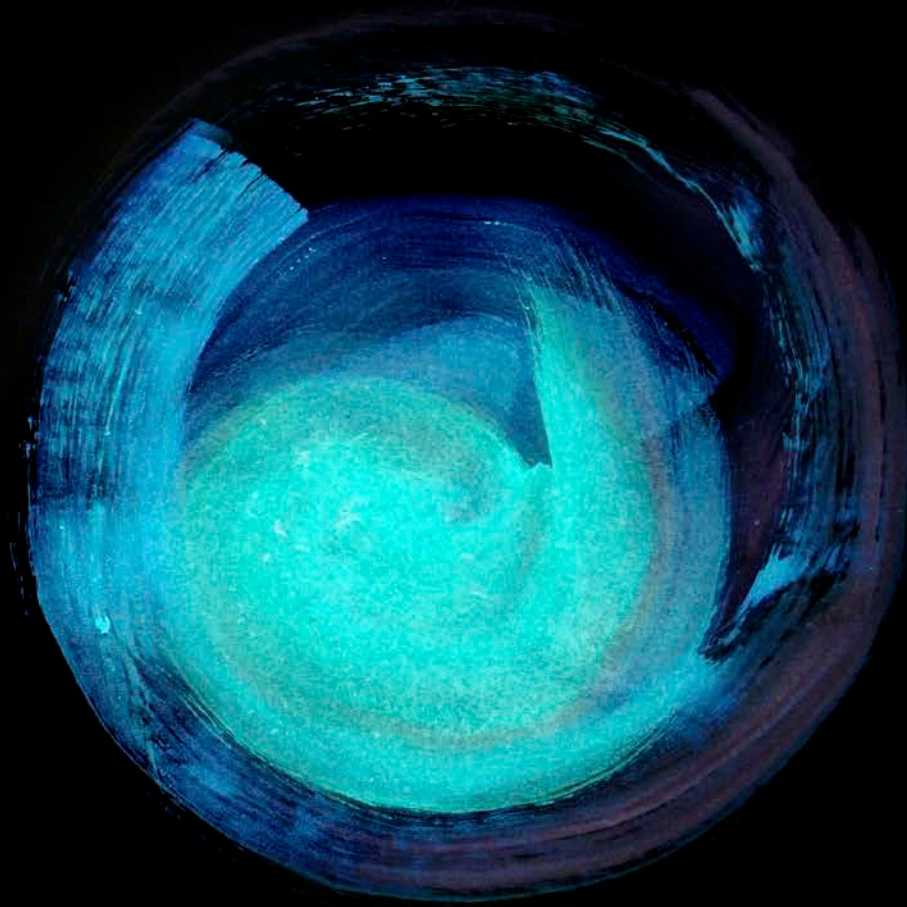


THE STATE OF ARTISTIC FREEDOM

2018

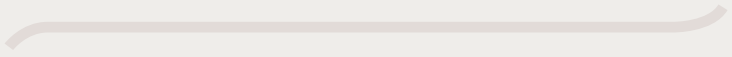


**FREEMUSE**

Freemuse is an independent international organisation advocating for and **defending freedom of artistic expression.**

We believe that at the heart of violations of artistic freedom is the effort to silence opposing or less preferred views and values by those in power – politically, religiously or societally – mostly due to fear of their transformative effect. With this assumption, we can address root causes rather than just symptoms – if we hold violators accountable.

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.



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Every effort has been made to verify the accuracy of the information contained in this report. All information was believed to be correct as of February 2018. Nevertheless, Freemuse cannot accept responsibility for the consequences of its use for other purposes or in other contexts.

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THE STATE OF ARTISTIC FREEDOM  
2018



**FREEMUSE**

“ I draw and I paint whenever I can. And I’ve also started giving drawing classes to my friends here. In a way, I socialize art in my fashion. They love to draw. Soon, I’ll be able to teach them how to make a paintbrush out of bird feathers found in the yard... I wouldn’t like you to imagine a sad-sack withdrawn Zehra, wasting her time. I write to tell you everything I do here, so that when you hear and pronounce the name Zehra, you picture a woman with a strong morale and hope, someone who is strong and upright. ”

LETTER FROM PRISON WRITTEN BY **ZEHRA DOĞAN**, AN ARTIST FROM TURKEY SERVING A TWO-YEAR-AND-NINE-MONTH SENTENCE FOR A PAINTING DEEMED TO BE “PROPAGANDA”

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## FOREWORD

# IT'S TRAGIC, **BUT WE ARE HERE TO SERVE**

## ONE

Freedom of artistic freedom and creativity does matter. It is recognised as a human right in key international human rights laws. But what makes artistic freedom matter is that it makes us who we are as a human being in society.

Imagine if you could not express yourself, your anger, your worldviews, your sadness, your humour, your freewill, your inspiration, your passion, your disappointment, your love, your desire. The humanity in you would appear to be incomplete; perhaps broken. While many of us enjoy this essential freedom and find our own voices in the world, hundreds of others cannot, and thus become the voiceless.

In 2017, on average, every week one person was prosecuted for expressing themselves artistically. Together, 48 artists were sentenced to over 188 years in prison. Women artists were attacked, arbitrarily restricted and had their artistic freedom violated. Minority artists faced terrorist charges. LGBT artists were persecuted and their arts censored. Thousands of pieces of art, music, paintings, theatre, dance and literature were censored, vandalised, and destroyed. We live in a world where artistic freedom is not for everyone.

## TWO

This report monitors, documents and examines 553 cases of violations in 78 countries. It is a big tip of a big iceberg.

The questions that lead to this new report were: What kind of information would decision and policy makers and influencers find most useful to deliver changes that need to happen so that everyone can enjoy freedom of artistic expression? How can we gather that information, analyse and present it in the way that informs policy choices, while also informing and catalysing changes for artistic freedom defenders around the world?

The answer was that we need to establish "what happened" in the world of artistic freedom, and we must do it accurately, independently and impartially. This has to be the foundation of our research. Reporting how many artists are in prison is not enough. We want to go further and look into why such violations took place at such an alarming scale. What motivated such atrocity? What enables it to happen repeatedly?

Having sat in case review meetings throughout the year, it became clear that those in power attempt to shut off those with whom they disagree, dislike, fear or simply see as different. But what violators share is the will to silence others. It is the same logic that governments in the P5, G20, North and South, rich & poor have in common. The practice of silencing others has become an unwritten global culture.

The tools used for violations of artistic freedom were one of the easiest things to trace. Governments used laws that violate human rights in the first place to arrest, detain and prosecute people and artists. Ironically, the worse the law is, the more effective tool it is to silence others. The vaguer, the better. Indecency, public morality, debauchery, nudity and terrorism are some of the examples of the most popular tools employed. These laws are hard to change under current weak international accountability mechanisms. Yet, they hold the key to the end of suffering for many. There is no short cut, one simply has to bite the bullet.

## THREE

This report is aimed to provide information and analysis, and facilitate meaningful dialogues between various actors so they can understand the scale and depth of the challenges, and work together to find concrete solutions to stop some of the most pressing challenges we are facing on artistic expression. 48 lives are behind bars, and one new life is being prosecuted every week.

We will continue to monitor, document, advocate for and support artists at risk. We are here to serve and focus on solutions. We are also keen to learn how we can serve the artistic freedom community better. Your feedback is warmly welcome. I trust that you know how to find us.

Srirak Plipat  
Executive Director

# SUMMARY

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.

The State of Artistic Freedom report is a research product comprised of 553 documented cases of violations of artistic freedom monitored in 78 countries in the 2017 calendar year, combined with an analysis of legal, political and social developments that shed light on the motivations and rationales behind the violations.

Through this comprehensive analysis we have identified 10 countries that have exhibited alarming developments in how they treat artists and their freedom of artistic expression, and are ones to keep a watch on throughout 2018. These countries are: China, Cuba, India, Iran, Israel, Mexico, Poland, Spain, Venezuela and the US. The report takes a further in-depth analysis of seven other countries, reviewing their laws, policies and practices that continue to sustain their troubling record of silencing freedom of artistic expressions, and take a closer look at emblematic cases that expose these continuing violations. These seven countries are: Bangladesh, Malaysia, Morocco, Nigeria, Pakistan, Russia and Turkey.

Through our continuous monitoring and analysis one prime aspect in 2017 became clear in the world of freedom of artistic expression: a new global culture of silencing others is emerging. Artistic freedom is being shut down in every corner of the globe, including in the traditionally democratic West. Art in

the online and digital space continues to challenge authorities and corporations who are quick to react by closing down expression rather than using it as an opportunity to foster it.

Though government authorities continue to be the main group of violators of artistic freedom, curtailing expression is increasingly being taken on by other actors, including religious groups, political associations, criminal gangs, private individuals and the artistic communities themselves. This disturbing geographical spread and growing group of violators is enabled by weak accountability mechanisms that fail to hold authorities to task and continue to create a wide space for impunity.

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. Further, in a growing culture of impunity toward matters of freedom of artistic expression, authorities implement direct intimidation tactics toward artists and their families or bring criminal charges to silence voices in a way that does not raise flags for observers and human rights activists.

However, a growing and troubling violator is that of the dominant religious authority, which in many contexts is also aligned with government structures. Religious authorities and groups often take the law in their own hands and distribute their own brand of justice to artists who they see as going against their doctrine. While government and religion dominate the list of violators of artistic freedom, we are starting to see that freedom fall victim to armed violent groups, cultural institutions and non-governmental organisations that also follow their own stifling agendas.



As part of this practice of controlling art to control culture, artists also find themselves caught in the middle of conflicting countries. Artists, their works and the venues they perform or exhibit in, can find themselves silenced either for expressing their ideas on the conflict or for traveling to or from particular areas. In 2017, we have seen this happen to numerous artists on both sides of the conflicts between Israel and Palestine, Russia and Ukraine, and Spain and Catalonia.

While some governments attempt to exert their power into countries they are in conflict with, some try to exert their power across borders by pressuring governments. China has repeatedly attempted to censor exhibits or film screenings in other countries, and Turkey has called for criminal procedures and arrests of artists – Turkish or otherwise – in other countries.

In the digital space, artistic freedom continues to be a confusing space of control and standards, where private companies enact non-transparent, arbitrary guidelines out of line with international human rights standards, and governments control access and often enact harsh laws for content shared online. Social media platforms often blindly take down posts and accounts that share art they deem indecent, while governments use social media expressions of art or opinion as evidence of a lack of morality by the artist or their intention to undermine authorities to bring up criminal charges.

One overarching and looming problem in the world of artistic freedom, however, is accountability, which is in short supply. Governments frequently contravene international human rights standards, regardless if they have ratified and signed on to particular treaties, as their national legislation allows for the space to violate artists' and audiences' rights as they

see fit. The fact that ambiguous laws exist in many national contexts easily points to the breach of legal obligations to international treaties. 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.

The State of Artistic Freedom report aims to provide information and analysis to support and create meaningful dialogue between and among all stakeholders to change laws, policies and practices. Art is in danger. The cases registered in this report are just the tip of the iceberg, but that sliver exposes the serious reality that 48 artists were imprisoned in 2017 and are serving sentences totalling over 188 years in prison, and at least one artist was prosecuted per week around the world for their artistic expressions.

We all have responsibilities to improve this situation. Governments must respect and protect the human right to freedom of artistic expression, and must enact and implement national laws in line with international standards. Businesses and corporations must create internal standards that comply with and observe international human rights norms and principles, and allow for consultation with independent human rights bodies on said standards. UN agencies and donors should make the most of existing accountability mechanisms, focusing on better monitoring of national legislation and ensuring a timelier adherence to universal human rights standards. The international community should also invest in building capacity of civil society, especially in the global South and East, so that they can better monitor, advocate and engage with their governments and other change agents to better protect freedom of artistic expression.

“You can’t touch saints. You can’t show them having sex because that offends the feelings of believers. This is not censorship, this is about the violation of people’s rights. **Artistic freedom is not limitless, it cannot impede on the rights of others.**”

**RUSSIAN MP NATALIA POKLONSKAYA** ABOUT THE FILM *MATILDA*, WHICH CAUSED CONTROVERSY FOR TELLING THE STORY OF A LOVE AFFAIR BETWEEN RUSSIA’S LAST EMPEROR, NICHOLAS II – NOW A CANONISED SAINT, AND A BALLERINA

*“Prohibitions of displays of lack of respect for a religion [...] are incompatible with ICCPR’ except for ‘advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.’”*

ICCPR, Art. 34, para 48.



THE VISUAL STORY

# 8 WAYS ARTISTS WERE SILENCED IN 2017







LITERATURE

**46** documented cases in 16 countries



DANCE

**12** documented cases in 6 countries



THEATRE

**52** documented cases in 20 countries

MUSIC  
**202**

documented cases in 57 countries

FILM **131** documented cases in 36 countries

VISUAL ARTS

**110**

documented cases in 39 countries



ART  
FORMS  
**SILENCED**  
IN 2017



IRAN:  
WOMEN CANNOT  
PERFORM SOLO  
**IN FRONT  
OF MEN**  
NOR MAKE THEIR  
OWN ALBUMS

**“INDECENCY”**  
IS THE MAIN MOTIVATION FOR  
SILENCING WOMEN ARTISTS

SAUDI  
ARABIA: <sup>WOMEN</sup> CANNOT  
**PERFORM  
PUBLICLY**  
IN FRONT OF MEN

# WOMEN DENIED RIGHTS TO ARTISTIC FREEDOM

In many countries women’s rights to freedom of artistic expression are systematically denied despite explicit international human rights standards. These are just the tip of iceberg:

## 10 PERSECUTED/ THREATENED

including 4 in Israel and others in Afghanistan, Egypt, India, Indonesia and Nigeria

### 27 CENSORED

including 11 in Iran, 3 in France, others in Argentina, Canada, India, Israel, Lebanon, New Zealand, Pakistan, Papua New Guinea, Saudi Arabia, Spain, Thailand and USA

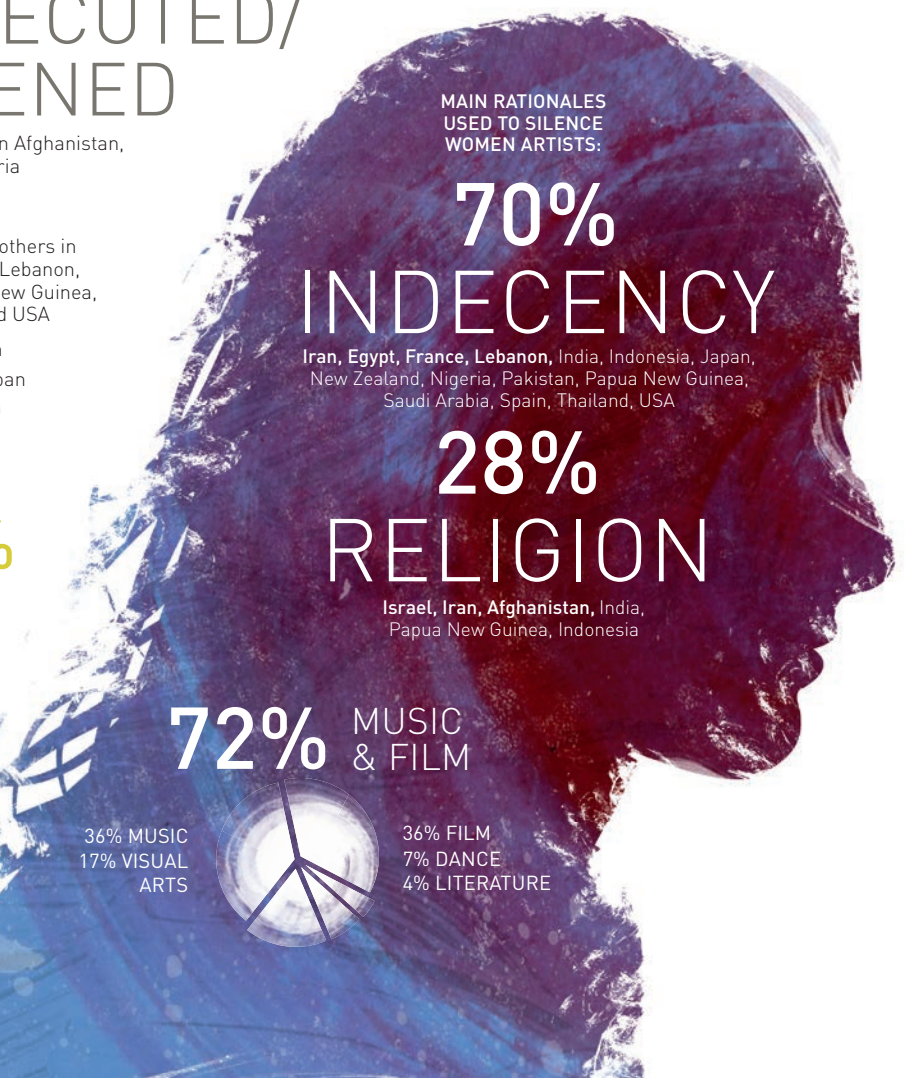
**4 DETAINED** in Iran and Lebanon

**2 PROSECUTED** in Egypt and Japan

**2 IMPRISONED** in Egypt and Iran

### TOP 6 COUNTRIES: IRAN 30%

ISRAEL 10.6% EGYPT 8.5%  
FRANCE 6.4% INDIA 6.4%  
LEBANON 6.4%



MAIN RATIONALES  
USED TO SILENCE  
WOMEN ARTISTS:

**70%  
INDECENCY**

Iran, Egypt, France, Lebanon, India, Indonesia, Japan, New Zealand, Nigeria, Pakistan, Papua New Guinea, Saudi Arabia, Spain, Thailand, USA

**28%  
RELIGION**

Israel, Iran, Afghanistan, India, Papua New Guinea, Indonesia

**72%  
MUSIC & FILM**

36% MUSIC  
17% VISUAL  
ARTS



36% FILM  
7% DANCE  
4% LITERATURE





# LGBT UNDER ATTACK

of violations committed by

## 76% GOVERNMENTS

1/3 of LGBT-related violations happened in **EGYPT, RUSSIA & ISRAEL** COMBINED

LGBT artists and communities have their artistic freedom violated for content:

- ▶ deemed indecent or obscene
- ▶ that talks about the LGBT issue
- ▶ created by LGBT people

## 62% CENSORED

in Algeria, Australia, Brazil, China, Colombia, France, India, Israel, Jordan, Kenya, Kuwait, Malaysia, Russia, Turkey, USA, Uganda, Venezuela and Zimbabwe.

35% were on grounds of **INDECENCY**  
20% are associated with **RELIGION**

14% <b>PROSECUTED</b> in Colombia, Egypt, Spain	7% <b>IMPRISONED</b> Egypt
7% <b>PERSECUTED/THREATENED</b> Egypt, Spain, South Africa	5% <b>DETAINED</b> Israel
	2.5% <b>ABDUCTED</b> Nigeria
	2.5% <b>ATTACKED</b> Uganda

## 33% MIDDLE EAST & NORTH AFRICA

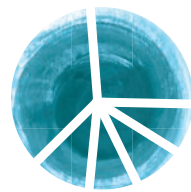
Algeria, Egypt\*, Israel, Jordan and Kuwait

19% **AMERICAS** Brazil, Colombia, USA and Venezuela  
19% **EUROPE** France, Russia\*, Spain and Turkey  
14% **AFRICA** Kenya, Nigeria, South Africa, Uganda\* and Zimbabwe  
10% **ASIA** China, India\* and Malaysia  
5% **PACIFIC** Australia

\* country that leads in total number of documented violations in the region

1 prosecuted,  
1 persecuted/  
threatened,  
1 attacked,  
11 censored

## 33.3% FILM



## 26.2% MUSIC

3 censored,  
3 imprisoned,  
4 prosecuted,  
1 persecuted/  
threatened

12% **LITERATURE**  
2 censored, 2 detained,  
1 abducted

9.5% **DANCE**  
2 censored, 1 prosecuted,  
1 persecuted/threatened

9.5% **VISUAL ARTS**  
4 censored

9.5% **THEATRE**  
4 censored

# MINORITY VOICES

## SILENCED WORLDWIDE

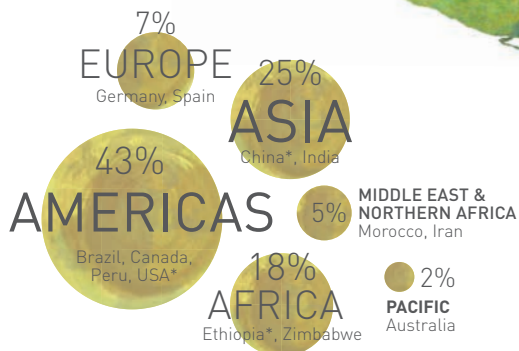
**5**  
COUNTRIES  
IN THE  
GLOBAL NORTH:  
AUSTRALIA, CANADA,  
GERMANY, SPAIN, USA

GLOBAL CASE  
OVERVIEW:

**48%**

**52%**

**8**  
COUNTRIES  
IN THE  
GLOBAL SOUTH:  
BRAZIL, CHINA, ETHIOPIA,  
INDIA, IRAN, MOROCCO, PERU,  
ZIMBABWE



\*lead the group in most cases registered

### TOP 3 COUNTRIES:

**34% USA** mostly censorship

**23% CHINA** including imprisonment of **8 Tibetan artists**

**16% ETHIOPIA** including prosecution of **7 Oromo artists**

**47.5% MUSIC**



**32% VISUAL ARTS**

9% FILM  
4.5% LITERATURE  
7% THEATRE

Many artistic freedom violations in the USA were connected to racial issues, which have stemmed from the Charlottesville rally. A majority of the censorship cases concerned visual arts, including paintings and statues that signify Confederate ideology, European explorers in positions of superiority over Indigenous peoples, and racial superiority.

Many of the violations in Australia, Canada and the USA concerned the artists' uses of indigenous symbols and allegations of "appropriating" them.



# ARTISTS SILENCED BY IMPRISONMENT

**48** ARTISTS

KNOWN TO BE IMPRISONED IN 2017

Most of these prison terms were combined with sentences that subject artists to heavy fines, lashes, exile and years of rights deprivation on voting, standing office and inherent rights

SENTENCED TO

**188** YEARS

5 MONTHS, 24 DAYS **COMBINED**

**13** SPAIN

**12** CHINA

**9** IRAN **5** EGYPT  
**3** TURKEY

**1** CUBA **1** ERITREA **1** SAUDI ARABIA  
**1** TUNISIA **1** VIETNAM **1** RUSSIA

**85%** ARTISTS BEING SEEN AS **OPPOSING GOVERNMENTS**

**27%** ACCUSED OF USING **HATE SPEECH**

**19%** RELATED TO **RELIGION**  
**17%** **MINORITY GROUPS**  
**6%** **WOMEN**

**65%** MUSIC  
**23%** LITERATURE

**4%** THEATRE **4%** FILM

**4%** VISUAL ARTS

**36%** EUROPE

**2%** AMERICAS

**2%** AFRICA

**33%** MIDDLE EAST & NORTH AFRICA

**27%** ASIA



# CENSORSHIP

AN EAST-WEST  
**SHARED VALUE**

**73%** of censorship cases  
committed by  
**GOVERNMENT  
AUTHORITIES**

## A-LIST OF **BLACKLISTING CULTURE**

## **TOP 10 COUNTRIES**

### **CHINA**

55 ARTISTS

Mainly Hong Kong and Taiwanese musicians, filmmakers and actors. Banned by government blacklist.

### **TURKEY**

31 ACTORS &  
ACTRESSES

Fired upon government closure of Diyarbakir Kurdish Theatre.

**UK 18 GANG  
MEMBERS**

Prevented from making music videos and other expressions. Banned by court injunction on the grounds of hate speech and indecency.

### **UZBEKISTAN**

225 FILMS

Banned in one blacklist by government – mainly horror films – on indecency.

### **IRAN**

10 FILMS

Banned by government for "feminist and inappropriate themes".

### **ALGERIA**

130 BOOKS

Banned by government, mainly for criticising the government and on the grounds of religion.

### **UKRAINE**

18 FILMS

Banned by government for being political and from conflicting countries.

### **MALAYSIA FRANCE**

22 BOOKS

22 fictional and non-fictional books banned by the government for criticising the government and on the grounds of religion.

125

**ARTWORKS**

Censored by a court order on the grounds of indecency and misogyny.

found to have censored the most in 2017 (by number of art works and banned artists)

**1. UZBEKISTAN: 225**

**2. FRANCE: 140**

**3. ALGERIA: 132**

**4. CHINA: 67**

**5. TURKEY: 40**

**6. USA: 31**

**7. MALAYSIA: 26**

**8. INDIA & UK: 21**

**9. UKRAINE: 20**

**10. KENYA: 16**



# 672

## ARTISTS & ARTWORKS AFFECTED BY BLACKLISTS

Be mindful! When an **ARTIST** is banned, it means all **ARTWORKS, CONCERTS, SONGS, INTERVIEWS AND PUBLIC APPEARANCES** are cancelled and prevented from happening again. How many units of **ARTISTIC FREEDOM** is that?

### 37%

artists seen as criticising the

## GOVERNMENT INDECENCY

countries in  
12% CONFLICT 21% RELIGION 11% LGBT

### 25% AMERICAS

### 24% ASIA

### 22% EUROPE

### 18% MENA Middle East & North Africa

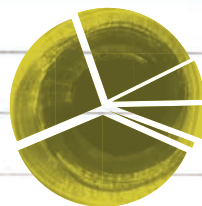
### 8% AFRICA

### 3% PACIFIC

### 37% FILM

### 26% MUSIC

### 23% VISUAL ARTS



### 7% THEATRE

### 6% LITERATURE

### 1% DANCE



# ARTISTS PROSECUTED

NATIONAL LEGAL  
BATTLES AGAINST  
INTERNATIONAL

Numerous governments took legal action against artists in 2017, exposing a troubling worldwide phenomenon where freedom of artistic expression as an international human rights norm is being challenged by national laws and institutions. Artistic freedom is losing these battles and artists are paying the price.

## FREEDOM OF EXPRESSION

On average, at least

**1 ARTIST**  
PROSECUTED  
per **WEEK** in 2017

**54%**  
**MUSIC**  
21% VISUAL  
ARTS  
11% LITERATURE  
7% FILM 5% THEATRE  
2% DANCE

**30%** MIDDLE EAST  
& NORTH AFRICA  
21% AFRICA 21% EUROPE  
14% AMERICAS 14% ASIA

**TOP 6**  
COUNTRIES KNOWN  
TO HAVE PROSECUTED  
ARTISTS THE MOST IN 2017

1. EGYPT
2. ETHIOPIA
3. SPAIN
4. BRAZIL
5. INDIA
6. ISRAEL

THE DRIVE AND RATIONALE OF PROSECUTION OF ARTISTS\*

**54%** OPPOSING THE  
artists seen as GOVERNMENT  
**23%** INDECENCY

**16%** RELIGION  
**14%** MINORITIES  
**11%** LGBT  
**7%** countries in  
CONFLICT

\*in many cases, there were multiple motivations behind prosecuting individual artists and groups



# MUSIC IS FREE NOT

## LYRICS:

*Music is free  
Only B flat and F sharp not allowed  
G minor and you'll cry*

*My president told me  
that music is free  
as long as he agrees*

In 2017 **2** musicians were **KILLED**

Sometimes it's too **POLITICAL 48%**

**31** PROSECUTED  
This is 1/2 of all artists prosecuted

Sometimes it's too **INDECENT 23%**

**31** IMPRISONED  
This is 2/3 of all artists imprisoned

Sometimes it insults **RELIGION 14%**

**12** DETAINED  
This is 1/4 of all artists detained

Sometimes it's **HATE SPEECH 8%**

**22** ATTACKED

**4** ABDUCTED

**63** CENSORED

*We say  
Music is free  
Music is our soul\**

[\*repeat and fade out]

**2/3** of violators against musical artistic freedom were **GOVERNMENTS**

**TOP 10** countries found to have violated freedom of musical expression the most in 2017 (by number of cases)

**1. SPAIN 2. EGYPT 3. CHINA**

**4. Mexico 5. Iran and USA 7. Nigeria 8. Tanzania and Venezuela 10. Israel**



# FILM SILENCED FOR THREATENING TRADITION

INDIA **1/3**  
OF PERSECUTIONS  
AND THREATS

India accounts for 1/3 of all documented cases of persecutions and threats against filmmakers, actors and actresses followed by United Arab Emirates (17%) and the Philippines (13%)

NIGERIA  
**50%** OF ALL  
ATTACKS

50% of all registered attacks against filmmakers, actors and their works took place in Nigeria followed by India at 20%.

