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**Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development**

## **Report of the Special Rapporteur in the field of cultural rights, Farida Shaheed**

### **The right to freedom of artistic expression and creativity\***

#### *Summary*

The Special Rapporteur in the field of cultural rights, Ms. Farida Shaheed, submits the present report in accordance with Human Rights Council resolution 19/6.

In this report, the Special Rapporteur addresses the multi-faceted ways in which the right to the freedom indispensable for artistic expression and creativity may be curtailed. She reflects upon the growing worldwide concern that artistic voices have been or are being silenced by various means and in different ways. This report addresses laws and regulations restricting artistic freedoms as well as economic and financial issues significantly impacting on such freedoms. The underlying motivations are most often political, religious, cultural or moral, or lie in economic interests, or are a combination of those.

The Special Rapporteur encourages States to critically review their legislation and practices imposing restrictions on the right to freedom of artistic expression and creativity, taking into consideration their obligations to respect, protect and fulfil this right. The Special Rapporteur notes that more discussion is urgently needed in several areas that she has considered.

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\* The annexes to the present report are circulated in their languages of submission only.

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## I. Introduction

1. The present report focuses on the right to the freedom indispensable for artistic expression and creativity, protected under articles 15 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) and 19 of the International Covenant on Civil and Political Rights (ICCPR).

2. Art constitutes an important vehicle for each person, individually and in community with others, as well as groups of people, to develop and express their humanity, worldview and meanings assigned to their existence and development. People in all societies create, make use of, or relate to, artistic expressions and creations.

3. Artists may entertain people, but they also contribute to social debates, sometimes bringing counter-discourses and potential counterweights to existing power centres. The vitality of artistic creativity is necessary for the development of vibrant cultures and the functioning of democratic societies. Artistic expressions and creations are an integral part of cultural life, which entails contesting meanings and revisiting culturally inherited ideas and concepts. 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. This principle lies at the heart of every issue raised in the debate over the right to freedom of artistic expression and creativity and possible limitations on that right.

4. There is no intention to propose a definition of art, or to suggest that additional rights should be recognized for artists. All persons enjoy the rights to freedom of expression and creativity, to participate in cultural life and to enjoy the arts. Expressions, whether artistic or not, always remain protected under the right to freedom of expression.

5. This report aims to understand the challenges and obstacles that impede the flourishing of artistic creativity, and make specific recommendations to overcome them. The approach adopted is broad. The report addresses forms of expression that carry an aesthetic and/or symbolic dimension, using different media including, but not limited to, painting and drawing, music, songs and dances, poetry and literature, theatre and circus, photography, cinema and video, architecture and sculpture, performances and public art interventions, etc., irrespective of whether their content is sacred or profane, political or apolitical, or whether it addresses social issues or not. It recognizes that artistic activity relies on a large number of actors not reducible to the artist *per se*, encompassing all those engaged in and contributing to the creation, production, distribution and dissemination of artistic expressions and creations. The Special Rapporteur is convinced that freedom of artistic expression and creativity cannot be dissociated from the right of all persons to enjoy the arts, as in many cases restrictions on artistic freedoms aim at denying people access to specific artworks. Hence, removing creative expressions from public access is a way to restrict artistic freedom. Ironically enough, restrictions are often imposed in the name of the public which, however, is prevented from making its own judgement.

6. Artistic expressions and creations come under particular attack because they can convey specific messages and articulate symbolic values in a powerful way, or may be considered as doing so. Motivations for restrictions stem from political, religious, cultural, moral or economic interests, and disturbing cases of violations are found on all continents.<sup>1</sup>

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<sup>1</sup> First World Conference on artistic freedom of expression, Oslo, 25-26 October 2012, <http://artsfreedom.org/?p=4057>.

7. The issue of violations of artistic freedom should be addressed more comprehensively by intergovernmental organizations. Media attention to cases of a few prominent artists tends to eclipse the reality lived by many people engaged in artistic activities around the world. Initiatives such as the establishment of safe cities for artists<sup>2</sup> and the enhanced development of networks between artists and human rights defenders<sup>3</sup> need to be supported.

8. In order to collect the views of States and other stakeholders, the Special Rapporteur disseminated a questionnaire on the right to artistic freedom. Responses were received from 28 States and 23 other stakeholders (annex I). The Special Rapporteur convened an experts' meeting on the issue on 4 and 5 December 2012 (annex II), and a public consultation on 6 December 2012. The Special Rapporteur is grateful to all those who contributed.

## **II. Legal framework**

### **A. Protection in universal, regional and national instruments**

#### **1. Universal and regional human rights instruments**

9. The most explicit provisions protecting the freedom of artistic expression and creativity are to be found in article 15 (3) of ICESCR, under which States “undertake to respect the freedom indispensable for...creative activity” and in article 19 (2) of ICCPR, which states that the right to freedom of expression includes the freedom to seek, receive and impart information and ideas of all kinds “in the form of art”. Articles 13 and 31 of the Convention on the Rights of the Child, article 13 (1) of the American Convention on Human Rights and article 14 of its Protocol in the area of Economic, Social and Cultural Rights, and article 42 of the Arab Charter for Human Rights also contain such explicit provisions. In addition, under article 27 of the Universal Declaration of Human Rights (UDHR), everyone has the right “to enjoy the arts”.

10. Implicit provisions encompass those guaranteeing the right to freedom of expression or the right to take part in cultural life without specific reference to arts or creative activities. Relevant provisions include article 19 of the UDHR, article 10 of the European Convention for the Safeguard of Human Rights and Fundamental Freedoms, articles 9 and 17 of the African Charter on Human and Peoples' Rights, and article 32 of the Arab Charter for Human Rights. The Committee on Economic, Social and Cultural Rights has stressed that the right to take part in cultural life entails rights of participation in, access to, and contribution to cultural life, and encompasses the right of everyone “to seek and develop cultural knowledge and expressions and to share them with others, as well as to act creatively and take part in creative activity.”<sup>4</sup>

11. Other important provisions linked to artistic freedoms relate to the right to freedom of opinion, and freedom of thought, conscience and religion, since art is also a means of expressing a belief and developing a world vision. For many people, the experience of the aesthetic dimensions of life is intimately connected to the sacred or divine. The right to artistic freedom also relates to (a) the right of peaceful assembly; (b) the right to freedom of association, including the right of artists and creators to form and join trade unions; (c) the

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<sup>2</sup> See in particular International Cities of Refuge Network, <http://www.icorn.org/>; freeDimensional, <http://freedimensional.org/>; and Mapping of temporary shelter initiatives for Human Rights Defenders in danger in and outside the EU, Final Report, February 2012.

<sup>3</sup> See in particular The Arts and Freedom of Expression Network, <http://artsfex.org>.

<sup>4</sup> E/C.12/GC/21, para. 15 (a).

right to benefit from the protection of the moral and material interests resulting from any literary or artistic production of which a person is the author; and (d) the right to leisure.

