

THE STATE OF ARTIST HUMAN RIGHTS DEFENDERS IN AFRICA



DEFENDDEFENDERS
East and Horn of Africa Human Rights Defenders Project



AFRICANDEFENDERS
Pan-African Human Rights Defenders Network

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ACRONYMS

CACWA	Central Authority for the Censorship of Works of Art
CSOs	Civil Society Organizations
DRC	Democratic Republic of Congo
EPRDF	Ethiopian Peoples' Revolutionary Democratic Front
FOE	Freedom Of Expression
HRDs	Human Rights Defenders
ICCPR	International Covenant on Civil and Political Rights
KII	International Covenant on Civil and Political Rights
NCC	Nigerian Copyright Commission
NFVCB	National Film and Video Censors Board
NGOs	Non Governmental Organizations
PWDs	Persons With Disabilities
RNE	National Register of Enterprises

ABOUT DEFENDDEFENDERS AND AFRICANDEFENDERS



Established in 2005, DefendDefenders (East and Horn of Africa Human Rights Defenders Project) seeks to strengthen the work of HRDs throughout the sub-region by reducing their vulnerability to the risk of persecution and enhancing their capacity to effectively defend human rights. DefendDefenders focuses its work on Burundi, Djibouti, Eritrea, Ethiopia, Kenya, Rwanda, Somalia (with Somaliland), South Sudan, Sudan, Tanzania, and Uganda.

DefendDefenders serves as the secretariat of the East and Horn of Africa Human Rights Defenders Network, which represents thousands of members consisting of individual HRDs, human rights organisations, and national coalitions that envision a sub-region in which the human rights of every individual as stipulated in the Universal Declaration of Human Rights are respected and upheld.



DefendDefenders also serves as the secretariat of AfricanDefenders (the Pan-African Human Rights Defenders Network). AfricanDefenders aims to coordinate activities in the areas of protection, capacity building, and advocacy across the African continent, supporting the five sub-regional networks: the North Africa Human Rights Defenders Network (hosted by the Cairo Institute for Human Rights Studies in Tunis, Tunisia), the West African Human Rights Defenders Network (Lomé, Togo), the Southern Africa Human Rights Defenders Network (hosted by the International Commission of Jurists in Johannesburg, South Africa), the Central Africa Human Rights Defenders Network (Douala, Cameroon), and the East and Horn of Africa Human Rights Defenders Network (EHAHRD-Net) (hosted by DefendDefenders in Kampala, Uganda).

AfricanDefenders leads the continental "Ubuntu Hub Cities" initiative, a holistic emergency protection and relocation programme for HRDs at risk across Africa, through its motto: "Safe but not Silent." Relocation ensures the physical and mental well-being of HRDs, while enabling them to continue their work.



METHODOLOGY

The report was primarily qualitative in nature and was enriched with literature review of materials on the status of artistic freedom of expression in Africa and region-specific documentation. The interviews were conducted in the languages of the focus countries, English, French, and Kiswahili. These were the languages best understood in the different mapped focus countries.

Ethical considerations

Several measures were taken to ensure ethics during the study. The design included protecting confidentiality and seeking informed consent from the respondents. Confidentiality was explained to all respondents during the Key Informant Interviews (KII). Where audio recordings were undertaken, permission was obtained from respondents beforehand to record them (informed consent, voluntary participation, anonymity, clarity of objective and how respondents were selected, sensitivity to respondents' situation and culture, gender sensitivity and do no harm principles).

The research team ensured all interviews are conducted professionally to guarantee confidentiality. All the KII guides used a consent statement that had to be read to the respondents and it bore a mark indicating that consent was obtained before the interview. Informed by the nature of the study and the target respondents in the different focus countries, and to minimize such risks and ensure ethical compliance, the following set of ethical considerations and measures were followed:

Informed consent

Voluntary participation and right to withdraw: participants in the research were informed about the purpose of the study, how they were selected to participate, that their participation was voluntary and that they were free to withdraw their participation at any time or decline the answer to any questions etc.

Confidentiality and anonymity

In relation to data and participants' identity in interviews were ensured by the research team. Commitment was also made to ensure that no identifying information would be released and such information can only be accessed by those directly involved in the research.

Data Triangulation

To ensure a higher level of objectivity and evidence-based approach, the study employed techniques for data triangulation and data quality assurance mechanisms during the actual data collection. Data triangulation consisting of source triangulation through examination of documents such as journals, study reports, partners reports, and contextual documents such as human rights group observations /reporting and online articles was utilized.



EXECUTIVE SUMMARY

Artists have a unique power of bringing people together, promoting change and raising awareness on social issues. Considering their ability to create visual interest and to promote solidarity and awareness, artists play a pivotal role in society by promoting human rights, especially in the modern age, where people rely heavily on technology and media. Furthermore, artists have contributed significantly towards achieving revolution and system changes across Africa. In South Africa for example, the Southern Africa National Gallery played a key role in the resistance art movement during the fight against apartheid. During the Arab Spring in North Africa, graffiti artists brought attention to the violent responses of authorities to the protests. During the 2011 revolution in Sudan, artists helped spur conversations about the revolution through murals and digital art. They were also instrumental in organizing protests by graffitiing the time, date, and location of protests on the streets.

Artistic freedom is an integral part of Freedom Of Expression (FOE) but is often left out in the prevailing narratives around violations of FOE. This leaves artist Human Rights Defenders (artists) vulnerable when they find themselves on the receiving end of state and non-state actors' reprisals for speaking out against impunity and societal injustices. In 2021, FreeMuse documented 128 acts of violations against artistic freedom in 20 African countries with the highest violations being in Egypt (38) followed by Nigeria (25), Senegal (10) including Ghana and Kenya that each registered 9 violations respectively. Moreover, marginalized groups of artists like women, minority artists, artists living with disability and indigenous artists face additional threats such as gender-based violence, online and offline threats, and cultural stigmatization.

It is against this backdrop that DefendDefenders and AfricanDefenders carried out research on the state of artistic freedom in Africa. This is in line with the African Union's 2021 theme of the year;



"Arts, Culture and Heritage: Levers for Building the Africa We Want, and Aspiration 5 of Agenda 2063 which envisions. An Africa with a strong cultural identity, common heritage, shared values and ethics."

The research aimed to create better insights into the situation of the artists HRDs¹ in Africa, especially to gain a deeper understanding of the needs of marginalized groups. The general objective was to analyze the state of artistic freedom and identify gaps in the promotion and protection of artistic freedom in Africa. The specific objectives included: identifying safe spaces where marginalized artist HRDs can safely express themselves; analyzing the implementation of laws that protect artists HRDs or lack thereof and researching on the situation of minority group artists HRDs on the continent. The minority artists HRDs included; women artists, Human Rights Defenders (HRDs) living with disabilities, indigenous artists, and minority artists. The research focused on 12 selected African countries namely; Tunisia, Egypt, Ethiopia, Sudan, Nigeria, Mali, Democratic Republic of Congo, Republic of Congo, Kenya, Tanzania, South Africa and Zimbabwe.

¹ A person who, 'individually and in association with others,' promotes and strives 'for the protection and realization of human rights and fundamental freedoms at the national and international levels' (UN 1999, p.3).



The rights of artists to express themselves freely are under threat worldwide, especially where artistic expressions contest or critique political ideologies, religious beliefs and cultural and social preferences. These threats range from censorship (by corporations, political, religious or other groups) to imprisonment, physical threats, and even killings.²
UNESCO (2019)

² Diversity of Cultural Expressions Entity Culture Sector-UNESCO (2019). Artistic freedom. en.unesco.org/creativity/. DANIDA



A woman with long, dark dreadlocks and a serious expression is shown from the chest up. She is wearing a dark jacket over a black top and a necklace with white, rectangular beads. Her right arm is raised, with her fist clenched. The background is a stylized map of North Africa, with countries colored in various shades of red, orange, and dark green. The map is semi-transparent, allowing the woman's image to be seen through it.

**STATE OF ARTIST HUMAN RIGHTS
DEFENDERS IN NORTH AFRICA:**

TUNISIA AND EGYPT

TUNISIA AND EGYPT

The repression of artistic freedom of expression by the Tunisian government threatens the democratic achievements that the nation strives for. The situation is characterized by widespread oppression that still clings to the decisions of governmental offices and the policies of the national police force . ³To better understand artistic freedom in Tunisia, one has to look at the Arab revolutions of 2011 that took the world by surprise. Immediately and after the uprising, the Arab world experienced a groundswell of change on the cultural level over the years, thanks to the circulation of cultural productions. Amongst the greatest beneficiaries were young musicians who enjoyed increased artistic freedom during and right after the Tunisian Revolution of 2011. For a couple of years following, they used it to build polyphonic public spaces with diverse claims, visions, and aspirations for civic engagement. On the artistic front, wholly unprecedented, daring initiatives emerged and are now in the very heart of Tunisians despite the highly restrictive system insofar as freedom of expression is concerned. From the findings organizations/institutions that have stepped in to cater for, and provide protection and other related support to artists include but are not limited to; [LaFabrique Art Studio](#), [FeMENA](#), <http://artveda.org/>, and [Amnesty International](#).

Egypt on the other hand is among the countries in the Maghreb which is facing rapid shrinking of freedom of artistic expression under Sisi's rule. An ongoing [security crackdown](#) on dissent, in place since 2013, has targeted artists and musicians along with opposition and political figures, journalists, and members of the [LGBTIQA+ community](#), stifling freedom of expression and putting a lid on provocative art and creativity.⁴ Egyptian artists have limited freedom of creative expression; any work that criticizes the government or that could be seen as offensive to certain religious groups is censored. Egypt remains the sixth-highest detainer of writers and public intellectuals globally, with 14 detained in 2021 as the regime of Abdel Fattah El-Sisi continues its brutal crackdown on free expression . ⁵The ongoing crackdown on freedom of thought and artistic expression in

Egypt also manifests in increased penalties under military and emergency courts, which operate to extend both detention and imprisonment.

Artistic FOE in Egypt has not been given keen attention. The government is trying to manipulate all kinds of artistic expressions and has put in place an agency that censors artistic work. This agency has become an authority on all matters of art and culture productions. One cannot present any theater performance or film without getting permission from this agency. The agency does not only concern itself with moral rights and sexual content but also political orientation. The censorship agency makes it very difficult to have any kind of specific expression unless one obeys the guidelines provided. Also, because this agency is somehow managed by the military in Egypt, which is an organ that has no appreciation and understanding of artistic expression, it's only focusing on the political aspect or how they manipulate the common understanding of the population. There are two kinds of support for artists in Egypt; government support and support by Non Governmental Organizations (NGOs). Support from the government comes with sticks rules on what is acceptable. You can't access this support if you're talking about things the government does not want the population to hear; this support is tied to censorship. The other support from NGOs is very risky since the artists who get this support are often blacklisted and targeted by the government for receiving support from external governments.

Gaps in the promotion and protection of artistic freedom in North Africa: Tunisia and Egypt

Artists have always found it challenging to find a safe space in the Arab state of Tunisia. This is especially for those whose message is perceived to be against a regime in power or obscene as per the Sharia laws. This has made it difficult to find public spaces where art can easily be expressed. It's not until the revolution that artists were able to come out in huge numbers to showcase their works to the public. The pioneer of the revolutions, broke the ground towards a new type of freedom

3 The Global Critical Media Literacy Project; Tunisia's Battle for Freedom Rages on

4 Shahira Amin, 'Artistic freedom of expression shrinks in 'new' Egypt' <https://www.al-monitor.com/originals/2020/01/january-25-anniversary-free-dom-of-expression.html#ixzz7gYrhZoJN>

5 PEN America, 'Freedom to Write Index 2021,' PEN America, April 13, 2022, <https://pen.org/report/freedom-to-write-index-2021/>

of expression visible in public spaces, in streets, and on city walls. Since the uprising, graffiti has become omnipresent, thanks to young artists and artists such as Hafedh Khediri (Sk-One) or Mouin Gharbi (Meen One). The people have left silence behind and the freedom they have won has become synonymous with street art. Graffiti has now earned its spurs on the Tunisian cultural and urban scene, together with cartoon or caricature, an expression of cyber-dissidence by young caricaturist bloggers.⁶ Marginalized youth are adopting new means of self-expression and a subversive language to reshape their identities and connect with each other in order to voice their dissent towards political, cultural, and religious authorities. Tunisian CSOs have always been concerned about the limits imposed by the authorities and continues to draw the attention of public opinion to the impact of these restrictions on Tunisia's democratic transition.⁷ In its concluding observations on Tunisia, the UN committee felt that the country should: refrain from intimidating, harassing, arresting, detaining, and prosecuting for vaguely defined offenses journalists and human rights defenders exercising their right to freedom of expression. Although subject to restrictions, the guarantee of human rights and freedoms in Tunisia remains an exception in the African region; this is sometimes seen as the only success story post the Arab Spring uprisings that triggered a democratic transition.

