

# EXPLORING THE CONNECTIONS BETWEEN ARTS AND HUMAN RIGHTS

Report of high-level expert meeting

Vienna, 29 – 30 May 2017

European Union Agency for Fundamental Rights



Pablo Picasso's horror of the Nazi German bombing of Guernica (Spain), during the Spanish Civil War on April 1937, inspired one of his masterpieces: Guernica.

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## Introduction

Artists, curators, scholars and human rights practitioners explored the links between artistic practice and human rights in the context of the European Union (EU) and the activities of its independent centre for fundamental rights expertise, FRA. In their discussions, they aimed to:

- articulate and debate essential questions about the relationship between arts and human rights, and the potential of such a relationship, in an EU context and within the practice of contemporary arts;
- explore models of collaboration between arts and human rights actors;
- identify how FRA can support artistic freedom of expression;
- explore the role arts may play to restrain or violate rights, and how to tackle such concerns;
- identify how arts could contribute to the Fundamental Rights Forum 2018 and FRA's work in promoting human rights.

The agency organised this high-level expert meeting in Vienna on 29-30 May 2017, bringing together participants from different EU Member States and horizons, including: human rights and fine arts academics; museum staff; curators; representatives of civil society organisations focusing on artistic freedom; and artists from the fields of photography, visual arts, comics, choreography, literature and music. Representatives from EU institutions and the United Nations (UN) also participated at the meeting. The discussions took place in the Chatham House format, so individual comments by participants are not attributed.

This report distils the meeting's discussions and concludes with recommendations to strengthen links between arts and human rights for FRA and other actors.

### Guiding questions

1. What rights are of most relevance to art and artists?
2. What is the role of art in communicating messages about human rights? Should there be greater linkages between artists and human rights professionals in this regard, without 'instrumentalising' art?
3. How does art help to dismantle stereotypes?
4. What is the role of art in protest movements? What have been the consequences, both desirable and detrimental, for the association of art with certain protest movements?
5. What are the most pernicious forms of state censorship in Europe? What are the justifications used?
6. How does the art/human rights world address the phenomenon of offensive or inappropriate art, including art, which is offensive in non-progressive (regressive?) ways?
7. What is the status of artistic freedom in the EU? Is art in Europe dominated by a certain group? What can be done to redress any imbalance and to guarantee equal access?
8. What are the boundaries of hate speech in relation to art? Should there be a greater or lesser benefit of the doubt in defining an art piece as hateful? When does 'offence' end and 'hate' begin?

## Commonalities between arts and human rights

There are many overlaps and commonalities between the fields of the arts and human rights. Both are concerned with questions of what is (and what is not), humanity, identity, dignity, of communicating empathy, of the transformation of lives, of visions for the future and of the mission of mankind, of the full development of the person. Both are universally applicable. There is a great deal of shared space between the disciplines, which should be captured and utilised more consistently in order to push forward with mutually beneficial agendas in both fields. Human rights, and sometimes the arts, raise a key question: "How do we make the future more attractive than what now exists?"<sup>1</sup> The arts question or give contours to what it is to be, while human rights empower people to be who they are.

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Human rights can facilitate the creation of spaces for artists and art to engage and flourish, through recognition and protection of the right to be creative, unpredictable, confronting, subversive, beautiful and ugly. Human rights provide the protection needed to break out of dogma, opening up possibilities for new thinking, which are often foregrounded in art. Much of the human rights agenda is directed at bridging attitudinal disparities, such as prejudices based on race, religion, gender, age, nationality, culture and identity. Art can help to overcome those barriers, by bringing a counter-discourse, contesting privileged narratives and perspectives.

The fields of neurobiology and psychology bring insight to the impact of art on our inner selves.<sup>2</sup> Art invites us to consider, to ponder, to reflect, to participate, and to respond. Art inspires "feelingful thinking".<sup>3</sup> The arts dignify human experience by giving voice to thoughts and feelings, which trigger recognition of one's own humanity, and hence the contemplation of our collective humanity. The aesthetic experience is one of confrontation with our logical "rational" self, our physical perceptions, our intuition, and our emotions.<sup>4</sup>

There are a number of organisations devoted to the dual causes of art and human rights. One example is Musicians for Human Rights.<sup>5</sup> Its mission is to foster humanism through music, for example by gathering leading musicians to perform for and with vulnerable groups (e.g. refugee children) or human rights organisations, to receive lectures from human rights experts, and to commission new pieces of music about human rights principles, historical events, or personalities.

## What can human rights do for arts?

"There is a human right to create art, to admire it, critique it, challenge it, be provoked by it, respond to it, and to ignore it".<sup>6</sup> All those involved in art have human rights, whether it be in relation to the creation, the production, the composition, the distribution, the dissemination, and/or the display of art. Art of

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<sup>1</sup> Comment from a participant.

<sup>2</sup> See, e.g., Fineberg, J. D. (2015), *Modern Art at the Border of Mind and Brain*, Lincoln, University of Nebraska Press.

<sup>3</sup> Rose, Gilbert J. (1996), *Trauma and Mastery in Life and Art: Expanded with an Original Docudrama*, Madison Connecticut, International Universities Press.

<sup>4</sup> Julian Fifer of Musicians for Human Rights.

<sup>5</sup> See [www.musiciansforhumanrights.org/](http://www.musiciansforhumanrights.org/).

<sup>6</sup> Facebook post to one of the participants.

course includes all types of arts, such as the visual arts, music, digital art, architecture, cinema, sculpture, crafts, literature, fashion and photography, and in all styles. All persons have rights to enjoy and have access to art and cultural institutions.

## Relevant rights

For the sake of brevity, reference is made to the relevant rights in the EU Charter of Fundamental Rights. The relevant rights are however widely recognised in other European and global human rights documents. The rights of most relevance to art and artists are freedom of expression in Article 11 and the right to cultural diversity in Article 22. Article 13 specifically recognises that “the arts ... shall be free of constraint”.

