



# CULTURAL RIGHTS MANUAL

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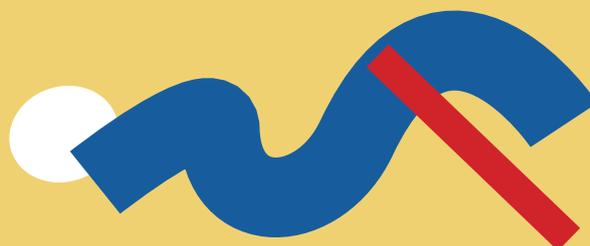
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## FOREWORD

Many cultural professionals, decisionmakers, authorities, activists, and citizens in the European Eastern Neighbourhood Countries (ENCs), Denmark and the wider world, lack basic knowledge on cultural rights. Against this background, the Danish Cultural Institute has therefore launched this “Cultural Rights Manual”: to clarify what cultural rights are, and how they can be used through a cultural rights-based approach (CRBA).

The manual is written specifically for the context of the programme *New Democracy Fund*<sup>1</sup> and for inspiration and practical use by ENC cultural partners. Their feedback and examples have been very important in its making. As cultural rights are part of our universal human rights, the manual also has wider relevance.

Using cultural rights through a CRBA is part of the human rights-based approach (HRBA). The HRBA has been defined by the European Network of National Human Rights Institutions (ENNHRI)<sup>2</sup>, and is stated to have two objectives:

- To empower rights-holders to claim and exercise their rights;
- To strengthen capacity of duty-bearers who have the obligation to respect, protect, promote, and fulfil human rights.

The CRBA can be defined as having the same overall objectives as the HRBA, though it specifically addresses cultural rights-holders and cultural duty-bearers. Cultural rights-holders include artists and cultural actors; individuals enjoying arts, culture and science; cultural CSOs; and other social groups that all have particular entitlements in relation to duty-bearers. Cultural rights duty-bearers include authorities at state levels relevant to culture, as well as non-state actors who have authority. These duty-bearers have the obligation to respect, protect, promote, and fulfil the cultural rights of rights-holders.

The HRBA as well as the CRBA are underpinned by five key human rights principles, also known as PANEL: Participation, Accountability, Non-discrimination and Equality, Empowerment, and Legality. The CRBA applies these principles and relates them to specific cultural rights. Typically, cultural actors will also additionally refer to the principle of Diversity, with an implied reference to the UNESCO 2005 Convention on the “Protection and Promotion of the Diversity of Cultural Expressions”.

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1 <https://www.newdemocracyfund.org/>

2 <https://ennhri.org/about-nhris/human-rights-based-approach/>

Cultural rights have a very broad definition: they include the right to education, the right to participate in cultural life, the right to benefit from scientific progress and its applications, and rights of authors. This manual mainly elaborates on cultural rights in the cultural sector itself, not in education and science per se.

Within the cultural sector the manual focuses mainly on the topics which are explicitly addressed by cultural rights or have been taken up by the UN Rapporteur on Cultural Rights. This includes artistic freedom and gender. Topics such as climate and environment and public space are not much addressed by cultural rights and the UN Rapporteur on Cultural Rights. These topics are included in our manual due to their increasing relevance. Their inclusion as cultural rights will be further elaborated.

We want to thank the two authors of the Cultural Rights Manual, Helle Porsdam, Professor of Law and Humanities, University of Copenhagen and UNESCO Chair in Cultural Rights, who has written the introduction, and Ole Reitov, Member of the EU/UNESCO Expert Facility on the Governance of Culture for the implementation of the 2005 Convention, who has written the main text and facilitated dialogues with partners. They are each internationally recognized experts in the field.

We also want to thank our partners and colleagues in the ENC's for their valuable feedback and contributions to producing this manual, as well as colleagues from other countries, who have also helped us in the process.

*DCI NDF Team  
Danish Cultural Institute  
By Olaf Gerlach Hansen*

# CULTURAL RIGHTS & THEIR RELATIONSHIP TO OTHER HUMAN RIGHTS

*By Helle Porsdam,  
UNESCO Chair in Cultural Rights*

## What Are Cultural Rights?

Cultural rights constitute one of the most exciting new frontiers of human rights research and practice. They enable people to aspire to a better future for themselves, and they play a key role in realizing all other human rights. Furthermore, they provide a much-needed discourse or common forum in which we can come to new cross-cultural understandings. All of this is supremely important today, at a time when respect for cultural diversity is a key concern worldwide, and when migration and advances in technology are increasing the level of cultural exchange but also risk causing cultural clashes and incompatibilities previously hidden by distance.<sup>3</sup>

There are four core cultural human rights: the right to education, the right to participate in cultural life, the right to benefit from scientific progress and its applications, and rights of authors. First outlined in Articles 26 and 27 of the 1948 United Nations Universal Declaration of Human Rights (UDHR), these rights were made legally binding on ratifying states by the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR).

Considering cultural rights to be universal human rights (the drafters of both documents put cultural rights into the fourth section of the UDHR (Articles 22 through 27)) was considered, at the time of its passage, to be the most groundbreaking part of the new declaration. UDHR Article 27 reads, “everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.” In 1966, the wording of Article 27 was repeated almost verbatim in ICESCR, whose Articles 15(1)(a) and (b) discuss the right of everyone “to participate in cultural life” and “to enjoy the benefits of scientific progress and its applications,” respectively.

The UDHR is a declaration, an ideal standard of rights held in common by nations, but it bears no force of law. Work on codifying these rights into a legally binding entity began almost immediately, but geopolitical developments such as the Cold War and decolonization processes as well as differences in economic and social philosophies made it very difficult to reach an agreement among the UN member states. Between 1949 and 1951, the Commission on Human Rights worked on a single draft covenant, which

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3 See Helle Porsdam, *The Transforming Power of Cultural Rights* (Cambridge University Press, 2019).

would include both economic, social, and cultural rights, as well as civil and political rights. But by 1951, it had become clear that two separate covenants were needed: the ICESCR and the International Covenant on Civil and Political Rights (ICCPR).

After almost twenty years of drafting debates, both covenants were adopted and opened for signature, ratification, and accession in 1966, and they entered into force in 1976. Human rights were now divided into economic, social, and cultural rights on the one hand, and civil and political rights on the other hand. This division would influence how cultural rights came to be perceived. This was unfortunate as scholars and practitioners around the world have since been unable to agree on the proper status not only of cultural rights but also of economic and social rights. The official UN position is that all human rights are “universal, indivisible and interdependent and interrelated,” but even within the human rights community, anyone arguing in favor of the usefulness of cultural rights has typically faced an uphill battle. Many human rights scholars and lawyers, as well as many of the Western states (e.g., the United States) consider civil and political rights to be the most important part of the human rights spectrum. They view economic, social, and cultural rights as mere policy goals, and those who do show an interest in these rights tend to focus on economic and social rights only.

## **The Relationship of Cultural Rights to Other Human Rights**

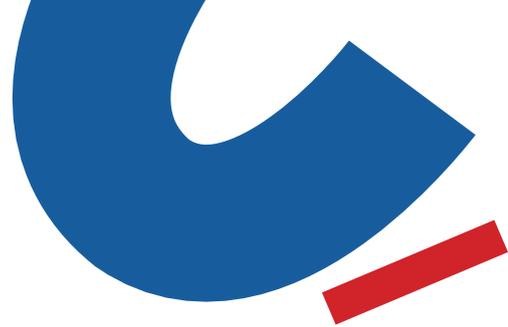
In 2009, the Human Rights Council decided to establish a Special Rapporteur in the field of cultural rights. The mandate asks the Special Rapporteur – currently Alexandra Xanthaki, who took over as Special Rapporteur in October 2021 – to identify best practices in the promotion and protection of cultural rights at all levels, from the local to the international.

They are furthermore requested to identify possible obstacles to the promotion and protection of cultural rights as well as to pay special attention to the relationship between cultural rights and cultural diversity and to integrate a gender and disabilities perspective into their work.

The legal basis for cultural rights can be found in international human rights instruments that either directly or indirectly refer to culture. We have already mentioned the importance of the ICESCR. In all four parts of Article 15 ICESCR, the right to participate in cultural life is mentioned alongside the right to benefit from scientific progress and its applications, and the rights of authors. This article recognizes the rights to culture and to science, as we saw. It also requires States Parties to conserve, develop, and disseminate science and culture, to respect the freedom indispensable for scientific research and creative activity, and to recognize the benefits of international contacts and cooperation in the scientific and cultural fields.

Cultural rights are about furthering human creativity and learning. The connection of both science and culture to education is furthermore worth noting. It is education that allows access to knowledge, values and cultural heritage. That science and technology are classified, together with education, as cultural human rights is especially important when considered in relation to sustainability and climate change.

Among the instruments that indirectly refer to culture we might mention the ICCPR, in particular the provisions protecting the right to privacy, freedom of thought, conscience and religion, freedom of opinion and expression, freedom of association, and peaceful assembly. In addition, various UNESCO instruments are also relevant. These include instruments such as the Universal Declaration on



Cultural Diversity (2001) that are devoted to protecting cultural diversity, promoting the diversity of cultural expressions, and safeguarding tangible and intangible cultural heritage. Likewise, the 2005 UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions carries special weight, as we shall see.

Finally, there are a number of relevant provisions and instruments relating to minorities and indigenous peoples that concern issues such as identity, language, belief systems, traditions and customs, participation in cultural life, education, and cultural heritage.

## **Cultural Heritage and the Right to Participate in Cultural Life**

Within the cultural rights context, as already mentioned, the right to engage with cultural heritage is considered an aspect of the right freely to participate in cultural life. Relevant legal documents reflect, more or less directly, the view that it is important when talking about cultural heritage also to look at the cultural meanings and practices that individuals and collectivities associate with it.

No uniform definition of cultural heritage can be found in the relevant legal instruments. Most of them simply list items that they understand as belonging to tangible, intangible, or natural heritage. Historical buildings, monuments, archaeological sites, and collections of objects belong in the category of tangible heritage, for example. Oral traditions, social practices, dances, rituals, and the knowledge and skills to produce traditional crafts are all part of intangible cultural heritage, and natural heritage refers to elements of biodiversity, including flora and fauna, ecosystems, and geological structures. The key here is the multiple expressions, manifestations, and communications of heritage through

which people – individuals as well as communities, including minorities and indigenous peoples – express their cultural identity and give meaning and value to their lives.

Over the years, a change seems to have occurred within international legal instruments as to what kinds of cultural heritage should be safeguarded, and for what reasons. Whereas the earlier instruments discussed and wanted to protect the cultural heritage that had outstanding value for humanity as a whole, newer instruments aim to safeguard cultural heritage which has special value for individuals and communities.

Crucially, the protection of cultural diversity should not be equated with cultural relativism. The fear that cultural rights and cultural diversity will automatically lead to cultural relativism has always been there. The UN Special Rapporteurs have tried to counter this fear by reaffirming the universality of cultural rights as an integral aspect of human rights. The commitment to cultural rights, they have argued, goes hand in hand with the commitment to cultural diversity. Respect for cultural rights as universal human rights will automatically make people respect cultural diversity, but it will also make people see and understand that not all cultural practices are protected in international human rights law.

Cultural rights are not and should never become an excuse for the violation of other human rights. Gender is an important issue in this context, as in so many other cultural rights contexts. When cultural practices lead to discrimination against women, they must be questioned.

# CULTURAL RIGHTS & THE 2005 UNESCO CONVENTION ON THE PROTECTION AND PROMOTION OF THE DIVERSITY OF CULTURAL EXPRESSIONS

By Ole Reitov  
Member of the EU/UNESCO Expert Facility on the Governance  
of Culture for the implementation of the 2005 Convention

Why should artists and cultural operators take an interest in UN conventions? The simple answer is: because conventions are instruments that make governments accountable. They provide frameworks for cultural policies and inclusion of civil society. In this chapter we will particularly focus on the UNESCO 2005 Convention as the main objective is to protect and promote the diversity of cultural expressions.

The Convention recognizes the *“sovereign right of States to maintain, adopt and implement policies to protect and promote the diversity of cultural expression, both nationally and internationally (and) supports governments and civil society in finding policy solutions for emerging challenges.”*<sup>4</sup>

To cut a very long – and sometimes complicated – story short, States are allowed to financially support cultural expressions and cultural institutions without violating international trade agreements. Thus, the states can fund and co-fund film, music, theatre, and literary productions without violating international trade agreements.

This ensures – in principle – that even small countries can produce artistic productions in their own languages and cultural and social contexts independently of market mechanisms.