One of the biggest gaps in the protection and promotion of artistic freedom in Tunisia is the absence of a specific legal framework to protect artists and their counterparts who are at risk due to the contents that they produce or by the mere fact that they are a minority group. This in itself is a huge blow to creative advancement since there is no path and structure to follow when advancing the rights of artists, guaranteeing their safety and their content. Another huge hindrance is the lack of or inadequate implementation and monitoring mechanisms of international conventions for artistic freedom and artists' protections. This gap is directly linked to the initial one where there is no legislation that domesticates and appraises global and regional conventions and protocols. This results in unclear enforcement that depends on the goodwill of the regime in power. The continuous state of emergency characterised by arbitrary

arrests, intimidation, torture, extrajudicial killings and religious taboos are barriers to the promotion and protection of artistic work in Tunisia. And because religion is intertwined with culture, in some cases, there are those who believe that any content or artwork is deemed to be offensive to religion and sharia laws. Other barriers preventing artists from exercising agency in the promotion and defense of their human rights include; lack of protection mechanisms and access to information, mobility restrictions for artists, and visa regulations for artists from the global south especially when they seek safe refuge.

Egyptian artists face challenges working with a military regime which feels that any content that seeks accountability is an attack to the regime. The stringent laws that were introduced by the ruling military regimes dictate that artists have to seek permission to share their content publicly. Artists ought to have a good working relationship with both the military and the police or they risk arbitrary arrest because of their creative expression. This environment makes it difficult for artists to earn a living since their content has been limited through continuous censorship and policing of artistic expression in the country. Another major gap in the promotion and protection of artistic freedom is the cultural orientation of the communities in Egypt. Majority of the population is muslim, this shapes the civil way of life thus anything that is seen to challenge this way of life is met with a lot of resistance. This affects mostly the religious minorities and the women artists. Communities in Egypt have had a challenge of accepting that art is a form of livelihood for the upcoming generation. Even with the diversified forms of art, parents have always considered art as leisure and they hope that their children will abandon it and seek other formal or blue collar jobs. This has limited the investment in the artistic scene and limited resources set aside by the regime to support artists. For the marginalized artists, accessing these resources is more challenging since they are considered enemies of the state. The failure to acknowledge that art plays an important role in the community has limited the growth or artistic expression in private life while in the streets of urban areas the same is met with terror from local authorities. The biggest gap is the creation of the legislation

⁶ 'Culture in the Mediterranean and the Arab Spring,' (2012).

⁷ Aboubakr, et al, 'Challenging Power in the Arab World Arts, Culture and Media under Duress'; Drawn from the proceedings of the 2021 Carthage Seminars convened by ResetDOC and Beit al-Hikma Pluralism in Arab and Muslim Societies June 30th – July 1st, 2021



and decrees that led to the establishment of the Central Authority for the Censorship of Works of Art (CACWA) in seven governorates. This body has over time infringed on the rights and freedom of expression and more so affecting the marginalized artists specifically women and minority activists. .

Safe spaces for marginalized artist human rights defenders in North Africa: Tunisia and Egypt

There is no safe space for marginalized artists in Tunisia and Egypt. Because of the existing laws, most of the minority artists in these two countries have to head into exile to be safe. When they are threatened, their best shot to get support is to seek asylum. There are however, a few actors who support by providing money for buying tickets for artists at risk who seek to exit the country. This kind of support is facilitated in some instances by other HRDs and by some Civil Society Organizations (CSOs). These CSOs have not had a smooth operating environment because the Tunisian government is hell bent on ensuring that they clamp down especially on those organizations that are supporting work around minority groups. In 2021, for instance, the Tunisian government attempted to dissolve a minority organization but the court granted legal protection to Shams. This has resulted in CSOs being forced to register with the National Register of Enterprises (RNE), a legal and fiscal framework that is used for private sector companies.

The women artists are faced with many challenges enshrined in the structure of a patriarchal society and the Sharia law. When it comes to the production of content, anything that goes against Sharia Law that governs socialization is slapped with social sanctions. This has instilled fear among the women artists whose voices have been largely muted. The spy network in Egypt is so advanced and as a result, finding shelters for artists remains risky endeavor.

The situation of minority human rights defenders in North Africa: Tunisia and Egypt

In Tunisia, homosexuality is criminalized⁸ and is punishable by three years in prison, and the LGBTQIA+ community is under threat of both legal action and homophobic violence.⁹ The country saw a rise in public minority rights activism in the years following its 2011 revolution that kicked off the Arab Spring uprisings¹⁰. Cases of the crackdown on minority artist increased during the COVID-19 pandemic with arbitrary arrests, physical assault, threats of rape and murder, and denied access to legal counsel including mobility and visa regulations. Majority of the population that is made up of mostly muslims have nothing to say about minority artists. In recent years since the revolution, minority artists have made gains and are able to share their content in theaters. However, it remains risky since the threat to this community comes from both government agencies and religious extremists. Tunisian minority groups vary depending on the location and the context of the regime in power and the policies they have determined to implement. The subject of inclusivity has not been looked at since the Tunisian people and regime are mostly Muslim and they tend to view themselves as a homogeneous community. Broadly in relation to freedom of expression, women, and minority groups (including religious minorities) are considered the most vulnerable amongst artists. The religious minorities are mostly christians artists who live in a country that is predominantly muslim whose symbols or worship and other practices are deemed unacceptable. Their artistic work in the practice of their freedom of worship is seen as an insult to the muslim doctrines thus considered "Haram" making them predisposed to the religious extremist who in some instances target and injure them. Women artists are considered a minority due to cultural beliefs and taboos within the Tunisian setting. Some of them have been targeted for content that was considered nudity and against cultural beliefs. The subject of gender and inclusion has not yet been well integrated or mainstreamed. It's only in leadership that some efforts have been made

8 Hakim Bishara, Hyperallergic "LGBTQ Artist and Activist Targeted by Tunisian Police", <https://hyperallergic.com/632106/lgbtq-artist-and-activist-targeted-by-tunisian-police/> March 28, 2021

9 Cooney, Emma, "Art in Tunisian LGBTQIA++ NGOs" (2018). Independent Study Project (ISP) Collection. 2843. https://digitalcollections.sit.edu/isp_collection/2843

10 All Africa News "Tunisia's first LGBTQ play lifts curtain on hidden violence", <https://www.africanews.com/2022/05/25/tunisia-s-first-lgbtq-play-lifts-curtain-on-hidden-violence/>



but in the artistic field, there is still much to do.

Indigenous peoples, people with disabilities, older people, children, and young people, women, and minorities are the worst affected by the restrictive legislative environment that limits the freedom of artistic expression in Egypt. Any conversation on matters minorities have always been sensitive in nature as they considered red flags. This topic is so sensitive that even artists are shying away from focusing on it. The Egyptian government arbitrarily arrests and detains people based on their sexual orientation or gender identity, and subjects them to torture and ill-treatment in detention, including forced anal examinations. In March 2020, during its third Universal Periodic Review at the UN Human Rights Council, Egypt rejected recommendations by several states to end arrests and discrimination based on sexual orientation and gender identity. Egypt responded that it; "does not recognize the terms mentioned in this recommendation" denying the existence of minority groups. There are minority groups in Egypt, much as the government has always tried to push the narrative that there are no minorities and that Egyptians are a homogeneous community. This narrative has even been pushed into the public platforms and has been presented in the cinemas, TVs and other platforms. The minority artists in Egypt face a lot of violence especially the Christians in Egypt. The government has always justified these attacks suggesting that these are third parties and terrorists who are trying to divide the Egyptian common identity.

Artist human rights defenders and the law in North Africa: Tunisia and Egypt

The struggle between artistic freedom and government censorship has seen books seized from bookstores for alleged religious blasphemy and artwork removed from an exhibition for being "too politically engaging." Ending government-enforced censorship was an integral aspect of the revolutionary movement in Tunisia, but instead of the practice coming to a halt, Tunisian artists

are discovering that censorship is simply taking on new forms.¹¹ Censorship laws have used religion as a tool to oppress the expression of artistic work in Tunisia. Artists in Tunisia have fears about the rise of ultra-conservative forces that seek to ban artworks that they deem insulting to the values of Islam. On 26 June 2011, ultra-conservative protesters attacked a movie theater that was airing *Neither God nor Master*, a film by Tunisian director Nadia el-Fani. The film's name was later on changed to *Secularism by God's Willing*.¹² The post-revolutionary music scene has expanded considerably, especially through social media. However, after several terrorist attacks in 2015 and predicating with the state of emergency law, the authorities have become more intolerant towards artistic expression, and the future of cultural space in Tunisia is highly unclear.¹³ Much as Tunisia's constitution guarantees FOE, there are no specific laws addressing artistic freedom. The bill¹⁴ concerning artistic status is yet to be adopted. There are also laws that still contradict the constitutional texts. Tunisian authorities are using the penal code as well as other laws to punish speech, including criticism of public officials.

Egyptian authorities on their part justify censoring art that addresses politics, religion, and sex in the name of protecting public order, morals, and state interests.¹⁵ Since the January 25, 2011, revolution, little has changed in the legal framework used by Egyptian authorities to censor artistic works.¹⁶ That statute authorizes the Ministry of Culture to oversee the censorship of all visual and audiovisual materials. The act of censorship is taken so seriously that they have established an office called the Office of Censorship of Artistic Works.¹⁷ This office oversees the censorship of film, music, television, and theater, while a parallel structure has been established for censoring books and other written material. Politics, religion, and sexuality are the three main content areas subject to official censorship. The standards for censorship are ambiguous enough to afford broad discretion to government censors.¹⁸ For decades, freedom of creativity, freedom of religion, the

11 Mark Bousquet, *Artistic Censorship Continues to Plague Post-Revolutionary Tunisia*; June 19, 2012 Comic Book Legal Defense Fund (cbldef.org)

12 Afef Abrougui, *Street Artists Under Fire In Tunisia*; Street artists under fire in Tunisia - Index on Censorship Index on Censorship

13 Laine, Sofia, et al. 'Respectful Resistance: Young Musicians and the Unfinished Revolution in Tunisia.' *What Politics?: Youth and Political Engagement in Africa*, edited by Leena Suurpää et al., vol. 6, Brill, 2018, pp. 58–74. JSTOR, <http://www.jstor.org/stable/10.1163/j.ctvbqs5zx>. 10. Accessed 3 Oct. 2022.

14 Draft Law 107/2017 on the status of artists. & Draft Bill 104/2017 on the recognition of the status of the artist and cultural professions.

15 Artistic expression still restricted despite revolutionary hopes: AFT, <https://dailynewsegypt.com/2014/06/08/artistic-expression-still-restricted-despite-revolutionary-hopes-afte/> Sunday October 2, 2022

16 ...Ibid

17 Schwart, Lowell H., et al. 'Impact of the Arab Uprisings on Artistic Freedom: Egypt as a Case Study.' *Artists and the Arab Uprisings*, RAND Corporation, 2013, pp. 15–32. JSTOR, <http://www.jstor.org/stable/10.7249/j.ctt3fgzkf>. 8. Accessed 3 Oct. 2022.