EGYPT **50%**  
OF REGISTERED  
PROSECUTIONS

50% of all registered prosecutions against filmmakers & actors are from Egypt

FILMMAKERS WERE IN  
**2** PRISON  
IN IRAN IN 2017

**256** FILMS AND  
FILMMAKERS  
SILENCED BY  
BLACKLISTS

**69%**  
CENSORED  
18% PERSECUTED/THREATENED  
8% ATTACKED 3% PROSECUTED  
2% IMPRISONED

BANNED  
MOVIES

TOP 6  
COUNTRIES  
CENSORING FILM:

1. INDIA  
**20%** of all  
censorship  
cases found

2. TURKEY 9%  
3. PAKISTAN 9%  
4. LEBANON 8%  
5. FRANCE 7%  
6. CHINA 6%

BANNED ACROSS THE GLOBE:

**MAWLANA** censored over religious issues in Kuwait, Lebanon and UAE

**BEAUTY AND THE BEAST** censored over LGBT issues in Kuwait and Malaysia; and attempts of censorship in Hong Kong, Indonesia, Russia and Singapore

**WONDER WOMAN** censored in Algeria, Lebanon, Qatar and Tunisia over lead actress Gal Gadot's support of Israeli military forces and actions

BANNED THE MOST IN THEIR COUNTRY:

**MATILDA (RUSSIA)** Attacks & threats over nationalist interpretations of history

**PADMAVATI (INDIA)** Attacks & threats over nationalist and religious interpretations of history

**S DURGA (INDIA)** Threats & censorship related to religion



# THEATRE

## CHALLENGING POWER AT THE RISK OF BEING SILENCED

Theatre proves that its power of storytelling and potential to involve its audience in creating social consciousness are undeniable. In at least 20 countries, its power was challenged and its voice was silenced, raising the rate of attack against theatre communities to nearly one attack on theatre crews per week.

Nearly **1**  
**ATTACK**  
per **WEEK**

took place on theatrical  
artistic freedom  
in 2017

62% against artists seen as **OPPOSING THE  
GOVERNMENT**

23% on the ground of indecency 15% on the ground of religion 8% were against LGBT artists  
8% were against artists from armed conflict countries

## 23% USA

The play Julius Caesar was cancelled, the artists involved received threats and their funding was cut due to the main character's resemblance with President Trump. Many other plays were cancelled on the grounds of racism, disrespect of minorities, indecency, containing LGBT content and strong language.

The clampdown on political dissidence continued, with attacks on theatres linked to controversial artists targeted by the government. This includes seven artists, considered as "counter-revolutionary" by authorities, who were detained during a performance about using art as a means of freedom.

## 15% CUBA

## 8% DEMOCRATIC REPUBLIC OF THE CONGO

Four artists were detained due to a performance criticizing the government for the widespread killings and long-term conflict in the country, which was seen as "rebellious".

## 44% AMERICAS

Brazil, Canada, Cuba, USA

### 13% AFRICA

Democratic Republic of the Congo, Kenya, Nigeria

### 8% MENA

Israel, Syria, Tunisia

### 6% ASIA

China, India, Singapore

## 29% EUROPE

France, Germany, Poland, Russia, Serbia, Turkey, UK

“Female musicians must be married, must refrain from wearing headbands, tight-fitting pants, short-sleeve shirts or anything in loud colours, and, during performances, **women must avoid making any movements beyond what was absolutely necessary for playing their instruments**”

BYLAWS APPLICABLE TO ALL FEMALE  
MUSICIANS PERFORMING AT KASHAN  
UNIVERSITY IN IRAN

*“The crucial task of implementation of universal human rights norms is to prevent the arbitrary privileging of certain perspectives on account of their traditional authority, institutional or economic power, or demographic supremacy in society.”*

REPORT OF THE SPECIAL RAPPORTEUR IN THE FIELD OF CULTURAL RIGHTS,  
**FARIDA SHAHEED**, A/HRC/23/34, para 3.





CHAPTER 2: THE STATE OF ARTISTIC FREEDOM:  
THE EMERGENCE OF A NEW GLOBAL CULTURE OF SILENCING OTHERS

# THE STATE OF ARTISTIC FREEDOM: THE EMERGENCE OF A NEW GLOBAL CULTURE OF SILENCING OTHERS

In a world full of noise and information, many are silenced. Individuals and artists around the world find themselves voiceless, despite information and communication technology, and social media that allow people to express themselves and share their experiences and points of view.

Women in Iran are not allowed to perform solo singing, while women in Saudi Arabia are not allowed to sing in front of men. Thousands of artists from ethnic minorities are subjected to persecution and threats for singing and performing their arts in their own languages. Oromo artists in Ethiopia are prosecuted on terrorism charges. Rappers in Spain are sentenced under anti-terror legislation. Concertgoers in the UK faced a bombing, while others in Egypt were arrested and sentenced to two years in prison for waving a rainbow flag in support of LGBT artists. In Uzbekistan, 225 films were banned in one blacklist in 2017, while 130 books faced the same fate in Algeria.

On average, at least one artist was prosecuted per week in 2017. Together they were sentenced to over 188 years in prison this year alone. Forty-eight artists were serving terms in prison for exercising their rights and expressing their views and feelings. Thousands of artists and artworks were banned. Freedom of artistic expression and creativity is being attacked at every front in every region of the world. In this process, a new global culture is emerging, one where censorship, attacks, prosecutions and other practices of silencing views one disagrees with is becoming the norm, driven both by governments and supported by large groups of people in society. This report documents and examines 553 cases of violations of artistic freedom in 78 countries carried out in 2017. It exposes violators and assesses the patterns and contexts of these violations. This research identifies groups of artists and people who are vulnerable to violations, especially women, minorities and LGBT people. It asks why, with such a large scale of attacks and abuses of artists around the world, there is little accountability.

# THE GLOBAL CULTURE OF SILENCING OTHERS

2017 was the year of a new rise of popular nationalist politics in the US and Eastern Europe, built on Brexit, the Trump election and nationalist rhetoric in Poland and Hungary in the previous year. Populist politics won elections through words of fear and hatred of foreigners. This vision of society without immigrants, refugees and “others” gave nationalist politicians the votes they needed at the cost of dividing society. The rhetoric of hate and attacking messages from populist-nationalist leaders over a period of time creates legitimacy in dismissing “others” who are different, resulting in wide intolerance. This has created an enabling environment for large-scale and systematic violations of freedom of artistic expression as we have witnessed in 2017.

This legitimising of the message of dismissing others’ views in the West is well received by traditional repressive regimes in the global South and East who continue to clampdown on civil society, journalists and artists, through taking over or weakening independent institutions. These neo-nationalist movements in the West, alongside old repressive regimes working together within weak international accountability frameworks, provide a governance structure for the new world culture of silencing others. This culture can be described with at least five common characteristics:

*Firstly, violation of artistic freedom is a worldwide phenomenon.* Violations of artistic freedom have gone beyond the stereotype of artists getting themselves in trouble for criticising governments in mostly repressive regimes in a handful of poor and less developed countries. This report shows that 553 cases of violations took place in 78 countries, including Europe and North America. Violations of minority rights to artistic freedom are found to have been practiced almost equally (in number of violation incidents) in the Global North (48%) and

Global South (52%). Six of the top 10 censoring countries in 2017 are G20 member countries.

*Secondly, the culture of silencing others is practiced by multiple actors.* Violators are not only governments of repressive regimes. This research shows that they include governments from countries usually seen as open and democratic. Religious police and authorities actively restrict freedom of artistic expression in many countries. Non-state armed groups carried out attacks on civilians as they attempted to enjoy their cultural rights in the West and South. Many online and social media service companies violated artistic freedom by imposing arbitrary criteria for censoring art work on their platforms, failing to observe international human rights standards to which they are also obliged. NGOs contribute to the culture of silencing others by calling for the censoring of artistic expression with which they disagree. Finally, professional associations representing artists’ interests in many countries are powerful agents determining who can and cannot function within the cultural industries. They too can contribute to the culture of silencing others by, for example, penalising artists whose work contradicts their definition of indecency.

*Thirdly, a new global culture of silencing others took place on communications and digital platforms.* While censoring books, songs, films, theatre and visual arts was widely practiced in 2017, violations of artistic freedom also took place on digital platforms. Many artists found that while their work was accessible to their audiences online, their commentary about their work or related issues through forums such as Twitter, Facebook, Instagram and others led them to be arrested and prosecuted. Internet censorship has become increasingly an effective tool to silence artists and people’s expression of their views and creativity, while little progress has been made to bring accountability on governments’ regulations on the use of internet and communication technologies.

*Fourth, people play a more significant role in silencing others.* This emerges in at least two forms. One is public support of populist-nationalist leaders in suppressing and silencing views considered non-

mainstream, non-traditional or non-nationalistic. This is particularly the case in the US and Eastern European countries where such support has fuelled nationalism. The other role is through direct calls and pressure upon government and private entities for censorship, sometime accompanied by violent acts. In 2017, several cases were documented where such pressure was placed on museums and festivals to cancel or remove artwork on the ground of indecency, or seen to have insulted minority and LGBT groups.

*Fifth, there is little accountability and justice for violations of artistic freedom.* Unlike other human rights guaranteed in international human rights laws, violators of artistic freedom and related cultural rights have largely enjoyed impunity. From years of monitoring and documenting violations of artistic freedom, very few cases, if any, were known to have been brought to justice. Killers of artists tend to walk free. The same applies to those who persecute, threaten, attack, abduct and kidnap artists, not to mention prosecution and imprisonment carried out by the state.

Key to the impunity enjoyed by those who violate artistic freedom is the silencing of others through legislation. Many laws have been created and used to censor, raid, detain, prosecute and imprison artists, despite their failure to comply with international human rights treaties.

## WHO IS RESPONSIBLE FOR SILENCING OTHERS?

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Overall, governments are the main violators of freedom of artistic freedom and creativity. In 2017 governments accounted for 63% of direct violations of artistic freedom and for failure to protect

the other 37% of violations from other actors including, armed violent groups, professional artist organisations, intergovernmental organisations and non-governmental organisation (NGOs), and private companies. This following section outlines key violators, patterns and tools used, and key cases of violations.

### ▶ GOVERNMENTS SILENCING OPPOSITIONAL VOICES

Most governments around the world acknowledge that checks and balances provided through oppositional parties within and outside parliaments are key to democratic principles and open society values. Yet, silencing oppositional voices was the most common cause of violations of artistic freedom in 2017.

The widespread practice of shutting off “oppositional” artists shows that governments understand the power of artistic freedom – how it can connect people emotionally and mobilise actions for social justice. The fear of the transformative effect of moving people to ask questions, re-interpret political and social realities, as well as hold public figures accountable have, over the years, driven some governments to shut off oppositional views emanating from artistic expressions.

In 2017, various methods were used by governments to shut off oppositional views. Countries such as Serbia and Uganda, for example, directly intimidated dissident artists by accusing them of offending the president. Other countries such as Russia and Equatorial Guinea used indirect intimidation, including employing tactics of allegedly trumped-up charges to clampdown on oppositional artistic expressions, while countries such as China and Ethiopia continued to enforce repressive laws to criminalise artistic expressions that challenge their authority.

### ***Equatorial Guinea: Cartoonist Ebalé criminally charged upon return to the country***

In September 2017, cartoonist and activist Ramón Esono Ebalé was arrested and subsequently detained without charge for over 60 days. He was later charged with counterfeiting and money laundering. The highly regarded cartoonist is known for his criticisms of the president and the government of Equatorial Guinea. Ebalé had lived abroad since 2011, and was arrested on his return to Equatorial Guinea to renew his passport. Freemuse shares international concerns, such as that of Amnesty International<sup>1</sup> that the accusation levelled against Ebalé are baseless and that his detention is arbitrary. In February 2018, all charges were dropped against the cartoonist.<sup>2</sup>



*Cartoonist Ramón Esono Ebalé (aka Jamón y Queso) was detained for over 60 days in Equatorial Guinea without charge. He later stood trial on charges of counterfeiting and money laundering that were largely believed to be fabricated. All charges were dropped in February 2018. Photo: Rafael Carvalho*

### ***Russia: Climate of fear reactivated through Serebrennikov arrest***

Kirill Serebrennikov, a renowned theatre director, was arrested and detained in August 2017 on embezzlement charges and placed under house

arrest. In October, Moscow's Basmanny district court decided to extend his house arrest, denying his appeals to be released for five days to finish shooting a film in St. Petersburg and to complete the production of a ballet at the Bolshoi set to premiere in December.<sup>3</sup> In December, the Moscow City Court upheld and further extended the house arrest as investigations continued.<sup>4</sup> The case is seen as part of a wider and ongoing crackdown on dissent.<sup>5</sup>

### ***Uganda & Serbia: Artists detained for insulting the president***

In December 2017, Ugandan musician David Mugema and music producer Jonathan Muwanguzi were detained in Luzira Prison after pleading not guilty before Buganda Road Chief Magistrate's Court in the capital Kampala on charges of "offensive communication" over their song *Wumula Mzee (Take a Rest Old Man)*, which the prosecution claimed "attacked and disturbed the peace of President Museveni". While the song does not specifically call for the 73-year-old president to retire, its video shows images of Museveni with former leaders, such as Saddam Hussein and Robert Mugabe. The artists were released on bail on 6 December 2017 after each paid a cash bail of 2,000,000 Ugandan shillings (442 euros) and a bond of 10,000,000 Ugandan shillings (2,200 euros).<sup>6</sup>

In October 2017, during the re-opening ceremony of the Museum of Contemporary Art in Belgrade, two artists, Vladan Jeremić and Uroš Jovanović, were detained on charges of insulting Serbia's president Aleksandar Vučić, by using his photograph in two separate performances. The artists were released the same evening due to the lack of a legal basis for the charges.<sup>7</sup>

### ***China: Artists for social justice arrested and imprisoned***

In November 2017, Chinese singer Xu Lin was charged for "picking quarrels and provoking troubles" after being detained for 35 days. Fellow

singer Liu Sifang, who was arrested and detained at the same time, was reportedly released on bail.<sup>8</sup> Both artists' homes were searched; their computers and phones were confiscated. The two artists have frequently collaborated on songs that focus on social injustices and are popular among activists. Their songs have included topics such as the Tiananmen Square democracy movement, detentions of activists and lawyers, and, most recently, Nobel Peace Prize laureate Liu Xiaobo, who died in custody in July 2017.

### ***Ethiopia: Artists charged with terrorism***

In Ethiopia, seven artists, including musicians and dancers, were charged with terrorism in June 2017 for allegedly producing and uploading inciting political songs and videos. Seenaa Solomon, Elias Kiflu, Gemechis Abera, Oliyad Bekele, Ifa Gemechu, Tamiru Keneni and Moebul Misganu were originally arrested in December 2016 and held in Maekelawi Prison, which is notorious for torture. There are grave concerns about the continued erosion of freedom of expression in Ethiopia, especially the clampdown on ethnic Oromo artists who are prosecuted, with many forced to flee or go underground.<sup>9</sup>

## ▶▶ RELIGIOUS POLICE AND AUTHORITIES

Religious bodies have long restricted artistic freedom and silenced others' cultural expression that they see unfit for their doctrines. In 2017, many artists and individuals suffered at the hands of religious authorities, especially those working on music and visual arts. Vandalism against artwork that challenges religious norms is common. Although violations by religious authorities were recorded in many parts of the world, they were of particular concern in Nigeria, Pakistan, Turkey and the United Kingdom.

### ***Nigeria and Pakistan: Religious authorities ban music and destroy musical instruments***

In many parts of the world Islamic authorities have the power to determine what is allowed and what is not, based on their interpretation of their doctrine. In January 2017, Islamic police, known as Hisbah in northern Nigeria, confiscated musical instruments used at the wedding party of the daughter of Sokoto State Governor. The charge was for playing music that violated Shariah.<sup>10</sup> The Commandant of the Sokoto Hisbah Commission confirmed that the musical instruments would be destroyed.<sup>11</sup>

In September, in Landi Kotal, Pakistan, religious leaders Muhammad Ibrahim and Muhammad Ilyas, imposed a ban on music and musical gatherings, and publicly burnt confiscated musical instruments for being "un-Islamic".<sup>12</sup> The clerics, who also issued threats of violence, including to burn down houses of those caught playing music, were later made to issue an apology by the political administration after condemnations by civil society groups.<sup>13</sup>

### ***Turkey: Religious protesters attack sculpture at exhibition for allegedly promoting secularism***

In October 2017, an art piece, *The Man Beneath the Sweater* by Australian artist Ron Mueck, featured at the *Doors Open to Those Who Knock* exhibition in Istanbul was attacked by a group of religious protesters who attempted to vandalise the piece after accusing the artist of promoting secularism.<sup>14</sup> The work, a sculpture of a nude man crouching on the ground holding a cardigan over himself, was placed within an antique tiled fireplace in the gallery. The protesters claimed that the work offended their religious beliefs.<sup>15</sup>

### ***UK: Artworks stolen and vandalised over promotion of interfaith unity***

In January 2017, artworks displayed in a multi-faith art exhibition hosted within Gloucester Cathedral titled *Faith* by artist Russell Haines, were vandalised



and stolen. The exhibit had created controversy, with some Christian groups criticising the inclusion of Islamic images and prayer recordings within the cathedral, and others accusing these protestors of Islamophobia.<sup>16</sup> This exhibition had 37 portraits of individuals of faith on display, including Buddhist chanting, Rastafarian drumming, Hindu dancing and the Muslim prayer, which led to controversies during the opening.<sup>17</sup>



*Russell Haines' art exhibition Faith was vandalised in Gloucester Cathedral due to it featuring portraits of various people of different religious faiths. Photo: Haines Art Facebook*

## ► ARMED VIOLENT GROUPS

In 2017, armed violent groups continued to make artists and audiences vulnerable at large gatherings where bombings can have most impact in terms of casualty and publicity. In contrast to past years where armed groups targeted artists, primarily in Egypt, Russia and Ukraine, 2017 saw a continuance of violent threats and direct attacks on artists and audiences. These violations were spread across geographical regions. Yet three groups are worth highlighting: The so-called Islamic State (IS) influenced attacks in the United Kingdom, "Area Boys" in Nigeria and the narcocorridos in Mexico.

### ***The UK: Islamic State attacked concertgoers***

The so-called Islamic State (IS) continued its violent attack on cultural rights. In May 2017, 22 concertgoers were killed and at least 250 more injured after a lone male detonated an explosive device after US singer Ariana Grande's music concert ended at the Manchester Arena in England.<sup>18</sup> The IS claimed responsibility, in various language statements through their media, for the worst terrorist attack in the UK since the 7 July 2005 bombings on London transport that killed 52 people and injured 700. It described the 2017 explosion as having taken place at a "shameless concert arena", and claimed that "with Allah's grace and support, a soldier of the Khilafah [caliphate] managed to place explosive devices in the midst of the gatherings of the crusaders in the British city of Manchester".<sup>19</sup> A 23-year-old from south Manchester was arrested in connection with the incident.

Prior to the attack, in April 2017, a British teenager was sentenced to life imprisonment after pleading guilty to plotting a bomb attack in London with one of the possible targets being an Elton John concert that was scheduled on the anniversary of the 9/11 Twin Towers attack in 2001 in New York.<sup>20</sup> The teenager was caught "researching, planning and attempting to source" materials to make explosives. He was apprehended by British Secret Service officers online with whom he communicated as they posed as fellow extremists.

### ***Nigeria: 'Area Boys' attacked Nollywood***

For several months in 2017, the Freemuse research team observed how armed groups, known colloquially as "Area Boys", have been attacking film crews and disrupting film shoots in cities across Nigeria, notably in Lagos. The armed groups, typically operating independently from each other, have attacked film sets where Nollywood movies were being shot with the aim of stealing equipment and other products.

In September 2017, actress Chioma Chukwuka-Akpotha's production bus was robbed at gun point by local "Area Boys" in Asaba, the capital city of the Delta State.<sup>21</sup> This attack followed a previous one several days prior, where popular Nigerian film director, Ugeze J. Ugeze's production bus was raided by armed "Area Boys" who stole cameras, money and mobile phones.<sup>22</sup> In May, Sheriff Aminu Ahlan – a veteran Nigerian actor in Kannywood, the Hausa film industry – was badly injured after being attacked by "Area Boys" in Kano City, in northwest Nigeria.<sup>23</sup> He was left with serious injuries being struck reportedly with a cutlass. In March, Nollywood actress, Kemi Afolabi, was attacked on set by local "Area Boys", alongside the producer of the film, cameraman and several crew members.<sup>24</sup> Furthermore, a crew member working alongside actress and filmmaker Omoni Oboli was stabbed by "Area Boys" in Lagos State, who also confiscated her production van key whilst on set in January 2017.<sup>25</sup>

These attacks by "Area Boys" on film sets across Nigeria are a serious violation of artistic freedom. While attempts have been made on the government's side to address the issue, there is little indication that better protection for artists, and filmmakers and their staff has been put into effect.

### ***Mexico: Narcocorridos targeted***

In 2017, states across Mexico imposed significant legal restrictions on the music genre narcocorrido, a form of folk music that tends to celebrate drug criminality that is popular among those involved in the narcotics trade, in an attempt to combat the drug-related violence associated with the genre, which promotes the lifestyle and crimes of Mexican drug kingpins.

In March, Rolando Arellano Sánchez, a member of the narcocorrido band Contacto, was shot and killed by cartel members who were waiting for him outside the house of another member of the band in Tijuana City.<sup>26</sup> According to local authorities, the assassination was connected to a separate double homicide of Contacto's friends, which occurred a

few days after the band's manager received a note warning that the band should stop singing songs to the Sinaloa Cartel on 25 January 2017. The threats were made by people who identified themselves as members of another drug cartel known as Cartel Jalisco Nueva Generación.

In October, Francisco Ernesto Ruiz Martínez, lead singer of the Latin Grammy Award winning band Cuisillos, was shot in front of his house in Guadalajara by armed men.<sup>27</sup> The public prosecutor ruled out the hypothesis of robbery and stated that the murder was planned, but no motive has since been determined.

The artistic community has not been spared in the attempts to reduce violence across Mexico, and despite the authorities appointing a special prosecutor to investigate crimes against freedom of expression in Mexico, the narcocorrido connection to gang violence and the drug industry has catalysed significant problems across Mexico and threatens the ability of narcocorrido musicians to produce and perform music without the threat of violence or death.

## **► CULTURAL INSTITUTIONS AND ASSOCIATIONS**

Art organisations often come together in challenging illegitimate restrictions of freedom of artistic expression. Yet, they too have on occasion called for censorship and contributed to violations of artistic freedom. These are practiced across the North-South divide, including in France, USA, Algeria and Egypt.

One of the most common practices is that artistic syndicates and professional associations, some of whom are mandated to issue permissions, have denied such permits on discriminatory or arbitrary grounds. This tends to happen when they are under pressure from the government or non-state actors. In 2017, a number of attempts of censorship was registered by Freemuse in which artists holding



positions in these organisations imposed pressure over other colleagues, leading to restrictions of their freedom of expression. These violations usually took place on the ground of politically sensitive or public morality issues.

### ***Egypt's Musicians Syndicate***

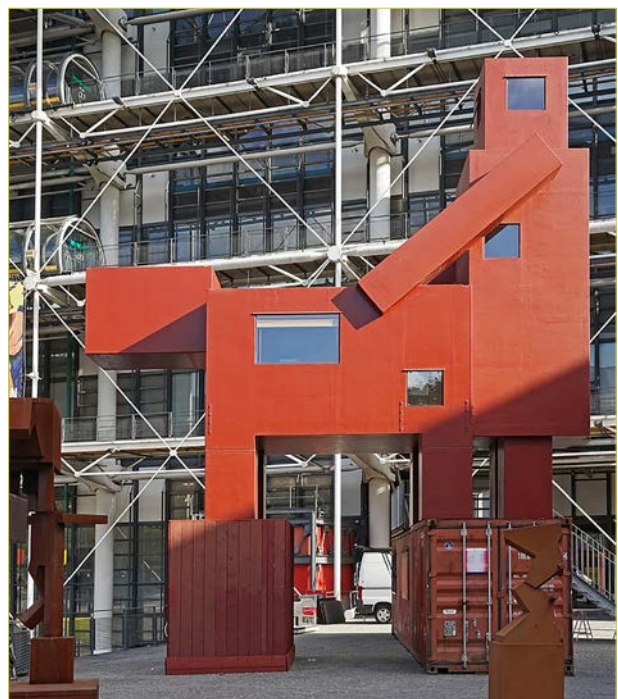
Egypt has developed various censorship instruments especially within the music industry. In addition to the Censorship Board and government services tasked to provide security at public events, the Egyptian Musicians Syndicate has emerged as a substantial contributor to the music censorship scene in the country. In November 2017, the syndicate decided to prevent Sherine Abdel-Wahab from singing and obtaining permission to hold concerts until investigations against her for “insults to the Egyptian state” were completed.<sup>28</sup> Sherine’s misdemeanour was related to her comments warning against drinking water from the river Nile during a concert in the United Arab Emirates. In February 2018, the singer was sentenced to six months in prison and a 10,000 Egyptian pound fine (460 euros). The singer is out on 5,000 Egyptian pound (230 euros) bail and the case can be appealed.<sup>29</sup> On 16 November 2017, the same professional association withdrew the annual license from her colleague Shyma Ahmad because of a “pornographic” video for her song *Andy Zoroof (I Have Problems)*.<sup>30</sup>



*Egyptian singer Sherine Abdel-Wahab has been condemned to six months in prison and a 10,000 Egyptian pound (460 euros) fine over comments she made about the quality of the river Nile’s water. Due to the comments, she also had her licence to sing and perform revoked by Egypt’s Musicians Syndicate. Photo: Sherine Abdel-Wahab Facebook*

### ***Cultural institutions***

While promoting the arts and representing artistic communities, a number of cultural institutions censored artists and their work on various grounds. This usually took the form of decisions to cancel, shut down or interrupt already announced cultural events. Some of these decisions were made by cultural institutions for internal reasons, while others were under the external pressure from different interest groups.



*Domestikator, a sculpture by the Dutch collective Atelier Van Lieshout, brought concern to Louvre Museum management for the reactions the public may have due to it evoking a sexual act. Consequently, plans to display it were aborted. Photo: Jean-Pierre Dalbéra*

In September 2017, the Dutch collective Atelier Van Lieshout’s sculpture *Domestikator* was censored by the management of the Louvre Museum in Paris.<sup>31</sup> This sculpture, an architectural building-block which evokes a sexual act, was to be placed in the museum’s Jardin des Tuileries as part of the International Contemporary Art Fair, but due to concerns that it might be found as indecent by conservative museum visitors and trigger violent reactions, the museum aborted the plan for its display.

In September 2017, the New York Guggenheim Museum pulled three major works from exhibition *Art and China after 1989: Theatre of the World* under pressure from animal-rights activists.<sup>32</sup> The museum received repeated threats of violence against videos in the exhibit that feature performances with live animals.

In October 2017, more than 100 books were banned from the International Book Fair in Algeria.<sup>33</sup> The fair's reading committee made this decision based on the observation that the books "incite sectarianism and violence and contradict the Maliki<sup>34</sup> doctrine, which is followed by the majority of the Algerian people".<sup>35</sup>

## ▶▶ OTHER VIOLATORS

NGOs and campaigning groups joined governments, religious groups and others in restricting freedom of artistic expression. Often their actions came in the name of protecting another set of human rights, notably minority and women's rights.

The best known attempts of censorship imposed by the artistic community registered in 2017 were related to the Boycott, Divestment, Sanctions (BDS) Movement. Through this movement a number of prominent artists advocated a cultural boycott against Israel because of its occupation of Palestinian territories. Artists including Nick Cave, Lorde and Radiohead were under public pressure to cancel their concerts in Israel.

In July 2017, the play *To the End of the Land*, funded the Israeli Ministry of Culture, scheduled to be performed in New York's Lincoln Center became a target of attempted censorship by the Legal Center of Arab Minority Rights.<sup>36</sup> The petition, initiated by the centre, was signed by more than 60 artists, including four Pulitzer Prize winners, and other prominent writers, actors, directors, and playwrights. The play went on as scheduled, though with added security measures and increased police presence.<sup>37</sup>

In September 2017, the European Union became a censor of art work when a British Member of European Parliament (MEP) Catherine Bearder initiated the banning of 12 of 28 cartoons set to be shown at the *EU Turns 60: A Cartoon Party* exhibition at the European Parliament. The cartoons were deemed "controversial" for negatively depicting German Chancellor Angela Merkel. The censored cartoons were created by French and Greek artists and dealt with a range of critical issues within the EU, including child poverty, the rise of fascism, the EU's handling of the refugee crisis, the dominance of Germany in EU policy and Brexit, among others.

