

Presentation

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UN Human Rights Council Report “The Right to Freedom of Artistic Expression and Creativity” (A/HRC/23/34)

My name is Alfons Karabuda. I am a composer and chairman of SKAP, the Swedish Society of Songwriters, Composers & Authors, as well as President of ECSA, the European Composer & Songwriter Alliance and Expert to the UN Human Rights Council.

Throughout the years, I have mainly composed music for the theatre, exploring the impact that the meeting of different artistic expressions has on stage. The theatre is a melting pot of artistic expressions, and as such extremely vulnerable to any restrictions imposed on artistic expression. On the same time, due to being this melting pot, the theatre is in many parts of the world, just like music, a powerful tool in an ongoing democratic process.

I have been asked to briefly present the UN Report “The Right to Freedom of Artistic Expression and Creativity”, to which I was appointed expert in the field of artistic rights.

Ever since early childhood, the question of freedom of expression has had not only a theoretical, but often to great extent highly concrete, presence in my life. Traveling with my journalist parents, often to corners of the world under radical change or development, I was frequently exposed to violent attacks on cultural creators, sometimes even close friends of my family.

As a young boy, to hear the news from my father that the nice man whom I had heard playing the guitar and singing in our house so many times had been tortured and killed, did have considerable impact. The picture of the military cutting off his fingers in order for him not to be able to play the guitar, before shooting him and leaving him in a ditch outside of Santiago, was forever etched to my mind. I speak of course of Victor Jara.

As you can imagine, when I in 2012 was asked to join Special Rapporteur Farida Shaheed in her work on the first UN report ever on freedom of artistic expression and creativity, it was easy to accept. Apart from my personal commitment, freedom of expression is a central issue to both SKAP and ECSA. Being able not only to participate, but also to influence the important UN work on these issues, is something I am immensely grateful for.

This report, the first ever of its kind, addresses the multi-faceted ways in which the right to freedom for artistic expression and creativity may be curtailed, all over the world. Artistic voices are being silenced by various means and in different ways, every day. The underlying motivations are most often political, religious, cultural or moral, or lie in economic interests. Sometimes they are a combination.

So, does the UN demand special rights for artists? No. But the UN acknowledges that artists, in all creative areas, are at particular risk as their work depends on visibly engaging people in the public domain. Special awareness is needed in order to safeguard the same rights for artist as for others.

A few words on the work behind the report. As I have already told you, I was involved as expert in the field of artistic rights, that is freedom of expression as well as authors’ rights, not the least moral rights. I was the only representative of a creative collective, the other experts being representatives

of human rights organizations, national arts councils and national legislative bodies. The group also included a few individual creators from different genres.

Apart from the expert group, the special rapporteur, Farida Shaheed, also turned to all UN member states through a questionnaire. Contributions to the report were also made by stakeholders like national human rights institutions, national arts councils and by UNESCO.

Together, we all supported the special rapporteur in her work. I am very pleased to say that the special rapporteur, considering the many, very different views on the subject, in my view has managed to balance different interests still keeping the universal interest of freedom of speech and creative expression at the heart of her concerns.

There is no doubt in my mind that lobbying your own interests is as common in the UN as in any other marketplace of views, interests and positions. One should keep this in mind, when reading the report, that producing it was in parts a tightrope walk. After one of my presentations at the UN assembly during the work on the report, the feedback from some member states delegates was surprising. After first giving their “full support” to artistic freedom, some claimed it is still the artist’s responsibility not to upset others. As one delegate chose to phrase it: “Isn’t it enough for artists just to entertain?”

This brings us to the content of the report. The member state delegate just quoted, was referring to the issue of incitement of art, a central idea of some regimes wanting to justify censorship or other forms of sanctions against artists.

The report has three major sections: a discussion on central legal framework issues, a background describing the situation globally today, and UN recommendations to the member states.

The legal framework discussion presents universal, regional and national human rights instruments at hand, including relevant UNESCO instruments. The section also discusses limitations to artistic freedom, and in what cases such limitations are acceptable. Under article 19 of the International Covenant on Civil and Political Rights, ICCPR, the right to freedom of expression, including in the form of art, may be subject to certain restrictions that are provided by law and are necessary for the respect of the rights or reputation of others, or for the protection of national security or of public order, or of public health or morals.

The report finds that responses to the questionnaire demonstrate that some constitutions mirror article 19 of ICCPR, while others regrettably go much further in the restrictions they allow.

