

ARTS RIGHTS JUSTICE
OBSERVATORY STUDY III:
JUSTICE. OPPORTUNITIES
AND CHALLENGES FOR
ARTISTIC FREEDOM ■

JUSTICE



Imprint

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PREFACE

Artistic creation, artistic freedom and the role of artists must be considered alongside human rights and freedoms in society. To this end, the ARTS RIGHTS JUSTICE Programme seeks to convey and professionalise skills, ensure the exchange of knowledge, make the most of multiplier effects, and build expertise on the subject. Therefore, the aim of the ARTS RIGHTS JUSTICE Programme is to strengthen and expand structures for the promotion and protection of artistic freedom. The Programme also seeks to question, from a research perspective, how 'protection' and 'promotion' in this field can be and need to be differentiated.

The Programme was developed together with about 30 international expert institutions and individual experts. The Programme includes an annual Academy at Hildesheim Kulturcampus, Germany, which invites about 30 young professionals, artists, cultural managers, lawyers and human rights defenders from different geographical origins. The Academy is accompanied by the ARTS RIGHTS JUSTICE Laboratories, which are satellite workshops in different regions of the world. The Programme also includes the ARTS RIGHTS JUSTICE Observatory, which seeks to ensure that knowledge in the field of freedom of artistic expression is produced, systematically collected and made accessible, in order to facilitate, support and professionalise relevant research, self-education and activism. Therefore, the ARTS RIGHTS

JUSTICE Library aims to collect, create access to and disseminate documents related to the promotion and protection of artistic freedom around the globe. We securely host and facilitate access to all kinds of documents related to this field in the database of the University of Hildesheim. This Library is online and open access: www.arj-library.de.

The ARTS RIGHTS JUSTICE Programme forms part of the UNESCO Chair Cultural Policy for the Arts in Development in the Department of Cultural Policy, at the University of Hildesheim in Germany. This allocation means that research on the subjects mentioned above becomes part of international cultural policy research. The ARTS RIGHTS JUSTICE Studies Series is Hildesheim's contribution to responding to the existing need for research that protects and promotes artistic freedom worldwide. We view the content and results of the ARTS RIGHTS JUSTICE Studies Series as a means of re-thinking policies and actions, and we aim to widen the international discourse in this way.

www.arts-rights-justice.de

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**JUSTICE.
OPPORTUNITIES
AND CHALLENGES
FOR ARTISTIC
FREEDOM**

BY MARIAM HÜBNER

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INTRODUCTION

I.1

ART, FREEDOM OF EXPRESSION, AND CHALLENGES TO FREEDOM OF EXPRESSION

Why are art and creativity related to the concepts of freedom, justice and the absence of restrictions? Why are artists often attacked and threatened because of their artistic expression and the free expression of their ideas? For years, the issue of artistic freedom of expression has been the subject of discussions and campaigns of support in different parts of the world, both rich and poor countries, and in

countries with different political, economic and social conditions. Why did the protection of artists become necessary? And can we find the mechanisms to ensure free artistic expression?

Art is an activity of a special nature, because it deals with ideas and feelings and because it conveys many messages, so it is powerful and influential.

'Art is powerful, emotional and transformative. Art exists to express ideas and emotions that often are beautiful and non-contentious, but art can at times also spur debate, question ideology and regime, and even lead to social and political change. For these reasons, we understand the value of art, the freedom of its expression and the necessity for its protection as a human right, specifically because many seek to undermine it for the very same reasons that make it essential for social wellbeing.' (Freemuse, 2018, p. 8)

Art is an activity based on human, psychological and mental communication. This is another source of power and influence.

'Art is a powerful form of communication which has a unique ability to transcend cultural and linguistic boundaries, an exploration of what it means to be human ... [Art] is one of the first forms of human expression and which remains rooted in the creative potential for innovation and transformation ... In this sense, artists should be considered [as] providing a vital, but under-appreciated contribution to the functioning of civil society.' (Khan, 2014)

Tools for artistic expression tool are usually cheap. Art does not always need complicated tools. To produce art, it is enough to have ideas, the senses and suitable tools: *'Art is a form of expression which is often one of the most available, even to the poorest individual:*

the tools required can be as simple as a voice, a pencil or a humble drum' (Khan, 2014).

Art is an important tool for each person, on the individual level and in communities, and groups of people, to develop and express their humanity, their thoughts and feelings, and the meanings assigned to their existence.

The strength of art lies in the diversity of its tools, the variety, the specificity and the spaciousness of each of these tools. The arts vary and styles of expression vary and affect sensations and thoughts.

'Artistic expressions are highly diverse. They may take the form of literature, performing arts – such as music, dance and theatre – moving images and all forms of the visual arts, including street art. They may be embodied in physical products such as printed books or sculptures, digital products such as streamed films or music files or in performances such as concerts or theatre. Some artistic expressions simply entertain us or appeal to our sentiments. Others may provoke us, generate debate or make us reflect, particularly when they are vectors of dissent or indignation.'

(Reitov, 2015)

People in all societies, whether poor or rich, whether developed or non-developed, will create, make use of, or relate to artistic expressions and creations.

Art is both valued and neglected, both ridiculed and feared. Art is a tool that is quietly disruptive and powerful. Art is closely linked to human rights and is a freedom that is guaranteed at an international level.

I.2

WHY DOES ART DEMAND PROTECTION? THE ROLE OF ART IN SOCIAL AND POLITICAL LIFE

Art needs to be protected for several reasons. First, it is a free tool of expression, and it encourages discussion and reflection on political, economic and social issues, that goes beyond technical discussions. The seriousness of art lies in its ability to communicate, influence and change.

'Artists may entertain people, but they also contribute to social debates, sometimes bringing counter-discourses and potential counterweights to existing power centres. The vitality of artistic creativity is necessary for the development of vibrant cultures and the functioning of democratic societies. Artistic

Artists may entertain people, but they also contribute to social debates, sometimes bringing counter-discourses and potential counterweights to existing power centres.

The vitality of artistic creativity is necessary for the development of vibrant cultures and the functioning of democratic societies.

Artistic expressions and creations are an integral part of cultural life, which entails contesting meanings and revisiting culturally inherited ideas and concepts.

SHAHEED

2013

expressions and creations are an integral part of cultural life, which entails contesting meanings and revisiting culturally inherited ideas and concepts.' (Shaheed, 2013)

The artist is someone who provides new ways of seeing the world. He or she brings a creative moral intellect to bear on things that may be taken for granted. The artist provokes debates about human needs and rights, and also about access to public goods that make freedom meaningful.

'Artists everywhere, and in all periods, have taken a role in standing up for human rights and human dignity through their explorations of the human condition, particularly in times of unrest, oppression and chaos. It is no wonder that its liberating and unbounded potential to speak truth to power is feared by those who remain invested in the suppression of the human spirit ... [Art is] a channel for dissidence, a telling of alternate histories, alternate futures.'
(Khan, 2014)

Artistic expressions and creations are under particular attack because *'they can convey specific messages and articulate symbolic values in a powerful way or may be considered as doing so'* (Shaheed, 2013).

The potential for change that art can bring places artists under threat. *'So, where art is transgressive, it is decried as immoral, sedi-*

tious or contrary to religious rules. Artists are silenced by many means, from harassment to imprisonment, from censorship to accusations of blasphemy, which can itself be a death sentence' (Khan, 2014).

Artists communicate with people, and engage with people in the public domain. Artists often question our lives, our thoughts, our perceptions of ourselves and others, our needs and feelings, our taboos, our fears and our visions for the world. Art elicits emotional as well as intellectual responses.

So, it is political, cultural, religious, moral, social or economic interests that motivate restrictions on artistic freedom. This is why art, as a form of expression and a catalyst for change, and artists need to be protected.



WHAT CONSTITUTES 'ART', 'ARTIST' AND 'ARTWORK' IN THIS STUDY

Art is difficult to define. In this study, art is a means of communication, expression and influence. Based on this definition, this study will highlight the mechanisms that guarantee that *'[a]ll persons enjoy the rights to freedom of expression and creativity, to participate in cultural life and to enjoy the arts. Expressions, whether artistic or not, always remain protected under the right to freedom of expression'* (Shaheed, 2013).

In this study, we will focus on addressing the capacity of art to communicate and to influence ideas. What guarantees are there that this freedom can be enjoyed without restriction?

'An artwork differs from non-fictional statements, as it provides a far wider scope for assigning multiple meanings: assumptions about the message carried by an artwork are therefore extremely difficult to prove, and interpretations given to an artwork do not necessarily coincide with the author's intended meaning. Artistic expressions and creations do not always carry,

and should not be reduced to carrying, a specific message or information. In addition, the resort to fiction and the imaginary must be understood and respected as a crucial element of the freedom indispensable for creative activities and artistic expressions: representations of the real must not be confused with the real, which means, for example, that what a character says in a novel cannot be equated with the author's personal views. Hence, artists should be able to explore the darker side of humanity, and to represent crimes or what some may consider as 'immorality', without being accused of promoting these.' (Shaheed, 2013)

In most countries, artists are affected by the same laws that may be used to penalise journalists and opinion-makers. Do these laws take into consideration the specificity of the artistic product and the need to free it from any political, security or social considerations? Usually, the specificity of the artistic product is not taken into consideration by the states or by the people. *'Artists are prosecuted under the same laws as journalists (such as blasphemy, insult and anti-terror laws), attacked by the same state and non-state groups, and are similarly vulnerable to self-censorship. So, the worst offenders tend to be the ones that abuse free expression and human rights generally'* (IFEX, 2016). This way of dealing with art places the artistic product at risk as it is evaluated with an inadequate tool. This threatens artists as well.

[Artistic freedom is] the right of people to basic freedoms and to live without the government becoming involved in private matters.

CAMBRIDGE DICTIONARY

Artistic expression is not a luxury, it is a necessity – a defining element of our humanity and a fundamental human right enabling everyone to develop and express their humanity.

SHAHEED

2013

I.4

TOWARDS A DEFINITION OF ARTISTIC FREEDOM

Increasing restrictions on political, religious and community authorities in various parts of the world, especially because of political and societal changes, have demonstrated the need to define, discuss and reach a minimum of agreement on freedom of artistic expression. Several definitions have emerged, most of which link artistic freedom of expression to human rights, as a basic and fundamental right of everyone, not only the artist.

UNESCO defines artistic freedom as follows:

'Artistic freedom is the freedom to imagine, create and distribute diverse cultural expressions free of governmental censorship, without pressures from state and non-state actors. It includes the right of all citizens to have access to these works, and it is considered essential for the wellbeing of societies ... It embodies a bundle of rights protected under international law, such as the right to create without censorship or intimidation; the right to have artistic work supported, distributed and remunerated; freedom of movement; freedom of association; protection of social and economic rights; and the right to participate in cultural life.'

In other words, freedom of artistic expression is the right of the creator and of the recipient as well. That is, the individual has the right to receive an artistic product without it being censored. Artistic expression is both a right and a civil liberty: *'the right of people to basic freedoms and to live without the government becoming involved in private matters'* (Cambridge dictionary). *'Artistic expression is not a luxury, it is a necessity – a defining element of our humanity and a fundamental human right enabling everyone to develop and express their humanity'* (Shaheed, 2013).

Different terms are used to connote the same idea: artistic freedom, artistic expression, creative freedom, and freedom of artistic expression.

Artistic freedom is a core component of fundamental freedom of expression. Artistic freedom also exists within a wider framework of interrelated freedoms: freedom of thought (including religion, conscience, and belief) and freedom of expression (including freedom of opinion and access to information), association, assembly and belief, *'since art is also a means of expressing a belief and developing a world vision'* (Shaheed, 2013).

In most jurisdictions, courts have abstained from defining the content of 'freedom of artistic expression'. Some courts have even criticised the categorising of certain forms of expression as 'artistic', for example, the South African Constitutional Court. Other courts have simply assumed that lawyers do not possess the proper qualifications to assess the artistic merit of disputed works. Nevertheless, some supreme and constitutional courts have sought to propose definitions of artistic expression.



APPROACH TO ARTISTIC FREEDOM

Our approach to artistic freedom is human rights-based as it provides an international legal framework and lays out the principles of accountability, equality and non-discrimination, and participation.

Freemuse 2018

At the same time, human rights are only one among many languages of ethical conduct that form the collective inheritance of human cultures across the world.

ARTISTIC FREEDOM IS GLOBALLY AT RISK

Sustaining artistic freedom is a global challenge. The right of artists to express themselves freely is under threat worldwide, especially where artistic expressions contest or critique political ideologies, religious beliefs, and cultural and social preferences. These threats range from censorship (by corporations, or political, religious or other groups) to imprisonment, physical threats, and even killings. Attacks on the freedom of cultural expression from intolerant individuals and groups, hate speech, racism, and xenophobia, among others, denote the denial of one of the fundamental prerequisites of democracy: the right of everyone to participate in debate as free and equal individuals.

Threats to artistic freedom exist throughout the world and have similar characteristics. Artists face death, attacks, imprisonment, detention, threats, sanctions or fines, travel bans and censorship, including (and more recently) digital censorship. This means that, in a more globalised world, protection mechanisms are becoming more connected and diverse. International organisations provide research, reporting and monitoring mechanisms on

artistic freedom, policy and advocacy, funding and networking, capacity building and knowledge sharing, consultation strategies, case management and refuge. The services are either specific to artistic freedom or operate under umbrella organisations that fight for human rights or freedom of expression more generally.

In the Arab region, violations intensified after the political changes that began in 2011 in a number of Arab countries. These political changes were followed by the large and influential role of art at the social and political levels, which in turn led to restrictions on and violations of artistic freedom.

'[There were] 553 violations of artistic freedom in 78 countries with the combined sentences of 48 imprisoned artists. On average, every week last year, someone went on trial for exercising their artistic creativity, while thousands of pieces of visual art, music, theatre, dance and literature were censored, vandalized or destroyed. Worse still, the hundreds of cases analyzed represent only a small percentage of all violations of artistic expression, as the vast majority go undocumented.' (Freemuse, 2018)

Restrictions and violations come from different quarters, including political systems and religious currents. In some cases, protecting people is used to justify restrictions on the exercise of artistic freedom of expression:

“Ironically enough, restrictions are often imposed in the name of the public which, however, is prevented from making its own judgement.”



SHAHEED

2015

Currently, there is a counterwave:

‘But it’s only been in the last few years that artistic freedom has really become a ‘sexy’ issue. That’s partly due to digital technology making political art more immediately accessible – such as the graffiti art during the Arab Spring and at the Gezi Park protests. It’s also partly thanks to the people who were part of the original group still working together to expand the idea of artistic freedom as a distinct right, and others are coming on board ... parallel, civil society actors and even states are developing methods to protect artists through monitoring frameworks, support, etc.’ (Whyatt, 2018)

In this study, we will discuss the mechanisms available to artists to guarantee their freedom of artistic expression. We will locate these guarantees in the constitutions, the laws governing artistic and cultural work at the state

level, the syndicates, as well as at the level of application and practice. The research also examines the protective mechanisms available to artists at risk, whether at the local, regional or international levels.

This study focuses on two Arab countries, Egypt and Tunisia, which have various aspects in common, most notably the political change that took place in 2011 as a result of the Arab Spring revolutions, as well as the important role played by culture and the arts, especially in the context of political, economic and social change. The two countries also witnessed a number of legislative changes that followed political changes and the practice of art, culture and artistic expression.

A public debate intensified after 2011 concerning the issues of freedom of artistic expression, the rights of artists, the artistic product and its political content, as well as art as a tool for human expression, as well as in the hands of some political regimes.

The study will briefly shed light on the Algerian experience in this regard, as the topic has not been the subject of much debate over the past years, since the political, economic and social situation in Algeria has been stable for the last 20 years.

The study will highlight the existing opportunities for freedom of artistic expression in

the three Arab countries. The study will focus on the protection tools and mechanisms provided by the constitutions and laws, and by local and international initiatives, both in civil society and the states. The study will try to understand to what extent these mechanisms are implemented to protect artists and their freedom of expression.

I.7

JUSTICE: MODELS OF PROTECTION

In light of the increasing number of threats against artists in the world and in a number of Arab countries, in particular, it was necessary to develop ways of protecting artists from physical threats and the risk of death, of protecting their artworks and finding ways to help them continue their mission.

Indeed, in many countries, the right to freedom of artistic expression is guaranteed in constitutions and laws, but the problem crops up in practice. Many of these rights are not actually practised and are circumvented. The entities that protect artists (for example, syndicates and unions) do not play their role due to legal complications or because of their political affiliations to the political regimes in most Arab countries.