MEP Bearder invoked Article 2, Section 3 of the "Rules governing cultural events and exhibitions on Parliament's premises", which mandates that content in such events shall not be "offensive", of an "inflammatory nature", contradictory to the values of the EU, or likely to cause "disturbances in the exhibition area". After a group of MEPs sent a complaint letter to European Parliament President Antonio Tajani asking him to support the exhibition and revoke Bearder's decision, it was reported that the number of banned cartoons had been cut down to five pieces.<sup>38</sup>

## PATTERNS & CONTEXT: SILENCING OTHERS IN SPECIFIC SITUATIONS

Having observed and analysed how artistic freedom has been targeted in 2017, we can see that people were deprived of their rights both in peace and war, on-line and off-line, and within and outside national borders. This section reviews how artists and artistic freedom were affected in countries under armed conflict and in others under pressure from another country. It also discusses violations on the internet in the broader context of digital communications.

## ▶ ARTISTIC FREEDOM CAUGHT BETWEEN CONFLICTING COUNTRIES

While there are artists who promote nationalist causes, some other artists feel under pressure to support their governments irrespective of their political views; others may use nationalistic sentiments to boost their careers. Analysis of trends in 2017 shows that governments violated international human rights norms to penalise artists from other countries that are in conflict, such as those between Israel and Palestine, Russia and Ukraine, and Spain and the Catalonia region.

### ***Artistic freedom in the Israel-Palestine conflict***

The conflict between Israel and Palestine continues to be prevalent in many countries around the world, with the conflict producing violations of artistic freedom on both a macro and micro level inside the borders of Israel and outside into the global vernacular.

In Israel, the al-Hakawati Theatre (also known as the Palestinian National Theatre) in Jerusalem was prevented from holding a cultural event that included concerts by three music groups on 27 September 2017.<sup>39</sup> Israeli authorities prevented the event on the grounds that it was sponsored by the Palestinian Authority. A sign was hung on the theatre door stating: "Public Security Minister Gilad Erdan ordered the closure of the Hakawati Theatre after receiving information about a cultural event entitled *Arabs expelled from their homes in 1948 and 1967*, under the auspices of the Palestinian Authority." The theatre has been reportedly shut down more than 30 times since its opening in 1977.

In August 2017, two 16-year old musicians from Gaza, Sofiya Radwan and Raslan Ashour, were finally granted permission to complete a tour and perform in Jordan with the Palestinian Youth Orchestra (PYO), despite being previously denied an entry permit by Israeli authorities. However, their request

for a permit to the West Bank was still denied. Due to a set of administrative circumstances, however, the two musicians were ultimately allowed to play both legs of the tour.<sup>40</sup>

In December 2017, the Israeli court in Nazareth rejected Palestinian poet Dareen Tatour's appeal to end her strict house arrest, which includes a ban on her using the internet and on publishing her works.<sup>41</sup> The poet remains under house arrest while she waits for a final verdict on her case over charges that one of her poems posted on YouTube and two Facebook posts constitute "incitement to violence". Tatour has been detained since her arrest in October 2015 and was moved to three different prisons before being placed under house arrest.

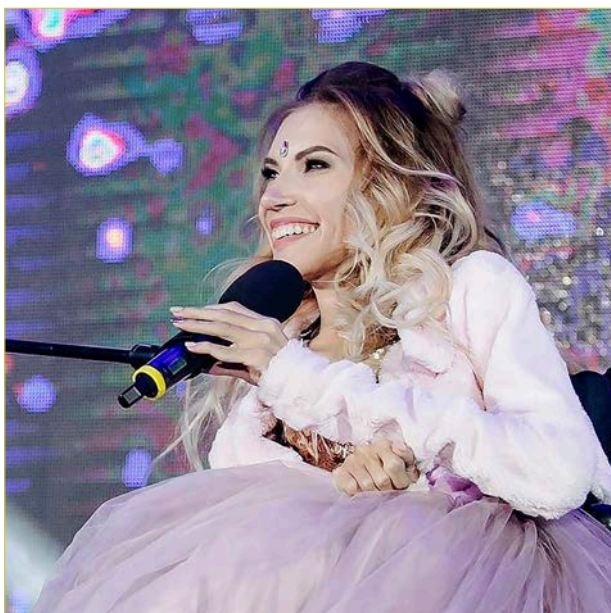
The conflict between Israel and Palestine was made evident elsewhere in 2017, with violations in the US and Lebanon, among other censorship attempts against Israeli and Palestinian art and artist by governments and non-state actors around the world. In particular, the US announced its decision in October to withdraw from UNESCO due to the organisation's "long-standing anti-Israeli bias" and to show that "today is a new day at the UN where there is a price to pay for discrimination against Israel".<sup>42</sup> In response, Israel also withdrew from UNESCO and will see their membership end in December 2018, whilst the US will become a permanent observer country in the same month.<sup>43</sup>

### ***Russia and Ukraine***

The Russia-Ukraine conflict began in 2014 after Russia's invasion and annexation of Crimea. The conflict left artists caught in the middle of a political struggle, and continued into 2017.

Ukraine's Security Service imposed a travel ban to Yulia Samoylova due to a concert that she performed in Crimea in 2015. Samoylova had been selected as the Russian contestant at the Eurovision Song Contest held in Kiev in 2017; Russia is in practice banned from taking part in this European regional event.<sup>44</sup> Ukraine's Deputy Prime Minister Vyacheslav

Kirilenko tweeted that “a broadcast of Samoylova’s performance by Ukrainian networks would violate the Ukrainian law just the same as her entry into Ukraine”, and suggested that the incident could be resolved if Russia sent another participant to compete in Ukraine. In April, the European Broadcasting Union, organizers of the Eurovision Song Contest, released an official statement condemning Ukrainian authorities for banning Samoylova. After attempts at negotiations, the 2017 Eurovision Song Contest was held without Russia’s participation, leading to the European Broadcasting Union imposing a 200,000 euro fine on Ukraine’s state based broadcaster UA:PBC, who appealed the decision. Samoylova performed in Crimea on the same day of the contest, and in January 2018 it was announced that she would be Russia’s entry to the 2018 Eurovision Song Contest in Lisbon.



*Russian singer Yulia Samoylova, who was due to represent her country at the Eurovision Festival 2017 being held in Ukraine, was banned from entry into the host country. Ukraine’s Security Service stated her entry was denied because she had performed in Crimea in 2015. Photo: Julia Samoylova/Юлия Самойлова Instagram*

In October 2017, the Staritsky Theatre in Khmelnytsky, Ukraine, banned its adaptation of Tolstoy’s *Anna Karenina* because it was set to be staged in its original language, Russian.<sup>45</sup> Under pressure from local activists, the theatre’s director

refused to sign a contract authorising the play to be staged in the theatre. This action comes alongside Ukraine’s President Pyotr Poroshenko signing a bill into law under which the country’s national TV and radio stations must broadcast in Ukrainian for at least 75 per cent of the time.

On the other side of the border, in Russia, Natalia Sharina, the former director of the Library of Ukrainian Literature in Moscow, was given a four-year suspended sentence after being found guilty of “inciting hatred”, “embezzlement” and having “extremist literature” in June 2017.<sup>46</sup>

Sharina was arrested in October 2015 when authorities confiscated books from the library that were considered to be anti-Russia propaganda written by Ukrainian nationalist Dmitri Korchinski. She and her lawyer contend that the books were planted in an attempt to falsely incriminate her. Media reports suggest that, at the hearing, every defence argument was dismissed, including the testimony of witnesses who said they saw police plant the “extremist” content in question.<sup>47</sup>

### ***Spain and Catalonia***

Tension between Spain and the autonomous community of Catalonia escalated following a referendum on 1 October 2017 producing an overwhelming result in favour of independence at 90 per cent. This conflict impacted on artistic freedom of expression and attempts to censor artists who expressed support for Catalanian independence.

Notably, throughout September 2017, the Spanish Popular Party called for the cancellation of several concerts in the Valencian Community, one of the 17 administrative regions in Spain, pointing to the artists’ alleged support for Catalanian independence in advance of the 1 October referendum. Singer Pep Gimeno (aka Botifarra) and the band Carraixet had their performance scheduled for 26 September in Torrevieja, which was organized by the Valencian regional government, cancelled.<sup>48</sup> The artists sing in Valencian (a variant of Catalan), leading Member



of Parliament and Secretary General of the Popular Party (PP) in Torrevieja, Joaquín Albaladejo, to demand the Valencian government to not grant a venue for the artists to perform, stating: “In the PP we will defend our freedom to protect our mother tongue which is Spanish.”<sup>49</sup>

Catalan singer Cesc Freixas was scheduled to perform in September in Pinoso, but the local PP branch in Pinoso published a Facebook statement demanding the Valencian Government cancel the concert, which they called “a political act funded with public money”, due to Freixas’ alleged ties to a Catalan pro-independence political party.<sup>50</sup> Without specifying details, the artist stated that the PP had tried to censor him previously, when agents of the civil guard, a Spanish paramilitary force, showed up at his concert claiming they had received a complaint over the phone. After a brief interaction, the guard left the venue. The three concerts, despite these demands, were ultimately held.

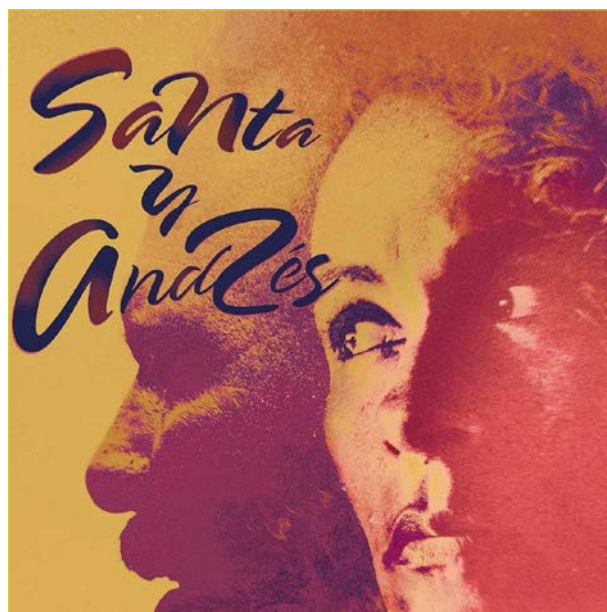
## ►► SILENCING DIPLOMACY: CENSORING ACROSS BORDERS

In 2017, China and Turkey continued their consistent attempts to strangle freedom of artistic expression outside their borders. Venezuela and Cuba applied pressure to censor arts beyond their territories. Non-state actors and artistic communities also used their diplomatic channels to have artists and artworks censored.

### ***China and Cuba: What is banned nationally must be banned internationally***

China is known to take a strong stance that films that are banned in China should also be banned in other countries, prepared to use its economic power to ensure that this policy is implemented. In June 2017, Liu Jian’s film *Hao Ji Le (Have a Nice Day)* was dropped from the Annecy International Animated Film Festival in France by its organisers by “official pressures”.<sup>51</sup>

Similarly, in March, Cuban filmmaker Carlos Lechuga’s *Santa y Andrés*, a film which has been awarded at a number of international film festivals and is banned in Cuba, was removed from the Havana Film Festival New York, reportedly due to pressure from Cuban authorities.<sup>52</sup>



*The movie Santa y Andrés, by filmmaker Carlos Lechuga, has suffered a number of censorship cases by the Cuban government, both inside the country and abroad. The movie deals with a number of issues that are uncomfortable to authorities, such as homosexuality, a friendship between an artist and the Cuban officer in charge of watching him, and political dissidence. Photo: Carlos Lechuga Facebook*

### ***Artwork censored in Chile over image of Venezuelan President***

In September, Spanish multinational cable company Telefónica’s foundation in Santiago, Chile, censored a work by Cuban artist Antuán Rodríguez featuring a punching bag bearing the face of Venezuelan President Nicolás Maduro. The foundation argued in a statement that the artwork sparked violent public reaction and they decided they could not risk the reactions and sensitivity that it could spark among the Venezuelan community in Chile. However, the artist claimed that the Venezuelan government has put pressure on the company’s headquarters in Spain, which in turn forced its Chilean branch to remove the work.<sup>53</sup>

### **Turkish writers detained in Spain on political charges**

In August, Turkish-German writer Doğan Akhanlı was arrested in Spain, in compliance with an international arrest warrant issued by Turkey through Interpol. The writer, who has written fictional and non-fictional works, was later granted conditional release to remain in Madrid for a period of 40 days to allow for consideration of a formal extradition request from Turkey.<sup>54</sup> German foreign minister, Sigmar Gabriel, criticised the Turkish authorities saying: “It would be terrible if Turkey could get people who raise their voice against [Turkish president Recep Tayyip] Erdoğan imprisoned on the other side of Europe.”<sup>55</sup>

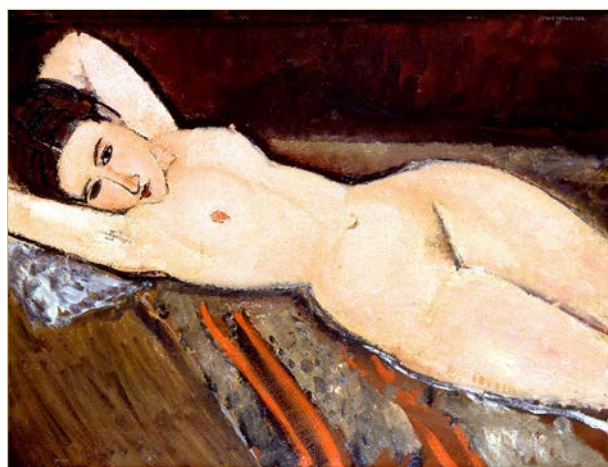
## ▶▶ VIOLATIONS ON SOCIAL MEDIA PLATFORMS

Facebook and Instagram are two of the most popular social media platforms. Both have adopted their own internal policies when considering what content can be allowed and which should be censored. As the two cases below illustrate, both companies have conducted censorship on the grounds of nudity and indecency, which is inconsistent with international human rights standards. These are just a few of a much larger number of censorship cases by these digital and social media platforms, much of which is not reported.

### **Facebook censored paintings for nudity**

In February 2017, the painting *Women Lovers* by Australian artist Charles Blackman was censored on Facebook. The oil painting presents two naked women at rest and a black cat next to them. The Melbourne auctioneer, Mossgreen, was organising an auction of the painting and wanted to advertise it on Facebook. Facebook rejected the images for violation of its community guidelines and “advertising adult products or services”.<sup>56</sup>

In June 2017, Facebook censored an educational video created by the L’Hermitage Foundation of Lausanne in Switzerland. The video was created to promote the *Masterpieces of the Emil Bührle Collection*, which included paintings of Impressionists and Post-Impressionists such as Monet, Cézanne, Van Gogh, Picasso and Modigliani. Facebook states that it had removed the image as the video contained an image of a painting *Nu Couché* by Modigliani featuring a naked woman.<sup>57</sup>



*The female nudity featured in Modigliani’s Nu Couché was the reason given by Facebook for censoring an educational video created by the L’Hermitage Foundation of Lausanne in Switzerland. Photo: Public domain*

### **Instagram and Facebook censored three images from the Museum of Fine Arts account**

In April 2017, Instagram and Facebook removed three pictures from a post by Boston’s Museum of Fine Arts in the US. The aim of the post was to promote the ongoing photography exhibition *Imogen Cunningham: In Focus*. The pictures that were removed were a pair of near-abstract, black-and-white nudes by photographer Cunningham, as well as photographer Judy Dater’s image of Cunningham alongside a nude model. According to Instagram, these pictures violated its community standards which prohibit nudity. According to Facebook, the removal was because the pictures “violated decency standards”.<sup>58</sup>

These cases are the just the tip of the iceberg. While a full discussion of violations of artistic freedom in the digital age is beyond the scope of this section in this chapter, a few key points should be highlighted.

First, violations of artistic freedom on online platforms are pervasive. This is largely due to the fact that they use their own arbitrarily defined “community guidelines criteria” inconsistently with international human rights standards. Although governments as state parties to international human rights treaties are main duty-bearers to the treaties, companies, including Facebook, YouTube, Instagram, Twitter and Google, have the responsibility to also respect the human rights norms and standards enshrined in those treaties. This responsibility includes avoiding violations of human rights, providing remedy when causing adverse impact, making policy commitments and carrying out human rights due diligence.<sup>59</sup> These examples of censorship on the grounds of nudity and indecency constitute violations of freedom of expression. They illustrate the failure to respect the principles of freedom of expression, to remedy, and to make policy commitments by including freedom of expression principles in their terms of services.

Second, there is a lack of transparency and accountability on the drawing up and uses of regulations on content hosted by these platforms. Similarly, most online and social media platform companies lack procedural safeguarding and access to effective remedy for their users.

Third, governments arbitrarily close down social media platforms in many countries, such as YouTube in Pakistan, and Google and Apple in China. This poses questions as to the legitimacy and accountable governance of many regulations on digital and social media imposed by governments.

Finally, online harassment against artists, artworks and people who enjoy their cultural lives are at a worrying level and a major cause of self-censorship, about which little has been done to address the large-scale nature of this challenge.

## THE VOICELESS AND THE VULNERABLE

Illegitimate restrictions of freedom of artistic expression and creativity affect us all whether or not they are within national laws. But at least three groups of people: women, minorities and LGBT, are particularly vulnerable and subjected to persecutions, threats and other forms of silencing. This section examines how their rights were violated in 2017.

### ► WOMEN’S RIGHT TO FREEDOM OF ARTISTIC EXPRESSION

Women’s right to artistic freedom remains unrealised in most parts of the world, with little improvements of states’ understanding of the responsibility to respect, protect and fulfil women’s right to artistic freedom. On the contrary, these rights are systematically denied in many countries.

Religious restrictions and traditions remain a major cause of repeated violations of women’s right to freedom of artistic expression and creativity in Iran, Saudi Arabia, Egypt, India and Pakistan. In other countries, women, as art producers, performers and spectators, suffer restrictions, bans, threats, prosecutions and unequal access to the opportunity to perform their arts publicly.

Suppression in the aim of combating “indecency” or “obscenity” is not the reserve of Muslim-majority countries. In April 2017, Japanese visual artist Rokudenashiko (real name: Megumi Igarashi) was fined 400,000 yen (3,040 euros) for digitally distributing “obscene” material related to her “vagina art” by the Tokyo High Court, upholding a 2016 lower court decision.<sup>60</sup> In New Zealand, a photo in which a woman’s nipples were visible was removed from an exhibition after four visitors complained.<sup>61</sup>

### **Saudi Arabia: A small opening in a closed society for women**

The notorious ban on women driving was lifted in September 2017 and a spark of hope has been brought with the first solo public concert by a female singer in the country's history. In December 2017, Lebanese singer Hiba Tawaji performed a mix of Western and Arabic classics in Riyadh in front of an all-women audience.<sup>62</sup> The concert was organised by the General Authority for Entertainment, a governmental institution, and was described as "another symbol of Saudi Crown Prince Mohammed bin Salman's attempts to modernize and reform Saudi Arabia".<sup>63</sup> However, much more needs to be done for the country with a poor record on women's artistic freedom. This should include removing rules on male guardianship of women, sex segregation in larger cultural events and the strict dress code.

### **Iran and India: Singing not allowed**

Since the Iranian Islamic revolution of 1979, women artists have been forbidden to sing solo in public in front of mixed audiences and are only officially permitted to sing in choirs, as background singers or to other women. In current practice, only the cities of Tehran and Sanandaj allow female musicians on stage.<sup>64</sup> It is in this context that the Kurdish band Dayrak Khatoon was banned from performing at the International Festival of Tribal Music in Kermanshah, western Iran, in January 2017.<sup>65</sup> The organisers of the festival (the local bureau of the Ministry of Culture and Islamic Guidance of Kermanshah Province) based their decision on the grounds that the women in the band also sang solo. The band has been fiercely accused of undermining Islamic values by Marsad News, a website known to be close to the Iranian Revolutionary Guards.

In India, female singer Suhana Syed was criticised and threatened in March 2017 by Islamic fundamentalists on a Facebook page called Mangalore Muslims.<sup>66</sup> Among others, she has been accused of "[tarnishing] the Muslim Community by singing in front of men" and blamed for "showing

[her] beauty to other men", while singing a Hindu devotional song on a singing reality TV show. Days later, a pamphlet signed by 46 clerics asked female singer Nahid Afrin to stop singing in public and called for her to be boycotted for "anti-Shariah acts".<sup>67</sup>

### **Egypt: Arrests and prosecutions in name of decency**

Female musicians have experienced difficulties in exercising their rights in Egypt. In November 2017, pop singer Shyma (Shayma Ahmad) was arrested and, a month later, convicted to two years in prison and a 10,000 Egyptian pound (460 euros) fine for her music video *Andy Zoroof (I Have Problems)*.<sup>68</sup> The charge was for "inciting debauchery and immorality" as the video shows the artist licking an apple and suggestively eating a banana in a classroom. The video director received the same sentence in absentia. Shyma's prison sentence was later reduced to one year upon appeal in January 2018.<sup>69</sup>

In December 2017, singer and dancer Eghraa (Fatma) was arrested for dancing "provocatively in revealing clothing" in the music video of her song *I Want a Man*.<sup>70</sup> She could be sentenced to up to three years in prison for "inciting debauchery" and "violating public decency". The same grounds have led to the arrest of female singer Laila Amer on 2 January 2018 for making "provocative gestures" and belly dancing in the video of her song *Bos Omak (Look at your Mother)*, an Arabic profanity. She was also expelled from the Egyptian Musicians Syndicate.<sup>71</sup> In February 2018, the singer was sentenced to two years in prison. Additionally, The director of the video was sentenced to six months in prison and a man appearing in the video with the singer received a three-month prison sentence. Amer's case is open to appeal.<sup>72</sup>

Women artists and audiences remain vulnerable to sexual harassment worldwide with no sign of improvement. In Europe, six rape cases were reported at Roskilde Festival 2017 in Denmark, one more than the previous year.<sup>73</sup> Several other sexual harassment cases at the same music festival were



reported by victims to Danish newspaper Politiken.<sup>74</sup> In Sweden, four rapes and 23 sexual assaults were reported at the 2017 Bråvalla Festival. The organisers consequently decided to cancel the 2018 program.<sup>75</sup> Swedish actress Emma Knyckare suggested to hold a “women-only” music festival in 2018, called the Statement Festival, aimed at creating a safe place where, “non-men” could be present.<sup>76</sup>

## ▶▶ MINORITIES

Artists coming from minority backgrounds and artwork dedicated to minority issues were subjected to censorship and other forms of violation in many countries. Attacks on artists in Algeria and Zimbabwe depicted the problems faced by minorities performing art in native languages, especially if those groups are perceived as a threat to the government. The judicial prosecutions of artists in Ethiopia, China and Turkey exemplified the attempts by authorities to prevent art as a tool for addressing dissatisfaction with such issues as legal status, unresolved territorial disputes and self-determination. Artists in such situations are often unjustifiably charged with terrorism and on other grounds. The US and Australia saw a trend in which representatives of rights groups attempted to impose restrictions on artistic representations of their history, symbols and traditions, particularly when used by artists of the majority ethnic background.

### ***Censoring minority languages in Algeria and Zimbabwe***

State and non-state actors have deprived the right of minority artists to express themselves in their native languages. In November 2017, Zimbabwean Afro-Jazz musician known as Jeys Marabini was physically attacked in Harare for singing Ndebele songs.<sup>77</sup> In the aftermath of the attack, the artist stated that he was struck that this incident occurred during the inauguration of newly appointed president Emmerson Mnangagwa and that the organizers took no action when he and his band were pelted off the stage by a crowd objecting to the band performing in their own language.

In Algeria, film director and actor Reda Amrani and journalist Rachid Ali Uqasi were attacked in Akbou in September 2017 on the day they planned to launch the TV channel TQ5 promoting Kabyle language and culture.<sup>78</sup> The prevention of cultural events organized in the minority Kabyle language is not uncommon in Algeria.

### ***Prosecution of minority artists in Ethiopia, China and Turkey***

The practice of marginalizing the Oromo ethnic group in public life has been present in Ethiopia for decades. Since December 2016, seven Oromo artists have been persecuted because of their political engagement. In June 2017, after six months in detention, they were charged with terrorism for producing “inciting” audio-visual materials and uploading them on YouTube.<sup>79</sup> This charge took place in the context where artists from Oromo communities are subjected to repression by Ethiopian authorities. As a result, many artists were arrested, forced to flee, or opted to disappear from public life.

China has yet to provide an appropriate legal framework for freedom of expression in minority languages, despite recognising 56 minority groups, among the estimated hundreds more that are not officially acknowledged. Chinese authorities arrest political opponents, especially representatives of the Tibetan and Uyghur ethnic groups, holding them in detention or “rehabilitation centres”.

In October 2017, Tibetan monk and songwriter Lobsang Jinpa was released from prison after serving a five-year sentence for writing a song in honour of a former Tibetan religious leader.<sup>80</sup> The monk was freed upon serving the full term, but a number of Tibetan, as well as Uyghur, artists remain in prison, some for many years. In March 2017, the popular Uyghur singer and musician Abdurehim Heyit was arrested in the Xinjiang region allegedly because he had performed the song *Atilar (Forefathers)*.<sup>81</sup> Prior to detention, he was interrogated by police on several occasions over allegations that this song was connected to jihad.

Although freedom of expression in general faces serious restrictions in Turkey in the aftermath of an attempted coup in 2016, the position of the Kurdish minority is especially difficult, especially when they share their political views. In December 2017, Kurdish singer Ferhat Tunç faced trial for alleged “propaganda of a terrorist organization”, “insulting the President” and “publicly provoking hatred and hostility” in three separate cases related to posts shared on social media.<sup>82</sup> The outcome of all three cases is expected in 2018. If convicted, Tunç could face more than 13 years in prison.

### ***Battles over the uses of indigenous symbols in Australia and the US***

Disputes over the right of artists to interpret certain topics related to minority rights took central stage in the US and Australia. In the US, the discussion on who can represent traumatic history in art was sparked over the attempts of censorship of Dana Schutz’s painting depicting the body in an open casket of Emmett Till, an African-American boy who was lynched in 1955 after being accused of whistling at a white woman. The work is currently displayed at the Whitney Museum of American Art in New York. In March 2017, the artist Hannah Black launched a campaign demanding the removal of the painting and calling for its destruction over “perceived racial insensitivity”.<sup>83</sup> In a letter addressed to the museum, she wrote that “it is not acceptable for a white person to transmute black suffering into profit and fun”.<sup>84</sup>

The use of symbols has also been brought into question. In June 2017, a large-scale sculpture *Scaffold* was removed from the Walker Art Centre’s sculpture garden in Minneapolis, Minnesota, upon request of the members of the Native American community who protested this artwork over claims that it represented an ignored and painful part of their history.<sup>85</sup> The sculpture was partly modelled on the gallows used to hang 38 Dakota men in 1862. The artist, Sam Durant, and the gallery agreed for the sculpture to be dismantled and burned at a ceremony held by Dakota elders.

Similarly, in September 2017, Driller Jet Armstrong’s exhibition in the Hahndorf Academy gallery in Adelaide Australia was shut down after Indigenous Australian leaders criticized the author for appropriating the Wandjina, a symbol sacred to Kimberly Aboriginal people.<sup>86</sup> In this way, the artist allegedly violated core values of the Aboriginal people of Kimberley which prohibit “interpreting somebody else’s story”.<sup>87</sup>



*Scaffold, a sculpture by artist Sam Durant, ignited many protests after members of the Native American community felt that the artwork represented a painful part of their history. The sculpture, related to the hanging of 38 Dakota men in 1862, was later dismantled and burned at a ceremony held by Dakota elders. Photo: Lorie Shaull*

## ▶ LGBT

Violations of freedom of artistic expression of LGBT people and on arts related to LGBT issues are of particular concern in countries where homosexuality is criminalised and discrimination against other sexual orientations is common. While some countries embrace their LGBT citizens through official recognition of partnerships and equal marital rights, others marginalize them by passing discriminatory laws and imposing illegitimate restrictions.

In 2017, a third of documented cases of LGBT-related violations took place in Egypt, Israel and Russia. China, Brazil and Nigeria also saw worrying developments. LGBT artistic communities and arts

with queer content are subject to persecution and censorship, often on the grounds of immorality, indecency, obscenity or debauchery.

In countries where there are no official restrictions related to homosexuality in artworks, censorship is exercised under the notion of traditional values. Right-wing political parties, church and conservative traditionalists are powerful driving forces of censorship in these cases. Other forms of censorship are carried out as a direct result of orders by state censorship bodies or court decisions. If some artworks are not entirely banned, they are subjected to content redaction, such as where “problematic” scenes from movies or chapters from books are removed.

In 2017, Egypt, Brazil, and China took steps backwards as their governments adopted new legal measures to prevent freedom of expression on LGBT communities, inconsistent with international human rights standards.

The cases shown below are evidence illustrating how LGBT artists and communities are under political, social and judicial pressure.