The Convention, ratified by 150 countries and the EU defines cultural diversity as *“the manifold ways in which the cultures of groups and societies find expression. These expressions are passed on within and among groups and societies. Cultural diversity is made manifest not only through the varied ways in which the cultural heritage of humanity is expressed, augmented and transmitted through the variety of cultural expressions, but also through diverse modes of artistic creation, production, dissemination, distribution and enjoyment, whatever the means and technologies used.”*<sup>5</sup>

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4 <https://en.unesco.org/creativity/convention>  
5 Article 4.1. <https://en.unesco.org/creativity/sites/creativity/files/passeport-convention2005-web2.pdf>

For civil society (including arts and cultural actors, minorities etc.) the Convention is indeed relevant as the countries (state parties) shall endeavor to “create in their territory an environment which encourages individuals and social groups:

- to create, produce, disseminate, distribute, and have access to their own cultural expressions, paying due attention to the special circumstances and needs of women as well as various social groups, including persons belonging to minorities and indigenous peoples;
- to have access to diverse cultural expressions from within their territory as well as from other countries of the world.

The Convention is equally clear on the right to freedom of expression. Article 2 of the Convention says that “cultural diversity can be protected and promoted only if human rights and fundamental freedoms, such as freedom of expression, information and communication, as well as the ability of individuals to choose cultural expressions, are guaranteed.”

States must also promote "openness to other cultures of the world" and they must report on progress and challenges every four years according to a monitoring framework.

They are equally obliged to include civil society in the implementation of the Convention as well as the reporting process.

The current monitoring framework includes 11 areas of monitoring and at best the Convention can be considered a “global constitution for arts and culture” or “global traffic rules for cultural policies,” but as with traffic, not everyone obeys the rules and the implementation of the Convention is falling behind in many countries.

The ENC countries are state parties to the Convention. The website <https://en.unesco.org/creativity/governance/periodic-reports> provides an overview of reports submitted.

UNESCO consider these reports key instruments “for civil society to engage with government officials in assessing progress made to protect and promote the diversity of cultural expressions.”

It is outside the scope of this manual to investigate all aspects of the monitoring of the 2005 convention as well as to analyze in detail how the ENC countries describe their policies.

In what follows, we will instead zoom in on certain key concepts:

- cultural sustainability;
- artistic freedom;
- cultural rights and gender;
- cultural rights and public space.



THE 2005 CONVENTION ON  
THE PROTECTION  
AND PROMOTION OF  
THE DIVERSITY OF CULTURAL  
EXPRESSIONS



<https://en.unesco.org/creativity/sites/creativity/files/passeport-convention2005-web2.pdf>

Download the full monitoring framework from:

<https://en.unesco.org/creativity/sites/creativity/files/2018gmr-framework-en.pdf>

# CULTURAL SUSTAINABILITY

If we believe cultural diversity is a rich asset for individuals and societies, then the protection, promotion and maintenance of cultural diversity are – as expressed in the Convention – *“an essential requirement for sustainable development for the benefit of present and future generations.”*

As cultures and societies change, cultural policies also need to support initiatives, which link the past, the present, and the future. Cultural policies must therefore also incorporate short-term as well as long-term strategies. What is the merit of short-term investments in digital content development or music education, if there isn't a long-term (and thus sustainable) perspective?

There is no universal definition of 'sustainable'. Discussions and reflections on increasing climate change, poverty and security issues in the 1980s resulted in the so-called Brundtland report,<sup>6</sup> which defines sustainable development as “development that meets the needs of the present without compromising the ability of future generations to meet their own needs.”

The report does not define 'cultural sustainability', but provides a holistic approach that considers ecological, social, and economic dimensions, recognizing that all must be considered together to find lasting prosperity.

The UNESCO 2005 Convention – in many ways – incorporates a practical approach to a sustainable culture.

The 2018 Global Report 'Reshaping cultural policies: advancing creativity for development'<sup>7</sup> describes how progress towards the implementation of the Convention's sustainable development goal may be measured through two areas of monitoring:

1. National sustainable development policies and plans, in order to determine the extent to which culture is integrated and whether there is regional equity in the distribution of cultural resources and equity in access to cultural resources by vulnerable groups.
2. International sustainable development programmes, in order to determine the extent to which these programmes integrate culture and provide financial assistance for creativity in developing countries, as well as technical assistance to strengthen the human and institutional capacities in the cultural and creative industries.

The latest UNESCO Global Report,<sup>8</sup> published in February 2022, provides the following visual presentations on how countries could (and should) support sustainable systems of governance for culture as well as integrate culture in sustainable development frameworks.

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6 <https://sustainabledevelopment.un.org/content/documents/5987our-common-future.pdf>

7 <https://unesdoc.unesco.org/ark:/48223/pf0000260592>

8 <https://en.unesco.org/creativity/publications/2022-global-report-reshaping-policies-creativity>

## Goal 1 – Support sustainable systems of governance for culture

| Areas of monitoring           | Indicators  | SDG Targets          | Means of verification   |
|-------------------------------|---|----------------------|---|
| Cultural and creative sectors | 1. Policies and measures support the development of dynamic cultural and creative sectors             | 8.3<br>8.3<br>4.4    | 1.1 Integrated strategies and frameworks.<br>1.2 Sectoral laws and policies<br>1.3 Job creation and entrepreneurship measures<br>1.4 Education and training programmes  |
|                               | 2. Policy-making is informed and involves multiple public bodies                                      | 16.6<br>16.7<br>16.7 | 2.1 Ministry with competence and budget for culture<br>2.2 Interministerial cooperation<br>2.3 Decentralized responsibilities<br>2.4 Information systems and statistics |
| Media diversity               | 3. Policies and measures support diversity of the media   | 16.10                | 3.1 Media freedom<br>3.2 Media accountability<br>3.3 Media monitoring<br>3.4 Media ownership  |
|                               | 4. Policies and measures support diversity of content in the media                                    |                      | 4.1 Public service media with cultural mandate<br>4.2 Content diversity in programming<br>4.3 Domestic content incentives<br>4.4 Data and information trends            |
| Digital environment           | 5. Policies and measures support digital creativity, enterprises and markets                          | 4.4                  | 5.1 Diverse actors in the digital industries<br>5.2 Digital transformation of industries and institutions<br>5.3 Digital creativity and competencies                    |
|                               | 6. Policies and measures facilitate access to diverse cultural expressions in the digital environment |                      | 6.1 Access to domestic digital content<br>6.2 Digital literacy<br>6.3 Data and information trends   |
| Partnering with civil society | 7. Measures strengthen the skills and capacities of civil society                                     | 17.17                | 7.1 Enabling environment for the Civil Society Organizations (CSOs)<br>7.2 Structuring of CSOs<br>7.3 Funding for CSOs  |
|                               | 8. Civil society is involved in the implementation of the Convention at national and global levels    | 17.17<br>16.7        | 8.1<br>8.2<br>8.3 CSOs initiatives<br>8.4 Participation in the work of the Convention's governing bodies  |

## But what do these headlines mean in practice?

As an example: cultural and artistic products (music, films, drama etc.) represent a huge part of broadcasting media content, thus states are supposed to support media diversity (verification 3.1-3.4) and even ensure the public has access to content diversity in programming (verification 4.2) and support the production of domestic content (4.3).

Each of these parts is complex, but if we look at 'content diversity in programming' (4.2) and take music as an example, then we need to clarify what we mean by the diversity of musical expressions. Are we talking about genres (such as jazz, RnB, blues, world, traditional versus 'pop' and 'mainstream')? Are we talking about the presentation on primetime radio (live) or streaming? Are we talking about national incentives/quotas (4.3) and how incentives support and strengthen domestic content versus international music? If so, what is 'international music'? and what does the gender and age representation look like? We might also consider live music versus recorded music? All of these, plus a few more questions, must be addressed in relation to the current output of public radio and the obligations of public media.

If you apply this to films or dramas produced by or presented on public TV, then you can easily ask the same questions. Then we need to understand how these are described in contracts, directives, and regulations as well as in terms of funding.

Civil society (in this case not least artists' associations/unions, collecting societies, cultural industry operators etc.) can provide very substantial input from the perspective of creators and can analyze how your country has developed a policy that lives up to all of these fine intensions.

As can be seen in the monitoring framework, each section addresses several interrelated issues. So as an example, your country may have a national quota for films. But does the state actually financially support the development of the national film sector? And does the state actively support a policy which supports digital creativity and competencies? (5.3)

The UNESCO framework in that sense addresses very concrete issues related to cultural policies, but sustainability can only be ensured if states incorporate culture in their development plans and recognize cultural expressions and creative industries as strategic areas in policies and plans.

Take the examples of Sweden<sup>9</sup> and the enormous success of Swedish Music Industries, and Denmark<sup>10</sup> and the international success of Danish films. These are the result of long-term state and community support, as well as strategies which incorporate educational and training opportunities; legislation respecting author's rights; grants systems; well-organised artists' associations; the financial support of and collaboration with the industry; as well as support for international cooperation. The following UNESCO framework describes in "headlines" how culture can be integrated into sustainable development.

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9 <https://sweden.se/culture/arts-design/the-swedish-music-miracle>

10 <https://www.dfi.dk/en/english/news/oscar-facts-danish-perspective>

## Goal 3 – Integrate culture in sustainable development frameworks

| Areas of monitoring                                   | Indicators  | SDG Targets          | Means of verification  |
|---|---|----------------------|--|
| National sustainable development policies and plans   | 15. National sustainable development policies and plans include action lines to support diverse cultural expressions      | 8.3<br>17.14         | 15.1 Culture and creative sectors in national development plans<br>15.2 Public cultural bodies in planning and implementation<br>15.3 Evaluation of national development plans and strategies  |
|   | 16. Policies and measures support equity in the distribution of cultural resources and inclusive access to such resources |                      | 16.1 Culture-based regeneration plans<br>16.2 Participation and access to diverse cultural expressions   |
| International cooperation for sustainable development | 17. Development cooperation strategies include action lines to support diverse cultural expressions                       | 17.2                 | 17.1 Culture and creative sectors in development cooperation strategies<br>17.2 Official development assistance (ODA) for culture<br>17.3 Evaluation of development cooperation strategies     |
|   | 18. Development cooperation programmes strengthen creative sectors in developing countries                                | 17.9<br>17.9<br>17.9 | 18.1 Support for cultural policy design and implementation<br>18.2 Support for cultural micro and small and medium-sized enterprise (SME) development<br>18.3 Support for artists and creation |



## REALITY CHECK

**Is this then happening in the 150 countries that have ratified the UNESCO Convention?  
Not really!**

**The UNESCO Global Report from 2022<sup>11</sup> sums it up:**

*“With a few exceptions, over the last decade public investment in culture has been steadily decreasing, and this has had a strong impact on the resilience and sustainability of the cultural and creative sectors – particularly in times of crisis”.*

*“Although there is a relatively high number of education and training programmes in culture and creativity, there remain strong disparities among regions and in the cultural fields covered – especially in digital skills and cultural management.”*

*“While the creation of decent economic opportunities for artists and cultural professionals has been a growing concern, the pre-existing vulnerabilities amplified by the COVID-19 pandemic call for a better recognition of the specific needs of artists and cultural professionals (including social security and well-being).”*

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11 <https://en.unesco.org/creativity/publications/2022-global-report-reshaping-policies-creativity>

# ARTISTIC FREEDOM

Freedom of expression is a key right protected by international human rights instruments that protect fundamental freedoms. Thus – in principle – all persons enjoy the rights to freedom of expression and creativity, to participate in cultural life, and to enjoy the arts.

Artists do not enjoy additional rights, but artistic freedom is recognized as falling under the category of freedom of expression and is thus similarly protected and guaranteed. International law has protected these rights since the late 1940s, with the promulgation of the Universal Declaration on Human Rights.

As previously mentioned, the 2005 Convention specifically mentions that *“cultural diversity can be protected and promoted only if human rights and fundamental freedoms, such as freedom of expression, information and communication, as well as the ability of individuals to choose cultural expressions, are guaranteed.”*

But as we know, these rights are violated all over the world and negatively affect artists, cultural producers, and institutions, as well as the public.

There is no universal definition of ‘artistic freedom’, nor is there a universal definition of ‘artist’. However, since 1980, the term ‘artistic freedom’ or ‘freedom of artistic expression’ has increasingly been used in discourses within the United Nations and by organizations and institutions documenting, discussing, and advocating artists’ rights to freedom of expression.

The UNESCO 1980 Recommendation concerning the Status of the Artist<sup>12</sup> takes a holistic view of artists’ rights. This is also reflected in the UNESCO 2005 Convention, which incorporates artistic freedom as an essential goal in the monitoring framework. Thus, in the UNESCO definition of artistic freedom, these rights include several additional rights and can be summarized as:

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

The Recommendation stipulates that governments must take:

*“all necessary steps to stimulate artistic creativity and the flowering of talent, in particular by adopting measures to secure greater freedom for artists, without which they cannot fulfil their mission, and to improve their status by acknowledging their right to enjoy the fruits of their work.”*

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12 <https://en.unesco.org/creativity/governance/status-artist>



## THE FARIDA SHAHEED REPORT

In March 2013, the United Nations (UN) Special Rapporteur in the field of cultural rights, Farida Shaheed, submitted a report entitled ‘The Right to Freedom of Artistic Expression and Creativity’<sup>13</sup> (hereafter the Shaheed report) to the United Nations Human Rights Council.