12. Provisions are to be implemented without any discrimination of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, as stated in article 2 of ICESCR and ICCPR. Article 5 (e) (vi) of the International Convention on the Elimination of All Forms of Racial Discrimination, article 13 (c) of the Convention on the Elimination of All Forms of Discrimination against Women, articles 43 and 45 of the Convention on the Protection of the Rights of Migrant Workers and Members of Their Families, and article 21 of the Convention on the Rights of Persons with Disabilities, stress that all persons, irrespective of their specific situation or status have the right to freedom of artistic expression and creativity.

13. Article 27 of ICCPR is crucial for guaranteeing the artistic freedoms of persons belonging to ethnic, religious or linguistic minorities. Particular attention must also be paid to article 31 of the Declaration of the Rights of Indigenous Peoples.

14. Important positive obligations devolve on States. Under article 15 (2) of ICESCR and article 14 of the San Salvador Protocol, States must adopt steps necessary for the conservation, the development and the diffusion of culture, which includes arts. Article 30 of the Convention on the Rights of Persons with Disabilities calls for measures providing persons with disabilities the opportunity to develop and utilize their creative, artistic and intellectual potential. Article 42 of the Arab Charter for Human Rights stresses that States shall work together and enhance cooperation among them at all levels, with the full participation of intellectuals and inventors and their organizations, in order to develop and implement recreational, cultural and artistic programmes.

15. Few decisions in the United Nations system relate to artistic freedom. In its Communication 926/2000 of 2004, concerning a painter, Hak-Chul Shin, who had been convicted for a painting deemed to be an “enemy-benefiting expression” contrary to the National Security Law, the Human Rights Committee found that the Republic of Korea had violated article 19 of ICCPR. The Working Group on Arbitrary Detention, in its Opinion 32/2011, declared that Lapiro de Mbanga, a famous Cameroonian musician and composer, had been arbitrarily detained for the legitimate exercise of his right to freedom of expression.

16. Some court decisions have also been adopted at the regional level, particularly by the European Court of Human Rights.<sup>5</sup> At least on one occasion, the Inter-American Court on Human Rights adopted a decision relating to artistic freedom.<sup>6</sup>

## 2. Relevant UNESCO instruments<sup>7</sup>

### (a) *Recommendation concerning the status of the artist*

17. The underlying principle of the 1980 United Nations Educational, Scientific and Cultural Organizational (UNESCO) Recommendation Concerning the Status of the Artist is that Governments should help to create and sustain a climate encouraging freedom of artistic expression and the material conditions facilitating the release of creative talents. The

<sup>5</sup> Council of Europe, “Cultural rights in the case-law of the European Court of Human Rights”, January 2011, [http://www.echr.coe.int/NR/rdonlyres/F8123ACC-5A5A-4802-86BE-8CDA93FE58DF/0/RAPPORT\\_RECHERCHE\\_Droits\\_culturels\\_EN.pdf](http://www.echr.coe.int/NR/rdonlyres/F8123ACC-5A5A-4802-86BE-8CDA93FE58DF/0/RAPPORT_RECHERCHE_Droits_culturels_EN.pdf).

<sup>6</sup> “Last temptation of Christ”, Chile, 5 February 2001.

<sup>7</sup> See UNESCO’s input to the Consultation on the right to artistic freedom.

recommendation addresses issues such as freedom of expression, support to artistic creation, artistic education and training, social and labour rights, and intellectual property rights. It stresses that artists shall benefit from the rights and protection provided for in international and national legislation relating to human rights, in particular in the area of freedom of expression and communication (articles III-6 and V 2).

18. States have a duty to protect, defend and assist artists and their freedom of creation (article III-3). They should ensure that artists have the freedom to establish and be a member of trade unions and professional organizations, and should enable organizations representing artists to participate in the formulation of cultural policies and employment policies (article III-4). Artists should be able to participate fully, either individually or through their associations or trade unions, in the life of the communities in which they practise their art, and be associated in the formulation of local and national cultural policies (article III- 7).

19. States should promote the free international movement of artists and not hinder their freedom to practise their art in the country of their choice (articles IV-1 j and k; and VI-8).

20. Furthermore, States should stimulate public and private demand for the fruits of artistic activity in order to increase the opportunities of paid work for artists, *inter alia* by means of subsidies to art institutions, commissions to individual artists, or the organization of artistic events, and by establishing art funds (article VI-1 c).

(b) *The Convention on the Protection and Promotion of the Diversity of Cultural Expressions*

21. According to article 2 of the 2005 UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions, “Cultural diversity can be protected and promoted only if human rights and fundamental freedoms, such as freedom of expression, information and communication, as well as the ability of individuals to choose cultural expressions, are guaranteed. No one may invoke the provisions of this Convention in order to infringe human rights and fundamental freedoms as enshrined in the Universal Declaration of Human Rights or guaranteed by international law, or to limit the scope thereof.”

22. Under article 7, States endeavour to create an environment which encourages individuals and social groups to create, produce, disseminate, distribute and have access to their own cultural expressions as well as to diverse cultural expressions from within their territory as well as from other countries of the world. States shall also endeavour to recognize the important contribution of artists as well as all those involved in the creative process, and their central role in nurturing the diversity of cultural expressions.

23. The Convention – based on the principle that cultural goods and services, as vectors of identity, values and meaning, must not be treated as mere commodities or consumer goods – recognizes the right of States to develop cultural policies that do not necessarily coincide with free market rules. It enhances their capacity to adopt measures necessary for the conservation, the development and the diffusion of culture, as required by article 15 of ICESCR.

**3. Standards at the national level**

24. As shown in responses to the questionnaire and other information, many constitutions expressly protect the right to “artistic creation” or “artistic creativity”. Others protect the right to “artistic/creative expression”, “freedom of creation” or of “artistic endeavour”, or of “cultural creativity”, or make reference to “freedom of the arts”. Some

constitutions protect the artistic freedom implicitly through the rights to freedom of expression, to participate in cultural life, to access culture and to cultural development.<sup>8</sup>

## **B. Limitations to artistic freedoms**

### **1. Standards on possible limitations**

25. Article 4 of ICESCR authorizes “limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.” Limitations must be necessary and proportionate, and established by legal rules that are transparent and consistently applied in a non-discriminatory way.<sup>9</sup>

26. Under article 19 of ICCPR, the right to freedom of expression, including in the form of art, may be subject to certain restrictions that are provided by law and are necessary (a) for the respect of the rights or reputations of others; or (b) for the protection of national security or of public order, or of public health or morals. Responses to the questionnaire demonstrate that some constitutions mirror article 19 of ICCPR, while others regrettably go much further in the restrictions they allow.

27. Under article 20, any propaganda for war, as well as any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence, shall be prohibited by law.

28. Over the last years, the meaning of articles 19 and 20 of ICCPR has been further clarified, in particular through General Comment 34 (2011) of the Human Rights Committee on article 19 of ICCPR, and the report of the Special Rapporteur on freedom of opinion and expression on the challenge to reconcile the need to protect and promote the right to freedom of opinion and expression and to combat discrimination and incitement to hatred (A/67/357).<sup>10</sup> The Office of the High Commissioner for Human Rights conducted activities focused on the relationship between freedom of expression and hate speech, especially in relation to religious issues. The process culminated with the “Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence”.<sup>11</sup>

29. Under article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination, States, with due regard to the principles embodied in the UDHR, shall declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof.