18 ...Ibid



rights of religious minorities, and academic freedom have been jeopardized by the arbitrary use of blasphemy and heresy laws in many Muslim states.¹⁹ Egypt's authorities have adopted a series of legal instruments including the Anti-Terrorism Law No. 94 of 2015 and the 2018 Anti-Cyber and Information Technology Crimes law that have created a heavily restrictive framework for the exercise of freedom of expression, association, and assembly. Since the adoption of the Anti-Terrorism Law No. 94 of 2015, Egyptian authorities have detained, prosecuted, and imprisoned dozens of artists under the pretext of countering terrorism.²⁰

to showcase and grow their talents in.

Recommendations

- Promote the adoption of progressive legislation aimed at facilitating freedom of artistic expression especially for the marginalized groups i.e. women, PWDs, and minority groups. There is a need for a specific policy or legislation that guarantees the support and promotion of artists
- Undertake additional research on the state of artistic freedom with a specific focus on the legal, policy and legislative frameworks to inform advocacy efforts at a local national and regional level.
- Repeal policies, laws, regulations and administrative practices that are incompatible with the enjoyment of freedom of artistic expression and reaffirm country specific commitment to domesticate, uphold and fulfill international obligations.
- Enhance the capacities of artists specifically upcoming and marginalized artists. Funds ought to be set aside capacity development initiatives for artists.
- Advocate against use of violence, online harassment, intimidation, and trolling of minority groups and artists by government and other entities; also, against the negative use of technologies to undermine the freedom of artistic expression.
- Foster the formation of inclusive coalitions for artists to push for reforms and facilitate advocacy for freedom of artistic expression
- Investment in artistic infrastructure like art museums and galleries that are both youth and culture friendly for artists

¹⁹ El Fegiery, Moataz, et al. "Taking Beliefs to Court: Blasphemy, Heresy, and Freedom of Expression under Islamic Law." Islam and Human Rights: Key Issues for Our Times, edited by Geneive Abdo, Atlantic Council, 2017, pp. 8–12. JSTOR, <http://www.jstor.org/stable/resrep03717.5>. Accessed 3 Oct. 2022.

²⁰ Freemuse, "The State of Artistic Freedom 2021," Freemuse, February 2021, <https://freemuse.org/media/ck5fvaze/the-state-of-artistic-freedom-2021.pdf>





**STATE OF ARTIST HUMAN RIGHTS
DEFENDERS IN EAST AND HORN OF
AFRICA:**

ETHIOPIA AND SUDAN

ETHIOPIA AND SUDAN

Like many governments in the region, the Ethiopian government remains wanting when it comes to expanding the democratic space and giving rights their due in the political life of the country, none equals the marginalization and obliteration of freedom of expression.²¹ Freedom of expression remains one of the most trampled and victimized rights on the political landscape of Ethiopia, with dim prospects of getting better anytime soon. For a country which has been challenged by internal wars among the different tribal factions against the government, Ethiopia remains a closed society of sorts, with organized civic groups and the media being restricted by the Charities and Societies and Anti-Terrorism Proclamation law. The government in Addis Ababa is not only at war with its own people on freedom of expression but also with international human rights organizations such as Human Rights Watch, Amnesty International and other organizations concerned with the continuous violations of human rights.²² External funding for media and human rights advocacy or monitoring work remains restricted. Despite this, the Ethiopian government has expressed its intention to reform many of these laws and open space for political dialogue. Much will also depend on whether the ruling EPRDF Executive Council, the real power behind the "throne", sees value in the agenda of reform, thereby allowing the prime minister the space to carry out his reform agenda.

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One of the challenges to artistic freedom in Ethiopia is censorship by the current regime. The government has control over all channels of mass communication thus limiting content that questions the powers that be. Issues around the ruling regime and the current war are not spoken about. Ethiopians have witnessed the shutting down of the internet and the jailing of activists. Most activists in Ethiopia shy away from talking about tribalism since it's one of the thorny issues that is causing the war in Ethiopia. The Human right situation in Ethiopia is characterized by

arbitrary arrest of human right defenders, torture and in some cases death of activists who are asking the hard questions. A case in point is the murder of [Haacaaluu Hundeessaa, singer and activist](#).

In Sudan, Freedom of expression including artistic expression has been severely curtailed since Omar Hassan al-Bashir seized power through a military coup. There exists a huge generation gap between younger people who are restless and eager to express themselves, and an older generation that has lived through decades of war and wants nothing more than to live a normal life. In the face of censorship and lack of financial and logistical resources, many younger artists have turned to social media and Facebook to work and publish online. Some younger artists are expressing themselves through the "huge" and growing street art movement in Khartoum.²⁴ The government for the most part had neglected the country's art scene, except for during democratic bright spots that never managed to last long before yet another military coup would force artist to disperse.²⁵ During the revolution, artists became an integral part of the months-long sit-in at the military headquarters in Khartoum, which was known as the heart of the revolution until it was violently dispersed by paramilitary forces on June 3, 2019. This immense expression of creativity was both a result of loosening restrictions on freedom of expression and, at the same time, a catalyst for further change.²⁶ With the exit of dictatorship there is still the challenge of the civil-military partnership government which stifles freedom of expression and creativity. The creative gains made during the revolution are hanging in the balance since the military targets the activists and their content. For example on October 20, 2022, the installation art exhibit Mido 55 (journey of revolution and 55 days of detention) was raided at the Khartoum [Civic Lab](#) the attack was done by masked sudanese security agents. Activists in Sudan, especially those who engage in street art, are targeted by the government and many of them have been forced to flee the country.

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22 Arid Lands Institute; Statement delivered at the 53rd ordinary session of the African Commission on Human and Peoples Rights in Banjul, Gambia. *Violation of Freedom of Expression in Ethiopia* | Pambazuka News

23 Rashweat Mukundu, Ethiopia in transition: Hope amid challenges Published in 2018 by International Media Support, <https://www.mediasupport.org/wp-content/uploads/2018/11/Ethiopia.final...spread-1.pdf>

24 Sudanese Artists Struggle to Reclaim Their Culture, <https://dpp.ceu.edu/article/2016-06-21/sudanese-artists-struggle-reclaim-their-culture>

25 Kalid Albaih, It is time to support Sudan's artist in the fight for democracy. <https://www.theartnewspaper.com/2020/02/24/it-is-time-to-support-sudans-artists-in-their-fight-for-democracy>

26 Elizabeth Murray, How Art Helped Propel Sudan's Revolution November 12 2022 <https://www.usip.org/blog/2020/11/how-art-helped-propel-sudans-revolution>





*"Government believes that when artists engage the people, they are plotting against the government."
Sudanese Artist*

Gaps in the promotion and protection of artistic freedom in the Horn of Africa: Ethiopia and Sudan

Artivists in Ethiopia have for a long time faced censorship from the state, the religious and cultural communities. Despite the guarantee by the constitution, one of the challenges is the opinions when applying the law to protect artists especially when the law is used as an excuse for national security. The country has also been in conflict for a long period of time thus hindering efforts to support the proposition and protection of artistic freedom. Any act by a section of the population to express against the conflict is met with resistance by the ruling elite. Artistic freedom is the control by the government that has oversight over platforms and infrastructure that guarantees freedom of expression in the country including radio, TV, social media platforms and the print media. The government seems to censor the field of information flow, thus limiting spaces where artists can freely share their content with the larger population.

Some of the gaps in the promotion and protection of artistic freedom in Sudan include; lack of funding, absence of an organization to run to, and lack of safe spaces and unity amongst artists. The state on its part does not recognise artists as HRDs. The card system for example that is used by the state authorities to identify artists is only given to a particular ethnic group which leaves out other artists who are not associated with this specific ethnic group. The fact that only certified musicians are allowed to perform is a major challenge to activism in Sudan. The challenges faced by artists in Sudan range from government regulations (mostly outdated laws), a dysfunctional ministry, the islamic and ethnic influence and the role of the military that doesn't support artists to function freely. The presence of the Sharia Law that prohibits music means that some artists are being misunderstood. There is resistance from security agencies when it comes

to street art. Police have the power to stop artists; this takes away opportunities from artists.

Safespaces and marginalized artists human rights defenders in Horn of Africa: Ethiopia and Sudan

Following the aftermath of the revolution, people are able to express themselves through music and the different forms of art. Much as there is a better landscape for expression through media, especially social media, there are no existing safe spaces where marginalized artists in Ethiopia and Sudan can freely express themselves except through some human rights organizations. Artists in Ethiopia are not prioritized considering the fact that there are no known artistic collectives that offer support to artists when they are under threat. With no clear systems and structures for safe spaces, artists always remain at risk in Ethiopia. In Sudan, there are little hubs that provide these safe spaces within the community where artists go to and feel safe to speak up. Artists are branding themselves and making use of social media to push their content, they are also commercializing art following freedom that came with the change of government to military.

The situation of minority human rights defenders in Horn of Africa: Ethiopia and Sudan

Women, ethnic and gender minorities are considered the most vulnerable amongst artists in Ethiopia. Female artists face a number of challenges including; sexual harrasment, rape and displacement. Although the issue of women is prominent in the artwork of Arab women artists, the freedom that women artists enjoy is limited due to censorship, whether it is self-imposed or institutional.²⁷When it comes to minority groups, it's virtually impossible to register minority organizations in Sudan despite human rights organization attempts to legally challenge discriminatory national legislation. Such situations also affect their ability to engage with artists and support or promote their work within their organizational activities. For this reason, many artist are compelled to work with virtually no financial support.²⁸ Artists through drawings, music, poetry depict the struggles that women, children, PWDs, and other minority

²⁷ Women and Art: Creating Spaces for Identity and Freedom, March 2022. <https://carnegieendowment.org/sada/86473>

²⁸ Denial of freedom of artistic expression in Sudan's LGBTQ+ community. <https://www.dabangasudan.org/en/all-news/article/report-denial-of-freedom-of-artistic-expression-in-sudan-s-lgbti-community>



groups face in hope that they feel connected to each other and in turn provide advocacy for these violations. Sudan has many minority groups including gender minorities, women in conflict areas like Darfur, internally displaced persons (the displaced and victims of the war are mainly women), non-Arab speaking people, and PWDs. Some of the challenges that these minority groups face are exclusive laws, and women not being given opportunities to push their content. Organizations like [Frontline Defenders](#), [Amnesty International](#), [SIHA](#) provide support to minority groups through counseling relocation and financial support. Sada Alnaghan specifically provides support to the visually impaired musicians.

Artist human rights defenders and the law Horn of Africa: Ethiopia and Sudan

One of the most pronounced acts by the Ethiopian government is aesthetic censorship of art, where artists are not free to choose their preferred style of expression and content. It's true that Ethiopia is grappling with hate speech and misinformation. The Ethiopian government proposed a draft piece of criminal legislation aimed at tackling the ever-increasing problem of hate speech and disinformation in the country. There is no doubt that hateful speech and disinformation have contributed significantly to the unfolding polarized political climate, ethnic violence and displacement in Ethiopia. The proposed law does not provide any substantive and procedural safeguards, and the biggest concern is that the law, once enacted, could be used to censor dissent and limit freedom of expression.²⁹ From censorship to competition from the growing cinema business, theater's voyage has been full of hurdles. Now, the art form is dealing with the pandemic and national security challenges.³⁰ Artistic expressions during the Derg era were famously weaponized and censored. Artists were forced to change subject matters or contexts, distorted to transmit specific state-sponsored messages. In the early era of the Ethiopian Peoples' Revolutionary Democratic Front (EPRDF) art was focused on music, theater, and literature, relegating visual arts to the backbench.³¹ Artists are exercising self-censorship due to the reforms brought about by the

²⁹ Filtering and Censorship, LSE Media Policy Project Truth, Trust and Technology Commission, 'The Problem with the Ethiopia's proposed hate speech and misinformation law'. [https://blogs.lse.ac.uk/medialse/2019/06/04/the-problems-with-ethiopia-proposed-hate-speech-and-misinformation-](https://blogs.lse.ac.uk/medialse/2019/06/04/the-problems-with-ethiopia-proposed-hate-speech-and-misinformation-law/)

law/

³⁰ Trualem Asmare, No-Showtime Theater Strains From Inception to Date. <https://ethiopianbusinessreview.net/no-showtime-theater-strains-from-inception-to-date/>

³¹ Hiwot Abebe, Art in times political transitions. <https://thereportermagazines.com/416/>

EPRDF regime under Prime Minister Abiy Ahmed.

