

Defending the Right to Freedom of Artistic Expression

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Good evening.

It is a real pleasure to be here with you at this important gathering with artists and defenders of artistic freedom from Switzerland and from all over the world. I'd like to thank the organizers for this very special convening, and also for inviting me. I realize that I stand between you and your Friday evening at the end of many rich discussions so I thank you sincerely for your attention. This evening, I am going to talk about defending the right to artistic freedom within the broader context of defending cultural rights as a whole, drawing from my report on Cultural Rights Defenders to be presented to the UN Human Rights Council on Tuesday March 3.¹ I will share some of the ideas in this report.

Let me express my sincere gratitude to those in this room from different regions who made contributions to the report which greatly enriched it.

The main point I wish to make this evening is that if the international community values artistic freedom, it must find ways to better support and enable the work of those who defend that human right. It must also respect and ensure their human rights.

I start with a personal anecdote. Last Sunday I was very stressed about getting ready for this trip. So I decided that I needed a culture cure. I spent the afternoon in the San Francisco area with cultural rights defenders. First, I visited a co-working creative space in Oakland, RBA Creative, to attend a presentation by Ajuan Mance, the African American artist who made the logo for the cultural rights mandate. She was speaking about her new project Bay Area Heart and Soul which aims to document the work and lives of local African American artists of all ages, who are increasingly being driven out of the area for financial reasons and whose work is all too often overlooked. She is now drawing these artists, incorporating their words in her drawings, and filming interviews with them to, as she says, fight against invisibility and affirm their continued existence in the gentrifying city.

¹ Those interested can watch the interactive dialogue on UN TV. The report is available on the mandate home page.

I then attended a youth music fundraising concert at a local church in Berkeley, a concert given by one of the only baroque orchestras at any US secondary school. Given the cuts in arts education the orchestra's devoted conductor, a music teacher, and the parents of the diverse musicians work tirelessly to keep the orchestra funded through events like that concert. I have never heard such a spirited performance of Rameau, a piece designated by the composer as one to be played as fast as humanly possible (and they did). The fact that these students are going to what they call baroque boot camp this summer– and are actually excited about that – gives one hope for the future of this artform.

By the end of the day, though I was ever further behind in my packing and preparations for the trip, I was reconnected with and re-committed to this trip's purpose: recognizing and building support for those who defend cultural rights. And I was also reminded that diverse cultural rights defenders who defend freedom of artistic expression for all and the right to participate in cultural life without discrimination are everywhere – around the world, in conflict zones and contexts of repression, struggling to even survive and work, and in our neighborhoods, wherever we are, around the corner, struggling for visibility, recognition and resources. As the organizers indicate on the conference website, the struggle for artistic freedom is a truly universal one though it manifests differently in different contexts.

Mandate info

Before I go any further, a quick technical point for those new to the UN human rights system about what exactly a UN Special Rapporteur is and does. Special Rapporteurs are appointed by the UN Human Rights Council, the highest UN political body in the area of human rights, and report to the council as I will on Tuesday. However, the rapporteurs do not work for the UN and are independent experts. (The late Kofi Annan once referred to these so-called Special Procedures of the Human Rights Council as the “crown jewels” of the UN human rights system. I always joke that that was a polite way of saying we are not paid. But our independence is very precious indeed.) So, in my day job, I am a law professor at the University of California, Davis. As Special Rapporteur, I write thematic reports, I carry out country missions and can raise specific cases of violations of cultural rights.