The Shaheed report became one of the most important reference points for artists and organizations advocating for and monitoring artistic freedom.

The report does not define ‘artistic freedom’, but, like the UNESCO documents, it places freedom of artistic expression and creativity into a larger context and, as described in the preamble to her report, “addresses the multi-faceted ways in which the right to the freedom indispensable for artistic expression and creativity may be curtailed.”

The report expresses “growing worldwide concern that artistic voices have been or are being silenced by various means and in different ways” and addresses the laws and regulations restricting artistic freedoms. She also discusses the underlying motivations for these restrictions, which she describes as “most often political, religious, cultural or moral.” They “lie in economic interests, or are a combination of those.” She 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.”

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13 <https://undocs.org/en/A/HRC/23/34>

In 2015, two years after the presentation of the Shaheed report, more than 50 states, from both the Global North and the Global South, in collaboration with civil society organizations, prepared a resolution on artistic freedom. The signatories, including Armenia, Denmark, and Georgia, confirmed that they would “continue to engage in the promotion and protection of the right to freedom of expression, including artistic and creative expression, wherever it is threatened.

As important as this statement is, it should, however, be noted that violators of artistic freedom, such as Turkey, Hungary, and Poland, were among the countries supporting the statement.

Earlier, the same year as this statement was made, terrorists had attacked the office of the French satirical magazine Charlie Hebdo and killed several staff members. And in the years following several attacks were made on concerts in France, UK and USA, leading to the deaths of hundreds of people attending the concerts.

So, one issue is state censorship, but civil groups (religious and political) are frequently involved in threats and even attacks on artistic freedom. This creates fear, and in many cases also self-censorship amongst creators as well as organizers.

As described in the Whyatt/Reitov report ‘ARTS. Protecting and Promoting Artistic Freedom.’<sup>14</sup>

“Conflicts over artistic expression frequently stem from tensions within societies, which are based on opposing political, social or religious views and traditions. Some of these conflicts spread beyond the local context. In a globalized

world, with the worldwide use of social media and the spread of trolling and ‘fake news’, such controversies are easily broadcast from one corner of the world to another.”

No doubt, we live in a world where there are new sensitivities and where old ones are reignited, and where groups in societies openly, and sometimes violently, express how they feel ‘offended’ by an artistic expression that conflicts with their worldviews and ideologies.

Thus, individuals or groups feeling offended may very well have good arguments, but the right to freedom of expression goes both ways and criticizing or ridiculing politicians or religions are basic human rights, whereas outright hate speech is illegal. Although international conventions allow for restrictions on artistic freedom when these expressions may threaten the security of a state, especially under states of emergency, it is extremely difficult to prove how certain expressions may de facto pose a risk.

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<sup>14</sup> [https://hildata.uni-hildesheim.de/api/v1/objects/uuid/acb0f28d-631d-4eb3-8393-55965670477a/file/id/18175/file\\_version/name/original](https://hildata.uni-hildesheim.de/api/v1/objects/uuid/acb0f28d-631d-4eb3-8393-55965670477a/file/id/18175/file_version/name/original)

# MONITORING OF VIOLATIONS

PEN International was the first organization to consistently document violations and attacks on writers. In 1960 PEN set up the Writers in Prison Committee at its headquarters in London to monitor attacks, to provide advice, and to coordinate PEN member advocacy on their behalf. Once a year PEN International publishes a case list of individual writers around the world who are detained or otherwise persecuted for their peaceful political activities or for the practice of their profession.<sup>15</sup>

Freemuse, established in 1999, initially focused on the censorship of music and musicians, and then expanded its work to all art forms in 2011. Freemuse publishes annually a report 'The state of artistic freedom'<sup>16</sup> with documentation of violations around the world. Freemuse has over the years even published a series of country reports and article compilations on violations of artistic freedom.

## ARTISTIC FREEDOM – THE LANDSCAPE

The artistic freedom landscape has gradually changed since 2011; from consisting of relatively few key civil society organizations (CSOs) promoting and defending artistic freedom and inconsistent donor policies to a landscape, which might now be described as a sector. This diverse landscape consists of a mixture of organizations and institutions that directly or indirectly support artistic freedom from, for example, an informed arts standpoint. They take a professional human rights/free speech standpoint, and work for social innovation and development aims, for academic research purposes, and from the legal sector.

What this means is that there are many differing responses to the same phenomenon. As such, it is important to recognize that each of these disciplines will have the expertise, deep understanding, and in some cases rigorous methodologies that have been developed over the years. They will also have a sound knowledge of relevant changes and trends in their spheres. In this sector, the key organizations/individuals, donors, policy makers and relevant UN organizations have continuous interaction and have developed a common understanding and promotion of the concept of artistic freedom, and in many cases have developed informal relations along the way.

Academic studies on artistic freedom are few and far between but are becoming increasingly available. The University of Hildesheim, through its project 'Arts Rights Justice' provides the best overview of reports and studies.<sup>17</sup>

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15 <https://pen-international.org/who-we-are/case-lists>

16 <https://freemuse.org/>

17 <https://www.uni-hildesheim.de/arts-rights-justice-library/tag/artistic-freedom/>

## Documentation

PEN International

<https://pen-international.org/>

Artists at Risk Connection

<https://artistsatriskconnection.org/>

Freemuse

<https://freemuse.org/>

Human Rights Foundation

<https://hrf.org/>

Index on Censorship

<https://www.indexoncensorship.org/>

Selam

<http://selam.se/eng/>

National Coalition Against Censorship

<https://ncac.org/>

Koalisi Seni

<https://koalisiseni.or.id/en/>

Nhimbe Trust

<https://www.nhimbe.org/>

## Safe spaces/Artist Residence

Artistic Freedom Initiative (AFI)

<https://artisticfreedominitiative.org/>

Safemuse

<https://safemuse.org/>

The International Cities of Refuge Network (ICORN)

<https://icorn.org/>

Artists at Risk (AR)

<https://artistsatrisk.org/>

Martin Roth-Initiative

<https://www.martin-roth-initiative.de/>

Ettijahat – Independent Culture

<https://www.ettijahat.org/>

Culture Resource (Al-Mawred Al-Thaqafy)

[https://mawred.org/rp\\_languages/english/](https://mawred.org/rp_languages/english/)



## Research and Archive

Arts Rights Justice Library

<https://www.uni-hildesheim.de/arts-rights-justice-library/>

## Urgent and Legal Support

Front Line Defenders

<https://www.frontlinedefenders.org/>

Avant-Garde Lawyers (AGL)

<https://avantgardelawyers.org/>

## Networks

Safe Havens Freedom Talks (SHIFT)

<https://sh-ft.org/>

Culture Action Europe

<https://cultureactioneurope.org/>

European Composer & Songwriter Alliance (ECSA)

<https://composeralliance.org/>

European Music Council

<https://www.emc-imec.org/>

European Alliance of Academies

<https://allianceofacademies.eu/>

# MY RIGHTS HAVE BEEN VIOLATED – WHAT CAN I DO?

If your work is censored or your application to organize an event is rejected, you should immediately request a detailed explanation from the relevant authorities. Consider if your network (artists' associations, unions or similar) can help you with legal advice. Ensure you document all details (what? when? where? who? how?) and consider whether the violation may be of interest and concern to the international artistic freedom landscape. Most organizations engaged in artistic freedom will engage in advocacy in some form, be it through appeals, statements, publishing research papers, legal representation, and events. Some of them coordinate activities through networks or grant financial support.

Organizations are increasingly inviting the UN Special Rapporteur in the field of cultural rights to be part of their events and workshops, and some have provided input into (her) annual and thematic reports. However, with the exception of Freemuse and PEN, few organisations in the landscape make use of the various UN instruments such as the Universal Periodic Review mechanism, UPR, the UN Special Rapporteurs, or of UNESCO's complaints procedure to raise concerns about individuals under attack.

## HOW CAN I COMPLAIN?

Read the chapter on UN & Council of Europe mechanisms in this manual.

### READ MORE:

<https://bit.ly/3DIJ7UW>

<https://www.artistrights.info/how-to-use>

<https://artistsatriskconnection.org/guide>

# GENDER MAINSTREAMING & CULTURAL RIGHTS

## Women

Why are women in Denmark borrowing twice as many books from public libraries as men? Women in many countries participate actively in culture to a greater extent than men. However, if we look at the specific situation and role of female artists and cultural professionals working in the Cultural Sector, inequalities and structural discrimination become apparent.

A quick view of the representation of women at one of the major music festivals in Europe, The Danish Roskilde Festival in 2017, showed a representation of 64 pct. male artists, 18 pct. women and 18 percent mixed. Having highlighted the gender imbalance at the festival, the organization developed a proactive gender initiative focusing on role models and supporting young talents.<sup>18</sup>

Gender and culture can be measured through many indicators and although the 2017 #MeToo movement put a strong emphasis on sexual abuse in the arts and media industries it even sparked (and continues to do so) new discussions on gender representation in arts and cultural life, and calls into question how funds are disseminated.

Less discussed was women's access to culture, which is still rigidly controlled in many countries due to cultural, social, and religious norms.

### Gender equality policy of the Finnish Ministry of Education and Culture

Motivated by the need to gain deeper insight into the #MeToo discussion, in 2018 the Finnish Ministry of Education and Culture commissioned a study on gender equality in the country's cultural and creative sectors. The questions addressed by the study included reasons why the artistic and cultural scene in Finland is prone to sexual or gender-based harassment and improper conduct. The research was carried out by the Centre for Cultural Policy Research Cupore, and the final study *She plays like a man! How to strengthen equality and wellbeing at work in the cultural field?* was published in 2019. Besides up-to-date statistics and good practice examples, the report proposes recommendations for promoting well-being and ensuring more equal working conditions for artists and culture professionals, such as:

- Including equality plans in funding applications, together with financial sanctions in case of misconduct – with possible withdrawal of funding;
- Continuous collection and publication of data on the state of gender equality in the cultural and creative sectors;
- Training on gender equality for managers/leaders/supervisors;
- Dismantling outdated gender traditions, stereotypes and genius myths – remembering that nobody is exceptional enough to have the right or special privilege to oppress others;
- Working conditions need to be decent, even when work is done as a calling.

One of the concrete actions carried out in 2019 by the Finnish Ministry of Education and Culture was the adoption of the Guidelines for Inclusion 2020-2023, an action plan for promoting operational gender equality and non-discrimination. Also, a gender equality clause was included in all operational grants of the Ministry, as of 2020. The clause stipulates that all beneficiaries must promote gender equality and non-discrimination in their operations, report on it and ensure that work is carried out within legal remits (Gender Equality Act and Non-discrimination Act).

These initiatives are even more noteworthy given that, in its 2016 periodic report on the implementation of the Convention, Finland stated that gender was not then part of the arts or cultural policy discourse in the country.

Sources: Finland QPR, [www.cupore.fi/en/publications/cupore-s-publications/the-girl-plays-like-a-man](http://www.cupore.fi/en/publications/cupore-s-publications/the-girl-plays-like-a-man).

No doubt, female role models are able to inspire girls to pursue their talents, but systemic discrimination is difficult to change. Everywhere in the world, it remains much more difficult for women than men to gain recognition and acclaim for their work in the creative professions.<sup>19</sup> But measures can be taken, for example in Sweden where a report from the Swedish Film Institute 2021/2022<sup>20</sup> revealed that female directors received more support in developing film projects than their male colleagues.

No doubt #MeToo has been crucial in changing (and enforcing existing efforts) policies and practices in several countries. In Finland, the Ministry of Education and Culture provides financial support in the fields of theatre and film, including practical measures to prevent harassment and support for employers' rights and obligations. A 2018 report commissioned by the Finnish Ministry of Education and Culture led to new guidelines for inclusion – which might include anything from gender-specific training courses to equality plans in funding applications.

Within the UN System UNESCO as well as the mandate holders of the Special Rapporteur in the field of culture have actively promoted and discussed gender issues related to the arts and culture sector.

Thus, issues surrounding women/gender rights are addressed in several reports from Special Rapporteurs as well as in a report from 2012 specifically addressing “the enjoyment of cultural rights by women on an equal basis.”<sup>21</sup> The report underlines the right of women to have access to, participate in, and contribute to all aspects of cultural life. This, according to the SR: “encompasses their right to actively engage in identifying and interpreting cultural heritage and to decide which cultural traditions, values or practices are to be kept, reoriented, modified or discarded. Gender, culture and rights intersect in intricate and complex ways, and cultural rights must be understood as also relating to who in the community holds the power to define its collective identity. The reality of intra-community diversity makes it imperative to ensure that all voices within a community, including those that represent the interests, desires and perspectives of specific groups, are heard, without discrimination.”