European states are also bound by the International Covenant on Economic Social and Cultural Rights (ICESCR) which recognises cultural rights in Article 15. There are also a number of UNESCO instruments which are of relevance to supporting the rights of artists, particularly the UNESCO Recommendation Concerning the Status of the Artist 1980 and the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions 2005. Attacks on sites of cultural significance, or cultural items, are recognised as war crimes in some circumstances under the laws of armed conflict and international criminal law.<sup>7</sup>

One of the most comprehensive reports on artistic freedom was compiled by the UN’s Special Rapporteur in the field of Cultural Rights in 2013, entitled “The right to freedom of artistic expression and creativity”.<sup>8</sup> There are also civil society organisations which work and report on artistic freedom, such as the Copenhagen-based Freemuse,<sup>9</sup> which focuses on artistic freedom and the rights of musicians in particular, and PEN International,<sup>10</sup> which focuses on the rights of writers. The International Council of Refugees Network (“ICORN”) constitutes an independent network of cities, mainly in Europe with some in the US, which provide temporary refuge to, as well as working and performing possibilities, to persecuted artists and artists.<sup>11</sup>

The work of such organisations is crucial in raising the profile of artistic rights, as witnessed by the rise in questions on artistic freedom raised during the Universal Periodic Review (“UPR”) process in the UN. These are largely driven by the efforts of Freemuse and other civil society organisations in monitoring artistic freedom, writing up relevant country reports and lobbying states to ask such questions.<sup>12</sup>

## Artistic freedom

Artistic freedom is one aspect of freedom of expression. However, concerns over freedom of expression tend to focus more on the news media, rather than upon artists and the arts. The rights of journalists and the press have dominated questions regarding free speech. For example, “freedom of the press” is often explicitly protected in constitutions or domestic laws, whereas “artistic freedom” rarely receives such explicit recognition as a human right. There is a dearth of research on and attention to artistic freedom.

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<sup>7</sup> See, for example, [Rome Statute of the International Criminal Court](#), Article 8 (2) (b) (ix).

<sup>8</sup> United Nations (UN) (2013), Report of the UN Special Rapporteur in the field of cultural rights, Farida Shaheed, [The right to artistic expression and creativity](#), UN doc A/HRC/23/34, 14 March 2017.

<sup>9</sup> See [www.freemuse.org](http://www.freemuse.org).

<sup>10</sup> See [www.pen-international.org](http://www.pen-international.org).

<sup>11</sup> See [www.icorn.org/icorn-cities-refuge](http://www.icorn.org/icorn-cities-refuge).

<sup>12</sup> Reitov, O. (2015), ‘Challenges to artistic freedom’, in UNESCO, *UNESCO Global Report 2015, 'Reshaping cultural policies'*, Chapter 10, pp. 195-196.

Artistic creations may have multiple meanings, some of which may not even be the meaning the artist intended to convey. An artist cannot control the various meanings ultimately attributed by their audience. Whether ambiguous or not, art attracts (dis-)proportionate amounts of controversy. Controversy is not itself a bad thing, as it provokes discussion in society, and is an important antidote to complacency. Hence, controversy should be embraced. In particular, it must not of itself lead to greater suppression and censorship of art.

## Threats to artistic freedom

Threats to artistic freedom can arise from government regulations and laws. At the governmental level, threats to the arts may be seen in crackdowns on free speech in various countries. Other threats to artistic freedom can arise from laws regarding blasphemy, obscenity, morality, defamation, national security laws, or overly rigorous classification systems.

## Copyright

Copyright laws help to protect the material interests of artists.<sup>13</sup> They are a form of intellectual property which is protected under Article 17 (2) of the Charter. However, developments in international economic law have led to the extensions of copyright laws long beyond the lives of authors and artists to the point where it is arguable that copyright terms are now routinely too long.

Copyright laws do not equate with the rights of artists under Article 15 (1) (c) of the ICESCR “[t]o benefit from the protection of the moral and material interests resulting from any ... artistic production of which he is the author”. For example, copyright laws can vest in companies which do not have rights under Article 15(1) (c). Article 15 (1) (c) does not dictate that current intellectual property protection is the only or even the most desirable form of such protection.<sup>14</sup>

Copyright laws can constrain the derivative use of certain art by subsequent artists. This issue is probably now more important in the digital age, and is of particular importance with certain art forms, such as rap music and its frequent use of “sampling”. Furthermore, copyright litigation is notoriously complex and expensive. Accordingly, copyright holders can abuse their rights by threatening litigation.<sup>15</sup>

Artists commonly assign their copyright to corporate publishers. Such assignment may sometimes arise under duress, due to the imbalance of power between the contracting parties, and the common lack of alternative financial means for the artist. Artists too often sign away their copyright, and also control of the work. This can mean that the work is later used in a way which contravenes the artist’s own preferences, such as in the advertising of a particular product.<sup>16</sup>

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<sup>13</sup> See also Report of the UN Special Rapporteur in the field of cultural rights, Farida Shaheed (2014), [Copyright policy and the right to science and culture](#), UN doc A/HRC.28/57, 24 December.

<sup>14</sup> See Committee on Economic Social and Cultural Rights (2006), [General Comment 17](#), ‘The right of everyone to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he or she is the author (article 15, paragraph (1)(c), of the Covenant’, UN doc. E/C.12/GC/, 12 January.

<sup>15</sup> Report of the UN Special Rapporteur in the field of cultural rights, Farida Shaheed (2013), [The right to artistic expression and creativity](#), UN doc A/HRC/23/34, 14 March, paras. 82 and 84.

<sup>16</sup> *Ibid.*, para. 80.