Speaking to you this evening from the vantage point of the mandate, I am not going to spend a lot of time talking about the substance of the right to artistic freedom itself. My predecessor as Special Rapporteur Farida Shaheed wrote an entire report about that in 2013 which I recommend to you and which has been very influential. I would simply note in law professor fashion that freedom of artistic expression is guaranteed by international law and is so important a human right that it is one of only a few rights found in both the International Covenant on Civil and Political Rights (in Article 19) and the Covenant on Economic, Social and Cultural Rights (in Article 15), as well as in the touchstone instrument of the human rights framework: the Universal Declaration of Human Rights (Article 27). Artistic freedom may only be limited in accordance with those standards. Moreover, it should be fostered for everyone,

including for so-called amateurs such as the youth musicians I listened to last Sunday as well as professionals, for both performers and their audiences. As noted in the report which I presented to the UN Human Rights Council in 2018 on socially engaged artistic and cultural initiatives, artists may choose to create engaged art, but equally validly they may also choose not to. In some contexts merely continuing any artistic practice at all may be a form of social engagement. With that very brief overview of some aspects of artistic freedom, what I want to talk about in my time this evening is how we better implement this right by supporting those who defend it.

A. Who/What is a Cultural Rights Defender?

This brings me to the concept of “cultural rights defender” which is a term I use to refer to human rights defenders who defend cultural rights, including artistic freedom, in accordance with international standards. Cultural rights defenders are an important constituency among human rights defenders, who are quite simply any person or group of persons working peacefully to promote human rights in accordance with the UN Declaration on Human Rights Defenders. Cultural rights defenders range from intergovernmental organizations, such as the United Nations Educational, Scientific and Cultural Organization (UNESCO), to individuals working locally. Such defenders can be of any gender or age, from any part of the world and from any professional or other background. They are not only found within non-governmental and intergovernmental organizations; in some instances, they could be government officials, civil servants or members of the private sector. Cultural institutions themselves may be cultural rights defenders.

Such defenders include experts, activists and ordinary people who act in defence of cultural rights. While respect for expertise is today essential, it is also important to avoid elitism in defining cultural work and to recognize wide-ranging contributions to the defence of cultural rights.

Cultural rights defenders may work on different substantive areas of cultural rights such as scientific freedom or the right to participate equally in sports or indeed the promotion and protection of artistic freedom. Collectively, they reflect the vibrancy of broad cultural ecosystems.

Many people may be cultural rights defenders, or function as such, without necessarily describing themselves in those terms. These include a wide range of those who contribute to the enjoyment of artistic freedom such as artists, cultural heritage professionals and defenders, cultural workers, curators and museum workers, educators, historians, librarians, media producers, public space defenders, staff and directors of cultural institutions, and writers.

It remains important to respect a person’s right to characterize their own work and to recognize that, in certain contexts, artists and others working in the field of artistic expression may fear they will be further penalized or stigmatized for being labelled a human rights defender, or they may prefer not to define themselves. However, in other contexts, there may be significant

added value for being recognized as such, including funding, acknowledgement, protection and various forms of support. The relevant constituencies should be clearly consulted and engaged in participatory processes to discuss such labelling or status, and the implications for their work, based on their own understandings and needs, which may be diverse. Moreover, whether or not someone is or can be a cultural rights defender depends on the objective nature of their work, regardless of official restrictions, for example, on who is considered an artist, such as those requiring artists to be authorized or officially recognized, or members of a professional association.

The rights that cultural rights defenders defend, including artistic freedom, are a core part of international human rights law. They are vital to the human experience and critical to implementing other human rights and to sustainable development. Despite the importance of these rights, and their normative grounding, they are not always given the attention they deserve, and not always recognized as human rights with the same standing as other rights. Cultural rights defenders are therefore often not fully recognized for their work, do not receive adequate support and are not granted appropriate protection. This must change, and both cultural rights and those who defend them must be acknowledged as critical to the human rights framework and its full implementation.

That is why I wrote the report, to, as Ajuan Mance in Oakland, CA said, promote visibility. While naming is not a panacea for the difficulties faced by cultural rights defenders and may in some situations have only modest benefits, it is one way of addressing challenges and marshalling resources to do so, and can have significant impact in certain situations. The task is to find cross-sectoral collaborative pathways to encourage the provision of funding and the development of improved support and protection programmes for people working on these rights, and to work against their unintentional erasure.

Cultural rights defenders pursue the elimination of violations of cultural rights and promote respect for and protection and fulfilment of these rights, and may specialize in working to these ends. According to article 1 of the UN Declaration on Human Rights Defenders, everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and at the national and international levels. Hence, the work of cultural rights defenders, including defenders of artistic freedom, is grounded in international human rights standards, and they have the right to undertake their work.