CONTEXT

II.1

SOCIAL, POLITICAL AND ECONOMIC CONTEXT IN EGYPT AND TUNISIA

Egypt and Tunisia are sovereign nations with trajectories that diverge and converge throughout their histories. The two nations experienced two key revolutionary movements in the last century, one for independence from colonial powers and the other for reform of the state's status quo. The Tunisian Revolution in January 2011 initiated a wave of Arab-Mediterranean uprisings, all articulating their demands for democracy, social justice and dignity. The revolution started in Tunis, where dozens were

left dead and President Ben Ali escaped with his family to Saudi Arabia. The events in Egypt, which began on 25 January 2011, ended on 11 February 2011, when President Mubarak stepped down. Following these revolutionary waves, both nations announced a series of political reforms, including the drafting of new Constitutions, the reorganising of state institutions, and the first 'free' and 'democratic' elections. All these changes severely impacted the eight years that followed.

 **EGYPT**

In his article 'The tragedy of Egypt's 'stolen revolution' (2017), Amr Hamzawy, an Egyptian political scientist, human rights activist and public intellectual, writes:

'The Egyptian government's readiness to utilize conspiracy theories, defamation, hate speech and populism to justify repression has made it easier for the military establishment to systematically violate citizens' rights and to disregard the principles of the rule of law without fearing accountability.'

Six years after its democratic revolution on 25 January 2011, Egypt's politics are just as they were previously. Once again, a military officer has been installed in the presidential palace after an election that was anything but democratic. Today, Egypt's political environment is characterised by heightened security, a state of emergency, the use of legislation to suppress freedom of expression, and a very challenging economy.

After 30 June 2013, the new system began to tighten its control over various institutions, including press, cultural and artistic institutions. The state has also begun to establish new oversight institutions and committees, and has introduced restrictive laws for most sources of opinion.

'The new feature of this year is that the State is seriously working to codify its repressive measures and to establish a new map of the emerging system, including legislative amendments in various areas ... It was clear that the regime is establishing a new roadmap to be extended for years as well as providing a legal foundation for security measures taken in the years after July 2013.' (AFTE, 2018)

A state of emergency was also declared:

'2018 did not differ much from the years that preceded it with respect to the violation of fundamental rights and the restriction on public freedoms guaranteed by the Constitution, international covenants and treaties. However, this year has been marked by the fact that it is all under the Emergency Law. The state of emergency was imposed in the second quarter of 2017 and the government, in coordination with the parliament, has been renewing it until now. This exceptional situation, or which was supposed to be exceptional, was not only reflected in the arbitrary practices inherent in such laws, but also reflected heavily on the state of legislation in Egypt. The laws were enacted in the spirit of emergency, laws that do not regulate rights, but aim to obstruct and restrict them, depriving them of any content.' (AFTE, 2018)

Many of the tools of censorship and repression are wielded in terms of legislation and are not random. Legislation is put in place to ensure public order and to uphold the morals of a society where the government functions as a gatekeeper to creative thought and opinion.

In effect, the state wants to control the narrative: *'The great battle that the State has been waging over the ownership and circulation of information over the past year, a battle for the domination of its voice and discourse, without allowing any other voices to reach the public'* (AFTE, 2018).

After the political changes of 2011, Egypt experienced a very difficult economic situation. The inflation rate reached its highest ever level. There was a severe economic crisis that affected all goods and services.

Nevertheless, the cultural and artistic scene after the 2011 revolution until 2013 was very powerful, diverse and influential. Many artistic groups were created, as well as many cultural spaces. Diverse cultural activities took place in public spaces. A maximum level of artistic freedom of expression was allowed. Arts and culture were a strong and powerful political, social and human tool. But, since 2014, the scene has changed. Restrictions became the rule, and many entities were created to control the artistic scene. New laws were passed to censor artistic content. The artistic scene in Egypt is still active but not free. Needless to say, censorship and restrictions also affected the civil society sector. **Hundreds of NGOs have ceased their activities in the last 5 years as a result of the legislative and administrative restrictions.**

 **TUNISIA**

The **'Jasmine Revolution'** or the **'Dignity Revolution'** occurred in Tunisia in 2011. Tunisians from all walks of life rose up in protest against the corruption and economic stagnation that had seen unemployment increase to 850,000 people in 2011 (up from 600,000 the year before), in a country of 10 million people.

There is no longer official censorship, and self-censorship decreased after the revolution in 2011. The media on the whole were free to cover opposition parties and leaders without government interference in 2015.

'Television debate programs in particular have developed into lively open forums for civil arguments between holders of diverse political opinions. However, polarization of the media landscape continued in 2015, leaving news organizations divided by political affiliation, economic interest, and ideology. The sharp delineation between Islamist and secularist viewpoints diminished slightly in 2015, mirroring the improved unity of a governing coalition that brought together Islamist and secular parties. Some media owners have openly aligned themselves with political parties, in apparent violation of the 2011 press code.' (Freedom House, 2018)

Since 2011, Tunisia has experienced remarkable political gains and significant improvement in freedom of the press and the efficiency of the civil society. However, the original goals of the revolution remain unfulfilled: economic development, the real and effective revision of legislation, and a democratic and young political regime.

Seven years later, anger in the streets resurged and looked all too familiar. Tunisians demonstrated anew:

'Such desperate acts highlight the urgency of the economic crisis still faced by many Tunisians in the wake of the revolution. Many are demanding more employment opportunities – or as they see it, the right to live with dignity ... Chief among the structural obstacles is Tunisia's economic stagnation. The country continues to suffer from a lack of investment and large deficits, as well as high levels of unemployment ... Tunisia's economy was also badly hit by two terrorist attacks in 2015 – on the Bardo Museum in Tunis and a Sousse beach resort – that crippled the tourist industry, a major source of income for the North African state.' (Barnell, 2017)

Furthermore, corruption and a highly centralised bureaucracy made it difficult for those without connections to find jobs, which makes the informal sector more appealing.

Tunisia has also held multiple free, fair, and competitive elections, including the country's first-ever democratic local elections in May 2018. The 2014 constitution, which replaced the 1959 constitution, is the most progressive in the Arab world. The constitution enshrines the freedoms of expression, of assembly, and of the press; protects the right to access information; and states that men and women are 'equal before the law'. Furthermore, in April 2017, President Beji Caid Essebsi created the Committee on Individual Freedoms and Equality to ensure that the country's laws align with the constitution and international norms.

'But public perception of the political reform process is mixed. In Carnegie's survey, 65 percent and 69 percent of respondents said the revolution had contributed to an increase in political freedom and press freedom, respectively. But there is still work to be done. As one respondent said, meeting the goals of the revolution requires 'the removal of mechanisms that lead to a political blockage, facilitating decision making, and reinforcing the idea of accountability of politicians and civil servants to the citizens.' ... In other words, rights on paper do not necessarily translate to rights in practice.' (Yerkez, 2018)

“In other words, rights on paper do not necessarily translate to rights in practice.”



YERKEZ

2018

This is the country's seventh government since the fall of the Ben Ali regime. Still, *'it is the least difficult one to work with in the Arab world. It's the only nation where we can work on human rights with the authorities, trying to push for reform from the inside rather than as some pariah NGO pressure group gesticulating from the outside'* (Tawab, 2015).

The artistic and cultural scene in Tunisia since 2011 has been rich, diverse and free. Art in Tunisia is supported by the regime, civil society and individuals. The artistic scene is influential and powerful. Freedom of artistic expression is a red line for Tunisian artists and cultural activists. Some violations have occurred during the last eight years but the discussions, lobbying, and institutional and legal work to support the artistic freedom did not stop. This is also a result of the very powerful status of the civil society sector in Tunisia.

LEGAL FRAMEWORKS IN EGYPT AND TUNISIA

EGYPT

The Egyptian legal system comprises a combination of Islamic (Shariah) law and the Napoleonic Code, which was introduced during Napoleon Bonaparte's occupation of Egypt and continued to be of force as a result of the subsequent education and training of Egyptian jurists in France.

The Egyptian legal system, as a civil law system, is based upon a well-established system of codified laws. Egypt's supreme law is its written constitution. With regard to transactions between natural persons or legal entities, the most important legislation is the Egyptian Civil Code of 1948 (the 'ECC') which remains the main source of law applicable to contracts. Much of the ECC is based on the French Civil Code and, to a lesser extent, on various other European codes, as well as on Islamic law (especially in the context of personal status).

The three main branches of the government, as stated in the Egyptian constitution, are (1) the executive branch, (2) the legislative branch, and (3) the judicial branch.

Parliament is a legislative body with the authority to make laws for a political entity, such as a country or city. Parliamentarians play a vital role in a government that has adopted the division of power model. Egypt has a parliamentary system of government, which is composed of the House of Representatives, which has 596 seats. About 448 members are elected directly, 120 members are appointed for Christians, women and youth, and 28 members are selected by the president.

 **TUNISIA**

Due to the recent revolution, Tunisia is now a constitutional government with a president, a prime minister, and a one-house parliament. Because Tunisia was a former French colony, it has a civil law legal system (IMUNA).

Tunisian law is based on the constitution, laws passed by Parliament, ministerial decrees and orders, and international conventions and treaties ratified by Tunisia. Tunisian law is largely inspired by French and Islamic law.

The legislative branch is ruled by a unicameral Chamber called the Assembly of the People's Representatives (l'Assemblée des Représentants du Peuple). Article 55 of the constitution mentions that 'the parliament representatives are elected for five years by a universal, free, direct, secret, sincere and transparent ballot according to the modalities and conditions determined by the Electoral Law.' The constitution added the terms '*sincere and transparent*' in order to break with the former regime.

ARTS: CULTURE AND POLITICS, DIFFERENT DIMENSIONS AND DYNAMICS

EGYPT

Today, in Egypt, artistic freedom particularly is under attack. The fact that art is deemed a threat to the state is evidenced by the laws that strictly regulate creative expression.

The Association of Freedom of Thought and Expression (AFTE) documented 23 incidents in 2018, involving 43 violations, which ranged from preventive detention to prison sentences, blocking of public performances, and preventing the entry of or deporting creative artists in 2018 (AFTE, 2018).

Security agencies recently created government entities that have added layers of censorship to silence artists' criticism of the government on television and in movies, theatres and books. The Egyptian authorities have arrested over a dozen people in a crackdown on artists, prosecuting them for exercising their freedom of speech. The government has also issued new decrees to severely curtail freedom of expression.

This is particularly troubling considering the role that arts and culture played in Egypt's revolution:

'One of the most profound effects brought about by the revolutionary uprisings in Egypt has been the reclamation of the street as a site where artistic and political representations are brought together in sometimes divergent and unpredictable ways. Many artists from the independent gallery scene in Cairo suspended their practices during the 18 days of the revolution in order to take part in actions that had a direct political aim or function. However, it is graffiti artists who successfully fused aesthetics and politics (as well as theory and practice) in their work, emerging as among the most powerful creators of revolutionary culture.'

(Elias, 2014, p. 89)

Today, art is being erased. Part of the wall decorated with graffiti on Mohamed Mahmoud Street was demolished by workers in November 2015, which many believe was part of a wider attempt by the authorities to erase all traces of the 2011 revolution.

TUNISIA

In Tunisia, since the political changes of 2011, it has become easier for young people to express their views on issues related to human rights and freedom of expression.

'During the early days of the uprisings in the Middle East, for instance, musicians – like 'El General' of Tunisia – played an essential role as truth-tellers, exposing political and financial corruption as well as providing rallying anthems, providing a sense of solidarity and unity to those on the street. In the words of a rapper from Gaza, who has since been forced into accepting protection by Gothenburg City Council: 'I am the CNN of the street.' (Khan, 2014)

After 2011, art became an act of freedom: *'Visual expressions of artistic freedom in public space were not confined to graffiti and to street art. The challenge was also taken up by performance artists and by dancers, using the streets for their stage and transforming public space at the same time as reclaiming it'* (Tripp, 2015).

Artists as activists were often part of the political scene, bringing ideas, thoughts and a critical intelligence to bear on power, and contributing to unsettling and then unseating the regime. *'This resonated with millions across the country, encouraging the expression of ideas that confronted the dictatorship'* (Tripp, 2015).

In the words of a rapper from Gaza, who has since been forced into accepting protection by Gothenburg City Council: 'I am the CNN of the street'.

 **Khan**
2014

In the squares and on the streets of the revolution, artists were the voice of the citizens:

'As citizens, they [artists] too have their own agendas, visions for the future of Tunisia and fears about the direction in which it may be heading. As artists, however, they have the capacity to make these concerns visible, projecting a set of ideas, fears and ambitions into public space. This is part of the power of art and is central to its mode of public contestation, visible in Tunisia as the circumstances of revolutionary possibility make concrete opposing visions of the country's future.' (Tripp, 2015)

As the past few years have shown, some within the state machinery and some in society at large have objected, sometimes violently, to the specific images, words and lyrics used by creative artists, as well as to forms of artistic expression in dance and song. *'Artists' ability to present versions of the truth that seem to contradict long held and scarcely questioned beliefs, both secular and religious, has been as unsettling in Tunisia as it has been elsewhere throughout history'* (Tripp, 2015).

In Tunisia, such interventions have consequently initiated debates amongst some artists, who are aware of the ambiguities of art and of art production itself in a country *'where significant social and economic inequalities are so entrenched. In seeking to address and to inform the public, they have to acknowledge that a lack of familiarity with the forms of artistic expression may be a barrier to comprehension'* (Tripp, 2015).

As citizens, they [artists] too have their own agendas, visions for the future of Tunisia and fears about the direction in which it may be heading.

As artists, however, they have the capacity to make these concerns visible, projecting a set of ideas, fears and ambitions into public space.

TRIPP

2015

FREEDOM OF ARTIS- TIC EXPRESSION: PROTECTION MODELS

In light of the increasing number of threats against artists throughout the world and in a number of Arab countries in particular, it was necessary to develop mechanisms to protect artists on a personal level (against physical threats and the risk of death) and to protect their artworks, and to co-operate and thus enable them to continue their mission.

Indeed, in many of these countries, the rights of freedom of artistic expression are guaranteed in their constitutions and laws, but the problem comes in practice. Many of these rights are not put in place and are ignored.

The entities that protect artists (syndicates and unions) do not play their role due to legal complications or because of their political affiliations, which follow the political regimes in most Arab countries.

We will present the rights of artistic freedom guaranteed to artists, whether guaranteed by their constitutions or laws, and we will also refer to local and international initiatives to protect artists at risk in two countries, Egypt and Tunisia. We will also refer briefly to Algeria.

III.1

LEGAL PROTECTION

III.1.1 International treaties, covenants and charters

Both Egypt and Tunisia have ratified treaties related to freedom of expression:

(A) Universal Declaration of Human Rights (UDHR)

Article 19 of the UDHR protects the right to freedom of opinion and expression. This right is protected in all the relevant international human rights treaties.

Freedom of opinion and expression in the UDHR includes both personal/individual and social/societal freedom. They are considered '*indispensable conditions for the full development of the person*', '*essential for any society*' and a '*foundation stone for every free and democratic society*' (UN Human Rights Committee, 2011). All forms of communication are protected, including '*political discourse, commentary on one's own and on public affairs, canvassing, discussion of human rights, journalism, cultural and artistic expression, teaching and religious discourse*' (UN Human Rights Committee, 2011).

B International Covenant on Civil and Political Rights (ICCPR)

The ICCPR further expands the scope of freedom of expression to include the freedom to seek, receive and impart information. In terms of Article 19 of the ICCPR, freedom of expression includes the *'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 a person's choice'*.

C International Covenant on Economic, Social and Cultural Rights (ICESCR)

The ICESCR states that any limitations should be *'determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.'*

The most explicit provisions protecting the freedom of artistic expression and creativity appear in Article 15(3) of the ICESCR, in terms of which states *'undertake to respect the freedom indispensable for ... creative activity'* (Shaheed, 2016).

D **Convention on the Protection and Promotion of the Diversity of Cultural Expressions**

This convention links freedom of expression to cultural diversity. The convention states that 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 have access to diverse cultural expressions, are guaranteed.

E **African Charter on Human and People's Rights**

Article 9 provides that *'[e]very individual shall have the right to express and disseminate his opinions within the law.'* Article 17 provides that *'[e]very individual may freely take part in the cultural life of his community.'*

F **Arab Charter for Human Rights**

Article 42 of the Arab Charter stresses that *states should work together and should encourage co-operation between them at all levels, with the full participation of intellectuals and inventors and their organisations, in order to develop and implement recreational, cultural and artistic programmes.*

III.1.2. Constitutions

*'Just as the history, society, culture, and preferences of every country is unique, so too is every constitution. Certain common issues, however, are likely to be front and center for countries transitioning from authoritarian rule to democracy ... In general, countries emerging from authoritarianism frequently identify constitutional reform as a priority – and Egypt and Tunisia have been no exception. How, when and by whom these and other countries transitioning from autocratic regimes revise their constitutions will substantially impact the democratic nature of the post-transition states ... In unpacking the constitutional challenges presented in post-authoritarian regimes, three issues frequently emerge: (1) **sequencing constitutional reform with a transition to democracy**; (2) **designing a constitutional review process that is seen as legitimate**; and (3) **addressing substantive constitutional concerns.**' (Gluck, 2011)*

EGYPT

a) Development of constitutional law

In Egypt, there have been four constitutions (in 1923, 1971, 2012 and 2014). The constitution has always been the supreme law: *'the consti-*

tution is the higher basic law that sets the rules and basics of the ruling regime ... Thus, the constitution has a special nature [that] gives it supremacy as the guarantor of freedoms and the pillar of the constitutional practice and the basis of its system' (Arab Organization for Human Rights, 2015).