The dominant legal conceptions of copyright law are based on Western concepts of individual ownership.<sup>17</sup> Accordingly, they do not “fit” with alternative notions of creation and ownership, such as those which have traditionally prevailed in Indigenous communities. Furthermore, copyright laws arguably provide insufficient protection to certain artists, such as those who popularise non-fictional stories.

## Access to funding

The right to culture in Article 15 ICESCR grounds a progressive duty upon States parties to provide adequate funding to art and the arts.<sup>18</sup> Nevertheless, arts funding has plummeted under austerity policies across many European states.<sup>19</sup>

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Furthermore, it is important that such funding be provided without “strings attached”, such that art is funded on merit rather than message. Funding must not be used by governments to politically shape art. Funding should be governed by bodies which operate independently, “at arm’s length”, from the political leadership to allay fears of the politicisation of funding priorities.

## Access to public space

Some of the most important art is “street art”, which is displayed for free, such as wall murals and street performances. Such art can make an impression on those who do not go out of their

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way to seek artistic engagements in museums and the like, and are also accessible to those with fewer resources to access art, such as the homeless.<sup>20</sup> The increasing privatisation of public space inhibits creativity in this arena. Furthermore, it is concerning that governments might take a stricter approach to regulating or censoring street art as opposed to advertising billboards in public spaces.<sup>21</sup>

## Non-state actors and arts

Non-state actors can also threaten artistic freedom. From a human rights point of view, non-governmental drivers of censorship are more difficult to address than State censorship. States have direct human rights duties under international law whereas non-state actors generally do not. States nevertheless have duties to protect human rights, such as the right to freedom of expression, from undue interference by non-state actors.

<sup>17</sup> See, for example, Davis, M. (1997), [Indigenous Peoples and Intellectual Property Rights](#), Parliament of Australia, Research Paper 20, 1996-1997.

<sup>18</sup> See Report of the UN Special Rapporteur in the field of cultural rights, Farida Shaheed (2013), [The right to artistic expression and creativity](#), UN doc A/HRC/23/34, 14 March, para. 90 (h).

<sup>19</sup> See, e.g., *Guardian* series, [European Arts Cuts](#), 3 August 2012.

<sup>20</sup> Report of the UN Special Rapporteur in the field of cultural rights, Farida Shaheed (2013), [The right to artistic expression and creativity](#), UN doc A/HRC/23/34, 14 March, para. 65.

<sup>21</sup> See Report of the UN Special Rapporteur in the field of cultural rights, Farida Shaheed (2014), [Promoting and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms](#), UN doc A/69/286, para 86.

Non-state “censorship” can arise from religious fundamentalists (seen at the most extreme level in the murder of the *Charlie Hebdo* cartoonists) and morals campaigners (who might for example object to art relating to sex, gender or gender identity). Of relevance here is the notion of a “heckler’s veto”, which applies where the adverse reaction of an audience prompts the removal of a work of art. Art is particularly prone to offending people, compared to other forms of expression. Sometimes art will outrage, and provoke an extremely antagonistic reaction from those who disapprove. Enormous pressure can follow to effectively compel the withdrawal of an artwork. Social media now provides a ready platform for the application of such pressure. Such adverse reactions also increase instances of self-censorship, which is when artists “give up” on pursuing certain controversial topics due to fear of an official or unofficial backlash.<sup>22</sup>

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## Market censorship<sup>23</sup>

Cuts in government funding have increased corporate power over the arts, which was already substantial. This trend increases the likelihood of effective market censorship of art. For example, advertisers may wield power without transparency and accountability, placing behind-the-scenes pressure on outlets, such as radio stations or museums, to withdraw or refuse to display certain artworks.<sup>24</sup>

Certain producers or distributors of art, such as film and television studios, radio stations and music production companies, are increasingly becoming part of ever larger corporate conglomerates. A decrease in the range of corporate owners increases the monopoly power of existing owners, which endangers market pluralism, and decreases opportunities for the wider release of challenging and unfashionable artworks, or of the work of low profile artists. Furthermore, contemporary corporate conglomerates may have far less understanding of artistic values than older media conglomerates, as art and media may not even be their main business focus.<sup>25</sup>

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Much art and art exhibitions is funded, at least in part, by sponsors. Historically, private patronage has been crucial in the dissemination of art, and the raising of the profile of artists. The Medici of yesterday have been replaced by the patrons of today (modern day Guggenheim) as well as rich corporations. Sponsorship is undoubtedly important for the flourishing of arts, especially with the decline in available public funding, but it can also place artists in difficult moral situations. There is a danger of capture, of subtle censorship, or of artists

<sup>22</sup> Indeed, participants at the meeting raised the intriguing idea of trying to organise an exhibition of the work that artists have refrained from creating, due to such pressures.

<sup>23</sup> See also Report of the UN Special Rapporteur in the field of cultural rights, Farida Shaheed (2013), [The right to artistic expression and creativity](#), UN doc A/HRC/23/34, 14 March, paras. 74-78.

<sup>24</sup> A notorious example of this phenomenon concerned the refusal by radio stations across the United States to play songs by the Dixie Chicks, after the band’s lead singer criticised then President George W. Bush on stage in 2003. This ban was driven in part by pressure from advertisers, see Carpowich, M. (2015), [‘Are the Dixie Chicks and Country Radio Finally Ready to Make Nice?’](#), *Huffington Post*, 20 November.