There is one very important caveat to remember and that is that not every claim based on cultural (or religious) arguments renders the person who makes it a cultural rights defender. The Declaration on Human Rights Defenders makes clear that human rights defenders must accept the universality of human rights, as defined in the Universal Declaration of Human Rights, and act in accordance with international human rights norms. Thus, those who deny the rights of some, or challenge the universality of human rights, or who advocate or practise human rights violations, violence or discrimination as defined by international standards, are not cultural rights

defenders. (The cultural rights defender label must not be misused to shield or legitimate efforts to undermine human rights protection.)

The report provides examples of cultural rights work being carried out across many fields. In the area of artistic freedom, the report notes that artist-protection funds, networks and programmes have been developed to fill in gaps in scholars at-risk programmes and enhance support for those practicing and defending the right to freedom of artistic expression. Case work on and documentation of violations of the rights of artists is developing and carried out by many organizations and is so critically important. All this must continue and increase, and include those whose work is considered controversial in accordance with international standards on cultural rights and freedom of expression. All such efforts are essential and should be supported and magnified by other human rights groups working to protect human rights defenders, fully reflecting the cultural rights dimensions of such cases, and the particular needs and work of cultural rights defenders.

It was very exciting to learn more about what is happening around the world as I was preparing the report. Artistic events are being organized in so many different regions to highlight contributions of those facing discrimination or invisibility in cultural sectors and provide a forum for discussion of human rights. For example, in October 2019, Harare was the site of a three-day pan-African “Women, Wine and Words Festival”, the second such event organized by Theatre in the Park, one of the first independent theatre spaces in Zimbabwe. The festival brought together women artists from 51 African countries for performances, readings and debates about women’s rights. In the words of the organizers, the goal was to advocate for Africa with a strong cultural identity... whose development is people-driven.

Working for inclusion and participation of persons with disabilities in all aspects of cultural life is a global and vital part of cultural rights work. Cultural institutions such as theatres, museums and libraries are central repositories of cultural knowledge; it is essential for persons with disabilities to access these places to enjoy their cultural rights. Those working to promote the equal cultural rights of persons with disabilities sometimes work within such cultural institutions to promote both accessibility and representation of persons with disabilities. I note with admiration the emergence of a specialized field around arts, culture and disability, in particular in the last 20 years, and the work of related organizations. I hope these issues will receive further attention from the UN Committee on the Rights of Persons with Disabilities, and from both cultural rights organizations and those working on the rights of persons with disabilities. Such constituencies also seek acknowledgement of the creative potential of disability through an understanding of disability arts and artistry.

Efforts of cultural rights defenders can have a significant effect and we need to spend time celebrating and analyzing the victories. For one recent example, when President Trump suggested in January 2020 that the United States might target sites of cultural importance in the Islamic Republic of Iran, rapid response by individuals and organizations concerned with heritage protection in both of those countries and around the world elicited clarification that

relevant international norms would instead be respected. Another important example is the success of the global campaign to free Ukrainian filmmaker Oleg Sentsov after 5 years of brutal imprisonment. When we work together, we can win!

B. The International Legal Framework Enabling the Work of Cultural Rights Defenders

This brings me to the topic of the international legal framework guaranteeing the rights of cultural rights defenders, including those who work in the field of artistic freedom. The work of all these cultural rights defenders ensures the implementation of international law norms guaranteeing artistic freedom that states themselves have adopted, that I mentioned at the outset. Quite simply, those rights cannot be secured without the work of cultural rights defenders. The work of those defenders is likewise guaranteed by many international standards, and reiterated in the UN Declaration on Human Rights Defenders which clearly applies to cultural rights defenders. The Sustainable Development Goals are also key to the work of cultural rights defenders and vice versa. Progress on human rights obligations such as those guaranteeing artistic freedom, and on the Goals are two sides of the same coin. Moreover, the safeguarding and promotion of culture contributes directly to many of the Goals.