The former UN Special Rapporteur, Farida Shaheed stressed that: “cultural rights must be understood as also relating to who in the community holds the power to define its collective identity. Preserving the existence and cohesion of a specific cultural community should not be achieved to the detriment of part of its members.”

In the report, the Special Rapporteur stressed that ensuring the equal enjoyment of cultural rights is an effective way to avoid cultural arguments being used as an obstacle to the full realization of women's rights.

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19 <https://unesdoc.unesco.org/ark:/48223/pf0000380474>

20 <https://www.filminstitutet.se/globalassets/2-fa-kunskap-om-film/analys-och-statistik/publikationer/jamstalldhet/jamstallhetsrapport21-22.pdf>

21 <https://undocs.org/en/A/67/287>

# LGBTQI+ - A Mixed Reality Globally

Positive, humane and real representations of LGBTQI+ persons are increasingly portrayed in film, television and other media. Dozens of annual film festivals are devoted to LGBTQI+ issues and concerns, and powerful voices have emerged as members of the community and allies among well-known personalities in all realms of cultural life, including the ubiquitous images provided by entertainment and social media.<sup>22</sup>

However, this is not the reality in most countries. Discrimination and violations of LGBTQI+ persons' cultural and human rights are prevalent. But is it ever legal to discriminate against lesbian, gay, bisexual, transgender or intersex people? The answer is no. The right to equality and non-discrimination are core principles of human rights, enshrined in the United Nations Charter, The Universal Declaration of Human Rights (UDHR) and human rights treaties. The opening words of the Universal Declaration of Human Rights are unequivocal: "all human beings are born free and equal in dignity and rights."

In recent years, several UN organizations, as well as many CSOs, have paid much attention to violations of LGBTQI+ rights. In spite of international law, several countries continue to harass, persecute and even kill citizens who do not identify themselves as "traditional men or women."

The United Nations' global campaign against homophobia and transphobia<sup>23</sup> has published several documents and initiated many campaigns for the rights of LGBTQI+ people. The documents include all references to international laws. As an example:

"The equality and non-discrimination guarantee provided by international human rights law applies to all people, regardless of sex, sexual orientation and gender identity or 'other status.' (...) this means that it is unlawful to make any distinction of people's rights based on the fact that they are lesbian, gay, bisexual or transgender (LGBT), just as it is unlawful to do so based on skin color, race, sex, religion or any other status."<sup>24</sup>

But as with all human rights, many countries violate these rights irrespective of if they have ratified the international conventions.

*In Russia: Code of Administrative Offenses, Article 6.21: "Propaganda" is the act of disseminating information to minors aiming to create non-traditional sexual attitudes, make non-traditional sexual relations attractive, equate the social value of traditional and nontraditional sexual relations or cause an interest in those actions.*

*In USA, Alabama Code, Title 16. Education § 16-40A-2, C (8): Course materials and instruction that relate to sexual education or sexually transmitted diseases should include... an emphasis, in a factual manner and from a public health perspective, that homosexuality is not a lifestyle acceptable to the general public and that homosexual conduct is a criminal offense under the laws of the state.*

Source: Freemuse.org

22 <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N19/220/72/PDF/N1922072.pdf?OpenElement>

23 <https://www.unfe.org>

24 <https://www.unfe.org/wp-content/uploads/2018/10/Equality-And-Non-Discrimination-English.pdf>

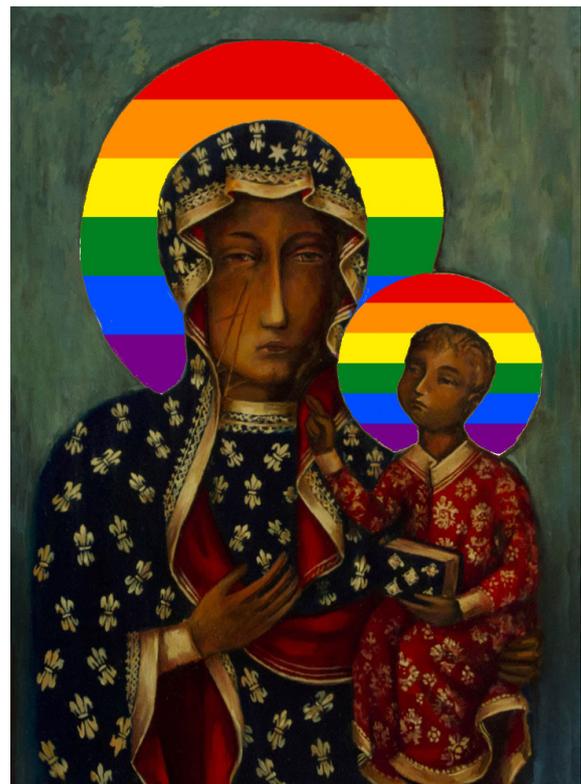
Freemuse, the artistic freedom monitoring organization, examined 149 acts of violations of artistic freedom against LGBTQI+ artists and art documented in 39 countries and in online spaces in the period between January 2018 and June 2020, “varying from those countries which criminalize homosexuality, penalize the so-called ‘promotion of homosexuality’ or impose no legal restrictions for the engagement of LGBTQI+ artists or promotion of queer artworks in public spaces, all of these legislative frameworks leave room for the suppression of artistic freedoms to some degree.”<sup>25</sup>

Obviously, the documentation only portrayed “the tip of the iceberg” as most violations and acts of self-censorship are never recorded or documented.

The report nevertheless showed that artistic expression tackling LGBTQI+ experiences exists in most countries, regardless of the political, legal, and social hurdles. What differs between these varying contexts is the extent to which “artists can access audiences, professional networks, cultural institutions, financial support and platforms to promote their work. They are also subject to varying levels of public disapproval, rejection, threats and violence and other forms of mistreatment.”<sup>26</sup>

#### *The Rainbow Madonna of Elżbieta Podleśna*

*In 2019, The Polish LGBTQI+ and feminist activist Elżbieta Podleśna was arrested in connection with a poster of the Virgin Mary with a halo painted in the colours of the rainbow flag (symbolizing the LGBTQI+ community) which appeared in the city of Płock in late April. The poster became known as the Rainbow Madonna. Before the arrest, police authorities searched her home and confiscated a laptop, mobile phone and memory cards. She was detained for several hours on allegations of “offending religious beliefs”. Although in July 2019, a court in Płock ruled that her detention was unjustified, the judge still argued that it was legal.<sup>27</sup> In March 2021 Elżbieta Podleśna together with two other women human rights defenders were acquitted by the court of Płock of the charges of “offending religious beliefs” under article 196 of the Criminal Code of Poland.<sup>28</sup>*



25 <https://freemuse.org/media/ub5lbyj5/painting-the-rainbow-digital-5.pdf>

26 *ibid*

27 *ibid*

28 <https://www.frontlinedefenders.org/en/case/women-human-rights-defenders-acquitted-rainbow-virgin-mary-case#case-up-date-id-13386>

But countries – and even cities within countries – differ enormously in their attitude to LGBTQI+ communities.

Tigran Amiryan, head of the Armenian NGO Cultural and Social Narratives Lab, highlights challenges in the Eastern Neighbourhood region:

*“Visibility or representation of LGBTQI+ people, as well as women in the cultural space in post-socialist countries, continues to be under strong pressure from patriarchal perceptions and excessive masculinity. The important issue that should be discussed is not only the visualization of gays, lesbians or queer people in popular culture but also the reflection on the cultural past. For example, whether modern societies of post-Soviet countries are ready to accept the queer culture of the Soviet or pre-Soviet era.*

*Cultural institutions rarely consider the LGBTQI+ community as full-fledged participants in the cultural past. The past itself is not subject to reinterpretation in this context. For example, the topic of Sergei Parajanov's (the famous Armenian film director and artist) homosexuality remains taboo until today. In the speech of museum workers and guides, to this day you can hear that "he was slandered and imprisoned under this article." Thus, it was not the article that was wrong, but the judges who considered Parajanov a homosexual. The second issue is that of the right to space. Public space in cities often excludes the LGBTQI+ community. Often, such places are repressed by the heteronormative city. For example, in 2012, the only gay-friendly club in Yerevan was blown up,<sup>29</sup> after which there was a massive persecution of all representatives of the LGBTQI+ community who visited the place or publicly spoke out in solidarity with the founder of the club. Another example is a park in the city center*

*(Komaygi or Children's park), where trans people usually gather. It has acquired the status of a "shameful place" on the city map. So, the city begins to break up into: "normal", "shameful", and "other".*

#### Queer Voices International Film Festival

*The LGBTQI+ and queer communities of Moldova are continuously silenced through structural and institutional violence, religious dogmas, and patriarchal traditional values. As a result, there is a lack of queer cultural discourse and a strong queer community in Moldova. Queer life is not discussed enough publicly through media or art as a means of portraying the community or personal stories. Nor are there any places where queer people or their allies can meet or engage in common activities.*

*The Queer Voices IFF investigates exclusionary attitudes towards individuals of different sexual orientations, gender identities and expressions, as well as socio-economic backgrounds, and presents portraits of individuals and communities that are working to promote solidarity, civil courage, and resistance to propaganda, corruption and discrimination in Moldova.*

*Since 2017, Queer Voices has been working on establishing a safe, creative space where queer people can express their personal stories, ideas, visions, and experiment with different forms of arts. Queer Voices has brought queer film narratives to Moldova by screening films or by creating new content, and by organizing various events with the participation of artists and guests from the international queer scene. As a result of its work, there have been more than 10 short films and 3 art performances created by queer people, about their personal queer life stories, and about the struggles and beauty of being queer. Throughout these years the festival has contributed to building a queer community in Moldova.*

*The festival is primarily organized with support from international donors, however, Queer Voices have a long-term partnership with state institutions and are widely disseminated in local media, which altogether provides more opportunities for the festival's continuation and development.*

Source: Mariana Munteanu, Queer Voices International Film Festival.

<sup>29</sup> <http://gayarmenia.blogspot.com/2012/05/hate-crime-diy-bar-in-armenia-capital.html>

Several cities welcome “rainbow people” and “gay pride parades”, some because of genuine dedication to supporting equal rights, others by combining a touch of “idealism” with pragmatic commercialism, as gay and transgender communities in many western countries have proven very “good business” for hotels and restaurants.

*Montenegro’s National LGBT Strategy (2013-2018) was partly designed to improve the public perception and social acceptance of LGBT people. To nurture a culture of tolerance and openness towards gender diversity, the Ministry of Culture rolled out a series of measures addressing the ways in which the LGBT community is represented in public spaces. A cultural programme was developed and implemented in collaboration with civil society organizations such as the Anna Lindh Foundation, Juventas and Queer Montenegro, as well as public institutions like the Centre of Contemporary Art and the municipal Cultural Centre Budo Tomović in Podgorica. They included photo exhibitions showcasing LGBT artists, as well as public debates focused on the cultural expressions of minority identities. Opening the art scene to new creators and cultural professionals with non-binary gender identities was part of the approach to highlight new facets of gender diversity in Montenegro. The strategy highlighted the responsibility of public cultural institutions to ensure their regular programming includes creative content by, with and about gender minorities. It also stressed the importance of supporting new cultural platforms that celebrate LGBT creativity, which will lead not only to a more diverse culture and creative landscape, but to a more inclusive social context in general.*

Source: Montenegro QPR to UNESCO.

In conclusion, while there is still a long and winding road globally to respect for all human beings’ rights, it is also a fact that several LGBTQI+ communities are very much “out in the open” and enjoying their lives in public spaces or at international events such as the Eurovision Song Contest.

As France 24 noted<sup>30</sup>:

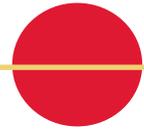
*“The LGBT community’s passion for the Eurovision Song Contest hardly began with Conchita Wurst’s triumph. The international TV and radio contest has long been embraced by gay, lesbian and transgender people tuned into its message of unity. Drag queens, a lesbian kiss and a transgender champion are part of the official history of Eurovision, (..) Slowly, but surely, the LGBT (lesbian, gay, bi and transgender) community found a welcoming home in Europe’s annual musical extravaganza.”*

The Eurovision has also become a platform for more than just singing, and contestants have protested against hate through song. For example, in 2013, Finland’s entry Krista (a straight ally) kissed another woman live on stage in protest over Finland’s failure to extend equal rights to gay people.<sup>31</sup>

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30 <https://www.france24.com/en/20150522-eurovision-gay-friendly-song-contest-lgbt-conchita-wurst>  
31 <https://lgbt.foundation/news/viewpoint-how-the-european-lgbt-community-took-eurovision-to-its-heart/154>

# UNESCO, GENDER, AND CULTURE



Gender equality is a global priority for UNESCO. Gender issues have been addressed in numerous UNESCO reports and conferences – many in relation to (equal rights) education, but even as a key priority of the organization’s interventions, particularly under the 2005 Convention for the Protection and Promotion of the Diversity of Cultural Expression, where Culture and Communication and Information sectors have come together to consistently present a gender-sensitive and empowering discourse. The organization has developed a Priority Gender Equality Action Plan<sup>32</sup> which – amongst others – offers to assist the Member States in the development of legislative and policy frameworks in support of women’s equal right to access, participate in. and contribute to cultural life.