Artists in Sudan are not prioritized nor is the arts industry rightly regulated. The instability of the government doesn't allow for laws to function as they are only written and not actualized. [Article 57](#) of Sudan's Constitution provides for freedom of expression however, its implementation remains wanting. The same can be said about the [copyright law](#) "copyright and neighboring Rights (protection) and Act 2013" that was passed in 2013 which seeks to protect artists' work. There are laws that allow for artists to work, but these laws are limited, as artists are not allowed to carry out their work freely. Artists are regulated in terms of when and where to perform. [The Ministry of Information, Culture and Tourism](#) is dysfunctional as it allows for violations for example shows not allowed beyond 10pm and artists are often victimized for speaking out against human rights violations. [The Culture and media affairs ministry](#) existed but it prevented artists from talking about issues of the civic government.

Recommendations

- Partner with academia and independent experts to promote research on the status of freedom of artistic expression with specific focus on minority artists.
- Review existing laws that relate to promotion and protection of artistic freedom and undertake advocacy against laws that limit expression like the censorship law. There's a need to interpret the law and facilitate access to reference resources for artists.
- Support solidarity amongst artists to be able to have a united voice. There is a need to facilitate intra and inter country convenings for artists to develop local, national and regional solidarity initiative/ actions (both offline and online) initiatives.
- Creation of linkages between artists and organizations in the human rights and governance sector. Such organizations have already established platforms that can be utilized by artists to promote specific causes.
- Organize training sessions for artists on how to better protect themselves and their creative products materials. This



presents an opportunity to highlight the consequences of activism and to broaden the understanding of the international arts sector.

- Establish a regional and continental coordination platform for activists to share information and knowledge in the human rights sector and to bridge the information gap when it comes to rights.
- Incorporate human rights due diligence framework and practices, including performing human rights impact assessments and providing mechanisms to prevent and mitigate abuse of rights through rights-respecting oversight and remedy processes.





**STATE OF ARTIST HUMAN RIGHTS
DEFENDERS IN WEST AFRICA:**

NIGERIA AND MALI

NIGERIA AND MALI

The Nigerian government has over time become intolerant on matters regarding freedom of expression as evidenced by the introduction of censorship bodies to cover up for the government's failure to protect and promote human rights. The government has authority to determine what is right and this has escalated harassment of artists because of the policies that have been put in place that restrict freedom of expression. Internet shutdowns and social media crackdowns have become commonplace in Nigeria for example twitter was banned in Nigeria and some artists were told to delete their online content. Artistic content is restricted on religious, ethnic, political, and sexual minority lines. Artists face threats for example DJ Switch during EndSARs protests. When asked if she has faced threats as an artist she replied;



"Yes I have....for my parody of Madonna's 'Don't Cry For Me Argentina', but mine was 'Don't Cry For Me Nigeria'. In my parody I mocked the government and the Nigerian 'diaper' suicide bomber and I was pulled in by the sponsors of the Star Quest Music show we had won, Star Lager Beer. I was warned because they had been warned by the government. I refused to apologize for it because it was true and thankfully I had the support of strangers who were lawyers ready to represent me. Since that time, building my career was a solo and slow process which I do not regret."

DJ Switch's organization's efforts to formally register have been futile simply because DJ Switch's name is in the documents used for registration; the process has been on hold since the start of 2022 and they are looking for other means to have this organization registered. The government has been after her for live-streaming soldiers shooting at unarmed peaceful protesters. The ministry of information had in a press conference said she was an agent for divisive forces amongst other things. Her bank accounts have been frozen. She however, continues to call for accountability and justice.

Mali is a perfect example of a country where artistic freedom has been grossly violated. With religious inspired conflict in most of the country, art has been the most affected. Mali was a democratic country until militant rebellion in the North inspired by extremist religious fervor and a coup in the south brought all life to a standstill. Violations against artistic freedom continue up to today. Censorship, and threats are the main kinds of limitations faced by artists in Mali. ISIS—and at a smaller scale other terrorist organizations—have been implementing iconoclastic cultural policies in the name of Islam. Hence, a number of cultural and historical sites have been under attack in Mali, while music has been banned in the north of the country since 2012, sending "to exile" a renowned festival, the Festival in the Desert. In September 2014, Islamists uploaded several videos on YouTube with persons attacking artifacts and other cultural treasures in Timbuktu.³²

Nadia Nkwaya et al. (2013) argue, while there is no law restricting freedom of creative expression, or a religious code limiting those freedoms, there is a strong religious based argument against freedom of creative expression that exists in this country. When militants in Northern Mali announced in 2012 that they were effectively banning all music in the country, religious fanaticism that saw music as a distraction from single-minded devotion was seen as the main motivation underpinning the ban. A case was made against the famous group of young Malian rappers "Tata Pound". They were accused of blasphemy. The group was censored and forced to rewrite their lyrics.



"That's what the Islamists don't understand. Without music, how can you rally people, communicate with them, send out messages, nurture social consciences or raise awareness in Africa. It's hard to get a message heard in Mali without music."³³
Ahmed Ag Kaedi, Malian guitarist

The socio-political crisis of 2012 created many loopholes for gross violations of human rights. Out-of-control areas are not conducive to artistic

³² Nadia Nkwaya et al. (2013). MONITORING FREEDOM OF CREATIVE EXPRESSION: ARTERIAL NETWORK REPORT 2013, ARTWATCH AFRICA, MIMETA

³³ Andy Morgan (2013). Music, Culture and Conflict in Mali. www.freemuse.org. Last visited on 24/09/2022 at 2:20pm



expression on topics of religion and violence against women." An area under state control, plagued by an exceptional regime and poor governance, is not a favorable environment for committed artistic expression, but despite this, committed opinions are slipped into artistic productions but quickly extinguished by the political maneuvers that set up a counter-power of henchmen and lieutenants on social networks to break the dynamic of artistic expression constituting a knot for the regime in place.

The current trend for artists in Mali borders on self-censorship and conscience buying. The oppression machine has given birth to reserved artists. Rapper Iba Montana has repeatedly been barred from scheduled concerts. The Ivorian rapper saw his show canceled in Mali for issues of propagandist manipulation in the Ivorian-Malian political-military crisis. The diplomatic crisis between France and Mali forced the artist to self-censor during his concert on February 18, 2022 at the French Institute. Lately, the political crisis with Côte d'Ivoire, an Ivorian artist was banned for fear of being exposed to the fallout from the crisis between the Ivorian state and the power in place. Visual artist Mechak Kadima's online content was equally banned.

Gaps in the promotion and protection of artistic freedom in West Africa: Nigeria and Mali

Regressive art regulations, policies and activities, and official censorship boards are some of the key challenges in the promotion and protection of artistic freedom in Nigeria. The National Film and Video Censors Board ([NFVCB](#)) for instance is inconsistent with international human rights standards and is characterized by repressive legislation. There are negative repercussions for activism in Nigeria. This manifests through retaliation from government or beneficiary governments either in losing endorsements or bookings and restrictions on certain songs with "strong messaging".

Organizations working on artistic freedom lack sufficient resources which is a big gap in the protection and promotion of human rights. Artists not recognized as HRDs there is a further reluctance in recognizing women artists. There is an information gap where both artists and

government are not aware of what exactly is happening or what they are fighting for neither are the artists aware of the legal frameworks available to guide and protect them. The other gap in the promotion and protection of artistic freedom in West Africa is the financial gap where artists find it difficult to push their work or are not paid for it. Artists are not recognized by the government, a situation that is worsened by the lack of solidarity amongst artists and the absence of functional cultural policy that limits advocacy for artistic freedom. Some artists are bound due to ethnicity and religious backgrounds, the government sees youth artists as threats, they are either attacked or compromised through benefits. Human rights organizations are mostly silent on the issues concerning artists especially when there is political interference (censored treatment). There is a poor understanding of the concept of activism and its role in the protection of human rights and lack of solidarity in the arts sector for activism to thrive.

Safe spaces and marginalized artists human rights defenders in West Africa: Nigeria and Mali

There are limited safe spaces for vulnerable artists in Nigeria. Female artists have had to rely on their families for support and [EPF Nigeria](#) provides creative safe spaces for women in the Art Industry. [Girls Voices](#) trains women in the Arts sector and builds their capacities while Disability Art International provides support to women with disabilities in Nigeria. The Task Team is available in Nigeria and it provides creative education and also offers legal services to artists in need. There are a number of national organizations and institutions active in defending freedom of expression and/or human rights in Nigeria. These include; among others; ActionAid International Nigeria, Civil Liberties Organization, Socio-Economic Rights Initiative (SERI) and Constitutional Rights Project.

Convenience organizations and Le Réseau Des Communicateurs Traditionnels Pour Le Développement Au Mali [RECOTRADE](#) use channels of dialogue to defend artist in the event of a problem. Amnesty International seems to be the only one capable of speaking out when the subject is difficult. Artists usually organize themselves to go through pleas in order to obtain freedom. Social networks exist but



at the risk of insults and other remonstrances.

Situation of minority human rights defenders in West Africa: Nigeria and Mali

Stigmatization against women artists is rampant in Nigeria. Women artists face discrimination at national and community level this makes it twice as hard for women artists with disabilities to be recognized. The legal system does not recognise women artists to the extent that, when a woman is caught up with the law, she must have a male legal representative or a male counterpart to present to authorities.

Women artists in Mali are not appreciated at their fair value in certain fights because of all the prejudices relating to the fairer sex. Female artists are exposed to a lot of social pressure as they struggle to fit in their different brands. They are subjected to various forms of sexual harassment and other forms of violence in managing their careers. Artists living with disabilities are seen more with an eye of compassion than for the affirmation of their artistic talent; this constitutes a violation of the principle of inclusion.

Artist human rights defenders and the law in West Africa: Nigeria and Mali



To cover up for its failure to secure lives and properties, the government has introduced censorship policies that bar filmmakers and other artists from producing works that depict activities of these criminals. Nigerian Artist

Nigeria has been a member state of the United Nations since 1960. The country therefore recognizes the Universal Declaration of Human Rights. Although there is no state mechanism to monitor adherence to the Universal Declaration of Human Rights (UDHR), civil society monitors adherence through an organization called Human Rights Monitor. Nigeria is party to The African Charter on Human and people's rights, ratified in 1983 and a signatory to the UNESCO Convention on the Protection and Promotion

of the Diversity of Cultural Expression, ratified in 2008, the International Covenant on Civil and Political Rights, ratified in 1993 and The International Covenant on Economic, Social and Cultural Rights, ratified in 1993. Nigeria however, is not party to UNESCO's Recommendations concerning the Status of the Artist and to The Rome Convention on Intellectual Property.³⁴

Laws protecting artists are yet to be ratified for example the copyright law, while the social media bill that works against the work of artists is being passed. The government does not recognise artists as human rights defenders and in most cases the critics of government are often compromised. Governments, religious leaders, the police, and secret services and marketing cartels are the main actors restricting freedom of creative expression in Nigeria.



"The government has adopted a lip service approach as they hardly commit to providing the enabling environment for the creative sector"
Nigerian Artist

Media regulations against artistic expression are an emerging trend in Nigeria. The Anti-social Media Bill (Nigeria) which was introduced in 2019 criminalizes the use of social media in peddling false information. This bill seeks to sanction offenders with a view to "encourage and enhance transparency" by social media platforms using internet correspondences. As a result of excessive regulation and activities of official censors, artists in Nigeria are operating in an atmosphere of fear. Artists are increasingly self censoring themselves to avoid retribution. The Nigerian government uses art for selfish reasons, photo-ops, also, unsuspecting creatives end up diluting their influence just by associating with the government and government officials.