The report highlights the wide range of vital standards guaranteeing the rights and recognizing the work of human rights defenders, including cultural rights defenders. These should be fully implemented without delay. However, the report notes that many of the standards on human rights defenders, including relevant resolutions, omit mention of aspects of human rights work specific to culture, cultural rights or cultural rights defenders. Moreover, many of the substantive standards on protecting culture and cultural rights omit specific mention of those who defend such rights. While the general standards regarding human rights defenders can and should be interpreted to cover these issues, elaboration of more explicit standards related to the work of cultural rights defenders, in the form, inter alia, of a resolution or guiding principles, would be a positive step. Moreover, mainstreaming of culture, cultural rights and the work of cultural rights defenders across all work on human rights defenders is urgently needed. Farida Shaheed's appeal from her 2013 report remains relevant. She argued then that: "The issue of violations of artistic freedom should be addressed more comprehensively by intergovernmental organizations. Media attention to cases of a few prominent artists tends to eclipse the reality lived by many people engaged in artistic activities around the world."

C. Risks and Challenges

Next, I will address some of the risks and challenges faced by cultural rights defenders, including those who defend artistic freedom. Many of you are perhaps all too familiar with some of these challenges. I am somewhat humble telling artists what their own challenges are so I look

forward to hearing more about this from you. However, this is what I have heard from many CRDs in many places.

The former Special Rapporteur on human rights defenders noted that defenders working in the field of economic, social and cultural rights often had a harder time having their work accepted as human rights work. As a result, they experience difficulties attracting funding, a lack of coverage from the media to violations of their rights, and a lack of attention paid to the violations and a hesitation in seeking remedial measures at the domestic or international level. There is a misconception that defenders working in the field of cultural rights are not “real” human rights defenders, that defending artistic freedom is less important a task. Hence, cultural rights defenders and their work often receive even less attention than those working on economic and social rights, even from international bodies, including the United Nations, and civil society. This lack of visibility creates many challenges and magnifies risks. Cultural rights defenders, including artists and museum workers, who have faced violations have stressed to me that they feel safer when their cases and work receive international attention.

The work of cultural rights defenders often touches upon issues deemed sensitive, which makes them especially vulnerable to persecution. Writers and artists may be targeted precisely because they represent the liberating gift of the human imagination and give voice to thoughts, ideas, debate and critique, disseminated to a wide audience. 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. This may create strong and emotional reactions from authorities and other actors. It can lead to threats and violence against cultural rights defenders, and may lead to their exclusion, and to their being dubbed as outside of or an enemy of their culture, religion, or national or ethnic group, as being “other,” “alien” or “foreign.” Such portrayal may be emotionally devastating both for the defender and their family and colleagues, and also facilitates other abuses.

There is a range of other particular challenges faced by cultural rights defenders. Here are a few of them:

- The impulse to censor thrives. For example, the organizers of the 2019 “Women, Wine and Words Festival” in Zimbabwe which I mentioned were required to submit scripts and films for official scrutiny prior to the festival.
- The spaces for enjoying cultural rights and for cultural expressions are being increasingly limited. Public spaces, which are essential for cultural rights and artistic freedom, are being privatized and are not fully accessible (see my report to the General Assembly last year on public spaces). The increasing homogenization and commodification of culture and cultural spaces generally represents an additional set of obstacles.
- Lack of adequate funding for culture, and its misperception as a luxury item, increase the difficulty of the work of cultural rights defenders and also affect their own economic rights.

- Gender discrimination persists across cultural sectors and in cultural institutions. This remains a major challenge for women cultural rights defenders, who face particular risks and challenges. Unfortunately, the Guerrilla Girls iconic satirical poster from the 80s entitled “The Advantages of Being a Woman Artist” which lists as advantage number 1: “Working without the pressure of success” all too often remains true in parts of the arts world. **Sexual harassment** in the field of arts and culture has sometimes been widespread and must be effectively combatted. One can hope that the verdict in the Harvey Weinstein trial and the Me Too movement and other language versions of it which was spurred by abuses in artistic fields are developments that can create new possibilities for re-imagining more inclusive arts.
- Cultural rights defenders may be prohibited from continuing their cultural work as retribution for their defence of cultural rights, or their work may be attacked or destroyed. Prohibitions on exhibiting one’s work or performing, and denial of access to cultural spaces for doing so, are sometimes used as retaliation.