According to UNESCO, actions under the programme will focus on “mainstreaming gender concerns in the statutory work of the culture conventions and in the delivery of its programmes and projects.”

## *What is gender equality?*

*For UNESCO, gender equality is a fundamental human right, a necessary precondition for sustainable, people-centered development and a goal in and of itself.*

*Gender equality has been a global priority for UNESCO since 2007. UNESCO's Action Plan for Gender Equality (2014-2021) refers to gender equality as the equal rights, responsibilities and opportunities of women and men, and girls and boys. It implies that the interests, needs and priorities of women and men are taken into consideration, recognising the diversity of different groups of women and men. For example, women and men belonging to ethnic minorities, with different sexual orientations and/or identities, from indigenous communities or with disabilities.*

*The Action Plan acknowledges that equality does not mean that women and men are the same but that their rights, responsibilities and opportunities do not depend on whether they are born male or female. Gender equality is not just a "women's issue" but concerns all men, women, girls and boys. It means that women and men enjoy the same status and have equal opportunity to realize their full human rights and potential to contribute to national, political, economic, social and cultural development, and to benefit from the results. It is the equal valuing by society of both the similarities and the differences between women and men and the different roles they play.*

*As global priority, UNESCO mainstreams gender equality across its five major programmes (Education, Social and Human Sciences, Natural Sciences, Communication and Information and Culture) and implements targeted programmes that can produce development outcomes in line with the 2030 Agenda for Sustainable Development, the Beijing Declaration and Platform for Action and other international or regional standard setting agreements. In the field of culture, the 2005 Convention on the Protection and Promotion of the Diversity of Cultural Expressions is a unique contribution to this normative environment with a specific obligation for Parties to put in place policies and measures to support women in the cultural and creative industries.*

*Source: UNESCO, "Priority Gender Equality Action Plan (2014/2021)", 2014, p.11, available at <https://unesdoc.unesco.org/ark:/48223/pf0000227222/PDF/227222eng.pdf.multi>*

These activities will be structured around three axes:

- (a) Policy monitoring: UNESCO will support the integration of gender equality in the periodic reporting systems and results frameworks of the culture conventions as a means to contribute to the collection of relevant information, including sex-disaggregated data, and the monitoring of legislative and policy frameworks adopted by Member States.
- (b) Capacity building: UNESCO will include gender perspectives in capacity building initiatives and training materials to encourage the development and implementation of gender-transformative policies and programmes aligned with the objectives of the culture conventions.
- (c) International assistance: UNESCO will introduce the promotion of gender equality as a criterion for obtaining financial assistance through the funds established under relevant culture conventions.

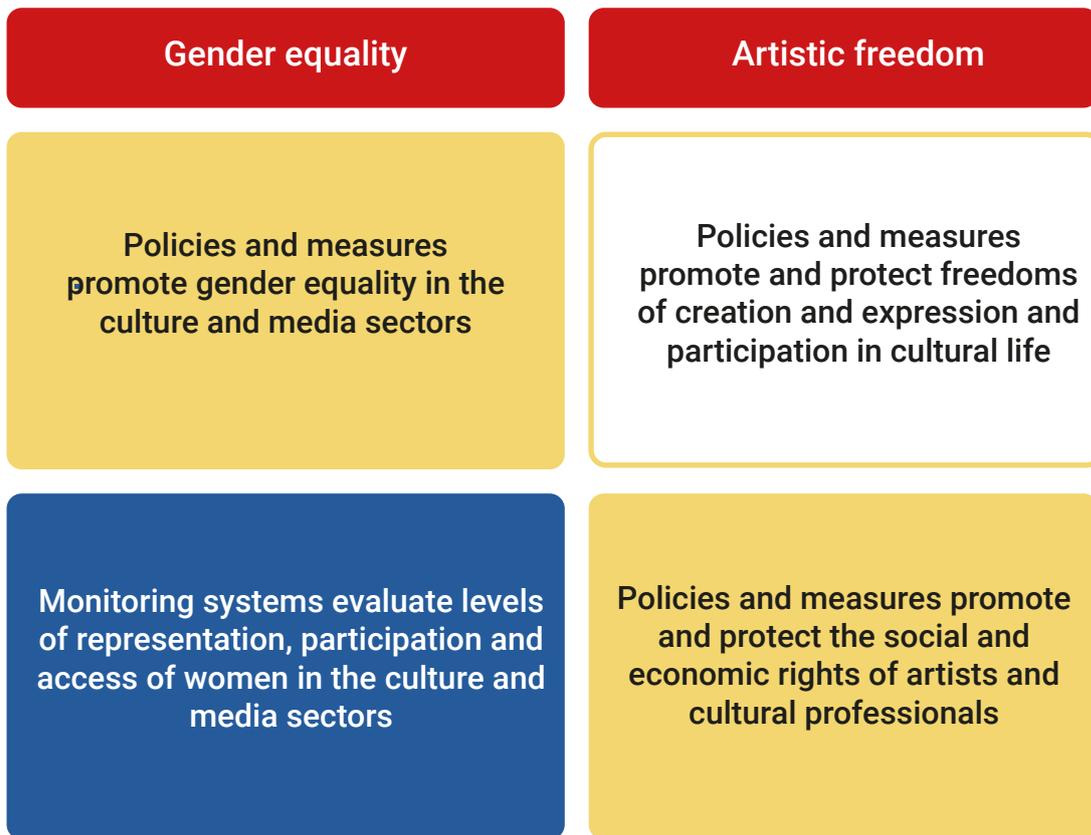
UNESCO – under the 2005 Convention secretariat – has published several reports addressing gender issues.

As an example, the report “Gender & Creativity”<sup>33</sup> concludes that,

- According to some available sex-disaggregated data and analysis on the gendered nature of employment, relative pay, contractual status and seniority, women in the culture and creative sectors continue to fare worse than men. Progress towards equality therefore requires urgent policy interventions adapted to diverse national and regional contexts and situations.
- Those who identify as women or as gender diverse are much more likely to suffer from harassment, abuse, bullying, and a general lack of safety in cultural and creative workplaces, including in the digital environment. A renewed focus on policies and measures dealing with safety and well-being in cultural industries is crucial for the promotion of gender equality, artistic freedom, and for the diversity of cultural expressions to be secured long-term.
- Moments of crisis increase the vulnerability of already marginalised groups, including women, and can reinforce the view that women are less central or even, more disposable, to the creative workforce than men. This is especially vital as COVID-19 continues to unfold and its long-term effects on the arts and on cultural production are not yet known. Too few initiatives to support artists and creatives affected by the pandemic are adopting an intersectional gender lens.

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33 [https://unesdoc.unesco.org/notice?id=p%3A%3Ausmarcdef\\_0000375706&posInSet=3&queryId=18e9aa99-0103-4aad-a66b-238973b726c4](https://unesdoc.unesco.org/notice?id=p%3A%3Ausmarcdef_0000375706&posInSet=3&queryId=18e9aa99-0103-4aad-a66b-238973b726c4)



*International and national legislation related to human rights and fundamental freedoms is implemented and promotes gender equality and artistic freedom*

State parties to the 2005 Convention must report specifically on gender issues as well as artistic freedom. As gender equality intersects with all areas monitored under the Convention, it has been an ongoing discussion between experts linked to the Convention as well as state parties and civil society on how and why gender equality should be monitored specifically in its “own box” rather than integrated into all other areas of monitoring. The answer is rather simple. It should be integrated into all areas, but as the gender equality chapter in the UNESCO 2018 global report points out, a “multifaceted gender gap persists in almost all cultural fields in most parts of the world, it is necessary to conduct specific research and monitor gender aspects as an area of its own.”

Although progress has been made in several cultural sectors in many countries, a gender gap persists in culture.

# DEALING WITH INEQUALITY

Gender discrimination and inequality do not disappear automatically. Proactive measures can change the landscape – or as a reggae artist, Jimmy Cliff sang in the mid-1970s, “action speaks louder than words/don't be deceived by all those fancy talkers.”<sup>34</sup> There are positive examples of art training activities for “women and non-binaries only” as they “take place in a safe space” aiming “to create a space of encouragement and mutual respect(...) without feeling the pressure to perform or to behave in a certain way.”<sup>35</sup> Several film festivals<sup>36</sup> focus entirely on productions made by women, or on women’s perspectives and women’s rights.

As a cultural producer, you may consider how aware you are of equality when you organize an exhibition, a concert, or a literary discussion. As a cultural activist or consumer, you may analyze representations in public performances, exhibitions, and request your local or national cultural agencies to strategize gender politics in regard to training, funding and representation.

The former UN Special Rapporteur, Farida Shaheed in her 2012 report “The enjoyment of cultural rights by women on an equal basis”<sup>37</sup> called on states to address stereotypes that restrict women's full enjoyment of their cultural rights and provided a list of issues to help states assess their level of implementation of women's cultural rights on a basis of equality, such as,

- Abolishing laws that sustain harmful gender stereotypes;
- Adopting measures that recognize women's contributions to culture;
- Taking action against institutions that threaten women who claim their right to participate in cultural life;
- Ensuring girls and women get an equal share of state support for the arts, sports, and sciences.

Those recommendations continue to be valid.

It is outside the scope of this compact manual to provide an overview of all kinds of cultural rights. As we are now moving away from rights, which are specifically monitored by the 2005 Convention we will focus on a couple of topics, which network partners have specifically wanted to deal with.

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34 The phrase was first used Abraham Lincoln in 1856.  
35 <https://www.futurefemalesounds.org/dj-workshops>  
36 <https://www.wmm.com/resources/film-festivals/>  
37 <https://undocs.org/en/A/67/287>

# CULTURAL RIGHTS & PUBLIC SPACE

Manifestations and demonstrations mostly take place in public spaces. But what is public space and to whom does it belong? Is public space a place belonging to the public or does it belong to a city or a state? Is anything allowed in public spaces? And if not, who is regulating what is permissible, and when?

There are no universal definitions of public space. Nor are regulations the same in all countries, and even less so in each city or township in a particular country. Nudity is banned in most public spaces such as in city squares or streets, but not necessarily on all public beaches. Live music is regulated in many cities. You are also not allowed to plant your own tree in a public space. Over the years many conflicts over the definition and use of public space have occurred.

Several researchers addressed this in the 2016 Routledge publication *Order and Conflict in Public Space*.<sup>38</sup> The collection used case studies concerning the management, use, and transgression of public space to invite reflection on the way in which typical social interaction is framed and shaped by the physical environment and vice versa. International experts from fields including geography, criminology, sociology, and urban studies came together to debate the concepts of order and conflict in public space.

In her July 2019 report to the UN General Assembly, UN Special Rapporteur in the field of cultural rights, Ms. Karima Bennouna, talked about “the importance of public spaces for the exercise of cultural rights and the challenges which must be addressed so that everyone can access and enjoy such spaces. [This report] reviews existing frameworks and proposes a more holistic human rights-based approach for policymaking.”<sup>39</sup>

Preparing the report the UN mandate invited states and civil society organizations as well as individual experts to submit their input. Ukraine was one of the countries submitting input to the report:

“According to the Ukrainian legislation public place means a part (parts) of any building, facility that is accessible or open to the public free of charge, by invitation or for a fee, permanently, periodically or from time to time, including porches, as well as underground passages, stadiums (Article 1 of the Law of Ukraine of September 22, 2005 On Measures of Prevention and Reduction of the Use of Tobacco Products and Their Harmful Impact on the Health of the Population).”<sup>40</sup>

In many countries a fee is charged for setting up commercial stalls in public spaces, whereas information booths may be allowed for free. Similarly street performers may be allowed, but in some countries tax authorities and/or the police will keep an eye on whether the performers ask for money from the public. In general, the more central a public space is in a city, the more control there is.

