

## Gender justice and the right to artistic freedom of expression

Across the globe, women are systematically denied the right to access and participate in artistic and cultural activities. Freemuse has documented how gender-based discrimination faced by women in arts and culture vernaculars is structural and imposed by both states and non-state actors, often under the guise of protecting tradition, religion, and ‘morality’. Women artists are forced to navigate these vague and challenging definitions on family values and morality, or face being censored, prosecuted, fined, fired, harassed, attacked, or killed for their expressions.

### Legal framework

Women’s rights to equal access to create and participate in cultural expressions are upheld by international human rights mechanisms. Article 15 of the International Covenant on Economic, Social and Cultural Right (ICESCR) affirms the right to access, participate and contribute to all elements of cultural life and Article 19 of the International Covenant on Civil and Political Rights (ICCPR) guarantees the right to freedom of expression and opinion without interference. Similarly, Article 6 of the 1980 UNESCO Recommendation Concerning the Status of the Artist upholds the importance of freedom of artistic expression, with Article 8 calling on Member States to ensure that all individuals, irrespective of their gender, can obtain and exercise their right to develop artistic talents. Further, Article 7 of the 2005 UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions emphasises the importance of creative expressions and recognises the special needs of women. These rights are affirmed by specific gender-based mechanisms like Sustainable Development Goal (SDG) 5 on empowering women and girls and strengthening legislation to achieve gender equality.

These mechanisms have established general pre-conditions for freedom of expression and gender equality through international human rights law but reach a limitation on application and acceptance at national and local levels, including by women themselves. States have proven reluctant in implementing international standards protecting the right to freedom of artistic expression and women’s rights, and varying context-specific challenges have perpetuated restrictions on access and participation in cultural life based on societal and patriarchal norm, such as the 2017 Presidential Decree in Burundi which introduced legislation prohibiting women from playing the drums - which have been recognised as being an integral part of Burundi’s intangible cultural heritage.<sup>1</sup> These different challenging contexts in which women artists exercise their right to freedom of artistic expression have contributed to women remaining outnumbered in the cultural sector, stifled in the name of religion or tradition, restricted by strict domestic legislations, and exposed to sexist and misogynist comments and various forms of harassment.

### Impact of public and social morals on women’s artistic freedom

The ICCPR requires restrictions on freedom of expression be subject to legislative intervention and the ‘test of necessity’. However, women artists face censorship and suppression while being held to a standard of public morals and decency. The high level of subjectivity and discretion required in their determination has led to them being used to suppress women’s rights to artistic freedom and cultural expression. In 2020, Freemuse documented that the vague rationale of indecency was used to suppress the voices of women artists in more than 40 percent of the violations focusing on women

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<sup>1</sup> Burundi Presidential Decree, No 100/0196 of 20 October 2017, Chapter 1, Section 1, Article 3, <https://www.presidence.gov.bi/2017/10/25/decret-n100-0196-du-20-octobre-2017-portant-reglementation-de-exploitation-du-tambour-aux-niveaux-national-et-international/>

issues that were documented. Censorship of women artists on these grounds emerges from the power imbalance between men and women, which is reinforced by the propagation of patriarchal public policy interventions. In April 2020, Nigerian television series ‘Kwana Casa’In’ was banned by the Kano State Censorship Board in northern Nigeria on account of an episode containing a scene of a woman being held by a man on a tricycle. The scene was deemed to contradict local norms and triggered censorship under the Kano State Censorship Board Law, which permits the prohibition of content that is indecent or injurious to morality. Such public action not only perpetuates gender norms and stereotypes, but also stifles free artistic expression.

Further, artwork portraying or depicting women’s bodies partially or completely nude have been censored offline and in digital spaces on the grounds of indecency. The multiple challenges faced by the French film ‘Cuties’ across the world is illustrative of how social norms across countries seek to control narratives about women’s sexuality and sexual expression. The film, which features the story of an 11-year-old girl who joins a dance group, sought to showcase the role played by social media in pushing girls to mimic sexualised imagery without fully understanding it. However, the film faced intense criticism and censorship in Turkey, Egypt, Brazil as well as the USA for ‘sexualising young girls’. It is imperative that public policy frameworks allowing for censorship on the grounds of ‘indecency’ not be used as executive tools to further discrimination against women artists and women-centric art and to suppress the right to freedom of artistic expression of women.

Crucially, some women occupy multiple intersections of identity and therefore experience intersecting forms of discrimination and marginalisation on their creative expressions.<sup>2</sup> This hostility operationalised against LGBTI women was particularly severe between 2018 and 2020, where Freemuse documented 98 violations of artistic freedom of LGBTI artists or of artwork centring on sexual orientation and gender identity and expression.<sup>3</sup> Illustratively, Hong Kong pop star Denise Ho, an openly gay musician who speaks regularly on issues concerning the LGBTI community, was denied entry into Malaysia in 2018 where she was scheduled to perform. The official communication noted that shows in Malaysia needed to be in accordance with ‘local laws and values’<sup>4</sup> and as an LGBTI woman, Ho’s experience is illustrative of the diverse hurdles that women face insofar as their right to freedom of artistic expression is concerned. Any robust legislation seeking to strengthen cultural rights of women must adequately view women as holding multiple identities simultaneously, with each identity contributing to their lived experience.