Laws are passed but they struggle to be useful because of governance and socio-political crises. Artists in Nigeria are fairly restricted when it comes to creative freedom. One major motivation is religion with the Sharia Law as the

³⁴ Nadia Nkwaya et al, (2013). MONITORING FREEDOM OF CREATIVE EXPRESSION: ARTERIAL NETWORK REPORT 2013, ART WATCH AFRICA, MIMETA



operative body of civil and criminal law in 9 out of the 36 states of the Nigerian Federation. Areas with large muslim populations like Kaduna, Niger and Gombe States have also imposed partial Sharia. The Islamic legal code is also one of the tools used by the state to censor art and artists. In all the states that have declared Sharia law as the ruling law, singing to drums is prohibited because it is considered immoral.³⁵The film and video censorship board requires that each participant in the film industry, including actors, editors, distributors, register individually with the censorship board. Most "censorship"-related cases are tried in state magistrate courts. Many artists are not aware of the laws that are in place that govern artists like the National Film and Video Censors Board Act, National Broadcasting Commission Act, Cybercrimes Prohibition Act, the [Nigerian Copyright Commission](#) (NCC) that regulates any creative work in the country.

Mali has been a member of the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expression since 2006 however, the country is not party to UNESCO's recommendations concerning the Status of the Artist and The Rome Convention on Intellectual Property. These have profound implications and are pointers to the country's lukewarm commitment to protecting artistic freedom. Article 4 of the [1992 constitution of Mali](#) provides for the freedom of expression and creation, the government frames the expressions legally, it creates the cultural policy of the country, but also supports as little as it can the actors of the art milieu and the artistic expressions by the establishment of a system first of apprenticeship of art (INA, Conservatory). The government defines the artistic policy and regulates the freedoms concerning it. Article 20 and 21 of the [Mali cybercrime law](#) punishes threats and insults made through the information system; is way problematic to the digital rights which directly affect artists.

Recommendations

- Enhance visibility for artists and the work that they do as individuals and collectively. Put a spotlight on and recognize artists who are creating socially and politically conscious content and products. Many artists are not aware of the existing resources that they can exploit to progress their activism. There is a

need to create linkage and facilitate access to organizations that provide resources for creatives.

- Provide civic and political education for artists to broaden their knowledge and understanding of the work they do. Training and capacity development for artists on human rights protection instruments is a necessity.
- Support solidarity, learning and sharing of experiences amongst artists and advocate for the recognition of artists as HRDs. Support the formation of artist platforms to address issues affecting artists. There is a need for cooperation, whether national or international, because challenges tend to become international in a context of globalization.
- Push for the domestication of international conventions and treaties that promote and protect freedom of expression. The implementation of legal and policy frameworks will ensure that artists get justice that they need.
- Engage CSOs for better advocacy especially for reforms around censorship regulations, and possible policies that artists may not be aware of. Governments ought to come up with laws that absorb the art sector in its fullness and recognize the potential in artists.

35 Nadia Nkwaya et al. (2013). MONITORING FREEDOM OF CREATIVE EXPRESSION: ARTERIAL NETWORK REPORT 2013, ARTWATCH AFRICA, MIMETA

**STATE OF ARTIST HUMAN RIGHTS DEFENDERS
IN CENTRAL AFRICA:**

**DEMOCRATIC REPUBLIC OF CONGO (DRC)
AND THE REPUBLIC OF CONGO**



Freedom of creative expression in DRC is coming of age. Artistic freedom however, is a new thematic area that requires broad awareness in navigating the rights and freedoms that it encompasses. A number of artists in DRC have been detained because of their content that highlights the unfavorable government decisions towards citizens. This situation has forced some artists to flee their country in search of refuge. Majority of artists in DRC are living in other parts of the world because they have been targeted and threatened virtually and physically. Five of the artists who were interviewed from the DRC were living in: Uganda, Paris, Burkina Faso and other neighboring countries.

The regime has continuously banned and censored songs such as Bob Elvis songs that advocate for social justice while visual artist Mechak Kadima's online content was banned. Music by artists has often been censored and refrained from airing on radio and TV. Government controls the media hence shrinking the space for artistic freedom. [The Censorship Commission](#) that has existed over 20 years has not drafted clear guidelines to censor music and furthermore has forced private media to stop playing songs that are against the government. Artists over time have been harassed and intimidated because of their work. They have been targeted, surveilled and sent messages that threaten their lives. They live in a state of fear and insecurity which curtails their ability to fully express themselves through art. Artists have been subjected to torture, arrest, killings and enforced disappearances and kidnaps. This has forced artists to refrain from advocating for certain issues especially those related to human rights violations because of fear of being kidnapped. State officials who have been intimidated by artists are the superintendent of kidnaps aimed at torturing, killing and silencing dissent voices of artists. The regime has been instrumental in shrinking the freedom of expression and opinion space in DRC. Prominent protest leaders, poets and musicians have disappeared from the public scene without a trace. In 2015 ahead of elections, two youth artists were arrested following the release of a song that spoke about democracy and exercising transparent electoral process ahead of elections.³⁶ Silencing of youth voices through arbitrary

arrests is a direct attack on artists and generally a clamp down on artistic freedom.

Despite the intimidation and fear, Artists in DRC continue to explore nonviolent means to raise awareness for unity, increase the demand for justice and demand for accountability from the government. An example is Ben Kamuntu, a slam poet in Goma and a pro-democracy activist with LUCHA released a powerful slam poetry video "Basembo" in 2021 that demanded for transitional justice and accountability. Through slam poetry he has engaged the youth and instilled human rights advocacy principles.³⁷

The Republic of Congo commonly referred to as Congo Brazzaville is characterized by rigorous human rights atrocities such as arbitrary arrests and detentions, forced disappearances, impunity, unlawful killings and unending conflicts that stand as obstacles to the enjoyments of human rights. Despite being a signatory to the [International Covenant on Civil and Political Rights \(ICCPR\)](#) and having a constitution that guarantees freedom of expression, freedom of expression is highly restricted in The Republic of Congo. Young artists are finding solace to the atrocities of freedom of expression through the arts. Art has been used to bring to light social problems and injustices in The Republic of Congo.

CASE STUDY CONGO BRAZZAVILLE

Martial Pa'nucci an activist rapper currently in exile in Burkina Faso, left Congo six years ago. This was at the moment his songs became a spotlight for government's criticism and he was accused of inciting violence. Pa'nucci was targeted because he had led protests at the time against President Saasou who was seeking a third Presidency term yet this was against the constitution. Furthermore the President was 72 years old and the constitution required a lower age. Martial conducted civic education on human rights and sensitized citizens on the role of the government to respect human rights. Martial released a song #Sassoule was a direct attack on President Sassou. This created an uncondusive environment for him. He had to flee to Burkina Faso where he continues to create activism music.

³⁶ International Women's Media Foundation, Kate Lamb, In Congo hip-hop gives youth a political voice, October 23, 2015

³⁷ Human Rights Watch, Interview: Touching Hearts through Art in Congo, March 9, 2021, <https://www.hrw.org/news/2021/03/09/interview-touching-hearts-through-art-congo> (accessed on September 23, 2022)



Gaps in the promotion and protection of artistic freedom in Central Africa: Democratic Republic of Congo (DRC) and The Republic of Congo

There is a huge capacity building gap on artistic freedom specifically in the field of the protection mechanisms of artists. The existing huge capacity gap among artists often hinders their operations. The impression from the respondents was that the available capacity building opportunities are shaped for HRDs in general yet artists have differing protection needs.

The other gap was the limited spaces of expression; the media channels such as TVs and radios that reach the majority of people are under the control of the state. The private companies are often attacked and their property destroyed when they break stories and host human rights shows. There is also increased surveillance of artists by state security. The indifferences in classification and recognition of artists as human rights defenders and the conditional ties that come with protection support are glaring gaps in the promotion and protection of artistic freedom in DRC. Artivism is a new theme that has not yet been socialized. There are no artist-led coalitions and networks to promote the protection of artistic freedom while most of the artists are not well versed with laws and procedures where they derive their mandates. The armed conflict in DRC has affected the livelihoods of artists with most running into exile. Artists are sacrificing their activism at the altar of livelihoods.



*"Most of the sponsors of artistic expressions in DRC are government agents who support artists to simply sing their praises"
Artist from DRC.*

Safe spaces and marginalized artists human rights defenders in Central Africa: Democratic Republic of Congo (DRC) and The Republic of Congo

There are limited safe spaces for artists in DRC and The Republic of Congo. Marginalized

artists have resorted to fleeing the country and settling in nearby countries as refugees as a survival mechanism. With challenges faced in the countries where they settle, it is hard for them to continue with their work due to language barriers, socio-economic challenges and inadequate capacity. The available protection spaces have a lot of bureaucracies with a long turnaround time when it comes to responding to queries from artists along with other conditions in terms of verification.

Despite all the risk that artists undergo, they lack safe spaces to share experiences, advocate for better and strategise on their activism. There has been a huge blurred line of advancing and respecting the freedom of expression through art forms. Independent media houses that offered some safety have been attacked by the government in a bid to silence dissenting voices. In August 2011, Junior Kudur Kasongo head of CMC TV, a private television channel in Kinshasa was arrested by men who presented themselves as representatives from the National Censorship Commission. His crime was that he distributed a music video that was regarded as immoral.³⁸ The activities of the Commission have proven over time that they aim at silencing dissenting voices that oppose the government. The Goma Youth Centre through the Amani festival welcomes every group of artists to showcase their work. The festival further organized spaces for artists with disabilities and welcomed indigenous artists such as the Batwas to present their art. Labs Space is a place dedicated for women artists where they meet to write and rehearse. Women have created small women-led organizations such as the [Friends of the Congo](#) which through culture and creative arts raises awareness on the challenges of DRC and advocates for inclusive decisions made by the government to the citizens.

Situation of Minority Human Rights Defenders in Central Africa: Democratic Republic of Congo (DRC) and The Republic of Congo

The worsening state of gender disparities in the DRC and The Republic of Congo have created an uncondusive environment for women artists. Women artists being a minority group have

³⁸ Artwatch Africa, Monitoring Freedom of Creative Expression Arterial network report, 2013, page 94, https://www.artwatchafrica.org/system/art-watch_promoteds/downloads/000/000/002/original/ArtwatchAfricaReport.pdf (accessed on September 23, 2022)



to grapple with gender-based violence. The expectations from society have exposed women to all the dangers associated with their activism. Women's rights are guaranteed in the laws but their position as an activist is not recognised. Women artists are constantly intimidated and marginalized because of their role as women artists. Customary practices treat women artists as impolite, shameless and difficult thus their artistic work is only recognised by fellow artists. Creative arts performed by a woman activist is not considered as art; society in general does not recognise these art forms.

There are no laws that legally guarantee the rights of women artists, those with disability and minority artists. Reality depicts repression and intimidation for the minority artists whose content denounces government plans. Minority artists have not thrived because of social stigma. Social and cultural norms around gender roles further secludes women as human rights defenders.

Artist human rights defenders and the Law in Central Africa: Democratic Republic of Congo (DRC) and The Republic of Congo

DRC is a signatory to the UNESCO 39 convention on the Protection and Promotion of the Diversity of Cultural Expression that was ratified in 2010. The convention recognises the cultural and contemporary artistic expressions and contributes to shaping the design of policies, laws and mechanisms that support artistic freedom through creative industries. DRC however experiences a legislation gap as it is not party to UNESCO'S Recommendations concerning the Status of the Artists. DRC in 1976 ratified the International Covenant on Civil and Political Rights that guarantees the right to freedom of association with others for their interests in Article 23. This article provides the right for artists to form unions that would strengthen their advocacy and solidarity towards enhancement of freedom of expression and artistic rights. The African charter on Human and Peoples rights holds the state of DRC accountable in ensuring that citizens freely enjoy the freedom to take part in their cultural life and furthermore to express and have personal opinions on the law. Artistic freedom advances on the respect and rightful upholding of these rights since artists have the ability to take part

in their cultural life and express their concerns on the law without fear or intimidation. Article 23 of the DRC constitution permits freedom of expression notably for speech, print and pictures. This article is a fundamental principle in paving the way for artistic freedom in DRC. Although freedom of expression is guaranteed, artists are often harassed when openly speaking about political indifferences and social injustice in DRC. Furthermore Article 46 guarantees the right to culture, freedom of intellectual and artistic creation.

