza**

**Founder of Assalamalekoum Performance Arts Festival and Vice-president of Arterial Network, 13th session of the Intergovernmental Committee for the Protection and Promotion of the Diversity of Cultural Expressions, UNESCO, February 2020.**



32. *Ibid.*, UNESCO Policy & Research series, 2019.

33. Boletín Oficial de las Cortes Generales, 20 June 2018. Congress of Deputies available in Spanish at [www.congreso.es/backoffice\\_doc/prensa/notas\\_prensa/61825\\_1536230939806.pdf](http://www.congreso.es/backoffice_doc/prensa/notas_prensa/61825_1536230939806.pdf).

## SPECIFIC BRANCH LEGISLATION

Beyond the adoption of status of the artist legislation in some countries, the approach has been sectoral. For instance, in Colombia, Parliament adopted Law 1975 in July 2019 to guarantee labour and cultural rights for actors and actresses. The law recognizes the contribution of artists to society and their right to collective bargaining. It creates a register for artists and regulates the application of social security benefits, health protection and security at work, based on the type of working status. This law has been the result of lobbying in particular of the *Asociación Colombiana de Actores* (ACA) created in 2014 with the objective to defend actors' entitlements to social benefits. Other countries are also working on specific laws for actors with the support of international trade unions. This is the case in Morocco and in South Africa, where the International Federation of Actors provided joint training sessions in 2019. Granting actors a more protective system is also a means to recognize their contribution to society.

Other international trade unions such as the International Federation of Musicians, under the umbrella of UNI-MEI,<sup>34</sup> have implemented training modules around the status of the artist, gender equality or sexual harassment in Costa Rica and Colombia. These training sessions are an opportunity to open spaces for dialogue on the links between economic and social protection and freedom of expression. Trade unions should be encouraged to do so with the support of UNESCO. In this context, the specific training material on artistic freedom that has been developed by the Secretariat of the 2005 Convention on the Protection and the Promotion of the Diversity of Cultural Expressions could serve as an additional tool to support a better understanding of the challenges of artistic freedom and its link to the economic and social status of artists in society.

34. UNI-MEI is the division of UNI Global Union representing workers in the media, entertainment, arts and sports sectors (freelance, independent and contract workers). It brings together over 100 unions and guilds in over 70 countries.



*Granting actors a more protective system is also a means to recognize their contribution to society*

The impact of these types of laws in granting better employment protection to artists is proven. A Korean survey on the status of artists and artistic activities shows that following the introduction of an amendment to Korea's Artists' Welfare Act of 2011 (in 2016), there was a rise in the number of written contracts obtained by artists from 26 per cent in 2015 to 37 per cent in 2018.<sup>35</sup>

In several countries, such as Finland, Norway and Sweden, reviewing the conditions of professional artists is an ongoing exercise with attention given to moving from a grants scheme to an employment scheme or to increasing the number of artists receiving a pension, in the case of Finland (Indicative Guidelines for Arts: Proposal by working group on the key objectives for arts and artist policy, 2019). This work is complemented by a reflection on how to improve the inclusiveness and diversity of the cultural sector. *An Inclusive Cultural Sector in the Nordics* (2017-2019), an initiative led by Arts Council Norway together with seven networks of artists, libraries, cultural centres, schools and other cultural organizations, explored how cultural organizations and institutions, as well as artists, can embrace a wide range of diverse influences and practices. Project objectives included maximizing opportunities for individuals to engage in the arts, promoting local artists from diverse backgrounds, and reducing structural barriers in the cultural sector. The end of the project was marked by a conference entitled *Nordic Dialogues: Towards an inclusive cultural sector* in December 2019 and its final report should be made public in 2020.

35. Republic of Korea, Ministry of Culture, Survey Report on Artists and Activities 2015 and 2018 (available in Korean at: <http://27.101.209.87/Sviewer/index.php?kid=19040418145075917>)

## INCREASED AWARENESS OF THE SPECIFICITIES OF ARTISTIC WORK AS REGARDS SOCIAL PROTECTION, FAIR REMUNERATION AND TAXATION

The recognition of a special status for artists has direct implications in terms of fair remuneration, access to social security and taxation. When the specificities of the cultural sector and the work of artists are recognized, measures can be adapted to their needs. In addressing social security benefits for artists, States can adapt their social security schemes to the specificities of artistic work or create new regimes (Box 8).



*When the specificities of the cultural sector and the work of artists are recognized, measures can be adapted to their needs*

In Niger, a draft decree was adopted to review modalities for collecting equitable remuneration for private copying in compliance with the provisions on copyright, neighbouring rights and expressions of traditional cultural heritage. This measure enables Nigerien authors and artists to take full advantage of new forms of digital exploitation of their work. More specifically, it determines the modalities for collecting the levy intended to equitably remunerate private copying, specifies the types of media subject to the private copying levy, including the amount and duration according to type of media, and designates the Niger Copyright Office (*Bureau nigérien du droit d'auteur*) as the only body authorized to collect the levy.

Concerning taxation, in line with the 1980 Recommendation concerning the Status of the Artist which calls upon States to "take into account the particular conditions of artists' work and activity", in their taxation system, several States provide exemptions or special conditions regarding artists' income.



As noted by fiscal experts in relation to the Spanish report on the status of the artist, some specificities of the sector are the following:

- Short duration of jobs
- Irregularity of income
- Assuming expenses for the activity even if developed through an employment relationship
- Specificity of income derived from copyright
- Gender inequality
- Very personal nature of the activity
- High level of international mobility<sup>36</sup>

Based on these elements, the Spanish report offers a road map, that can be translated into concrete measures such as:

- Correction of the increase in progressivity due to the temporal irregularity of income.
- Specific types of withholding that take into account the irregularity of the income and its low amount.
- Deductibility of the expenses necessary for the artistic activity.
- Specific rights taxations.<sup>37</sup>

Other issues can remain unaddressed, such as double taxation issues, when artists are taxed in the country of residence and in the country of performance. They involve technicalities around possibilities for tax exemptions or tax credits based on national laws as well as bilateral tax treaties. Organizations working on mobility, such as On the Move or the European Festivals Association (EFA), are raising awareness on this issue and providing resources for artists. Through its Mobility Information Points (MIP) in several European countries and in the United States of America, On the Move helps artists tackle administrative challenges they face when working across borders, particularly with regard to double taxation, social security contributions and, of course, visas.