I was sorry to learn that some of those who systematically raise such issues as discrimination against persons with disabilities inside cultural institutions – even in countries with legal commitments to disability rights– find they are putting their jobs at risk by doing so. This is unacceptable. Addressing accessibility of arts and culture, and discrimination in the culture sector, is a core component of cultural work. Cultural institutions that are not considering these issues are not fulfilling their mandates.

The national legal framework regulating the enjoyment of economic, social and cultural rights generally is often weak. In particular, there is regularly a lack of redress mechanisms available to cultural rights defenders and to ensure the effective protection and justiciability of cultural rights.

Cultural rights defenders in certain circumstances face similar human rights violations as other human rights defenders. These may include loss of employment; threats; acts of violence; torture or ill-treatment; and extrajudicial killings, by State and/or non-State actors. When cultural rights defenders are forced to flee, they may face further abuses in exile, both from actors in their countries of origin and in receiving countries. Impunity for all such abuses is rampant in many contexts.

All this has a significant impact on them and on those close to them and indeed on their entire societies. I think of those cultural rights defenders whose struggles had the deepest impact on me personally, who worked to keep some cultural life going in my father’s home country Algeria in the “dark decade” of the 1990s when artists, playwrights, and musicians were being systematically targeted, threatened, and assassinated by the Daesh of those time. When the music producer Aziz Smati, whose shows brought us local youth music on television every week and the first Rai videos to be shown inside Algeria, when he was shot in an assassination attempt by the Armed Islamic Group in 1994 on Valentine’s Day, the entire country held its breath waiting to see if he would survive. This was both because of the importance of Aziz himself but because

his survival represented cultural survival and was a metaphor for the fate of the society itself. I was in Algeria at the time and wept as I watched the evening news as did everyone. So beloved was Bled Musique, Aziz's first show, that even a young doctor at the Beni Messous Hospital, where he was taken, wept outside the operating room. I cut Aziz's photo out of the papers the next morning, still fearing that the producer would die. But, like Algeria itself, Aziz would not let the fundamentalists kill him. After a twelve-hour operation, he came back. As the newspaper *Le Matin* said on its front page in one of my old clippings, "Although the perpetrators of this attack and the supporters of fundamentalist terrorism might not like it, Aziz remains with us. To produce other shows, to strive for another culture. His survival rallied us all. But Aziz would never walk again. He was forced into exile in France and today continues to produce culture from his wheelchair.

Around the world today, many cultural rights defenders are arbitrarily detained. For example, I was dismayed by the cruel re-arrest of cultural rights defender Osman Kavala in Turkey on 18 February, within hours of his acquittal and had the opportunity to speak with a Turkish musician a few days ago about how this event reverberated across the artistic and cultural fields in her home country. All such cases are of grave concern and I call for the immediate release of anyone detained for their work as a cultural rights defender, or as an artist.

We owe cultural rights defenders and in particular those who defend freedom of artistic expression, such as so many of you in this room, a significant debt of gratitude for the work they do, you do, to defend human rights and ensure beauty, expression, celebration, thought, meaning and memory in our world; for the way they and you challenge us to think and re-think by striving for cultural rights. One night in October 2019, as a curfew blanketed the city of Santiago, opera singer Ayleen Jovita Romero peacefully protested by singing from her window to her neighbours. She sang "The right to live in peace" a song made famous by singer Victor Jara before he was murdered following the 1973 military coup. Her act inspired other musical protests and curfew concerts. Cultural rights defenders promote access to culture and creative responses in the face of human rights violations and strife, and can bring hope to others in our challenging times.