### ***Egypt: Six years in prison for flying a rainbow flag at a concert***

Although there are no laws officially banning homosexuality in Egypt, in September 2017, seven people were arrested on charges of “inciting immorality” for waving a rainbow flag, a symbol of the LGBT community, at the Lebanese indie rock band Mashrou’ Leila concert in Cairo.<sup>88</sup> The band’s lead singer is openly gay and addresses the issue of same-sex relations through his songs. Egyptian police also later arrested dozens of concertgoers, mostly by identifying them through video footage from the concert and dating apps.<sup>89</sup>

The first detainee among them was prosecuted by the Dokki Misdemeanour Court in Giza, reportedly

after an unfair trial. He was sentenced to six years in prison, followed by six years of probation, and fined for “debauchery” and “inciting immorality”. Others faced similar but less severe, prison sentences.<sup>90</sup> Amnesty International reported that they were subjected to anal examination by the Forensic Medical Authority in order to determine participation in same-sex intercourse.<sup>91</sup>

The Egyptian Musicians Syndicate has banned Mashrou’ Leila from further performances in Egypt, whilst the Supreme Council for Media Regulation ordered a media blackout on any form of support to the LGBT community, calling homosexuality a “shameful disease”, and that the only way a homosexual person could appear in the media is if they admit their “non-acceptable behaviour” and “show repentance”.<sup>92</sup>



*Lebanese indie rock band Mashrou’ Leila, which was banned from performing in Egypt when some audience members flew a rainbow flag at one of its concerts in Cairo. The audience members were arrested and some have been handed harsh prison sentences, while the incident also started an official clampdown on the LGBT community in Egypt. Photo: Mashrou’ Leila Facebook*

### ***Brazil: Art exhibition closed down due to nudity and blasphemy allegation***

In September 2017, a so-called Brazilian “cultural war” broke out when conservatives and evangelical Christians, together with the Free Brazil Movement, campaigned against arts, debates and expression on nudity and sexuality.

In November, Gaudencio Fidelis, the curator of *Queermuseu – Cartografias da Diferença na Arte Brasileira* (*Queer museum – Cartographies of Difference in Brazilian Art*) was summoned to testify before the Senate in Brasília, due to allegations of “mistreatment of children and teenagers” for works included in the exhibition. Queermuseu had been forced to shut down a month before it was scheduled to end when Santander Bank, the sponsor of the exhibition, was urged to close the exhibition under pressure from conservative pressure groups. The exhibition was held at Santander Bank’s Porto Alegre centre in São Paulo. The conservative groups accused the exhibit of promoting blasphemy, paedophilia and bestiality.<sup>93</sup> The exhibition featured 85 artists and over 263 artworks, including many by leading Brazilian artists. The Public Prosecutor’s Office technical note on the “Liberty of artistic expression in face of the protection of children and teenagers” of 11 November concludes that art venues must warn their public of the exhibition’s contents so that parents may decide on whether it is appropriate for children.

In the aftermath of this order, another two pieces of artwork were censored in Brazil. Wagner Schwartz was summoned to appear before the Senate’s investigative commission after an allegation that he was involved in a nude performance at the MoMA in São Paulo that sparked outrage when a young girl approached to touch him.<sup>94</sup> The play *O Evangelho Segundo Jesus, Rainha do Céu* (*The Gospel according to Jesus, Heaven’s Queen*) was banned in São Paulo by a judicial decision responding to complaints filed by religious traditionalist groups. The play was a story of a trans-woman’s relationship with religion after undergoing sex-change surgery, and featured a trans-actress playing Jesus.<sup>95</sup>

### **Russia: The 2013 law on ‘gay propaganda’**

The 2013 law on “gay propaganda” continues to stifle the artistic freedom of LGBT communities by spreading a climate of fear, self-censorship and driving LGBT arts underground. In 2017, Russia was among the top three countries found to have

violated artistic freedom related to LGBT. In August 2017, a Russian publisher admitted that it redacted sections on queer relationships in the fantasy series *Shade of Magic* for fear of the 2013 “gay propaganda” law, after its American author, Victoria Schwab, accused the publisher on Twitter for breaching her publishing contract by redacting her book without permission.<sup>96</sup>

In August, singer Zelimkhan Bakaev (who performs under the name Zelim Bakaev) disappeared in the Chechen capital Grozny while he was visiting from Moscow to attend his sister’s wedding. Human rights activists fear he might have fallen prey to so-called “anti-gay camps” and is feared dead.<sup>97</sup> In January 2018, Chechen leader Ramzan Kadyrov suggested that Bakaev may have been killed by his own family in an “honour killing”,<sup>98</sup> although his fate remained unknown.

### **China: New regulations banning online LGBT content**

Although homosexuality is not prohibited in China, Chinese authorities take an active role in restricting the visibility of the LGTB community, using censorship laws to cut scenes or ban films depicting homosexuality. In June 2017, with the approval of the Ministry of Civil Affairs, the China Netcasting Services Association (CNSA) adopted regulations on banning any display of “abnormal sexual behaviour”, including homosexuality in online video and audio content.<sup>99</sup> Through these regulations, auditors will be tasked to check if online content is in line with “core socialist values”. This procedure will be applied to any original online audio-visual content, including web series, short films, cartoons, educational videos and documentaries. Cases of censorship included the Chinese version of the movie *Alien: Covenant* in which six minutes of the film, including a scene of kissing between cyborgs Walter and David, were removed.<sup>100</sup>



### **LGBT rights in Nigeria: Writer abducted over anti-homophobic essay**

The LGBT community faced severe restrictions of freedom of artistic expression in Nigeria, where a rigid Same-Sex Marriage Prohibition Act provides imprisonment of up to 10 years in cases of “directly or indirectly making public show of a same sex amorous relationship”. In June 2017, Chibuihe Obi, a Nigerian writer known for his LGBT-themed poems and essays, was abducted for allegedly “spreading Satanism”.<sup>101</sup> After three days of being held hostage by unknown abductors and interrogated, which included questions about his LGBT writings, the writer was released with minor injuries. Prior to his abduction, this internationally awarded artist had been threatened via social networks on many occasions.

Elsewhere, in February, Palestinian authorities banned Abbad Yahya’s latest novel *Crime in Ramallah* for “indecent”, confiscated copies of the novel from bookstores and issued an arrest warrant for the writer, who was in Qatar at the time and, as a result, fears going back home.<sup>102</sup> The book’s editor and distributor, Fuad al-Aklik, was detained for six hours and interrogated. He was released the following morning after Palestinian Culture Minister Ehab Bsaiso intervened to arrange his release. *Crime in Ramallah* follows the lives of three men, one of whom is gay, as they take very different turns after the murder of a young woman. In telling their story, the novel makes fun of the Palestinian leadership and includes graphic sexual language.

## A QUEST FOR ACCOUNTABILITY

Of the 553 cases of violations of artistic freedom documented in 2017, very few are known to have seen their perpetrators acknowledge, compensate

or be brought to justice for their acts. Accountability for violations of artistic freedom is rarely mentioned. It is an unusual concept, and evidently, it is in short supply.

Most violations in the forms of prosecution and imprisonment require national laws to do so. Arrests, detentions and censorship are at the discretion of law enforcement bodies. On reviewing the cases of attacks, it becomes clear that most violations of artistic freedom by the state are carried out legally as guided by national laws and regulations. Many articles in these laws are inconsistent with international human rights standards and breach the legal obligations of state parties to international human right treaties.

### ▶ THE GAP BETWEEN NATIONAL LAW AND INTERNATIONAL HUMAN RIGHTS TREATIES

This research conducts a legal analysis in 12 countries: Belarus, Bangladesh, Egypt, Iran, Lebanon, Malaysia, Morocco, Pakistan, Tunisia, Turkey, the US and Zimbabwe, reviewing the level of protection in their constitutions, penal codes and other laws related to freedom of expression. Key findings and observations of this review can be summarised as follows:

First, in most of these countries, many laws related to freedom of expression are outdated, but are kept unchanged and are frequently used by governments to silence criticising or opposing voices of artists, journalists and other groups. Malaysia’s Sedition Act 1948, for example, was passed when Malaysia was under British colonial rule, yet has served the government well, as is seen in the prosecutions against cartoonist Zunar in 2017.

Secondly, many articles in penal codes, cultural- and communications-related laws are broad and vague in their definition. In legal terms, this is neither good nor effective law as they are not specific enough to make distinctions between accepted

and unaccepted behaviours in a society. In political terms, these laws are useable and effective as they allow governments and law enforcement agencies to apply their own discretion in arresting, detaining and prosecuting artists and other critics. These include charges on the grounds of indecency, public morals and insulting the nation.

Finally, governments are slow to change these laws. After a parliament ratifies an international human rights treaty, the government has obligations, among others, to start a process to review and amend national laws to ensure their compatibility with these treaties, and to report periodically to committees overseeing the implementation of such treaties. This legal review finds that there are a large number of articles of freedom of expression related laws that explicitly contradict Article 19 of International Covenant on Civil and Political rights (ICCPR), its General Comments and other international human rights standards, notably the International Convention on Cultural, Social and Economic Rights (ICCSER).

Here are some key contradictions between international and national laws that are often used by governments.

### ***Insulting head of state and government officials***

Insulting the prime minister or president is one of the most frequent charges made against artists in every continent, applied in 85 per cent of imprisonment cases and 54 per cent of prosecution cases in 2017. It is important to note that criticising, scrutinising, opposing and holding governments to account is legal under international human rights laws, and is an essential feature for a healthy and democratic society. As stated by the ICCPR General Comment 24, “all public figures, including those exercising the highest political authority such as heads of state and government, are legitimately subject to criticism and political opposition.”<sup>103</sup>

For example, in practice, Turkey’s Penal Code Article 25 penalises cases of defamation against

a “public office”, and carries prison terms of up to two years. The Anti-terror law (TMK) Article 299 targets anyone who “insults” the president, which carries a maximum sentence of four years in prison. Lebanon’s Penal Code, Articles 384, 385, 386 and 388, criminalise contempt, libel and defamation against the president, other public officials and judges. Possible penalties include up to one year in prison and/or a fine. Similar criminalisation is found in Egypt, Morocco, Tunisia, Pakistan and Zimbabwe.

### ***Insulting religions and religious feelings***

Blasphemy, hurting religious feelings or insulting heads of religion are grounds often used to silence artists and accounted for 16 per cent of prosecutions cases in 2017. The ICCPR General Comments 34 states that: “Prohibitions of displays of lack of respect for a religion [...] are incompatible with ICCPR”<sup>104</sup> except for “advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.”<sup>105</sup>

In Lebanon, Article 474 of the Penal Code criminalises “publicly insulting a religion” with three years’ imprisonment, and Article 373 criminalises “blasphemy” with one year’s imprisonment. Bangladesh’s Penal Code, Section 295A, criminalises “deliberate and malicious acts intended to outrage religious feelings of any class by insulting its religion or religious beliefs”. Turkey’s Article 216 (3) of the Penal Code lists an offence of “openly disrespecting the religious beliefs of a group if the act causes potential risk for public peace”. Similar criminalisation is found in Egypt’s and Morocco’s penal codes.

One of the most repressive laws in the group is Pakistan’s so-called “blasphemy laws”. Sections 295 and 298 deal with insults to the religion or religious beliefs of a particular class of citizens, defiling of the Holy Quran, derogatory remarks in respect of the Holy Prophet, the deliberate and intentional wounding of any person’s religious feelings, derogatory remarks in respect of holy personages, and the use of Islamic religious terms

by “Ahmedis”,<sup>106</sup> prohibiting them from calling or representing themselves as Muslims. The offences are punishable with imprisonment and fines. The maximum sentence is imprisonment for life.<sup>107</sup>

## ►► FINES AND FINANCIAL RESTRICTIONS TO SILENCE ARTISTS

In addition to the pervasive uses of laws inconsistent with international standards, many governments impose fines and other financial restrictions to silence artists, adding to a climate of fear and exacerbating self-censorship. Some of these fines are imposed on discriminatory grounds against people from specific ethnicities, countries of origin and gender, compromising legitimacy of the laws.

In 2017, evidence showed that governments have increasingly developed new regulations and financial measures against artists whose work challenges the government, is considered immoral or otherwise transgressive. This is particularly so in Egypt and Burundi. Others use large fines to prevent artists’ performances, such as in Ukraine. This adds more pressure upon artists and arts communities than has been the case in previous years, running alongside bans or cuts to financial support to critical and oppositional artists as practiced in South Korea, Russia and Israel.

### ***Ukraine: A new law against Russian artists carrying up to an 11,700 euro fine***

In November 2017, Ukraine’s President, Piotr Poroshenko, signed a new law, passed by the parliament in October, whereby Russian artists can only perform in Ukraine if they receive authorization from the Ukraine Security Services.<sup>108</sup> If organizers fail to do so, or only partially fulfil the law, they are subject to fines ranging from 5,000 to 11,700 euros.

This law discriminates against people and artists on the ground of country of origin, severely restricting

freedom of artistic expression, including limiting access to cultural scenes, promoting a climate of fear and legalizing censorship. Artists from both sides of the conflict find themselves in a worsening situation as their work and performances become increasingly subject to threats and censorship, and their voices silenced.

### ***Burundi: A new fee of equivalent to four months’ salary to perform a show***

In October 2017, the President of Burundi, Pierre Nkurunziza, signed a new decree which demands that all groups seeking to perform publicly must register for authorization with the Ministry of Culture and pay a fee of USD\$ 280 (230 euros).<sup>109</sup> This is the equivalent of over four months of the Burundi average individual monthly income of USD\$ 66.67 (54 euros).<sup>110</sup> In addition, the decree makes it strictly forbidden for women to play drums and other percussion instruments. There are concerns that the new policy will make performance impossible for artists who cannot afford the authorization fee.

### ***Philippines: 1,630 euros for not singing national anthem ‘enthusiastically’***

In July 2017, the House of Representatives of the Philippines unanimously approved a bill that requires citizens to sing the national anthem “enthusiastically” when it is played in public. The intention is to “inculcate in the minds and hearts of people a just pride in their native land, fitting respect and affection for the national flag and anthem”. This offence is punishable with a fine of the equivalent of between 815 to 1,630 euros, and the possibility of a year’s imprisonment.<sup>111</sup>

### ***Egypt: Two years in prison and a 460 euro fine for violating public morals***

Article 178 of the Egyptian Penal Code 58 has been increasingly used as a financial limitation against artists who are convicted of manufacturing



or possessing materials that “violate public morals”. The article stipulates a fine of 5,000 to 10,000 Egyptian pounds (230 to 460 euros) and/or imprisonment of up to two years.

In November 2016, members of parliament initiated a proposal to abolish jail terms arguing that Article 178 is unconstitutional through its restriction of freedom of expression. The Egyptian Parliament’s Committee on Constitutional and Legislative Affairs, however, rejected a proposal for amendment.<sup>112</sup> Following this decision, Egyptian novelist, Ahmed Naji was fined 10,000 Egyptian pounds (460 euros) and imprisoned for two years for his book, *The Use of Life*, which “violated public morality”. The editor of a literary magazine that published excerpts of the book was also fined. In 2017, the same fines and imprisonment terms were imposed on Egyptian singer Shyma as discussed earlier.

## ►► CIVIL SOCIETY: A GROWING UNDERSTANDING AND ADVOCACY FOR ARTISTIC FREEDOM

Accountability of violations of artistic freedom is running low, not only because it is in short supply on governments’ side, but also because it is low on the demand side. The majority of civil society organisations (CSOs) and donors do not see artistic freedom as a priority, even where they support projects relating to freedom of expression, specifically freedom of the media.

However, there is a growing understanding of the role of artistic freedom in the promotion and protection of democracy and a broad range of rights, including its place in enhancing the UN’s Sustainable Development Goals. For example, in recent years, more resources have been put into so called “artists at risk” programmes, aimed primarily at relocating artists who are at risk in their own countries, giving them periods of respite in mostly Northern countries for a few months to two, or even more, years. Artists are therefore removed from hostile environments and able to continue their work. While these programmes are essential, relevant and contributing to the safety of artists-at-risk, there remains the challenge of achieving changes in law, policy and practices that cause artists to leave their countries in the first place, posing the question of the sustainability of these programmes and their long-term strategic value.<sup>113</sup>

Other programmes are emerging to better tackle the accountability challenge, as a few CSOs and donors have pioneered a shift from a charitable and relief approach to a human rights-based approach to artistic freedom. These organisations adopt an international human rights framework to their research, advocacy, campaigns and relief efforts. They search for and dialogue on solutions, including changes on legislation and policy, and engage artists as change agents and actors, and not only as victims. Both approaches of CSOs and donors are crucial and there is room to improve the synergy between the two approaches so that demands for accountability can be strengthened and realised for the rights to artistic freedom of people and artists.



*“In a large number of cases, States resort to imposing restrictions authorized under international law in inappropriate or abusive ways, favouring some worldviews over others. Consequently, stakeholders lose confidence in State institutions, leading to a loss of credibility of Governments, including when they legitimately impose limitations in accordance with articles 19 (3) or 20 ICCPR. This effect is amplified when rules are ambiguous and procedures are not transparent.”*

REPORT OF THE SPECIAL RAPPORTEUR IN THE FIELD OF CULTURAL RIGHTS, **FARIDA SHAHEED**, A/HRC/23/34, para 41.

“ I share the opinion that this is a gutter. It is a violation of cultural principles, incitement to violence, something that should not appear on the stage of the theatre, **but above all it should not be financed from public money.** ”

**BEATA MAZUREK**, SPOKESPERSON FOR POLAND'S LAW AND JUSTICE (PIS) PARTY, IN A STATEMENT ABOUT THE PLAY *THE CURSE*, WHICH CAUSED PROTESTS BY RELIGIOUS AND NATIONALIST GROUPS

3

WATCHLIST COUNTRIES

# POLAND:

## NATIONALISM AND RELIGION THREATEN ARTISTIC FREEDOM

### ▶ KEY POINTS

- Art increasingly viewed through a lens of identity politics and Catholicism
- Theatre a prime target for violations as it became a platform for challenging current ideologies

In Poland, freedom of artistic expression has increasingly come under threat from a combination of government and non-governmental actors under the guise of Polish cultural identity, national pride and the Catholic religion. Specifically, the ruling Law and Justice Party perceives culture as a “national communal adhesive” and has produced an environment in Poland where artists are challenged when expressing narratives outside the asserted system of values.<sup>1</sup>

In May, the National Festival of Polish Song in Opole was cancelled after controversy ensued over an alleged artist blacklist by organiser and sponsor Polish Television (TVP). This led to a boycott of more than 20 artists for their participation in anti-government demonstrations and “organised opposition action to destroy Polish democracy”.<sup>2</sup> In a similar way, the Polish Ministry of Culture removed Magdalena Sroka as Director of the Polish Film Institute in October for jeopardising “the image of Poland and Polish cultural institutions on the international arena”.<sup>3</sup>

Furthermore, in February Croatian director Oliver Frlić’s play *Klątwa* (*The Curse*) celebrated its premiere in the Powszechny Theatre (Teatr Powszechny) in Warsaw. As a loose adaptation of Polish playwright Stanisław Wyspiański’s 1899 play, *Klątwa* includes several controversial scenes

including one which an actor performs oral sex to a statue of Pope John Paul II. However, following the premiere, scenes from the play were broadcast on Polish national television TVP without permission to highlight the “problematic” scenes out of context, consequentially leading to protests by religious and nationalist groups condemning the play.<sup>4</sup> Although Warsaw city authorities ban protests organized ahead of performances, in May the local court annulled the ban which led to demonstrations becoming violent and led to an individual being hospitalised after a corrosive liquid attack.<sup>5</sup>

After the premiere, state prosecutors announced that *Klątwa* was under investigation over allegations of hate speech and inciting spectators to murder. The situation continued to escalate once the Ordo iuris Institute encouraged citizens to sue the theatre, director and actors, alongside offering legal support to spectators whose “religious beliefs were offended”.<sup>6</sup> In the aftermath of this case, the International Theatre Festival Dialogue (Międzynarodowy Festiwal Teatralny Dialog) in Wrocław<sup>7</sup> and the Malta Festival in Poznań<sup>8</sup>, who planned to host showings of *Klątwa*, were initially deprived of pre-agreed funds from the Ministry of Culture and National Heritage before being provided some budgetary support after protesting their right to the funds. State funds were also removed from the 2017 Brave Festival in Wrocław, a festival that promotes art from persecuted groups and distant cultures.<sup>9</sup>

Since the nationalist-Catholic Law and Justice Party took power in 2015, culture has been at the forefront of most political actions and discourse. However, this has been a specific and limited form of culture that excludes free artistic creations, and has consequently resulted in artists across Poland being silenced for their art that ventures outside the government-imposed cultural norm.

# USA:

## THE RISE OF TRUMP AND POLARISED VOICES SILENCING “OTHERS”

### ▶ KEY POINTS

- Visual arts and theatre were particularly targeted in 2017
- Violations of artistic freedom were mainly related to President Trump, artistic representations of historical people and events, and racial issues

Following the inauguration of President Donald Trump on 20 January 2017, the USA government and non-government actors have undertaken an extensive program of violating artistic freedom in the USA. This has consequentially augmented the USA in the global list of violating countries, alongside producing a domestic shift in American society wherein freedom of expression and artistic freedom has become a highly divisive topic.

In this new context of polarising voices and fake news paranoia, President Trump’s supporters, including the more violent alt-right nationalists, have placed immense pressure on artists whose art reflects an anti-Trump or anti-American narrative. This includes the surge of abusive messages, a protester stage invasion and loss of major sponsors at the New York City’s Public Theatre for their production of *Julius Caesar* due to the title character dressing like Donald Trump and behaving in a Trump-esque manner.<sup>1</sup> Moreover, alt-right and conservative pressure on artistic freedom is frequently implemented under the guise of “appropriateness”, especially when art is being censored or removed in schools and universities. For example, a San Francisco artist was forced to remove his Black History Month exhibit in February at San Jose High School after some parents complained it was too political and inappropriate.<sup>2</sup>

Alongside the alt-right and conservatives violating artistic freedom, other groups in the USA have justified their violating activities under the guise of social justice. The most prevalent theme in this trend has been the criticising, vandalism or illegal removal of statues, monuments and paintings depicting confederate or violent leaders in the country’s history. In 2017, more than one third of documented cases from the USA related to this topic. These cases include one from October 2017 where protesters splashed red liquid onto a bronze statue of Theodore Roosevelt outside the American Museum of Natural History for the statue being an emblem of “white supremacy and settler-colonialism”.<sup>3</sup> Furthermore, on 2 June, Sam Durant’s large-scale sculpture of *Scaffold* was removed from the Walker Art Centre in Minneapolis, Minnesota, after members of the Native American community protested the piece for its part-modelling on the 1862 gallows used to hang 38 Dakota men.<sup>4</sup>

In addition to these violations, the government’s limitations placed on travel into the USA from specific countries led to many artists being banned from entering the country despite having pre-planned festivals and concerts. The SXSW festival in Austin, Texas was one of the first music events to publicly state that the travel limitations from President Trump’s executive order led to some of their acts being turned away at the border; thus illustrating the impact on cultural expressions.<sup>5</sup>

Violations of artistic freedom in the USA have proliferated under President Trump, with his public disregard for a culturally diverse artistic environment emboldening both conservative and liberal citizens to use censorship, threats and violence to protect themselves and their respective groups; therefore, illustrating the nuanced paradox of these de facto violations of artistic freedom in the USA when paired with de jure violations from authorities.



# IRAN:

## IMPRISONMENTS AND DETENTIONS AS MAIN TOOLS OF SILENCING

### ▶▶ KEY POINTS

- Imprisonment (35%) and detentions (27%) accounted for more than half of documented violations in 2017
- Poets accounted for half of artist imprisonments in 2017
- A majority of artistic voices silenced for politics and religion

Throughout 2017, Iranian authorities primarily silenced artists through a combination of detentions and imprisonments under the guise of religion and state reputation. Of these artists, poets accounted for more than half of artist imprisonments and half of all prosecuted artists. Alongside this, women artists across all art forms continued to experience limitations in their expression of artistic freedom, with a nation-wide ban on solo performances of women remaining in 2017.

In November 2017, poet and well-known women's rights activist Dr Sedigheh Vasmaghi was released on bail after being detained in Evin Prison in Tehran in October 2017 after returning from her exile in Sweden.<sup>1</sup> The poet was forced to flee Iran in March 2011 after receiving increasing police attention and a growing number of charges over her writings and peaceful activism. A month before she fled, the Ministry of Security issued an arrest warrant against her.

Prior to Dr. Vasmaghi's release, poet and civil rights activist Reza Akvanian was sentenced to three years in prison and 40 lashes on the charges of "propaganda against the state" and "insulting the sacred" for the poetry he posted on his now deactivated Instagram account in October 2017. According to the Revolutionary Court in Tehran, Akvanian's poems

insulted Islamic beliefs and produced propaganda against the state, despite the Ministry of Culture and Islamic Guidance providing Akvanian with approval to publish some of his poems.<sup>2</sup>

Musicians and filmmakers were also subject to imprisonments in 2017. Notably, musician Mehdi Rajabian and filmmaker Hossein Rajabian were imprisoned for "insulting the sacred" and "propaganda against the state" in June 2016 following the production and promotion of underground music, and spent 13 months in prison before being released early in June 2017 due to international pressure.<sup>3</sup> It is understood that Yousef Emadi, a friend of the Rajabian brothers who faced the same charges, remains in prison.

2017 also saw the early release of filmmaker Keywan Karimi from prison after serving nearly five months of his one-year sentence. The filmmaker was originally sentenced to six years in prison for "insulting Islamic sanctities" and 223 lashes for "illicit relations falling short of adultery" in connection with a music video that authorities discovered on his hard drive and "being under one roof" with a female friend and poet.<sup>4</sup> However, an appeal by Karimi saw the sentence reduced to one year in prison, a five-year suspended sentence and a subsequent early release for good behaviour.<sup>5</sup>

# SPAIN:

## RAPPERS IN THE CROSS-HAIRS

### ▶ KEY POINTS

- 66% of documented cases in Spain were against rappers
- All 13 imprisonments documented were of rappers
- 66% of documented prosecution cases were against rappers
- 50% of documented cases of persecution/threats were against rappers

Human rights organizations are increasingly spotlighting how freedom of expression in Europe has become endangered due to anti-terrorism measures of national states and supranational institutions.<sup>1</sup> These measures have enabled authorities in certain countries to convict individuals under terrorism-related offences for their artistic expressions, and has consequentially produced a culture of silencing artists through threats, persecutions and imprisonments.

Of these countries, Spain has increased its anti-terrorism legislation since 2015 by adding amendments to the Law on Public Security and the Criminal Code.<sup>2</sup> The amendments have led to a significantly weaker right to freedom of expression in the country, with one of the main Spanish political parties, Podemos, presenting a proposition in Congress to modify the Criminal Code to remove the charge of “glorification of terrorism”.<sup>3</sup> Despite this, the Spanish National High Court in 2017 delivered a multitude of verdicts against artists accused of “glorified terrorism” in various ways.

Central to this are rappers in Spain, who were frequently prosecuted for “glorification of terrorism” and “humiliation of terrorist victims” in 2017. This is evident in the case of La Insurgencia, a 14-member

rap group known for their “combative rap” and anti-capitalist messages that were summoned to court after a street performance. Following a trial, 12 member of the group were sentenced in December 2017 to two years and one day in prison, a fine of 4,500 euros and a ban from standing for public office for nine years each on the charge of “supporting terrorism” in their lyrics.<sup>4</sup> One minor in the group was directed to a separate prosecution and the 14th member was acquitted.

Furthermore, La Insurgencia’s reference to surviving members of the political group GRAPO (Grupos de Resistencia Antifascista Primero de Octubre) in their songs, calling for their liberation from “unjust imprisonment” by “true terrorists - fascist Spanish State” following their imprisonment for 84 assassinations undertaken in the 1970s and 1980s, was used by Spain’s Public Prosecutor as additional justification for the imprisonment.<sup>5</sup>

In addition, rapper Valtonyc was sentenced in February 2017 to three years and six months in prison, a 3,000 euro fine and a ban from holding public office for eight years on the charges of “grave insults to the Crown”, “glorification of terrorism and humiliation of its victims” and “threats” in his songs.<sup>6</sup> The National Court reviewed songs that Valtonyc posted on YouTube, MySpace and hip-hop music portal HHGroups and argued that the rapper gravely insulted and directly threatened politicians, prominent public figures and most of the Royal family members in his lyrics. His lawyer has since affirmed their desire to approach the European Human Rights Court with Valtonyc’s case.

Despite some of the lyrics by many Spanish rappers discussing violence and challenging the Spanish government and Crown, the proliferating levels of imprisonments, persecutions and threats against rappers in Spain is in total violation of the international treaties Spain is a party to and produces a silencing environment for artists in the country.