<sup>25</sup> See Kovach, B. and Rosenstiel, T. (2007), *The Elements of Journalism*, New York, Three Rivers Press, making this point about media outlets in general, on pp. 30, 62, 71 and 156.

being forced to associate with businesses that they fundamentally disapprove of.<sup>26</sup> Corporate sponsorship is often granted to boost a company's brand, and thus can be swiftly withdrawn if a company perceives possible brand endangerment through association with a controversial artwork.<sup>27</sup>

## What can arts do for human rights?

Despite enormous advances in medicine, science, and technology, there are new and intensified threats to the enjoyment of human rights. The world today is witnessing the unprecedented displacement of human beings, murderous religious extremism, belligerent nationalism and xenophobia, expanding wealth disparities, and increasing impacts from climate change. There is also a crisis of confidence, and a mass loss of trust, in institutions such as the European Union, government authorities, established political parties, churches and the media. Overall, many perceive reduced prospects for a dignified life.<sup>28</sup>

In this environment, the human rights message is flagging and may be failing. It is possibly taking place in a bubble where we talk to ourselves; it is not reaching the "unconverted". It is not swaying those who are disinterested or antagonistic. Perhaps the human rights message is too legalistic, technocratic, or condescending, or "politically correct". The standard human rights message may have become too divorced from the lives of many, too focused on particular types of vulnerable people (e.g. refugees, minorities and prisoners), such that many do not see what might be in it for them (e.g. Mr "Average Spain", or the nurse who might contemplate joining the one third of French electors who voted for the Front National).<sup>29</sup>

Whatever the reasons, the language of the international and municipal human rights professionals, whether conveyed by the practitioners, the activists, the lawyers, the academics, the bureaucrats, or the judges, is not resonating as we need it to. The human rights message needs help and reinforcement. Artists can help.

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The professional field of human rights can learn a lot from the field of arts. Emotions commonly drive decisions; yet, modern societies (wrongly) believe to be driven by rational thought and intellect. We do not only think, therefore we are, but we also feel, therefore we are. Indeed, perceptions (including love, hate, hope, forgiveness, horror and empathy) are more powerful than facts, especially when society's acceptance of facts is rapidly fracturing. Art is all about perceptions, even sometimes visceral representations and reactions. Music and storytelling are more

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<sup>26</sup> Note, regarding this point, the threatened boycott by several artists of the Biennale of Sydney in 2014, in protest against one of the sponsors being associated with the offshore detention of refugees by Australia. Eventually, the Biennale cut ties with the relevant sponsor: see Joseph, S. (2014), '[The Biennale Boycott Blues](#)', *The Conversation*, 22 March.

<sup>27</sup> A recent example of this phenomenon was the swift withdrawal of sponsorship from "Shakespeare in the Park", a dramatic production in Central Park, New York, due to controversy over the apparent depiction of the assassination of President Donald Trump in its 2017 rendition of 'Julius Caesar'. See Greenblatt, S. (2017), '[Trump as Julius Caesar: anger over play misses Shakespeare's point, says scholar](#)', *Guardian*, 13 June.

<sup>28</sup> This paragraph was inspired by an email from one of the participants.

<sup>29</sup> FRA also convened in May 2017 another expert meeting on 'Communicating rights' to respond to the urgent need to more effectively communicate, at every level, the fact that rights and freedoms belong to all. It concluded that effective communication is about sustaining support for those rights, influencing change leaders and raising awareness among rights holders. See the meeting report at [http://fra.europa.eu/sites/default/files/fra\\_uploads/fra-2017-communicating-rights-expert-meeting-report\\_en.pdf](http://fra.europa.eu/sites/default/files/fra_uploads/fra-2017-communicating-rights-expert-meeting-report_en.pdf).

powerful mediums than the formal text normally used by human rights professionals. Art can transcend barriers, such as politics and language.

Art can chronicle human rights abuses, hence providing for a unique form of naming and shaming, witnessing, and accountability. For example, Picasso's *Guernica* (1937) is a savage indictment of the aerial bombing of civilians in the Spanish civil war. Bob Dylan's *Hurricane* (1975) drew stark attention to racism in the US criminal justice system.

The right to protest is a crucial manifestation of freedom of expression, and often takes the form of an objection to human rights abuses. Art has a long history as being part of protest. For example, art in multiple forms was in the vanguard of drawing attention to the AIDS calamity in the 1980s in the face of initial official indifference.<sup>30</sup> In this way, art can also inspire people to act as advocates for human rights causes.

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Art can be used in more direct ways to appeal to governments. After all, policymakers and leaders have cultural tastes and lives. A message delivered by a leader's favourite artist or author about a human rights issue can have significant influence. Indeed, leaders used to have more celebrated connections with artists, as in the case of London's famed Kit-Kat club of the nineteenth century.<sup>31</sup>

Art can help to heal the wounds of human rights abuses. For example, art programmes can help to alleviate the suffering of people in refugee camps, or in prison. Art can help one cope with one's own anguish. For example, Myuran Sukumaran, a convicted Australian drug smuggler who was sentenced to death in Indonesia in 2005, coped with the stress of death row by transforming himself into an accomplished painter.<sup>32</sup>



Vedran Smailovic playing Albinoni's Adagio in G Minor in the destroyed building of the National Library in Sarajevo, 1992

However, the potential power of art must not be overestimated by the human rights world. Art may be better at elucidating the important "questions" rather than the "answers". While art can provide some comfort to victims, and even the creators themselves, that comfort does not undo human rights abuses. For example, art projects for incarcerated refugee children may help them cope with their plight, but it does not remove the need to end inhuman incarceration. Sukumaran's art may attract praise, but he was still executed by firing squad in 2015.

There is a perceived tension between so-called high art and low art, and, relatedly, the conveyance of human rights messages in complex and simple terms. The simpler message is likely to reach or resonate with a larger number of people, but such a message risks being received as a superficial "sugar hit". The more complex message may resonate more deeply, but perhaps with a smaller group of people. Both types of messages are important in furthering the cause of human rights, that is the "popular", which is likely to be simpler, as well as the "complex", with its greater nuance.

<sup>30</sup> See, e.g., Pollack, B. (2014), '[Document, Protest, Memorial: AIDS in the Art World](#)', *ARTNews*, May 2014.

