

UNIVERSAL PERIODIC REVIEW
Tunisia
2016

Stakeholder submission

Freemuse is an independent international membership organization advocating and defending the right to artistic freedom worldwide. Freemuse has held Special Consultative Status with the United Nations Economic and Social Council (ECOSOC) since 2012.

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Freemuse welcomes the opportunity to contribute to the third cycle of the Universal Periodic Review (UPR) process of Tunisia. Our organisation's focus is on Tunisia's compliance to its commitments under international human rights instruments relating to **cultural rights, freedom of expression, creativity and the arts**, as well as guarantees under its own constitution, and to recommendations accepted by Tunisia during the second cycle of the UPR in 2012. This submission is based on interviews with local artists and additional desk research.

SUMMARY

1. Tunisia's 2014 constitution and the country's ratification of the central international human rights instruments guarantee the right to artistic freedom. Despite such guarantees, artistic freedom is not fully upheld and protected in Tunisia. Artists, often rappers, are exposed to threats, assaults, prosecution and imprisonment.

THE UNIVERSAL RIGHT TO ARTISTIC FREEDOM

2. The freedom to create art is increasingly recognized as an important human right under international law. In a 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."¹
3. 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".
4. Under UNESCO's 2005 Convention on the Protection and Promotion of the Diversity of Cultural Expressions, States shall endeavour to create "an environment which encourages individuals and social groups to create, produce, disseminate, distribute and have access to their own cultural expressions, paying due attention to the special circumstances and needs of women as well as various social groups, including persons belonging to minorities and indigenous peoples".
5. According to UNESCO's 1980 Recommendation concerning the Status of the Artist, "freedom of expression . . . is the essential prerequisite for all artistic activities, Member States should see that artists are unequivocally accorded the protection provided for in this respect by international and national legislation concerning human rights".
6. Furthermore, artistic freedom is protected by other fundamental rights: chiefly, liberty and security of persons; 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 their violation and by engendering cultures that affirm the inherent and equal dignity of the person.
7. At the Human Rights Council's 30th session, an oral statement joined by 57 states reaffirmed the right to freedom of expression including creative artistic expressions.² Tunisia did not support the statement.

¹ Farida Shaheed, UN Special Rapporteur in the field of cultural rights, "The Right to Artistic Freedom and Creativity," <http://artsfreedom.org/?p=5311>

² <https://geneva.usmission.gov/2015/09/18/hrc-statement-reaffirms-right-to-freedom-of-expression-including-creative-and-artistic-expression/>

NATIONAL AND INTERNATIONAL LEGAL FRAMEWORK

8. In Tunisia, the revolution in 2010-2011 has, to a certain extent, liberated artistic creation from direct political interference, but also generated new challenges to artists who are finding that they face new kinds of restrictions and threats from state and non-state actors. From the legal perspective, Tunisia's new Constitution ratified on 7 January 2014 is an important step in the right direction.
9. The Constitution states:

“Freedom of opinion, thought, expression, information and publication shall be guaranteed. These freedoms shall not be subject to prior censorship” (Article 31).

“The state guarantees the right to information and the right of access to information and communication networks” (Article 32).

“The right to culture is guaranteed. The freedom of creative expression is guaranteed” (Article 42).
10. The main international covenants that relate to freedom of expression, including artistic freedom, which Tunisia is a party to, are the Universal Declaration of Human Rights (UDHR), the International Covenant on Economic Social and Cultural Rights (ICESCR), the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention on the Rights of the Child (CRC), the Convention on the Rights of Persons with Disabilities (ICRPD) and the African Charter on Human and Peoples' Rights (ACHPR), as well as the UNESCO 2005 Convention on the Protection and Promotion of the Diversity of Cultural Expressions.

PREVIOUS UPR RECOMMENDATIONS

11. During Tunisia's second cycle Universal Periodic Review (UPR) that took place on 22 May 2012, no recommendations were focused specifically on artistic freedom. However, multiple states made recommendations within the broader realm of freedom of expression and cultural diversity, including Belgium's recommendation 115.14 to “ensure that the fundamental rights to freedom of expression, association and assembly will be guaranteed in the future Constitution, in line with Tunisia's international obligations”.³ Tunisia supported the recommendation, along with multiple other recommendations, to secure and support freedom of expression in the country. Additional recommendations from the second cycle are included when relevant below.

THE PENAL CODE

General statement

12. The Penal Code includes vaguely worded articles that punish with imprisonment speech offenses, such as defamation of public officials, harming public order and public morals, and spreading false information.