Therefore, the provisions of the constitution are the supreme peremptory norms that the state should abide by when issuing its legislation, in its judicial system and in the practice of its executive powers. The constitutional provisions have to be equally adhered to by the legislative, executive and judicial institutions (Arab Organization for Human Rights, 2015).

Egypt has three supreme courts: the Supreme Constitutional Court, the Court of Cassation, and the Supreme Administrative Court. The Supreme Constitutional Court monitors and safeguards the constitution. The Supreme Constitutional Court has exclusive jurisdiction to decide issues regarding the constitutionality of laws.

b) Relevant constitutional articles

To determine how the constitution protects artists requires a reading of articles related to sovereignty, freedom of the press and freedom of opinion. The latter are all linked to the notion of free expression.

Egypt was one of the first countries in the world to affirm freedom of expression in its constitution. Thus, Egypt has been a pioneer in the international arena in establishing the foundations of human freedoms, of which the most important is freedom of opinion and expression. *‘Those who read the Egyptian constitutions issued over the next decades do not find it difficult to understand the significance of the constitutional legislator’s inspiration for the contents of the 1923 constitution, which was ahead of the criterion of his era’* (AFTE, 2018).

Successive Egyptian constitutions – since the 1923 constitution – addressed public rights and freedoms. All Egyptian constitutions, starting with the 1923 constitution, and up to the 2014 constitution provided for and guaranteed the protection of freedom of opinion.

The 1971 constitution expanded the right to freedom of expression. Article 47 of the constitution stipulated that *‘freedom of expression is guaranteed and each person has the right to express his opinion and to spread it orally, in writing, through photography or any other means of expression within the limits of the law, self-criticism and objective criticism, to protect the safety of the national structure.’*

In 2012, the updated constitution upheld a similar spirit but without the caveat. Article 45 of the constitution stated that *‘freedom of opinion and expression is guaranteed. Each*

individual has the right to express his opinion verbally, in writing, or through photography, or any means of publication or expression.’

The constitution also recognises and prioritises sovereignty. Article 4 states that *‘[s]overeignty belongs to the people alone, which exercises it and protects it. They are the source of power.’* Thus the people should have *‘an effective popular control which it exercises through free opinion and constructive criticism of whatever the ruling power conducts ...’* (Arab Organization for Human Rights, 2015).

“Personal freedom is a natural right and it is inviolable.”

EGYPT'S CONSTITUTION 2012

Article 54

Article 54 states that *‘personal freedom is a natural right and it is inviolable.’* Article 99 protects personal freedom. Any assault on the personal freedoms or the sanctity of the lives of citizens is a crime with no statute of limitations for both civil and criminal proceedings. The injured party may file a criminal suit directly.

The autonomy of the press has long been recognised in Egypt's constitutions, and freedom of the press is given special importance in the Egyptian constitutions (Arab Organization for Human Rights, 2012). Article 15 of the 1923 constitution provides that *'the Press is free, within the limits of the law, and it is not legitimate to warn, suspend, or ban any newspaper by an administrative order unless this is necessary for protecting the social order.'*

Article 48 of the 2012 constitution states that:

[F]reedom of the press, printing and publication and all mass media is guaranteed. They shall freely and independently perform their tasks to serve the community, express the different attitudes of public opinion and participate in forming and directing it within the scope of the basic constituents of the state, community, and protection of public rights and freedoms and respect of private life of citizens and meeting the requirements of the national security. They cannot be suspended, closed or confiscated except through a court order. Censorship on topics published in the newspapers is not allowed.

“ Egypt's constitution 2012
Article 48

Article 48 of the 2012 constitution added a caveat: *'As an exception, a limited censorship shall be imposed during war time and at time of public mobilization'*. Article 70 of the constitution guarantees freedom of the press, printing and publication, paper, audio, visual and electronic publication. It also allows for the right of ownership and publication of newspapers and establishing visual media channels by notification.

Of all the constitutions, the 2014 constitution has the greatest focus on the freedom of the press. Fifteen articles in the constitution – out of a total of 247 articles – address press and media issues, and freedom of opinion and expression (AFTE, 2018).

Freedom of opinion is linked to rights such as the right to criticism, the freedom of the press, printing and publishing, the freedom of scientific research and literary, artistic and cultural creativity, the right of assembly for consultation and the exchange of views, and the right to address the public authorities (Arab Organization for Human Rights, 2015). Freedom of opinion has been guaranteed in the constitution since 1923, and has often been linked to freedom of expression. Article 48 of the 2014 constitution provides that *'freedom of opinion and expression is guaranteed. Each person has the right to express his opinion verbally, in writing or through photography or any means of expression and publication.'*

Following the revolution on 30 June, the 2012 constitution was suspended, and a constitutional declaration (2014) was issued. Although this declaration comprised only 33 articles, it did not ignore the right of opinion and expression. Article 7 of the declaration stated that *'the right of opinion and expression is guaranteed and each person may express his opinion verbally, in writing, or through photography or any other means of expression according to the law.'* Article 8 of the declaration also aimed to protect the freedom of the press.

The 2014 constitution appears to be the most developed with regard to artistic freedom. Article 67 of the constitution – on the freedom of creativity – represents a remarkable development in relation to the protection of the freedom of creativity, if we consider the history of Egyptian constitutions. Two paragraphs were added that prohibit the filing of lawsuits to stop or confiscate works of art and prohibit lawsuits against their creators, except by means of public prosecution. ***'They also stated that it is impermissible to impose a deprivation of freedom penalty for crimes committed because of the publicity of the artistic, literary or intellectual product. The only exception to that is for crimes related to incitement to violence or discrimination'*** (AFTE 2018).

THE FOLLOWING ARTICLES IN THE 2014 CONSTITUTION ARE RELATED TO FREEDOM OF EXPRESSION:

65 Freedom of thought and opinion is guaranteed.

Every person shall have the right to express his/her opinion verbally, in writing, through imagery, or by any other means of expression and publication.

66 Freedom of scientific research is guaranteed.

The State is committed to sponsor researchers and inventors and to provide protection for and endeavor to apply their innovations.

67 Freedom of artistic and literary creativity is guaranteed.

The State shall encourage arts and literature, sponsor creative artists and writers and protect their productions, and provide the means necessary for achieving this end. No lawsuit may be initiated or filed to stop or confiscate any artistic, literary, or intellectual works, or against their creators except by the Public Prosecutor. No freedom restricting sanction may be inflicted for crimes committed because of the publicity of artistic, literary or intellectual product. As for crimes related to the incitement of violence, discrimination between citizens, or impingement of individual honor, the Law shall specify the penalties therefore. In such cases, the court may obligate the sentenced to pay punitive compensation to the victim of the crime, in addition to the original compensations due to the victim for the damages incurred. All the foregoing shall be in accordance with the Law.

69 The State shall protect all types of intellectual property rights in all fields

The State shall protect all types of intellectual property rights in all fields, and establish a specialized agency to uphold such rights and their legal protection as regulated by Law.

For the first time in the history of the Egyptian constitutions, it is expressly stated that no action may be taken to stop or confiscate artistic, literary or intellectual works, and that no action may be taken against its creators, except by means of a public prosecution. No penalty is imposed because of the public artistic, literary or intellectual product. The text of this article ends the actions of hardline supporters who, for more than a quarter of a century, had filled the courtrooms with their claims against creators.

‘Freedom of expression’ with its meaning being mentioned generally and absolutely to include opinion on various political, economic and social domains... And since the impact of the freedom of expression is not limited to he who adopts the opinion, but also to others, and to the society, the Constitution did not give free rein to this freedom, but permitted the legislator to organize it by setting the rules and regulations that show how freedom is exercised in order to ensure its protection in its legitimate framework without exceeding it to the extent of harming the others or the community. (AFTE, 2018)

c) Legislative protection

According to the constitution, legislative bodies must not restrict any freedoms: If the legislator, while enacting laws on this constitutional guarantee (freedom), deviates from this

by restricting a freedom that was absolute in the constitution or by inhibiting a freedom under the guise of a constitutionally permissible limitation, the legislation is invalid because it violates the constitution.

TUNISIA

Tunisia had one of the oldest constitutions in the world – the so-called Carthage constitution, dating back almost 3,000 years. Tunisia gained independence from France in 1956, and the constitution of Tunisia was adopted and promulgated in 1959. Since then, the constitution has been amended five times. The constitution sets forth the manner of government (a three-branch presidential parliamentary system) and also guarantees certain rights to the people.

Following the 2011 revolution, a new constitution had to be drafted. One of the major challenges of post-revolution Tunisia was to equip itself with a legal framework that guaranteed the freedom of opinion and expression in line with international standards, in order to avoid past mistakes and to pave the way for a true democratic transition. The key to this transition was a thoroughly institutionalised state, and the key to the latter was the long and well-entrenched constitutional history of the country, despite decades of abuse by successive leaders.

The 2014 constitution enshrines freedom of religion and women's rights:

'The constitutional scholar Slim Loghmani said that despite some drawbacks, the constitution was a 'historic compromise between identity and modernity' that could serve as a model for other countries in the region seeking a balance between an Arab-Islamic heritage and contemporary ideas of human rights and good governance.' (Associated Press in Tunis, 2014)

Despite some blunders, the Tunisian Republic's constitutional text, the final draft of which was adopted on 26 January 2014,

'represents a remarkable and encouraging change that places Tunisia ahead of other countries in the Arab world in terms of democratic transition and the protection of fundamental rights, particularly with regards to the freedom of expression and opinion ... an open and participative process that lasted almost two years, a process that is, in many ways, unique in the Arab world.' (Benchelah, 2015)

"This constitution, without being perfect, is one of consensus."



BEN JAAFAR

Assembly speaker

'This constitution, without being perfect, is one of consensus', the assembly speaker Ben Jaafar said after the vote. *'We had today a new rendezvous with history to build a democracy founded on rights and equality.'* (Associated Press in Tunis, 2014)

The post-revolutionary constitutional process Unlike in Egypt, where in the past four years two constitutions have been quickly drafted by appointed committees with little public debate or input, in Tunisia the elected assembly of Islamists, leftists and liberals worked on a detailed roadmap for their political future. A first draft was done with the support of UNESCO.

The 2014 constitution marks a profound break from the 1959 constitution, which failed to prevent the authoritarian abuses of Ben Ali's regime. Indeed, the 1959 constitution provided that: 'Freedom of opinion, expression, press, publication, assembly, and association are guaranteed and implemented in the conditions provided for by the law.' There were no restrictions in the 1959 constitution against laws that threatened freedom of expression.

In general, Tunisia's 2014 constitution guarantees freedom of expression and enshrines the right to access information and communication networks.

'However, the constitution also lists circumstances in which restrictions on press freedom

would be justified, including to protect 'public morals'. Moreover, Article 6 attempts to reconcile Tunisia's secular and religious populations by identifying the state as the guardian of religion and belief, a role that could be used to justify press freedom violations in cases of alleged blasphemy and similar offenses.' (Freedom House, 2016)

The Freedom House report states that the Tunisian legal framework:

*'contains a mixture of new and prerevolution elements. Decrees 115 and 116, passed in 2011, enable journalists to access information and publish without prior authorization from the Interior Ministry. However, they include some restrictive provisions, such as a requirement that journalists hold academic degrees. In addition, several pre-2011 laws have not been struck down or updated to reflect the freedoms established in the constitution. **These older laws, and in particular the penal code, have allowed journalists to be prosecuted for defamation and other crimes.**'* (Freedom House, 2016)

However, military trials for civilians do occur: *'In January 2015, a military court reduced the 2014 sentence of prominent blogger Yassine Ayari from three years to one year in prison for his alleged defaming of the army in a Facebook post. In March, a military appeals court further reduced the sentence to six months. Also in March, well-known satirist Wassim Hrisi, as well as a television anchor and a producer, re-*

ceived six-month suspended prison sentences for allegedly defaming the president and violating several other articles of the penal code in connection with an impersonation Hrisi did of the president.' (Freedom House, 2016)

Journalists' access to state information has improved since 2011, but remains a challenge. In July 2015, the government withdrew a draft access to information bill that was due to be approved by parliament later that week; press freedom advocates had been supportive of the draft. **'Meanwhile, freelance journalists are unable to obtain official press cards, which prevents them from entering the parliament building without an invitation. Journalists who cannot obtain a press card also lack other legal protections afforded to their peers'** (Freedom House, 2016).

A 2013 decree created the Tunisian Technical Agency for Telecommunications (ATT), to *'provide technical support for judicial investigations on cybercrimes'*.

Article 127 of the 2014 constitution provides for the creation of an Audiovisual Communication Body, which is responsible for regulating audiovisual media. Article 127 also lays down how the body is to be appointed. The Audiovisual Communication Body is responsible for regulating and developing the audiovisual communication sector. The body ensures the guarantee of freedom of expression and



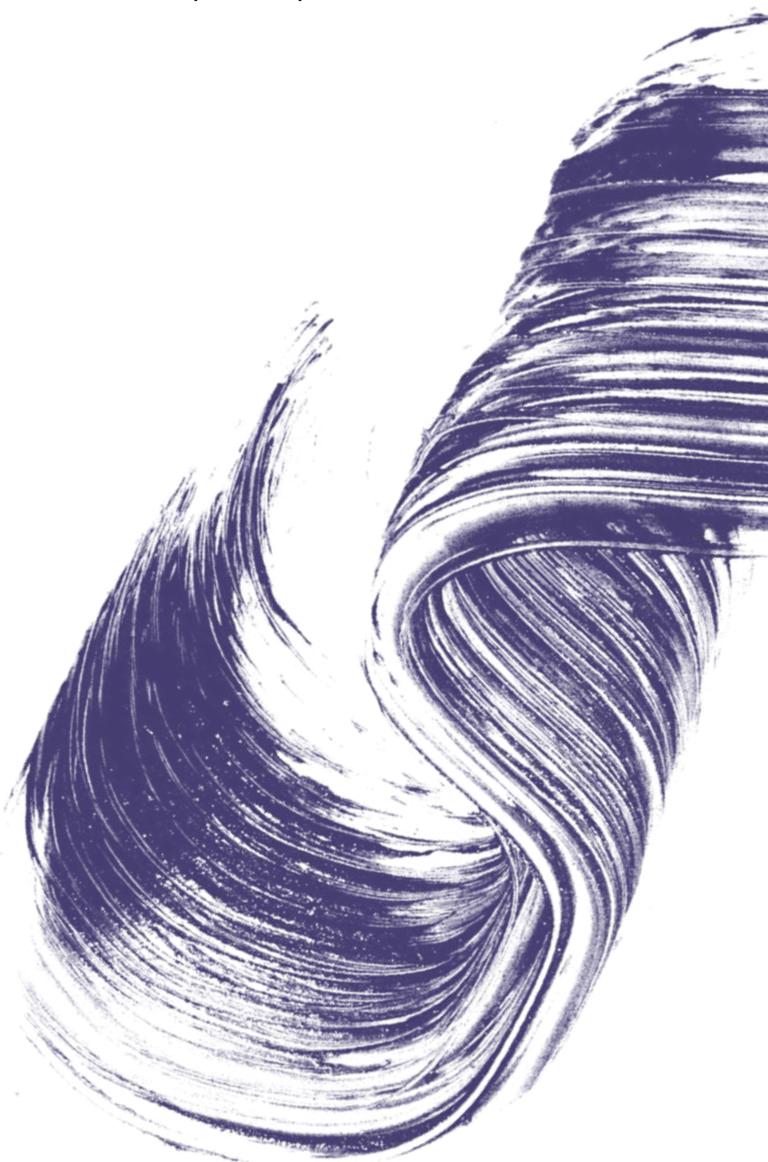
information, and the establishment of a pluralist and upstanding media sector. The body will benefit from regulatory power in its field of competency. It must be consulted on draft laws pertaining to its remit. The body will comprise nine independent, neutral, competent and upstanding members, whose mandate will last for a period of six years. One-third of the members will be replaced every two years.

The body's regulatory power, its area of competence – the audiovisual media sector – and the method of appointing its members by a qualified majority of the members of the Parliamentary Assembly should contribute to giving it the means to protect freedom of expression and information, and to establish free, independent, and pluralist media that complies with international standards.

Since 2011, press freedom groups and professional organisations like the National Union of Tunisian Journalists (SNJT) have been active in pushing back against legal restrictions, and providing assistance to journalists who are prosecuted or dismissed for their work.