30. These various texts set the parameters for defining possible limitations of artistic freedoms.

31. The Special Rapporteur notes in particular the recommendation to clearly distinguish among (a) expression that constitutes a criminal offence; (b) expression that is

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<sup>8</sup> All responses to the questionnaire are available on the website of the Special Rapporteur, at the following address:

<http://www.ohchr.org/EN/Issues/CulturalRights/Pages/SRCulturalRightsIndex.aspx>.

<sup>9</sup> E/C.12/GC/21, para. 19.

<sup>10</sup> See also A/66/290.

<sup>11</sup> A/HRC/22/17/Add.4.

not criminally punishable but may justify a civil suit or administrative sanctions; and (c) expression that does not give rise to criminal, civil or administrative sanctions but still raises a concern in terms of tolerance, civility and respect for the rights of others.<sup>12</sup> In other words, what may be morally objectionable (from one point of view) may not necessarily be legally inadmissible or condemnable. Criminal sanctions should be the very last resort measures only, to be applied in strictly justifiable situations. In this regard, the Special Rapporteur is concerned that many artists have been disproportionately sentenced under the criminal code, including under charges of offences such as “extremism”, “terrorism” or “hooliganism”. A particularly useful suggestion in the Rabat Plan is to use a six-part threshold test for those expressions that are criminally prohibited, implying an analysis of the context, speaker, content or form (which implicitly also refers to “the form of art”), extent of the speech, and likelihood, including imminence.

32. The Special Rapporteur considers that States have the challenge of ensuring the full implementation of artistic freedoms and resort to limitations only when absolutely necessary. States shall bear in mind that they shall not single out some individual conceptions of the beautiful or sacred for official protection, as all persons are equal before the law and are entitled without any discrimination to the equal protection of the law (article 26 of ICCPR). Moreover, “it is not compatible with the [ICCPR] for a restriction to be enshrined in traditional, religious and other such customary law”.<sup>13</sup>

## **2. Application to artistic freedoms: specific challenges**

33. States and other stakeholders often refer to the necessity of regulating the dissemination of artistic expressions deemed to, for example, call for discrimination, hatred and violence against specific groups or persons, amount to drug propaganda, or contain pornographic content. The necessity to protect children and adolescents against specific contents, such as extreme violence or pornography, the right to privacy and the moral and material rights of authors, and the rights of indigenous peoples, has also been mentioned in responses to the questionnaire. The attention of the Special Rapporteur was also drawn to examples of songs having encouraged ethnic hatred and the broadcasts of these songs having had an amplifying effect on genocide.<sup>14</sup>

34. These concerns need to be addressed in compliance with international standards regarding possible limitations as described above. The Special Rapporteur encourages States, when applying these standards, to take into consideration the specific nature of artistic expressions and creations.

35. Artists, like journalists and human rights defenders, are at particular risk as their work depends on visibly engaging people in the public domain. Through their expressions and creations, artists often question our lives, perceptions of ourselves and others, world visions, power relations, human nature and taboos, eliciting emotional as well as intellectual responses.

36. Artistic expression and creativity may entail the re-appropriation of symbols, whether national (flags, national anthems), religious (figures, symbols, venues) or social/economical (a certain brand for example), as part of a response to the narratives promoted by States, religious institutions or economic powers.<sup>15</sup> States, religions, corporate

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<sup>12</sup> A/66/290, para 18.

<sup>13</sup> CCPR/C/GC/34, paras. 24 and 32.

<sup>14</sup> International Criminal Tribunal for Rwanda, Case No. ICTR-01-72-T, Simon Bikindi, 2008, in particular paras. 254-255, and 264.

<sup>15</sup> Svetlana Mincheva, “Symbols into soldiers: Art, censorship and religion”, Background article for the Oslo Conference, p. 2.

companies and social groups also use art to propagate their ideas and promote their interests, including concepts of right and wrong to create homogeneity of belief and behaviour. In most cases, restrictions on artistic freedoms reflect a desire to promote a world vision or narrative “while simultaneously blocking all others”.<sup>16</sup>

37. An artwork differs from non-fictional statements, as it provides a far wider scope for assigning multiple meanings: assumptions about the message carried by an artwork are therefore extremely difficult to prove, and interpretations given to an artwork do not necessarily coincide with the author’s intended meaning. Artistic expressions and creations do not always carry, and should not be reduced to carrying, a specific message or information. In addition, the resort to fiction and the imaginary must be understood and respected as a crucial element of the freedom indispensable for creative activities and artistic expressions: representations of the real must not be confused with the real, which means, for example, that what a character says in a novel cannot be equated with the author’s personal views. Hence, artists should be able to explore the darker side of humanity, and to represent crimes or what some may consider as “immorality”, without being accused of promoting these.<sup>17</sup>

38. While policies designed to attract wider audiences to art should be encouraged, this should not exclude controversial works because unprepared audiences may be put in contact with them. Rather, it is imperative to enhance arts education, which can be seen as a strong and efficient alternative to censorship.

39. The open access to, and circulation of, artworks through the Internet has increased challenges, with instances of conflicts ignited over artistic expressions made locally, but distributed globally. However, the issue of the Internet must not obfuscate the fact that a great majority of violations of artistic freedoms concern artists working in their own country and questioning their own cultural heritage, traditions and surroundings.

### III. Restrictions and obstacles: the need for national assessments

40. The multifaceted character of restrictions and obstacles to artistic freedoms needs to be acknowledged so as to provide a better understanding of the obligations of States to respect, protect and fulfil these freedoms and develop good practices.

41. 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 of ICCPR. This effect is amplified when rules are ambiguous and procedures are not transparent.

#### A. Persons impacted

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

<sup>16</sup> Marie Korpe, Ole Reitov and Martin Cloonan, “Music censorship from Plato to the Present”, in *Music and Manipulation*, Bergahn Books, 2006.

<sup>17</sup> Agnès Tricoire, *Petit traité de la liberté artistique* (La Découverte, Paris, 2011); Submission from Denmark, p. 1.

performers, comedians and playwrights, visual artists, authors, editors, film producers, publishers, distributors, directors and staff working in libraries, galleries, museums, cinemas or theatres, curators and organisers of cultural events. Audiences may also be affected. It is important to recognize the artistic freedoms of all persons when they participate in cultural life or wish to engage in creative activities.

43. Restrictions on artistic freedoms may target some categories of the population more specifically. Women artists and audiences are at particular risk in some communities, and are prohibited from performing arts altogether, from solo performances before mixed audiences, or from performing with men. In a number of countries, many women making a living as artists, or wishing to engage in artistic careers, particularly in the area of cinema, theatre, dance and music, continue to be labelled as “loose” or “prostitutes”. Ethnic and religious minorities may also suffer from prohibitions such as using a language or artistic style specific to a region or a people. People with disabilities may suffer particular prejudice when wishing to perform or display their work.