<sup>31</sup> See Field, O. (2008), *The Kit Kat Club*, Harper Press.

<sup>32</sup> Sukumaran, C. (2017), '[Myuran Sukumaran's brother on art's healing power](#)', *Sydney Morning Herald*, 4 February.

Art must not be instrumentalised, as this would harness and control art. It cannot be that art “must” convey a human rights message. There is no “must” for art, which would undermine art itself. The wonder and purpose of art is not to save the world: art has no strict purpose, which is part of its power.

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There are many examples of the conveyance of human rights messages through art, including the following European examples.

- During the siege of Sarajevo in the early 1990s, Vedran Smailović, the “Cellist of Sarajevo” and former member of a famed string quartet, defiantly played his cello outdoors despite the dangers of bombs and snipers. He played at the sites of civilian deaths to honour those who had died, and to bring some hope and beauty to the lives of a besieged population.<sup>33</sup>
- After the conflict in the Western Balkans, U2 played in Sarajevo on 23 September 1997 at a time when many still thought of the city as dangerous. That night people gathered as U2 fans rather than as members of separate ethnic groups. The language of music was used to foster reconciliation in a broken city, and may have achieved more in one night than had been achieved by the language and machinations of diplomacy.<sup>34</sup>
- Many contemporary artists are highlighting the dangers of climate change, including in the public art of Spanish artist Isaac Cordal<sup>35</sup> and the installation at the 2017 Venice Biennale of Lorenzo Quinn entitled “Support”.<sup>36</sup> Climate change of course has and will have numerous human rights impacts.
- Human rights issues have arisen at the Eurovision song contest, despite the explicitly apolitical (and light-hearted) nature of that competition. In 2014, Austrian winner Conchita Wurst highlighted issues regarding the rights of LGBTIQ people,<sup>37</sup> while the 2017 winner, Portugal’s Salvador Sobral, has highlighted the plight of refugees in his press conferences.<sup>38</sup>
- German photographer Eva Leitolf’s “Postcards from Europe” is a long-term project starting from 2006, focusing on the structures and procedures used by European societies to register and administer migrants, “in a quest to reinforce their grip on Europe’s outer borders”.<sup>39</sup>



Portugal's winner of Eurovision Song Contest 2017, Salvador Sobral, wearing the SOS Refugees shirt during the first Semi-Final press conference

<sup>33</sup> See, e.g., Buttry, B. (2012), '[Vedran Smailović: the brave cellist of Sarajevo still moves the world](#)', *Read the Spirit*, 24 June.

<sup>34</sup> See, e.g., Fetter, A. (2012), '[When U2 went to Bosnia in 1997](#)', *The Atlantic*, 22 September.

<sup>35</sup> For example, see Cordal’s work in Nantes, France, entitled '[Waiting for Climate Change](#)'.

<sup>36</sup> See Lorenzo Quinn’s '[Support](#)' at the 2017 Venice Biennale.

<sup>37</sup> See Lees, P. (2013), '[Drag Queen? Transgender? Conchita's an ambassador and that's what matters](#)', *Guardian*, 12 May.

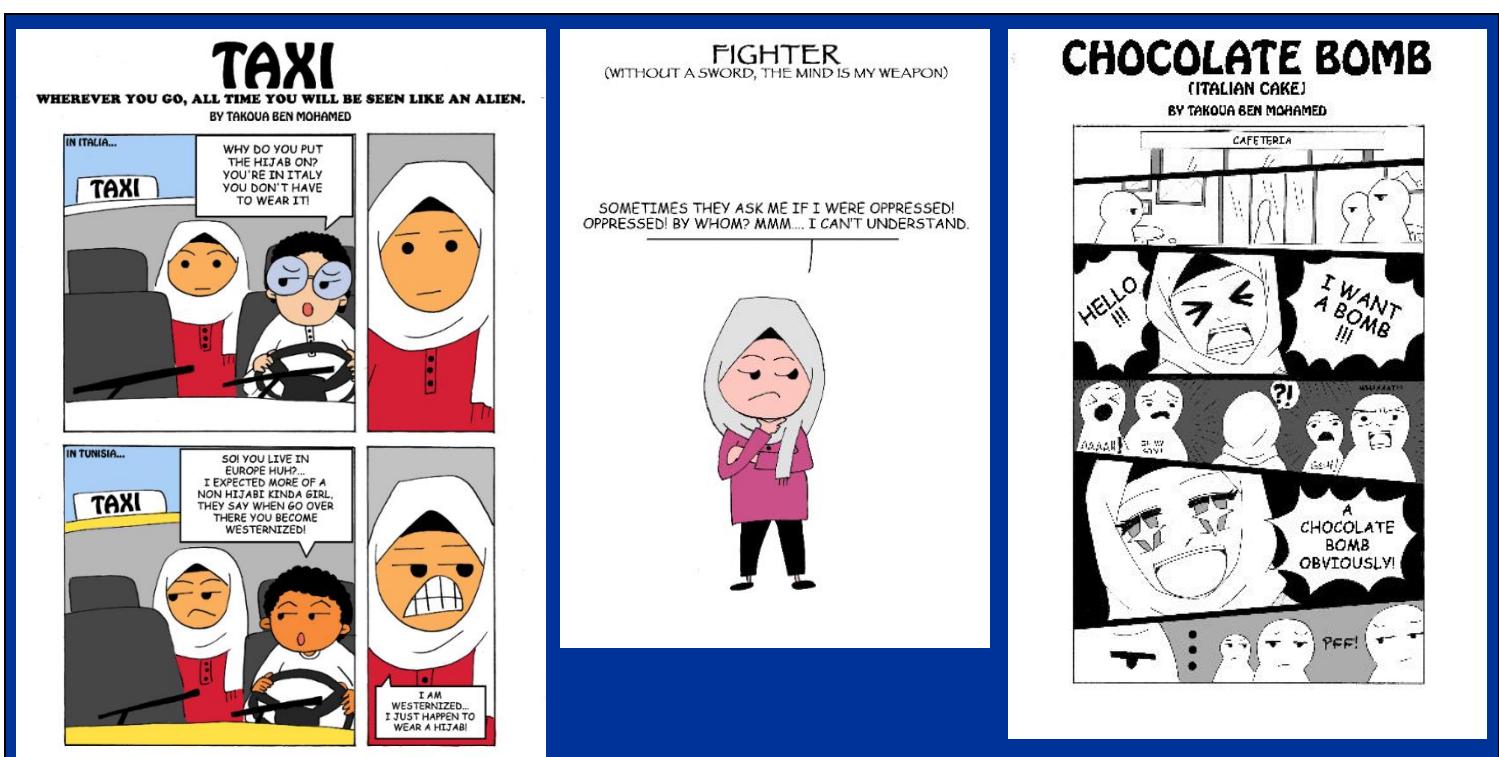
<sup>38</sup> Taylor, F. (2017), '[Portugal wins Eurovision for the first time as Salvador Sobral scoops 2017 victory](#)', *Radio Times*, 13 May.