Among all the articles on fundamental rights, Article 30 on freedom of expression was the only one to provide a specific restriction, which sent out a contradictory message. The members of the Constituent Assembly seemed to be indicating that freedom of expression was different from other liberties, and that a

specific barrier needed to be built to contain it. This provision makes it possible for the Supreme Court to invalidate laws regarding fundamental rights that would be destructive to freedom. The constitution specifies that prior censorship of the freedom of expression is strictly prohibited, which rules out the possibility of a law advocating for the systematic control of the press a priori.



CIVIL SOCIETY INITIATIVES

Around the world, many local, regional and international organisations defend freedom of artistic expression and work on its protection. They provide the following types of protection and support:

III.2.1. Research, reporting and monitoring

Transparently documenting and sharing data and narratives about artistic freedom is one way of attracting global attention to cases. The platforms also exist online which assists with accessibility and the sharing of relevant events, news, profiles of artists at risk, and guides on best practice. The amount of documentation and advocacy by organisations that monitor artistic freedom is continually growing. One example is the Association of Freedom of Thought and Expression (AFTE) in Egypt.

III.2.2. Refuge

Some organisations protect artists at risk by providing them with refuge and facilitating their safe relocation. This may include support with visas and relocation. The number of cities offering safe havens for artists has grown: 80 in 2017.

One example is the Roberto Cimetta Fund, which provides grants specifically intended to support artists in exile or in conflict zones. It also supports shelters or safe havens for artists who have been driven out of their home countries. The Fund pays the bills for shelters in Lebanon, Tunis, Istanbul and northern Kurdistan.

Culture Resource has designed an initiative for responding to cases of risk. The purpose is to provide support to artists who are directly endangered as a result of their creative output or other work. The initiative is called the Kon Ma3a El Fann (Be with Art) Program, and it was launched in 2016. Culture Resource has adopted a simple approach for this initiative: direct mechanisms that are quick, flexible and ensure that various forms of support are

immediately available to the artists. Many artists have been stripped of all their sources of income and support because they had to relocate geographically.

III.2.3. Funding and networking

Funding opportunities for artists to help them freely express themselves also exist. There are also emergency funds or grants for artists at risk due to their work, linked to refuge. When needed, international organisations can use their wide networks to connect different people to each other and to provide funding channels.

One example is the Arab Fund for Arts and Culture (AFAC), which is currently exploring ways to help Arab artists living abroad.

III.2.4. Capacity building and knowledge sharing

Training can cover areas such as artistic freedom, international treaties and support networks, policy design and implementation, and understanding legal frameworks. Knowledge sharing also happens in the form of public events and workshops, which encourage

dialogue and understanding about the subject. Both Culture Resource and AFAC are active in this area.

III.2.5. Consultations, strategies and case management

Legal experts can work with artists and art organisations providing advice about threats or controversies. The aim is to help them navigate the complex web of enforcing artistic freedom. Some lawyers may even appear in courts on behalf of threatened artists. Many of the existing organisations are developing this initiative. Legal advice is included directly or indirectly in the financial support provided to the artist at risk.

III.2.6. Policy making and advocacy

Policy making and advocacy can occur in many forms, for example, through working groups, media campaigns, joint statements and petitions. Policy making and advocacy are not limited to organisations and international legal instruments. One example is the drafting of the 2014 constitution in Tunisia. This was done with the support of UNESCO, in order

to assure that the constitution complied with international standards. UNESCO co-operated with the Centre for Law and Democracy to produce a comprehensive analysis of the matters relating to freedom of expression in the first constitutional draft and to propose a number of recommendations (Benchelah, 2015). Other international actors, including the Council of Europe's Venice Commission, for instance, put forward similar recommendations. This assistance was intended to benefit the public authorities, particularly the National Constituent Assembly (NCA) in charge of drafting the new constitution, but also the vibrant civil society, particularly those associations concerned with freedom of expression and freedom of the press.

III.3

REGIONAL AND INTERNATIONAL ORGANISATIONS

A range of key organisations provide the above services to the artists at risk in the world, including the Arab region.

- 1 **Pen International**
www.pen-international.org
- 2 **Artists at Risk Connection (ARC)**
www.artistsatriskconnection.org/stories
- 3 **Artistic Freedom Center**
www.artistic-freedomcenter.org
- 4 **IARA**
www.iara.live
- 5 **The Artists Safety Net**
www.artistsafety.net
- 6 **Artwatch Africa (Part of Arterial)**
www.arterialnetwork.org/artwatch
- 7 **Arts Rights Justice**
www.uni-hildesheim.de/arts-rights-justice
- 8 **Culture Resource**
www.mawred.org
- 9 **Arab Fund for Arts and Culture**
www.arabculturefund.org
- 10 **Mophradat**
www.mophradat.org

III.3.2 Human rights and/or freedom of expression organisations

- 1 **Arterial**
www.arterialnetwork.org
- 2 **Freemuse**
www.freemuse.org
- 3 **The Roberto Cimetta Fund**
www.cimettafund.org
- 4 **ICORN International Cities of Refuge Network**
www.icorn.org
- 5 **Index on Censorship**
www.indexoncensorship.org
- 6 **IFEX**
www.ifex.org
- 7 **Arab Organization for Human Rights**
www.aohr.net/en
- 8 **International Federation of Coalitions for Cultural Diversity (IFCCD)**
www.ficdc.org/en
- 9 **Article 19**
www.article19.org
- 10 **Creative Resistance Fund**
www.creativeresistancefund.org
- 11 **Arab Network for Human Rights Information**
www.anhri.net
- 12 **MENA Media Law Reform**
www.menamedialaw.org
- 13 **UNESCO**
www.unesco.org
- 14 **Amnesty International**
www.amnesty.org
- 15 **Human Rights Watch**
www.hrw.org

DOMESTIC ORGANISATIONS AND THEIR STRATEGIES

Many of the international and regional organisations listed above have offices or representatives in other countries or have partnerships with relevant local initiatives. Furthermore, there are local national organisations that support artists.

Local organisations support artistic freedom directly, including arts and culture organisations that conduct specialised research, provide reports on artistic freedom, and conduct monitoring, advocacy, and case management support.

TUNISIA

Organisations include the King Lazaar Foundation, Al Bawsala, the Vigilance Association for Democracy and Civil State, and Damj, the Tunisian Association for Justice and Equality. Many more are listed here: www.hrw.org/news/2018/07/24/tunisia-pact-equality-individual-freedom.

EGYPT

Despite the crackdown on civil society as a result of the recently drafted NGO law, some organisations and movements provide protection for artists. The Association for Freedom of Thought and Expression (AFTE) is an Egyptian organisation that documents violations of freedom of expression and defends victims in free expression cases. The organisation has three primary programmes: the Academic Programme, the Censorship Programme and the Right to Information Programme. These programmes support freedom of thought and expression, which is the main cornerstone of democracy and essential for the advancement of any society.

Other organisations are the Cairo Institute for Human Rights Studies (CIHRS) and the Egyptian Center for Economic and Social Rights. These organisations use a variety of strategies and instruments. The following are some examples:

III.4.1. Reporting

In early 2014, Freemuse submitted a Universal Periodic Review (UPR) on restrictions on artistic freedom – the first such report of its kind – to the Egyptian government, with recommendations for legislative and institutional reforms.

III.4.2. Joint statements

In 2016, after the crackdown on many cultural organisations, organisations co-operated to make the following statement:

'The undersigned organizations express condemnation of the repressive measures that have recently been taken against a number of Egyptian cultural institutions ... This recent campaign comes in line with the crackdown on artistic and cultural works ... By adopting this security campaign that aims at intimidating the independent civil and cultural work, the Egyptian government infringes a set of its international commitments abiding by which the state bodies should stop interfering in these institutions' activities in order to impose restrictions that disrupt the essence of freedom of cultural works and freedom of creativity.'

(Freemuse, 2015)

The undersigned organizations express **condemnation of the repressive measures** that have recently been taken against a number of Egyptian cultural institutions.

FREEMUSE

2015

III.4.3. Lobbying

Tunisian civil society is very aware of issues of freedom of expression, and has been extremely active in sensitising political decision-makers to the need for amendments to the draft constitution. *'The contributions made by the civil society, especially by eminent Tunisian constitutionalists, were crucial for the Commission's works'* (Benchelah, 2015).

'It was the mobilization of a civil society committed to defending and promoting human rights and fundamental freedoms – the feminist associations, the Tunisian Human Rights League (LTDH) and the Tunisian General Labour Union (UGTT), in particular – that, in the summer of 2013, overturned the power relations in favour of a transition finale more respectful of the democratic aspirations that the revolution against Ben Ali's regime had been.'
(Ferjani, 2018)

III.4.4. Pacts

In order to outline the fundamental rights that all Tunisians should enjoy, the Pact for Equality and Individual Freedoms was issued to confirm a commitment to a civilian and democratic Tunisian Republic, in the wake of the publication of the report of the presidentially appointed

Commission for Individual Freedoms and Equality. The Commission's proposals aimed to place human rights at the heart of the Tunisian justice system and to abolish laws that previous governments had long used as tools of repression. The right to privacy, freedom of conscience and thought, freedom of expression, and academic and artistic freedoms are also considered fundamental rights and represent the pillars of a democratic, creative and pluralist society.

III.4.5. Local press and social media

Egyptian activists are using social media to demand the release of five detained members of a satirical street performance group whose video clips mocked the president, Abdel Fatah al-Sisi. The activists posted pictures on Facebook of themselves holding mobile phones in front of their faces with the caption: 'Does a mobile phone camera rattle you?'

III.4.6. Artists and artworks

'Revolution is a lifestyle' is the ethos that is largely shared by interviewed musicians, one which resists any simple oppositional stance

toward the hegemonic culture, political elite or their parents' generation. During the Ennahda regime (2012–2014) urban, secular, educated young people felt disillusioned and sidelined from the political process, and the aim to continue the revolution is also visible in the lyrics and narratives of the interviewed young musicians.

'They call for breaking the culture of silence and the imposed authoritarian discourse of Tunisian cultural and political life. The lyrics of the song cited above celebrate the heterogeneity and freedom of artists and encourage everyone to practice art – whatever the art they espouse. It is a call to expand the cultural sphere in Tunisia and to struggle to widen the space for the civic engagement of Tunisian citizens.'

(Laine et al, 2017)

III.4.7. Unions and federations

The visual arts were represented and defended by the 'Association of Tunisian Visual Artists' (Union des Artistes Plasticiens Tunisiens or UAPT). Today, democracy has seen the birth of different associations. The Union of Visual Arts Professions (Syndicat des Métiers des Arts Plastiques or SMAP), created in 2009, notably seeks a structure to defend the interests of visual artists and to guarantee their independence:

'[The union's] ... office is comprised of young artists and [it] ... works to assure artists' professional status, to change the politics of the current management of production assistance and the system of buying artworks as took place at the Ministry of Culture ... Among these different structures today there exists a desire for communal action for the principles of defending and promoting the visual arts in Tunisia.'

(Triki, 2012)



ALGERIA: AN OVERVIEW

III.5.1. Historical context

French colonisation in Algeria transformed the country into socio-economic, intellectual and administrative areas. French control in Algeria ended in 1962, following an eight-year independence war that claimed the lives of at least one million people. Algeria became independent in 1962 following a referendum on self-determination. The new republic was founded under FLN (National Liberation Front) rule, starting the almost 30-year long single-party regime under the influence of the army as the guardian of the Republic.

While Algerian society benefited from socialist economic policies in the early years of independence, the political incapacity of the regime along with a stagnating economy in the 1980s led to a growing discontent with the Bendjedid regime. Following widespread riots in 1988, Bendjedid decided to make constitutional amendments as a survival strategy. As a result of the constitutional referendum in 1989, Algeria entered a tumultuous era that still marks the Algerian political scene today. The most important outcome of the new constitution was

the introduction of a multi-party system, which removed the FLN from its official state party role. In 1990, Algeria had its first multi-party local elections. The FIS (Islamist Front Islamique du Salut) won almost 55% of the votes. In the following year, Algeria had its first free legislative elections. The FIS's landslide victory, and the fact that the FLN won less than one-tenth of the number of FIS seats, alarmed the army, the guardian of the Algerian Republic. On 11 January 1992 the army executed a coup d'état in which it cancelled elections, banned the FIS, and forced Bendjedid to resign. This coup d'état ended the incomplete democratisation of Algeria, started an authoritarian reversion, and led to an eight-year-long civil war between the army and various Islamic forces.

The Algerian Civil War claimed around 100,000 lives and left the country in turmoil. Although the army returned the presidency to civilian rule and allowed multi-party elections, the authoritarian regime continued while the military still dominated politics. In 1999, Abdelaziz Bouteflika ran for the presidency with the backing of

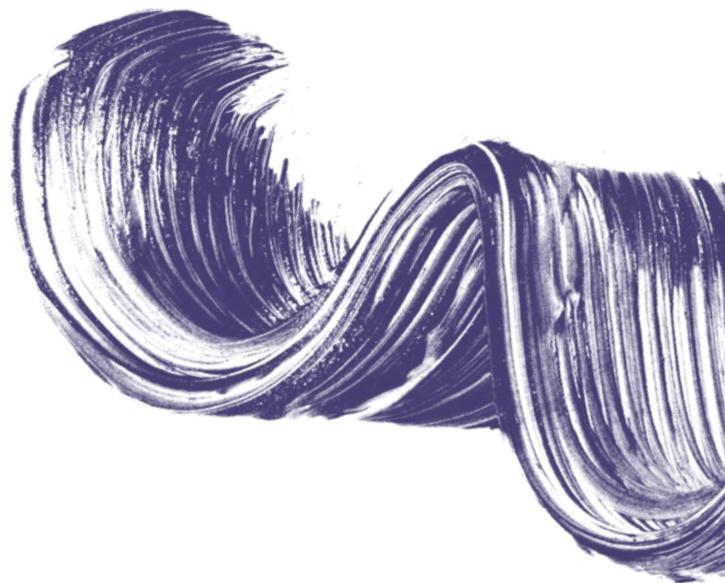
the military and won the elections, after all the other candidates withdrew due to allegations of systematic vote rigging. After becoming president, Bouteflika started a reconciliation process with the warring parties, pardoned some Islamist insurgents, and ended the civil war. Restoring order and unity along with military support in war-fatigued Algeria, Bouteflika won four consecutive presidential elections, the last being in 2014.

Opposition politicians, former establishment figures and demonstrators called for Bouteflika's removal on health grounds, but he nonetheless announced that he would seek a fifth term at the April 2019 election. Street protests after the announcement prompted President Bouteflika to postpone the April election and withdraw his candidacy (BBC, 2019).

III.5.2. Cultural context ¹

Having undergone 132 years of French colonisation supported by colonial cultural policy shaped at the highest state level, Algeria has worked since its independence in 1962 to find and develop the foundations of its cultural identity. The restructuring of the cultural sector was particularly important.

- **1962 to 1989:** The cultural sector was managed according to the socialist model or the Soviet model (the state exclusively defined the means and objectives of culture). The number of laws and regulations relating to the cultural sector was not very important. The texts published in this period were generally steeped in socialist cultural policy, characterised by the authorities' control of the structures and cultural organisations. These texts mainly concerned the rules and modes of organising public cultural institutions in the field of cinema.
- **1990 to 2000:** During the civil war, the state sought to suppress the cultural sector.
- **2000 to the present:** The state came back stronger than ever to establish a hegemonic cultural strategy. With a higher budget for the cultural ministry, many critical laws and regulations were passed.



III.5.3. Protections guaranteed by the Constitution, laws and syndicates

a) Constitutional protection ²

Since 1963, Algeria has had three constitutions. The 2011 revolution in neighboring Tunisia and signs of growing discontent among Algerians led President Bouteflika to promise a raft of reforms that included constitutional revisions. Consultations on recommended changes took place from 2011 to late 2015. The amendments included provisions that expanded the protection of certain rights, including the rights to freedom of expression and peaceful assembly:

The relevant articles of the constitution include:

- **Article 33:** The individual or associative defence of fundamental human rights and individual and collective liberties is guaranteed.
- **Article 41:** Freedom of expression, association and assembly are guaranteed to the citizen.
- **Article 41 (bis 2):** Freedom of the printed and audio-visual press and through the media networks shall be guaranteed and may not be restricted by any form of prior

control. This freedom may not be used to prejudice other citizens' dignity, rights and liberties. The unrestricted publication of information, ideas, pictures and opinions shall be guaranteed within the framework of the law, but must respect the nation's principles and religious, ethical and cultural values. Press offences may not be subject to liberty deprivation punishments.

b) The role of the Ministry of Culture ³

With the arrival of the Minister of Culture Khali-da Toumi in 2002, the culture budget increased, the government-sponsored artistic events began on a large-scale (for example, the Year of Algeria in France, the Algiers capital of Arab culture, the Pan-African Festival of Algiers, the Tlemcen capital of Islamic culture, the fiftieth anniversary of the independence of Algeria, the Constantine capital of Arab culture). This windfall has helped to launch several projects in the sector (the creation of new agencies, the organisation of festivals, etc) and is supposed to provide a legal and structural framework.