36. *El estatuto fiscal del artista*, Gonzalez-Cuellar Serrano, La cultivada, 2019, p. 6.

37. *Ibid.*

Income tax measures have an impact on artists, but taxes on cultural content dissemination platforms can have an impact on the artists' communities when the funds collected are reinvested in their favour. Such measures could therefore benefit artists and creators. Such was Paraguay's project when, in 2018, the Audiovisual Promotion Law No. 6106 (known as the "Film Law"),

which seeks to promote the development of Paraguay's audiovisual sector, was enacted. This law calls for the creation of the Paraguayan National Audiovisual Fund (FONAP), 50 per cent of whose budget will come from tax deductions for commercial operations arising from audiovisual services obtained on the Internet from abroad, to be withheld by credit and debit card operators.

### Box 8 • *International Labour Organization – Understanding the challenge of social protection for artists*

*While it is difficult to assess the effectiveness of the various forms of social protection for self-employed workers and freelancers (including most of the artists and workers in the media and culture sectors) - whether they are enrolled in a general scheme, or in a specific social security scheme - many countries are far from providing social security benefits, including unemployment insurance, sick leave and retirement pensions.\**

*In 2019, the Sectoral Policies Department of the International Labour Organization issued a study on "Challenges and opportunities for decent work in the culture and media sectors", covering 18 countries from all regions of the world.\*\* The study focused on the different working arrangements for culture and media workers including freelance, self-employment and part-time work. It makes direct reference to status of the artist as these arrangements can affect working conditions, ability to participate in collective bargaining as well as access to basic protection. It covers musicians, actors, dancers, journalists, screenwriters, technicians and creators of audiovisual and live performances and visual artists. Following this report, the ILO has been working on a paper on "Social protection for workers in the cultural and creative industries: Country practices and policy innovations", to be published in 2020. By putting forward concrete proposals to improve the applicability of the social security system to workers in the media and cultural sector, the work of the Spanish parliamentary sub-commission for the elaboration of an artist's statute, opens up interesting avenues to close both the coverage and adequacy gaps, by considering the specific, and often intermittent, nature of artists' and authors' work. In this sense, the implementation of the recommendations included in the sub-commission report would represent a step forward in the progressive application of the full range of social security benefits to artists and authors, in line with the Social Security (Minimum Standards) Convention, 1952 (No. 102).\*\*\**

*Some countries are taking actions to fill these gaps, for example, by providing all workers, regardless of employment status, with access to social security benefits which are adapted to the specific conditions of these workers, and in the case of artists and workers in the media and culture sectors, to their intermittent nature, mobility and irregular incomes.*

*Furthermore, the specific measures allowing these workers' inclusion in the general social security regime, respond to the need of ensuring the coverage, adequacy and sustainability of social protection schemes and a greater degree of redistribution and risk pooling between different income groups.\*\*\*\**

\* ILO: *Challenges and opportunities for decent work in the culture and media sectors*, Working Paper 324, Geneva, ILO, 2019, available at [www.ilo.org/wcmsp5/groups/public/-ed\\_dialogue/-sector/documents/publication/wcms\\_661953.pdf](http://www.ilo.org/wcmsp5/groups/public/-ed_dialogue/-sector/documents/publication/wcms_661953.pdf)

\*\* Argentina, Brazil, Canada, Colombia, Côte d'Ivoire, Democratic Republic of the Congo, Egypt, Indonesia, Japan, Kenya, Lebanon, Morocco, New Zealand, Peru, Republic of Korea, Senegal and South Africa.

\*\*\* For broader discussions on the Convention 102, see ILO: *World Social Protection Report 2017-19*, Geneva, ILO, 2017.

\*\*\*\* C. Behrendt and Q. A. Nguyen: "Innovative approaches for ensuring universal social protection for the future of work", Geneva, ILO, 2018.





In parallel, starting in 2019, the Paraguayan Government began to work on a tax reform bill that would levy income tax and value added tax (VAT) on digital services provided in Paraguay by foreign companies (e.g. Netflix, Uber, Spotify, etc.). While the Film Law established the withholdings to be applied to these commercial operations, of which 50 per cent should be transferred to FONAP and the remaining 50 per cent to the Treasury, the Treasury decided to wait until the tax reform project was completed to start applying such withholdings. Law No. 6380 on the Modernization and Simplification of the National Tax System was approved in September 2019 and the related tax amendments did not come into force until 1 January 2020. It will therefore be the task of future reports to analyse the functioning of the system for the collection by the State and the transfer of the first payments to FONAP, and its impact on the quantity and quality of projects, programmes and actions generated or supported by the Fund.

Civil society has, however, long been drawing attention to the importance of ensuring fair remuneration for artists. One interesting example is the strategy "Paying the Artist"<sup>38</sup> launched in February 2020 by the Arts Council of Ireland for 2020-2022, a policy on the fair and equitable remuneration and contracting of artists motivated by the fact that the culture of underpaying or not paying artists continues to exist in 2020, with working and living conditions of artists that remain below acceptable standards, with some Irish artists reporting incomes below the national minimum wage. Launching its new policy document, "Paying the Artist", the Arts Council of Ireland stated that it would award grants only to organizations that remunerate artists fairly, and promised to keep the issue to the fore through new funding conditions, research, education, advocacy across government and civil society, and a campaign, #PayTheArtist.

***When speaking about artistic freedom it would also be necessary before, maybe, to speak of the status of the artist, because before being free to express oneself one must legally exist.***

**Valerie Oka**

*'What is artistic freedom to you?', UNESCO video, 2018.<sup>39</sup>*

This form of engagement demonstrates the role that national agencies responsible for arts around the world can play in promoting equitable and fair remuneration and contracting in the arts. The Policy Statement in this document states that "remuneration is fair when it equates to what is asked of an artist in

terms of their time, input and expertise". Remuneration is one of the best gauges of the status of the artist and reflects the value that a society is willing to recognize for her or his engagement. A focus on equitable remuneration is a commitment to equal opportunity and diversity in the arts.