## **B. Actors imposing restrictions or creating obstacles**

44. A wide range of actors may create obstacles or impose restrictions to freedom of artistic expression and creativity. These include States, but also non-State actors in their own spheres of influence, such as mass media, broadcasting, telecommunications and production companies, educational institutions, armed extremists as well as organized crime, religious authorities, traditional leaders, corporations, distribution companies and retailers, sponsors, as well as civil society groups such as parents’ associations.

## **C. Motivations**

45. The Special Rapporteur recalls that the expression of political dissent and participation in public debate, including in the form of art, is protected under article 19 of ICCPR. Public figures, including those exercising the highest political authority, are legitimately subject to criticism and political opposition. Therefore, laws on matters such as *lèse majesté*, *desacato*, disrespect for authority, disrespect for flags and symbols, defamation of the head of State and the protection of the honour of public officials, do raise concern. States should not prohibit criticism of institutions such as the army or the administration.<sup>18</sup>

46. The suppression of political dissent, the quest for nation-building and pursuit of hegemonic policies have always been prominent reasons for art censorship. In some countries, artistic expressions openly critical of a Government are still systematically suppressed. Lyrics, visual and performance art criticizing public figures or institutions (such as the police), or using national symbols (such as flags, the image of a monarch or head of State and/or Government, or the national anthem), may be censored. In countries engaged in armed conflicts, artistic expressions questioning the legitimacy or the conduct of the war are frequently marginalized or suppressed. The accusation of “separatism” or “terrorism” or being “unpatriotic” can be levelled at artworks criticizing the Government.

47. Restrictions on artistic freedoms based on religious arguments range from urging the faithful not to partake in various forms of artistic expression to outright bans on music, images and books.<sup>19</sup> Artists have been accused of “blasphemy” or “religious defamation”,

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<sup>18</sup> CCPR/C/GC/34, para. 38.

<sup>19</sup> “A very dark future for the local populations in Northern Mali,” warn United Nations experts, 7 October 2012.

insulting “religious feelings” or inciting “religious hatred”. Artistic activities or artworks concerned include those quoting sacred texts, using religious symbols or figures, questioning religion or the sacred, proposing an unorthodox or non-mainstream interpretation of symbols and texts, adopting a conduct deemed not to follow religious precepts, addressing abuse of power by religious leaders or their linkage with political parties or criticizing religious extremism.<sup>20</sup>

48. The Special Rapporteur recalls that “prohibitions of displays of lack of respect for a religion or other belief system, including blasphemy laws, are incompatible with [ICCPR], except in the specific circumstances envisaged in article 20, paragraph 2, of the Covenant.”<sup>21</sup> Blasphemy laws have a stifling impact on the enjoyment of freedom of religion or belief and impede a healthy dialogue and debate about religion.<sup>22</sup>

49. In some cases, cultural institutions and artists have abstained from presenting “controversial works” under high pressure from communities, including threats of violence and violence itself, and “policy makers and arts administrators have come broadly to accept the argument that it is morally unacceptable to cause offence to other cultures.”<sup>23</sup> It must be recalled that, within any collective identity, there will always be differences and debates over meanings, definitions and concepts.<sup>24</sup> To understand who speaks for which culture or community, and ensure that predominance is not accorded to one voice over the other, most often out of prejudice, are particular challenges. The fear that some communities may protest should not be sufficient to lead to the conclusion that some artworks should not be displayed or performed; a certain level of contest and dispute is often inherent to contemporary art.

50. Issues relating to gender, sexuality and sexual orientation, in relation to religion and morals, continue to be highly debated in connection with artistic expressions and creations. Artworks that are concerned range from those addressing the issue of love and romance, or representing or exposing nudity, to those resorting to pornography or certain forms of pornography. References to, or descriptions of, homosexual relationships in literature, music and visual arts are criminalized in several countries, or face particular censorship in some others. The Special Rapporteur notes with concern that the motivation of protecting children from certain content may be used to and lead to prohibited access for adults.<sup>25</sup> She further stresses that according to some information, “despite widely publicized claims that adverse effects [of sexual or violent content on children] have been proven, the studies are ambiguous, disparate and modest in their results”.<sup>26</sup> Arts education, together with education that teaches children how to interpret and critique media and entertainment messages, may be a far better and more effective solution than censorship.

51. The protection of corporate interests may also play an important role in art restrictions. Underlying motivations include the desire to silence criticism from artists of

<sup>20</sup> For example, TUN 2/2012 in A/HRC/22/67; RUS 2/2012 in A/HRC/21/49.

<sup>21</sup> CCPR/C/GC/34, para. 49.

<sup>22</sup> Rabat document, para. 19.

<sup>23</sup> Kenan Malik, “Arts for who’s sake”, in Index on Censorship, *Beyond belief, theatre, freedom of expression and public order – a case study*, p. 3-6.

<sup>24</sup> A/67/287, para. 10.

<sup>25</sup> Svetlana Mintcheva, “Protection of politics? The use and abuse of children”, in *Censoring culture, Contemporary threats to free expression*, The New Press, 2006, p. 167-172; Agnès Tricoire, *op. cit.*, p. 53; Submission from Japan Actors Union and Japan Arts Council.

<sup>26</sup> Marjorie Heins, “Media effects”, in *Censoring Culture*, p. 179.

corporate activities, or to protect a specific logo or brand.<sup>27</sup> Sponsors have also played a direct role in having artwork considered too controversial or not fitting their own interests to be removed from artistic competitions, television shows or magazines.

52. The aesthetic censorship of art,<sup>28</sup> when artists are not free to choose their preferred style or to borrow from others, is a field which is often overlooked. Specific styles of music or visual arts are deemed to be political, and/or considered to carry a foreign ideology. The claim that such styles are devoid of any artistic merit has led, for example, to the banning of, or restrictions on, abstract or conceptual art. Artistic expressions specifically concerned can include musical systems or styles such as heavy metal music (described as “satanic”) or Reggae Ton and Dance Hall (criticized as demeaning of women).

## **D. Specific measures and practices impacting on the right to freedom of artistic expression**

53. Restrictions can be imposed at various stages of the artistic creation, from the development of the idea through to production, performance, publication and distribution. Restrictions on artistic freedoms can result from oppressive laws and regulations, but can also be the outcome of a fear of physical or economic coercion.

54. The Special Rapporteur is deeply concerned that artists in many parts of the world feel threatened or have been attacked by aggressive audiences. Violence includes assassinations, death threats, beating, burning of theatres and cinemas, blowing up of DVD/CD stores, and destruction of artworks or musical instruments. Artists have been accused of, and prosecuted for, incitement to violence when, in fact, aggressive individuals, groups or crowds, sometimes with the duplicity of local or foreign State authorities, were responsible for the incitement. Reactions to controversial artwork can be expressed through the exercise of the rights to freedom of expression and peaceful assembly, but must never take the form of violence. The Special Rapporteur also regrets that in some cases, the police charged artists and cultural institutions to provide protection.