# CHINA:

## AUTHORITIES SILENCE ARTISTS BEHIND BARS AND WITH BANS

### ▶ KEY POINTS

- All documented cases of violations in 2017 were carried out by Chinese authorities
- Imprisonment and detentions (48%) and censorship (45%) are the two main tools for silencing artists
- 64% of detentions and imprisonments in 2017 were of minority and Tibetan artists.
- New regulations banning LGBT content online

In 2017, Chinese authorities were the sole violators of artistic freedom in China across all art forms. In particular, 86 per cent of artists were imprisoned or censored in China, with 56 per cent of these violations occurring against musicians and 64 per cent of detentions and imprisonments against minority and Tibetan artists. Alongside this, new regulations were implemented that limit artistic freedom by prohibiting images of homosexuality on online platforms.

A multitude of cases illustrate the intention of Chinese authorities to silence artists in China and the Chinese autonomous regions. Poet Wu Mingliang (Langzi) was detained for 10 days in July 2017 after co-signing a letter and writing an anthology in support of writer, activist and 2010 Nobel Prize laureate Liu Xiaobo, who later died in July 2017 whilst a political prisoner in China.<sup>1</sup> Following his release, Wu Mingliang was arrested again in August 2017 on allegations of “illegal business operations” for his work published without explicit permission from the authorities.<sup>2</sup>

Violations of freedom of artistic expression targeting artists from autonomous regions are common. In February 2017, Macau-based iAOHiN Amber gallery cancelled Tibetan painter Tashi Norbu’s live painting event after receiving pressure from the government for containing Buddha-related themes.<sup>3</sup> Norbu had been previously detained in 2016 for his similarly themed paintings. At least five Tibetan musicians remained in prison in 2017 for writing and singing their own songs. As of 31 December 2017, they have collectively served 16 years and six months in prison.<sup>4</sup>

Chinese authorities maintain tight control of what their citizens can and cannot see, listen and experience when it comes to international artists. In 2017, China indefinitely banned Justin Bieber for “bad behaviour”,<sup>5</sup> following another indefinite ban of Katy Perry after she wore a sunflower dress at her 2015 concert in Taiwan and draping a Taiwan flag on herself.<sup>6</sup>

In June 2017, China implemented new regulations to ban any act of “abnormal sexual behaviour”, including homosexuality and drug addiction, through audio-visual content on online platforms.<sup>7</sup> Individuals can be reported to the police for investigation if the China Netcasting Services Association (CNSA) considers content to display “abnormal behaviours”.

Throughout the year, Chinese authorities censored artists and their artworks on the internet at an alarming scale, creating a climate of fear throughout the country. This culture of silencing artists in China has also transcended geographical borders and extended its actions to international artists who are considered to be against the mainstream views and values of China; thus creating an environment that stifles artistic freedom at a worrying level.

# MEXICO:

## NARCORRIDOS REMAIN THE PRIME TARGET

### ▶ KEY POINTS

- 83% of documented violations in Mexico in 2017 involved musicians
- Narco corrido musicians remain the single-most targeted artistic group
- Government and non-state actors are main violators against narcocorridos

In 2017, states across Mexico imposed significant legal restrictions on the music genre, narcocorrido, in their attempts to combat the drug-related violence associated with the genre. The often deadly violence has been targeted at artists engaging in narcocorrido, with the narcocorrido genre catalysing violence due to the promotion of the lifestyle and crimes of Mexican drug kingpins.

These violent acts include the 3 March 2017 killing of Rolando Arellano Sánchez, a member of the narcocorrido band Contacto, who was shot and killed by cartel members who were waiting for him outside the house of another member of the band in Tijuana city.<sup>1</sup> According to local authorities, the main line of investigation for the assassination can be tracked to a double homicide that occurred on 25 January 2017. The double homicide of friends of Contacto occurred just a few days after the band's manager received a note warning that the band should stop singing songs to the Sinaloa Cartel.<sup>2</sup>

In response to the increasing crime from narcocorridos, numerous states across Mexico implemented strategies and legislation to limit narcocorridos' ability to perform. In May 2017, the City of Chihuahua fined popular band Los Tigres del Norte 20,230 euros for singing narcocorrido and closed the Palenque, the traditionally Mexican venue they were to perform in.<sup>3</sup> The fine followed a significant crackdown on narcocorrido in Chihuahua

since 2015, when the city passed a bill to punish narcocorrido involvement at events, including music concerts, with fines of 16,180 euros.<sup>4</sup> According to Chihuahua Mayor María Eugenia Campos Galvan, penalties on narcocorridos have been implemented because: "the way things are now with insecurity, we can't permit drug traffickers to be venerated in songs."<sup>5</sup>

In August 2017, the Legislative Assembly of Mexico City passed an agreement recommending delegations not to contract artists who play narcocorrido for Independence Day.<sup>6</sup> They reason that it is taxpayer-funded and they do not want narcoculture to settle in Mexico. The instigator of the legislation, Congressman Raúl Flores from the Party of the Democratic Revolution (PRD), stated that the agreement could not be considered as censorship because it does not prevent people from listening to narcocorrido in the privacy of their homes.<sup>7</sup>

Despite being protected under the ICCPR, ICESCR and the 2005 UNESCO Convention, the artistic community has not been spared in the attempts to reduce narcocorrido violence across Mexico; and despite the authorities appointing a special prosecutor to investigate crimes against freedom of expression, the legal restrictions on narcocorrido do not meet international standards of necessity and proportionality.

# CUBA:

## SILENCING ARTISTS WITH ARBITRARY DETENTION

### ▶▶ KEY POINTS

- Cuba is one of the very few countries that choose to detain artists more than censoring their work
- Artists in Cuba face detention, prosecution and imprisonment three times more than censorship
- Artist Luis Manuel Otero Alcántara faced multiple arbitrary detentions

When Raul Castro assumed the Presidential office on 24 February 2008, the communist government signed two human rights treaties within the first few days. This generated debates about whether the country was heading in a new direction.<sup>1</sup> However, ten years on, the unchanged Cuban Constitution states that “artistic creativity is free as long as its content is not contrary to the Revolution”.<sup>2</sup> This produced a new reality in 2017, where 61 per cent of artistic freedom violations in Cuba were detentions compared to 28 per cent of censorship violations.

The detentions placed on artists in Cuba differs from that in other countries as Cuban authorities typically subject artists to numerous short detention periods and threats, rather than long-term imprisonments. This changing pattern of silencing artists in 2017 could be attributed to authorities wanting to avoid exacerbating their poor record of silencing artists, making the country a hotspot for artists to work, create and share their views and artistic expression.

On 21 November 2017, artist Luis Manuel Otero Alcántara and his partner, curator Yanelys Nuñez Leyva, who were arrested in November after filing a complaint to the Military Prosecutor over the “illegal” police search of their house earlier in

November.<sup>3</sup> Alcántara was detained for three hours, during which he was interrogated and threatened in relation to his contact with artist Tania Bruguera, who is considered an enemy of the Cuban revolution. Prior to this detention, Alcántara was arrested and detained for three days just hours before his press conference about the upcoming independent Havana Biennial, an alternative festival to that of the government. The charge was “illicit possession of construction materials” as the supplies were limited and were only provided by the government after Hurricane Irma.<sup>4</sup> According to a Freemuse source, Alcántara was arrested two additional times in December 2017 for holding a street performance.

Also subject to a short-term detention in 2017 was artist and dissident Danilo Maldonado “El Sexto” was released from a maximum-security prison in Cuba after being imprisoned for nearly two months following his arrest on 26 November 2016 for anti-Castro graffiti that he created at the time of the announcement of Fidel Castro’s death.<sup>5</sup> Whilst the motive for his release is unclear, it is understood to be connected to a petition with 13,700 signatures that called on Cuba to release Maldonado and for a review by the UN Working Group on Arbitrary Detention.<sup>6</sup>



# ISRAEL:

## DISPROPORTIONATE TARGET ON PALESTINIAN ARTISTS UNDERMINES THE ARTS

### ▶▶ KEY POINTS

- 61% of all documented cases of violations in Israel in 2017 were on the Israel-Palestine conflict
- All of documented cases of prosecution of artists in Israel were against Palestinian artists
- All of documented cases of detentions of artists in Israel were against Palestinian artists: 50% by the Israeli authority and the other 50% by Palestinian authorities.

The Israel and Palestine conflict continues to affect artists and artistic freedom at an alarming level. Palestinian artists are subjected to restrictions of freedom of artistic expression imposed by the Israeli authority in a disproportionate manner.

In August 2017, Israeli authorities detained three Palestinian folk musicians, Mohammed al-Barghouti, Nazaal al-Barghouti and Naji al-Rimawi, in the West Bank for performing a song at a wedding and uploading the performance on social media.<sup>1</sup> The song included lyrics about Omar al-Abed, a Palestinian man who stabbed three Israelis to death in July 2017 in an Israeli settlement in the West Bank and who is currently in detention. Israeli authorities allege that this was an “incitement to terrorism and violence” and consequently jailed the musicians.

A proliferating number of art forms were affected by the conflict inside Israel. This includes poetry, with the 4 December Israeli court’s rejection of Palestinian poet Dureen Tatour’s appeal to end her strict house arrest, continuing her inability to use the internet or publish any of her works since her arrest in October 2015.<sup>2</sup> In addition, the al-Hakawati Theatre (also known as the Palestinian National Theatre) in Jerusalem was prevented from holding a cultural event by Israeli authorities in September on the grounds that it was sponsored by the Palestinian Authority.<sup>3</sup>

In a broader context, throughout 2017, 61 per cent of documented violations of artistic freedom in Israel related to the Israel-Palestine conflict, and more than one third of documented cases occurred outside Israel. These primarily occurred in the Middle East and the USA and centered on censorship attempts by governments and non-state actors. For example, the global blockbuster film *Wonder Woman* was banned in Lebanon and Qatar, pulled from a festival in Algeria<sup>4</sup> and suspended in Tunisia because of the Israeli nationality of lead actress Gal Gadot and her defense of Israel and the Israeli Defense Forces.<sup>5</sup>

Elsewhere, violations took place in forms of cancellations and bans of pro-Palestinian or anti-Israeli art. For example, the American Jewish Historical Society (AJHS) cancelled a reading of *Rubble Rubble*, a play by Dan Fishback for being accused of being anti-Israel.<sup>6</sup>

In October 2017, Israel withdrew its membership of UNESCO, following the withdrawal of the US government due to its “long-standing anti-Israeli bias” and a need for “fundamental reform”.<sup>7</sup> Both Israel and the USA are set to become permanent observer countries in 2018.<sup>8</sup>

# VENEZUELA:

## ARTISTS CAUGHT UP IN POLITICAL TURMOIL

### ▶ KEY POINTS

- Music was the most silenced art form (73% of documented cases)
- Government forces used detentions and violence to silence artists
- Artists, both for and against the current government, are being punished for their political actions, having their performances cancelled

President Nicolás Maduro and his party's increasing power in Venezuela, coupled with an economic crisis that has created an inflation rate of 700 per cent,<sup>1</sup> has led citizens to protest in the streets. Artists have played a high profile role in these protests, and as a result have been targeted and attacked.

One of the most emblematic of these artists is violinist Wuilly Arteaga. Images of him playing his instrument as he marched with protestors went viral worldwide, and especially so after police destroyed his violin during one of the demonstrations. He was detained by the National Guard on 27 July and spent 19 days in prison, during which time he claimed he was repeatedly beaten.<sup>2</sup> Upon release, Arteaga was ordered to report to the authorities every eight days and banned from participating in further demonstrations.

Arteaga was among a number of young musicians who took to the streets with their instruments to protest the death of their fellow musician, Armando Cañizales, shot dead by the National Guard during a demonstration on 3 May 2017.

On 21 August, President Maduro's office cancelled a US tour by the Venezuelan National Youth Orchestra, planned with world famous conductor Gustavo Dudamel. It is thought that Dudamel's criticism of Maduro,<sup>3</sup> demanding that the president "listen to the people", could have led to the cancellation. On 12 September, the conductor announced that a planned tour of Asia of the Simón Bolívar Symphony Orchestra of Venezuela, which he would have led, had also been cancelled by the government.<sup>4</sup>

Musician Frederick Pinto was detained on 4 April in Caracas while on his way to a rehearsal where a demonstration was ongoing nearby. Pinto was beaten by police officers, despite identifying himself as an orchestra musician. He was later detained by the National Intelligence Service and released after a few hours. Pinto reportedly received a number of threats warning him against speaking out about what happened, forcing him and his family to move to Spain.<sup>5</sup>

Venezuela's political problems seem to have extended to its neighbours as well. In Colombia, on 12 May, the Bogotá District Institute of Arts cancelled Venezuelan musician Paul Gilman's show at *Rock al Parque*.<sup>6</sup> Gilman, a supporter of President Maduro, was told that his show was pulled from the programme due to public complaints about his inclusion at the event.

Venezuelan artists who went against the ruling government peacefully, employing their human right to freedom of expression – both artistic and political – suffered the consequences of a regime that silences voices in a number of violent and non-violent ways, creating a dangerous environment for artists. However, artists who align themselves with the government are also not spared artistic freedom violations outside the country.

# INDIA:

## FILMMAKERS CAUGHT BETWEEN GOVERNMENT, RELIGION AND CASTE

### ▶ KEY POINTS

- 67% of all documented cases were against films and filmmakers
- 50% of all documented violations were censorship cases
  - 86% of censorship cases were against films
- 91% of all documented violations were by government authorities (55%) and non-state actors (36%), including religious and caste groups

In 2017, Bollywood filmmakers found themselves in major scuffles with censors and far-right caste groups. Throughout the year, they were confronted by frequent hurdles put in their way by censors demanding cuts to films deemed indecent or likely to offend religious or ethnic sentiments. These challenges came amidst threats, and sometimes attacks by caste groups.

The Indian epic period drama *Padmavati* faced significant controversies, threats and violent protests in 2017 over alleged distortion of historical facts. There were several nation-wide protests including an attack in January in which filmmaker Sanjay Leela Bhansali was slapped and his film set vandalised by members of the Karni Sena, a Rajput caste group angered by what they saw as the film's depiction of a Rajput queen, putting her in a poor light.<sup>1</sup> An application to expedite certification for the film was turned down by the Central Board of Film Certification (CBFC), resulting in an indefinite postponement of its release.<sup>2</sup> In December, the film was reviewed by the CBFC and approved with five

modifications, including disclaimers and a change in title from *Padmavati* to *Padmavaat*, and by doing so making reference to a work of fiction rather than historical fact.<sup>3</sup>

In October, the CBFC refused to approve the film *Sexy Durga* until the filmmaker agreed to drop the word "sexy" from the title and mute 21 curse words to ensure cultural sentiments would not be hurt. In November, the CBFC denied permission to exhibit the film at the International Film Festival of India in Goa, alleging fresh complaints by the jury about the film's title.<sup>5</sup>

The award-winning film *Lipstick Under My Burkha* was banned in January by the CBFC for being "lady oriented" and containing sexual scenes and innuendos.<sup>6</sup> In April, the Film Certification Appellate Tribunal (FCAT) overturned the decision and its screening went ahead.<sup>7</sup>

In March, the film *Satyadev IPS* was denied release by pro-Kannada activists over dubbing from Tamil to the Kannada language. Activists destroyed the film's banners and posters, as well as vandalised and threatened to set ablaze any theatres that screened the movie.<sup>8</sup>

The challenge of being creative in a multi-religious and culturally sensitive society was profound for Indian filmmakers in 2017. Claims of preserving cultural values and preventing religious uprisings were used excessively by censors to justify violation of artistic freedom. This seemingly encouraged far-right caste groups to take action towards stalling film releases, threatening and attacking filmmakers in the course of the year.

Although some censored films were eventually cleared for screening, the sector's creativity was largely undermined.

“ When people are emboldened to defy and stand up against injustice, it chips away at the power structure that keeps people docile. We need to stop being afraid of our government. We need to have the courage to stand up against injustice, against corruption. **Disobedience against a corrupt government is not a crime, it is a duty** ”

2016 TWEET **FAHMI REZA**, AN ARTIST FROM MALAYSIA SENTENCED IN FEBRUARY 2018 TO ONE MONTH IN JAIL AND A FINE FOR A PORTRAIT OF THE MALAYSIAN PRIME MINISTER AS A CLOWN

# 4

COUNTRY IN-DEPTH ANALYSIS



# TURKEY:

## ART AND EXPRESSION IN A STATE OF EMERGENCY

*“The festivals held in Kurdistan, including the Amed (Diyarbakır) Theatre Festival, are rights we have earned with huge struggles. The oppressors attack art first, because art is freedom.”*

**RUGEŞ KIRICI**, AN ACTRESS IN TURKEY

### SUMMARY

A state of emergency enacted after an alleged coup attempt in July 2016 continues to hold sway in Turkey 18 months on, during which there has been an unprecedented crackdown on public officials, journalists, academics and others, including artists. Anti-terror and insult laws were used to imprison and prosecute artists, as well as cinema regulations to ban film screenings. Kurdish arts and cultural centres have been particularly targeted, suffering closures and dismissals. Overall the outlook for freedom of artistic expression in Turkey remains bleak.

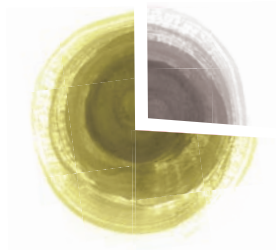
#### ▶▶ KEY POINTS

- Continuous use of state of emergency law to silence artists and oppositional voices.
- Kurdish artists remain vulnerable and subject to arbitrary arrests, censorship and other forms of violations.
- UN Special Rapporteur on freedom of opinion and expression, in a report to the UN Human Rights Council in June 2017, called for
  - those detained and prosecuted to be free, including those charged for “insulting” the president
  - an end to censorship.

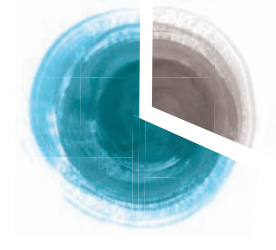
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## TURKEY'S MAIN VIOLATOR

Government authorities continue to severely limit expression across all art forms through censorship and imprisonments, using political reasons, such as “criticising or opposing the government”, “spreading propaganda” or “insulting the president”.



74% of documented cases were for  
**POLITICAL REASONS**



68% of all documented cases were committed by  
**GOVERNMENT AUTHORITIES**

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## COUNTRY CONTEXT

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Since the first three-month state of emergency decree was enforced on 20 July 2016, it has been renewed six more times. The last, enacted on 19 January 2018, will continue for three more months, meaning Turkey will have been in a state of emergency for 21 months. According to Turkey's Constitution a state of emergency can be instated for a maximum of six months. Alongside the state of emergency, it was announced that Turkey would derogate from its commitments under the European Convention on Human Rights and the International Covenant on Civil and Political Rights.

Throughout the year there was a ratcheting up of arrests, dismissals and suspensions of public officials, including police, teachers, academics and members of the judiciary, sectors already under pressure since crackdowns began in 2014. By the end of the year, it was reported that over 110,000 public officials had been dismissed, and 60,000 arrested.<sup>1</sup> All are accused of association with a so-called “terrorist organisation” allegedly led by the exiled religious figure, Fetullah Gülen, said to be behind the coup attempt – an accusation that he denies.

Freedom of expression was under particular pressure with media freedom organisations reporting more than 150 journalists arrested, around 40 of whom remain in prison. Artists and cultural workers were among those scooped up under the crackdown, the scale of which making documentation of abuses a challenge.

An April 2017 referendum exacerbated the already acute situation when a motion to amend the Turkish constitution to give more powers to the President and the executive was won by 51 per cent of the vote, amid suggestions of voter irregularities and fraud.

## INTERNATIONAL OBLIGATIONS AND COMMITMENTS

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Turkey is a signatory to the UN International Covenant on Civil and Political Rights (ICCPR) and the European Convention on Human Rights (ECHR), both of which contain articles that protect freedom of

expression, as well as to the International Covenant on Economic, Social and Cultural Rights (ICESCR) that protects freedom of creative activity. However, in July 2016 the Turkish government announced that it had “temporarily suspended” its commitments under the ICCPR and ECHR.<sup>2</sup> Both treaties allow for derogation at times of emergency, provided that certain rights, such as the rights to life and not to be tortured remain protected<sup>3</sup> – free expression, however, is among the rights that can be curtailed.

Turkey was last scrutinised under the UN’s Universal Periodic Review in January 2015<sup>4</sup> during which it accepted 32 recommendations calling for improvements in freedom of expression made by member states. Norway notably specifically included the arts as demanding protection. In September the same year, Turkey was one of 57 UN member states that in September 2015 signed a joint statement “Reaffirming the Right to Freedom of Expression, including the Right to Artistic Expression”.<sup>5</sup>

In November 2016, UN Special Rapporteur on freedom of expression, David Kaye, visited Turkey, later reporting to the UN Human Rights Council in June 2017 that the country was in a “grave crisis”. He recommended that anyone detained or prosecuted solely for expressing their opinions should be freed, as well as an end to censorship and, more specifically, a review of anti-terror legislation, urging that definitions of what comprises “terrorism” be more clearly defined. He also called for an end to prosecutions against those accused of “insult” to public figures including the President.<sup>6</sup>

On a positive note, in November 2017 Turkey became the 145th State to accede to the UNESCO 2005 Convention on the Protection and Promotion of the Diversity of Cultural Expressions that includes the right to access and participation in creativity and cultural expression.

## NATIONAL LEGAL PROTECTION

Turkey specifically protects artistic freedom under its constitution, Article 27 of which, titled Freedom of Science and the Arts, states that: “Everyone has the right to study and teach, express, and disseminate science and the arts”. Article 26 protects the right to freedom of expression “in writing or in pictures or through other media”. Article 64 also states: “The State shall protect artistic activities and artists. The State shall take the necessary measures to protect, promote, and support works of art and artists, and encourage the spread of art appreciation.”<sup>7</sup>

That said, while Article 26 initially outlines protections, it moves on to define restrictions that include those on works that challenge “national security, public order and public safety, the basic characteristics of the Republic and safeguarding the indivisible integrity of the State with its territory and nation, preventing crime, punishing offenders, withholding information duly classified as a state secret, protecting the reputation and rights and private and family life of others, or protecting professional secrets as prescribed by law, or ensuring the proper functioning of the judiciary”. Thus this allows for constitutional guarantees for free expression to be pushed aside at times of perceived national endangerment, such as is presently the case.

## POLICY, REGULATIONS AND INSTITUTIONS

As in previous years, 2017 has seen the harsh application of anti-terror legislation that is vague in its definitions and over-broad in its application. The majority of journalists, writers and artists arrested and on trial from July 2016, and before, are prosecuted under the 1991 Law No. 3712 to Fight Terrorism (Anti-Terror Law) with no evidence of engagement in or support of violence. Kurdish regions of Turkey have been especially affected by this law under which any cultural and artistic expression within the Kurdish rights movement can be construed as “separatist propaganda” and outside the protection of freedom of expression and the arts.<sup>8</sup>

Also applied against artists has been Article 299 that targets anyone who “insults” the President and which carries a maximum sentence of four years in prison.<sup>9</sup> From 2013, hundreds of insult cases were initiated by President Erdoğan, who, in an extraordinary move in July 2016, announced that: “For one time only, I will be forgiving and withdrawing all cases against the many disrespects and insults that have been levelled against me.”<sup>10</sup> This did little to alleviate pressure on artistic freedom in light of the subsequent crackdown, and new insult cases have been opened since.

Restrictions on film have been a constant hindrance to arts freedom in cinema. A 2014 directive from the Ministry of Culture and Tourism General Directorate of Film requires that all domestic films should obtain a registration certificate as a pre-requisite to screening at film festivals, becoming in effect a tool of censorship. This is coupled with the Law on Intellectual and Artistic Works, Article 3 of which demands that films must be controlled in view of “public order, general morals and protection of minors” among others.<sup>11</sup> Several films were banned from local screenings in 2017, notably on LGBT issues.

## PRACTICES & CASES

### ▶ ANTI-TERROR LEGISLATION – ARRESTS AND TRIALS

#### *Imprisoned*

Zehra Doğan is a Kurdish artist, journalist and women’s rights activist who was arrested in July 2016 for “membership of an illegal terrorist organisation” under the Anti-Terror Law. She was freed to face trial in December 2016, then returned to prison in June 2017 to serve a two-year-and-nine-month sentence.<sup>12</sup> The original charges were dropped, but she was convicted of “propaganda” under Article 7/2 of the law for her painting, based on a Turkish army photograph of the destruction of the Kurdish town of Nusaybin, which she had adapted to depict the armoured vehicles devouring civilians.



Artist, journalist and activist Zehra Doğan was sentenced to two years and nine months in jail for this painting of the Kurdish town of Nusaybin, on the grounds of “propaganda” under the Anti-Terror Law. Photo: Zehra Doğan

Photographer, Çağdaş Erdoğan, whose work straddles photojournalism and art, was arrested in September 2017 for taking photos of the National Intelligence Agency building in Istanbul. He was detained on accusation of “membership and facilitation of a terrorist organisation”<sup>13</sup> until his release to face trial in February 2018. In his defence statement, Erdoğan expressed that he was tortured

under custody, that he was exposed to imposition of espionage related to news sources during his interrogation by Turkish National Intelligence officers and that he was threatened with arrest in case he does not provide the officers with intelligence information. The next hearing of the case is scheduled for 1 June 2018.

On 1 November 2017, Turkey's most prominent civil society actor and patron of the arts, Osman Kavala, was arrested and remains imprisoned, facing trial under the Anti-Terror Law. According to Turkish media reports, he is accused of playing a leading role in the 2013 Gezi protests and for having connections with Fetullah Gülen. These charges are widely dismissed as fabricated and linked to Kavala's work supporting minority rights and culture in Turkey.<sup>14</sup>



*Singer Ferhat Tunç is being prosecuted in three different cases for "propaganda of a terrorist organisation", "insulting the President" and "publicly provoking hatred and hostility". His charges amount to more than 13 years of imprisonment. Photo: Ferhat Tunç Instagram*

### **On trial**

Facing imprisonment is singer Ferhat Tunç, who is among more than 30 people being prosecuted under Anti-Terror Law Article 7/2 for holding a peaceful demonstration in January 2016 against the arrest of a school teacher who had phoned into a live television program to protest the treatment of civilians in the Kurdish south east, and who herself was charged with terrorism. The trial against them opened in April 2016 and was still under way at the end of 2017.<sup>15</sup> Tunç has a long history of standing

up for Kurdish rights and for freedom of expression for which he has been imprisoned and prosecuted over the years. He has been the subject of Freemuse advocacy, including most recently in December 2017, a campaign for the current set of charges to be dropped in three separate cases against the musician.<sup>16</sup>

In December 2017, the trial opened against 146 academics who were among 1,128 who had signed a peace petition in January 2016, almost two years earlier, criticising Turkish army actions in the south east. They are accused of "terrorist propaganda" under Article 7/2. Four others are charged under Article 301 – insult to the Turkish state.<sup>17</sup> In January 2017, 433 film and documentary makers issued their own petition for peace in support of the academics,<sup>18</sup> a number of whom are thought to also be facing prosecution.

### ► INSULT TO THE STATE AND THE PRESIDENT

2017 saw the re-emergence of the notorious Penal Code Article 301 with the arrest of fashion designer Barbaros Şansal for a video he posted on social media on New Year's Eve 2016 containing strong language against the government. Then in Northern Cyprus, he was deported to Turkey on 2 January 2017, enduring beatings and insults from a crowd on his arrival at the airport. He was held until March then freed on trial. In June 2017 he was sentenced to six months and 20 days for "insulting the Turkish nation". The sentence was upheld on appeal in November 2017.<sup>19</sup>

Musician Ferhat Tunç is also on trial under Penal Code Article 299 for "insult" to President Erdoğan for his posts on his Twitter feed, including cartoons by the Brazilian artist, Carlos Latuuf. His trial opens in February 2018. He faces over 5 years in prison if convicted.<sup>20</sup> (See also his trial under anti-terror legislation referred to above.)



## ►► PRESSURE ON KURDISH ARTISTS AND ARTS

Kurdish theatres and cultural centres have for some time been the target of forced closures. In September 2016, 83 of the 103 Kurdish opposition-run municipalities were taken over by state-appointed trustees on order of the Ministry of Interior that had deemed them to be supporting the banned Kurdistan Worker's Party (PKK), and thus taking them "out of the hands of terrorists". Theatres and cultural centres were closed down, and in other centres Kurdish directors were sacked and replaced by government appointees.

The Batman municipality's theatre and opera was among those completely shut down and its director, Ahmet Bülent Tekik, was reassigned to work as an engineer in the municipal parks department. Actors, like Tekik, considered to be municipal employees, were also "reassigned" to menial posts, including within the police and sanitation departments. Others were fired, such as all actors working with the Diyarbakır Metropolitan Municipality City Theatre who were dismissed in January 2017. Even outside south east Turkey, theatres that show Kurdish material are under threat, such as the privately funded, Istanbul-based Seyr-î Mesel Theatre that closed after a police raid carried out under the emergency decree. Actor Yüksel İnce, a member of the theatre, believes that the raid was because of its work bringing Kurdish theatre and music to the public.<sup>21</sup>

## ►► CENSORSHIP IN THE FILM INDUSTRY

In 2015, the documentary *Bakur (North)* was among several films to be denied film certification required for screening at film festivals and in effect banned.<sup>22</sup> In December 2017, it was again targeted when its directors, Ertuğrul Mavioğlu, Dicle Anter and Çayan Demirel, were indicted under Article 7/2 of the Anti-Terror Law for the movie. They were next scheduled to appear before the court in February 2018. The film has scenes set inside Kurdish guerrilla camps and had been subject to complaints from the Ministry of Culture.