We should remember all those who have fallen in defence of cultural rights and artistic freedom. I think of the late great Sabeen Mahmud (slide – Sabeen), creator of T2F cultural space in Karachi who did such much work to foster an environment for creativity and expression and was gunned down by a young jihadist leaving her café in 2015. And so many others. However, let us not wait until we are mourning the deaths of those who defend artistic freedom before we determine how to support them. Let us honour those who have fallen by supporting and protecting those who continue their work.

This must be done by recognizing and popularizing the work of cultural rights defenders and those who defend artistic freedom. This must be done by acknowledging the inherent importance of arts and culture and cultural rights, and work to defend them in accordance with

international standards, and by recognizing their centrality for implementing other human rights, achieving sustainable development.

Such efforts must also include full implementation of standards on the protection of cultural rights and relevant international standards on human rights defenders, including the Declaration on Human Rights Defenders, which applies fully to cultural rights defenders, including those who defend artistic freedom, and the enforcement of national laws in compliance with those standards. In addition, those efforts require full recognition of the specific risks and challenges that defenders of artistic freedom face and their particular needs in context; full consultation of and participation by cultural rights defenders in the development of programmes to benefit them; the adoption of gender and disability perspectives; and the speedy actualization of the recommendations of all relevant United Nations mechanisms, including the Special Rapporteur in the field of cultural rights. (slide – Guterres statement) I made many relevant recommendations in the report but will just mention a few here: I called on states to:

- Ensure that all national legislation related to human rights defenders, including cultural rights defenders, is in accordance with international human rights standards, and abrogate or reform without delay any legislation not in compliance with international standards or that inhibits the work of cultural rights defenders, or puts them at risk;
- Adopt cultural rights-based cultural policies that include the work of cultural rights defenders, and protections for them, including strategies and mechanisms for responding to violations;
- Conduct national assessments, in conjunction with civil society, national human rights institutions, cultural rights defenders and experts, of the enjoyment of cultural rights, such as artistic freedom, and the ability of cultural rights defenders to do their work freely, identifying obstacles and recommending necessary remedies;
- Recognize and support the positive role of dissent through cultural and creative expressions, and ensure that cultural dissenters are protected and not depicted as alien to society or cultures;
- Develop heightened protection mechanisms for cultural rights defenders in conflict and post-conflict situations, and whenever they face increased risks, including through urgent action plans;

I called on States, international organizations and civil society to:

- Make sure that cultural rights defenders are included in all programmes and measures for human rights defenders;
- Fully integrate the particular needs and challenges of cultural rights defenders into holistic efforts to create safe and enabling environments for human rights defenders;
- Raise the profile of cultural rights defenders and give this concept and the work of these defenders greater visibility;

- Make sure that cultural rights dimensions of human rights violations and of the work of relevant human rights defenders is highlighted and that data regarding cultural rights defenders are disaggregated to assess specific challenges;
- Provide information to cultural rights defenders, including artists and cultural practitioners, about their rights and the availability of protection measures;

Perhaps especially relevant for your further conversations, I also make suggestions to Cultural rights defenders themselves, asking that they consider:

- Exploring further avenues for working together collaboratively and comprehensively across regions and sectors, bringing together, inter alia, those working on many aspects of the right to take part in cultural life, including artistic freedom;
- Consider ways to raise awareness of the concept of cultural rights defenders and;
- Give further consideration to creating an international coalition for cultural rights, including at the United Nations, to ensure the voices of cultural rights defenders are heard at the global level.

Cultural rights will not realize themselves. Artistic freedom will only be available if the international community supports those who exercise it and those who fight for it. The work of cultural rights defenders to protect and promote these rights is urgently needed in today's fraught world, as is our collective work to support them in doing so. Let me end with the hopeful words of Faiz Ahmed Faiz, national poet of Pakistan words I first heard sung at Sabeen Mahmud's T2F: Fair once wrote that "tyrants... cannot snuff out the moon, so today, nor tomorrow, no tyranny will succeed." Let us stand together with those artists and defenders of artistic freedom who refuse to accept the snuffing out of the moon, and let us work together to ensure this poet's words come true.

Thank you