### **1. Laws and regulations**

#### *(a) Unclear regulations*

55. Restrictions on artistic freedom are often implemented through unclear regulations or directives without legal basis. In too many cases, regulations are implemented without consistency by non-transparent mechanisms with no possibility of appeal. In the area of cinema or public art in particular, artists may be required to obtain additional permits from State and non-State, as well as official and non-official authorities, “giving influential parties and individuals the power to interfere and restrict freedom of expression”.<sup>29</sup> Difficulties multiply when overlapping laws and regulations are used to prevent public access to artworks.

56. The Special Rapporteur recalls that laws imposing restrictions “must be formulated with sufficient precision to enable an individual to regulate his/her conduct accordingly and

<sup>27</sup> Nadia Plesner vs. Louis Vuitton, Case number 389526/KG ZA 11-284, Court of The Hague, 4 May 2011, <http://www.nadiaplesner.com/simple-living--darfurnica1>; and *Mattel v. MCA Records*, 296 F.3d 894, United States Court of Appeals for the Ninth Circuit, 2002.

<sup>28</sup> Si Han, “The invisible red line – manoeuvring Chinese art censorship”, Background article related to the Oslo Conference, p. 4.

<sup>29</sup> Censorship in Lebanon: law and practice .A Collaborative Study by Nizar Saghieh,Rana Saghieh and Nayla Geagea,

it must be made accessible to the public. A law may not confer unfettered discretion for the restriction of freedom of expression on those charged with its execution. Laws must provide sufficient guidance to those charged with their execution to enable them to ascertain what sorts of expression are properly restricted and what sorts are not.”<sup>30</sup>

(b) *Prior censorship*

57. An important issue relates to the question of whether prior censorship, occurring before the production or publication of an artwork, such as movies and theatre plays or public art, for the purpose of “proscribing content, prohibiting its public presentation, and/or preventing its creators from working towards its realisation”,<sup>31</sup> is in accordance with international human rights standards. As a matter of principle, a negative answer must be given, in line with the recommendations of the Special Rapporteur on freedom of opinion and expression, who considers that prior-censorship bodies “should not exist in any country”,<sup>32</sup> and the view of the Committee on Economic, Social and Cultural Rights, which considers that States must “abolish censorship of cultural activities in the arts and other forms of expression”.<sup>33</sup>

58. Article 13 of the American Convention on Human Rights clearly states that freedom of expression shall not be subject to prior censorship but only to subsequent imposition of liability. In its judgement regarding the controversial movie *The Last Temptation of Christ*, the Inter-American Court found a violation of article 13 for this reason. Article 13 further states that public entertainment may be subject by law to prior censorship for the sole purpose of regulating access to them for the moral protection of childhood and adolescence. Thus, under this provision, censorship is understood as “regulating access” by children and adolescents only, and exclusively in the area of public entertainment. Regulations take various forms, and it is important that States always choose the least restrictive measure possible.

59. Responses to the questionnaire indicate that a number of States have prohibited censorship or prior censorship in their constitutions, albeit sometimes with limited exceptions. Many countries do not have censorship bodies mandated to decide on possible restrictions on artworks. However, this does not mean that censorship is not imposed by executive authorities.<sup>34</sup> Moreover, in practice, bodies not entrusted with the responsibility of censoring artworks sometimes function as censorship commissions, with no information on their membership, rules of procedure and activities, and no appeal mechanisms.<sup>35</sup>

60. Some States have established bodies authorized to issue distribution restrictions for the protection of children, in particular in the area of press, movies and entertainment software, while others have bodies mandated to overview electronic and print media, radio and television broadcasting, which also can have an impact on artistic freedoms.

61. In the view of the Special Rapporteur, prior censorship should be an exceptional measure, taken only to prevent the imminent threat of grave irreparable harm to human life or property. A system whereby content automatically requires official clearance before it can be released would be unacceptable, as its harm to freedom of artistic expression and

<sup>30</sup> CCPR/C/GC/34., para. 25.

<sup>31</sup> 2010 Arts Community Position Paper on Censorship and Regulation, Singapore, p. 3.

<sup>32</sup> A/HRC/20/17, para. 25.

<sup>33</sup> E/C.12/GC/21, para. 49 c).

<sup>34</sup> Submissions from Lebanon, Organización de Sindicatos de Artistas del Estado Español (OSAAEE), Prof. Shugurov.

<sup>35</sup> Submission from the Collectif Alger-Culture.

creativity would by far outweigh the benefit of its goals.<sup>36</sup> In countries where prior-censorship bodies exist, the immediate abolition of these bodies should be envisaged, as regulating access for children and youth can best be implemented through rating and classification procedures.

(c) *Classification and rating*

62. For some specific areas of artistic creativity, to the use of regulation, understood as “the disinterested classification of content according to publicly available guidelines”,<sup>37</sup> seems a better option. For example, one collective of artists has advocated for regulation instead of censorship in their country, and suggested the implementation of “a regulatory system that is user-friendly, transparent and accountable.”<sup>38</sup> Regulation as classification includes greater freedom of expression, as works fitting in the highest rated category shall remain uncut except materials that are prohibited by a court of law in accordance with the law; accordingly, with such very limited exceptions, adults shall be able to have access to all artworks. Regulation as classification would also enable the public to make an informed decision about what they want to experience, or allow their children to experience; and setting clearer rules for all stakeholders.<sup>39</sup>

63. Classification bodies have been established in many countries to protect children from contents that are easily accessible by them, in particular movies, music and video games. These include private voluntary rating associations or self-regulatory bodies. In some States, it is clearly indicated that classification bodies may not order the deletion of specific scenes in movies, or that “adults should be able to read, hear and see what they want”. Some States have, however, retained a level of classification which leads to prohibition of content.

64. Such regulations constitute limitations and may be acceptable only to the extent that they fully comply with international standards. Classification and rating may be used as tools of oppression and should be used with care and transparency.

(d) *Regulation over the use of public space*

65. To what extent may those engaged in artistic activity use public spaces to share their works? This concerns various kinds of artistic expressions and creations, from street theatre performances to graffiti, reciting poems or shooting films in open spaces, street dancing, to displaying commissioned visual art in city plazas and streets. A related question is the extent to which people may engage in “public art”, in reference to “artistic practices, which use locations outside of traditional art spaces for the production, exhibition, and mediation of art. (...) Often, pieces in public space critically deal with social and political issues, which aim at stimulating discussions, propelling social interaction, inviting locals for participation in the conception and execution of the work, and finding alternative audiences with a broader range of spectators.”<sup>40</sup> The use of public space for art is crucial as it allows people, including marginalized people, to freely access, enjoy and sometimes contribute to the arts, including in its most contemporary forms. In some cases, artistic expressions and

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<sup>36</sup> See also Article 19, Censorship, Violence and Press Freedom, <http://www.article19.org/pages/en/censorship-violence-press-freedom-more.html>.