The directors of the sci-fi comedy film *Son Şnitzel (The Last Schnitzel)* depicting a future President's impossible task of finding a chicken schnitzel in a world which no longer has chickens, refused to accede to a Ministry of Culture request that certain parts of the script be struck out before it could be granted certification. As a result, the film could not be included as planned in the 2017 Istanbul Independent Film Festival program or other Turkish film festivals.<sup>23</sup>

Although homosexuality is not illegal in Turkey, homophobic attacks are rife; annual gay pride marches have been banned three years in a row and cultural events on LGBT themes attacked. Four films due to be shown at the German embassy-backed Pink Life QueerFest in Ankara in November 2017 were banned<sup>24</sup> as part of a blanket ban enforced by Ankara's governor office of all LGBT-related events. The governor had cited intelligence reports that "terror organizations are seeking to attack dissident groups or individuals" and that the "screening could be provocative and draw reactions". Festival organisers condemned the move, adding that the statement, rather than protecting the films and audiences, could legitimise attacks.<sup>25</sup>

## ►► NON-STATE ACTORS ATTACK ART WORKS

Sculptures of human figures frequently inspired the ire of conservatives. In June 2017, an installation in the Black Sea town of Ordu featuring three fully clothed seated women was attacked and damaged for the third time in two years. The town mayor had previously stated that statues featuring women are not in line with "society's general custom and (...) moral sensitivity".<sup>26</sup> Then in October 2017, a sculpture of a naked man, by the Australian hyper realist artist Ron Mueck, situated in a private gallery in Istanbul was set upon by religious protestors who saw it as an infringement of their right to be "free from secularism". They were escorted from the site before more damage was done.<sup>27</sup>

# NIGERIA:

## FREEDOM UNDERMINED BY WEAK AND CORRUPT LAW ENFORCEMENT

*“Queer literature is part of the story, part of the struggle, part of the style and syntax. Queer literature matters, and queer writers and artists matter equally within the Nigerian literary community.”*

ESSAY BY **CHIBUIHE OBI**, A POET FROM NIGERIA, KNOWN FOR WRITING LGBT-THEMED POETRY AND ESSAYS, ABDUCTED FOR FOUR DAYS IN JUNE 2017 FOR ALLEGEDLY “SPREADING SATANISM”

### SUMMARY

Beset by ethical and structural decay, public institutions in Nigeria are often too weak to defend the rights of artists. The exploitation of state ineptitude by a crosscutting range of perpetrators throws light on some of the 31 confirmed violations of artistic freedom in 2017. This is separate from the more familiar pattern of violations enabled by adverse state actions, notably a 2015 law targeting expressions on the internet that is generating new forms of violations. Nigeria views itself as a mainstream actor in the international arena, but a combination of factors enables the country to shun its obligations to defend the right to artistic freedom.

#### ▶▶ KEY POINTS

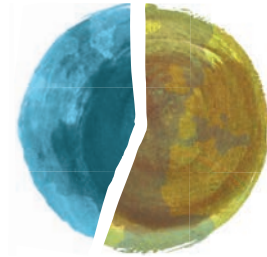
- Islamic-Christian/north-south split continues to produce differing interpretations and implementation of national law on freedom of expression
- Corruption, impunity and insecurity have allowed criminals and gangs to target artists, especially those in the film industry, leading to attacks, abductions and theft of equipment

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## TARGETED ART FORMS:

Musicians and artists in the film industry have the most to lose for expressing themselves artistically. Filmmakers increasingly face situations of filming in unsafe environments where criminals and gangs can take advantage of their vulnerability, and musicians are constantly reminded of the censoring power of the National Broadcasting Commission.

40% of total artist  
**ABDUCTIONS**  
**WORLDWIDE**  
in 2017 happened in Nigeria



100% of  
**CENSORSHIP**  
cases were related to  
**MUSIC**

44% of cases related to  
**MUSIC**

71% of  
**ATTACKS**  
on artists related to  
**FILM**

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## COUNTRY CONTEXT

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Nigeria has been a constitutional democracy since 1999 following a thirty years off-and-on period of military rule. The election into office of the current administration of President Muhammadu Buhari in 2015 was the first time in the country's history that an opposition party has been successful in a general election. Social media and other digital channels galvanising young voters played a significant role, alongside the promotional powers of influencers from the artistic community<sup>1</sup>.

During the decade following return to democracy, the country has grown to become the biggest economy in Africa<sup>2</sup>. Drivers of this economic growth include emerging sectors such as telecommunications and the creative industries. For example, in the absence of developed infrastructure, Nollywood, Nigeria's film industry which is regarded as one of the three most prolific in the world,<sup>3</sup> relies predominantly on digital technology for production and distribution. Ranked at 152 of 188, the country occupies the 'low' tier of the United Nations Development Programme's Human Development Index. The current government's official economic recovery

plan has identified both the technology and creative industries as linchpins for targeting the youth-dominated areas of the economy (*Ministry of Budget and National Planning, 2017*)<sup>4</sup>.

With these factors in mind, the roles of unimpeded digital access, alongside artistic freedom that enables the participation of the populace in civic, cultural and economic life, are critically important.

## INTERNATIONAL OBLIGATIONS AND COMMITMENTS

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Nigeria is party to the key international instruments of human rights protection including the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR).

At a regional level, Nigeria is party to the African Charter on Human and Peoples Rights (ACHPR) and the African Union (AU) Plan of Action on the Cultural

and Creative Industries in Africa adopted in Dakar in 1992. One of the twelve 'key priority areas' of the AU Plan is "Improving the working conditions of artists, creators, actors and operators in Africa" by ensuring the necessary legal and economic conditions to "Guarantee freedom of expression for the creative and performing artists".

No recommendations on freedom of expression were made when Nigeria, in 2013, underwent its most recent Universal Periodic Review (UPR). In its first UPR in 2009, the country accepted the recommendation to: "Ensure that freedom of expression is respected and that Nigerian journalists may take on their mission of providing information without suffering harassment." Nigeria's next UPR is due in November 2018.

Nigeria was among the sixty state respondents to a 2015 survey commissioned by UNESCO on the adherence to its 1980 *Recommendation Concerning the Status of the Artist*. On the question on limitations on and challenges to freedom of expression, Nigeria said that freedom of expression is 'moderated by responsibility'.<sup>5</sup>



Actress Rahama Sadau's two-year-long ban from the Hausa-language film industry has finally been lifted in 2018. She had been banned for "immoral actions" in a music video where she hugged, cuddled and held hands with a male artist. Photo: Rahama Sadau Facebook

## NATIONAL LEGAL PROTECTION

In tandem with its international obligations, Nigeria guarantees most political rights under its constitution, including those relating to freedom of expression, thought and conscience. However, these rights are subjected to laws "reasonably justifiable in a democratic society" in the interest of public order, safety, morality, among others. Derogation based on "public morality" is particularly significant in view of its impact on artistic expression with edgy tones. Although restrictions on human rights, including that to freedom of expression, is consistent with international law, Nigeria's Supreme Court has consistently maintained that any legal restriction must be objectively proportionate and subject to judicial review. It should be noted however that government actions - and inactions - have not always supported the fulfilment of these obligations. Noteworthy is the introduction of the *Sharia* (law based on Islamic jurisprudence) into the penal system in some Muslim-dominated states in the north of the country, which has seen censorship through public policies.

On the national level, one recent significant development is the passing into law of the Cybercrime Act in May 2015. Under that law, acts which, if otherwise carried out through non-digital means, would at best form a basis for civil action in defamation of character (slander or libel), have been criminalised merely by being carried out on the internet. Penalties under this Act are up to three years imprisonment or N7million (15,000 euros) fines. Within a year of the passing of the Act, at least five online journalists were arrested and prosecuted based on complaints by various government functionaries, agencies and influential private actors<sup>6</sup>.

The Cybercrime Act holds significant portents for the creative industry. In view of the significance of

digital channels to the business model and civic participation of actors in the Nigerian creative industry, a law that constricts the use of the internet poses a threat to both the social and economic rights of artists, and is inconsistent with Nigeria's commitments to the protection of those rights.

## POLICY, REGULATIONS AND INSTITUTIONS



Nigeria's institutional framework comprises agencies established under federal and state laws broadly geared towards promoting an enabling environment for artistic production. The exception is in the areas of broadcast content and film exhibition, which are regulated by government agencies. The National Broadcasting Commission (NBC) focuses on protection against "misleading" and "offensive" contents. The country's official censorship board rates films according to parameters which include whether they could be exhibited for "general viewing", are suitable for children or are for restricted viewing. While these models of regulations are considered to meet global standards there have been instances where their application has been arbitrary and inconsistent.

Developments in recent years have wider ramifications for artistic expression in Nigeria. In northern Nigeria, institutions created under the Sharia regime have perpetrated acts inimical to artistic expression considered 'immoral', 'offensive' or otherwise inconsistent with Islamic tenets. An example is in Kano, the commercial and cultural 'capital' of the region, where the Kano State Censorship Board (KSCB), established in 2001, has cracked down on 'offensive' films and books in particular working with the local Hisbah (enforcers of the Sharia who operate outside the constitutionally recognised civil police force). The KSCB itself is

headed by a former functionary of the Hisbah. Kano is the centre of the thriving Hausa language 'chick lit' genre, *Littattafan Soyayya*, which has been subjected to book banning and burning in recent years<sup>7</sup>. Attempts to self-regulate by the artistic community in the region merely mirrors the official stance. The Motion Picture Producers Association of Nigeria (MOPPAN) has banned practitioners from working in the regional 'Kannywood' film industry in the last few years.

Under the terms of the proposed Motion Picture Council of Nigeria Act (MOPICON Act), Nigeria will, for the first time, regulate qualification for engaging in an artistic practice. The draft bill, promoted by powerful practitioners in 'Nollywood', proposes to establish a body for, inter alia, "regulating and controlling professional practice in the motion picture industry". Also, under the mandatory 'Code of Ethics' annexed to the proposed Act, works that "ridicule religion or the Nigerian law" (paragraphs 3.2, 3.5.n.) or "underestimates the intelligence of the audience" (paragraph 3.6.e.) will be banned. Violation of the provisions of the Act will carry penalties ranging from expulsion from practice (Section 40.2) or a monetary fine and/or term of imprisonment of up to two years (Sections 32.3 and 45.5). In the interim, disagreement within the artistic community on the details and overall necessity of the law has halted its passing. Opponents of the law, mostly younger practitioners, have petitioned against it, leading the Minister of Culture Alhaji Lai Mohammed to note: "Some have [...] suggested that we are about to set up another agency that will muzzle creativity and dictate to them the kind of movies to produce."<sup>8</sup>

Meanwhile, in Lagos, the spirit of the MOPICON Act is already being felt in the Lagos State Films and Video Censors Law (2004) which requires the regulation of cinematographic works and exhibitions and the registration of practitioners engaged in film production, distribution and exhibition.<sup>9</sup> In that event, there is the potential danger that this may lead to the violation of the right to artistic expression in the country's commercial and cultural 'capital'. These



developments have serious portents for Nigeria's capacity to continue to fulfil its international obligations on the defence of artistic expression.

## PRACTICES & CASES

In 2017, there were 24 incidents leading to 31 recorded violations of artistic freedom. This is made up of nine acts of censorship and 22 cases of imprisonment prosecution, physical attacks, and, most alarming, two killings. This is a marked increase (72 per cent) from the 2016 recorded of 18 violations. Freemuse's 2016 report gave insight into how violations are perpetrated by a broad range of violators, often motivated by religious conservatism and political intolerance. This trend was maintained in 2017.

### ▶▶ ATTACKS AND KIDNAPPINGS

Among the attacks was the abduction, for four days in early June, of the poet Chibuihe Obi who was held by what was described as homophobic criminals expecting a ransom. The writer had just published in *Brittle Paper*, in the days before the incident, an essay criticizing homophobia, a widespread phenomenon in Nigeria. *Brittle Paper* is a popular blog on African creative writing. Earlier, in the northern city of Sokoto, the notorious Hisbah attacked a private party and confiscated, with the intention of destroying the DJ's musical instruments and equipment. The Sharia enforcers alleged that the DJ had played music contravening Islamic law.

### ▶▶ IMPUNITY IN ATTACKS BY NON-STATE ACTORS

Almost two-thirds (13) of the recorded serious violations in 2017 were perpetrated by non-state

actors, often criminals who carried out the most violent attacks, abductions and killings. These remain unresolved by police investigations, and there have been no arrests or prosecutions. While this may reflect the general state of impunity insecurity in the country, it strikes a more poignant note for Nigerian filmmakers who have especially high profiles and because of the nature of their work.

### ▶▶ ATTACKS ON FILM PRODUCTIONS

Five violations recorded in 2017 were carried out on film locations. Local thugs (known in Lagos as 'area boys' and notorious for extracting protection money from local businesses) were responsible for these attacks. 'Nollywood', unlike Hollywood, is not a physical district and its production model is primarily location rather than studio-based. In the course of the year, Omoni Oboli, Funke Akindele and Kemi Afolabi – all female filmmakers – reported disruptions to their productions by 'area boys'. Some video and photo evidence published by the filmmakers in the media showed the women having to physically tackle these thugs, thus exposing themselves to risk of bodily injury. At least two of these incidents also entailed attacks on production crew.

Attempts by Ms. Oboli to launch an online campaign against these attacks received a tepid response from the government and the public. Suggestions by some of her online interlocutors demonstrate how the public's lack of confidence in the police fuels the cycle of corruption and violations. One such interlocutor advised her to contract military men for security on her locations, since "it's working well for us in the [oil and gas] sector". In November, a group dressed as soldiers attacked Freedom Park, a hub for artistic production and performance in Lagos. The attackers forcibly demanded free access into the venue and, in the process, beat up the gatekeepers and disrupted the film audience and diners<sup>11</sup>. As typical of such attacks, no arrests have been made despite the supply of video evidence to military authorities by the venue's management.

## ►► CORRUPTION AND WEAK INSTITUTIONS

Institutional weakness and corruption are inherent in the violations by government agencies, such as arbitrary imprisonments by police. Widespread use of police arrests for causes with little or no reasonable prospect of successful prosecution is evidence of the susceptibility of the police to pressure and to corruption by state or non-state actors. Cases in point include the arrest and detention, twice, of the popular musician, Harrysong, linked to a dispute with the management of his former record label. Another is the detention of the 'Naija's Craziest' comedy quartet for mocking a local Lagos cleric in one of their popular YouTube skits.

Nigeria's creative industry is plagued by high level of income inequality. Many victimised artists are not economically self-sufficient or confident enough to defend themselves, and often have to be satisfied with being able to negotiate their way out of unlawful imprisonments by capitulating to the demands of their violators. For example, the 'Naija's Craziest' quartet informed Freemuse that they were released from detention only after apologising to the complainant.



*The members of the Naija's Craziest comedy quartet were arrested and detained for mocking a local Lagos cleric on YouTube. Photo: Naija's Craziest Facebook*

## ►► INDUSTRY SELF-REGULATION

Such widespread tolerance of violations fosters an environment of fear, self-censorship and so-called industry self-regulation. One such case is that of Rahama Sadau who remained expelled from the Hausa-language film industry (Kannywood) for a second year in 2017 by the Motion Pictures Practitioners Association of Nigeria (MOPPAN) for what it considered "immoral" actions. The actress in a music video hugged, cuddled and held hands with a male artist. The male artist suffered no backlash for the video<sup>12</sup>. This was in spite of her tendering a formal apology to MOPPAN in October 2017. News reports in January 2018 disclosed that the Kano State Censorship Board (KSCB) had lifted the ban on Sadau<sup>13</sup> it is notable that this is the first time that KSCB has admitted to being involved in this particular ban. Hitherto, the board always denied government involvement in what was presented as a solely self-regulatory action by the artistic community. This portends a trend towards government outsourcing censorship to so-called industry self-regulators.

# MALAYSIA:

## ART IN A TIME OF SCANDAL AND OUTDATED LAWS

*“Call my cartoons whatever you want – provocative, humiliating, intimidating, blunt, hard-hitting – as long they can wake the Malaysians mind up, I am happy.”*

**ZUNAR**, CARTOONIST FROM MALAYSIA FACING NINE CHARGES UNDER THE SEDITION ACT FOR WRITING NINE TWEETS, CARRYING THE POSSIBILITY OF 43 YEARS IN PRISON

## SUMMARY

Malaysia continues to widely use criminal law, the Sedition Act 1948 and the Communications and Multimedia Act 1984 (CMA) to criminalize artists and restrict freedom of artistic expression in the country. The long standing corruption scandal involving the government-owned investment fund 1Malaysia Development Berhad (1MDB) triggered public investigation and calls for the prime minister to resign. The prime minister responded through the wide use of repressive laws to clamp down on oppositional voices, creating a worsening climate of fear leading to the rule of law and independent institutions becoming weakened. Artists who challenge political, religious and societal establishments have suffered repression and attempts to silence their voices.

### ► KEY POINTS

- Low Level of Commitment to international Human Rights Norms: Malaysia has never ratified the ICCPR, ICESCR and 2005 UNESCO Conventions
- Repeated use of the Sedition Act and Communications and Multimedia Act to silence artists and oppositional voices
- UN Special Rapporteur for cultural rights, after a country visit in September 2017, called for
  - repeal of the Sedition Act
  - amendment of Communication and Multimedia Act to be consistent with international human rights standards
  - Abolition of prior censorship bodies and process

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## METHODS OF SILENCE: CENSORSHIP & PROSECUTION

Malaysian authorities consistently use prosecution and censorship as their main methods of silencing artists using outdated laws that have routinely been called into question by its own citizens and external observers.



**83% CENSORED**  
17% PROSECUTED

**50% VISUAL ARTS**  
16.6% MUSIC 16.6% FILM  
16.6% LITERATURE

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## COUNTRY CONTEXT

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Prime Minister Najib Razak was at the heart of a corruption scandal in 2015 as US\$ 700 million was found in his personal bank accounts, allegedly channelled through the government-run investment fund 1MDB. Razak claimed that the money was a gift from a foreign funder. The then-attorney general charged with investigating the matter was sacked and various critics were arrested.<sup>1</sup> Although the new prosecutor, appointed by the prime minister, found him innocent of corruption<sup>2</sup> and the Public Accounts Committee cleared him of wrongdoing,<sup>3</sup> questions have remained and investigations are still ongoing abroad, among others in Switzerland<sup>4</sup> and the US.<sup>5</sup> Furthermore, the scandal has been a turning point in the recent political climate, with the government tightening its grip on its opponents and on freedom of speech.

With the next general election set for mid-2018, where Razak will also be standing for re-election, freedom of expression is likely to be a key concern in a country where international human rights groups' reports point to "repressive acts" frequently used to silence opposition voices.<sup>6</sup>

## INTERNATIONAL OBLIGATIONS AND COMMITMENTS

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Malaysia has yet to ratify the ICCPR, ICESCR, and the 2005 UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions.

In its last Universal Periodic Review (UPR) held in October 2013, Malaysia received 232 recommendations, including calls for the ratification of international human rights instruments, freedom of expression guarantees, and the repeal of the Sedition Act.<sup>7</sup> Regrettably, the Malaysian government mostly accepted recommendations asking for relatively minor changes, and otherwise simply noted or refused to accept those that could make a significant difference for freedom of expression and artistic freedom.<sup>8</sup> The next UPR for Malaysia is due in November 2018.

The UN Special Rapporteur in the field of cultural rights, Karima Bennouna, visited the country in September 2017. In a press release following her



visit, she expressed concern about the restrictions on certain artists at the federal level, as well as on artistic and cultural practices in Kelantan State, an area where religious conservatives have a controlling influence and where practices, such as placing restrictions on women performing for mixed audiences take place.<sup>9</sup>

## NATIONAL LEGAL PROTECTION AND ITS IMPLICATIONS

Artistic freedom and cultural rights in Malaysia are significantly restricted through a number of key legislations. These include the Sedition Act 1948, the Communications and Multimedia Act 1998 (CMA), the Printing Presses and Publications Act (PPPA), the Film Censorship Act 2002 and the criminal defamation provision of the penal code. These laws and regulations have been widely and continuously used to silence artists and oppositional voices.

In this context, after her visit to Malaysia in September 2017, Karima Bennoune, called for the repeal of the Sedition Act, amendments of the CMA to be consistent with international standards for freedom of expression and cultural rights, repeal or clarification of sections 211(1) and 233(1) of the CMA, and abolition of prior censorship bodies and processes.<sup>10</sup>

### ▶▶ THE SEDITION ACT 1948

This colonial-era act criminalises any conduct with “seditious tendency”, including “exciting disaffection” against or “bring into hatred or contempt” of the government, the king or the ruler of the state. In August 2015, the law was challenged as unconstitutional, but the federal court ruled against

the challenge pointing out that article 10 (2) of the constitution allows parliament to restrict freedom of expression “as it deems necessary and expedient in the interest of the security of the federation”.<sup>11</sup>

### ▶▶ THE COMMUNICATIONS AND MULTIMEDIA ACT 1984 (CMA)

Section 211 of the CMA provides penalties of up to one year in prison and 50,000 MYR (approximately 10,250 euros) for “content which is indecent, obscene, false, menacing or offensive in character with intent to annoy, abuse, threaten or harass any person”.<sup>12</sup> Section 233 imposes the same punishment on any person or network that “(i) makes, creates or solicits; and (ii) initiates the transmission of, any comment, request, suggestion or other communication which is obscene, indecent, false, menacing or offensive in character with intent to annoy, abuse, threaten or harass another person”.<sup>13</sup>

These terms fail to meet international legal standards that require laws to be sufficiently precise to enable an individual to regulate his or her conduct, and not to confer unfettered discretion for the restriction of freedom of expression on those charged with its execution.<sup>14</sup> In practice, this broad and vague terminology makes it an effective law against those seen as critical of the prime minister and royal family.

The CMA is also the main law used to block websites. In 2016 it was reported that 51 websites were blocked, including those reporting on the prime minister’s involvement in corruption, such as the *Sarawak Report*, *the Malaysian Insider* and *Asia Sentinel*.<sup>15</sup> As of September 2017, 269 cases were reportedly being probed under the CMA, including cyber bullying and other social media matters.<sup>16</sup>

# POLICY, REGULATIONS AND INSTITUTIONS

## ▶▶ MUSIC CENSORSHIP

Music censorship rarely makes the news in Malaysia. However, most music that comes under fire is western popular music, such as the Puerto Rican summer hit *Despacito* that was banned from government-run radio and TV outlets in July 2017 for having “obscene lyrics”.<sup>17</sup>

Performances are also under threat through the country’s strict regulations on decency that deter pop concerts,<sup>18</sup> and encourage the police’s abuse of power. In August 2015, police arrested 163 young concertgoers while attending a music festival organised by Bersih, the Coalition for Free and Fair Elections, at a cultural venue in the town of Ampang Jaya.<sup>19</sup> All were later released after being detained for several days.<sup>20</sup> They were not charged, but were later told that it was due to their attempts to topple the government.<sup>21</sup> The case is a small example of the wider abuse of power by the police, which impacts art communities and ordinary people who enjoy their cultural lives.

## ▶▶ FILM CENSORSHIP

The 2017 Walt Disney blockbuster *Beauty and the Beast* was briefly caught up in a censorship storm in Malaysia for alleged homosexual references. The Film Censorship Board of Malaysia (LPF) first approved the film after requesting a four-and-a-half minute cut from a subplot containing a “gay moment”.<sup>23</sup> Disney, however, refused the request and held it from Malaysian release for several days before it was released without cuts and stamped with a P13 rating.<sup>24</sup> In 2016, the Singaporean film *Fundamentally Happy*, based on an award-winning play, was banned by the LPF due to “cultural insensitivities”.<sup>25</sup>

These are two of dozens of films known to be banned in Malaysia over the last several years, including: *The Danish Girl*,<sup>26</sup> *Fifty Shades of Grey*<sup>27</sup> and, most recently, Bollywood film *Padmaavat*.<sup>28</sup>

The LPF prohibits scenes that are “obscene” or “otherwise against public decency” and all films must be approved by the LPF before release. The LPF has been tightening its censorship rules since 2015, including banning scenes or dialogue on television that “mock, belittle, [or] criticise the government and the country’s national sensitivities”, as well as any that “tarnish the government’s image”.<sup>29</sup>

## ▶▶ BOOK CENSORSHIP

Book censorship is covered by Section 7 of the Printing Presses and Publication Act (PPPA), which gives full discretion to the Minister of Home Affairs to forbid any publication that is, or is likely to be, prejudicial to public order, morality, security, public interest, national interest or that may alarm public opinion. Its scope is very broad and Malaysian authorities routinely use it to prohibit local and international books they disagree with. In March 2017, 19 publications were banned.<sup>30</sup> In October 2017, 22 more publications were proscribed for reasons ranging from explicit drawings to promoting Shia beliefs and liberalism.<sup>31</sup>

## ▶▶ VISUAL ART CENSORSHIP

Removing artworks from exhibitions and public spaces is a common practice in Malaysia, not so much on the grounds of violations of particular laws or regulations, but in the name of “appropriateness”. On 22 February 2017, two days before the opening of the *Escape from the SEA* exhibition, one of Sabah art collective Pangrok Sulap’s artworks was removed after a request from “high-up” that the work was “too provocative”.<sup>32</sup> On 22 November 2017, a seven-member artist group that had produced an installation for the Kuala Lumpur Biennale 2017 decided to withdraw from the event after authorities allegedly removed some of the components of their art installation titled *Under Construction* on the grounds that it contained “elements of communism”.<sup>33</sup>

## PRACTICES & CASES

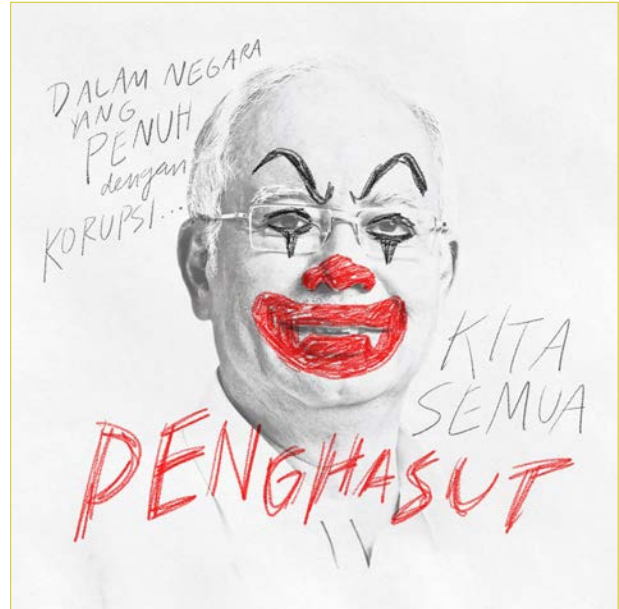
Cartoonist Zunar (Anwar Haque) is facing nine charges under the Sedition Act 1948 for making nine tweets, carrying the possibility of 43 years in prison. Court proceedings, which started in November 2016, are still ongoing. Prior to this, Zunar was arrested and detained in November 2016, February 2015 and September 2010 for breaching the peace, a crime that also comes under the Sedition Act.<sup>34</sup> His office and printing factories were raided; lorries carrying his books were blocked; book launches were stopped; and his work was banned and confiscated on several occasions since 2009. Zunar is challenging a travel ban, enforced following a trip to Geneva to receive the Cartooning for Peace Award 2016.<sup>35</sup> His case was taken up by Karima Bennouna during her visit to Malaysia in September 2017 where she called for the charges under the Sedition Act and his travel ban to be dropped.<sup>36</sup>



One of Zunar's tweets the cartoonist is being charged for under the Sedition Act. Zunar's case in total: Nine Twitter messages; nine charges under the Sedition Act; Zunar could face up to 43 years in prison. Photo: Zunar Twitter

In January 2016, Fahmi Reza posted on his social media accounts a clown caricature of Prime Minister Najib Razak, referring to the 1MDB corruption scandal, with the caption: "In 2015 the Sedition Act was used 91 times. But in a country full of corruption, we are all instigators." The following day, Fahmi Reza

was questioned and placed under police surveillance before being arrested on 4 June 2016 under section 233 (1) of the CMA and section 504 of the penal code. In February 2018, Reza was sentenced to one month in prison and fined 6,225 euros.<sup>38</sup>



Fahmi Reza could be fined up to 13,400 euros and spend one year in prison under the Sedition Act for this twitter message: "In 2015 the Sedition Act was used 91 times. But in a country full of corruption, we are all instigators." Photo: Fahmi Reza Twitter

Four books by award-winning writer Faisal Tehrani have been banned for being detrimental to public order and safety,<sup>39</sup> and influenced by Shia Islam, which Malaysia's Islamic authorities condemn as a deviant expression of Islam.<sup>40</sup>

In January 2018, the Court of Appeal decided that the ban was "irrational, unreasonable, disproportionate and tainted with procedural impropriety", thus not in accordance with Subsection 7(1) of the Printing Presses and Publications Act (PPPA) 1984 and illegal.<sup>41</sup> However, there remains a threat to booksellers and others dealing with his books – banned or not. Section 8 of the PPPA states that anyone found to have printed, imported, sold or in possession of the banned books in the country can be jailed for up to three years and fined a maximum MYR 20,000 (approximately 4,100 euros). Tehrani states that the threat of prosecution is stopping bookshops from selling even those of his books that are not banned.<sup>42</sup>

# PAKISTAN:

## ART CAUGHT IN THE MIDDLE OF GOVERNMENT AND RELIGION

*“Whoever ... defiles the sacred name of the Holy Prophet Muhammad (peace be upon him) shall be punished with death, or imprisonment for life, and shall also be liable to fine.”*

**SECTION 295C** OF PAKISTAN'S PENAL CODE

### SUMMARY

While Pakistan is confronted with religious militancy, political instability and socio-economic woes, the country's musicians and artists continue to work under very challenging conditions. The indifferent attitude of the state towards the promotion and protection of artists, as well as hostility from some extremist religious and social groups leave few opportunities for creative artistic expression. In many instances artists self-censor their works to avoid backlash.