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38 A Pdf can be downloaded at [https://www.researchgate.net/publication/299492142\\_Order\\_and\\_Conflict\\_in\\_Public\\_Space/link/5cfe431692851c874c5b8297/download](https://www.researchgate.net/publication/299492142_Order_and_Conflict_in_Public_Space/link/5cfe431692851c874c5b8297/download)

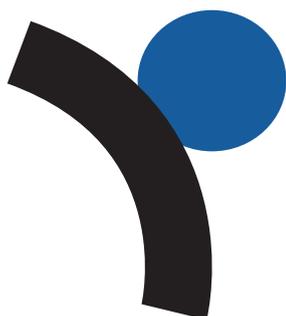
39 <https://www.ohchr.org/EN/Issues/CulturalRights/Pages/ImportancePublicSpaces.aspx>

40 [https://www.ohchr.org/Documents/Issues/CulturalRights/Call/16\\_Ukraine\\_Responses.docx](https://www.ohchr.org/Documents/Issues/CulturalRights/Call/16_Ukraine_Responses.docx)

According to the input from the government of Ukraine, the country by Order of the Cabinet Ministers of January 23, 2019 has “established the legal framework for creating cultural spaces and specific creative clusters to be used to meet public cultural needs, to realize cultural rights, and to promote economic growth of communities.”

The Committee on Culture of the World Organization of United Cities and Local Governments (UCLG) is a global platform of cities, organizations and networks, which for years has analyzed and discussed policies on the role of culture in sustainable development, including the role of, and conflicts over, public space. In their input to the UN Special Rapporteur, the network wrote<sup>41</sup>:

“There are close links between cultural rights and public spaces, as public spaces provide one of the foremost contexts in which the particularly collective dimension of the right to take part in cultural life can be exercised, and where forms of cultural interaction can be fostered (see e.g. Culture 21 Actions, Commitment 7, g). Restrictions to the free, universal use of public space can by contrast become major impediments to the exercise of cultural rights. In addition to physical and virtual public spaces as the setting where cultural rights can be tangibly exercised, it is also important to recognize that public spaces (particularly physical places) may have a symbolic value, and as such they require safeguarding and formal recognition (Culture 21 Actions, 7, h).”



#### *PUBLIC SPACES IN POST-SOCIALIST COUNTRIES*

*There are two common issues in almost all post-socialist countries. Modernist public spaces that served as cultural and public places in the past (cinemas, culture houses, concert halls, etc.) are regularly subjected to destruction and degradation, while new developers are actively clearing out the old vernacular quarters – places of identity for local communities.*

*Both processes result in the traumatic loss of urban, collective, and family memory. While in the case of the degradation of modernist buildings, the loss of the existing practices of cultural consumption is visible, the loss of vernacular and pre-Soviet architecture results in the rough intrusion of city authorities and developers into the natural process of urban development and memory formation.*

*These issues lead both to the artificially induced amnesia of cities and the proliferation of large commercial and business centres emerging as a symbol of capitalist power and excluding any commercially free social exchanges in urban spaces. These processes have seriously affected the public urban areas in many cities in recent years (Tbilisi, Yerevan, Kyiv, etc.) and often became the subject of struggle by local activists.*

*Source: Tigran Amiryan, CSN Lab (Armenia).*

In a previous chapter, we looked at the various definitions of cultural sustainability. United Cities and Local Governments (UCLG) argue that there is a link between cultural sustainability and public space:

“The connection between cultural participation and other dimensions of sustainable development and human rights becomes particularly visible at the local level, in cities and

41 [https://www.ohchr.org/Documents/Issues/CulturalRights/Call/61\\_UCL\\_culture.pdf](https://www.ohchr.org/Documents/Issues/CulturalRights/Call/61_UCL_culture.pdf)

towns. In this respect, as highlighted by Culture 21 Actions, there are strong connections between the cultural relevance of public spaces and progress in areas including the right to education, access to information and knowledge, social inclusion and cohesion, and the fight against discrimination.”

The organization further recommended that to enable the exercise of cultural rights, public spaces should be open and accessible (in physical, sensorial and symbolic terms), as well as inclusive of everyone. The organization further suggested that local governments can adapt four roles as regards to public space, including as funders, regulators, implementers, and facilitators, each involving different forms of engagement with communities and the private sector, and in the input mentioned some factors that may impede accessing and using public spaces, particularly for cultural purposes:

- legislative restrictions to freedom of expression and assembly;
- the privatisation of public spaces through restrictive uses (e.g. by shops, bars and other private concerns) and advertising;
- urban regeneration and redevelopment plans and programmes that openly or inadvertently impact on the capacity of public spaces to be sites of cultural activity;
- poor preservation, design, and care of the physical environment, including it being unpleasant, or inaccessible for all, as well as aspects like poor lighting and negligent design;
- concerns about security and discrimination, including the perception that women, children, minorities and other groups may be subject to discrimination in physical or virtual public spaces.

Karima Bennoune, the UN SR, having surveyed the range of definitions of public space, suggested that these places are: “publicly owned and accessible to all without discrimination, where people can share in the project of building a common society based on human rights, equality and dignity, where they can find ways to develop *vivre ensemble*, to build what they have in common and to share their common humanity, while still nurturing and expressing their own identities.”

She pointed out that the management of public spaces must respect human rights. Therefore public spaces must include and respect that “they are places where various, sometimes opposing, world visions can at times be expressed and where controversies can be debated in circumstances that respect the human rights of all.”

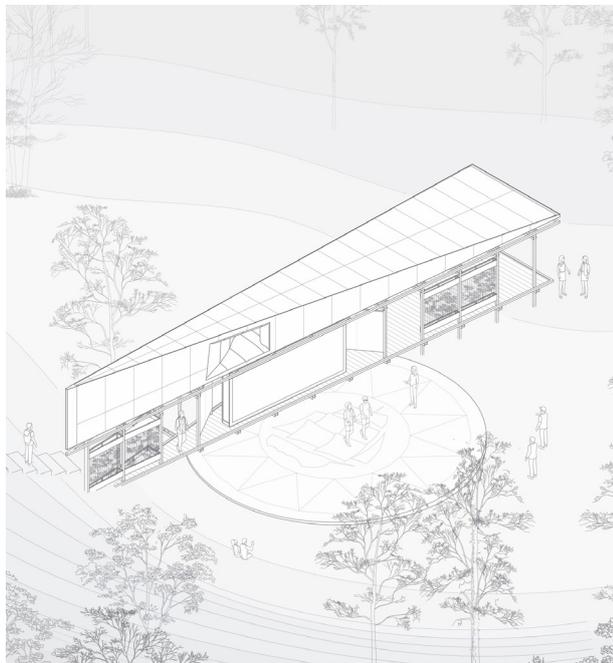
The United Nations Human Settlements Programme (UN-Habitat) lists a number of characteristics public spaces should have to contribute to substantive equality, diversity and dignity, including availability, accessibility, affordability, flexibility and good quality, and adds that, as a common good, public spaces imply a “spirit of public service without any purpose other than contributing to the overall quality of urban life.”<sup>42</sup>

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42 United Nations Human Settlements Programme (UN-Habitat), *Global Public Space Toolkit: From Global Principles to Local Policies and Practice* (2015), p. 24.

## UKRAINE: ABANDONED PROPAGANDA THEATRE BECOMES PLATFORM FOR FREE CULTURE

What to do with an abandoned former Stalinist summer theatre located in the central park of Dnipro? Dozens of small creative communities were scattered around Dnipro but didn't have a platform to meet. So the idea of *Сцена:Stage* was formed - to use the process of working in the public space as a mechanism for creating a new community. The initiators used crowdsourcing and crowdfunding tools. Architects, citizens, and future users collectively designed it, cleaned the site and participated



in the construction. Although the original function remained, the values underpinning it directly opposed those of the former structure. *Сцена:Stage* was about promoting and giving a space for free and diverse contemporary culture, not propaganda as it was during the Soviet era. The hierarchy was replaced by horizontality. The border between the stage and the audience was blurred.

Using their rights as citizens and achieving the realization through joint efforts, the community demonstrated how to integrate creative goals and develop urban space by injecting the rich and diverse culture of post-Maidan Ukraine. The project resonated far beyond Dnipro and Ukraine. In June 2018 it got the 1st Special Mention at the European Prize for Urban Public Space 2018 in Barcelona as one of the best public spaces in Europe. Moreover, the stage was nominated for the prestigious European award, The European Union Prize for Contemporary Architecture, the Mies van der Rohe Award.

Source: Kultura Medialna (Ukraine).

## WHAT IS PRIVATE AND WHAT IS PUBLIC... OR BOTH?

How to deal with privately owned/privately rented spaces of public use - whether commercial shopping malls or restaurants - making use of outdoor public and frequently tourist attraction squares as well as spaces surrounding village wells in rural areas, located on private property but with a customary right for public access and use? Elaborating further on the question of private/public, Bennoune said that:

*“Privatization and overreliance on private sponsorship of cultural events may also affect cultural activities in public spaces, such as festivals. The attendant risks include censorship by private sponsors, when freedom of artistic expression is no longer guaranteed by public authorities and decreasing diversity.”*

The Special Rapporteur further noted that some groups, such as indigenous peoples, may at times:

*“need their own ‘common space’, which may not always be accessible to all, or accessible only under certain conditions. Such spaces must be respected, but they are also governed by human rights standards, such as the prohibition of discrimination, including against women.”*

The report included several recommendations, including providing training for relevant public officials on the concept of inclusive public spaces and asked to “ensure that administrative processes do not represent an excessive burden for the use of public spaces, including by publishing transparent information about them.”

## PUBLIC SPACE, ‘MONU-MEN’ DOMINATION, AND VISUAL POLLUTION

Public spaces worldwide are dominated by “sculptures of power” – mostly symbols of nationalism/patriotism and mostly “monu-men” – sculptures of men. Already in the late 1960’s women artists and activists started occupying public spaces with counter art, and theatre groups were making use of performance art - in many ways like what we now understand as flash-mobs.

These hit and run strategies can be very effective at addressing various issues, especially when authorities or private companies are less willing to accept the right to make use of public space for various manifestations. As public spaces are increasingly commercialized, buildings are visually polluted by digital billboards, advertising banners, and bus stops are commercialized by advertising companies which pay city councils for their use. Some even offer special packages, which include rain and wind shelters combined with advertising. But those contracts are seldom published by the city councils, and it is entirely up to the advertising companies to decide which commercials they will accept. This has created counter-reactions in some countries, not least through graffiti or changing the messages of commercials by adding stickers, which obfuscate commercial and (in some cases) sexist advertising. However, some cities have dealt with the worst of their visual pollution. In Sao Paulo, the Clean City Law took down 15,000 billboards in one go in 2007 (they are now being reintroduced, but in a much more controlled fashion). In 2014, the French city of Grenoble became the first in Europe to ban street advertising, replacing it with trees and community noticeboards.

### WHAT CAN YOU DO?

When you wish to make use of public space for artistic expressions consider the following:

- Do you need a permission?
- Who provides permissions, and do they respect national and local legislations or regulations when doing so?
- Are these regulations reasonable? If not, who can you influence to change this?
- If you don’t get permission, which strategies do you have? What risks would you take and how will you document this?

### WANT TO KNOW MORE?

Clean City Law

<https://www.goodnewsnetwork.org/europes-first-ad-free-city-replaces-billboards-trees/>

<https://awarewomenartists.com/en/decouvrir/oeuvres-feministes-monumentales-dans-lespace-public/>

<https://thecityateyelevel.com/stories/advertising-takeover-of-the-public-spaces/>

<https://exclusive.multibriefs.com/content/advertising-and-the-city-are-billboards-a-threat-to-public-space/facilities-grounds>

# CULTURAL RIGHTS & CLIMATE CHANGE

Climate change and its effects on cultural practices and on cultural heritage sites and access to culture is a rather complex issue. UNESCO in an info sheet titled Culture & Climate Change<sup>43</sup> suggests that:

*“culture is a powerful resource for addressing climate change impacts. Natural heritage sites serve as vital ‘sinks’ for greenhouse gas emissions, and are key for the protection of biodiversity. Intangible cultural heritage practices have proven to be highly effective tools for helping communities prepare for, respond to and recover from climate change-related impacts and emergencies. (...) Creativity is essential for finding new solutions to environmental challenges. Artists and creators have an enormous role to play in inspiring climate action.”*

The paper suggests that artists and creators may be important “tools” for creating awareness, “thinking” that has similarities to how development policies over decades have made use of artists as “tools” for certain issues such as health. UNESCO therefore “calls on countries to fully integrate culture into their climate change policies and strategies and is working to support the inclusion of culture in global climate action.”

Climate change will, no doubt, have a grave impact on the cultures and cultural heritages of all humankind and hence on the related human rights of billions of people. While most human rights are affected by climate change, cultural rights are particularly affected, in that they risk being simply wiped out in many cases. The former UN SR, Karima Bennouna, addressed this in a report submitted in August 2020.<sup>44</sup> “The

universality of human rights, including cultural rights, has no meaning today without a liveable environment in which they can be enjoyed”. Adding that “not least indigenous peoples and people living in extreme poverty are affected by climate changes, which in some cases even lead to what is termed as ‘harmful cultural practices’ (...) against women such as child marriage of girls and female genital mutilation. Humanitarian assistance such as in disasters attendant on climate change tends to ignore caste dynamics and caste-related power structures, thus exacerbating existing caste-based exclusion.”