³ Source of position: A/HRC/21/5 - Para. 115

13. In addition to the direct threat of imprisonment, a disproportionate punishment for any artistic expression, the possibility of being arrested by the police, held in detention and subjected to a criminal trial creates a chilling effect on artists' and others' creative expressions.
14. During the second cycle review in 2012, Tunisia supported recommendation 114.59 made by the United States of America to "revise remnants of Ben Ali-era legal code that stifle the freedoms of expression, assembly, and religion so as to fully protect those rights in accordance with international human rights law".⁴
15. Furthermore, Tunisia noted recommendation 117.3 by the Czech Republic to "eliminate provisions criminalizing defamation".⁵

Supportive examples

16. Actress Sabrina Klibi and cameraman Mohamed Hedi Belgueyed were sentenced to six months in prison in 2013 for their participation in rapper Weld El 15's (Ala Yaacoubi) music video, 'Cops are Dogs'. At the Court of First Instance of Ben Arous, a southern suburb of Tunis, the artists were charged according to five articles of the Penal Code that punish those who defame police officers and contribute to civil disobedience. Weld El 15 was sentenced to two years of imprisonment in absentia.
17. In a retrial in June 2013, held after Weld El 15 turned himself in, the same court sentenced Weld El 15 to two years in prison on charges of insulting the police in the music video.
18. "In the song, I used the same terms that the police used to speak about the youth. The police have to respect citizens if they want to be respected," he said before the trial.
19. On 2 July 2013, Weld El 15's sentence was reduced to a six-month suspended sentence after an appeal hearing.
20. On 22 August 2013, Weld El 15 was arrested on stage along with another young rapper, Ahmed Ben Ahmed (alias Klay BBJ) when policemen interrupted their concert at the International Festival of Hammamet. The two rappers were released the same night, claiming the police assaulted them while they were detained.
21. On 30 August 2013, the two rappers were sentenced to one year and nine months in prison for "insulting the police", "defamation of public officials", and "harming public morals". Both rappers were not notified of the trial and were condemned in absentia and subsequently went into hiding.
22. After turning himself in, Klay BBJ first had his sentence reduced to six months and was later acquitted in an appeal hearing on 17 October 2013.
23. Weld El 15 turned himself in on 5 December 2013 and was subsequently sentenced to four months in jail. He was released on 19 December 2013 after an appeal hearing.

⁴ Source of position: A/HRC/21/5 - Para. 114

⁵ Source of position: A/HRC/21/5 - Para. 117

DRUG LEGISLATION AS TOOL OF REPRESSION

General statement

24. One of Tunisia's most controversial laws, No. 92-52 (referred to as Law 52), was concocted under the Ben Ali regime to combat the use, trafficking or promotion of all drugs. Opponents of the law, including lawyers and human rights organizations, have repeatedly denounced abuses of the law by the authorities both before and after the fall of Ben Ali, claiming police systematically plant bogus proof of drug taking to muzzle dissident voices, including artists.
25. Law 52 requires courts to impose a minimum mandatory sentence of one year in prison on any person found guilty of use and possession of an illegal drug, including cannabis. The law imposes a minimum sentence of five years in prison for repeat offenders. For both offenses, judges have no discretion to reduce the sentence in light of mitigating circumstances, according to Human Rights Watch.
26. On 30 December 2015, the government approved a new draft drug law subsequently to be sent to the parliament for discussion and voting. According to Human Rights Watch the draft law proposes to abolish prison terms for first-time offenders in drug use or possession cases, as well as abolishing mandatory sentences for both first-time and repeat offenders. However, the draft maintains the option of prison sentences of up to one year for repeat use and possession of illegal drugs.
27. The draft adds a new offense of "public incitement to commit drug-related offenses", which entails half the sentence of the underlying offense, according to Human Rights Watch. This new provision, as written, could be used to prosecute rappers and singers who sing about drugs, as well as regular citizens and other artists who express themselves peacefully about drugs.
28. During the second cycle review in 2012, Tunisia supported Canada's recommendation 115.4 to "ensure that police officers and security personnel receive adequate human rights training and clear instructions with regard to their duty to respect human rights at all times, including the right to freedom of expression, association and peaceful assembly".⁶

Supportive examples

29. Two years after his arrest and sentencing to jail for insulting public officers, rapper Klay BBJ was arrested again on 17 October 2015. Klay BBJ was with another rapper and a friend on their way to take part in a private concert in the city of Hammamet when they were arrested during a police drug raid in his neighbourhood.
30. Klay BBJ and his two friends were accused of consuming cannabis, which they firmly denied. He has asserted that he had a verbal clash with the policemen.
31. A spokesperson for the Ministry of the Interior declared that the arrest took place at the request of the prosecutor. Klay BBJ and his two friends refused to have a cannabis-screening test and after the consultation of their file, the prosecutor ordered their release.