38. [www.artscouncil.ie/uploadedFiles/Main\\_Site/Content/About\\_Us/Paying%20the%20Artist%20\(Single%20Page%20%20EN\).pdf](http://www.artscouncil.ie/uploadedFiles/Main_Site/Content/About_Us/Paying%20the%20Artist%20(Single%20Page%20%20EN).pdf)

39. [www.youtube.com/watch?v=HSUDk3fh6XU](https://www.youtube.com/watch?v=HSUDk3fh6XU)

## DIGITAL TECHNOLOGIES AND FAIR INCOME DISTRIBUTION

Fair remuneration and fair income distribution are necessary for the recognition of artistic activities. The 1980 Recommendation concerning the Status of the Artist calls upon Member States to “assist artists and organizations of artists to remedy, when they exist, the prejudicial effects on their employment and work opportunities of new technologies”.

Results from the 2018 UNESCO global survey on the implementation of the 1980 Recommendation show a global consensus on the artist’s overall loss of income caused by the digital shift. This has raised questions about fair remuneration for artists in the digital environment. The European Directive on Copyright in the Digital Single Market, adopted in April 2019, is an attempt to respond to these challenges and to protect creative expressions. The Directive aims to strike a balance between individual interest (artist income) and general interest and public access. It includes measures that require large platforms to ensure that copyright holders are compensated for their creativity, with exceptions for small platforms and those for non-commercial purposes.



*The digital environment is an area where the link between the livelihoods of artists and artistic freedom is most visible*

In December 2019, in an interesting move, Quebec’s Ministry of Culture and Communication launched a process of consultation of the cultural sector to revise two laws on the status of the artist in order to adapt them to the digital environment. The Law on Respecting the Professional Status and Employment Conditions of Performing, Recording and Film Artists dates from 1987 and the Law on Respecting the Professional Status of Artists in the Visual

Arts, Crafts and Literature and their Contracts with Promoters was passed the following year. Although they were amended in 1997, 2004 and 2009, in recent years, they have revealed their obsolescence. A review was deemed necessary in Quebec in order to update the content of the laws to facilitate their implementation and ensure that artists and producers evolve in a fair work environment adapted to the new realities of artistic creation. The report with conclusions should be available in the summer of 2020.

The digital environment is an area where the link between the livelihoods of artists and artistic freedom is most visible. Artists rely on the Internet and social media to share their work and to find new markets in order to survive economically. Artists are thus forced into a vulnerable position of having to balance exposure with retaining ownership of their work. Exposure on the Internet and social media presents many risks for artists: the risk of losing ownership of their work and revenues. Individual artists must constantly balance the economic benefits and the losses as well as the risks.

## EROSION AND GROWING LIMITATIONS TO THE FREEDOM OF MOVEMENT

Inequality in mobility undermines artistic freedom. The 1980 Recommendation concerning the Status of the Artist calls on Member States “to provide those engaged in artistic activities with all the means and, in particular, travel and study grants, likely to enable them to establish lively and far-reaching contacts with other cultures” and “to take all appropriate steps to promote the free international movement of artists”. Becoming a Party to the 2005 Convention on the Protection and Promotion of the Diversity of Cultural Expressions means a commitment to putting in place policies and measures that facilitate equitable access, openness and balance in the flow of cultural goods and services, and that promote the free movement of artists and cultural professionals.



*Fair remuneration and fair income distribution are necessary for the recognition of artistic activities*

Parties to the 2005 Convention have also made commitments under Article 16 on Preferential Treatment for Developing Countries to “facilitate cultural exchanges with developing countries by granting, through the appropriate institutional and legal frameworks, preferential treatment to artists and other cultural professionals and practitioners”. Despite this commitment, global security concerns have continued to restrict the freedom of movement and the transnational mobility of artists. Challenges to the transnational mobility of artists remain very present and artists continue to face a number of administrative and financial barriers to travel. As noted in the report on the second Civil Society Forum of the 2005 Convention, “simplified and rationalized procedures and processes are much needed, not only for artists moving from South to North, but also within the South itself, where problems with artist mobility have also been identified”.<sup>40</sup> This has a negative impact both on the income of artists and on access to a diversity of cultural expressions for audiences. Civil society organizations or professional touring associations working on visas for artists are often confronted with non-transparent, time-consuming and costly application procedures. A new area of concern is the outsourcing of visa processing to visa processing centres.

40. Conclusions of the 2nd Civil Society Forum, Information Document, DCE/20/13.IGC/INF6, 13th session of the Intergovernmental Committee for the Protection and Promotion of the Diversity of Cultural Expressions, UNESCO, 17 January 2020.



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Among the recent initiatives, the Visas for Third Country National Artists Travelling to the Schengen Area booklet, published by Pearle-Live Performance Europe in April 2018, provides resources for artists, cultural professionals and live performance organizations on the rules applicable and how to apply. On the Move has deployed Mobility Information Points in several European countries and the United States of America to address administrative challenges that artists and cultural professionals can face when working across borders. Relevant issues include obtaining visas, social security, taxation, customs and so forth. In 2018, 80 European organizations from the cultural sector issued a joint statement asking the European Union to take the sector's specific concerns on visas into account. In December 2018, a proposal for a revision of the Visa Code before the European Parliament was welcomed by the cultural sector as integrating some demands such as: the possibility to lodge

a visa request already nine months in advance, clear definition of the costs, possibility to lodge applications directly at the consulate as well as measures to reduce fees for touring cultural groups. They regretted however "that the complicated and strict system to obtain a Multiple Entry Visa, has not been made easier and clearer for visa applicants".<sup>41</sup>

It is to be noted that mobility can also be denied on an individual level to an artist as a restrictive measure in an arbitrary way. Such travel bans have been issued for at least nine artists according to the report of Freemuse on 28 European countries.<sup>42</sup>

41. Pearle, European Association for the Education of Adults (EAEA), The vote in the European Parliament on the revision of the Visa Code recognizes specific needs of touring artists and cultural professionals, 4th December 2018. [www.pearle.eu/positionpaper/pearle-and-eaea-jointstatement-on-ep-vote-on-visa](http://www.pearle.eu/positionpaper/pearle-and-eaea-jointstatement-on-ep-vote-on-visa)

42. Freemuse, *The Security, Creativity, Tolerance and their Co-existence: The New European Agenda on Freedom of Artistic Expression*, 2020

“

*Mobility barriers have a negative impact both on the income of artists and on access to a diversity of cultural expressions for audiences*

Some of these restrictions reflect two almost opposing trends: on the one hand, international art biennials or music festivals for which borders no longer seem to exist and, on the other, endless borders, visa applications, lawyers, legal documentation and, refusals for those same artists who were invited to participate in international events.

