

FREEMUSE
FREEDOM OF MUSICAL EXPRESSION

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FREEMUSE – The World Forum on Music and Censorship is an independent international membership organization advocating and defending freedom of expression for musicians and composers worldwide. Freemuse has held Special Consultative Status with the United Nations Economic and Social Council (ECOSOC) since 2012.

PEN International promotes literature and defends freedom of expression. Founded in 1921, our global community of writers have Centres in over 100 countries, including PEN Lebanon Centre. PEN International is a non-political organisation which holds Special Consultative Status at the UN and Associate Status at UNESCO.

FREEMUSE and PEN International welcome the opportunity to contribute to the second cycle of the Universal Period Review (UPR) process of Lebanon. This submission examines the protection of freedom of expression and artistic freedoms in Lebanon.ⁱ

EXECUTIVE SUMMARY

1. The freedom to create art is increasingly recognized as an important human right under international law. In a June 2013 report, “The Right to Artistic Freedom and Creativity,” the UN Special Rapporteur in the field of cultural rights, Ms. Farida Shaheed, observed that the “vitality of artistic creativity is necessary for the development of vibrant cultures and the functioning of democratic societies. Artistic expressions and creations are an integral part of cultural life, which entails contesting meanings and revisiting culturally inherited ideas and concepts.”ⁱⁱ
2. The right to artistic freedom and creativity is explicitly guaranteed by international instruments; most importantly, Article 15(3) of the International Covenant on Economic, Social, and Cultural Rights (ICESCR), under which state parties to the treaty “undertake to respect the freedom indispensable for . . . creative activity” and in International Covenant on Civil and Political Rights (ICCPR) Article 19(2), which provides that the right to freedom of expression includes the freedom to seek, receive and impart information and ideas of all kinds “in the form of art.”
3. Furthermore, artistic freedom is enabled by other fundamental rights; chiefly, liberty and security of person; freedom of association, assembly, and movement; freedom of thought, conscience, and religion; and equal protection of the law. The exercise of artistic freedom supports these fundamental rights and freedoms by witnessing to their violation and by engendering cultures that affirm the inherent and equal dignity of the person.

LEGAL AND INTERNATIONAL FRAMEWORK

4. Article 13 of Lebanon’s Constitution provides that “freedom to express one’s opinion orally or in writing, the freedom of the press, the freedom of assembly, and the freedom of association shall be guaranteed within the limits established by law.”ⁱⁱⁱ The constitution’s preamble also points out that the State “abides by the United Nations Charter and the Universal Declaration of Human Rights and that the State shall reflect these principles in all rights and fields with no exception.”
5. Nonetheless, there are numerous articles including in the Penal Code, the Press and Publications law, the Military Penal Code and other legislation that restrict legitimate freedom of expression. Additionally, draft laws on access to information and whistleblower protection introduced in 2009 and 2010 respectively remain in parliament.^{iv}

6. Lebanon is overdue in its reporting on several key international human rights instruments, including the International Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

EXISTING RECOMMENDATIONS

7. During its 2010 Universal Periodic Review, Lebanon expressed support for a number of recommendations relevant to the enjoyment of artistic freedom. It supported, *inter alia*, the recommendations by Armenia that it guarantee freedom of expression and create additional conditions for its fulfillment;^v the recommendation by Tunisia that it continue efforts to strengthen human rights;^{vi} and the recommendation by Kuwait that it continue the search for appropriate solutions with regard to the full enjoyment of basic political, economic, social and cultural rights.^{vii}

FREEDOM OF EXPRESSION

Censorship

8. The Directorate General of General Security wields vast discretionary power to engage in prior censorship of artistic works on television, in film, and on the theatrical stage. The mandate of General Security, as defined under Article 9 of Legislative Decree No. 2873, lacks clear regulatory guidelines. Within this ambiguous legal framework, the General Security has adopted a working methodology that often renders judgments that are arbitrary, selective, and inconsistent.
9. General Security carries out prior censorship of theatrical works based on Legislative Decree No. 2 of 1977. This legislative decree granted General Security the explicit authority to reject a theatrical performance or to approve it in whole or in part. Accordingly, anyone who wants to stage a theatrical performance must first submit an application along with three copies of the play's script to General Security's department of publications, which is also the same department that exercises prior censorship control over screenplays and issues filming permits. Legislative Decree No. 2 offers no timeframes for the application process or criteria or standards for approval, effectively granting the General Security broad discretionary powers.
10. One prominent case of the censorship of theatrical works was the rejection on 28 August 2013, of the play "Will It Pass or Not?" by Lebanese director Lucien Bourjeily. The play,

which tackles the theme of censorship, was totally rejected. The stated rationale for the rejection of the work was that four “critics” insisted the play had no artistic merit. Prior to rejection, the play was performed on university campuses to invited audiences instead of theatres. However, members of the censorship board disrupted the performance.