548 'important' laws and regulations for the cultural sector were published between 2002 and 2012. This number may exceed 1200 texts in 2014, if we take into account other texts, including appointments, replacements and termination of personnel functions of the

Ministry of Culture and members of boards of cultural organisations, etc. Of the 548 texts counted in this decade, 297 are ministerial decrees, 119 are ministerial orders, 130 are decrees, one is a prescription, and one is a law.

The cultural sector in Algeria is mainly funded by the state. The private sector contributes only symbolically. A culture of sponsorship and patronage is absent.

From only US\$64 million in 2003, the budget for culture was increased to US\$314 million in 2014. This dramatic change is due to the financial windfall of oil and gas rents which the country benefited from in the early 2000s. The evolution of oil and gas rents generally follows the growth trend of the budget of the Ministry of Culture: the more budget, the greater the number of laws and regulations too. Furthermore, the implementation of the texts has been effective and real in the managing and financing of public institutions, but also in restricting independent initiatives, which strengthened the hegemonic strategy of the Ministry of Culture.

A new Minister of Culture Ms Nadia Labidi was appointed in May 2014. She inherited a cultural sector that is at a crossroads today. The sector is dominated by the state and can no longer meet the needs of local people because it is too tightly controlled, thus not allowing citizens to participate in creating, dis-

seminating, accessing and distributing their own cultural expressions. The new Minister of Culture seems to have recognised this reality. A few days after taking office, she called for *'the involvement of civil society and the largest number of local artists, without exception in the development of cultural programs.'* She also felt that it was *'entirely possible to open the theatre to the private sector.'* Again, this discourse explicitly recognises for the first time the positive potential role of civil society and the private sector in the development of the cultural sector.

The annual Miriam Makeba Award for Artistic Creativity was established to reward African artists and creators for their outstanding works. This includes the creators of musical, cinematographic and literary works. The award was announced on the sidelines of the forum of African creators on 14 September 2017 by Mr Azzedine Mihoubi, the Minister of Culture in Algeria. ⁴

c) Other legal protection

- Fundamental freedoms and rights are not protected under organic laws, which take precedence over standard legislation and require a higher (two-thirds) majority to amend (Carnegie, undated).
- In Algeria, intellectual property is protected,

both by preventing counterfeiting and by respecting copyright and related rights (literary and artistic property, industrial property rights). Intellectual property law covers individuals or entities established in Algeria or abroad that are part of multilateral treaties or agreements in which Algeria is included. Copyright Law no. 03-05 of 2003 includes 164 articles that protect artistic works. ⁵

These articles include:

- Article 1 provides that this Law introduces copyright and neighbouring rights, protects literary or artistic works, and provides penalties for the infringement of such rights.
- Article 2 provides that this Law guarantees the protection of the rights of the authors of literary and artistic works, performers and musicians, producers of audio or audio and video recordings, and institutions of audio or audio and video radio broadcasting.

■ **Algeria has ratified the following conventions:**

- International Covenant on Civil and Political Rights (CCPR) on 12 September 1989
- International Covenant on Economic, Social and Cultural Rights (CESCR) on 12 September 1989

- Arab Charter on Human Rights
- African Charter on Human and Peoples' Rights

III.5.4. Additional information about Algeria

- In terms of the Universal Declaration of the Rights of Peoples (4 July 1976) ⁶, the Permanent Peoples' Tribunal (Tribunal permanent des peuples or TPP) was called upon by the Justice Commission for Algeria (Comité Justice pour l'Algérie), supported by several NGOs (Algerian, French and international) that defend human rights, to rule on serious human rights violations perpetrated against the Algerian people by State security forces and their auxiliaries, as well as by armed forces and groups claiming to be fighting in the name of Islam.
- Some artists have said that they fear a repeat of the situation in 1990s Algeria, where radical militant Islamists killed artists and journalists during the height of its '*black years*' on the grounds that art is forbidden in Islam (Amara, 2012).
- While public debate and criticism of the government were widespread, journalists and activists believed they were limited in

their ability to criticise the government publicly on topics that crossed unwritten '*red lines*'. Authorities arrested and detained citizens for expressing views that were deemed damaging to state officials and institutions, and citizens practised self-restraint in expressing public criticism. The law criminalising speech about security force conduct during the internal conflict of the 1990s remained in place, although the government said there had never been an arrest or prosecution under the law. A separate law provides for up to three years'

imprisonment for publications that '*may harm the national interest*' or up to one year's imprisonment for defaming or insulting the president, parliament, army, or state institutions. Government officials monitor political meetings (US Department of State, 2018).

- A 2001 amendment to the information code criminalises writing, speech and cartoons that insult or offend the president, the parliament, the judiciary, or the armed forces (Freedom House, 2015).

CHALLENGES TO FREEDOM OF EXPRESSION & BARRIERS IN PRACTICE

The consequences of the censorship and the repression of the artistic freedom are multiple and on different levels. And the same time the effects of censorship can be easily identified in cases where artists are imprisoned or killed, the social, cultural and economic consequences of restrictions to freedom of artistic expression are more difficult to measure. *'Restrictions to artistic freedom and access to artistic expressions generate important cultural, social and economic losses, deprive artists of their means ... and create an unsafe environment for all those engaged in the arts and their audiences'* (Reitov, 2015).

Not only artists are victims of restricting freedom of artistic expression. The whole cycle of artistic production is affected: artist, audience, critics and society. The professional network around the artistic product is affected as well.

'Obstacles to artistic freedoms impact on the enjoyment of rights by a wide range of people: the artists themselves, whether professionals or amateurs, as well as all those participating in the creation, production, distribution and dissemination of artwork. They include authors, musicians and composers, dancers and other performers. Audiences may also be affected. It

is important to recognise the artistic freedoms of all persons when they participate in cultural life or wish to engage in creative activities.' (Shaheed, 2015)

Challenges to freedom of expression are not only contained in legislation. Not only the repressive regimes are problematic. Challenges also come from society, from religious restrictions, and from the people themselves.

The challenges are also related to the implementation of the legislation. Having a legislative system, including a constitution and laws, that supports freedom of artistic expression, does not mean that in practice these laws will be implemented in favour of the artists and the artistic products. In most of the Arab countries, the use of laws and legislations in practice is a major problem.

Although constitutions can be changed, changing the laws may take a long time. In Egypt, for example, the articles that support freedom of artistic expression are not fully implemented, because many Egyptian laws still need to be updated to ensure the implementation of the new constitution.

The main challenges are the societies, the status of artists in these societies, the religious restrictions, the lack of a legal framework, and a lack of administrative structures that should support artists and defend their rights. For

example, in most of the Arab countries, the syndicates form part of the government, and they represent the regimes and work to implement their agendas.

IV.1

BARRIERS TO ARTISTIC FREEDOM: GLOBAL VIEW

The challenges of artistic freedom of expression are global, and occur in a political, social and economic context. The level of the challenges and the risks that artists face are different in the Arab region, for many reasons, but the main overlaps are politics, religion and social convictions. The dynamics in the complicated relationship between artists, political regimes and society determine the fluid spaces between artistic freedom, restrictions and the level of risks.

Freedom of artistic expression is actually an important topic at the international and regional levels, and has a place on the agendas of international political, cultural and human rights organisations.

The first ever UN report on freedom of artistic expression and creativity published by the UN Special Rapporteur in the field of culture last spring was a long-awaited achievement, raising many crucial questions, calling upon governments to take action and calling for violations to be recorded.

The documentation, lobbying and pressure from the international community forced many countries to initiate the creation of legal and administrative systems that support freedom of artistic expression. Thus freedom of artistic expression has started to form part of national legal systems.

On the one hand, there have been advances in terms of global artistic freedom: In terms of legislation, we saw an increase in the number of states – Canada, Togo, Mali and Germany, to name a few – that include the economic, social and cultural rights of artists in national law. We also noted that 22 states now cite artistic freedom as a right in their legislation; among those 22, however, some still curtail this right through threats, censorship and arrest. (IFEX, 2016)

On the other hand, there have been steps backwards in terms of global artistic freedom: The universal right to freedom of expression, including creative and artistic expression, was reaffirmed in a joint statement by 57 states at the Human Rights Council Session in 2015,

although less than a third of all UN member states were supportive.

Ole Reitov, in his report to UNESCO, *Five Challenges to Freedom of Expression*, specifies five challenges:

IV.1.1. Violations of international human rights conventions

International human rights conventions are important tools for pressure on signatory countries. All UN member states should respect international human rights conventions and the rule of law. Respecting the international conventions is challenging, especially in the Arab region, for example, because most of the countries who signed the conventions did not adapt their national laws to be compatible with their commitments in the conventions. This is a major reason why these conventions are violated by the states at the national level.

'Governments, as the key artistic freedom violators, obstruct oppositional and critical voices through a variety of methods, including implementing vague laws that allow for wide interpretation, declaring states of emergencies that suspend laws, or by simply ignoring their obligation to international human rights treaties they are party to. International institutions

and accountability mechanisms are yet to be effective in holding governments to account to their obligations, including abolishing and amending violating laws, which is essential to better protect artists and their expression.' (Freemuse, 2018)

The lack of accountability is a major factor. International organisations have monitoring systems in place to evaluate the commitment of the countries who are signatories to the treaties, but they do not have any system of accountability. And, as was mentioned before, the national laws are not amended to ensure that they comply with the international conventions signed by countries.

'Governments frequently contravene international human rights standards, regardless of whether they have ratified and signed particular treaties, as their national legislation allows them the space to violate artists' and audiences' rights as they see fit' (Freemuse, 2018). *'A key issue is very patchy reporting generally: States are not required to report specifically on artistic freedom, so one has to review a lot of other material from rights and cultural organisations'* (IFEX, 2016).

Furthermore, in the ever-growing culture of impunity in matters of freedom of artistic expression, authorities employ intimidation tactics in respect of artists and their families or bring criminal charges to silence their voices in a

way that does not alert observers and human rights activists.

However, states face very little censure for non-compliance. But, at the local level, there are many recommendations for international organisations to apply monitoring, evaluation and accountability systems that ensure the commitment of the relevant countries. *'Experts at the UN will review the situation. There will be some naming and shaming, there will be recommendations ... that's how the soft law works. You do not take the government to court'* (Saurus, 2018). Some recommendations want to link the commitment of countries with international grants and subventions.

Some regimes see artistic freedom as a political tool and believe that artists have political, external agendas. This is why some countries, especially in the Arab region, think that this is related to the country's national security and that a time of political turbulence is not an appropriate time to implement international treaties.

'There is also tricky terrain: It can be difficult to measure or confirm an infringement of artistic freedom when you move beyond the 'classic' type of persecution. A lot of indirect censorship is hard to detect: how can you prove that an artist did not get funding because of his politics? In many countries, if you are a controversial artist, you are certainly less likely to receive

funds from the government or have your work exhibited in a gallery.' (IFEX, 2016).

The other pretext of some regimes is that international conventions are compatible with first world countries, and that the political, security, economic and social particularities of third world countries is not taken into consideration in these conventions.

IV.1.2. Repression by non-state actors

Even if all UN member states did respect the right to artistic freedom stated in the international treaties and conventions, large parts of the world unfortunately are controlled and repressed by non-state actors such as Daesh/IS, Al-Qaeda and Boko Haram. *'The attitude of these actors towards artistic expression is one of total control, total condemnation and total repression of any expression that they dislike'* (Reitov, 2015).

Although government authorities continue to be the main violators of artistic freedom, the censorship of artistic expression is increasingly being conducted by other actors, political parties and groups, religious groups, criminal gangs, artistic organisations and communities, individuals, the artists themselves and the audience.

'However, a growing and troubling violator is the dominant religious authority, which in many contexts is also aligned with government structures. Religious authorities and groups often take the law into their own hands and distribute their own brand of justice to artists who they view as violating their doctrine. While governments and religious groups dominate the list of violators of artistic freedom, armed violent groups, cultural institutions and non-governmental organizations also follow their own repressive agendas.' (Freemuse, 2018)

In this 'poisoned circuit' politics plays its role and uses the different actors for its own interests. In this cycle, the regimes and the religious groups are major and powerful actors. Civil society and the independent artistic community try to resist, but the power and the laws are in the hand of the regimes and their supporters.

The market and commercial or financial power can also restrict financial benefits. Art is powerful, and influences people and can be linked to a huge financial effect.

'Corporate interests may also restrict artistic freedom. The underlying motives include the wish to silence criticism of corporate practices by artists or to stop artists from (ab-)using corporate brands, but corporations may also dominate markets. Some corporates may also be linked to political or religious interests.' (Reitov, 2015)

Self-censorship can also be a reason, as artists may fear losing audiences because of different points of view, whether political, social or religious. They may fear financial loss or fear confrontation with the regime, society or religious groups.

'Self-censorship is also an issue. Artists and arts producers and venues (festivals, galleries, cinemas, etc.) self-censor for a number of reasons, including fear of causing controversy or offence, fear of losing financial support, or a combination of these. Self-censorship may also stem from very real threats from religious groups of all faiths, surveillance by intelligence services, extremists, drug cartels and other criminal groups. Measuring or confirming the extent of self-censorship is almost impossible, and few people will admit to self-censoring.' (Reitov, 2015)

IV.1.3. Nationalism and religious orthodoxy

Ole Reitov has mentioned nationalism and religious orthodoxy as challenges as well. *'Nationalism and religious orthodoxy are spreading in many parts of the world. Controlling the minds and expressions of people is based on fear, and the tool of control is spreading more fear, leading to self-censorship, and to the stereotyping of "the other"'* (Reitov, 2015).

'Art as a tool to support the national objectives' is not necessarily a government slogan of repressive regimes. It is also a popular approach that was adopted for a long time by social and religious movements. In Egypt, for example, in the era of president Gamal Abdel Nasser, art was considered as the voice of the regime. Art was a national mission. Artists were 'soldiers' for the regime, since art was popular at this time. After the revolution of 1952, huge number of arts 'soldiers' worked according the instructions of the regime. The artistic creations of this era (music, cinema and theatre) were closely linked to the political context and were clearly propaganda for the regime. The artists on the other front (the opposition) were automatically rejected. This approach is still popular and has its defenders. *'Behind messages such as "protecting our culture and nation" and "protecting our moral values" lie the fear of diversity of expressions, opinions*

and creativity. It seems that the world has not learned anything from Hitler's "Entartete (degenerate) art" campaigns' (Reitov, 2015).

IV.1.4. Lack of solidarity

The lack of solidarity in cases of violations of artistic freedom, at the local, regional and international levels, represents an important challenge. As Ole Reitov mentions:

'Very few national artists' organisations, international umbrella organisations and members of the well-endowed culture industry address the violation of artistic freedom. The documentation of violations and advocacy for artistic freedom is mainly conducted by human rights and freedom of expression organisations, such as Freemuse.' (Reitov, 2015)

Solidarity has many aspects: the documentation of the incidents of violations, organisations that can work on lobbying and campaigning, the availability of information regarding the rights of artists and freedom of artistic expression and, before all this, artists' awareness and knowledge of their rights.

In the Arab region, there are few organisations that document violations at the local level. Most documentation is done by human rights

organisations. Local independent journalist organisations are very cautious when dealing with these violations. They cannot announce their solidarity as they will be risking their existence.

In some countries, where the regimes are repressive, solidarity becomes a crime. In most Arab countries, solidarity with an opinion that opposes the regime is a very risky act.

International solidarity is an important form of pressurising governments, but it needs information and documentation. In most Arab countries, international solidarity has a bad reputation and sometimes it harms the artist. For these regimes, international solidarity proves that the artist has a foreign agenda and means that he or she is contributing to the country's bad reputation. Many artists that have been arrested in Arab countries were accused of being spies and of giving false information about their countries to another country.

IV.1.5. Insufficient monitoring

Lack of monitoring is a very important challenge. If no information is available about violations, it is difficult to evaluate needs, to develop strategies for support, to take speedy action to save threatened artists, and to evalu-

ates the risk and the actions needed at the local, regional and international levels.

'In comparison to the numerous organisations documenting and defending freedom of expression for journalists and more conventional political activists, artists have few organisations to monitor violations worldwide, and to provide support to people at risk, and to lobby for the changes in laws which limit the freedom of expression and for the changes in policy which would make states take responsibility for the protection of artists and of artistic freedoms.' (Khan, 2014)

The documentation of violations needs a suitable climate that permits freedom of movement, the collection of data, networking and lobbying. In most countries where artistic freedom is repressed, the monitoring and documenting of violations is very hard work, because providing data is proof of a violation.

"Because of limited coverage and limited funding for artistic freedom, violations are underreported in many countries due to fear, self-censorship and repression. [...] This is a huge challenge."

OLE REITOV

2015

'The potential for change that art can bring is evidenced by the extraordinary means that are employed to crush it. Many incidents are never made public. International reports on violations of human rights tend to focus on media freedom, to the exclusion of other forms of expression.' (Khan, 2014)

The lack of the specialists in this field in most countries is also a challenge, as is lack of tools for documentation. There are few organisations that specialise in the field of artistic freedom and not only human rights. There is also a lack of funding for these kind of activities at the local and regional levels. Foreign grants have been restricted after the passing of new laws in Egypt, for example.