## ONLINE SAFETY OF ARTISTS

**““ As the number of my followers increase, my personal insecurity increases. Personal safety is essential as an artist talking about human rights.**

**Moses Kabaseke, Democratic Republic of Congo**

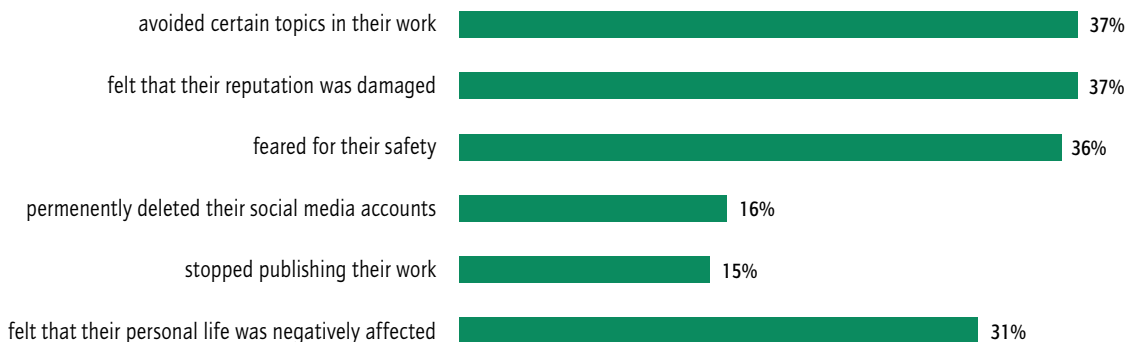
In 2018, to address the increase of online threats and harassment, PEN America, Artists at Risk Connection (ARC), the Index on Censorship and International Arts Rights Advisors (IARA) held a seminar to discuss available resources and explore support to free expression. PEN America launched the Online Harassment Field Manual in 2018, to help writers and journalists respond to episodes of online harassment. This digital manual contains strategies and resources that writers, journalists, their allies and their employers can use to defend themselves against cyber hate and fight online abuse. In 2020, the organization plans to launch a specific Online Harassment Field Manual for Artists, as a result of findings in which it was determined that the majority of attacks on artists came via the Internet. At the same time, the Internet and social media are the best platform for artists to showcase their work and reach new audiences. This confronts artists with a very difficult choice between visibility online exposing them to harassment or invisibility of their work. Such a dilemma is fuelled by the role that digital platforms can play in content censorship and account deletion. An in-depth analysis of the impact of these practices on artists and their work has yet to be conducted.

**““ Online harassment poses a clear threat to free expression, as evidenced by the results of our survey. When certain voices are muzzled, when people choose not to write about topics that matter and when they remove themselves from the public debate, everyone loses.**

**Suzanne Nossel, PEN America Chief Executive Officer  
PEN America's Online Harassment Field Manual (2018)**

Based on PEN's research, two-thirds of trolled writers responded to the abuse by refraining from publishing their work and deleting their social media accounts. They also said they feared for their personal safety as a result of the abuse. Over a third of respondents said trolling had led them to avoid controversial topics in their writing.

### Due to online harassment... writers:



Source: Pen International, 2017. <https://pen.org/online-harassment-survey-key-findings/>

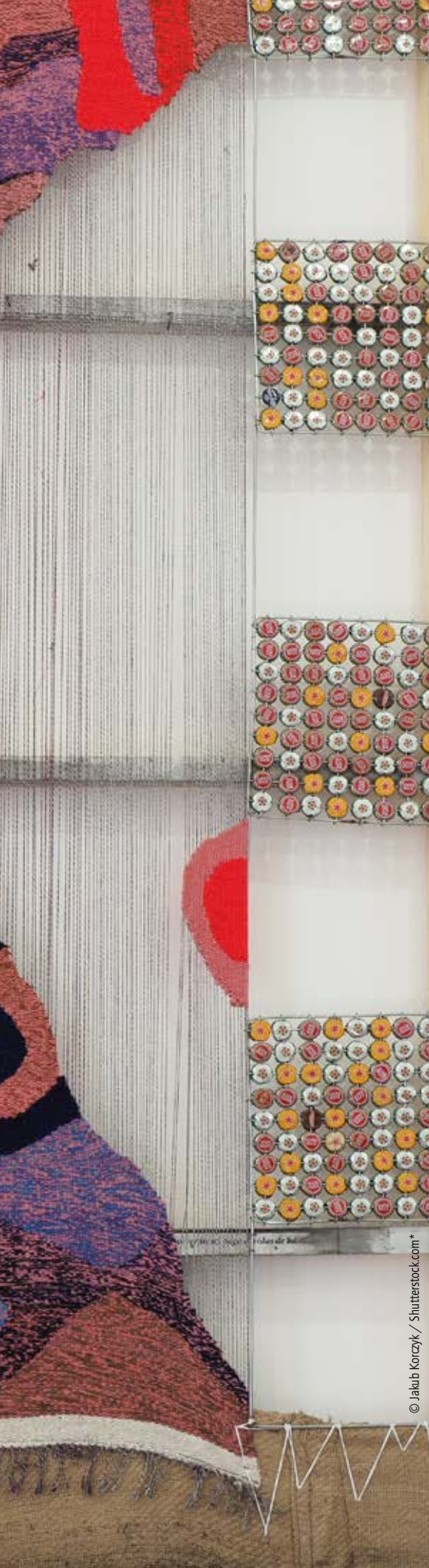






## Chapter 3

# *From access to knowledge to global monitoring and advocacy*



## INCREASED ACCESS TO LEGAL KNOWLEDGE AND RESOURCES

### *Recommendation No. 2 (2018 Global Report)*

**Support should be extended to all engaged in the arts and cultural sector to develop expertise in documenting, monitoring and advocating freedom of artistic expression, including drawing upon the expertise of media rights and other organizations working in defence of human rights.**

In a context of shrinking democratic space, that is where preconditions for civil society (but also for independent media and universities) such as freedom of expression, are being circumscribed, the role of artists in counteracting this trend is increasingly recognized. Indeed, in some contexts, artistic practices are turned into democratic tools. In an effort to promote democratic values and societies, new initiatives to protect artistic freedom and facilitate access to information and resources to enjoy to it are flourishing in such countries as Denmark, Germany, Norway or Sweden.