The gendered impacts of climate-change, resource scarcity, and disasters, which may result for women in increased caretaking responsibilities and time poverty, may according to the report “create further obstacles to their ability to participate in cultural life and access educational opportunities [and] cultural restrictions on women’s mobility can limit their access to environmentally friendly methods of transportation such as cycling.”

The relationship between cultural rights and climate change may not necessarily be obvious to most people.

The UN SR suggests that, “we must think broadly about the relationship between culture and addressing climate change,” including:

- (a) Through cultural change;
- (b) In ways related to our modes of interacting with nature;
- (c) The promotion of green cultures. Such efforts require the marshalling of cultural resources.

43 [https://en.unesco.org/sites/default/files/info\\_sheet\\_climate\\_change.pdf](https://en.unesco.org/sites/default/files/info_sheet_climate_change.pdf)

44 <https://www.undocs.org/A/75/298>

Bennoune considers that arts and culture are also critical fields for the mobilization of climate action, as well as for information-sharing and awareness-raising about climate change.

*“What the arts can do is create the empathy to bridge that gap, create the personal response (...) Artistic and cultural forms provide space for collective, improvisational and reflexive modes of acting on and thinking about uncertain futures.”*

To sum up, it seems that on one level there are concerns over how climate changes may negatively impact cultural rights – especially for women and indigenous people – and on another level that artists may play an essential role as advocates, eye-openers and game changers. But what can artists and the cultural industries do in order to reduce their own climate footprints?

Well, some larger music festivals have worked on these issues for several years, by reducing and/or recycling garbage, increasing access to public transport, and collaborating with technical universities,<sup>45</sup> so their students may test environmental solutions on site as well as reducing the carbon footprint of each meal served.

Digital distribution of music and films reaches millions of people and potentially minimizes the use of plastic for physical products such as vinyl discs, CDs and DVDs. However, streaming is extremely energy demanding as computers need energy-demanding cooling systems as well as electricity, which is not necessarily “clean.”

Culture and climate are complex issues, but no doubt artists and cultural operators do already play an essential role in creating awareness about problems. They may even become part of the solution, but doing so, they may also be at particular risk of threats, harassment and human rights violations.

## FOOD FOR THOUGHT:

If you engage in environmental issues as an artist or cultural operator, do consider:

- Get your facts correct (consult real experts);
- Identify your potential opponents (and consider inviting them for dialogues);
- Collaborate with potential “friends of environment”;
- Provoke only? Or point to solutions?

### READ MORE:

<http://www.art2030.org/>

<https://artistsandclimatechange.com/about/>

<https://www.riseart.com/article/2485/9-artists-confronting-climate-change>

## CULTURE & ADVOCACY

Advocacy is a means of advancing our mission and at best of achieving our goals. However, methodologies vary enormously. Influencing public policy and decisions on priorities and resource allocations differs quite a bit from advocating for artistic freedom. Professional organizations may organize campaigns for the release of artists for years without results. Other times such campaigns may result in artists being released. Repressive regimes will never reveal when and why they may decide to release artists, but when this happens, artists can often tell that it was pressure from the outside that not only helped get them to get released but even gave them hope while imprisoned.

So, there is not necessarily a direct link between efforts and results. Sometimes campaigns and advocacy succeed simply because the right decision-makers receive and are open to advocacy at the right time. Such an example may be found in Belarus, when a campaign from the Belarusian Culture Solidarity Foundations in 2021 led to EBU<sup>46</sup> suspending the membership<sup>47</sup> of the Belarusian broadcaster, BTRC.

### *BELARUS: EXCLUSION OF BTRC FROM THE EBU*

*On 24 May 2022 the European Broadcasting Union at a meeting in the Executive Board agreed to suspend national Belarus broadcaster Member BTRC. The EBU in a press release[1] mentioned it had "been closely monitoring the suppression of media freedom in Belarus and had consistently called on BTRC, as a Member of the EBU, to uphold our core values of freedom of expression, independence and accountability."*

*Being suspended meant, that the national Belarusian broadcaster will neither have access to programmes from the network nor will be able to take part in joint projects such as The Eurovision Song Contest.*

*But what was really behind this step? The press release did not mention a yearlong campaign initiated by the Belarusian Council for Culture which already in January 2021 appealed to the European Broadcasting Union to disqualify Belarus from the EBU. The letter contained the facts of repeated and permanent violations of journalistic standards, journalistic ethics, and censorship in relation to the Belarusian artists - these were a direct violation of the EBU statute. As there was no immediate response from the EBU main office BCC launched a full-scale information campaign. The campaign involved the Office of Svetlana Tsikhanouskaya, National Anti-Crisis Management, and Belarusian diasporas in EU countries. The BCC also addressed the broadcasters from the Executive Board of the EBU, some of whom supported the campaign and made statements on the matter.*

*As a result of the campaign initiated by the BCC, BTRC was expelled from the EBU.*

*Source: Belarusian Council for Culture.*

Advocacy and campaigns may obviously be relevant on the local, regional, and national level – if you wish to give attention to discrimination of minority groups, change specific culture policies or unfair regulations.

<sup>46</sup> The European Broadcasting Union (EBU) is an alliance of public service media organizations, established on 12 February 1950. The organization is made up of 115 member organizations in 56 countries, and 34 associate members from a further 21 countries.

<sup>47</sup> <https://eurovisionworld.com/esc/belarus-ebu-membership-suspended>

Thus, any CSO should first make a priority list. Let's face it, "we can't do everything all the time."

But, if your priority is artistic freedom, then, on top of having analyzed the legislations of your country and how they relate to international Conventions ratified by your country, you need to document how artistic freedom is restricted and by whom, and what the consequences are. And if your country is repressing artistic freedom then you can lobby international organizations and governments to support your agendas.

#### *BELARUS PEN EXAMPLE*

*Responding to the mass violations of human rights in Belarus, which certainly affected cultural workers and cultural organizations, Belarusian PEN has developed a monitoring system recording violations on cultural rights. The system allows for having up-to-date information about violations for internal use by Belarusian PEN and upon the request of interested parties. The main public document is an annual monitoring report on the implementation of cultural rights and human rights violations against cultural workers. PEN Belarus additionally publishes a review every three months.*

*The findings of Belarus PEN's monitoring activities are used by the Office of the UN High Commissioner for Human Rights, the UN Special Rapporteur on Belarus and the Special Rapporteur on Cultural Rights. The main force of the reports is in the system of International PEN and its country offices. It is an important part of international relations, and is based on shared values and a common organizational culture built on the protection of cultural rights in close connection with human rights.*

*"Strengthening the influence of Belarusian PEN reports in European cultural institutes is a necessary element for a further mutual European future."*

*Source: PEN Belarus.*

## FOOD FOR THOUGHT

If you wish to advocate on any topic you need - at least - to have in order your:

- Documentation;
- Argumentation;
- Communication and advocacy strategy.

It is always worth trying to secure a dialogue with those who can change policies and those who can convey your issue further in "the system" or who are in charge of the implementation of rules and regulations. Don't give them the opportunity to dismiss your campaign on the grounds that "you never contacted them."

Unless your topic is absolutely urgent, then give it some time for the system to respond, but follow up frequently and then move on with public campaigns if you do not secure a proper dialogue or a satisfying response.

Culturepartnership.eu offers an online course on advocacy:

<https://www.culturepartnership.eu/en/publishing/advocacy-course/what-is-advocacy>

## SOME LINKS TO CAMPAIGNS:

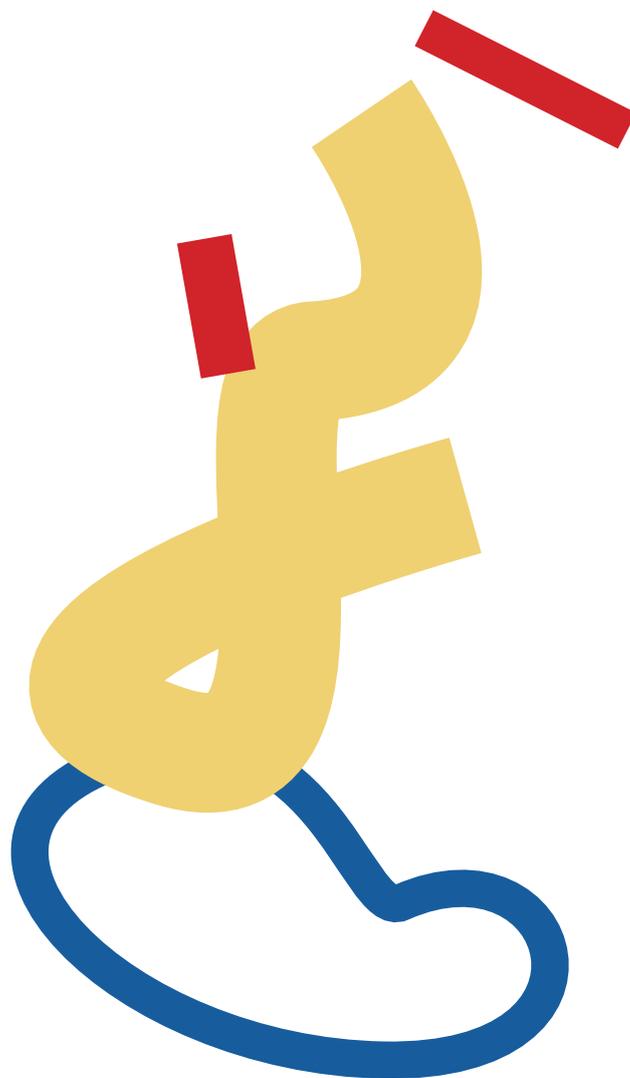
<https://pen-international.org/defending-free-expression/campaigns>

<https://freemuse.org/campaigns-list/>

# ARE YOU A CULTURAL RIGHTS DEFENDER?

Promoting, defending, or claiming your cultural rights may not be without risks. Those who claim the rights to artistic freedom or rights of minorities may face very strong opposition, or in some cases repression, persecution, threats and even imprisonment. You may not consider yourself as a 'cultural rights defender', but let's look at the UN SR definition of a cultural rights defender<sup>48</sup>: they "can be of any gender or age, from any part of the world and from any professional or other background. They can be found within non-governmental and intergovernmental organizations, but can also be government officials, civil servants or members of the private sector."

Accordingly, "cultural rights defenders are human rights defenders who pursue the elimination of violations of cultural rights and promote respect for and protection and fulfilment of these rights. They can be experts, activists and ordinary people who act in defense of cultural rights; they may specialize in working to these ends, and even certain cultural institutions may be considered as cultural rights defenders, or they may function as such, without defining themselves in those terms." The SR adds that: "cultural rights defenders may be seen as challenging dominant cultural or religious arguments or symbols when those are used as instruments of domination or discrimination, including by authoritarian governments, fundamentalists and extremists, and both states and non-state actors."



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48 <https://www.ohchr.org/EN/Issues/CulturalRights/Pages/CulturalRightsDefenders.aspx>

# UN ORGANIZATIONS, UN MECHANISMS & UN SPECIAL PROCEDURES

## UNESCO

UNESCO being the UN organization for science, education and culture, promotes and defends artists through two interrelated mechanisms.

The 1980 Recommendation concerning the Status of the Artist as well as the 2005 UNESCO Convention.

As an international law, the 2005 Convention operates within the context of the United Nations rules and procedures. All the countries that have ratified the Convention are called “Parties” and together form “the Conference of Parties”. When a country ratifies a Convention, it becomes legally bound to the terms of that Convention and should as such report on progress and challenges every four years through the so called QPR mechanism.

Since 2019 Artistic Freedom is a reporting requirement. State parties are supposed to report on:

- Policies and measures that promote and protect freedoms of creation and expression and participation in cultural life;
- Policies and measures that promote and protect the social and economic rights of artists and cultural professionals.

## UN HUMAN RIGHTS COUNCIL, UPR MECHANISM

The Universal Periodic Review (UPR) is a unique process which involves a review of the human rights records of all UN Member States. The UPR is a state-driven process, under the auspices of the Human Rights Council, which provides the opportunity for each state to declare what actions they have taken to improve the human rights situations in their countries and to fulfil their human rights obligations.

As one of the main features of the Council, the UPR is designed to ensure equal treatment for every country when their human rights situations are assessed. The ultimate aim of this mechanism is to improve the human rights situation in all countries and address human rights violations wherever they occur. Currently, no other universal mechanism of this kind exists. CSOs may submit their own reports – often called “shadow reports.” These may influence other countries to read state reports more critically.

More information: <https://www.ohchr.org/en/hrbodies/upr/pages/uprmain.aspx>

A special UPR Info group organizes pre-sessions for CSOs, where they present their analysis of the situation in countries that come up for “examination”.