<sup>37</sup> 2010 Arts Community Position Paper on Censorship and Regulation, Singapore, p. 3.

<sup>38</sup> *Ibid.*

<sup>39</sup> *Ibid.*, p. 6-7.

<sup>40</sup> Markus Graf, “Radius of art: Thematic Window - Public Art”, Heinrich Böll Foundation, 22 March 2012.

creations are used in public spaces as a peaceful way of manifesting dissent or alternative viewpoints.

66. Several questions ensue: What is “public space” and to whom does it belong? Who should decide what is allowed, when, where and for how long? To what degree should the public have a say, in particular locals who may be subjected to sounds and images that they dislike in their daily environment? Why should artistic expression be given less space than, for example, advertising?

67. In this area, States’ practices vary significantly. Responses to the questionnaire indicate that regulations relating to public assemblies, level of noise, the respect due to historic buildings or private property, are applicable to artists as to other persons, and are frequently managed by local authorities, or the police. Consequently, situations may vary considerably within a country. Prior authorization is generally required. The response to non-authorized street visual and performing art can be ignored by the authorities, dealt with leniency or may be systematically prosecuted for administrative or criminal offences. Some cities have initiated innovative procedures, such as “space reservation” on particular days of the month.<sup>41</sup>

68. People engaged in creative activities encounter manifold difficulties, including (a) the bureaucracy’s reluctance and tardiness in granting free use of public spaces; (b) arbitrariness in the granting of permits and requirements to obtain multiple authorizations from various authorities; (c) censorship over content before authorization is granted; (d) inadequate or abusive licensing systems for street performers and live entertainment;<sup>42</sup> and (e) increasing encroachment of public space by private properties.

(e) *Restrictions on mobility*

69. Travel restrictions include the retention of artists’ passports to impede their travelling abroad, as well as restrictions on the issuance of visas and work permits, which affect artists’ options to perform and audiences’ possibilities to access artistic expressions and creations. Many tour, concert and festival organizers, agents, management companies, cultural organizations and others, when organizing concerts and tours of foreign artists, face non-transparent, time-consuming and costly application procedures to obtain a visa. Some festivals have stopped inviting artists from particular countries owing to the unpredictable nature of their visa application procedures.<sup>43</sup>

## 2. Economic and financial issues

70. Responses to the questionnaire indicate that many States have adopted various ways of supporting the arts, including financial support to cultural institutions or artistic projects, bursaries, prizes and support for training and international exchange. However, many stakeholders stress that the main impediments artists encounter in their work relate to their precarious economic and social situation. The current financial crisis has led to severe cuts in public spending, resulting in great unemployment amongst artists, the closure of art institutions, and a shift towards private sponsorship. In their responses to the questionnaire, some stakeholders stressed the absence of or a reduced market in their country. One

<sup>41</sup> Submission from the Austrian Ombudsman Board.

<sup>42</sup> Submissions from Japan Actors Union and Japan Arts Council; Equity; Collectif Alger-Culture.

<sup>43</sup> Richard Polacek, Mobile.home, *Study on impediments to mobility in the EU live performance sector and on possible solutions*, 2007; Ole Reitov and Hans Hjorth, *Visas, the discordant note, a white paper on visa issues, Europe and artists’ mobility*, 2008,; Artists’ mobility and visas: A step forward, On The Move, December 2012.

challenge for artists is to enjoy freedom including from their sponsors, whether State or private.

(a) *Restricted access to State support and cuts in financial support*

71. State cultural policies need to take artistic freedoms into consideration, in particular when establishing criteria for selecting artists or institutions for State support, the bodies in charge of allocating grants, as well as their terms of reference and rules of procedure. The system in place can help to avoid undue government influence on the arts.

72. Reconciling public intervention and freedom is not an easy task. The pivotal factor is ensuring that the system as a whole is neutral. In this regard, policies developed on the basis of a “principle of pluralism” may be worth exploring as a good practice.<sup>44</sup> The “arm’s length principle”, whereby independent experts, in particular peers, are mandated for a limited time period to allocate funds and grants, also seems a good guarantee against undue political influence. Another way of supporting the arts without interference with regard to content is through improving the social status of artists, in particular their social security, which seems a widely shared concern amongst them.

73. Criticism over publicly funded artworks made by Government, Parliament, or any group, remains part of the debate. However, financial cuts and harsh criticism against cultural institutions or specific artworks may also be a cover for censorship.<sup>45</sup> As one observer stresses, “When state authorities threaten to withdraw financial support from certain cultural institutions while giving preference to others whose political views are closer to their own, they are engaging in a violation of freedom of speech.”<sup>46</sup>

(b) *“Market censorship”*

74. Private art institutions may enable critical, unconventional, controversial and “avant-garde” art works to be displayed or performed. However, the adverse consequences on artistic freedoms of the increasing weight of corporate sponsorship need to be assessed. Cultural producers and artists refer to the existence of a “censorship by the market”, arising in particular when cultural industries are basically market-oriented, public funding is under pressure and alternative distribution is minimal.

75. The following are of particular concern: (a) corporation consolidation within all branches of cultural production, which frequently results in *de facto* monopolistic control; and (b) the incorporation of media, arts and entertainment holdings into corporate empires, and their impact on artistic freedoms and on people’s access to the arts.<sup>47</sup> Whole chains of production of artworks, in particular in the area of music and movies, are controlled from creation to distribution by particular corporations. Companies may have control over bookstores, concert halls and cinemas. This may lead to situations where, for example, music bands’ protests against war plans resulted in their songs being removed from hundreds of radio stations controlled by a media conglomerate, very large consumer retailers censoring any CD labelled “Parental Advisory”, and musicians and record companies agreeing to create a “sanitized” version of lyrics for particular megastores. The recent refusal by a major private digital distributor to publish an e-book containing several photographs of nude hippies is another example.<sup>48</sup> The drastic reduction in the number of independent book and music stores in comparison to chain and megastores, which “have

<sup>44</sup> Céline Romainville, p. 10; submission from Romania.

<sup>45</sup> Submission from the Alliance of Canadian Cinema, Television and Radio Artists (ACTRA).

<sup>46</sup> Association for Civil Rights in Israel, Project Democracy: Fighting for the Ground Rules, p. 15.

<sup>47</sup> Robert Atkins, Svetlana Mintcheva, *Censoring culture, op. cit.*, p. xix.