In May 2019, Arts Rights Justice (ARJ), a programme set up in 2017 with support from the German Federal Foreign Office at the University of Hildesheim, launched an online library aiming to secure and make available the most important publications in the areas of arts, rights and justice. It also commissioned studies to address artistic freedom and the protection of artists at risk, in particular definitions, main actors involved, protection mechanisms and case studies.<sup>43</sup>

The situation of displaced or at-risk artists is increasingly the subject of studies and practical guides at the initiative of various actors.

43. [www.uni-hildesheim.de/arts-rights-justice-library/arj-studies-2/](http://www.uni-hildesheim.de/arts-rights-justice-library/arj-studies-2/)

This concerns not necessarily artists at risk that are on temporary relocation schemes but artists that have migrated to new countries. In 2019, the International Federation of Arts Councils and Culture Agencies (IFACCA), the global network of arts councils and ministries of culture in over 70 countries, conducted a study on displaced artists as a means to integrate them in their cultural policymaking.

The IFACCA study provides examples of how cultural centres can develop programmes that allow artists affected by displacement to contribute to public programming. The idea behind these programmes is to offer a platform for sharing stories and interacting with different audiences as well as influencing wider social discourse.<sup>44</sup>

CoCulture is another example of an initiative that gives a voice to displaced artists and aims to improve their professional situation while contributing to the local cultural scene with their own narratives. The organization was founded in 2017 by an artist in exile in Germany and has since received support from large civil society organizations.

44. IFACCA, p. 11.



***Art, like democracy, is about freedom of expression, open choice, and diversity of representation.***

**John-Paul Stonard**

**Opinion – Arts and Democracy, A response to Ai Weiwei's quotation on art's relation to democracy, Tate Etc., 9 April 2018**

Among its projects are the Syria Cultural Index, an online platform that aims to map and connect the Syrian artistic community around the world and the Syrian Biennale. In France, the Agency for artists in exile<sup>45</sup> is another example of a structure that emerged from civil society. Since 2017, it supports artists in exile from all origins and all disciplines by offering them work spaces and putting them in contact with professionals in France and other European countries in order to provide them with the means to continue their artistic practice. In 2020, the agency supports more than 250 artists.

45. <https://aa-e.org/en/category/atelier2/>



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In a public appeal in September 2017, renowned institutions and leading figures of the German cultural scene called for policymakers to create a programme that ensures not only the safety of endangered artists, but also the continuation of their work in theatres, museums, exhibition halls and art festivals. The Martin Roth Initiative arose from this call, in November 2018, as a joint project by the German Institute of Foreign Affairs and the Goethe-Institut to protect artists who are committed in their home country to the freedom of art, democracy and human rights by enabling temporary residence in Germany or third countries for the purpose of protecting those who are being persecuted. In addition to providing financial support for temporary relocation in Germany or in third countries within their home region, the Initiative also conducts research on temporary shelter and relocation initiatives, shedding light on the bridges and overlaps between organizations working in the arts sector and those working in the field of human rights defenders, and how they can help each other.



*In some contexts, artistic practices are turned into democratic tools*

### NEW CIVIL SOCIETY GUIDES FOR THE PROTECTION OF CULTURAL PROFESSIONALS AND ARTISTS

Recently, organizations with special programmes dedicated to artistic freedom have issued manuals intended to support artists and cultural workers in dealing with controversy and upholding artistic freedom. In 2018, the United States organization National Coalition Against Censorship issued *Smart Tactics: Curating Difficult Content*, which addresses censorship in museums and other art institutions. It provides practical advice on curating controversial content.

*We carried out an extensive survey of various stakeholders to find out what knowledge was lacking in this sector and how we should collate, share and multiply knowledge. Based on this, we see the key users of the Arts Rights Justice Library as artists, human rights activists, cultural managers, lawyers, researchers and people working at policy level. These are the people who are committed to protecting and promoting artistic freedom. We are aware that some users will be unaccustomed to working with academic studies, so we have decided to include a growing number of guidelines and short training documents in our Library.*

**Daniel Gad**

Managing Director of the UNESCO Chair in Cultural Policy for the Arts in Development at the University of Hildesheim and Head of the Arts Rights Justice programme



© Philippe Nyirrimingo\*





***Displaced artists are first and foremost artists. They have the same needs as any creative professional trying to sustain their practice. This includes the need for supportive policies that enable them to work and study, establish social networks, and receive financial support, training and artistic development. When these needs are met, displaced artists can contribute valuable expertise that can enrich the societies in which they live, fuel the evolution of art forms, and contribute to our understanding of complex issues.***

**IFACCA study, *Artists Displacement and Belonging***  
February 2019

It also contains model statement, which can be adapted according to context, for art and cultural institutions to defend freedom of expression. In January 2020, the French Observatory for Artistic Freedom issued Artwork against it censors, the practical guide of the Observatory for artistic freedom (*L'œuvre face à ses censeurs, le guide pratique de l'Observatoire de la liberté de création*) with 13 case studies that support cultural workers and artists in the face of censorship and information on how to respond to censors. Since 2019, the Index on Censorship that has long been working in support of artistic freedom through training tools, began providing a new service to those working in the

United Kingdom's cultural sector facing ethical, reputational, legal or personal challenges.

In November 2017, professional organizations such as the International Network for Contemporary Performing Arts (IETM), the UNI Global Union, Media-Entertainment and Arts (UNI-MEI) and the International Federation of Actors (FIA) published a toolkit entitled *Life offstage, Survival Guide for Creative Arts Professionals*<sup>46</sup> that contains advice and resources on taxation and social security as well as on freedom of expression.

46. Available at [www.ietm.org/en/system/files/publications/survivalguide\\_ietm\\_nov2017\\_1.pdf](http://www.ietm.org/en/system/files/publications/survivalguide_ietm_nov2017_1.pdf).