11. The 2011 film, “Beirut Hotel,” directed by Danielle Arbid, which was originally due to be shown in Beirut in January 2012, was not approved for screening although the General Security had approved the script prior to production. The producers filed a lawsuit with the State Council. The first lawsuit of its kind against the censorship system in the post-civil war period, it argued that the censorship of the film lacked a legal basis. Ruling in favor of the government, the State Council limited its own oversight function and affirmed overly broad powers of General Security, in contradiction to international norms.^{viii}
12. Print and audiovisual materials are subject to censorship via the Court of Publications, a specialized court dedicated to the settlement of disputes involving journalists and publications. A review of verdicts reveals that Court systematically gives greater weight to concerns about defamation and privacy than to the right of freedom of expression. According to daily *Al-Akhbar*, between March 2014 and September 2014, the Court of Publications issued 40 court rulings against media outlets and journalists, the majority of which were cases of libel and slander. The prosecutors, mostly politicians and officials, won 37 out of 40 lawsuits, while the defendants were found innocent in only three cases.

Detention and Criminal Defamation

13. Articles 384, 385, 386, and 388 of the Lebanese penal code criminalise contempt, libel and defamation against the president, other public officials, and judges. Possible penalties include up to one year in prison and/or a fine. Laws that allow imprisonment in response to criticism of individuals or state officials are incompatible with Lebanon's international obligations to protect freedom of expression.
14. Articles 582 to 584 criminalise libel and slander committed against private individuals, again punishable by up to three months in prison or a fine. International human rights mechanisms have repeatedly clarified that defamation should not be punished by imprisonment.
15. While defamation cases in Lebanon typically result in journalists being fined, not imprisoned, a rise in the number of criminal defamation cases resulting in imprisonment

- is an alarming indication of increasing restrictions. The threat of prison has a chilling effect on freedom of expression, especially since defaming public figures is considered a crime. On 12 February 2014 the publications court sentenced Jean Assy, a blogger, to two months in jail for defaming and insulting President Michel Sleiman on Twitter.
16. On 26 July 2011 musician and singer Zeid Hamdan was summoned and held for several hours at the Justice Palace for allegedly defaming the Lebanese president in a song entitled "General Suleiman." The song, which criticises the political situation in Lebanon was written two years previously but had recently been sent on a DVD to Lebanon by its Italian director where it was intercepted by a customs official.
 17. On 24 November 2014 the singer Ali Barakat was detained by General Security in connection with a summons issued for releasing sectarian songs that "harm Lebanon's relations" with Arab countries. On 5 January 2015 he paid a fine and was released after testifying that "he will never make a song where he will criticise KSA ever again."

Digital Freedom

18. Presently there is no specific law in Lebanon regulating cyberspace. However, in recent years, the freedom of information online increasingly has been subject to the expanding power of the Cybercrime and Intellectual Property Rights Bureau (hereafter referred to as 'the Bureau'). Established in 2006, the Bureau is attached to the Special Criminal Investigations Department of the Internal Security Forces' Judicial Police, which is the division concerned with state security crimes, terrorism, money-laundering and international larceny. Upon referral from the public prosecutor or on its own prerogative, the Bureau has the power to summon any person for investigation at its offices, including individuals facing complaints over online social media and blog posts.
19. Although the Press and Publications Law stipulates that investigations of journalists be conducted by the courts, not the security apparatus, since 2010 the Bureau has interrogated numerous journalists, bloggers, and social media users and compelled them to sign pledges not to repeat their alleged offences. On 26 August 2013 blogger Rita Kamel was interrogated over a blog post criticising the Pan Arab Web Awards Academy; she was required to pledge not to repeat the offense. On 27 August 2013, journalist Lokman Slim was interrogated for more than four hours about an article critical of Lebanese Forces leader Samir Geagea. On 11 September 2013 journalist Rasha el-Amine was interrogated for several hours about the same article. On 13 September 2013

journalist Rabih Farran was called in for questioning based on a complaint over an article on the al-Mukhtar news site and was forced to pledge not to repeat the offense. On 29 January 2014 the bureau detained blogger Gino Raidy for two and a half hours over a blog post about cube7. On 13 March 2014, blogger Imad Bazzi was interrogated for three hours over a blog post citing an abuse of power by former Minister of State Panos Mangyan. On 16 December 2014, Zaven Kouyoumdjian, TV host and producer at Future TV, was interrogated based on a complaint regarding intellectual property matters.