<sup>48</sup> Submissions from Denmark and the Council of Danish Artists.

vast advertising budgets at their disposal, enormous sales forces, and an extremely efficient network of press contacts”, is worrisome. Financial and marketing strategies often drive the decision to publish a specific book or not.<sup>49</sup>

76. A current tendency is for States to co-fund with corporate sponsors. While some artists and arts organizations call for legislation enabling private (and corporate) sponsorship of the arts, others fear a reduced scope for contemporary, experimental and provocative artistic expressions. States should ensure that, in the process, the arts and artists do not become mere advertisers of corporate interests.<sup>50</sup>

77. Artists’ autonomy can only be guaranteed through diversity of funding and a good balance between public and private sponsorship, both of which may open space for artistic creation. States should not monopolize funding of the arts but cannot leave sponsorship entirely to corporations. Corporations tend to show little interest in funding alternative cultural spaces or institutions and prioritize funding high-profile programmes such as blockbuster exhibitions.<sup>51</sup>

78. These issues are complex and need to be urgently addressed. While it is important to ensure producers and distributors are free to select what to support or promote, strategies are needed to ensure that artists not fitting market strategies may still make their voices heard. This underscores the importance of the 2005 UNESCO Convention, which affirmed the right of Parties to introduce cultural policies and measures to support the creation, production and distribution of local cultural goods and services. Some stress, however, that support provided to local productions sometimes does not enable a clear added value, and that what is actually subsidized does not really differ from what the private market may offer.

(c) *The protection of the moral and material interests of artists and authors*

79. One way of silencing artists is to impede their livelihood options as professionals in a career devoted to artistic creations. According to article 27 of the UDHR and 15 of ICESCR, all individuals have the right to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which s/he is the author. As stressed by the Committee on Economic, Social and Cultural Rights in its General Comment 17, the protection of these interests is not to be equated with legal entitlements recognized in intellectual property systems.

80. While the Special Rapporteur understands the concern that piracy and file sharing may threaten the potential of artists to earn their living, she also stresses the need to acknowledge the percentage of royalties that go to publishing houses/copyright holders rather than to the artists themselves. Concern has been expressed about coercive contracts that authors and artists identify as a primary obstacle to fair remuneration. Under such contracts, which are frequent, creators sign away all their rights to their creation in order to gain a commission for creating a work. Consequently, they lose control over their creation, which can be used in contradiction to their own vision.

<sup>49</sup> Robert Atkins, “Money talks...”, pp. 3–9; and André Schiffrin, “Market censorship”, pp. 67–79, in *Censoring Culture*, *op. cit.* On these issues, see also submission from Argentina.

<sup>50</sup> On these issues, see submissions from Denmark, Monaco, Austrian Ombudsman Board, Jordi Baltà Prof. Shugurov, OSAAEE.

<sup>51</sup> Hans Haacke, “Revisiting Free Exchange: The art world after the culture wars”, pp. 51–57, and Robert Atkins, “Money talks: The economic foundations of censorship”, pp. 3–9, in *Censoring culture*, *op. cit.* See also submission from Equity.

81. In a number of countries, non-profit collective societies, with a majority of board members being artists, have been established to collect the income from artistic creations/performances. This system, under which collective societies do not own the artists' rights, and in which the artist has the freedom to participate or not, should be promoted and protected.

82. A highly debated issue is whether the moral rights and copyright systems have evolved in such a manner that the balance between the rights of authors and artists on the one hand, and the need to promote creativity and access to culture on the other, is no longer achieved. Some observers stress that spaces within those systems that allow "certain free uses of work",<sup>52</sup> are shrinking.<sup>53</sup> Others consider that strengthening moral rights would help to promote such free uses of work. This debate is particularly vivid in the world of hip-hop/rap culture, where sampling is an art in itself,<sup>54</sup> but also concerns other areas of contemporary art.<sup>55</sup> The challenge is to find flexible solutions, which neither infringe on artists' moral right nor the fair interests of remuneration for publishers but, at the same time, respect the right of artists to "quote" or refer to other artists' productions.

83. Another concern relates to the pressure exerted by entertainment and media companies to impose their ownership on material that is part of shared cultural heritage, though demanding the extension of the duration of the period of copyright, which they have obtained in some countries. The Bern Convention states that all works except photographic and cinematographic shall be copyright for at least 50 years after the author's death, but authorizes longer terms. The limitation of material in the public domain and the narrowing of possibilities of free use may fly "directly in the face of contemporary art practices".<sup>56</sup>

84. One additional concern is that on all these issues, artists are reluctant to enter into lengthy and costly judicial proceedings against corporations, which in turn can be a deterrent to artistic creativity.

#### IV. Conclusion and recommendations

**85. All persons enjoy the right to freedom of artistic expression and creativity, which includes the right to freely experience and contribute to artistic expressions and creations, through individual or joint practice, to have access to and enjoy the arts, and to disseminate their expressions and creations.**<sup>57</sup>

**86. The effects of art censorship or unjustified restrictions of the right to freedom of artistic expression and creativity are devastating. They generate important cultural, social and economic losses, deprive artists of their means of expression and livelihood, create an unsafe environment for all those engaged in the arts and their audiences, sterilize debates on human, social and political issues, hamper the functioning of democracy and most often also impede debates on the legitimacy of censorship itself.**

**87. In many cases, censorship is counterproductive in that it gives wider publicity to controversial artworks. However, the fear censorship generates in artists and art institutions often leads to self-censorship, which stifles art expression and**

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<sup>52</sup> Bern Convention for the Protection of Literary and Artistic Works, article 10.

<sup>53</sup> See Céline Romainville.

<sup>54</sup> Siva Vaidhyanathan, American music challenges the copyright tradition, in *Censoring culture*, *op. cit.*, p. 45.

<sup>55</sup> See Céline Romainville, p. 19.

<sup>56</sup> Robert Atkins, Svetlana Mintcheva, *Censoring culture*, *op. cit.*, p. 7.

<sup>57</sup> See submission from the *Observatoire de la diversité et des droits culturels*.

impoverishes the public sphere.<sup>58</sup> Artistic creativity demands an environment free from fear and insecurity.

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

89. The Special Rapporteur recommends that:

(a) Artists and all those engaged in artistic activities should only be subject to general laws that apply to all people. Such laws shall be formulated with sufficient precision and in accordance with international human rights standards. They shall be made easily accessible to the public, and implemented with transparency, consistency and in a non-discriminatory manner. Decisions on restrictions should clearly indicate motives and be subject to appeal before a court of law;

(b) States should abolish prior-censorship bodies or systems where they exist and use subsequent imposition of liability only when necessary under article 19 (3) and 20 of ICCPR. Such liability should be imposed exclusively by a court of law. Prior censorship should be a highly exceptional measure, undertaken only to prevent the imminent threat of grave irreparable harm to human life or property. Avenues for the appeal before an independent entity of any decision to exercise prior restraint should be guaranteed;

(c) Classification bodies or procedures may be resorted to for the sole purpose of informing parents and regulating unsupervised access by children to particular content, and only in the areas of artistic creation where this is strictly necessary due in particular to easy access by children. States shall ensure that (a) classification bodies are independent; (b) their membership includes representatives of the arts field; (c) their terms of reference, rules of procedure and activities are made public; and (d) effective appeal mechanisms are established. Particular attention should be paid to ensuring that the regulation of access by children does not result in prohibiting or disproportionately restricting access for adults;

(d) Decision makers, including judges, when resorting to possible limitations to artistic freedoms, should take into consideration the nature of artistic creativity (as opposed to its value or merit), as well as the right of artists to dissent, to use political, religious and economic symbols as a counter-discourse to dominant powers, and to express their own belief and world vision. The use of the imaginary and fiction must be understood and respected as a crucial element of the freedom indispensable for creative activities;