## MORE SYSTEMATIC AND PARTICIPATORY GLOBAL MONITORING

### *Recommendation No. 7 (2018 Global Report)*

The Convention's periodic reporting process should be revised with a view to making reporting on freedom of artistic expression a requirement, involving consultation with civil society organizations with expertise in this domain.

Artistic freedom is monitored both by civil society organizations that are invited to provide information to regional and international mechanisms and by States through international periodic reporting mechanisms. At the United Nations level, the Human Rights Council issues recommendations in the context of the Universal Periodic Review<sup>47</sup>. The treaty bodies that implement civil and political rights as well as economic, social and cultural rights can also issue recommendations on artistic freedom based on article 19 of the International Covenant on Civil and Political Rights (ICCPR)<sup>48</sup> and article 15 of the International Covenant on Economic,

47. The Universal Periodic Review (UPR) is a unique process which involves a periodic review of the human rights records of all 193 UN Member States. It provides an opportunity for all States to declare what actions they have taken to improve the human rights situations in their countries and to overcome challenges to the enjoyment of human rights. The UPR also includes a sharing of best human rights practices around the globe. Currently, no other mechanism of this kind exists.

48. 1. Everyone shall have the right to hold opinions without interference. 2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice. 3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order (ordre public), or of public health or morals.



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Social and Cultural Rights<sup>49</sup> (ICESC). The Specials Rapporteurs in the field of cultural rights and on the promotion and protection of freedom of expression also monitor artistic freedom in their country visits and through communications based on their mandates. The efficiency of these mechanisms relies on the quality of information transmitted both by States and civil society organizations.



*The efficiency of international monitoring mechanisms relies on the quality of information transmitted both by States and civil society organizations*

This points to the importance of civil society organizations providing up-to-date and easily assessable information, as most mechanisms have limited capacity in terms of resources. UNESCO has established a robust system for monitoring the implementation of the 2005 Convention on the Protection and Promotion of the Diversity of Cultural Expressions that can be used both globally and at the national level to measure the health of the diversity of cultural expressions. This system is organized around four overarching goals; promoting human rights and fundamental freedoms is one of them, covering two monitoring areas, one of which is artistic freedom, the other gender equality.

49. 1. The States Parties to the present Covenant recognize the right of everyone: (a) To take part in cultural life; (b) To enjoy the benefits of scientific progress and its applications; (c) To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author. 2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for the conservation, the development and the diffusion of science and culture. 3. The States Parties to the present Covenant undertake to respect the freedom indispensable for scientific research and creative activity. 4. The States Parties to the present Covenant recognize the benefits to be derived from the encouragement and development of international contacts and co-operation in the scientific and cultural fields.

## KEY QUESTIONS ON ARTISTIC FREEDOM

### 2005 Convention periodic reporting form

**1. The constitution and/or national regulatory frameworks formally acknowledge:**

- The right of artists to create without censorship or intimidation
- The right of artists to disseminate and/or perform their artistic works
- The right for all citizens to freely enjoy artistic works both in public and in private
- The right for all citizens to take part in cultural life without restrictions

**2. Independent bodies are established to receive complaints and/or monitor violations and restrictions to artistic freedom:**

- YES  NO

**3. Initiatives to protect artists at risk or in exile have been developed or supported by public authorities during the last 4 years (e.g. providing safe houses, guidance and training, etc.):**

- YES  NO

**4. Measures and initiatives intended to ensure transparent decision-making on government funding/State grants and awards for artists exist (e.g. through independent committees, etc.):**

- YES  NO

**5. Social protection measures that take the professional status of artists into account have been adopted or revised in the last 4 years (e.g. health insurance, retirement schemes, unemployment benefits, etc.):**

- YES  NO

**6. Economic measures that take the status of artists into account have been adopted or revised in the last 4 years (e.g. collective agreements, income tax and other regulatory frameworks, etc.):**

- YES  NO

With the adoption by the Conference of Parties to the 2005 Convention, in June 2019, of a new framework for periodic reporting that is fully aligned with the Convention's monitoring framework, 149 Parties to the Convention are now required to report on artistic freedom on a four-year basis. Before this turning point, although Parties to the Convention may have reported on policies and measures to promote artistic freedom, they were not required to answer specific questions in this area. This resulted in lost information as most countries failed to include information even when they had implemented promising policies and initiatives. With this new form, Parties will have the opportunity to specifically address achievements and challenges

in the area of artistic freedom and to showcase relevant policies, measures and programmes.

The above-mentioned UNESCO global survey on the implementation of the 1980 Recommendation concerning the Status of the Artist also included human rights and fundamental freedoms as a monitoring area, divided into three sub-areas: social and economic rights, gender equality and freedom of artistic expression. The resulting UNESCO publication, *Culture and working conditions for artists* (2019), referred to in Chapter 2 above, therefore devotes an entire section to the advances and challenges encountered in promoting and protecting human rights and fundamental freedoms for artists.

## SPREADING THE WORD: THE EMERGENCE OF NEW VOICES AND ADVOCATES

Since the last Global Report *Re|Shaping Cultural Policies* was published, there has been an increase in advocacy on artistic freedom at regional level. Until recently, the conversation on artistic freedom occurred mainly in the global North where many organizations involved in advocacy are based. The voices of artists in exile and representatives from organizations based in the global South were heard through their participation in meetings and conferences but there were no global meetings taking place. In the last two years, a number of initiatives have brought the conversation to the global South. This is an important step in engagement with civil society, journalists, media professionals, academia and public authorities at the national level as well as at the regional level, with human rights organizations and alliances that can grant protection to artists and cultural expressions.

In October 2018, a regional seminar on "Art, activism and human rights" was organized by the Centro de Estudios Legales y Sociales (CELS) and Artists at Risk Connection (ARC) in Buenos Aires to discuss issues around temporary relocation and risks related to artistic expressions. Based on this model, ARC



*Whoever attacks the freedom of art actually wants to question the democratic freedom of a society.*

**Martin Roth**

Former director of the Dresden State Art Collections and of the Victoria and Albert Museum

planned to convene a similar regional meeting with the Mekong Cultural Hub in Asia in the summer of 2020.