The state's overt and covert support for religious and militant groups as part of its military strategy in Afghanistan and to thwart Indian influence in Kashmir, has created ample space for religious groups to impose their own brands of Islam on the people. Most of these militant and religious leaders consider music and dancing as sinful and discourage them often through violence. This hostile environment has forced some musicians to either quit singing or leave the country.

#### ▶ KEY POINTS

- Several national laws remain out of line with international human rights conventions that Pakistan has ratified
- Artists are faced with violence and threats from non-state actors, mainly from religious groups or individuals acting upon religious ideologies
- Music and cultural events attacked on university campuses in 2017

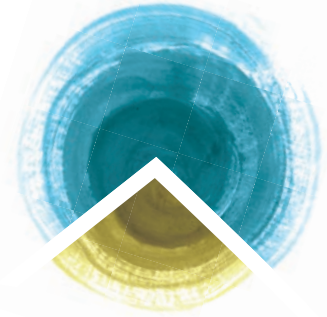


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## ARTISTIC FREEDOM STUCK BETWEEN AUTHORITIES & CLERICS

Artists in Pakistan are caught in the middle of a government who censors or detains them for expressing themselves and non-state actors – mostly religious or emboldened by religion – who attack and threaten them.

**73%** of documented violations were committed by  
**GOVERNMENT AUTHORITIES**  
**27% NON-STATE ACTORS** including religious groups



**66%** of documented cases were  
**CENSORSHIP** mostly committed by  
**GOVERNMENTS**

**20%** of cases were  
**ATTACKS** exclusively carried out by  
**NON-STATE ACTORS**

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## COUNTRY CONTEXT

When General Zia ul Haq took power in a military coup in 1977, his goal was to launch a major Islamisation campaign. The education system was “reformed” and religious texts glorifying war and violence inserted into school texts. Female television hosts were forced to wear head-scarfs or leave jobs, films were censored, music performances were frowned upon, and writers and artists were banned and penalised. Alongside this, after Zia’s death in 1987, the subsequent US war against terrorism in Afghanistan has provided a raison d’être to former jihadi groups to re-unite and re-organise their activities along the Pakistan-Afghan border region.

In 2007, Pakistan’s militant groups formed an umbrella organization, the Tehrik-e-Taliban Pakistan (TTP) or Pakistan Taliban Movement. Most of its members follow the strict Wahabi sect of Islam and strongly oppose musical and artistic expressions, and aim to purge society of “evil western influence”. Music shops were bombed, rare archaeological sites destroyed, singers were attacked and forced to flee the country. An estimated 500 music shops have

been destroyed throughout North Western Pakistan since 2005.

In the urban centres, cinema halls were targeted and the film industry suffered losses. In 2006, Taliban militants threatened cinema owners to stop promoting “obscenity and vulgarity”. As a result, cinemas were shut down, and others were converted for other purposes. Attending a screening was extremely risky. On 11 February 2014, a bomb exploded in a cinema hall in Peshawar that killed 10 people.

Meanwhile the military operation in Pakistan’s Federally Administered Tribal Areas (FATA) displaced millions, and singers, poets and artists were singled out. In July 2014, about 50 poets from North Waziristan Tribal Agency fled their homes and took refuge in Bannu, a city in Khyber Pakhtunkhwa province. They spoke of how Taliban groups in the tribal region submitted them to torture for their “profane” verses and forced them to write Jihadi slogans.

Dr Muhib Wazir, a university professor interviewed for this report said poets were faced with an acute dilemma of what to express and what to hide. “Their words could leave them dead,” he remarked.

The killings and threats by radical Islamists have forced several singers and musicians to either quit music or shift to devotional music. Former popular singers, such as Junaid Jamshed, Pashto singers Shehenshah Bacha, Shaz Khan, Shahsawar and Masood Akhtar, and film star Liaqat Major are now Islamic preachers. In 2012, another acclaimed singer, Nazia Iqbal, announced early retirement to pursue her Islamic faith. Later, when she resumed singing, Iqbal revealed that the Taliban had threatened her with dire consequences if she continued to perform. This suggests that others who have given up performing to turn to devotional music may have done so under pressure.

## INTERNATIONAL OBLIGATIONS AND COMMITMENTS

Pakistan has signed and ratified both the ICCPR and ICESCR, but has not accepted the Optional Protocol to the ICESCR, and the similar First Optional Protocol to ICCPR, which allow parties to recognise the competence of the covenants' committees to consider complaints from individuals. In reality Pakistani laws are not fully in conformance with several provisions of the covenants and are also in breach of other international rights mechanisms. Pakistan has also not ratified the UNESCO 2005 Convention on the Protection and Promotion of the Diversity of Cultural Expression.

In Federally Administered Tribal Areas (FATA), on the Pakistan-Afghan border, ethnic and religious minorities are deprived of their fundamental rights under the Frontier Crimes Regulation (FCR) in force since British colonial rule. Rights defenders, activists, artists, journalists and opinion-makers are harassed, abducted and killed by both state and non-state actors.

## NATIONAL LEGAL PROTECTION AND ITS IMPLICATIONS

Pakistan's constitution states that "every citizen shall have the right to freedom of speech and expression"<sup>1</sup>; however, the country's blasphemy laws carry a potential death sentence for anyone who desecrates Islam. Human Rights Watch reports that in 2016 "at least 19 people remained on death row after being convicted under Pakistan's draconian blasphemy law and hundreds awaited trial."<sup>2</sup>

The Pakistan Penal Code 1860 and the Anti-Terrorism Act 1997 are the two main criminal statutes that restrict artistic expression with their provisions on hate speech, blasphemy and dissemination of material that incites sectarian hatred. Some carry the death penalty.<sup>3</sup>

Film censorship is conducted through the Motion Pictures Ordinance 1979, the Punjab Motion Pictures (Amendment) Act 2012 and the Sindh Motion Pictures Act 2011. Private broadcast media, including television and radio, is regulated through the Pakistan Electronic Media Regulatory Authority Ordinance 2002 and online/internet content through the 2016 Prevention of Electronic Crimes Act.

# PRACTICES & CASES

## ▶▶ RELIGIOUSLY MOTIVATED VIOLENCE

### ***Peshawar***

In November 2017, Gulzar Alam, a celebrated Pashtun singer, fled Pakistan and took refuge in Kabul, Afghanistan, because of threats from a local cleric. He had already given up music to set up a dairy farm when the cleric had become friendly with Alam, visiting his farm regularly. It was on one of these visits that Alam, during a debate with the cleric, equated the melody of Azan (Muslim call for prayer) with music, an argument that caused the friendship to collapse.

“I was away from home. A relative informed me that the cleric had accused me and my son, Iqrar Alam, of insult to Islam and had issued a fatwa (religious decree) against us,” Alam told Freemuse.

In November 2017, traffic police launched a crackdown on “immoral rickshaw art” in Peshawar. The authorities said they had ordered the removal or covered up paintings that decorate motorized three-wheeled vehicles because they considered the images to be spreading immorality, glorifying guns and smoking, among others.

### ***Haram Sufi music attacked***

Historically, music played an important role in Islam in the Indian sub-continent where Sufi spiritual leaders would hold musical gatherings at shrines across the country. Music, such as Qawwali Indian classical music that is usually played at Sufi shrines, is an integral part of Sufi Islam. However, the ascendance in Pakistan of the extremist Wahabi version of Islam that sees music as against Shariah, hence haram (strictly forbidden), is placing musicians under threat.

In February 2017, a suicide bomber attacked the shrine of a revered Sufi mystic, Lal Shahbaz Qalandar, one of Pakistan’s most visited religious sites. Seventy-five people, including women and children, were killed and hundreds of others wounded. The Islamic State (IS) took responsibility for the attack.

In October 2017, a suicide bomber killed at least 18 people at the Fatehpur Shrine compound in central Baluchistan province. These events add to the toll of attacks on Sufi shrines and music. Between March 2005 and November 2016, a total of 15 Sufi shrines were reportedly attacked in Pakistan,<sup>4</sup> and in June 2016, the renowned Sufi singer, Qawwal Amjad Sabri, aged 40, was shot dead in Karachi.<sup>5</sup> Taliban groups have claimed responsibility for the attacks and eulogized the attackers in their propaganda videos.

### ***Music on university campuses attacked and banned***

In March 2017 members of Islami Jamait-e-Talaba (IJT), the student wing of the hard-line Islamic political group Jamat-e-Islami, attacked a musical event in Punjab University, Lahore. Five students were injured in the incident. IJT members tried to halt the musical event, which resulted in a clash between students at the university.<sup>6</sup> In several campuses across the country student wings of various religious parties are active and, in some cases, act as moral police.

In May 2017, IJT staged a protest demonstration in front of the Institute of Peace and Conflict Studies (IPCS) at the University of Peshawar opposing a musical performance. The protesters called on the administration to stop the event, claiming it was spreading vulgarity.<sup>7</sup> The extreme danger the IJT poses is illustrated by the March 2010 attack on student Adnan Abdul Qadir for playing music inside his hostel room. Adnan later died of his injuries in hospital.



The Punjab University of Lahore. In March 2017, the student wing of the hard-line Islamic political group, Jamat-e-Islami attacked a musical event at the university. Photo: Pale blue dot/Ali Imran.

Foreign music is also targeted. In August 2017 the Karachi Grammar School, an elite, liberal educational institute, cancelled a plan for students to sing John Lennon's *Imagine*, after a conservative journalist complained that the song encourages atheism and thus falls foul of Pakistan's blasphemy laws. Until then, the school had sung the song at their annual concerts for many years without apparent problem.<sup>8</sup>

## ▶▶ RELIGIOUSLY MOTIVATED VIOLENCE

### **Artists in Balochistan suffer arson, abduction and killing**

In April 2017 the Baloch National Movement (BNM), a separatist organization, said in a statement that Pakistan security forces had burnt down the house of popular Baloch singer Minhaj Mukhtar. The organization condemned this undemocratic and inhuman act and stated that singing was a way to protect their language and culture from extinction. While there is no official confirmation of the incident, independent sources report that artists and musicians are under constant threat from state authorities and the militant groups in Balochistan province.

In February 2017, the body of Misk Ali Bugti, a Baloch nationalist poet, was found in Suhri Darbar area of Balochistan. Although the cause of his death was not ascertained, there are concerns that he may have been killed because of his works promoting independence and criticising Pakistan's armed forces.<sup>9</sup>

In April 2017, security forces abducted Waleed Nasir, an independent Baloch filmmaker and writer from his hotel room in Karachi, the capital of Pakistan's Sindh province.<sup>10</sup> The Human Rights Council of Balochistan wrote on its website that this is his second abduction, having been held for some time in 2016 during a military operation. The authorities have not commented.



Album by popular Baloch singer Minhaj Mukhtar, who reportedly had his house burnt down in April 2017 by security forces. Photo: Minhaj Mukhtar Facebook.

### **Music and dance victims of militancy**

Pakistan security forces have been fighting Taliban militants since 2007 with the Federally Administered Tribal Areas (FATA) and Khyber Pakhtunkhwa provinces as the main battle grounds, leaving houses and businesses destroyed, and lives shattered. Dr Mohib Wazir, an academic at Bacha Khan University in Charsadda who belongs to the Waziristan tribal agency<sup>11</sup> – one of the areas where Pakistan security



forces have been combating Taliban militants – told Freemuse of the impact of the conflict on cultural traditions.

“*Atan* is our traditional dance. We perform it on all occasions of joy and hope. But after the emergence of the Taliban no one dared to hold musical gatherings and dance events. Wedding ceremonies were held secretly without music and festivities. Poets refrained to share their literary works publicly and *Mushairas* (poetry recitals) came to a standstill.”

In September 2017, in the Khyber tribal agency, followers of a local cleric stormed a wedding party, seized instruments and forced a musical performance to shut down, reportedly under order of a local cleric. His followers went on to publicly burn musical instruments, claiming that they wanted to purge the society of “immoral” behaviour.

In November 2017, a faction of Taliban in the guise of a peace committee distributed pamphlets in Wana Bazar in the South Waziristan region that called for the banning of music, traditional *atan* dance and narcotics use. In July 2017, Zar Sanga, an internationally renowned Pashto singer of nomadic songs popular in Pakistan and Afghanistan, was injured in an attack. She threatened to leave Pakistan if the perpetrators are not brought to justice.

## ►► CENSORSHIP PRACTICES

### Film censorship

Pakistan film censor boards frequently ban both Pakistani and foreign movies, citing among the reasons that the films dishonour family values and religious traditions, or promote a negative image of the country. In February 2017, the Central Board of Film Certification (CBFC) said that Bollywood movie *Raees* will not be allowed release in the country due to its “objectionable” content, allegedly portraying Muslims as criminals and terrorists.<sup>12</sup> Press reports suggest that Pakistan has banned 16 Bollywood movies since 2010.<sup>13</sup> On 5 October 2017, the Punjab Film Censor Board banned the Pakistani film *Na*

*Maloom Afraad 2* due to “persistent complaints from different quarters”.<sup>14</sup> No concrete reason was given. Two days after the ban, the film was re-examined by the Punjab Film Censor Board, the decision was reversed, and its screening was allowed. On 16 November 2017, the CBFC lifted the ban on film *Verna* one day before its scheduled opening.<sup>15</sup> The film was originally reportedly banned for scenes of violence and rape, and “portrayal of government institutions in an undesirable manner”.<sup>16</sup>

### Transgender artists targeted

Persecution of transgender people continues unabated throughout Pakistan with police bans against their participation in music and dance events. Himayatullah Mayar, district mayor of Mardan district of Khyber Pakhtunkhwa province, told Freemuse that his office was committed to protecting the rights of transgender singers, “but we can’t allow them to spread obscenity and vulgarity in the society”.

Qamar Naseem, president of TransAction, a network of transgender activists told Freemuse that transgender women are the victims of attacks both from society and the authorities, saying: “As the most vulnerable segment of the society, transgender people are the victims of violence and oppression.”

Since 2015, a total 54 transgender people have been killed in violent attacks in different parts of Khyber Pakhtunkhwa province.<sup>17</sup> Many transgender people, shunned by family and friends, earn their living by singing and dancing in wedding ceremonies, birthday parties and other festivities, so are even more vulnerable to attack. These attacks continue despite Pakistani laws protecting transgender people and a 2009 Supreme Court advisory that provincial governments recognize transgender rights.

# MOROCCO:

## ART CONFINED WITHIN “RED LINES”

*“Anyone offending the Muslim religion or the monarchy or inciting violation of the Kingdom’s territorial integrity will be punished by six months to two years in prison and a fine of 20,000 to 200,000 dirhams or one of these two penalties.”*

ARTICLE 267-5 OF THE MOROCCAN PENAL CODE

## SUMMARY

In Morocco artists enjoy a significant degree of freedom so long as they do not broach taboo subjects. The judiciary is not independent and is often used to clamp down on free expression and silence opposing voices. The penal code maintains imprisonment for various non-violent expressions, and includes provisions that allow for arbitrary and disproportionate punishment against artists. While civil society is active, corruption in state institutions is rampant and state surveillance has been a growing concern in recent years.

### ▶▶ KEY POINTS

- Though relevant international treaties have been ratified, Morocco’s Constitution allows for ambiguity and unclear implementation
  - The same applies to vague national laws and policies that leave implementation up to interpretation
- The country, monarchy, religion and Western Sahara remain taboo subjects that stifle expression and allow for strict and arbitrary punishment

## COUNTRY CONTEXT

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In the context of the popular uprisings that swept across North Africa and the Middle East between 2010 and 2012, Morocco's "Spring" movement saw peaceful protests demanding dignity, social justice and political reform. Just as in the rest of the "Arab revolutions", where artistic expression and activism cultivated a sense of global community, Moroccan artists helped forward the Moroccan "Spring". But unlike its neighbours, the Kingdom of Morocco responded swiftly and sagely. On 9 March 2011, King Mohammed VI announced the creation of an ad hoc commission tasked with reforming the constitution. On 1 July 2011, a referendum on constitutional reforms was held and approved by 98.49 per cent of voters.

## INTERNATIONAL OBLIGATIONS AND COMMITMENTS

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Morocco's international commitments emerge from its membership in the United Nations, the League of Arab States (LAS), as well as the Organization of Islamic Cooperation (OIC). While Morocco is not a party to the African Charter on Human and Peoples' Rights (ACHPR), it has ratified the Arab Charter on Human Rights, ICESCR, ICCPR, as well as the Convention on the Elimination of All Forms of Discrimination against Women (Art. 13, guaranteeing a right to participate in cultural life). In 2013, Morocco also ratified the UNESCO 2005 Convention on the Protection and Promotion of the Diversity of Cultural Expressions.

Morocco's Constitution leaves the role of international treaties ambiguous. There is no apparent obligation for judges to uphold international law or for national

legislation to be compliant with international human rights standards. However, once international human rights treaties are ratified, state parties have the obligation to implement the treaties with or without explicitly stating so in the constitution. These obligations often include abolishing or amending national laws to comply with international standards and reporting progress of the implementation of such treaties periodically to the treaty committees.

International civil society organisations have condemned violations of freedom of expression in Morocco, sometimes involving violence, torture and imprisonment of artists, journalists and political activists. In its 2017 World Press Freedom Index, Reporters without Borders ranked Morocco 133rd of 180 countries, among those with the least media protections.<sup>1</sup> Human Rights Watch notes in its 2017 World Report that while Morocco enacted laws in 2016 that advance free expression, authorities continue to restrict activities of local human rights associations and many individuals continue to serve prison terms for politically motivated offences.<sup>2</sup> Political and economic pressure continues to be used to suppress coverage of sensitive subjects, such as criticism of the King, nation and religion.

## NATIONAL LEGAL FRAMEWORK

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The 2011 Moroccan Constitution ensures the independence of the judiciary, recognises the law as the "supreme expression of the will of the nation" and promotes equality between men and women. It includes rights that were not previously acknowledged, such as the right to free exercise of religious practices, the right to a fair trial and the right to freedom of association. Most relevantly, it guarantees freedom of the press, and freedom of thought, opinion and expression in "all their forms". However, six years after its adoption, vague language and the presence of abstract notions such as

“immutable national identity”, “national standards” or “indivisible identity” gave Moroccan authorities broad discretionary power and encouraged arbitrary decision-making. Article 5 of the Constitution calls for the creation of the National Council of Languages and of Moroccan Culture, which remains to be established. Freedom of the press, and freedom of assembly and peaceful demonstration are all guaranteed by the constitution, but the conditions for the exercise of these freedoms have not been set. The right to information is guaranteed under Article 27 but may be restricted by law “in order to protect all aspects of national defence, internal security and external state and privacy of people”. Article 19 of the ICCPR does allow for restrictions on the right to freedom of expression where there is a need for protection of public security or public order, among others. However, such restrictions need to meet international law requirements that are applied in accordance with laws that are clear and precise.



*Protest singer Silya Ziani was detained for two months over the summer for her participation in Rif movement protests. Photo: Silya Ziani Facebook*

Morocco’s Penal Code should be held to the same standards of clarity and precision. In the context of broader plans to reform the justice system, draft legislation to amend the Penal Code was approved in June 2016. Although the new code featured a number of new innovative measures, including alternatives to imprisonment, it failed to address undue restrictions on freedom of expression and religion, among others. More specifically, it maintains imprisonment as punishment for non-violent expression offences,

for example, those that cross certain “red lines”: speech that harms the monarchy, the person of the King, Islam and/or Morocco’s territorial integrity. Such offences are broadly defined and are often used to silence voices that oppose the regime. They include: misappropriating the national anthem, immoral statements, insulting public officials, state institutions, the country’s flag and symbols, and praising terrorism.

Harsh provisions of the Penal Code undermine recent press law reforms. A new Press and Publications Code adopted in August 2016 removed imprisonment as a penalty for offences such as defamation, insulting foreign heads of states or diplomats and maliciously publishing false news. While this is indeed a major improvement, the Press Code cannot be seen in isolation from the Penal Code which, as described above, maintains prison sentences for some forms of peaceful expression.

Morocco’s Law on the Status of the Artist, in force since 2003, acknowledges the dignity of the artist as well as the artist’s importance to society. Amendments to the law adopted by Parliament in 2016 secured social benefits and social security for artists, improving their working conditions and reducing the precariousness inherent in work within the creative sector. On the other hand, copyright laws (Law n°2-00, Law n°34-05 and Law n°79-12) protect only works of art that were not previously subjected to censorship by the government and, in practice, corruption and shortcomings in the functioning of the Moroccan Copyright Office leaves artists often struggling for copyright protection.

All filmmaking activity in Morocco is regulated by Dahir (Decree) n°1-01-36 of 15 February 2001 and subjected to authorisation by the Moroccan Cinema Centre. The centre is run by a board and managed by a general director who also chairs the Film Screening Commission. This allows for the concentration of broad discretionary powers in the hands of a few who can issue permits for the establishment of production companies, distribution and importation of films; and can also allow or deny the screening/distribution of a film. Moreover, criteria to deny permits or ban films altogether are vague while the decision-making process lacks transparency.



## POLICY, REGULATIONS AND INSTITUTIONS

The ability of artists to create, perform, display or disseminate their work is limited both by laws that are unclear and unpredictable, as well as by over-zealous law-enforcement officers who overstep their role and demand authorisation for performances whereas only a simple declaration is necessary, or who stop events minutes before they are supposed to commence, ostensibly because they contain contentious material. Restriction of free speech on sectarian grounds and politically motivated arrests, unfair trials and trumped-up charges are still common practice when “red lines” are crossed.

On the other hand, new initiatives on cultural policies are emerging, propelled by civil society organisations,<sup>3</sup> cultural centres<sup>4</sup> and artists themselves,<sup>5</sup> whilst the relevant authorities continue to improvise in the absence of any concrete strategy addressing the cultural sector and its actors. In September 2015, representatives from the Ministry of Justice and the Moroccan media participated in a workshop led by Penal Reform International on the use and implementation of alternative sanctions to imprisonment. Within the framework of the Neighbourhood Partnership with Morocco 2015-2017, the Council of Europe and the Department of Communication of the Ministry of Culture and Communication of Morocco organised several training sessions on freedom of expression and freedom of the media for government officers from the ministry. The focus was on the European Convention of Human Rights’ standards as concern freedom of expression, and discussed the case law of the European Court of Human Rights using examples from signatory states. In 2017, the Government of Morocco expressed interest in joining the Open Government Partnership, an international platform committed to making governments more open, accountable and responsive to their citizens. Alongside this initiative, Morocco has undertaken to

improve government transparency by adopting the Draft Law Regarding the Right to Access Information.

In February 2017, Morocco reported to the UN Human Rights Council under the Universal Periodic Review (UPR). Freemuse, partnered by the Moroccan cultural rights organisation Racines, submitted a report to the UPR and welcomed that the Moroccan government, in its own 2017 UPR report, declared it a priority “to provide access to cultural infrastructure and activity programmes”.<sup>6</sup> The report also revealed an ambitious plan to promote and protect cultural initiatives by enlarging the network of cultural institutions and establishing a new legal framework aimed at promoting and protecting culture, issues that had also been raised by Freemuse.<sup>7</sup> The report was equally welcomed by the UN High Commissioner for Human Rights for Morocco’s “constructive engagement in the UPR procedure and acceptance of 140 recommendations made by member states”.<sup>8</sup> However, the report failed to address the issue of a revision of the Criminal Code to remove limitations on freedom of expression, as recommended by Freemuse and Racines and by several member states.

## PRACTICES & CASES

One such example, is that of rap musician Lhaqed (Mouad Belghouat), whose songs touch on corruption and social injustice, and who has been the target of censorship and arrest numerous times in recent years.<sup>9</sup> As a result of this continuous harassment by the authorities, he left for exile in Belgium, where he was granted asylum in 2017.

In July 2015, film director Nabil Ayouch and actress Loubna Abidar were charged with pornography, indecent assault and inciting minors to debauchery for Nabil’s film *Much Loved*, in which Abidar played a prostitute. Subsequently, charges were dropped but Loubna Abidar was violently attacked in Casablanca

in 2015, and when the police failed to provide protection or start a criminal investigation against the attackers, she fled the country and is now living in France.<sup>10</sup> In 2017, *Much Loved* remained banned in Morocco, despite international petitions and support from various associations, including the Moroccan Association of Human Rights.



Rapper Lhaqed has repeatedly been harassed, censored and arrested by authorities for his songs. He consequently fled to Belgium and was granted asylum in 2017. Photo: L7a9d Facebook

In July 2015, four stagings – in Rabat, Fez, Nador and Tangier – of a theatre performance entitled *b7al b7al (All Equal)*<sup>11</sup> were banned by local authorities, even though the organisers had fully complied with administrative procedures. The play recounts the daily life of Sub-Saharan migrants and exposes the everyday racism and discrimination endured by the Sub-Saharan community in Morocco.

Writer Aziz Benhadouch was sentenced in August 2016 in Ouarzazate, central Morocco, to a two-month suspended prison sentence and ordered to pay damages of 20,000 dirhams (1,800 euros) for defamation.<sup>12</sup> The plaintiffs had filed a complaint under the Press and Publishing Code claiming that characters in the author's 2014 novel *The Island of Males* were identifiable in the real world. The book addresses controversial issues of religious and

sex education, and features “ghost children”, a phenomenon where Moroccan immigrants to France in the 1950s were able to obtain birth certificates illegally.

Painter Chama Mechtaly was scheduled to exhibit a number of her pieces at the Sidi Belyout Cultural Complex in Casablanca in June 2015. The director of the centre ordered her to remove one painting entitled *Drapeau marocain revisité (Moroccan flag revisited)* which depicted a green Star of David on a red background, with the words identity, memory and history inscribed in Amazigh, Hebrew and Arabic. When she refused to do so, she was threatened with a prison sentence for contempt of a national symbol.<sup>13</sup>

In January 2016, a special edition of the French periodical *Sciences et Avenir*, entitled “God and Science” was banned by the Minister of Communications claiming it damaged Morocco's image as a democratic country.

Silya Ziani, a protest singer from Morocco's Rif region, who had been detained since 5 June 2017 for her participation in Rif movement protests was given royal pardon and released together with 58 other members on 29 July.<sup>14</sup> The protests erupted in the capital of the Rif region, Al Hoceima, and by Amazigh people elsewhere in Morocco, to demand government action after the death of a fish merchant sparked outrage over widespread corruption and underdevelopment in the region.

Noam Vazana, an Israeli singer, invited to perform at the 2017 Tanjazz festival, was faced with protests from more than 100 people denouncing her participation in the festival. The demonstrators took to the streets of Tangier on 15 September, where they burned the Israeli flag, pointing to her period of service in the Israeli military, and that her participation in the festival was a “normalization of the state of Israel”. Despite the controversy, Vazana went on to perform her two concerts as programmed and expressed gratitude for the support she received from her fans. She claims that her role in the army was as a member of the army's orchestra.<sup>15</sup>

# BANGLADESH:

## TOO FEARFUL TO EXPRESS

*“Whoever, with or without Bangladesh, with intent to influence, or knowing it to be likely that he will influence, any person or the whole or any section of the public, in a manner likely to be prejudicial to the safety of Bangladesh, or to endanger the sovereignty of Bangladesh in respect of all or any of the territories lying within its borders, shall by words, spoken or written, or by signs or visible representation, condemn the creation of Bangladesh in pursuance of the Proclamation of Independence on the twenty-sixth day of March, 1971], or advocate the curtailment or abolition of the sovereignty of Bangladesh in respect of all or any of the territories lying within its borders, whether by amalgamation with the territories of neighbouring States or otherwise, shall be punished with rigorous imprisonment which may extend to ten years and shall also be liable to fine.”*

SECTION 123A OF THE BANGLADESH PENAL CODE

## SUMMARY

In Bangladesh today, the right to artistic freedom is threatened both by non-state actors and the state. Violent extremists have killed or threatened writers and publishers since 2013, while the state continues to censor films, proscribe books, plays and other artistic endeavours, as well as restrict performances by artists supporting the political opposition. The rationale given for many of these restrictions involve allegations of, among others, hurting the image of the state or of any person, or hurting religious sentiment.