'Because of limited coverage and limited funding for artistic freedom, violations are underreported in many countries due to fear, self-censorship and repression. Obtaining funding to support documentation is almost impossible, with some exceptions, such as funding from the government of Sweden. Donors tend to support media and internet freedom, and there are few people dedicated to documenting violations of artistic freedom and advocating for it. This is a huge challenge.' (Reitov, 2015)

BARRIERS TO ARTISTIC FREEDOM: LOCAL VIEW (EGYPT AND TUNISIA)

IV.2.1. Legal and law enforcement barriers

Two separate but interlinked trends must be kept in mind when it comes to legal interpretation. Protections exist in the legal framework but are not enforced or practised, and the legal framework is often vague and contradictory, and often represses. This leads to the fact that law can sometimes be instrumental in repression.



EGYPT

After the revolution of 2011, Egypt took positive steps towards the creation of a legal framework for freedom of expression in general. The Association for Freedom of Thought and Expression (AFTE) describes the 2014 constitution as the '*Constitution of Good Intentions*'.

Although all Egyptian constitutions, starting with the 1923 constitution and up to the 2014

constitution, were supportive of and guaranteed the protection of freedom of opinion, the necessary administrative and legislative measures were not taken, and the provisions of the constitutions were not fully implemented. This did not provide a positive context for artistic freedom. The problem is not in the constitutional text then, '*but in the subsequent legal practices that contradicted it in the courts*' (AFTE, 2018).

Most of the guarantees in the Egyptian constitution are ignored by the legislator, the courts and the daily practices of law enforcement agencies. '*The constitution no longer has any legal binding value to the three authorities*' (AFTE, 2018).



TUNISIA

Unlike Egypt, civil society and the independent sector in Tunisia are very powerful, and have been organised for many years. Despite the challenges of the legal framework for artistic

freedom in Tunisia, civil society is playing an important role in advocacy, monitoring violations, and lobbying for a legal framework that is compatible with the provisions of the constitution that support freedom of expression in general and the artistic freedom in particular.

In the Tunisian case, the debates started early, and there were concerns with the bodies that drafted the constitution that is meant to uphold freedoms:

'The main part of the transition was run by a scholar of constitutional law. Members of the body were powerful individuals nominated on the basis of their standing as national figures (intellectuals, academics, human rights advocates, regional leaders, etc). Tunisia ran its widely acclaimed elections in 2011, and these elections resulted in the current constituent assembly and government. They also gave rise to a reversal of constitutional culture. Of the 217 members of the assembly, only one is an expert in constitutional law.' (Omri, 2013)

The assembly decided to start drafting the constitution from scratch, and this was understood by civil society as a political manoeuvre. *'This approach sacrificed historical memory and ignored existing expertise and civil society groups'* (Omri, 2013).

In Tunisia, following divisive and acrimonious debates and boycotts within and outside the

assembly, deputies finally realised that electoral legitimacy and partisan politics were not sufficient to produce a quality constitution.

Moreover, the majority of the youth, especially the revolutionary youth, viewed the civil society groups that had the most impact on the drafting of the constitution with suspicion. They tried to exclude the elements affiliated with the Ben Ali regime. The youth argued that younger organisations and those that were more involved at the community level were excluded from this process.

Under the pressure of the civil society and the opposition parties, *'Mr. Ben Jafaar, President of the assembly, gave public assurances that the new constitution would fully guarantee freedom of expression, and that nobody in the country would be above criticism.'*

Although the new constitution was ratified by the assembly on 26 January 2014, many debates were raised about the legal framework of the articles related to freedom of expression. Tunisian civil society organisations have expressed serious concerns about a recent trend in legislation, which risks the constitutional achievements and the guarantees of freedom of expression and access to information (Article 19 of the constitution).

Unlike Egypt, this legal framework is in being supported by the power of the civil society. It

is not clear that the regime intends to delay the legalisation of the constitution, as in the case of Egypt.

Many debates are taking place in Tunis about the new laws related to freedom of expression in general, artistic freedom and the media. The state has issued laws that contradict the Constitution. For example, organic law no 2015-26, dated 7 August 2015, introduced provisions that are likely to place major limitations on press freedom when journalists cover political events, namely government action with regard to fighting terrorism. The law lists a number of crimes and offences in very broad terms. This ambiguous terminology opens the door for highly subjective interpretation, paving the way for unacceptable restrictions on the media. Such offences and crimes (incitement to committing a terrorist crime; release, in bad faith, of fake news) carry harsh punishments, including jail sentences.

Many Tunisian civil society organisations, legal institutions, artistic and human rights organisations, lawyers and artists are working on the legalisation of the articles of the constitution. Many initiatives are happening to seek the full implementation of the constitution through the implementation of a strong legal system, but there are still many steps to be taken.

IV.2.2. Vagueness as a strategy

As mentioned in the Freemuse report 2018, the existence of ambiguous laws in many national contexts indicates that states are breaching the legal obligations imposed by international treaties. The Arab countries do not adopt clear and transparent policies and strategies that support freedom of artistic expression. It is not a priority for these states, especially after the political changes in 2011. Although the articles related to freedom of expression are clear in the constitutions of the two countries, a lot of work needs to be done to ensure that the states are adopting a strategy that applies to all government entities and organisations.



EGYPT

The constitution notes that many articles and rights are '*within limits of the law*'. These laws, of course, are subject to interpretation and are intentionally left open-ended to maximise the state's control. By using the gaps in the constitution, it is possible to impose restrictions on freedom of opinion and expression, for reasons that include national security, religion, morals, public order, religious values, ethics and national values.

TUNISIA

The situation in Tunisia is also challenging. It is hard to say that the regime is adopting a clear and strong strategy to guarantee freedom of artistic expression, but the current secularism in Tunisia, the power of the civil society and the powerful artistic scene have had a positive impact on advocacy and lobbying.

IV.2.3. The artist as 'terrorist' and 'traitor'; the state is above criticism

The status of the artist in most Arab countries is problematic. This is related to nationalism and the role of artists as defenders of their nations. The regimes have worked to emphasise this idea for many years.

The security and political situation in these countries after the political changes of 2011 gave the regimes the opportunity to categorise artists as terrorists if they opposed the regime and as traitors if they communicated their opinions with audiences or the international community. *'In countries engaged in armed conflicts, artistic expressions that question the legitimacy or the conduct of the war are frequently marginalised or suppressed. The accusation of "separatism" or "terrorism" or being*

"unpatriotic" can be levelled at artworks that criticise the government' (Shaheed, 2013).

EGYPT

Publicising an opinion against the state or the military is regarded as high treason, and leads to intimidation tactics by the executive. The president El Sisi stated: 'Do not permit these insults. If someone insults the army or the police this is something harmful to all Egyptians. This is no longer freedom of opinion.' These were his words to the media and state institutions, instructing the latter to challenge any insult to the army or the police, using the law, because such insults are 'high treason'.

The Supreme State Security Prosecution (SSSP), which oversees terrorism cases, and the military prosecution unit, have summoned artists, some of whom face terrorism-related charges. Using measures such as prosecution, surveillance and blocking to fight 'terrorism' has given a 'legal' character to authoritarian practices that are exercised by the state and its authorities in order to tighten control.

TUNISIA

Individual rights and freedoms may be legally infringed upon 'with the purpose of protecting the rights of others or where required by public order, national defense, public health or public

morals, while ensuring any restrictions are proportionate to the intended objective' (Article 49 of the constitution).

As mentioned above, the Tunisian constitution has put limits on individual rights and freedoms, stating that they should not affect national security, the public order, morals, etc.

There was confrontation between artists and the regime because of artistic works. But the image of artists is better in Tunisia than in Egypt. The terms 'terrorist' and 'traitor' have never been used by the regime. This can be linked to the powerful civil society and the artistic community, unlike in Egypt, where civil society has been repressed by laws since 2013.

IV.2.4. Absence of the rule of law: Extending control and monitoring powers

We will focus here on the case of Egypt, as it is a very useful example that shows the extent of a regime's control.

EGYPT

No regulations are in place, giving the administrative authority space to manoeuvre when applying the provisions of the law.

a) Censorship and monitoring authorities

The laws that guarantee freedom of expression and creativity are rarely applied due to the intransigence of the Office of the Public Prosecutor, which regards artistic creativity as a crime in and of itself and which prosecuted artists instead of upholding the laws.

The persecution of creative artists is not limited to the civil judiciary. 2018 saw an escalation in the number of cases referred to the military judiciary, which convicted defendants in two cases.

'The Cyber Crime Act that targets information technology crimes affects artists who share their content online, changing the nature of the online world, which is meant to provide greater safety and independence This law allows for the practice of website blocking, comprehensive and collective surveillance, and the authority to access and keep user data. Authorities can also access and monitor the activities of users, and block sites and links for reasons of national security. The law is criticised for being vague and because it violates the constitutional protection provided for in Article 57 of the Egyptian constitution.' (AFTE, 2018)

On 11 July 2018, Prime Minister Mostafa Madbouly issued Decree No. 1238 of 2018, which imposes severe restrictions on organising 'any cultural or artistic events... local or international, organised by government or non-government

entities.’ Article 2 of the Decree obliges all event organisers to obtain an advance ‘licence from the Ministry of Culture, following coordination with the relevant authorities in the State.’

The provisions of the media and press regulation law are inconsistent with the provisions of the Egyptian constitution that regulate media freedom, especially Articles 70 and 71.

‘The law enforces the authority of the council to censor content and issue licences for websites and newspapers. The council has loose and vague powers to impose penalties on press sites, private accounts and private websites, contrary to the provisions of the constitution, particularly the right to own and issue newspapers and to create audio and visual media outlets, and the prohibition of censorship on newspapers and Egyptian media, and the prohibition of their confiscation, suspension or closure.’ (AFTE, 2018)

The Law of Artistic Works, or Law 430, promulgated in 1955, contains twenty paragraphs, each capable of preventing the screening of any film.

The Central Authority for the Censorship of Works of Art (CACWA) and other censorship bodies were expanded. Eight new offices for CACWA were established in seven governorates. *‘CACWA is the decades-old censorship agency that reviews and censors cultural*

productions, especially television shows, films, and theatre productions. Before the decision, which was made following the pro-government media uproar against the play about Suleiman Khater, CACWA had offices only in Cairo and Alexandria’ (AFTE, 2018).

The new regulations were being used ‘as a means to control freedom of expression’. One of the event’s organisers said: *‘You have to submit what it is you’re going to hold a workshop on, what the discussion will be about – ultimately they are looking at forms of control. It’s a matter of being able to control the activities and programming that take place – music, performance, talks, visual art.’*

b) Judicial violations: Large number of violations linked to judiciary

During 2018, the judiciary was responsible for 17 violations, followed by government institutions represented by the Supreme Council of Media Regulation and the Control of Artistic Works (nine violations). The military judicial bodies and the security forces were accused of committing seven violations.

The Minister of Justice has the power to grant judicial police warrants to individuals, thus allowing an artist to exercise certain powers of judges or prosecutors against his or her fellow artists or their creative works.

The concept of expertise before the court is regulated by Law 96 of 1952, which determines who has the right to give their opinions before the courts in technical and scientific matters. *'However, the importance of the reports submitted by experts is determined by the judge alone, according to a ruling by the court of cassation. The ruling has determined that the judge – as a higher expert – can assess the value of the expert's opinion'* (AFTE, 2018).

TUNISIA

The Tunisian situation is complicated as well. NGOs like Amnesty International, Human Rights Watch, the Tunisian League for Human Rights and the Tunisian Organisation against Torture have regularly condemned violations perpetrated by security forces during the state of emergency, including acts of torture and arbitrary arrests, which are a threat to the democratic transition process in Tunisia. *'Abuses perpetrated in the name of security often go unpunished, according to these organisations. This has created a climate of impunity. Security forces regard themselves as above the law and do not fear prosecution'* (Letaief, 2018).

Journalists are still prosecuted in accordance with the military justice code, the criminal code and other laws, instead of in terms of the Decree Law 2011-115 on the freedom of the press, printing and publishing.

*'In June 2015, the government charged Nouredine Mbarki, editor of the private news website **Akher Khabar Online**, with "colluding with terrorists and facilitating their escape" under the 2003 antiterrorism law. Mbarki had refused to disclose the source of a photo his website had published of the gunman responsible for killing 38 people at a popular tourist resort that month. He had not had a court hearing by year's end. In December, investigative journalist Walid Mejrj received a summons from the anticrime division of the national gendarmerie in connection with an article he had written in 2013 that described security practices at the Tunis airport. Press advocates described the summons as an attempt to discourage investigative journalism.'* (Freedom House, 2018)

'The continual use of the criminal code for defamation-related activities within the media and the right to legally sue writers, journalists, bloggers and artists poses a growing threat to freedom of expression in Tunisia' (IFEX, 2016).

In recent months, however, there have been significant attempts by the government, in the form of draft laws, *'to roll back on key legislation in the areas of media regulation, the excessive use of the criminal code in claims of defamation, and lack of progress on the regulation and protection of personal data'* (Article 19.org, 2018).

The most widely used legislation is No 92-52, established 23 years ago.

*'Once again, lawyers are claiming it is a legal arsenal used **to lock up dissident artists on bogus drugs charges**. Observers insist certain corrupt habits continue to thrive under the law since richer youth who are arrested for possession of any drugs are released before their cases come to court, as long as the police come to an understanding with their parents. The director of Human Rights Watch in Tunisia, Amna Guellali, claims the law is 'une machine à broyer la jeunesse – a machine to grind down Tunisia's youth – and is used repeatedly against artists from the country's poorer popular quarters.'* (Freemuse, 2015)

Police unions, created in the first post-revolution weeks, have become increasingly powerful in Tunisia as well.

IV.2.5. Syndicates



EGYPT

Again, Egypt is an excellent example of the situation of artistic syndicates that present themselves as a part of the government. In Egypt, arts syndicates continue to be used as instruments of censorship and to police the arts, despite repeated calls to the Egyptian authorities by free expression advocates to abolish prior censorship and to allow artists to organise freely.

'According to the UPR, the artistic professional syndicates play a key role in limiting artistic expression in cinema, theatre, television and music, thus breaching labour agreements and the international guarantees of freedom of association and assembly signed by Egypt. Judicial 'police status' has been granted to Egypt's artistic syndicates, and, in particular, the music syndicate, which has taken on a 'watchdog' role. The music syndicate uses policing methods to force members to comply with its strict regulations, and ostracises some musicians and performers from the cultural scene altogether.' (Freemuse, 2018)

The Egyptian constitution guarantees the formation of independent syndicates but, in reality, independent syndicates cannot be formed.

Until 2011, the artistic syndicates featured in the official organogram of the Egyptian ministry of culture, which clearly explains the relationship of the syndicates with the regime, which is not in the interests of the artists.

TUNISIA

In Tunisia, the relationship between artistic syndicates and the regime is similar. The syndicates apply the regime's strategy regarding arts and artists, as most artists can confirm. The Tunisian Musicians Syndicate has banned the Tunisian singer Naglaa from working in the country because *'she promoted vice and immorality in her latest video'*, reported news site Al Bawaba on 31 March 2016.

'The syndicate has also stated that legal action would be taken against anyone who will collaborate with the artist. The actions taken by the Tunisian syndicate mirror those of Egypt's controversial Musicians Syndicate, led by Hani Shaker, which in January 2016 suspended six singers from performing due to "sexually suggestive" and "racy" behaviour on stage.'
(Freemuse, 2018)

A large number of artistic syndicates exist in Tunisia. The establishment of syndicates is guaranteed by law. The role of these syndicates is a subject of debate between artists and artistic organisations, especially after January 2011.

In Tunisia, the artistic syndicates are many and varied: *"Some of them do not belong under the working organization and others have nothing to do with syndical work ... they didn't succeed to change any laws and failed to activate any procedure in favor of artists, but did not provide anything", says Ezzeddine El Bagy (Tunisian Musician)'* (Najwa Al Hidary, 2016)

The syndicates of Professional Artists, the Syndicate of Musicians, the Syndicate of Dramatic Arts, and the Syndicate for Cinema and Audiovisual Technicians are some of the syndicates that exist in Tunisia. Some of them was created after 14 January 2011. These syndicates have the legal status but *'don't have the technicalities, knowledge and skills needed for the syndical work, according to El Bagy'* (Najwa Al Hidary, 2016).

Some syndicates have been accused of corruption. The musical syndicates have accepted the membership of 1,400 new members in two years (2015 to 2016). The selection criteria were not transparent but the syndicate income from these memberships was 28,000 dinars.

In the Tunisian case it is clear that civil society, the independent artistic sector and the artists play a more active and powerful role in defending the right of artistic freedom than do the artistic syndicates, who still focus on the regime's agenda and their own interests.