In December 2019, for the first time, the Safe Havens Conference, a global network of cultural creators, journalists and academics, held its annual meeting outside Europe in recognition of the fact that new protective mechanisms were increasingly appearing in other continents. Safe Havens was established in 2013 to share knowledge on threats and possible solutions for artistic freedom. All previous editions had taken place in Malmo, Sweden with support from the municipality. The overarching theme of the Conference, organized in South Africa in partnership with the City of Cape Town, was Safe Havens in the Global South, with a focus on African initiatives, creative women at risk and the link between journalists' and artists' protection.

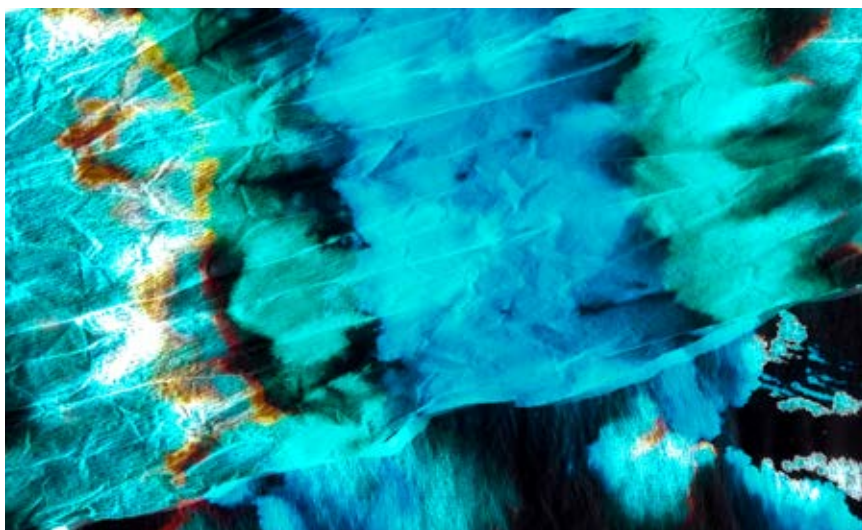
The stated objective of the 2019 Safe Havens Conference was to formalize an African network to defend creators. This new network initiative was agreed upon at the end of the Conference. Amani: Africa Creative Defence Network held its first virtual meeting in February 2020. It will provide situational monitoring, emergency/challenges alerts, interventions (legal assistance, advocacy, internal relocations) and finally, transnational relocations. The next Safe Haven Conference in 2020 should take place in Colombia as a way to continue the conversation in another continent.



*In the last two years, a number of initiatives have brought the conversation on artistic freedom to the global South*

In 2019, Freemuse launched a new programme to monitor violations of artistic freedom in Europe. In January 2020, it published the *Security, Creativity, Tolerance and their Co-existence: The new European Agenda on Freedom of Artistic Expression* report, which examined 380 cases of artistic freedom violations in 28 European countries between January 2018 and October 2019.

Through these initiatives, more specific information on the challenges to the protection of artistic freedom can emerge. They also allow new players to be identified and public authorities can be invited to revisit their own practices. This is promising, as it will add to the information being reported on artistic freedom under the monitoring framework of the 2005 Convention on the Protection and the Promotion of the Diversity of Cultural Expressions, and will allow countries to work with better informed civil society organizations. These are all very positive developments as they allow for a greater understanding of regional specificities, for a wider community of interested organizations and for increased ownership within regions.



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*Artists have a crucial role to play in promoting social tolerance, encouraging a deeper understanding of the communities around us, and this process has the potential to open up spaces where we can engage with our complicated world and start conversations around some of the most pressing issues that we have today.*

**Ian Nielson**

City of Cape Town Deputy Mayor, Opening remarks, Safe Havens Conference, 2019



© Hülya Özdemir\*



***Cultures also have many positive implications for the enjoyment of universal human rights and this must never be overlooked. Cultures can be like oxygen for the human spirit. When enjoyed in accordance with international standards, they can nourish, sustain, challenge and create space for debate, rethinking and resolving conflicts, as well as for expression, education and enjoyment. This is part of why our battle to support artistic freedom and at-risk artists means so much.***

**Karima Bennoune**

UN Special Rapporteur in the field of cultural rights,  
Safe Havens 2018 Conference, Malmö, Sweden.



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Added to this is the previously mentioned implication of lawyers in litigation cases on issues of artistic freedom in different countries. This has contributed to developing legal knowledge and case law.

In recent UNESCO World Press Freedom Conferences, more space has been given to debates on artistic freedom. In 2019, the World Press Freedom Conference was held in Ethiopia and participants adopted the Addis Ababa Declaration asking governments to: "Put in place transparent and effective systems to protect journalists, including press cartoonists, artists, 'activists' and others who are at risk of attack for exercising their right to freedom of expression, thereby ensuring that they can carry out their public watchdog role effectively, including during elections."



*Media organizations are increasingly taking artistic expression into account, particularly online*

For the first time, the 2020 UNESCO World Press Freedom Conference, concept note<sup>50</sup> included for the first time many references to artists and artistic freedom as actors and as a concept, comparing them to journalists and freedom of expression respectively, as they share the same struggles over gender equality, media independence and diversity, and censorship. Raising awareness of artistic freedom among journalists is also important because, as well noted in the 2018 edition of the UNESCO Global Report *Re|Shaping Cultural Policies*, "much of the information base relies on what is reported in the local and international press and by organizations that monitor media freedoms and general human rights violations".

50. Available at [https://en.unesco.org/sites/default/files/concept\\_note\\_wpfd2020\\_final.pdf](https://en.unesco.org/sites/default/files/concept_note_wpfd2020_final.pdf).





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Acquiring the capacity to monitor cases and train the media to identify the challenges are all important matters as media play a key role for audiences to understand works of art.

Media organizations are increasingly taking artistic expression into account, particularly online. This comes as a recognition that artists, just as journalists, are exposed to risks when they share their work online. For instance, the annual *Freedom on the Net* report makes specific reference to artistic freedom in different areas such as:<sup>51</sup>

- the use of technical means to restrict freedom of opinion and expression, for example by blocking websites and online content featuring journalism, discussion of human rights, educational materials, or political, social, cultural, religious and artistic expression;

- the existence of specific laws – including those related to the media, defamation, cybercrime, cybersecurity and terrorism – criminalize online expression and activities that are protected under international human rights standards (e.g. artistic expression);
- monitoring of publicly available information posted online for the purpose of deterring independent journalism or political, social, cultural, religious and artistic expression.