### ▶ KEY POINTS

- Artists caught between substandard laws, political culture of shutting off oppositional voices and violence from extremist groups
- Government oppositional voices curtailed for those that question its authorities, police, military and policies, as well as dominant religion
- Artists practice a degree of self-censorship for fear of losing state patronage

## COUNTRY CONTEXT

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The Awami League-led ruling coalition government, in power since 2008, has become increasingly repressive towards the political opposition and others viewed as dissenters, and has curtailed freedom of the press. All major opposition parties boycotted the parliamentary elections held in January 2014 as they rejected the process which they feared would enable poll manipulation. As a result, most of the governing coalition's MPs were elected unopposed. As the government prepares for an election which may be held by the end of 2018, there are concerns that the overall political situation may worsen.

Freedom of expression has long been under pressure in Bangladesh with television stations and newspapers linked to opposition parties targeted for closure. Prosecutions for sedition are numerous and brought in relation to incidents entirely unrelated to the overthrow of the state. Among those charged are several journalists.<sup>1</sup> Dozens of people have been arrested under the Information, Communications and Technology Act simply for online criticism, including simple Facebook likes, of the government and high officials, in particular of the prime minister.

The new draft of the Digital Security Act 2018 also proposes draconian sentences for online speech that criticises the "Father of the Nation" or "the spirit of the liberation war".

Between 2013 and 2015, six bloggers and publishers who wrote on issues of religion, secularism, atheism and justice for war crimes, were killed by Islamic fundamentalist groups. The attacks have widened to include civil society actors, academics, students and religious figures; in 2016, 14 other people were killed. While acknowledging that there have been arrests and prosecutions of militants in connection with attacks on bloggers, the government continues to offer limited protection to them and a climate of fear prevails, resulting in scores of secular writers fleeing the country.

## INTERNATIONAL OBLIGATIONS AND COMMITMENTS

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Bangladesh ratified the ICESCR in 1998, ICCPR in 2000 and the Convention on the Elimination of All Forms of Discrimination against Women, which targets discrimination based on gender – including against female artists – in 1984. Bangladesh has, since 2007, been a state party of the UNESCO 2005 Convention on the Protection and Promotion of the Diversity of Cultural Expressions.

A recommendation was made by the UN Human Rights Council to Bangladesh during the 2013 UPR to "sign and ratify the Optional Protocol to the ICESCR"; however, Bangladesh has yet to do so – nor has it ratified and signed the Optional Protocols to the ICCPR. Ahead of Bangladesh's third cycle UPR in Geneva in May 2018, Freemuse in collaboration with the Bangladeshi and international civil society organizations Drik, PEN International and PEN Bangladesh, submitted a report on artistic freedom in Bangladesh to the UN Human Rights Council.<sup>2</sup>

## NATIONAL LEGAL PROTECTION

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The Constitution of Bangladesh, adopted within nine months of independence in 1972, secures core fundamental rights to life, liberty, equality and non-discrimination, and freedom of religion, among others. The right to freedom of expression is guaranteed under Article 39(2), but may be limited by "reasonable restrictions" imposed by law, "in the interest of" reasons including: state security,



friendly relations with foreign states, public order, decency or morality, contempt of court, defamation or incitement to an offence.

A series of criminal laws, some from the pre-constitutional period, and some enacted subsequently – including the Information and Communication Technology Act 2006 which includes a sentence imposing imprisonment for a minimum of seven years, the Anti-Terrorism Act 2009 and the Pornography Control Act 2011 – may be invoked to prohibit and penalise artistic works. No artist in Bangladesh is known to have been prosecuted for any of these criminal offences in recent years; however, these laws have been invoked to shut down exhibitions. Writers and political commentators, as well as artists, have referred to practising self-censorship due to the existence of laws criminalising speech or gestures that “hurt the image of the nation” or “hurt religious sentiment”.

The Censorship of Films Act 1963<sup>3</sup> requires pre-censorship of films, and empowers the Bangladesh Film Censors Board to issue certificates prior to the public screening of any film. The Censorship Code, contained within the act, and its related rules, include the following prohibitions: ridiculing or bringing into contempt the defence forces, police force or any other force responsible for maintenance of law and order in the country; giving a general impression of predominance of violence and lawlessness in the country and showing forces of law absent or inactive; and adversely affecting friendly relations with another country or wounding the susceptibilities of foreign nations. Many of these restrictions contain arbitrary, over broad and unnecessary provisions that allow for the potential criminalisation of peaceful artistic expression, which are inconsistent with international norms, and appear contrary to constitutional provisions.

The constitution expressly prohibits discrimination based on, among others, sex, race and religion, and requires the state to take special measures for the “advancement of women”. There are no express legal restrictions on women artists, and many work as painters, sculptors, singers and musicians, writers and poets, as well as filmmakers and in

theatre. Some say that gender is not an issue in terms of their art or performance, such as one female singer who told Freemuse, “I have never felt any different from any male artist.” Others however felt that “women artists’ lifestyle and work patterns are subjected to humiliation and discouragement” and one actor said it was an “open secret” that women actors are frequently expected to trade sexual favours for roles or career advancements.

In rural areas, cultural restrictions may affect women disproportionately in terms of mobility and visibility, although prominent women Baul<sup>4</sup> singers perform regularly in public spaces, including at night. In many villages, there are more cultural prohibitions on women, and this has, for example, affected female dancers performing in Jatra Palas, which are a long-standing village tradition involving dancing and theatre. In recent years, women dancers in some parts of Bangladesh have reportedly been prevented from dancing in Jatra Palas. This appears to be, in part, a response to increasing fundamentalism and a rise in conservative morality, with women being depicted by some groups as involved in “immoral activities” simply for the act of dancing.

## PRACTICES & CASES

### ▶▶ FILM CENSORSHIP

Between 2015 and 2017, censor certificates were refused to three films and as a result were unable to go on popular release though they have been shown in festivals overseas.

### ▶▶ MY BICYCLE

In 2015, the Bangladesh Censor Board (BCB), under the Censorship of Films Act, refused a certificate to Aung Rakhine’s *My Bicycle*, the country’s first Chakma language<sup>5</sup> feature film, for failing to make

cuts to certain scenes. Rakhine had agreed to one cut, but refused to comply with the demand to cut a scene with references to people having lived in an area that was later flooded in the 1960s as part of the construction of a dam and a hydroelectric power station, which led to mass displacement of the indigenous people who had resided there for generations.



The Bangladesh Censor Board refused a certificate in for the country's first Chakma language feature film, *My Bicycle*, in 2015. Photo: Still from promo video, *Aung Rakhin*, YouTube.

## ▶▶ RANA PLAZA

In June 2014, the BCB refused to provide director Nazrul Islam Khan a certificate for the release of his feature film *Rana Plaza* based on the collapse of the Rana Plaza building in Dhaka, which killed at least 1,135 people, mostly garment workers, a year earlier. The board noted two concerns: first, that the film was about a real event and might influence a trial that was underway to establish responsibility for the event; and second, that its depiction of garment workers being involved in political activities would give a negative impression about the industry. In July 2015, the High Court directed the board to issue a certificate contingent on a number of cuts. However, in 2016, following the intervention of a trade union leader, the BCB's appeal body directed that the film not be screened. A petition challenging this order remains pending before the High Court.

## ▶▶ DOOB (NO BED OF ROSES)

In February 2017, the BCB cancelled the no objection certificate it had earlier granted in 2016 for film maker Mostafa Sarwar Farooki's feature film *Doob*. The plot relates to the life of a best-selling writer who marries a much younger woman as his second wife. Although the BCB gave no reasons for the decision, it is reported that it had received instructions from the government, after Meher Afroz Shaon, second wife of the late best-selling writer Humayun Ahmed wrote a letter to the BCB objecting to the film, claiming that it was based on her life with Ahmed. Shaon claimed that the film "impairs the moral standards of the audience" by "deprecating social values" and that it "offends the sentiments of the public" and the "effect ... is likely to be harmful". The film has now been released after some scenes allegedly were taken out.<sup>6</sup>

## ▶▶ MUSICIANS EXCLUDED FROM GOVERNMENT-RUN EVENTS OR BODIES

Musicians with links to the opposition Bangladesh Nationalist Party (BNP) have claimed they have been refused permission to hold concerts, removed from government jobs and banned from performing on government-controlled media for almost a decade. Pop singer Asif Akbar claims to have been refused permission by police and district commissioners to hold open air concerts since 2008. He believes that this is due to his having served on BNP's executive committee for ten years.

## ▶▶ DRAMA PERFORMANCE STOPPED

In July 2016, the Teerondaz Repertory theatre company was due to perform the play *Sun Stuck in our Throat* at the Shilpakala Academy, the national arts centre in Dhaka. The performance was to include a live debate on the issue of a Bangladesh-

India joint venture: the Rampal power plant being built close to the Sundarban mangrove forest. Both the performance and debate, which featured speakers in favour of and against the plant, were widely advertised on posters. On the night of the performance, venue authorities reportedly informed the group that they could not hold the event as it was considered “anti-state”.

## ►► RELOCATION OF STATUE OF “LADY JUSTICE”

In December 2016, a statue by Mrinal Haque was erected at the entrance of the Supreme Court. It depicted a woman, clad in a sari, blindfolded, and holding a sword and scales. Commentators described the statue as being of Themis, the Greek goddess of justice. In February 2017, the Islamist group Hefazat-e-Islam, protested it as an “idol”, and staged large demonstrations calling for action against the court, the Chief Justice and those it identified as responsible for erecting the statue. Hefazat’s leaders argued that “statues or any kind of idols are completely banned in Islam .... so Muslims can’t allow a statue in the Supreme Court premises”. In April 2017, the prime minister supported Hefazat’s criticisms when addressing a group of religious leaders, she asked: “Why would the statue of Greek Themis be set up in Bangladesh?”

On 25 May 2017, following orders from then Chief Justice of Bangladesh, the statue was repositioned in a less conspicuous area of the Supreme Court.<sup>7</sup> During the course of the events, student demonstrators who held peaceful protests were arrested for allegedly “attempting to murder” the police.<sup>8</sup> Two well-known secular activists were threatened with defamation of the prime minister for protesting its removal, and another noted secular activist faced trolling and death threats when she engaged in a debate on a TV talk show defending the placement of the statue in the court.

## ►► SELF-CENSORSHIP

Many artists speak of practising a high degree of self-censorship, particularly in relation to online content and content which is “hurtful to religious sentiments” or “hurts the image of the state”. They fear being implicated in a criminal case and arrested; in extreme cases, held without charge – a common occurrence; or suffer physical threats or attacks by violent extremists. These fears are combined with the more mundane anxieties of loss of patronage or privileges for being critical of the state. One photographer told Freemuse in 2017 that in relation to artists generally: “My observation is that at present anything that might challenge the power structures has been hugely curtailed by artists themselves; the artists’ community does not rock the boat. That is across the board.” However, artists continue to operate within a political environment where it is widely perceived that any dissent by an artist could result in arbitrary use of government power, including the arrest of the artist or their family. High profile public events, celebrations of classical music, art and photography, as well as literature, continue to take place with government patronage and corporate sponsorship, bringing together artists from across the country and region. The space for more critical voices may be thinning to a sliver, but for less critical voices, or modulated ones, there remains space and opportunities.

# RUSSIA:

## PERSECUTION AND CLIMATE OF FEAR

*“If the state gives money for a production, the state has the right to determine its theme.”*

**DMITRI S. PESKOV**, SPOKESMAN FOR RUSSIAN PRESIDENT VLADIMIR V. PUTIN

### SUMMARY

As in previous years, 2017 demonstrated that control and censorship of the art industry in Russia is becoming increasingly formalised. National laws relating to freedom of expression have become more repressive, and as such criticism of the authorities or any form of dissent can be regarded as an offense with punishments getting tougher. Authorities use an intimidating strategy of uncertainty wherein some arts projects that are critical of the authorities go unnoticed or are even openly supported, whilst others, often minor events, lead to serious consequences for their creators. The Russian Orthodox Church increasingly intervenes in the sphere of culture and art, while the actions of radical Orthodox activists are becoming more aggressive. Among artists and arts organisations not affiliated with the state, there is talk about an atmosphere of fear and self-censorship becoming

increasingly dominant as it has become clear that it can be beneficial to be seen to publicly support the government. In turn, those in power use key art figures to help justify certain actions, such as the annexation of Crimea.

#### ► KEY POINTS

- Vague provision in the Criminal Code leave room for religious and pro-Kremlin groups to exploit the law.
- Staff in the art and cultural sphere being replaced by those within government structures.
- Art increasingly being seen as a matter of national identity, which needs to be controlled and protected.



## ART IN DANGER ALL AROUND

Artists across the board in Russia are faced with their freedom being curtailed from all directions and for a myriad reasons. They are targeted by government authorities, religious groups and even from members within the artistic community, for reasons related to politics and conflict, as well as religion, indecency and LGBT issues. As a result, they suffer from nearly all violations Freemuse documents.



MAIN VIOLATORS:

**GOVERNMENT** 46%

NON-STATE ACTORS 27%

ARTISTIC COMMUNITY 18%

MAIN VIOLATIONS:

**CENSORSHIP** 37%

PERSECUTIONS/THREATS 18%

ATTACKS 18% DETENTIONS 9%

IMPRISONMENTS 9% PROSECUTIONS 9%

## COUNTRY CONTEXT

“Today’s Russia has the most repressive atmosphere for the entire post-Soviet period”, according to Human Rights Watch.<sup>1</sup> Since 2012, when Vladimir Putin was reinstated as president, a range of laws and actions has led to a deterioration in human rights. Freedom of expression, particularly online, has been a specific target. Most news media are either state-owned or have strong ties to the Kremlin and support official government rhetoric.

There have been a number of corruption scandals in recent years, some involving senior officials, including within the cultural sphere, and a significant decrease in trust of federal and municipal authorities has been documented.<sup>2</sup>

The upcoming presidential election scheduled for 18 March 2018, will by most accounts end with a victory for Putin, who has led the country since 2000, and one that will keep in power for another six years.

## INTERNATIONAL OBLIGATIONS AND COMMITMENTS

Russia is a party to most international human rights treaties, including the ICCPR and ICESCR, as well as the European Convention on Human Rights.

The last UPR on Russia was in 2013. While not accepting recommendations on repealing the law that requires NGOs that accept foreign funding to register and identify themselves as “foreign agents”, Russia did “note” them, as well as others recommending clarification of the definitions of extremism in legislation, revising the Information Act, including online, and to reject a too ambiguous definition of “treachery of the state” in the Criminal Code. Russia’s next UPR session is scheduled for May 2018.

In 2017, Russia suspended its participation in the Parliamentary Assembly of the Council of Europe (PACE) and froze payment of its membership fee to the council in response to the sanctions imposed after the annexation of the Crimea.

Amendments to the Constitutional Court Act signed by President Putin in 2015 allow the Constitutional Court to overturn the decisions of the European Court of Human Rights if it deems them unconstitutional.<sup>3</sup>

## NATIONAL LEGAL PROTECTION

“We always say that what is prohibited by law should be banned”, Putin stated in August 2017 referring to the possibility of censorship in Russia in the light of more stringent legislation limiting freedoms of conscience, expression and creativity.

Article 44 of the Constitution of the Russian Federation guarantees “freedom of literary, artistic [...] and other types of creative activity”, and protects intellectual property.<sup>4</sup> Article 29 prohibits censorship and guarantees freedom of expression. The legislative framework in the field of art and culture is set by the Fundamentals of Legislation of the Russian Federation on Culture (1992). Article 31 of the law entitles the state to intervene in activities of people, cultural institutions and NGOs if their work is seen to, among others, propagandise war, call for violence, advocate racial, religious or class hatred, or is pornographic.

Vague provisions in the Criminal Code such as “hooliganism” (Article 213) and “incitement of hatred” (Article 282) leaves room for arbitrary decisions and misuse in violation of Russia’s international obligations. Article 148 makes it a crime to “insult the feelings of believers” and has been used by groups affiliated to the Russian Orthodox Church to put pressure on artists and art institutions. Violations are punishable with prison sentences of up to three years. Such penalties are in contravention of the ICCPR, as stated in the Human Rights Committee’s General Comment No. 34: “Prohibitions of displays of lack of respect for a

religion [...] are incompatible with ICCPR, except in the specific circumstances envisaged in article 20, paragraph 2, of the Covenant”.<sup>5</sup>

## POLICY, REGULATIONS AND INSTITUTIONS

The prohibition of obscene language on a new law banning profanity in the arts promulgated in 2014<sup>6</sup> is seen by many as hastening the erosion of freedoms in the independent arts and culture field.

Cinema and theatre are among those art forms at the centre of the battlefield for freedom of expression today and public attacks, especially those sanctioned by or carried out in the name of the Orthodox Church, specifically target contemporary art tackling taboo topics, and is often seen as an anti-Russian and anti-Orthodox phenomenon.

Over 80 per cent of Russians supported the idea that the state should have some control over artistic content according to a 2015 survey by the Public Opinion Foundation.<sup>7</sup>

Among the informal strategies to control arts and culture is the replacement of senior arts institution staff by people from the state apparatus, and the merging of major art bodies bringing them under the rule of appointees of the Kremlin. The distribution of state grants only to art organisations loyal to the government is another tool through which to influence the cultural agenda. Among the goals of the 2016 State Cultural Policy Strategy is to combat the “washing out of traditional Russian spiritual and moral values [...] by external cultural and information expansion, [...]attempts of falsification of the Russian and world history [...]”.<sup>8</sup>

In late 2017, just before the VI International St. Petersburg Cultural Forum, a list of undesirable

participants, each accompanied by a short profile, signed by First Deputy Minister of Culture Vladimir Aristarkhov was revealed in the media. The ministry denied that it had created the document. The influential art web-portal Colta stated that the list is evidence of a large and growing dossier of “enemies of Russian culture”.<sup>9</sup> Among those listed were prominent theatre directors.

## PRACTICES & CASES

### ▶▶ ANTI-UKRAINIAN SENTIMENTS

In 2017, military actions continued in east Ukraine, where among fighting forces were separatists supported by Russia.<sup>10</sup> Mutual economic and political sanctions have been in place since the beginning of the Russia-Ukraine conflict in 2014. While running a wide propaganda campaign to justify its actions in Ukraine, the state is using prominent cultural figures and art generally to support government policy. For example, in 2017, the movie *Crimea*, which was widely screened in Russia, was produced with the financial support of the Ministry of Defence.<sup>11</sup>

In 2017 there was no report on the ban on Ukrainian art or entry of Ukrainian artists to Russia at the state level. Despite the political tension, Ukrainian artists who are loyal to Russia tour the country unhindered, such as the popular singer Ivan Dorn and the hip hop band Griby.

On 10 December, activists of the pro-Kremlin South Eastern Radical Bloc (SERB) movement interrupted the screening of a Ukrainian film *Polet Puli (The Flight of the Bullet)* at the Artdokfest festival in Moscow and threatened its audience. The film is about Ukrainian far-right volunteers who fought in eastern Ukraine in 2014.<sup>12</sup> Previously, members of another Russian far-right group threatened to bring 500 of their followers to attack the screening if it

went ahead. On 30 December, press reports say that Cossacks interrupted a performance by Ukrainian poet Eugenia Bilchenko in Moscow.<sup>13</sup> Police took in the poet “for checking” and later let her go.

### ▶▶ VIOLENT ACTIONS BY RADICAL ORTHODOX CHRISTIANS

Cases of direct violence by Orthodox activists and ultra-patriots against exhibitions continue. Targeting of artistic expressions has become one of the main activities of a number of groups, including SERB. Attackers either remain unfound, or receive minor, administrative penalties, giving the impression of impunity.

On 8 December 2017, a SERB activist allegedly threw urine at an exhibition by American photographer Jock Sturges held at the private Lumière Brothers photo gallery in Moscow. Over 100 men from the group had forcibly entered the building, forcing it to close the show. A Kremlin senator had labelled Sturges’ work as paedophilia; though Sturges counters that his portraits of hundreds of families were taken with their permission.<sup>14</sup> In May, an exhibition in Surgut titled *Tabu* was forced to close on demand of a local organisation, Russian Spirit, just two days after it had opened at the Port cultural centre.

### ▶▶ THE PERSECUTION OF CULTURAL FIGURES BY THE AUTHORITIES

The film *Matilda*, directed by Alexei Uchitel, about the love affair between the last Russian emperor, Nicholas II, and ballerina Matilda Kshesinskaya, sparked a wide debate about censorship in the cinema. Long before its release, Natalia Poklonskaya, deputy of the State Duma, demanded a ban on public screenings of the movie and took her crusade to the prosecutor’s office, claiming the film insulted religious feelings and threatened national security. Her campaign was widely supported by Orthodox activists. Nicholas II is a canonised saint. The director, film studio and cinemas received large

numbers of threats from radical Orthodox groups. On the night of 31 August 2017, three Molotov cocktails were thrown at the windows of the film studio's building in St. Petersburg. In September, two cars were set on fire in front of the office of Uchitel's lawyer. Also in September, a man in a lorry loaded with gas canisters deliberately drove into the porch of a cinema in Yekaterinburg that was planning to show the film. Earlier he had taken part in demonstrations against the screening of the movie, but the official investigation into his actions did not include his antipathy towards Matilda as a factor. Nevertheless, the film went on to be screened. Lead actor Lars Aydinger, who played Nicholas II, refused to come to the premiere, fearing for his life.<sup>15</sup> In many cities, the premiere screenings took place under the protection of OMON special police forces, while Uchitel questioned why firmer action hadn't been taken against the attackers.<sup>16</sup>



*One of the burned vehicles in front Matilda film director's lawyer's office. The film caused wide debate in Russian society, leading to threats and attacks by Orthodox activists. Photo: Konstantin Dobrynin Facebook*

The criminal case around the theatrical troupe The Seventh Studio and the arrest of director Kirill Serebrennikov, known for his critical films and performances, has become an international scandal.<sup>17</sup> On 22 August 2017, the Investigative Committee detained Serebrennikov accusing him and his colleagues of misappropriating 68 million roubles (1 million euro) from state grants. At the end of 2017, Serebrennikov and theatre general director Yury Itin remained under house arrest; the theatre's chief accountant Nina Maslyayeva cooperated with

investigators and was transferred from prison to house arrest; the general producer of the studio, Aleksey Malobrodsky, remains detained in a prison; and the director of the Russian Academic Youth Theater, Sophia Apfelbaum, who is accused of complicity, remained under house arrest. The Minister of Culture Vladimir Medinsky and President Putin have denied any political implications in the case.



*One of the most high-profile cases of 2017 is the continued house arrest of director Kirill Serebrennikov for the misappropriation of state funds, a charge many in the Russian artistic community question. Photo: Gogol Center Facebook*

On 22 June at the Red Square in Moscow, police detained performance artist, Katherine Nenasheva as she conducted a street performance wearing a virtual reality (VR) headset that featured scenes from inside psychiatric detention centres. After being released from detention, having been held without charge, the artist said she had been told by police that it is forbidden to wear VR headsets in public places.<sup>18</sup>

The alternative musical scene has become the focus of authority scrutiny in the last couple of years. In 2017, Radio Svoboda and other media reported that in several cities, under pressure from authorities and local Federal Security Services (FSB), concerts



by popular punk band Porn Films were cancelled for propaganda promoting an “antisocial way of life, [and] instilling distrust and hatred towards public authorities and law enforcement bodies”, according to the FSB.<sup>19</sup>

## ▶▶ SELF-CENSORSHIP AND ATMOSPHERE OF FEAR

“There has come a terrible time – a time of self-censorship”, according to art critic Andrei Kovalev.<sup>20</sup> Among the reasons for this situation is the extremely precarious position of art professionals, who have few avenues through which to protect themselves against censorship and attack. As the case of artist Kirill Serebrennikov illustrates, even the most famous and successful among them, who have good connections, have no protection from the state power. This leads to self-censorship and conflicts between cultural workers. In November, during the

graduating performance of students of the Moscow Art Theater School, a professor of another theatrical college ran out onto the stage demanding to stop the performance due to a naked actor appearing on stage. In the cities of Vladimir, Saratov and Nizhny Tagil, theatrical producers actively participated in campaigns to cancel certain theatre performances where they saw either an insult to morality or criticism of the authorities.

Throughout 2016 and 2017, an exhibition featuring dead animals by Belgian artist Jan Fabre at the Hermitage in St. Petersburg attracted online outrage and threats. Though there was a public campaign against the exhibition there was also support from the general public. The museum used social media platforms to argue its case and the Ministry of Culture declined to take sides, simply stating that the Hermitage has independence and freedom, and should be allowed to make its own decisions on exhibits.<sup>21</sup>

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## CHAPTER 2

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## A NOTE ON DOCUMENTATION

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Freemuse's State of Artistic Freedom report is a research product created as a result of annual monitoring, documentation and examination of cases of violations of artistic freedom and other legal and policy developments worldwide.

Every effort has been made to verify the accuracy of the information contained in this report, and all information was believed to be correct as of February 2018.

When artists have faced multiple violations stemming from the same incident, we document the most serious violation. If an artist is detained, prosecuted and then consequently imprisoned for the same incident, the violation is only recorded as imprisoned. If an artist is abducted in one incident and threatened in a separate, unrelated incident, then those are registered as two separate cases.

"Attacked" refers to artists, artworks or events being physically attacked; each attack is registered as a single violation.

"Imprisoned" refers to artists who were sentenced to prison for their artistic work during the calendar year, as well as artists who were imprisoned in years previous, but remained behind bars during the whole or part of the year.

"Detained" refers to artists who were held in custody by state authorities when charges were not pressed against them. When an artist is charged, the case will be registered as "prosecuted".

"Censored" refers to incidents of censorship including concerts being stopped; films, books and music being censored and banned; and works of art being removed from exhibitions.

Blacklists are registered as one act of censorship for comparative purposes, regardless of the number of artworks affected. However, if the list is updated with new censored artworks, it will be registered as a new violation.



*“Women’s cultural rights are a prime target for fundamentalists and extremists, who often claim to be defending culture, religion or tradition but instead deny the rights of others in these regards.”*

REPORT OF THE SPECIAL RAPPORTEUR IN THE FIELD OF CULTURAL RIGHTS, **KARIMA BENNOUNE**, A/HRC/34/56, para 74.



*“Freedom of expression is not a right that may only be exercised when deemed convenient by those in power.”*

**DAVID KAYE**, UNITED NATIONS SPECIAL RAPPORTEUR ON THE RIGHT TO FREEDOM OF OPINION AND EXPRESSION, AND **HARLEM DÉSIR**, OSCE REPRESENTATIVE ON FREEDOM OF THE MEDIA

“After enduring five years in exile with my loyal husband, we intend to return to our home. In the fifth and sixth decades of our lives, we are not at an age where we want to suffer in exile. It will also be difficult for me to go to prison, given my physical condition, especially my extremely weak eyesight. **However, I understand that the current ruling establishment has a policy of making the people who return home sorry—a policy that has denied our freedom and forced us to choose between silence, exile, or prison.**”

**SEDIGHEH VASMAGHI**, POET AND ACTIVIST WHO WAS FORCED TO FLEE IRAN IN 2011. SHE WAS RELEASED ON BAIL ON 4 NOVEMBER 2017 AFTER HAVING BEEN DETAINED IN TEHRAN'S EVIN PRISON SINCE 22 OCTOBER 2017, EIGHT DAYS AFTER RETURNING TO IRAN. THE POET HAD PREVIOUSLY BEEN DETAINED FOR A FEW HOURS AT TEHRAN'S INTERNATIONAL AIRPORT UPON ARRIVAL.

Freemuse is an independent international organisation advocating for and **defending freedom of artistic expression.**

We **monitor and document** violations of artistic freedom, expose laws and policies that enable and sustain these violations, and leverage **evidence-based advocacy** for systemic structural changes at international, regional and national levels.

Working with partners, artists and activists in the global south and north, we **campaign for and support** individual artists, focusing on women artists and other vulnerable groups of artists. We facilitate and grow locally-owned **national coalitions** in their campaigns and capacity building to monitor and defend artistic freedom.

[freemuse.org](https://freemuse.org)