IV.2.6. Parliament



EGYPT

The Egyptian parliament is a part of the regime and one of its tools of repression. It has adapted existing laws to violate the rights of citizens. Legislative developments that have taken place over the past few years have often contradicted the constitutional texts.

'The legislator has adopted a philosophy that seeks to escape the clarity of the legislative texts, leaving huge gaps for executive regulations that amount to legal organisation rather than clarification of how the law should be implemented. This constitutes a clear violation of the specific function of each authority, where the executive has been a partner in the process of legislation. This philosophy means that legislation is invariably very vague and open to manipulation.' (AFTE, 2018)

There were long debates in parliament regarding the laws related to freedom of expression. The Egyptian parliament highlighted the necessity of laws that protect 'national security', 'national identity', public figures and Egyptian 'symbols' (the iconic-historical Egyptian persons). Parliament has also approved the formation of many censorship entities and committees (on drama, the press and festivals).



TUNISIA

In Tunisia, the authorities, led by the parliament, made progress in harmonising legislation with the constitution. In 2016, parliament revised the Code of Criminal Procedure.

In 2018 Tunisia halted the reforming of repressive laws and the establishing of key institutions to protect human rights. Parliament played an important role in this. Although freedom of expression was generally respected, with independent media able to operate freely:

'Tunisian authorities continued to prosecute speech considered offensive to 'public morals' or 'public decency'. The state of emergency, which was declared in November 2015 following a deadly attack on the presidential guard, was last extended in October 2018 for a period of one month. Authorities used the state of emergency to impose house arrest on hundreds of people accused of threatening state security.' (hrw.org, 2019)

Some observers think that the actual Tunisian parliament is controversial, because it includes 'Nahda' members, but positive steps were taken towards legislative reform.

IV.2.7. The state as guardians of public 'morality', 'decency' and religion

In most Arab countries, the state has the right to protect its history, its image, public figures, symbols and the people.

'The Special Rapporteur notes that the expression of political dissent and participation in public debate, including in the form of art, is protected by Article 19 of the ICCPR. Public figures, including those exercising the highest political authority, are legitimately subjected to criticism and political opposition. Therefore, laws on matters such as lèse majesté, desacato, disrespect for authority, disrespect for flags and symbols, defamation of the head of state, and the protection of the honour of public officials, do raise concern. States should not prohibit criticism of institutions such as the army or the administration' (Shaheed, 2013).

EGYPT

While the constitution does guarantee freedom of artistic expression, *'loopholes remain in Egypt's legislation, which allows for the imprisoning of artists and citizens on the charge of "contempt of religion"' (Freemuse, 2018).*

Article 98 of the Egyptian Penal Code states that *'exploiting religion in spreading either by words, in writing or in any other means, extreme ideas for the purpose of inciting strife, ridiculing or insulting the Abrahamic faiths or sects following those faiths or damaging national unity is punishable by prison sentences of between six months to five years.'*

In 1994, the State Council's Fatwa and Legislation Committee issued a decree stating that Al-Azhar is the sole author of the binding opinions for the Ministry of Culture in assessing the Islamic issue of licensing, or the refusal to license audiovisual works. In 2012 a final text amended the second article of the law of Al-Azhar to read *'Al-Azhar is the final reference in all matters related to Islam and its sciences'*. Hence, Al-Azhar has the right to assess whether an artistic work touches on Islamic issues or not. Its opinion is binding on all ministries of the state, including the Ministry of Culture and the sections falling under it.

In terms of Article 178 of the penal code concerning an offence to public morals, artists can be sentenced to two years in prison and to a fine of up to the equivalent of US\$2,000, which is extremely high for the average artist in Egypt.

TUNISIA

'How is the ban on violation of the sacred to be reconciled with freedom of expression and freedom of conscience? ... They exploit the more conservative, identity-related reflexes in order to oppose the abrogation of anti-constitutional, liberty-killing laws, ... the judiciary and the administration to prosecute and punish those who eat and drink in public during Ramadan, those who consume alcohol, those who take the liberty of producing artistic creations judged to be blasphemous' (Ferjani, 2018).

The state's role in protecting religion is problematic. One of the main weaknesses of the constitutional system lies in Article 6 of the constitution itself, which describes the state as 'the protector of religion and custodian' of sacred (values). Article 6 stipulates that 'the state protects religion, guarantees freedom of faith, conscience and creed. It ensures the neutrality of mosques and worship locations against instrumentation by (political) parties. *'The state commits to disseminate the values of moderation, tolerance, protect the sacred (values), ban, prevent and fight any apostasy accusations, incitement to hatred and violence'* (Letaief, 2018).

Freedom of expression can be hindered by vague articles in the constitution related to the

control of religion. A second key issue is the struggle for freedom, as other clauses are also open to interpretation.

Article 6 both guarantees freedom of conscience and protects the sanctity of religion, a notion that has been often used to censor public intellectuals, artistic productions, and critics of religious orthodoxy across the world. In other words, the same clause that guarantees freedom of conscience also censors freedom of expression when it comes to religion. Some are concerned that members of the soon-to-be-elected parliament may seek to pass laws related to the role of religion in public life because they could not include those clauses in the Constitution. (Yahya, 2014)

The state's role in protecting 'public morality' is problematic as well. Moreover, it is also alarming to note that 'public morality' is one of the interests to be protected (Article 49), although it in fact limits freedom. *'Admittedly, this restrictive notion is mentioned in Article 19 of the ICCPR, but in the Tunisian context, and in an environment where religious references prevail, with rising conservatism, it can be exploited in a way that limits freedom'* (Letaief, 2018).

IV.2.8. Non-state barriers

A wide range of actors may create obstacles to freedom of artistic expression and creativity.

'These include non-state actors in their own spheres of influence, such as mass media, broadcasting, telecommunications and production companies, educational institutions, armed extremists, organised crime, religious authorities, traditional leaders, corporations, distribution companies and retailers, sponsors, and civil society groups such as parents' associations' (Shaheed, 2013).

Two examples of non-state actors trying to impose restrictions on artistic freedom follow.

Egypt: Samir Sabry files three complaints against three artists/artworks in a single day

The occasion was a speech by the President in Matrouh governorate on 1 March 2018. On the same day lawyer Samir Sabry filed three urgent complaints with the public prosecutor, the high state security prosecution and the military prosecutor against a poetry collection by Galal El Beheiry titled 'The best women on earth', a song by artist Ramy Essam titled 'Balaha', and a play titled 'Soliman Khater', written and directed by Ahmed El Garhi. All these artists had allegedly insulted the President and the armed forces.

Tunisia: The case of the Printemps des Arts at the Palais Abdelliya in La Marsa (2012)

A number of Tunisian artists sought to forestall efforts to establish new forms of hegemony and conformism by defying existing, sometimes unspoken, rules about what can and cannot be revealed, and what may or may not be displayed for open and public discussion (Tripp, 2015).

The 2012 exhibition 'Printemps des Arts' at the Palais Abdelliya in La Marsa, a suburb of Tunis, marked a significant moment in the history of fine art in Tunisia. The exhibition provoked a national debate (Hendaoui, 2012). The curator wanted to inscribe the event within the movement of democratic emancipation that the country was experiencing, and hoped to give local artists wider international recognition. A group of three, including the bailiff, asked for two 'offensive' paintings to be removed. The gallerist refused to comply and alerted the artists and media to the threats.

Several meetings, declarations and motions of support took place. The debate surrounding freedom of expression and the limits placed on creativity gained momentum in the national media. Today, the Palais Abdellia has reopened, and the inquest into the exhibition is still in progress, while the bailiff who was present on the last day of the exhibition was

sentenced to a month's imprisonment for inciting hatred. The artists involved were deeply affected by their ordeal.

IV.2.9. Cultural barriers

Artists are not only faced with the limitations of their own governments but are increasingly sceptical about foreign cultural institutions in the region.

The Egyptian curator, Omar Kholeif, refers to a 'postcolonial paranoia', or a heightened consciousness in contemporary Middle Eastern and African artists as players in an international, predominantly Western, art world. Especially when artists in Egypt find themselves pigeon-holed to the events of the revolution, they question whether they are making work that is dictated by foreign institutions and, furthermore, how they can develop a practice free of institutional dependency that better reflects their own realities and interests. (Amin, 2016)

IV.2.10. Financial barriers

Lack of funding is a crucial problem. Most of time, artists are obliged to choose their artistic works based on the financial opportunities. Foreign funding usually has its own agenda. Local funding is almost non-existent and, where it does exist, it is linked to political and commercial purposes. 'Many stakeholders stress that the main challenges that artists encounter in their work relate to their precarious economic and social situation' (Shaheed, 2013). They have restricted access to state support and may also experience cuts in financial support.

IV.2.11. Self-censorship

In the current climate of fear and intimidation, many writers and artists are increasingly resorting to self-censorship, which is a major threat to the cultural space in Egypt and Tunisia today. Fearful of the consequences of freely expressing their ideas and creativity, many artists and writers have fallen silent. In such a climate, most artists are leaving the Arab region, causing a shortage in artistic production and a general sense of fear within the arts and culture community.

A WAY FORWARD

In this section, we will try to consolidate the needs of artists, taking into consideration the challenges that have been discussed.

V.1

LEGAL PROTECTION AND SAFETY

The artist, in principle, should not be wary of censorship, intimidation and imprisonment, in line with the recommendations of the Special Rapporteur on freedom of opinion and expression, who states that prior-censorship bodies 'should not exist in any country', and the view of the Committee on Economic, Social and Cultural Rights that states must 'abolish censorship of cultural activities in the arts and other forms of expression' (Shaheed, 2013).

The artist must be protected by the state, by a legal system and an administrative structure that work to support and protect artists and their freedom in producing free ideas and concepts. The state, the media and the public should not be sources of risk to artists. The artist must have a good knowledge of legal frameworks that both hinder and support their practice. Providing this knowledge should be the role of syndicates, research and advocacy organisations, the artists themselves and their administrative entities as well.

Mechanisms to ensure safety, support and refuge in times of emergency are also a necessity, especially in the countries where freedom of artistic expression is at risk. More collaboration is needed between the artistic world and the human rights sector.

ENGAGEMENT WITH SOCIETY AS A WHOLE

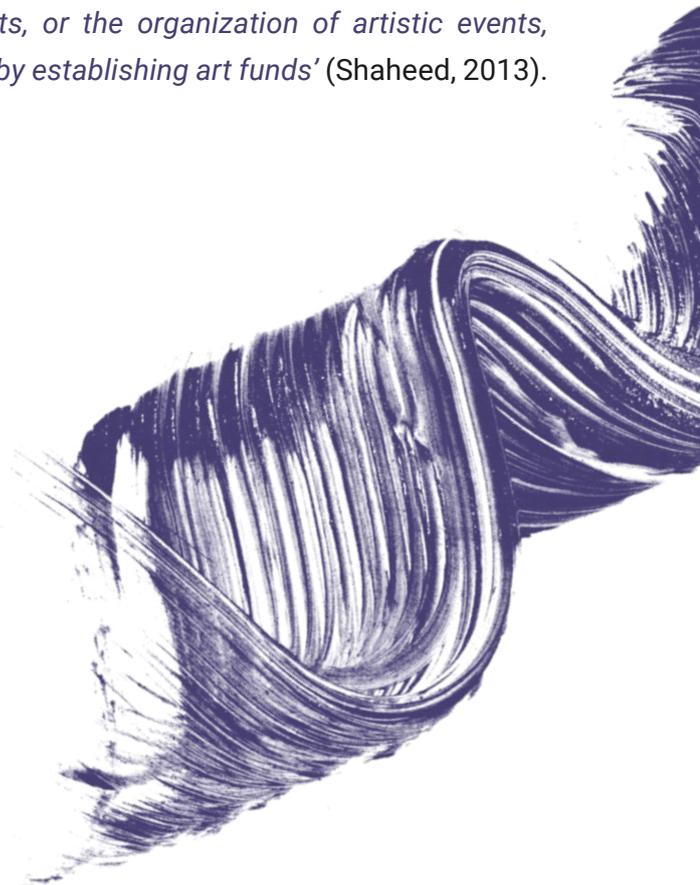
Artists should not be isolated from their community and society. They should be present as an integrated part of the society. Isolation is the main reason for misunderstanding and miscommunication. Artists' work should be in the public gaze.

The organic relationship between the artist and the public must be sustained and enhanced, and the artist should have a role and voice in civil and political life. Access to the means of disseminating art products, particularly on online platforms, is a crucial aspect of artistic freedom.

Artists must have the freedom to establish and be members of trade unions and professional organisations. Organisations representing artists should be enabled to participate in the formulation of cultural policies and employment policies. *'Artists should be able to participate fully, either individually or through their associations or trade unions, in the life of the communities in which they practise their art, and be associated in the formulation of local and national cultural policies'* (UNESCO, 1980).

FINANCIAL SUSTAINABILITY

Mechanisms to protect artists professionally are needed so that they do not feel driven to abandon their artistic professions, namely, mechanisms to protect them from the market and to enable them to continue work in their professions. Artists need *'[f]inancial support ... and opportunities for the fruits of artistic activity in order to increase the opportunities of paid work for artists, inter alia by means of subsidies to art institutions, commissions to individual artists, or the organization of artistic events, and by establishing art funds'* (Shaheed, 2013).



SUPPORT, LOBBYING AND ADVOCACY NETWORKS

Artists need strong networks at the local, regional and international levels to provide support, lobbying and advocacy. There are many networks that currently play different roles, as was mentioned previously. The work of these entities should be evaluated regularly and should be flexible in order to be able to respond to the needs of artists, based on the changes occurring in different countries at different levels, especially in the Arab region, where the political regimes are creating new strategies for repression.

We will now make some recommendations based on the needs stated above. Most of these recommendations were discussed and developed at Al Mawred Al Thaqafy's meeting 'Artists against all odds', which was held in Beirut in 2016 and which brought together the majority of organisations working with artists at risk at the local, regional and international levels.

V.4.1. Monitoring and evaluating the risks and threats facing Arab professionals in the arts and culture community today

Strict and closer monitoring of conditions and greater efforts to make information available are sorely needed. Establishing a rights observatory to monitor violations at all levels and building a regional observatory specialising in cultural rights will help to monitor the violations and to decide how we can respond to these. The observatory would not only monitor cases of violations against artists but would also identify the specific needs of artists, both within their own countries and abroad.

The performance of case studies with an eye to identifying mechanisms that can be adopted by other countries or groups in order to protect artists in danger or at risk could also be a way to document the types of violations.

V.4.2. Advocacy, campaigning and awareness raising

We need to raise awareness within judiciaries and justice ministries and mobilise them in favour of the role of culture and artists' rights.

We need to promote advocacy work for freedom and respect for human rights, and encourage funders to support systematic programmes involving in-depth discussions and advocacy activities that could influence decision-makers locally.

Creating a survey of all organisations involved in the field of cultural rights (locally, regionally and internationally) could provide a good means for documentation, and would be a tool for co-ordination and co-operation between these organisations. This is also highly recommended for strengthening local networking.

Specific advocacy around the role of the artist and people's understanding of artists is needed. Work for behavioural change in societies must be done, through awareness raising and sensitising activities (eg. meetings, lectures, and artist protection programmes) that seek to render art more available to the public and alter prevailing attitudes. The media could also be used to profile the real image of the artist in his or her domestic context.

Social networking should be used whenever necessary, to create partnerships and network with media experts in order to best use the mass media. We can profile personal, true-life stories and work with the mainstream media.

A legal internet platform featuring all available legal texts for each country could be launched. We should develop regular, transparent and relevant studies around artistic and cultural freedom, at the local level by local experts.

V.4.3. Community and coalition building, and building a culture of support for artistic freedom

The following strategies could be adopted:

- Developing a **mapping project** that would include a large number of both small and large organisations with programmes for artistic support, relocation assistance or artistic residences;
- Forging **coalitions within the media** or working to develop an alternative and innovative media establishment;
- Drafting and signing a **unified charter for the protection of artists** and the rights of artists in the Arab region (as well as the African region);

- Closer and more extensive **networking between organisations**, and ensuring that this includes building coalitions with national cultural institutions and bringing on board different sectors of society;
- Ensuring the **sustainability** of organisations that support artistic freedom;
- Creating a **'matchmaking' framework** to bring together artists from the Arab region and artists from other countries.

V.4.4. Capacity building and training

We need to work to promote the transfer of knowledge and expertise, and must urge artists to educate themselves on the law, to demand their rights and to become actively involved in some movements. Capacity building or training topics should include the legal framework for artistic freedom (both internationally and domestically). Artists, lawyers, independent workers in the arts in legal rights, cultural workers, and artists producing socially debatable arts or political art would be the ideal participants for training.