*Acquiring the capacity to monitor cases and train the media to identify the challenges are all important matters as media play a key role for audiences to understand works of art*

Treatment of artistic freedom in media gives visibility to the issue and raises awareness for the general public. It allows the complexity of the issues involved and the different roles of art in society to be embraced, rather than simplifying the message. For instance, in the case of artistic expression addressing a controversial issue, it can convey the message that the artist is contributing to opening a space for debate in society rather than exposing the artist to violence by calling it provocative or insulting.

51. Freedom House, *Freedom on the Net 2019: The Crisis of Social Media*



# In focus

## SPECIFIC CHALLENGES OF ARTISTIC FREEDOM FOR WOMEN ARTISTS

Article 7 of the 2005 Convention on the Protection and the Promotion of the Diversity of Cultural Expressions emphasizes the potential of culture for the enhancement of the status and role of women in society and calls on countries to pay due attention to the "special circumstances and needs of women" among a range of other groups that might be considered vulnerable. Twenty-five years earlier, the 1980 Recommendation concerning the Status of the Artist called on countries to **"give particular attention to the development of women's creativity and the encouragement of groups and organizations which seek to promote the role of women in the various branches of artistic activity"**. While neither of these two international cultural policy references explicitly mentions gender equality per se, the 2005 Convention's monitoring framework integrates gender equality as a monitoring area in its own right, based on the Convention's guiding principle of respect for human rights and fundamental freedoms.

Restrictions on artistic freedom target women, among other categories of the population, more specifically.



**Online trolling is a huge problem, especially for women artists who face more personal attacks in comparison to male artists.**

**We must pay special attention to online gendered restrictions and cyber harassment. This is a new phenomenon that is increasing social pressure on women.**

**Hija Kamran**, Head of Communications and Research at the Digital Rights Foundation (DRF),  
World Press Freedom Day, Accra, Ghana, 2-3 May 2018

As recognized by the former UN Special Rapporteur in the field of cultural rights, Farida Shaheed, in her 2013 report, *The right to freedom of artistic expression and creativity*: "Women artists and audiences are at particular risk in some communities, and are prohibited from performing arts altogether, from solo performances before mixed audiences or from performing with men. In a number of countries many women making a living as artists, or wishing to engage in artistic carriers, particularly in the area of cinema, theatre, dance and music continue to be labelled as 'loose' or prostitutes." A/HRC/23/34, Paragraph 43.

The Freemuse report *Creativity Wronged: How women's right to artistic freedom is denied and marginalized*, issued in 2018, contains further evidence and examples of this situation for women artists:



**Main violators in severe cases against women artists identified by Freemuse since 2013**

**41%**  
**Government Agencies**

**37%**  
**Unknown or unidentified individuals/groups**

**16%**  
**Artistic communities**  
(artist union, associations and syndicates)

**“ Women who perform wearing ‘inappropriate’ clothing or express ‘indecent’ words or thoughts are imprisoned in some countries. Others are censored, prosecuted, fined, fired, harassed, attacked or, in the very worst circumstances, killed.**



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**Women all over the world are forced continually to walk a fine line, balancing on the edge of vague definitions made by family, social groups, religious groups, fundamentalist groups and governments, which, if crossed, have significant consequences. Women artists have to suffer that daily negotiation, not because they are artists, but because they are women.**

Creativity Wronged: How women’s right to artistic freedom is denied and marginalized, Freemuse, 2018 (p.6)

The attacks are the tip of the iceberg, but in all regions there are still issues around work life balance/remuneration gaps/access to the profession. The Council of Europe, for instance, recognizing that in 2018, data and evidence demonstrate that equality between women and men has not been achieved in Europe and that gender-based inequalities have been identified at all levels of the industry, be it gender pay gaps, the glass ceiling, (sexual) harassment, or lack of distribution of female-driven content, has adopted a Recommendation on Gender Equality in the audiovisual sector.<sup>52</sup>

The recommendation is complemented by implementation guidelines based on preliminary research on gender equality in the European audiovisual sector<sup>53</sup> that identified ten barriers preventing women from working in the industry on equal terms with men:

1. Lack of awareness of the prevalence of gender inequality.
2. Conscious and unconscious gender bias at all levels of the industry.
3. Lack of willingness to invest in financially ambitious female-created audiovisual content.
4. Unequal distribution between women and men of funding for audiovisual content.
5. Unequal investment on the part of equity investors.
6. Unbalanced support for the dissemination of female-created content.
7. Low representation of women on commissioning and funding panels, as well as on supervisory and executive bodies.
8. Unequal pay between women and men.
9. Failure to support parents and carers, and non-reconciliation of work/life balance in the sector.
10. Unequal access to employment opportunities between women and men.

52. Recommendation CM/Rec(2017)9 of the Committee of Ministers to Member States on gender equality in the audiovisual sector (Adopted by the Committee of Ministers on 27 September 2017).

53. "Where are the women directors? Report on gender equality for directors in the European film industry, 2006-2013", European Women's Audiovisual Network (EWA), 2016.

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United Nations  
Educational, Scientific and  
Cultural Organization



Diversity of  
Cultural Expressions

# FREEDOM & CREATIVITY

## Defending art, defending diversity

In anticipation of the third edition of *Re|Shaping Cultural Policies*, this special edition of the Global Report series that monitors the implementation of the 2005 Convention on the Protection and Promotion of the Diversity of Cultural Expressions, focuses on one of the Convention's overarching goals: the promotion of human rights and fundamental freedoms and, in particular, artistic freedom. Freedom of expression, information and communication, as well as the ability of individuals to choose cultural expressions is a prerequisite for the protection and promotion of the diversity of cultural expressions.

Building on the recommendations put forth in the 2018 Global Report, this special edition provides an overview of current advances and challenges in the legal protection of artistic freedom, the protection of the social and economic rights of artists and cultural professionals and the monitoring of artistic freedom at the national, regional and international levels.

By producing new evidence and valuable analysis, the 2005 Convention Global Report series is intended as a reference tool for cultural policymaking and advancing creativity for development.

<http://en.unesco.org/creativity/>

SPECIAL EDITION  
2005 Convention Global Report series