<sup>39</sup> [www.europeanprospects.org/eva-leitolf](http://www.europeanprospects.org/eva-leitolf): “She focuses on the tension between what is visible and what will become conceivable. In her image-text works she fathoms the possibilities and limits of what is representable, displaying a conceptual astringency that is activated by the means of documentation.”

- Takoua Ben Mohamed is an Italian-Tunisian comic artist. Her comics challenge racist and Islamophobic stereotypes, particularly those attributed to Muslim women, and also educating people about the lives of Muslim women.<sup>40</sup>
- The Oasis song, *Don't Look Back in Anger*, originally released in 1995, has become a symbol of hope and resilience in the wake of the Manchester terrorist attack in May 2017. It has been sung for the same purpose in London, and was played by a military band at a football friendly between France and England. It is a message of solidarity and hope, hopefully alleviating the despair and desire for revenge people may feel over such awful attacks.<sup>41</sup>

The Oasis example shows how the meaning of a work of art can change, and evolve well beyond the context of its original composition, even far beyond the imagination of the creator. It demonstrates how the entire back catalogue of art may be useful in communicating positive human rights messages (with permission where needed), rather than only contemporaneous works.

"The entire back catalogue of art may be useful in communicating positive human rights messages."



Takoua Ben Mohamed, a young Italian-Tunisian comics artist and graphic journalist, represents with irony in "Taxi" the daily distress of Muslim girls wearing Hijab. She also describes in "Fighter" the prejudice faced by Muslim women on their status of oppression. Her cartoon with the title "Chocolate bomb (Italian cake)" deals with Islamophobia and especially the prejudice towards Muslim communities linked to the fear of terrorist attacks.

<sup>40</sup> Her Facebook page is available at [www.facebook.com/IlFumettoInterculturaTakouaBenMohamed/](http://www.facebook.com/IlFumettoInterculturaTakouaBenMohamed/).

<sup>41</sup> See Davis, C. (2017), 'France and England fans united to sing "Don't Look Back in Anger" in tribute to terror victims', *The Telegraph*, 14 June.

## Divergences between arts and human rights

Art can be misused to violate human rights, such as in reports of the use of heavy metal music as part of US programmes of torture,<sup>42</sup> or in the revelation that the much-lauded erotic movie of 1973, *Last Tango in Paris*, depicts an actual sexual assault on the lead actress, Maria Schneider.<sup>43</sup>

"Art can be misused to violate human rights."

There are artworks which convey messages now seen as abhorrent, but which were seen as normal and even laudable by dominant sectors of society at the time of their creation. Examples include works that celebrate colonisation. A recent controversy of this sort concerns the appropriateness of a public statue of Cecil Rhodes in Oxford. Would its removal represent an appropriate contemporary rejection of Rhodes' white supremacist vision, or a vain attempt to rewrite or sanitise history?<sup>44</sup>

Art can equate with hate speech, which is a breach of human rights under international human rights law entailed in, for example, Article 20 of the International Covenant on Civil and Political rights (ICCPR). Examples of "hate art" include depictions of Jews from the Nazi newspaper *der Stürmer*, and urgings to genocide of certain songs from Rwanda.<sup>45</sup> However, the issue of "hate speech" gets less clear beyond such obvious examples. It is not always easy to draw the line. This is particularly the case with art which may, as stated, evoke multiple meanings.

Clearly, there are many artworks which may fall short of hate, but which may still be, or be perceived to be, antagonistic to certain groups of people including vulnerable minorities. Just as art can help to dismantle harmful stereotypes, it can reinforce them: art is not necessarily "progressive" in relation to human rights. Examples include numerous cartoon depictions associating Islam with terrorism, and the sectarian murals on display in Northern Ireland.

Art can combat propaganda, and can also constitute propaganda. Clearly, "propaganda for war" is equated with human rights abuse as a form of hate speech under Article 20 of the ICCPR. But what about other forms of propaganda? Artists can allow their art to be appropriated for certain political messages, such as when musicians allow their songs to be used as parts of political campaigns. Some propagandistic art is undoubtedly of very high quality and even iconic, such as Sergei Eisenstein's *"Battleship Potemkin"*. When does an artistic message constitute "propaganda"? Is it possibly true that most Hollywood movies have some propaganda value in promoting the capitalist lifestyle? Is all art used in the service of advertising a form of propaganda?

Human rights activists must be wary of kneejerk reactions to art which may seem, or even have, a divisive message. The right to free speech and artistic expression is very broad, and guards against the censorship of most views. While any piece of art may be subject to criticism, the human rights community must be very careful before calling for the withdrawal of or censorship of art.