<https://www.upr-info.org/en/upr-process/pre-sessions>

# THE SPECIAL PROCEDURES OF THE HUMAN RIGHTS COUNCIL

The special procedures of the Human Rights Council are independent human rights experts with mandates to report and advise on human rights from a thematic or country-specific perspective. They are non-paid and elected for 3-year mandates that can be reconducted for another three years. As of October 2021, there are 45 thematic and 13 country mandates.

With the support of the Office of the United Nations High Commissioner for Human Rights (OHCHR), special procedures include the following: “undertake country visits, act on individual cases of reported violations and concerns of a broader nature by sending communications to States and others conduct annual thematic studies, seek information from calls for input and convene expert consultations contribute to the development of international human rights standards, and engage in advocacy, raise public awareness, and provide advice for technical cooperation.”

## UN SR IN THE FIELD OF CULTURAL RIGHTS

On 26 March 2009, the Human Rights Council decided to establish a special procedure entitled “independent expert in the field of cultural rights” under resolution 10/23.

The Special Rapporteur reports annually both to the Human Rights Council, and to the General Assembly. Under this mandate, the mandate holder is asked to:

- Identify best practices of promoting and protecting cultural rights at local, national, regional and international levels.
- Identify obstacles to the promotion and protection of cultural rights and submit recommendations to the Council on ways to overcome them.
- Work with States to foster the adoption of measures—at local, national, regional and international levels—to promote and safeguard cultural rights and make concrete proposals to enhance cooperation at all levels in that regard.
- Collaborate closely with states and other relevant actors like the United Nations Educational, Scientific and Cultural Organization, to study the relationship between cultural rights and cultural diversity, with the aim of further promoting cultural rights.
- Integrate a gender and a disability perspective into this work.

Coordinate with intergovernmental and non-governmental organizations, other special procedures, the Committee on Economic, Social and Cultural Rights, the United Nations Educational, Scientific and Cultural Organization, and relevant actors, representing the broadest possible range of interests and experiences, including by attending relevant conferences and events.

During the past two mandates the Special Rapporteurs, Ms. Farida Shaheed and Ms. Karima Bennouna have worked in close cooperation with several CSOs. In fact, the office is rather dependent on verified information about violations from organizations such as Freemuse, PEN or local CSOs advocating and defending artistic freedom.

Complaints about violations can be filed to the office of the SR. UN member states must respond to complaints (although they do not always do so). The SR can also request to visit countries. Country visits include consultations with CSOs as well as government representatives and finish with a declaration. From December 2021 a new SR, Alexandra Xanthaki has been appointed. Ms. Xanthaki will put a special focus on cultural rights for minorities and indigenous people.

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

## **SPECIAL RAPPORTEUR FOR FREEDOM OF OPINION & EXPRESSION**

Purpose of the mandate: the mandate of the Special Rapporteur was created by the Human Rights Council to protect and promote freedom of opinion and expression, offline and online, in light of international human rights law and standards.

Current Mandate Holder: Irene Khan was appointed as UN Special Rapporteur for Freedom of Opinion and Expression in August. An internationally recognized advocate for human rights, gender equality and social justice, she was Secretary-General of Amnesty International from 2001 to 2009 and Director-General of the International Development Law Organization (IDLO) from 2010 to 2019.

## **UN COMPLAINTS MECHANISMS**

The complaint procedure of the Human Rights Council addresses consistent patterns of gross and reliably attested violations of all human rights and fundamental freedoms occurring in any part of the world and under any circumstances (Human Rights Council resolution 5/1 of 18 June 2007).

Two distinct working groups – the Working Group on Communications and the Working Group on Situations are responsible, respectively, for examining written communications and bringing consistent patterns of gross and reliably attested violations of human rights and fundamental freedoms to the attention of the Council. This complaint procedure is the only universal complaint procedure covering all human rights and all fundamental freedoms in all States Members of the United Nations. This procedure is confidential, with a view to enhance cooperation with the State concerned.

Complaints may also be addressed to the Special Procedures (Offices of the Special Rapporteurs), who will then communicate to Governments and others, such as intergovernmental organizations, businesses, military or security companies. In these letters, the experts “report on allegations of human rights violations they have received, regarding:

- past human rights violations - which can be the object of a letter of allegation;
- ongoing or potential human rights violations - which can be the object of an urgent appeal;
- concerns relating to bills, legislation, and policies;
- practices that do not comply with international human rights law and standards.

The expert(s) will in the letter present the allegations and request clarifications on them. Where necessary, the experts request that the concerned authorities take action to prevent or stop the violation, investigate it, bring to justice those responsible, and make sure that remedies are available to the victim(s) or their families. The experts also recall the applicable human rights provisions in these letters.”

[https://www.ohchr.org/Documents/HRBodies/ComplaintProcedure/ComplaintProcedurebooklet\\_E.pdf](https://www.ohchr.org/Documents/HRBodies/ComplaintProcedure/ComplaintProcedurebooklet_E.pdf)

<https://www.ohchr.org/EN/HRBodies/HRC/ComplaintProcedure/Pages/HRCComplaintProcedureIndex.aspx>

There are other procedures applicable to the Working Group on Arbitrary Detention and the Working Group on Enforced or Involuntary Disappearances; please consult their methods of work here:

<https://www.ohchr.org/EN/HRBodies/SP/Pages/Communications.aspx>

**Intro video to UN HR  
complaints mechanisms**

<https://slideplayer.com/slide/5708054/>



# UNESCO INDIVIDUAL COMPLAINTS (PROCEDURE OF 104 EX/ DECISION 3.3)

Individuals, groups of individuals and NGOs can submit an individual complaint to the Committee on Conventions and Recommendations of UNESCO if they are direct victims or if they have a sufficient connection to the claimed violation. The protected persons are teachers, students, researchers, artists, writers and journalists. The procedure is confidential from the beginning to the end.

The mechanism has not been used a lot. The author of this report has, however, one very positive experience, which led to the release of an Iranian artist. What seems problematic to many CSOs is the fact that the minutes and decisions made by the Committee are strictly confidential – not even UNESCO staff members related to the relevant Conventions and recommendations have access to discussions and decisions.

The positive side of this is that the Committee members can discuss very openly a complaint and be pretty harsh on the state party violating their obligations.

[http://www.claiminghumanrights.org/unesco\\_procedure.html](http://www.claiminghumanrights.org/unesco_procedure.html)

## COUNCIL OF EUROPE & EUROPEAN COURT OF HUMAN RIGHTS

As all countries we are dealing with – except Belarus – are members of the Council of Europe, it is relevant to mention that the member states are obliged to live up to the "European Convention on Human Rights,"<sup>49</sup> which protects freedom of expression, including artistic freedom. In 2020 the Council of Europe, through the Steering Committee for Culture, Heritage and Landscape have "stepped up" their focus on artistic freedom with a "Manifesto on the Freedom of Expression of Arts and Culture in the Digital Era"<sup>50</sup> developed by a group of external experts. The steering committee in the manifesto emphasizes that:

- Freedom of expression needs to be protected, be it from abuse of technological developments, attempts to muzzle dissenting voices in a society or misuse of the freedom of expression to foster divisive narratives, intolerance and hate;
- Artistic and creative expression is a part of the freedom of expression and artists must be protected against censorship and any form of pressure or intimidation. Any limitation should be in line with the European Convention on Human Rights and the case-law of the European Court of Human Rights;

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49 [https://www.echr.coe.int/Documents/Convention\\_Instrument\\_ENG.pdf](https://www.echr.coe.int/Documents/Convention_Instrument_ENG.pdf)

50 <https://rm.coe.int/0900001680a056a2>

- Restrictions on freedom of expression and artistic freedom affect the whole of society, bereaving it of its pluralism and the vitality of the democratic process. The ecosystem of artistic freedom affects education, cultural development, socio-economic standards, wellbeing, quality of life, and social cohesion.

Whereas complaints to the UN mechanisms are not tested in a regular court, member states of the Council of Europe are obliged to accept verdicts from the European Court of Human Rights.<sup>51</sup> Russia and Turkey are frequently taken to the court and found guilty of violations. In 2021, Georgia was found guilty of not protecting LGBT demonstrators. But it took seven years from the incident to the final verdict. However, Georgia was convicted and forced to pay compensation.

“The Court held that Georgia was to pay the applicants amounts totaling overall 193,500 (EUR). In particular, it awarded 10,000 (EUR) to the applicant who had suffered concussion and 6,000 (EUR) to the applicant who had been humiliated by the police in the supermarket.”

All court decisions and press releases are available from:

<https://www.echr.coe.int/Pages/home.aspx?p=caselaw/HUDOC&c=>

#### GEORGIA: RELIGIOUS FEELING VS. CONDOMS - THE AIISA CASE

*In 2018 the chairman of the conservative civil political movement “Kartuli Idea” (Georgian Idea), complained to the Municipal Inspectorate of the Tbilisi City Hall that Georgian condom brand Aiisa had used designs that “were insulting to the religious feelings of Georgians.”*

*Established in 2017 by then 23-year-old female entrepreneur Anania Gachechiladze, the brand name literally means “that thing” in Georgian and refers to the way some consumers ask for this specific product in the shops when they are embarrassed to use the word “condom”. The ironic images and texts on the packaging are based on popular former and current historical and fictional characters. They feature political figures and events, well-known quotes and popular slogans, phrases indicating social biases, wordplay, and designs expressing support of the LGBT community.*

*Gachechiladze was served an administrative-offence report which said she had placed unethical advertising of her product and that the brand’s Facebook page was in breach of the rules concerning the production and dissemination of advertising.*

*Based on the ruling of the Tbilisi City Court Gachechiladze was declared an administrative offender to be fined 500 Georgian Laris (approximately 165 (EUR)). She was also ordered to cease using and disseminating the relevant designs for the products on social media, and to issue a product recall in respect to the products already distributed.*

*The case was transferred to the European Court of Human Rights for further consideration. In July 2021 it ruled that “the views on ethics of the Georgian Orthodox Church took precedence in the balancing of various values protected under the Convention and the Constitution of Georgia” and the Georgian courts’ reasoning was not “relevant and sufficient” to interfere with the freedom of expression concerning at least three of the four disputed condom packaging designs.*

Sources: European Court of Human Rights,<sup>52</sup> Civil.ge.<sup>53</sup>

51 [https://www.echr.coe.int/Documents/Court\\_in\\_brief\\_ENG.pdf](https://www.echr.coe.int/Documents/Court_in_brief_ENG.pdf)

52 <https://hudoc.echr.coe.int/eng?i=001-211123>

53 <https://civil.ge/archives/433471>

## AFTERWORDS

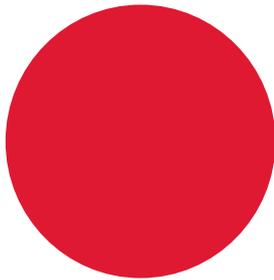
What is the use of knowing my rights, if they are violated? What is the use of this manual if your cultural rights, your exhibition, concert or film are banned? Hopefully, you will be able to reach out to networks, which can either provide assistance or ensure that proper documentation takes place. Every country has to go through the Universal Periodic Review (UPR) – an “examination” of human rights at the Human Rights Council and those countries which have ratified the UNESCO 2005 Convention must report every four years – with the help of civil society – on progress and challenges. Your situation and the situation in your country are relevant to these reports, which are read and commented on internationally. You can ensure that violations are reported and thus assist in creating greater awareness of the situation for your work and the conditions of cultural rights in your country.

But, first of all – being aware of your rights – provides you with an “arguments toolbox” when dealing with authorities providing permissions or attempting to restrict your cultural rights. Hopefully, this manual may also contribute to reviewing your work from a perspective of cultural rights. At best you will realize that what you do as a creative person in many ways reflects various cultural rights.

Most cultural organizations, artists and institutions have to spend a lot of time and energy on writing applications and reports. Donors in general like to add a number of “buzzwords” to their application schemes. At the very least you may pick up a few “buzzwords” from this manual. And do not forget. A manual is written at a certain time. Things change. In cultural policies trends come and go, so maintain your knowledge and insist on your rights.

## BIOS

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*Ole Reitov* is a global human rights defender, speaker, moderator, journalist and independent consultant. In 1999, he co-founded Freemuse, the world's leading organization defending artistic freedom and was its Executive Director from 2013-2017. In this position, he was also accredited to the UN Human Rights Council advocating artistic freedom. As an expert consultant to the UN Special Rapporteur in the Field of Cultural Rights, he provided the background to the first UN report on artistic freedom: "The right to freedom of artistic expression and creativity". Since 2015, he has been an appointed member of the EU/UNESCO Expert Facility for the 2005 Convention and conducted several workshops on behalf of UNESCO and published several reports and articles on censorship and artistic freedom.

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