### **Restrictions in the digital space**

In 2020, the digital space became synonymous with the public space as the COVID-19 pandemic necessitated the digital environment as the primary environment for social and cultural interaction and exchange. This period marked a critical point for the state of artistic freedom, highlighting the need to bridge the gap between ruling community guidelines and human rights principles. However, digital spaces and online platforms often provide opportunities for threats and harassment from people who choose false names, fake accounts and can remain faceless. This makes it challenging to assess or ascertain with any accuracy the intention behind the threat. In addition, content controls and community guidelines restrict artistic expressions under the guise of indecency wherein

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<sup>2</sup> Amnesty International (2018). *Toxic Twitter, a Toxic Place for Women*, <https://www.amnesty.org/en/latest/research/2018/03/online-violence-against-women-chapter-2/0>

<sup>3</sup> Freemuse (2021). *The State of Artistic Freedom 2021*, <https://freemuse.org/wp-content/uploads/2021/02/THE-STATE-OF-ARTISTIC-FREEDOM-2021.pdf>

<sup>4</sup> BBC (2018). *Pop star Denise Ho denied Malaysia permit ‘over LGBT views’*, <https://www.bbc.com/news/world-asia-china-43072223>

expressions from swearing to paintings of nipples are censored. For women artists, this online harassment and abuse on social media platforms is prolific and exceptionally harming to their right to freely express, often leading to women withdraw or limit their participation on such platforms.

Censorship by social media platforms also challenges women's rights to expression online. Freemuse research on cases featuring censorship illustrates a particularly punitive, conservative, and inconsistent approach to the policing of nudity, which goes against the fundamental tenets of free expression, democratic engagement, and the value of crucial public debates around gender and sexuality. In particular, the broad and vague wording of community guidelines on social media platforms, as well as their failure to engage with the artworks or artists in question, has led to a disproportionate censoring of women artists, as well as artwork centred on themes of women's rights and liberation.<sup>5</sup> This has had a chilling effect on the expression of women artists, with women self-censoring their works in response to the disproportionate and restrictive reprisals they face, in addition to the impacts of mental health and fatigue that such experiences entail.<sup>6</sup>

Throughout 2020, Egyptian authorities exercised a targeted crackdown on women TikTok creators in the country which led to more than 10 women being arrested on the grounds of threatening the values of the Egyptian family and inciting immorality and debauchery for singing, dancing, and posing on the social media app. The arrests have specific gender and class implications as the authorities in Egypt targeted women from working-class backgrounds who are disproportionately scrutinised for their dress and do not enjoy the same protection as women from wealthier demographics. Furthermore, Freemuse received reports that the interrogations involved authorities asking the women to reveal their bank details and disclose their income from their TikTok content.

Of these women arrested for their creative expressions on TikTok, Haneen Hossam, a student at Cairo University, was arrested on 23 April 2020 for broadcasting a video on the app which was deemed incompatible with public morals, university values, and traditions in Egypt. Hossam was later sentenced to two years in prison and fined 300,000 LE (approximately 14,000 euros), and on 18 August 2020, the Cairo Criminal Court upheld the decision of the Prosecutor General to freeze her assets. In February 2021, Hossam was released from prison.<sup>7</sup> In a similar case, actress and dancer Sama El-Masry was arrested on 24 April 2020 for inciting and publishing debauchery and was sentenced on 25 June 2020 to three years in prison, three years of probation, and a fine of 300,000 LE (approximately 14,000 euros) on the charges of disrupting public modesty, posting videos showing her body in a way that stimulated sexual instincts, and violating Egyptian family values. On 8 September 2020, El-Masry's case was reduced to two years imprisonment.<sup>8</sup>

### **Impact of COVID-19 on women's rights to artistic freedom**

In the wake of the pandemic, extraordinary measures were introduced under the guise of protecting populations from the virus and government authorities began to exploit the pandemic to silence those expressing critical or dissenting opinions. Some governments adopted laws to fight misinformation, including false news or non-objective information, whilst others imposed restrictions on freedom of

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<sup>5</sup> Freemuse (2019). *Privatising Censorship, Digitising Violence: Shrinking Space of Women's Rights to Create in the Digital Age*, [https://freemuse.org/wpcontent/uploads/2019/09/Digitising\\_Censorship\\_Privatising\\_Violence\\_2019.pdf](https://freemuse.org/wpcontent/uploads/2019/09/Digitising_Censorship_Privatising_Violence_2019.pdf)

<sup>6</sup> Ibid.