(e) States should abide by their obligation to protect artists and all persons participating in artistic activities or dissemination of artistic expressions and creations from violence by third parties. States should de-escalate tensions when these arise, maintain the rule of law and protect artistic freedoms. The police should not charge artists and cultural institutions for the costs of their protection;

(f) States should address issues regarding the use of public space for artistic performances or displays. Regulation of public art may be acceptable where it

<sup>58</sup> Svetlana Mintcheva, "Symbols into soldiers...", p. 2.

conflicts with other public uses of the space, but such regulation should not discriminate arbitrarily against specific artists or content. Cultural events deserve the same level of protection as political protests. States, private institutions and donors are encouraged to find creative solutions so as to enable artists to display or perform in public space, through, for example, offering open spaces to artists. Where relevant, in particular for permanent visual artworks, States should facilitate dialogue and understanding with the local communities;

(g) States should review their visa issuance system and adjust it to the specific difficulties encountered by touring artists, their host organizations and tour organizers;

(h) States should ensure the participation of representatives of independent associations of artists in decision-making related to art, and refrain from nominating or appointing cultural administrators or directors of cultural institutions on the basis of their political, religious or corporate affiliation.

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

(a) Enact and/or implement anti-trust legislation and legislation against monopolies in the area of media and culture;

(b) Support securing the survival of independent bookstores, music stores and cinemas threatened by megastores, multiplexes and global distributors;

(c) Ensure that measures established to support private sponsorship of the arts do not negatively impact on artistic freedoms;

(d) Establish a clear national legal framework prohibiting coercive contracts under which creators sign away their rights to their creation;

(e) Support the establishment of non-profit collective societies mandated to collect and distribute income from artistic creations and performances, with a majority of artists sitting on their board;

(f) Encourage initiatives to support free legal representation for artists or other forms of legal aid;

(g) Assess and address comprehensively the impact of current intellectual property rights regimes, especially of copyrights and authors' rights, on artistic freedoms;

(h) Fully support artistic creativity and the establishment of cultural institutions accessible to all. Public agencies should function as a financial backup for programmes that do not attract corporate sponsors, based on the understanding that they cannot interfere with contents. Various systems of State support can be envisaged, including delegating decisions on funding to independent peer-review bodies, which should act in conformity with transparent terms of reference and rules of procedure. These bodies' decisions should be motivated and subject to appeal;

(i) Fully implement the UNESCO Recommendation Concerning the Status of the Artist;

(j) **Develop and enhance arts education in schools and communities, instilling respect for, appreciation and understanding of artistic creativity, including evolving concepts of acceptability, awakening the ability to be artistically creative. Arts education should give students a historical perspective of the constant evolution of mentalities on what is acceptable and what is controversial.**

91. **The Special Rapporteur recommends that national human rights institutions and non-governmental organizations:**

(a) **Document more systematically violations of the right to freedom of artistic expression and creativity;**

(b) **Submit their findings to relevant national and international bodies, in particular the Committee on Economic, Social and Cultural Rights and the Human Rights Committee;**

(c) **Support artists who are threatened through in particular legal support.**

## Annex I

*[English/French/Spanish only]*

### **Responses to the questionnaire on the right to artistic freedom**

#### **Member States of the United Nations**

Argentina	Lebanon
Azerbaijan	Mauritania
Bulgaria	Monaco
Cambodia	Mongolia
Colombia	Montenegro
Cuba	Norway
Czech Republic	Romania
Denmark	Seychelles
Estonia	Serbia
Fiji	Slovenia
Georgia	Spain
Germany	Syria
Ireland	Ukraine
Japan	United States of America

#### **National human rights institutions**

Austrian Ombudsman Board  
CNDP Rwanda  
Defensoria del Pueblo de la Republicana Bolivariana de Venezuela

#### **Other stakeholders**

Alliance of Canadian Cinema, Television and Radio Artists (ACTRA)  
Amis des étrangers au Togo  
Arts Council of Northern Ireland (United Kingdom)  
Canada Council for the Arts  
Céline Romainville, Universités de Louvain et de Saint Louis, Belgique  
Coalition béninoise pour la diversité culturelle  
Collectif Alger-Culture  
Council of Danish Artists  
Czech Actors Association

Equity, United Kingdom

Japan Actors Union and Japan Arts Council

Jordi Baltà, Fundación Interarts, Spain

Mark Vladimirovich Shugurov, Russian Federation

Meta Atauea, Cultural producer, Kiribati

National Association for the Visual Arts, Australia

Observatoire de la diversité et des droits culturels, Switzerland

Organización de Sindicatos de Artistas del Estado Español (OSAAEE)

Portuguese Coalition for Cultural Diversity

Romania Independent Society of Human Rights

Syndicat français des artistes interprètes

### **Other contributions**

UNESCO

## Annex II

*[English only]*

### **Experts' meeting on the right to freedom of artistic expression (Geneva, 4–5 December 2012)**

#### **List of experts**

Bruguera, Tania	Installation and performance artist (Cuba)
Cuny, Laurence	Human rights lawyer and Coordinator of a residency programme for artists at risk (France)
Dacey, Austin	Lecturer, Department of Philosophy, University of Central Florida and adviser, Freemuse (United States of America)
Hazan, Pierre	Lecturer, University of Geneva; Director of a programme on the issue of memorialisation, Geneva University of Art and Design (Switzerland)
Karabuda, Alfons	Composer and chairman of the European Composer and Songwriter Alliance (Sweden)
Knüsel, Pius	Former Director of Pro-Helvetia Swiss Arts Council (Switzerland)
Iglesias, Marisol	Program Officer, Department of External Relations, WIPO
Malik, Kenan	Senior Visiting Fellow in the Department of Political, International and Policy Studies at the University of Surrey and Trustee of Index on Censorship (United Kingdom)
Mboya, Joy	Director of the Performing and Visual Arts Centre Ltd. and member of the Arterial Network Steering Committee (Kenya)
Merkel, Christine M.	Head of the Division of Culture, Memory of the World of the German Commission for UNESCO; Executive Coordinator of the German Federal Coalition for Cultural Diversity (Germany)
Mintcheva, Svetlana	Director of the Programmes at the National Coalition Against Censorship and founder of NCAC Arts Advocacy Project (United States of America)
Nadeem, Shahid	Playwright and media professional (Pakistan)
Obuljen, Nina	Researcher in cultural policies (Croatia)
Reitov, Ole	Programme Manager and one of the founders of Freemuse – the World Forum on Music and Censorship (Denmark)
Saghieh, Nizar	Lawyer (Lebanon)
Sansour, Larissa	Multimedia artist (Palestine)

Spencer-Shrestha,  
Oliver

Head of advocacy on freedom of artistic expression,  
Article 19 (United Kingdom)

Vézina, Brigitte

Legal Officer, Traditional Knowledge Division, WIPO

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