⁶ Source of position: A/HRC/21/5 - Para. 115

32. On 19 November 2015, photographer Fakhri El Ghezal, artist Atef Maâtallah and filmmaker Ala Eddine Slim were arrested in Aala Eddine Slim’s home in Nabeul. Around 15 armed policemen entered the house with a search warrant for suspected terrorist activity. The three artists were later charged with possession of cannabis and sentenced to one year in jail and a 1,000 Tunisian Dinars (approximately 400 Euros) fine each. On 21 December 2015, the artists were acquitted by the Tunisian court of appeals.

NON-STATE ACTORS

General statement

33. Non-state actors from religious groups to terrorists use different violent and non-violent tools to limit artistic expression. Under international conventions, the State has a responsibility to secure a safe environment for all those engaged in the arts and their audiences.
34. During the second cycle in 2012, Tunisia supported Sweden’s recommendation 114.58 to “take appropriate measures to ensure that freedoms of assembly and expression are not threatened, and to combat impunity of those identified as responsible for human rights violations”.⁷

Supportive examples

35. On 18 March 2015, militants attacked the Bardo Museum in the capital Tunis killing more than 20 and injuring around 50. Terrorist organisation Da’esh claimed responsibility for the attack.
36. On 10 June 2012, three Islamists, who were accompanied by a bailiff and a lawyer, toured the Palais El-Abdellia, an art gallery in Tunis, taking part in the Printemps des Arts modern contemporary art fair. The group demanded that the organisers take down two artworks which they claimed were offensive to Islam.
37. When their request was denied, the Islamists returned later that night with a large number of supporters and broke into the exhibition from the rear walls, burned the painting of Faten Gaddass, and tore to pieces two linen artworks, one by Mohamed Ben Slama and the second by a French artist.
38. Rapper Hamadi Dia was severely beaten on 10 November 2014 in El Reqab. Five men first forced him to have his hair cut and then forced him to pray at a mosque. Afterwards he filed a formal report with the police, but claims his complaint was completely ignored.
39. Hamadi Dia has explained how he was previously attacked by radical groups when he released songs critical of extremists.

⁷ Source of position: A/HRC/21/5 - Para. 114

TARGETING WOMEN ARTISTS

General statement

40. The 2014 constitution provides improved protection for women's rights, according to Human Rights Watch. Still, women artists are singled out and targeted for their gender often by non-state actors.
41. During the second cycle review in 2012, Tunisia supported several recommendations to improve women's rights, including recommendation 114.1 from Poland to "put in place a comprehensive strategy to eliminate patriarchal attitudes and negative stereotypes of women in the Tunisian society as well as eliminate discrimination against women that still exists in the national legislation".⁸

Supportive examples

42. In March 2016, the Tunisian Musicians Syndicate banned singer Hana al Zughlami (aka Tunisian Naglaa) from working in the country under accusations she promoted vice and immorality in her latest video and single 'La Ykhebbesh Wala Ydebbish'. The syndicate also stated that legal action would be taken against anyone who will collaborate with the artist.
43. The abstract artist Sana Tamzini, who took part in the 2012 Printemps des Arts festival, started receiving threats after her number and address were published on Facebook on 12 June 2012, along with exhortations by extremists to kill anyone associated with the annual arts festival.
44. "You are a whore," said a man's voice in one threatening phone call. "You are not a Muslim, we must kill you."

RECOMMENDATIONS

45. Replace unclear and vague provisions in the Penal Code used arbitrarily and disproportionately to imprison artists.
46. Criminal defamation laws should be abolished and replaced, where necessary, with appropriate civil defamation laws.
47. Take measures, including human rights training for police and other law enforcement officials to ensure the Penal Code, Law 52 (concerning drugs) and other regulations and arbitrary practices are not used by the police to quell artistic expressions critical of the police and other aspects of society.
48. Ensure that the new proposed drug law, specifically the new provision: "public incitement to commit drug-related offenses", will not be used to target artists' creative expressions.
49. Put in place a comprehensive strategy to eliminate threats, patriarchal attitudes and negative stereotypes of women artists.

⁸ Source of position: A/HRC/21/5 - Para. 114

50. Take appropriate measures to secure a safe environment for all those engaged with the arts, including audiences, and to combat impunity of those identified as responsible for violations against artists and audiences.