<sup>7</sup> Egyptian Streets (2021). *TikTok Content Creator Haneem Hossam Released from Jail pending Trial*, <https://egyptianstreets.com/2021/02/02/tiktok-content-creator-haneem-hossam-released-from-jail-pending-trial/>

<sup>8</sup> South Morning China Post (2020). *Popular Egyptian belly dancer Sama el-Masry jailed for 'debauchery' after TikTok posts*, <https://www.scmp.com/news/world/middle-east/article/3090883/popular-egyptian-belly-dancer-sama-el-masry-jailed>

association and expression. These legislations have seldom been written or implemented in accordance with international human rights laws and have hence contributed to government authorities aggressively misusing the restrictions.

Freemuse has documented that this suppression of speech also extended to artistic voices and had a significant impact on women artists and cultural actors. Many governments across the world arbitrarily detained artists and human rights defenders who expressed opinions critical of their governments' political actions during the pandemic, something which was possible due to the difficulties in legally measuring what is offensive and the lack of implementation of international norms protecting artists. In July 2020, Ugandan poet and academic Stella Nyanzi was arrested on the charge of holding an illegal demonstration after speaking at a joint press conference protesting the closure of arcades due to the COVID-19 in Kampala.<sup>9</sup> Nyanzi's arrest occurred when the police raided Biraj International hotel, located near Nakasero market, where the poet was speaking. She was kept at the Kampala Central Police Station until being later released. Nyanzi's arrest is illustrative of a global trend of repression of voices of women participating in democratic action.

Further, in early April, an unnamed woman in Morocco was arrested and sentenced to two months in prison for posting a 15-second video on the social network TikTok after she imitated local security figures in Morocco, the Caida Houria.<sup>10</sup> The comedy video imitated the Caida's and encouraged people to respect the COVID-19 lockdown. She was charged with 'unauthorized public wearing of an official uniform' under Article 382 of the Moroccan Penal Code and is currently imprisoned in Errachidia. In Morocco, artists enjoy a significant degree of freedom if they do not broach taboo subjects, including the military, monarchy, religion, and Western Sahara. However, the penal code continues to mandate imprisonments for various non-violent expressions, such as artwork that engages the aforementioned topics, with creative expressions under COVID-19 further perpetuating detentions and limitations.

## Recommendations

To uphold and promote women's rights to creative and artistic expressions, Freemuse calls on the Special Rapporteur for freedom of opinion and expression to recommend that States:

1. Abolish and amend legislation, executive orders and by-laws that prohibit and restrict women from participating in all dimensions of cultural life.
2. Critically review all legislation and executive practice restricting the right to freedom of artistic expression in alignment of and in consideration with international human rights law, specifically the ICCPR and ICESCR.
3. Take positive steps and adopt legislation and regulations to promote and protect women's cultural rights, including monetary assistance and enabling measures for women artists and cultural actors (such as arts education, training, system support and professional development).
4. Regulate and place accountability mechanisms to govern syndicates and professional artist organisations to mitigate against discrimination of women artists and cultural actors.
5. Ensure that religious bodies, traditional and informal authorities do not restrict women's right to freedom of artistic expression and creativity.

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<sup>9</sup> The Observer (2020). *Stella Nyanzi arrested over arcade closure demo*, <https://observer.ug/news/headlines/65603-stella-nyanzi-arrested-over-arcade-closure-demo>

<sup>10</sup> Human Rights Watch (2020). *Humor Comes at a Price in Morocco and Tunisia*, <https://www.hrw.org/news/2020/05/13/humor-comes-price-morocco-and-tunisia>

6. Develop programmes and sensitisation campaigns to create awareness and put in place effective measures to prevent women artists from any form of sexual harassment.

*Regarding women's access to right to freedom of artistic expression in **online spaces**:*

1. Ensure that social media and online platforms uphold international human rights laws, and that their framework of restricting artistic expression, including monitoring, assessment and engagement, respect these standards.
2. Develop programmes and sensitisation campaigns to create awareness amongst women artists. Freemuse has developed a toolkit for artists who are being harassed in the online space, providing key points to be followed.<sup>11</sup>

*Regarding women's access to right to freedom of artistic expression during and following the **COVID-19 pandemic**:*

1. Commit to re-opening and financially supporting artistic spaces, with a specific focus on artists which welcome women artists to address the specific challenges that they faced during the pandemic.
2. Include all artists and cultural actors into government funding or unemployment schemes, with a specific focus on women artists and cultural actors to undo the disproportionate impact of the pandemic on women.
3. End the harassment, detention, and silencing of artists who criticise the government through their creative and political expressions.

Freemuse, Copenhagen  
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<sup>11</sup> Freemuse (2020). *Digital Toolkit: A Guide for Artists facing Censorship and Harassment Online*, <https://freemuse.org/wp-content/uploads/2020/06/Freemuse-Digital-Toolkit.pdf>