The section of the report covering the situation globally today was, understandably, the section most vividly discussed during the work. Describing the situation, also by problematizing it, is a difficult task for everyone, almost impossible for representatives of member states where the views on artistic freedom of expression differ from the universal instruments of the UN and UNESCO, as I have already described.

The report reveals the core of artistic censorship – stopping artists from taking part of, or even actuate progress. As the great Irish-born British playwright George Bernard Shaw put it:

“All censorship exists to prevent any one from challenging current conceptions and existing institutions. All progress is initiated by challenging current conceptions, and executed by supplanting existing institutions. Consequently the first condition of progress is the removal of censorships.”

This section discusses the persons impacted, actors imposing restrictions or creating obstacles, motivations for restrictions, mainly suppressing political dissent, religious issues and issues relating to gender, sexuality and sexual orientation. The section also discusses specific measures and practices impacting on the right to freedom of artistic expression, like unclear regulations, prior censorship, classification and rating, regulation over the use of public space, restrictions on mobility, and economic and financial issues, like restricted access to state support and cuts in financial support, "market censorship", coercive contracting and the infringement of moral rights.

It is crucial to remember that artistic freedom, as all human rights issues, is important in every corner of the world. Of course, it is easy to see in what ways freedom of speech is attacked in non-democratic systems. It is, however, almost as easy to forget that freedom of speech is attacked, on a daily basis, also in parts of the world considered democratic.

For this reason, the report discusses to some length the position of the creator in relation to his or her contractual position, as the problem of corporations stripping the individual creator of all artistic rights – freedom of expression as well as authors' rights, not the least moral rights – is a universal problem. Human rights, including artistic rights, should not be the object of a contractual negotiation. These rights are supposed to stay close to the individual.

Finally, the report concludes by presenting the UN recommendations for the member states on the field of the right to freedom of artistic expression and creativity. The recommendations are focused on the principle that artists and all those engaged in artistic activities should only be subject to general laws that apply to all people. Such laws should be formulated with sufficient precision and in accordance with international human rights standards.

Apart from presenting a list of recommendations concerning the section of the report covering the situation globally today, the recommendations also demand of the member states to fully implement the UNESCO recommendation concerning the status of the artist. Finally, the national human rights institutions and non-governmental organizations are recommended to document, more systematically, violations of the right to freedom of artistic expression and creativity, to submit their findings to relevant national and international bodies, and to support artists who are threatened.

So, what's next? The intentions of the UN Human Rights Council is clear: this report should be used in the work for promoting the right to freedom of artistic expression and creativity in all member states. Recommendations are to be implemented where needed. Of course, there are member states where the government has opposing interests. To that end, the need of approaching these issues internationally and collectively is crucial. We have to show solidarity.

Also, the UN Human Rights Council is following up the report by appointing new work groups digging even further into the impacts of artistic rights. Being an expert to the Council, I am happy to disclose the release of two new reports during 2015.

But we also have to put our own house in order. All non-governmental creators organizations have to use the report and the UN recommendations in order to meet any need of their members and of the creator collective. In the area of moral rights, the non economic part of authors' rights or copyright, we see how individual creators rights are infringed daily.

Moral rights, protecting the right to your own word tighter with freedom of expression, is attacked mainly by economic interests, interests wanting to overtake all rights of the creator – simply to be able to claim ownership of his or her creation. The report clearly puts forward the importance of authors' rights in order to secure the right to your own expression without your message being tampered with.

Paul Brickhill, long-time champion of artistic rights and initiator of the Harare Book Café, a platform for the promotion of cultural expression in Zimbabwe, as well as a dear friend of mine, has put it very eloquently: “We have freedom of expression. It’s just that we don’t have freedom *after* expression.”

We must also be aware of the structural problems that can limit the conditions for certain groups. In some countries, these problems are obvious, in others less so. Whatever the case, we must actively work to combat discrimination on grounds of gender, ethnicity or religious affiliation. This applies to society at large and for our specific industries. This year, SKAP is therefore giving special attention to questions of diversity and equality within the music industry.

Let me conclude by urging you all to read the report, to make use of it in the way your organization or your position can benefit from, and to spread the message of the report. Only by exposing threats to the right to freedom of artistic expression and creativity, and only by promoting universal recommendations, can we succeed in our difficult mission. Let us do so together.

Thank you!