"Human rights activists must be wary of kneejerk reactions to art which may seem, or even have, a divisive message."

<sup>42</sup> See Ross, A. (2016), '[When Music is Violence](#)', *The New Yorker*, 4 July.

<sup>43</sup> See Torres, César A. and Golding, D. (2016), '[Why we should no longer consider Last Tango in Paris 'a classic'](#)', *The Conversation*, 5 December.

<sup>44</sup> Compare Choudhury, A. (2016), '[The real meaning of Rhodes Must Fall](#)', *Guardian*, 16 March and Jenne, A. (2015), '[Mary Beard says drive to remove Cecil Rhodes statue from Oxford University is a 'dangerous attempt to erase the past'](#)', *The Independent*, 22 December.

<sup>45</sup> See International Criminal Tribunal for Rwanda, [Simon Bikindi v. Prosecutor](#), Case No. ICTR-01-72-A, 18 March 2010 (Appeal Chambers), and McNeil; Donald G. Jr (2002), '[Killer Songs](#)', *New York Times*, 17 March.

## Museums

Museums and galleries are important sites for the display of art, and for people to access their cultural heritage, and those of others. Some museums are devoted to particular human rights causes, such as Liverpool's Museum of Slavery.<sup>46</sup>

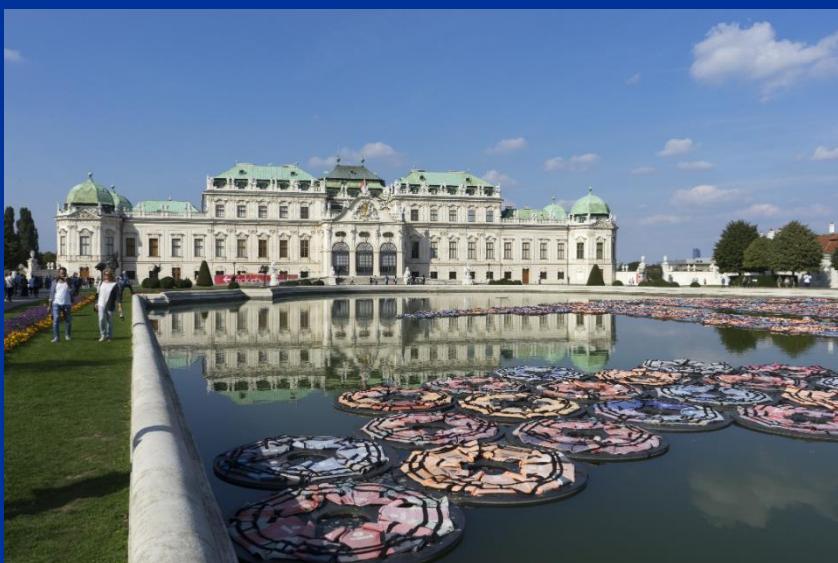
Museums have often failed to champion diversity in their collections. For example, the "Guerilla Girls" are a women's artists' collective, who have long drawn attention to manifest discrimination

"Museums have often failed to champion diversity in their collections."

against female artists by museums, galleries and organisers in staging exhibitions the world over.<sup>47</sup> They commonly highlight the very low numbers of pieces commissioned or displayed from female artists in various named galleries, including numerous ones in Europe.

Some museums have a very problematic history, such as ethnographic museums with displays originally curated as blatant showcases for colonial and racist superiority. A case study in this respect is the Royal Museum of Central Africa in Brussels, given the horrific nature of Belgian colonial rule in Africa. How should museums deal with such problematic histories? The Royal Museum has responded by undergoing a complete renovation since late 2013 and is due to reopen in June 2018.<sup>48</sup> During this period, the museum has consulted with the African Diaspora in Belgium, as well as contemporary artists, on how to convey the history represented in its exhibits.

A related issue is to question how museums should address display items which have been "plundered" from other cultures, such as the Elgin Marbles in the British Museum, or Indigenous artefacts in numerous European museums. Of great relevance in Europe are incidences of art housed in museums, which has been looted from persecuted owners, such as Jews in the years up to and during the Second World War.



Ai Weiwei's major solo exhibition, presented in 2016 at the 21er Haus in Vienna, reacting on social realities of migration between countries and continents.

<sup>46</sup> See [www.liverpoolmuseums.org.uk/ism/](http://www.liverpoolmuseums.org.uk/ism/).

<sup>47</sup> See [www.querillagirls.com](http://www.querillagirls.com).

<sup>48</sup> See [www.africamuseum.be/renovation](http://www.africamuseum.be/renovation) for a discussion of the renovation, and the reasons behind it. See also O'Donnell, J. (2014), 'Colonial ghosts haunt Belgium as Africa museum eyes change', *Reuters*, 24 February.

## Recommendations

### For human rights professionals

- Always consider new and more dynamic methods of communicating about human rights. Current methods are not reaching far beyond constituencies that are already sympathetic and engaged. In short, try to reach those who read the *Daily Mail* or watch *Fox News*.\* Otherwise, human rights are (wrongly) perceived to be the preserve of “the left”. In this respect, establish connections with different types of artists who may be able to assist or advise on the conveyance of human rights information.
- Cooperate more often with artists. Such cooperation may arise after the work is complete, which avoids any interference with the artistic process but may still allow for utilisation of the work to convey human rights messages.
- Increase civil society monitoring of artistic freedom as a discrete human rights issue, rather than one that is simply part of, and therefore buried within, the broader notion of freedom of expression. Relevant strategies include the lobbying of states during the process of Universal Periodic Review and assisting artists who experienced human rights abuse to seek redress in domestic or EU courts, or submit cases and communications to regional and global human rights bodies.
- Consider offering *pro bono* seminars to artists on human rights, particularly the rights of most relevance to artists. Ideally, the seminars will be two-way dialogues, so that human rights professionals also learn from artists.
- Expand networks to include artists and other cultural influencers, such as film producers and film distributors.