Artistic freedom in DRC is characterized by curtailed freedom of expression through restrictions especially on art forms that are against bad governance, arbitrary arrests of artists, censorship and violations of intellectual property and copyright law. DRC lacks a cultural policy that guides art forms with minimal guidance on artistic operations from the Ministry of Culture and Art. This often results in banning of songs and poems without a clear direction. Artists who criticize the government often face physical and indirect threats. This has caused a lot of fear among artists and limited them to only advocate for those rights that are less risky. Artists who advocate for socio-economic advancement stand a high chance of being threatened.

There is a ministry of culture and arts that takes into account matters related to the culture and art sector of the country. The creative economy and artists' freedom are protected by the law embodied in the DRC constitution. Specifically [Article 23](#) grants the rights to freedom of expression on opinions and convictions. Artists have the right to create their art forms with the mandate from Article 46. This article promotes cultural diversity and seeks to protect the cultural identity of DRC.



"Bad governance has led to the disrespect of this article. Freedom of expression is always flouted by the various authorities who abuse their power to try and muzzle artists who speak against their regime." Ben Kamuntu



The [Protection of CopyRight and Ordinance law n°89-033 of April 5, 1986](#) law exists to protect the intellectual property of the works of the mind. Majority of the art forms that DRC artists human rights defenders promote are listed to be protected by this copyright law in Article 4. Such a mechanism encourages freedom of expression with confidence that promotes copyright of art pieces. The [1996 decree law No. 96-002 of 22 June 1996](#), is the governing framework for the freedom of expression in DRC. It provides content regulations and guidelines of songs before they are displayed to the public. However, the application of this law has been weakened in cases of its discrepancy. It has also shown that laws do not operate on some people since state officials can access security assistance to censor a song that exposes them. Recently, DRC adopted the [law on mechanisms to protect human rights defenders](#) in order to protect human rights defenders to operate without hindrances and with security to protect them. On the contrary however, this law displayed some of the limitations that would hinder the operations of human rights defenders. For instance Article 7 requires human rights defenders to be affiliated with an NGO. Most activists operate in informal settlements and do not match up to all these conditions in the law.

In the Republic of Congo, [Article 25](#) of the constitution permits freedom of expression, freedom of press and right to information. However, this is more theoretical than it is practical due to the challenges that come as a result of activists expressing themselves. [The recent 2011 law on freedom of information and communication](#) has the mandate to ban ownership in the communication and information business. This law that is implemented through the High Council for freedom of Communication, seems to target media groups whose content is contrary and critical to the government. Several independent media groups have been closed and their content banned under this law. The Republic of Congo has numerous domestic and international laws that govern freedom of expression which is a fundamental right to artistic freedom however, challenges arise during implementation of these laws.

advocacy training to state agents and non state agents on the protection and safety of activists especially women, activists with disabilities and minority activists. The enforcement agencies have been catalysts of unrest, police brutality and arbitrary arrests activists. engaging with the police and civil society sector will address some of these issues.

- Train activists on existing policies, legislative mechanisms and other tools to inform effective and structured advocacy in the protection and promotion of their freedom. Training Will ensure activists fully understand their rights and how they can conduct advocacy using the right tools.
- Change societal attitudes around women activists by running campaigns to sensitize communities and enforcement agents on the role of women activists in advancing democracy and social justice. Campaigns should base on challenges that they encounter such as SGBV that is rampant during performances and while in custody.
- Create a network of women activists to strengthen advocacy around challenges that women activists face and formulation of concrete recommendations.
- Protection support should be revised to meet the needs of vulnerable activists. This needs to be taken into account when providing support, especially temporary relocation.
- Set up a regional or international coalition for the protection of activists. The available protection mechanisms are centered around support for general human rights defenders. However, due to differing needs of activists, there is a need to establish a regional or international protection network for activists.
- Creation of protection/safe spaces and other platforms where activists can access protection assistance while in danger. Activists have been distanced from national and international protection mechanisms that they could turn to while in danger. Provision of direct telephone contacts and creation of protection desks would offer immediate support to activists especially the marginalized and minority activists

Recommendations

- Conduct capacity building sessions and



**STATE OF ARTIST HUMAN RIGHTS
DEFENDERS IN EAST AFRICA:**

KENYA AND TANZANIA



Artivists in Kenya are under attack as evidenced by the cases of extrajudicial killings especially in informal settlements. As a result of the COVID-19 pandemic most activists lost their sources and they are trying to recover but they do not have enough support to sustain their activism. Most people don't understand the work that artivists do and tend to judge them or sideline them because of the issues that arise from the work that they do. Artivists do not have access to funding to produce their artwork if they do, it's not exposed to many people but rather limited to their peers. Artivists are not given airplay nor are they exposed to media and if they do they are heavily censored. The key challenge to artistic freedom in Kenya is that the constitutions that are supposed to guide what artivists do have freedoms embedded in them but the problem arises when it comes to applicability of these freedoms. The biggest issue at the moment are bodies that regulate freedoms.

The 2019 Freemuse report on the "State of Artistic Freedom" highlights Tanzania as one of the most difficult countries for artists to freely express their ideas through their work. The Constitutions of Tanzania and Zanzibar both provide for rights which include the right to work, freedom of movement, freedom of association and promotion and protection of culture. However, specific to the artists, the government of Tanzania could consider implementing the UNESCO Recommendation concerning the Status of the Artist". There are excessive restrictions on artistic freedom of expression in Tanzania. Artivists are aggressively suppressed and cannot freely express their views through their artistic works. The country has witnessed frequent banning of artistic works. The authorities in Tanzania have drawn the line on the kinds of artistic expressions that need to be shared with different audiences. This affects the work of artivists especially when their works are banned resulting in financial loss. The systematic economic sanctions and degrading human treatment from the government discourages artivists from engaging in meaningful activism.



"I was warned and threatened not to compose any song with human rights and political contents"
Tanzanian Artist.

Artivists are not safe to express their views



on political matters in both Kenya and Tanzania. The system does not tolerate any kind of criticism or any public awareness on matters that may contradict political interests.



"There is no artistic freedom and protection at all; I was arrested unexpectedly and prosecuted for drawing a cartoon".
Tanzanian Artist

The human rights situation in Tanzania is worse despite the fact that the current President Hon. Samia Suluhu Hassan has expressly declared support for FOE in the country. Artivists are defenseless and helpless when their rights are violated in Tanzania. For instance, artivists are not offered any help when their copyrights are infringed. When they are arrested, threatened, kidnapped, tortured because of enjoying artistic freedom of expression, they get no help or support which has killed a lot of talents in the arts. It is difficult to protect artivists when it comes to financial attacks.



"This year 2022, I released the song called MAREKANI and after the release, TCRA called and told me that the song may endanger diplomatic relations between TANZANIA and the USA. Therefore it was banned and later lifted"



"We are frequently threatened by the authorities. We live in fear of our safety day to da".
Tanzanian Artist

Another controversial matter is censorship of artistic works. In the laws of Tanzania, recognition of freedom of expression as a right is similarly questionable. One may correctly argue that censorship of songs exercised with discretion by Baraza La Sanaa La Taifa (BASATA) are unconstitutional as they violate the right to freedom of expression. Gaps in the promotion and protection of artistic freedom in East Africa: Kenya and Tanzania Most of the governments are signatories to

human rights instruments but when it comes to real freedoms, they infringe on them without a care. There are instruments that speak about liberties and freedom of expression for example the 2010 constitution of Kenya but when it comes to the regulators, there is just something that goes wrong. An example in the Kenyan space where the Kenyan Film classification board ends up acting more as a censor instead of a classifier . There is a lack of an umbrella body to lobby for the rights of artists and the government does not see the value of artists and they are often left out when it comes to policy and law creation processes. Artists and their works are not recognized in Tanzania. No initiatives have been invested to recognize the work of artists nor are they institutionalized. Artists rights are not known and recognized by the public even by artists themselves. There are no strong organizations for promoting and defending artists rights. No Financial support is directed to individual artists despite their dedications and efforts. Their works are not documented anywhere despite the fact that some have proven to change the community.



"Artists are not recognized and appreciated as HRDs"

Kenyan Artist

There are a number of human right defenders organizations which do not respond to the context of artists.



"In our country, artists and human rights defenders are not recognized, they are seen as people who are against the government like opposition parties."

Tanzanian Artist

Safe spaces and marginalized artists human rights defenders in East Africa: Kenya and Tanzania

There are no defined safe spaces for artists in Kenya . Minority activists have resorted to creating spaces where they periodically meet to discuss issues affecting them. There are limited safe spaces for marginalized artist

human rights defenders in Tanzania. The safe spaces include; Tanzania Gender Network Programme (TGNP), [Tanzania Women Lawyers Association \(TAWLA\)](#) which are basically civil society spaces as opposed to creative art spaces.

Situation of Minority Human Rights Defenders in East Africa: Kenya and Tanzania

The most vulnerable artists are especially those who identify as gender minorities including indigenous rights, and land rights activists. What makes them vulnerable is the lack of acceptance by the community because their way of life is considered untraditional which in most cases exposes them to a number of risks. Women artists experience gender related risks as compared to their male counterparts. For example, a female artists is likely to experience cases of sexual harassment. How women express themselves can sometimes put them at risk, and most attacks against women artists are often sexualized. The risks faced by women artists are usually more gender lensed. Women artists have undergone sexual harassment and gender-based violence while conducting their activism. Minority artists experience a harsh environment with backlash from both government and society. A case in point is Grace Munene alias Grammo Suspect- Rainbow Ambassador Kenya a lyrical and pictorial activist who advocates for equality through music and photography. As a minority activist, Grammo faced intimidation and discrimination from the community, police, local leaders and backlash from some family members due to his album dubbed "Embrace Diversity" that speaks about matters affecting gender minorities. The 2010 Kenya constitution protects the rights of PWD also the 2003 disability act of parliament is in existence albeit with limited enforcement. Women and their rights are not guaranteed in the laws of Tanzania since they are classified as a weak class by the public. Women artists are perceived differently and they work under restrictions.



"Tanzania Film Board and BASATA (National Arts Council) restrict the clothes of women in movies."

Tanzanian Artist

They do not work freely and are often



undermined by society. There have been cases of sexual harassment against women artists. In general Women rights are not appreciated and recognized. In the arts and cultural sector, their specific needs are not considered. Women are facing discriminations, sexual harassment and the existing legal frameworks are gender blind.

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"I had never seen a woman who engaged in music industry and become a real successful without being sexual harassed"

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"women are restricted to wear certain clothes and dance in certain ways. In 2016, a video of a musician called SNURA on the song chura was banned". Tanzanian Artist.

Minority artists are prohibited by the laws and it is a crime to belong to this group. Minority issues in Tanzania are considered totally unethical and are prohibited by the law; the public does not want to hear anything or support any issues related to them. If anyone starts discussions to support minorities, the public is provoked which endangers their safety. It is a crime which attracts imprisonment to advocate for minorities in Tanzania. Artists who engage in political analysis, rule of law, good governance and human rights are equally vulnerable and marginalized, so are the indigenous artists who are highly stigmatized.