V.4.5. Case management and legal support

Strategies here should include the following:

- Creating a **core group of lawyers** who are willing to come to artists' assistance in times of emergency and to help refer them to specialised legal counsel;
- Creating a **guide on the culture-related laws in each country** (or a handbook for artists with synopses of certain provisions of the law that might protect them or that could pose a threat to them);
- Working to create **mechanisms to protect artists from the legal perspective**;
- Developing programmes to provide **legal support and protection for artists** in the region.

V.4.6. Financial support

It is highly recommended that a fund be established to support artists at risk, followed by work to create multiple funds in order to meet their needs. It is important to develop alliances with donors within the framework of addressing risks to artists, and to consider censorship and market censorship, in particular, as a basic threat to the work of artists.

V.4.7. Supporting artists in exile, artists seeking refuge and artists at risk

Possible strategies would include:

- Addressing **cases of artists at risk** both in their home countries and in exile;
- Developing **risk mitigation strategies** to help artists to avoid putting themselves at risk;
- Ensuring the **visibility of artists**, which might help to secure their safety;
- Formulating a comprehensive **definition of 'emergency conditions'** in the countries of the region;
- Creating a clear **mechanism for notificati-**

ons and urgent requests (for example, via a specific organisation, body or authority);

- Creating a **hotline, Skype account and free Twitter account**;
- Developing **agreements** in principle in advance **with embassies** to put into place rapid mechanisms **for evacuating artists** if needed;
- Putting in place **ready-to-use mechanisms for contacting human rights organisations**, the Red Cross and Red Crescent, and international institutions.

V.4.8. Artists in exile specifically

It is very important to enable artists in exile to resume their work and ensure suitable working conditions. Risks at the border must be pre-empted as much as possible, by furnishing essential information, creating a 'tips manual' could be very useful.

Another aim is to assimilate artists in exile in the artistic sectors in their host countries, but as ordinary artists, without labelling them 'artists at risk'. How can such integration be achieved? The problem is challenging, given the vast development in the global contemporary arts markets. It is important to draw atten-

tion to their knowledge and needs (eg. support in acquiring the language of the host country, support in building up new relationships, etc). Ways to help them remain in touch with their home countries should be developed. Coordination in advance with cultural organisations that have residency programmes (so as to use existing cultural space and areas) could be also an important action.

Ensuring the freedom of movement and the ability to obtain passports and to process visa applications in particular is crucial.

V.4.9. Strategies for individuals and groups working to strengthen artistic freedom

- Developing the **ability to respond rapidly** to current situations;
- Devising **long-term solutions and initiatives** rather than relying solely on emergency responses;
- Exploring **new mechanisms to provide support to artists** outside of the currently existing frameworks, in terms of geographical focus, targeted groups and the criteria used to categorise artists;
- **Linking the risks facing artists to the risks at the level of the civil rights battle**, due to political and social violence;
- **Studying the successful domestic experiences** in which artists and intellectuals played a distinct role in the battles for culture and linking these directly to social realities;
- **Freeing artistic discourse from political discourse** and broadening the discussion on change and the new international battle for freedoms;
- Promoting **cultural practices as an integral part of civil rights** and calling attention to citizens' right to access artistic and cultural output;
- Working to establish **cultural policies outside the bounds of government institutions and national borders**, based on alternative and innovative artistic experiences and approaches that promise to enhance the response to flight and displacement;
- Working to **reorganise the efficacy and governance of the independent sector** through partnerships between its various organisations, associations, institutions and individual stakeholders;
- Designing **model (experimental) projects for rights and freedoms**, which would be transportable and based on the work of previously existing organisations;

- **Ensuring the safety of the artist** (and his or her family), which is the highest priority.
- Understanding the **importance of a sense of security** (financial, physical and psychological)
- Helping artists to **remain in their local environments**;
- **Choosing the nature of the instrument of protection**, respecting it and ensuring its confidentiality;
- Ensuring **inclusivity**;
- Ensuring **different social and economic demographics** are supported equally;
- Creating a **network of artists and cultural workers** from the Arab world and Europe focused on creating a different type of discourse to the types of discourse that currently prevail, one that interacts with current events and forges a safety net for artists that can be called into action when needed;

Thinking of long-term responses at the political level was difficult, because of the fear that politicians would not respond favourably and due to the many hurdles that have to be overcome before we can turn to them in order to win the rights and demands of artists. However, governments should not be excluded. It is important to maintain pressure on them or work with them when possible.

V.4.10. Reform at state level

Specifically, in Egypt and Tunisia, reform is needed at the state level. This includes redrafting the right to freedom of artistic expression (and freedom in general for that matter) in the Constitutions to be less vague, contradictory and vulnerable to suppression. Laws that restrict artistic freedom of expression must be removed, independent bodies to support and regulate artists must be developed, and artistic syndicates and the role of the Ministry of Culture must be reformed.

'The Special Rapporteur calls upon states to review critically their legislation and practices imposing restrictions on the right to freedom of artistic expression and creativity, taking into consideration relevant international human rights law provisions and in cooperation with representatives of independent associations of artists and human rights organizations. The full array of States obligations to respect, protect and fulfil the right of every person to freedom of artistic expression and creativity should be considered for this exercise.' (Shaheed, 2013)

SPECIAL RAPPORTEUR

THE SPECIAL RAPPORTEUR RECOMMENDS THAT: (SHAHEED, 2013)

- A** Artists and all those engaged in artistic activities should only be subject to general laws that apply to all people. Such laws shall be formulated with sufficient precision and in accordance with international human rights standards. They shall be made easily accessible to the public, and implemented with transparency, consistency and in a non-discriminatory manner. Decisions on restrictions should clearly indicate motives and be subject to appeal before a court of law;
- B** States should abolish prior-censorship bodies or systems where they exist and use subsequent imposition of liability only when necessary under article 19(3) and 20 of ICCPR. Such liability should be imposed exclusively by a court of law. Prior censorship should be a highly exceptional measure, undertaken only to prevent the imminent threat of grave irreparable harm to human life or property. Avenues for the appeal before an independent entity of any decision to exercise prior restraint should be guaranteed;

- C** Classification bodies or procedures may be resorted to for the sole purpose of informing parents and regulating unsupervised access by children to particular content, and only in the areas of artistic creation where this is strictly necessary due in particular to easy access by children. States shall ensure that (a) classification bodies are independent; (b) their membership includes representatives of the arts field; (c) their terms of reference, rules of procedure and activities are made public; and (d) effective appeal mechanisms are established. Particular attention should be paid to ensuring that the regulation of access by children does not result in prohibiting or disproportionately restricting access for adults;
- D** Decision makers, including judges, when resorting to possible limitations to artistic freedoms, should take into consideration the nature of artistic creativity (as opposed to its value or merit), as well as the right of artists to dissent, to use political, religious and economic symbols as a counter-discourse to dominant powers, and to express their own belief and world vision. The use of the imaginary and fiction must be understood and respected as a crucial element of the freedom indispensable for creative activities;
- E** States should abide by their obligation to protect artists and all persons participating in artistic activities or dissemination of artistic expressions and creations from violence by third parties. States should de-escalate tensions when these arise, maintain the rule of law and protect artistic freedoms. The police should not charge artists and cultural institutions for the costs of their protection;
- F** States should address issues regarding the use of public space for artistic performances or displays. Regulation of public art may be acceptable where it conflicts with other public uses of the space, but such regulation should not discriminate arbitrarily against specific artists or content. Cultural events deserve the same level of protection as political protests. States, private institutions and donors are encouraged to find creative solutions so as to enable artists to display or perform in public space, through, for example, offering open spaces to artists. Where relevant, in particular for permanent visual artworks, States should facilitate dialogue and understanding with the local communities;

- G** States should review their visa issuance system and adjust it to the specific difficulties encountered by touring artists, their host organizations and tour organizers;
- H** States should ensure the participation of representatives of independent associations of artists in decision-making related to art, and refrain from nominating or appointing cultural administrators or directors of cultural institutions on the basis of their political, religious or corporate affiliation.

90. The Special Rapporteur recommends that States and other stakeholders assess and address more comprehensively restrictions to artistic freedoms imposed by corporations, as well as the impact on artistic freedoms of aggressive market strategies and situations of monopolies or quasi-monopolies in the area of media and culture. The support provided to cultural industries should be revisited from the perspective of the right to artistic freedom.

THE SPECIAL RAPPORTEUR RECOMMENDS IN PARTICULAR THAT STATES: (SHAHEED, 2013)

- A** Enact and/or implement anti-trust legislation and legislation against monopolies in the area of media and culture;
- B** Support securing the survival of independent bookstores, music stores and cinemas threatened by megastores, multiplexes and global distributors;
- C** Ensure that measures established to support private sponsorship of the arts do not negatively impact on artistic freedoms;
- D** Establish a clear national legal framework prohibiting coercive contracts under which creators sign away their rights to their creation;

- E** Support the establishment of non-profit collective societies mandated to collect and distribute income from artistic creations and performances, with a majority of artists sitting on their board;
- F** Encourage initiatives to support free legal representation for artists or other forms of legal aid;
- G** Assess and address comprehensively the impact of current intellectual property rights regimes, especially of copyrights and authors' rights, on artistic freedoms;
- H** Fully support artistic creativity and the establishment of cultural institutions accessible to all. Public agencies should function as a financial backup for programmes that do not attract corporate sponsors, based on the understanding that they cannot interfere with contents. Various systems of State support can be envisaged, including delegating decisions on funding to independent peer-review bodies, which should act in conformity with transparent terms of reference and rules of procedure. These bodies' decisions should be motivated and subject to appeal;
- I** Fully implement the UNESCO Recommendation Concerning the Status of the Artist;
- J** Develop and enhance arts education in schools and communities, instilling respect for, appreciation and understanding of artistic creativity, including evolving concepts of acceptability, awakening the ability to be artistically creative. Arts education should give students a historical perspective of the constant evolution of mentalities on what is acceptable and what is controversial.

CASE STUDIES

VI.1

THE ARTIST AS ‘TERRORIST’ AND ‘TRAITOR’; THE STATE IS ABOVE CRITICISM

EGYPT (AFTE, 2018)

(1) In May 2018, Egyptian authorities arrested a 33-year-old musician at Cairo International Airport. He was detained in connection with a satirical music video that appeared to poke fun at President El-Sisi. The video had gone viral ahead of the March 2018 presidential elections. According to his lawyer, the musician took no part in writing, producing or performing the song. The authorities had already detained the alleged author of

the lyrics in March 2018, along with four other individuals accused of involvement in the track production. The detainee and his co-defendants are facing trumped-up charges of ‘membership of a terrorist group’ and ‘insulting the president’. Now, in April 2019, they are still detained. Between 2011 and 2013, the musician played in a band with the singer of the song, but he ended his relationship with the band and the singer.

Wary of the intensified crackdown on the right to freedom of expression in Egypt in the last few years, he had avoided political commentary and focused on social issues in his music.

(2) In mid-February 2018, a group performed a play about a member of the Egyptian Central Security Forces, who was sentenced to hard labour by a military court for an incident that had occurred in the mid-1980s during his enlistment. The play was supposed to be performed for three days, but the last performance was cancelled after the escalation of some complaints by club members who considered it offensive to the armed forces. In a television interview with a well-known talk show host, the director of the play denied that his intention was to abuse the army, and confirmed that some sections of the play were cut and were used out of context to appear insulting. A few days after the intervention, the director was arrested, together with the playwright and four performers. They were accused of publishing false news and wearing military uniforms without permission. They were put on trial for a period of time before being referred to the court, which gave them a suspended sentence of two years' imprisonment.

(3) An Egyptian poet, lyricist, and activist has been in detention in Tora Prison in Cairo sin-

ce March 2018. Early in 2018 he allegedly collaborated with a musician on a satirical song that poked fun at President El Sisi. The poet was also planning to publish a book of poetry, which led to him being detained, tortured, and imprisoned unjustly for several months awaiting a court indictment. He was arrested five days after the release of the song, disappeared for a week, and exhibited signs of torture when he appeared before the High State Security Prosecution. He is currently being detained under the High State Security's charges of terrorist affiliation, dissemination of false news, abuse of social media networks, blasphemy, contempt of religion, and insulting the military. The verdict in his case was expected in May but was then rescheduled for June 2018, and again for July 2018. He was sentenced to three years in prison and a fine of 10,000 EGP (around US\$550).

ABSENCE OF THE RULE OF LAW: EXTENDING CONTROL AND MONITORING POWERS

JUDICIARY VIOLATIONS: LARGE NUMBER OF VIOLATIONS LINKED TO JUDICIARY



EGYPT

(4) In February 2016, an Egyptian author was sentenced to two years in prison for ‘violating public modesty’ with the content of his book. The editor of the weekly literary newspaper in which the novel was published was ordered to pay a fine of 10,000 Egyptian pounds. The novel was previously approved by the Egypt’s censorship authority for distribution in Egypt. However, after a chapter of the novel was published in a state-sponsored newspaper, in August 2014, an individual reader complained about the author and the editor, stating that the text caused him to have heart palpitations and his blood pressure to fall. The author and the editor were charged under Article 178 and Article 200 of the Egyptian Penal Code (related to violation of public morality). A guilty verdict was issued by the appeals court, with the maximum sentence of two years handed down to the author, and a maximum fine of 10,000 Egyptian pounds to the editor for publishing it.

The trial triggered outrage in literary circles. It also prompted a social media campaign in solidarity with the defendants, with an Arabic hashtag that translated into #Against The Trial Of Creativity. *‘Several prominent literary figures appeared in court as defence witnesses, arguing that punishing artists for their work would stifle artistic creativity and free expression. Fortunately, earlier this year a Cairo court acquitted both the novelist and the editor. Rights advocates hailed the ruling on 2 January 2016 as a major victory for free expression’* (AFTE 2017).

Many Egyptian laws still need to be updated to ensure the implementation of the new constitution. *‘Articles 178 and 200 of the Penal Code clearly undermine the rights guaranteed in the constitution and have led to a conviction which violates the right to freedom of expression. The ruling stated that the role of literature is to advocate*

virtues and good morals that are accepted by society. The judge regarded himself as a novelist who could dictate the literary methods that the author should use' (AFTE 2017).

'This leads to an analysis of the idea that the judiciary holds itself out to be a higher expert in evaluating creativity. The court may put the expert's opinion aside altogether, or consider the opinion of one expert not the other, or even use part of the expert's report and put aside the rest of the report without giving reasons. The paradox created by this approach to the opinions of specialists was clear in the contradiction between the acquittal of the novelist by the court of first instance and the maximum sentence of two years' imprisonment from the court of appeal' (Article 19.org Naji).

TUNISIA

- (5) In 2015, two cultural spaces in Tunis – Mass'Art and the Whatever Saloon (Café El Louh) – were closed down in quick succession in the spring of 2015. Mass'Art in Bab Lassa had been founded to provide a venue in which multidisciplinary artists and the youth of this poor quarter of Tunis could interact. Its director, Salah Hammouda, and the artists, journalists and local youths who staged a protest demonstration in front of the premises when it was ordered to close in March saw this as the latest in a series of moves by the authorities, who had always been uneasy about the venue's counter-culture nature. This impression was reinforced when the minister of culture, Latifa Lakhdar, claimed that she was powerless to intervene to save it from closure. As with the Whatever Saloon, which was closed abruptly in May by the ministry of the interior on the grounds of questionable legality, it had been a venue where rappers and alternative cultural expressions could perform. Just before its forced closure, the Whatever Saloon had hosted the festival of improvised song and music, El Chanti, the Tunisian version of the international 'La Voix est Libre' movement (Tripp, 2015).
- (6) Two people from the southeast city of Gabès were arrested and charged for the slogans they painted, which defended the poor and marginalised. The jury used legislation from the pre-revolutionary days. The judge also referred to Decree-Law No. 115 of 2011 dealing with the 'offence of false news which harms public order', a law that has increasingly come under fire from defenders of freedom of expression.

THE STATE AS GUARDIANS OF PUBLIC ‘MORALITY’, ‘DECENCY’ AND RELIGION



EGYPT

(7) Two belly-dancers were arrested for their scantily clad performances in videos. Lawyers filed complaints, saying they had offended public morality and harmed the image of Egyptian women. Another dancer received a six-month sentence in July for a video in which she wore skimpy clothing while making fun of male gropers. The male cameraman was also jailed for six months, while a second man who produced and appeared in the video was sentenced in absentia to a year in prison (BBC).



TUNISIA

(8) In April 2017, a Tunisian court sentenced British DJ Dax J to a year in jail for ‘public indecency’ and ‘offending public morality’ after he played a dance remix of the Muslim call to prayer (Freemuse Tunisia, 2017).

ENDNOTES

- 1— www.medculture.eu/country/report-structure/algeria.html
- 2— www.icnl.org/research/monitor/algeria.html
- 3— www.medculture.eu/country/report-structure/algeria.html
- 4— www.samro.org.za/news/articles/call-applications-miriam-makeba-award-artistic-creativity
- 5— www.cyrilla.org/api/documents/download?_id=5a5dd102e53878461f9c5d2f
- 6— www.algerie-tpp.org/tpp/en/declaration_algiers.htm

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