### For artists, museums, curators and producers of art

- Learn about your rights. Find out about relevant organisations, such as trade unions, devoted to the working rights of artists. Expand networks where possible, including with human rights activists.
- If motivated to do so, consider ways in which your art can make a difference, however small, in particular human rights struggles, including ones that might directly concern you or your networks.
- Museums, curators and producers of art, such as music labels, should always be mindful of the need for diversity in arts. Ensure that any commissioned and displayed art reflects a broad demographic.
- Museums should consult with affected populations in deciding on the most inclusive and sensitive ways to display certain collections, such as ethnographic material collected from colonial times.
- Museums must cooperate with authorities in honestly appraising the provenance of artworks that are the subject of credible claims of looting.

\* These media outlets commonly publish stories that are antagonistic to human rights protections. See, e.g., Ian Drury (2017), '[Europe backs ‘human rights’ of Zimbabwean thug we tried to deport: Judges tell government it acted unlawfully in locking up criminal while he challenged being kicked out](#)', *Daily Mail Online*, 23 June.

### **For EU Member States**

- Identify the key questions that society will have to grapple with so that relevant disciplines, including arts and human rights, can anticipate and attempt to deal with them. Such questions might include addressing the likely impact of technological advancement on the labour market, possible ways of positively channelling the rise of nationalism, the likely economic paradigms that will follow neo-liberalism, and how to tackle climate change and extremism.
- Art was once at the centre of societies and provides some of the greatest connections between current civilisations and the past, going back centuries and even millennia. However, art has seemingly moved to the periphery of modern societies and its marginalisation may even gather pace, given the decline in recognised 'public intellectuals'. Art must regain a central place in society, especially to prepare for new challenges, such as the loss of jobs from new technologies. To that end, the prominence of arts in education should be increased.
- Allocate money to boost artistic creations that are ignored by the market. Help under-recognised artists reach a wider audience.
- Consider the inclusion of arts funding as a component of development aid budgets.

### **For EU institutions**

- Recognise that greater engagement with the arts may be one way of countering mass dissatisfaction with the European Union, its direction and vision. Europe is rightly proud of its artistic heritage and thus has every reason to foster an enduring contemporary arts culture, and to make clear that the flourishing of the arts remains a key European value.
- Copyright laws should be analysed to ensure that they are not obstructing human rights related to the arts. Consideration should be given to both greater inclusivity (for example, to provide appropriate protection to indigenous art) and greater flexibility (intellectual property laws should draw a fair balance between the rights of artists, consumers of arts and facilitators, such as corporate publishers).
- Encourage FRA to carry out a study on state practices on the funding of arts in the European Union, as well as EU practices regarding the implementation of the 2005 UNESCO treaty. FRA should be explicitly requested to devise recommendations on 'promising practices' in this regard.
- Foster cultural exchanges with a conspicuous human rights angle within the arts, including between arts students inside Europe and outside Europe.
- Consider the creation of a human rights museum within the European Union

### **For FRA**

- FRA should prioritise to conduct a study on the scope of artistic freedom in the European Union. What is the meaning of 'artistic freedom'? What are the relevant laws and regulations in the EU? A comprehensive comparative study would shed light on the current status of artistic freedom in the EU. The indicators of artistic freedom created by Freemuse form a sound baseline for such a study.

- FRA should study the main threats to artistic freedom, including from both state and non-state actors. For non-state actors, examples of sources of threats include religious extremists, morals' campaigners, social media pressure and market censorship. Self-censorship should also be examined, including the substantive areas of self-censorship and the reasons motivating such self-censorship.
- Facilitate the creation of a human rights museum in the European Union, such as the [Canadian Museum for Human Rights](#).
- Vienna is a great city of culture. While FRA is an EU body, it should utilise its geographic location and connect more with the cultural events of the city, such as its annual human rights film festival.
- FRA reports, including survey data, should be illustrated with art works, making them more interesting to read and more accessible. Those works of art do not have to be new – permission could be obtained (if necessary) to use existing and old art works. Transmedia story-telling, using different forms of new digital media which are particularly attractive to youth, could be used for particular reports.
- Develop links with relevant institutions on arts and human rights, such as UNESCO, the UN Special Rapporteur in the field of Cultural Rights, the UN Office of the High Commissioner for Human Rights and civil society organisations (e.g. Freemuse).
- Build a network of artists in various fields who are interested in particular human rights issues. FRA should also connect with curators, museums and art schools, including convenors of relevant courses and research at universities, such as at the University of Vienna.
- Sponsor a course for artists to educate them on human rights, especially their human rights. As part of the course, a discussion should take place on what might be considered as art that obstructs the cause of human rights. Ideally, artists and not human rights professionals should lead this discussion. Beyond the issue of 'hate art', namely art that constitutes hate speech, is there any such art that detracts from human rights? Does it matter, for example, if an art piece might be equated with propaganda? The purpose of such a discussion would be to tease out relevant issues as the basis for starting a conversation on this point; its purpose would not be to define the appropriate boundaries of art.
- Offer an annual prize to an artwork in the field of human rights, including different disciplines (such as photography, sculpture, film). The theme could vary, but one potential theme could be artworks based on a right enshrined in the Universal Declaration on Human Rights or the EU Charter of Fundamental Rights. For example, the 2018 Fundamental Rights Forum could take this initiative in the context of the film festival, 'This human world'.
- Commit to an 'artist in residency' programme for artists who live in the European Union, offering two positions: an on-site residency and a virtual residency. A virtual residency programme is important to increase accessibility and to be inclusive.
- Include artists in major events, such as the 2018 Fundamental Rights Forum.
- Raise awareness on the importance to pay artists for their time, since artists are too often assumed to be available for free or at non-commercial rates.





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