Artist human rights defenders and the law in East Africa: Kenya and Tanzania

In 1981 Kenya adopted the African Charter on Human and Peoples rights, an instrument that ensures the protection and promotion of human rights and basic freedoms on the African continent. The African Charter stipulates in Article 9 clause 2 that every individual shall have the right to express and disseminate his opinions with the law. Furthermore Article 17 clause 2 calls on state governments to guarantee individuals their right to freely take part in the cultural life of their community. Artistic freedom thrives on the respect and upholding of these rights and

39 UNESCO, The Convention on the Protection and Promotion of the Diversity of Cultural Expressions, <https://en.unesco.org/creativity/convention>

40 Republic of Kenya, Ministry of Sports, Culture and the Arts, National Music Policy January 2015

41 Japheth Otike, Copyright Law in Kenya, the major weaknesses of the Copyright Act.

freedoms, and is undermined if they are not guaranteed and implemented in the rightful way.

Kenya is a signatory to the UNESCO 2005 Convention on the Protection and Promotion of the Diversity of Cultural Expressions.³⁹ The Convention supports and calls on states to uphold international and national legislation related to human rights and fundamental freedoms that promote both artistic freedom and the social and economic rights of artists. However, the convention does not provide for penalties and consequences for states that ratified this convention in case it does not act in accordance with the provisions of the convention. Furthermore the realism theory argues that states have sovereignty over the international treaties, protocols and conventions hence they stand a chance to limit their implementation without strong monitoring activities.

The Constitution of Kenya (2010) advocates and legalizes the protection and promotion of music as a form of cultural expression. [Article 11](#), states that the State shall promote all forms of national and cultural expression through literature, media and the arts. This section speaks to the operations of artistic freedom and encourages the state's obligation to promote creative arts. Furthermore, freedom of expression specifically [clause \(b\)](#) calls for everyone's right to freedom of expression which includes freedom of artistic creativity. However, there have been cases of infringement of these rights which are not in accordance with the constitution.

[Kenya's Copyright Act \(2001\)](#) – is the only current legislative framework that is related to music.⁴⁰ The Act however has been borrowed from international operatives hence does not specifically address the needs of creatives in Kenya. Therefore there is a need to nationalize the Act to fit into the needs of Kenyan creatives.⁴¹ Furthermore, there is inadequate capacity building among artists about the copyright law hence causing an increase in ignorance of this Act among the citizens.

The recent COVID19 outbreak saw various regulations being put in place to suppress the freedom of expression yet this is the foundation of artistic freedom. The arts in Kenya are affected by a repressive wave through the punitive laws,



continuous violations and rough criticism that worsen the environment for artistic freedom to prevail. In a 2021 report by Freemuse, it was indicated that more than half the cases documented in Kenya in 2020, artistic freedom was highest fueled by allegations of public morality and indecency.⁴² One of the key hurdles to artistic freedom is the systematic retrogressive legislation and regulation that restricts the space for artistic freedom of expression through harsh provisions and sanctions. On June 3, 2020 the Statute Law Bill 2020 which includes the changes made to the Film and Stage Plays Act 1962 (Cap 222) gave the Kenya Films and Classification board (KFCB) more provisions and authority to censor, license and authorize any video and audio creative content before it is dispersed in the public.⁴³ Such is a direct attack to artistic freedom of expression and limits the capacity for artists to freely express resistance, rebellion and advocacy for policy reforms through the arts.

In the recent developments however, [NTV Kenya](#) reported that Nairobi County Governor Johnson Sakaja waived permit fees for photographers and filmmakers in Nairobi. The previous shooting process required photographers and filmmakers to pay KES 6,000 (\$50) and write a letter to the Officer Commanding Station (OCS) of the police station within the filming jurisdiction. With the new directive, Photographers and filmmakers are able to create content within Nairobi for free. Such an act opens up the space for creative industries to thrive and provides access for both registered and unregistered artists to continue with their creative art forms without the bureaucratic nature of accessing permits. Currently the biggest challenge has been the lack of a legislative framework that safeguard expression because art in itself is expressive. Kenya does not have a freedom of expression law and of course these laws are meant to safeguard the interests of artists but also consumers of art. So with lack of legislative framework that can safeguard or protect artists. We've seen instances where artists develop content that does not invite people to action, but rather, content that appeals to the status quo. That it's a deliberate attempt of shifting position of power from artists to express their true authentic selves or the contracts they

want to express to really appeal or rather appease the interests of the liberal populace, the governance structures, and the opposition. Additionally, the government has a very big influence in terms of the total consumption of rights as enshrined in the freedom of association and assembly.

The Constitution of the United Republic of Tanzania guarantees freedom of expression but also limits rights enshrined in it. The National Arts Council Act, No. 23/1984 2005 UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions The African Charter on Human and Peoples Rights. Tanzania has the National Arts Council Act, 1984 [or Baraza la Sanaa Tanzania – BASATA] with a legal mandate to promote artistic works, protect the morals and values of members of Tanzanian society. According to BASATA, its core purpose is to make sure that the tradition of Tanzanian art is maintained while upholding professionalism, excellence and creativity. Since 2015, BASATA has banned a number of songs for various reasons but mostly for allegedly being immoral or ridiculing the government and creating disharmony between citizens and the government. In 2015, BASATA banned a female artist by the name of Zuwena Mohamed a.k.a Shilole for one year on the grounds that her performance in Belgium entailed revealing clothes that according to BASATA irked national morality. BASATA Executive Secretary maintained that the penalty came following previous warnings to the same artist regarding her dressing manner during stage performances. On February 28, 2018, BASATA in cooperation with Tanzania Communication Regulatory Authority (TCRA) banned 13 local songs on grounds that they were against the country's norms and values and they violated ethics of regulations of broadcasting services (Content), 2005. It should be pointed out that BASATA has been issuing warnings and fines to artists posting their videos and pictures on social networks which have been branded immoral content. The excessive restrictions on artistic freedom of expression emanates from government practices to the existing legal framework which governs the arts and cultural sector. There are other laws in criminal justices that act as serious barriers.

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42 Freemuse, The state of artistic freedom 2021, February 2021, <https://freemuse.org/media/ck5fvaze/the-state-of-artistic-freedom-2021.pdf> (accessed on 20th September 2022)

43 ArtsMattersInfo, Censorship Threatens Artistic Freedom Of Expression Across East Africa, September 4th, 2020 <https://artmatters.info/2020/09/censorship-threatens-artistic-freedom-of-expression-across-east-africa/>, (accessed in 20th September 2022)



An example is the offense of sedition which is used as an effective tool to suppress activists when their contents criticize political issues as was the case with Ney wa Mitego's song TOZO.



"I have been denied opportunities to participate in National Music Awards and other Awards. My songs have been blacklisted to get air time in the media. I have been threatened most of the time to stop doing the kind of music I do. I have been ordered to amend verses of my songs to eliminate some of my artistic views."
Tanzanian Artist

There are impressions that the government has a good relationship with the arts and cultural sector, however the problem is with the entrusted authorities such as Copyright Society of Tanzania (COSOTA) and BASATA who do not adhere to the principle of public participation and involvement. These authorities are preoccupied with monitoring the as opposed to regulating it and as a result, they are not helpful. The Newspaper Act 2016, Penal Code Cap 16. Re. 2019, Cyber crimes Act, 2015, Copyrights and Neighboring Act. Cap 218, Re. 2002 and the National Museum Act have all been used one way or the other to curtail artistic freedom in Tanzania.

Recommendations

- Build community support for artists by putting spotlight on minority artists, showcasing the impact of their work, acknowledging them, and advocating for the recognition of their work. There is a need to sensitize communities on the rights of minority artists and their contribution to the protection and promotion of human rights. Develop a mechanism of recognizing artists and documenting their work for archival and reference purposes.
- Facilitate the establishment of local, national, regional and international networks of activists. This will enable them to exchange experiences, share and learn from each other the different techniques and strategies in the promotion, protection and defending of human rights. Having artists in networks will enhance unity and solidarity. This will in turn strengthen advocacy engagements, create solidarity and provide a platform for

artists to network, and find lasting solutions to the challenges facing their art forms.

- Invest in building the capacity of artists on artists rights awareness and safety measures to undertake when at risk. Most artists are exposed to risks in the course of their work and empowering them with the knowledge and skills on how to manage their own security is an important prerequisite. Train artists on how to advocate for human rights using art while at the same time maintaining their own security.
- There is a need to create an enabling environment for artists in addition to strengthening and supporting organizations who directly engage artists.
- Create awareness of the work of artists. Most people do not really understand the roles of artists in activism or as agents of change. This will increase community support and enhance protection for artists. There is a need for public campaigns, recognition of artists and their positive contribution to society.
- Conduct research on the role of artists in protecting and promoting freedom of artistic expression and establish how best to protect and promote artistic freedom of expression for minority artists.
- Establish psychosocial and mental health support networks and centers as a safety and sanity net for artists.
- Establish an emergency support center for artists when they face complications with authorities
- Promote media intellectual dialogues about the importance of artists and their work. Sensitization of the media is imperative to the success of artistic freedom since it has the ability to reach out to more people and set artistic freedom agenda
- Advocate for legal frameworks that guarantee the safety of artists. Advocate for review and amendment of the laws which restrict artistic freedom of expression. Push governments to enact legislation that explicitly tackles the subject of artistic expression and freedom



**STATE OF ARTIST HUMAN RIGHTS
DEFENDERS IN SOUTHERN AFRICA:**

SOUTH AFRICA AND ZIMBABWE



The Constitution guarantees human rights for all but it is artists with resources, networks, education who are most able to exercise these. The Constitution guarantees human rights for all, especially Freedom of Expression and Freedom of creativity in Section 16. There are inadequate mechanisms to support artists who land in trouble when exercising these freedoms. Artists are battling to assert the rule of law so that constitutional rights can be brought to life. Great material, infrastructure, skills inequalities mean that the overwhelming majority of artists cannot do their work effectively and their audiences do not have easy access to their work. Social media negative commentary, political marginalization by political entities, marginalization within the arts sector for fear of guilt by association are the various forms of censorship experienced by artists and those engaging with artwork that is seemingly "controversial" in nature. Post-apartheid, artists have been playing a vital role in advancing social cohesion, fighting against gender-based violence and other social ills. Over the past year, they have mobilized to protest against the Minister of Arts & Culture and the National Arts Council for their lack of transparency, corruption and mismanagement of public funds.



*"We have not seen transformation in the arts in South Africa, even television channels which give black people less money and their white counterparts four five times more than the money and nothing is being done."
South African Artist.*

Artists in South Africa are more focused on bettering their finances to be able to keep up with their activism work. They shy away from speaking out against state censorship by the Department Sports, Arts & Culture and from criticism of the state or corporations when they are dependent on grants. Artist Protection Fund, the Human Rights Foundation, Legal Resource Centre and Law clinics at various universities are some of the organizations that provide support to artists at risk. For the most part, these organizations provide financial and legal assistance.

44 Joint stakeholder submission to the UPR of Zimbabwe by Nhimbe Trust and Freemuse for consideration at the 40th Session of the Working Group in January 2022 15 July 2021

45 The Guardian (2020). Charges against Tsitsi Dangarembga must be dropped, argue writers. <https://www.theguardian.com/books/2020/oct/06/charges-against-tsitsi-dangarembga-must-be-dropped-argue-writers>

The right to freedom of artistic expression in Zimbabwe, is characterized by artists and cultural actors' who are subjected to systematic censorship, criminal prosecution as well as harassment and intimidation. Such violations arise from the existence of legislative frameworks that are utilized to silence artistic voices as well as other forms of democratic dissent. Despite constitutional guarantees to the right to freedom of artistic expression, the Government of Zimbabwe has not undertaken adequate measures to ensure the full realization of the right.⁴⁴ This situation became worse during the Covid pandemic as Zimbabwean human rights organizations documented a proliferated clampdown on artists. The pandemic was used as a guise to restrict and suppress civil and political liberties in Zimbabwe. On 31 July 2020, novelist Tsitsi Dangarembga was arrested and detained by the police for engaging in a two-women anti-corruption protest march in Harare. Dangarembga was charged with intending to incite violence under the Criminal Law (Codification and Reform) Act and breaching the COVID-19 regulations promulgated by the government through a Statutory Instrument⁴⁵.