20. Online materials are also subject to judicial censorship following publication. According to the rulings of the Court of Publications, websites, including blogs, are considered print and audiovisual materials. Recently, the Court has also issued harsh sentences against social media users.
21. Summary affairs judges have jurisdiction under Articles 589 and 604 of the Code of Civil Procedure to take all “interim or precautionary measures to preserve rights and prevent damages,” without necessarily applying the contradictory principle. During the last few years, this jurisdiction has served as a basis for summary affairs judges to accept the requests of plaintiffs and order removal of offensive online materials, or prohibition of broadcasting or publishing a specific material. Some verdicts went even further to prohibit future publication or broadcasting of any material related to the plaintiff or to a specific subject that is perceived as damaging to the interests of the plaintiff.

FREEDOM OF ASSOCIATION

22. According to the 1909 Ottoman Law of Associations, associations can be established freely without prior authorization but are required to notify the Ministry of Interior. Undeclared organisations are regarded as “secret” and are prohibited. Contrary to the provisions of the law, the system of notification was transformed de facto and with no legal basis into a system of authorization whereas associations had to seek the approval of the Council of Ministers. Since 2006, the system of notification has been reinstated with a requirement that the Ministry of Interior issue registration receipts within 30 days. Nonetheless, the Ministry of Interior still sometimes withholds the receipt of registration without justification. Moreover, it always refers the file to General Security for discretionary approval. Thus, the procedure may take up to three or four months. If the Ministry does not reply within two months, the association may consider the silence of the Ministry an implicit refusal to deliver the receipt of registration and may accordingly file a petition to the State Council within two months from the date of implicit refusal.

23. With respect to freedom of association, as freedom of expression, enjoyment by citizens depends in part on the behavior of non-state actors in the form of private corporations. The Spinney's workers' union is a case in point. While the Labor Ministry granted employees a license to form a labor union, the company cracked down on the workers. It discouraged them from joining the union through enticement and intimidation, without any form of oversight or accountability.
24. Another point of concern is that Lebanese associations may only include one foreigner for every four Lebanese. As to the establishment of a branch or a foreign association, it can only be issued by decree of ministerial council, which is a very complicated process that may take years.

FREEDOM OF ASSEMBLY

25. Although freedom of assembly is guaranteed by the national constitution, it faces serious constraints, particularly when the interests of a powerful entity are at stake. A lawsuit for slander and libel filed in 2014 by a deputy from the Lebanese Forces against two activists who were protesting the second extension of the parliamentary mandate and carrying signs addressed to members of Parliament: "We're sick of you," "Get out," and "128 thieves." Protesters at the Naameh landfill were arrested during January 2014 as a form of punishment for blocking the road to trucks of the garbage collection company Sukleen.

RECOMMENDATIONS

Lebanon is failing to abide by its international commitments to protect fully the artistic freedoms of its citizens. We therefore offer the following recommendations to the government:

- 1. Decriminalise defamation by repealing Articles 384 to 386, 388, and 582 to 584 of the Lebanese Penal Code.**
- 2. Amend Legislative Decree No. 2 and any other law permitting prior censorship of theatrical, broadcast or printed material to ensure that freedom of expression, which includes the right to receive or impart information is protected in line with Lebanon's international obligations.**
- 3. Enact legislation guaranteeing freedom of information and protecting whistleblowers.**
- 4. Submit all outstanding reports to UN Human Rights Mechanisms, in particular on Lebanon's implementation of the ICCPR and ICESCR**

- 5. Review the legal basis of the Cybercrime and Intellectual Property Rights Bureau and restrict its operation to technical matters in support of lawful investigations.**
- 6. Ensure that the Summary Affairs judiciary does not engage in prior censorship.**

ⁱ This submission was prepared with the assistance of Rana Saghieh and Nizar Saghieh and based in part on *Censorship in Lebanon: Law and Practice*, a 2012 collaborative study by Nizar Saghieh, Rana Saghieh, and Nayla Geagea, edited by Doreen Khoury.

ⁱⁱ Report of the Special Rapporteur in the field of cultural rights: The right to freedom of artistic expression and creativity, A/HRC/23/34, 13 March 2013, para.3.

ⁱⁱⁱ See <http://www.presidency.gov.lb/English/LebaneseSystem/Documents/Lebanese%20Constitution.pdf>

^{iv} See *Lebanon – Whistleblowing Protection, Overview*, Blueprint for Free Speech, <https://blueprintforfreespeech.net/document/lebanon-overview>

^v Human Rights Council, Report of the working group on the Universal Periodic Review, Lebanon, A/HRC/16/18, 12 January 2011, para. 81(9).

^v A/HRC/16/18, para. 81(1).

^v A/HRC/16/18, para. 81(3).