The Arts in Zimbabwe from the time of the liberation struggle against colonial settlers has always been understood as an important element of message dissemination and community buy-in. Liberation movements and post liberation movements continue to view the influence of art especially music, dance, poetry as important in ensuring the masses understand the ethos of the liberation struggle. Unfortunately the same liberation movements have gone on to stay in power for too long in most Southern African countries and have entrenched themselves more as dictators rather than the liberators. The understanding of the value of art means that they understand how impactful artists can be in influencing the trajectory of advocacy, engagement and emancipation of the common masses or citizenry.

The civic space in Zimbabwe has shrunk to unbearable levels due to the impending elections and the sanctions that the government seeks to fight. The economic environment also means funding to activities is also limited thus making the work of advocacy harder. Most artists are not aware of their rights except for those who have



genuine interests or are engaged in Human Rights related careers. Most activists are cautious while delivering their message; for instance, not many musicians are direct in their messaging. Music and creative content is censored and banned if it is thought to stir any form of violence which deters progress and changes for the future. There are a number of artists and human right defenders who have been targeted by the state including artists like; Tsitsi Dagerembwa and Winky D who have been labeled as puppets of the west. Haruzivishe was arrested at gunpoint by detectives from the Criminal investigations Department's Law and Order section in February 2021 and was tortured in custody. To him the acquittal is welcome but the torture he experienced at the hands of the state cannot be undone. Amongst the critical emerging issues and trends in protecting activists in Zimbabwe, it is acknowledged that those in positions of power are recognizing the value of activists before the activists themselves. Artists ought to be cognisant of their influencing power and value ; their numbers especially in Facebook and other media platforms in Zimbabwe are what is wanted by those in authority.

Gaps in the promotion and protection of artistic freedom in Southern Africa: South Africa and Zimbabwe

There is a lack of support and resources for activists. There are no specific Human Rights organizations that support activists at risk. The other gap is self-censorship as a consequence of dependence on state funding, social media and government/political party intimidation of critics and Lack of opportunities/platforms and independent resources to nurture and support freedom of artistic expression. There are no existing structures to promote and defend human rights and freedoms in the arts space. Activist are not aware of their rights and because of this they are unable to defend their rights. There is a lack of respect for the arts as a valid and meaningful category of practice (rather than as a luxury/hobby) and support for legal/advocacy work.

There are a number of gaps when it comes to promoting and protecting artistic freedom in Zimbabwe. It is hard to recognize the important work that activists do without necessarily labeling them as sellouts or selling a certain narrative or script. The other gap is the lack of legislative

laws protecting their rights such as freedom after expression and restrictions to broadcasting artistic work. There is a need to broker a healthy relationship between activists and the government for them to be able to work together to create a better country. The other glaring gaps are the funding and capacity building and infrastructural gaps amongst activists.



*"I am a film artist but I have no equipment of my own which limits my artist narrative to the funding options available which usually funds do not give to community based artists but those in the mainstream defeating the purpose of amplifying marginalized voices".
Zimbabwean Artist.*

Most narratives of activists are often told by people who have not shared their lived realities. Art is taken as mostly a form of entertainment with very limited marketing and exposure yet there is a lot of talent and content that never gets out there. Artistic expression is limited and censorship inhibits the activists from being fully recognized especially if their content is deemed inappropriate to be put on TV and radio.

Safe spaces and marginalized artists human rights defenders in Southern Africa South Africa and Zimbabwe

In South Africa, safe spaces for marginalized activists include; August House, Galleries that don't have boundaries of what work comes in, Constitution Hill, Apartheid Museum, big galleries across south africa including spaces in urban settings majority of which are white owned. Universities and theaters spaces are also safe spaces because they provide space to create and readily accessible audiences. Open houses play an important role in getting activists, content work beyond just the confines of their homes. Activists have also found safe spaces within their small social groups where they get to interact and talk about their work; sometimes this is through whatsapp groups or facebook pages.

Twitter and other social media platforms are considered the current safe spaces for marginalized activists. There are a number of organizations



that provide support to activists in Zimbabwe namely; Platinum prince Mr president NGO: ActionAid, Plan International, Caritas Zimbabwe, Youth Advocates and Helpline Zimbabwe. The notable support systems are the Zimbabwean Lawyer for human rights, and Nhimbe Trust that aims to strengthen policy responsiveness, ensuring policies, programmes and commitments that are responsive to the needs of creative civil society, artists and cultural professionals affected, and their participation in realizing these policies; Amnesty International can speak out in artists support if they face any persecution from government including evacuation to another county or to a safe house within Zimbabwe; MISA (Media institute of southern Africa) defends and promotes media freedom, freedom of expression and access to information.

Situation of minority human rights defenders in Southern Africa: South Africa and Zimbabwe

For activists who identify minorities both in content and context, their work is not shared in the region because of homophobic laws. Even when their content is shared on social media, most of the time they are met with attacks. Most of the minority activists face challenges in the townships where they live. In South Africa; the wound movie; the artist had to leave South Africa and now lives in the UK because of his sexual orientation and because he challenged the status quo.

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“Minority Activists in South Africa find it difficult and you need to be very very big to command a lot of money and respect in market place”
South African Artist

“

“I say, being black and being a woman and being queer, I have to defend myself at every turn”.
South African Artist

Women are most vulnerable amongst activists. Many women are not given opportunities as men and so there is no equal opportunity. Women activists are targeted on a daily basis; there are always reports in the news of either women getting killed, women getting kidnapped, women

getting raped every single day. There’s always a report on something that has happened to women. Primarily Activists from Zimbabwe who are living in South Africa are vulnerable because of the challenges of immigration. Activists with disabilities in South Africa face a challenge of access to opportunities. Disabled activists in South Africa are not really supported; they are invisible.

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“From what I gathered as long as it is non-political, non violent and in unison with the government policies there is a lot of support in airplay and even funding”.
South African Artist

Amongst the activists in Zimbabwe, women/ girls, activists in the rural populations, activists living with albinism and minority activists are considered vulnerable. Minority activists are at risk of arrest, stigma and social exclusion. Women are labeled as wanting to play victim or amplify their voices ahead of men; patriarchy plays a role of silencing minority and marginalized activists. A case in point are women who were kidnapped in Zimbabwe; their crime was to speak about human rights through comedy. These women got into trouble and had no protection even while in the safe house and still their lives are at risk. The linguistic minorities such as the Tonga, Nambiya, Ndebele are vulnerable including activists from Matebeleland North and South because of the Gukarahundi genocide. Ethnic and Linguistic activists from the Matebeleland region are considered a minority because of their experience of the Gukarahundi genocide and other regional structural barriers such as lack of financing and educational opportunities. Amongst the other vulnerable activists are the activists with disabilities, the less privileged and the mentally disturbed. There are existing organizations/institutions that provide protection support to minority/ vulnerable activists namely; Zimbabwe Musasa project for women, Zimbabwe lawyers for human rights, ZELA for natural resources governance but these are all spread too thin and not accessible to marginalized populations let alone activists.

Artist human rights defenders and the law in Southern Africa: South Africa and Zimbabwe Whilst the South African Constitution provides Freedom of Expression and Freedom



of Creativity under Section 16 of the South African Constitution, there are no clear mechanisms in place to support artists.



*"Money is put aside but we don't see anything really big happening"
South African Artist*

The very same policies that are put in place by the state to have black people get on their feet from a creative and cultural industry perspective are the same things choking black creatives. What is missing in South Africa is a space within policy for integration of migrants and refugees in the arts in the mainstream economy; it remains a big issue that needs to be addressed. Policies in government need to catch up with the reality that the industry is still white and white male primarily.



*"In Zimbabwe speaking against the government is a sure thing to dry your financial coffers as doors are closed in certain quarters especially at govt sponsored events".
Zimbabwean Artist*

Central to the censorship of artistic and creative content in Zimbabwe is the Censorship and Entertainments Control Act [Chapter 10:4] of 1967 which establishes a Board of Censors that regulates recorded material including films, videos, publications, pictures, and statues, alongside theaters and places of public entertainment. Section 10(2) of this legislation specifically allows for censorship of films or film advertisement content considered indecent, obscene, harmful to public morals, as well as that which is likely to be contrary to the interests of defense, public safety, public order, or public health. The concept of censorship in itself is antithesis of free expression and the many times the law has been used to prosecute or ban artistic works have left artists feeling like there is always an ax above their head, resulting in self-censorship. The law has been weaponized to stifle the true voice of objection and inhibit creativity. The impending Patriotic bill in Zimbabwe and the PVO bill seeks to curb the right of association. These bills will definitely shrink the voices of those in civic spaces and artists. The law

in Zimbabwe supports the intimidation, arrest and prosecution of artists through the criminalization of publication of "inaccurate" information. There are other legal and legislative frameworks that are being used to curtail freedom of expression these include; PVO act and Patriotic Bill, POSA (public order and security act), MOA, (miscellaneous offenses act), AIPPA (Access to Information Protection Privacy Act) and MIC (media information commission). These acts give access to the government to control whatever is played on air or put on the media and gives power to take action if it goes against government policies. Anything deemed to obstruct peace is banned and censored. Action may be taken against artists who are not in compliance. The Constitution Amendment 2, the 2002 Access to Information and Protection of Privacy Act (AIPPA) requires journalists and media companies to register with the government-controlled Media and Information Commission (MIC) and gives the government powers to deny people to work as journalists. Laws such as the Public Order and Security Act (POSA) and the Miscellaneous Offences Act (MOA) are used to violently disrupt peaceful demonstrations and justify the arrest of artists.

Recommendations

- Facilitate linkages between minority artists and HRDs. When it comes to protection support, HRDs and human rights organizations are usually the first point of contact. More information needs to be shared on where one can find help as an artist. There is need to educate artists about their rights and existing organizations which can assist them
- Build artists' capacities on human rights; there is a need for capacity building in the creative space. There is a need to inform artists of their rights because once they know their rights they will know when those rights are being taken away from them. Establish a platform to engage creatives on their rights and how to protect them when they are being violated.
- It's important for artists to be given platforms for peer to peer exchange learning. Such platforms have the potential to amplify creative voices. Create safe spaces for the government and Human Rights Defenders to talk about important issues and finding ways to help one another to create a better country
- There needs to be a body that protects the content and context of artists. A continental



body to protect artists. This will enable artists to use every platform that they have been given to practice their creativity freely without fear of persecution and no bias

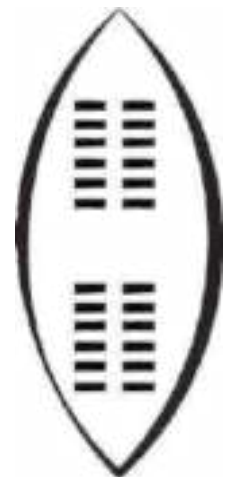
- Creating platforms and events for artists to express themselves freely without fearing for their lives and knowing their content will not be banned or silenced. The existing cases of persecuted artists need to be used to fight for others in the spirit of solidarity. There is a need to raise an army of volunteers who will be able to stand up for artists in African countries where freedoms don't exist.
- Establish a solidarity fund for artists in distress. Artists need to be resourced and offered protection in times of trouble. Protection mechanisms ought to cascade to marginalized communities and grassroots arts organizations who risk losing multiple sources of income by participating in activism
- Engage the government and make recommendations on artistic freedom legislative issues that require prioritization through the law.





Defenddefenders (the East and Horn of Africa Human Rights Defenders Project) seeks to strengthen the work of HRDs throughout the subregion by reducing their vulnerability to risks of persecution and by enhancing their capacity to efficiently defend human rights.

Defenddefenders is the secretariat of the East and Horn of Africa Human Rights Defenders Network, which represents thousands of members consisting of individual HRDs human rights organisations, and national coalitions that envision a sub-region in which the human rights of every individual as stipulated in the Universal Declaration of Human Rights are respected and upheld.

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AfricanDefenders (Pan-African Human Rights Defenders Network) is an umbrella network of five African sub-regional networks, dedicated to the promotion and protection of human rights defenders across the African continent. DefendDefenders serves as the secretariat of AfricanDefenders.

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