



UNESCO's Instruments  
in Defence of Freedom of  
Expression of Artists,  
Journalists and Scientific  
Researchers

Permanent Delegation of  
Denmark to UNESCO

# CRITICAL VOICES



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Freedom of Expression of  
Artists, Journalists and Scientific Researchers

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# ACRONYMS

**CEB**

Chief Executives Board

**CPJ**

Committee to Protect Journalists

**CR COMMITTEE**

Committee on Conventions  
and Recommendations

**CSO**

Civil Society Organizations

**DIHR**

Danish Institute for Human Rights

**ECOSOC**

United Nations Economic and Social Council

**EFJ**

European Federation of Journalists

**HRC**

Human Rights Council

**ICCPR**

International Covenant on Civil  
and Political Rights

**ICESCR**

International Covenant on Economic,  
Social and Cultural Rights

**ILO**

International Labour Organization

**IMS**

International Media Support

**INSI**

International News Safety Institute

**IPDC**

International Programme for the  
Development of Communication

**IPI**

International Press Institute

**JSI**

Journalist Safety Indicator

**MTR**

Mid-Term Report

**NGO**

Non-governmental Organization

**NHRI**

National Human Rights Institution

**OHCHR**

Office of the High Commissioner  
for Human Rights

**OSCE**

Organization for Security and  
Co-operation in Europe

**QPR**

Quadrennial Periodic Report

**RSF**

Reporters Without Borders

**SDG**

United Nations Sustainable  
Development Goal

**STI**

Science, Technology and Innovation

**UDHR**

Universal Declaration of Human Rights

**UN**

United Nations

**PLAN OF ACTION**

United Nations Plan of Action on the Safety of  
Journalists and the Issue of Impunity

**UNESCO**

United Nations Educational, Scientific  
and Cultural Organization

**UNSC**

United Nations Security Council

**UPR**

Universal Periodic Review

**WHO**

World Health Organization

The Permanent Delegation of Denmark  
to UNESCO

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The Permanent Delegation of Denmark  
to UNESCO  
1, Rue Miolis  
75015 Paris



# PREFACE

This Report – Critical Voices. UNESCO’s Instruments in Defence of Freedom of Expression of Artists, Journalists and Scientific Researchers – has been drafted by the Permanent Delegation of Denmark to United Nations Educational, Scientific and Cultural Organization (UNESCO). During the process, we have benefitted from financial support from the Nordic Culture Fund, for which we are very grateful. We have also drawn on data filtered by the Danish Institute for Human Rights in relation to the Universal Periodic Review of the Human Rights Council. Furthermore, in the drafting process, a number of colleagues and experts have provided comments on various drafts of the Report, which have undoubtedly helped us to focus and improve the outcome. For all these contributions, we remain thankful.

In the Report, we review and analyze some of UNESCO’s human rights-related legal instruments. Reviewing these normative texts has only confirmed their pertinence and relevance in tackling some of today’s most pressing issues in the area of freedom of expression, not least in the context of COVID-19. For the purpose of raising stakeholders’ awareness of the rich content of these instruments, some parts of

the Report contain relatively lengthy quotes from these basic texts. On the basis of the review, we provide a number of conclusions, propose a renewed UNESCO vision and set out 25 specific recommendations for further strengthening UNESCO’s human rights work. In so doing, we seek to set an agenda and to spur further discussions among Member States, National Human Rights Institutions (NHRIs), civil society organizations (CSOs) and the UNESCO Secretariat. Neither the detailed analysis nor the specific recommendations represent official positions of the Danish Government.

The Report covers a broad agenda. Still, there are a number of issues which have not been addressed, or have only been addressed in a fairly brief manner. This pertains especially to the issue of everyone’s right to “freedom of opinion and expression” as set out in Article 19 of the UDHR, and the right to freely “participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits”, as stated in article 27. We have in the Report consistently tried to focus on the right to freedom of expression for members of the three professional groups (artists, journalists and scientific researchers), not on

the broader – equally important – right of members of the public at large to enjoy and benefit from the outcomes of these professional processes. Likewise, in our efforts to sharpen the focus of the report, we only touch upon a modest part of the legal framework on the right of access to information. In the same way, we have not gone into detail with regard to the trade-related and commercial aspects of the work of the various professions, with the exception of the role of government support in the creation of an enabling environment, in financial and economic terms, for the three professions.

We have also sidestepped the broader role of the CR Committee and the so-called 104-Procedure within UNESCO, through which the Organization (its Member States) deals with individual complaints concerning alleged violations of human rights in its fields of competence, including Articles 19 and 27 of the UDHR. This procedure is a challenging subject, which may call for a detailed study of its own, and it has not been possible to integrate it in this Report.

We also readily admit that the gender aspects could have been developed much further, as sexism and misogyny continue to be a deplorable fact of professional life in all countries, and as women artists, journalists and scientific researchers are generally subject to more intimidation, intolerance and outright threats than their male colleagues. UNESCO has developed global frameworks across all three sectors to facilitate an enabling environment for gender equality. This includes flagship activities such as the L'Oréal-UNESCO for Women in Science Programme as well as the UNESCO

gender-sensitive indicators to enable assessment of gender equality both in the media sector and in the creative industries.

Finally, the new threats posed by digitalization and the increase in online communication, especially radicalization, hate speech and libel, could also have been developed in much greater detail.

The Report presents various options and possible steps to be taken in order to protect – and further strengthen – the right to freedom of expression for three key professional groups, artists, journalists and scientific researchers, within the mandate of UNESCO.

There are most surely other ways to reach this goal, but we hope that the reflections, conclusions and recommendations of this Report will help pave the way for a continuation of this discussion and a re-invention of UNESCO as a human rights organization.

We invite all interested parties to make use of the Report and its recommendations as best they can. Hopefully, it will lead to discussions among Member States and further positive changes in how human rights are integrated into the work of UNESCO. We will be ready to take part in such discussions.

### **Permanent Delegation of Denmark to UNESCO**

October 2021

# EXECUTIVE SUMMARY

During the UNESCO General Conference in November 2019, Member States made a number of interventions in various contexts, expressing deep concern about the visibly shrinking space in many countries – in all regions – with regard to freedom of expression of those artists, journalists and scientific researchers who, based on their professional standards and ethics, and in pursuit of reason, truth, factual evidence and the free exchange of ideas, often expressed voices of dissent, provided uncomfortable insights and/or challenged traditional points of view.

These three professional groups all play a vital role as catalysts of open and democratic dialogue and discussion in society. They contribute with new ideas, new approaches, key insights and – especially for journalists – with means to safeguard the rule of law and maintain a system of political accountability, where civil society can play a decisive role in holding public officials accountable. They represent the critical voices that are part and parcel of public discourse, innovation and progress. At the same time, members of the three professions are subject to professional standards – artists maybe less formally than journalists and scientific researchers – to ensure that their practitioners execute their

critical functions as independently, honestly and fairly as possible.

The COVID-19 pandemic has only emphasized – and further enlarged – the problem of a shrinking space for these professional groups. As the coronavirus has spread around the world with unprecedented speed and dramatic consequences, so has the temptations of many governments to utilize the COVID-19 crisis – and their obligation to impose relevant emergency measures, as appropriate – in ways that are going beyond what was and is necessary, based on the principles of necessity, transparency, legality, proportionality and other restraints, developed as part of international human rights law.

As documented in Chapter 1, many governments have used the COVID-19 pandemic to impose measures which go beyond what the health situation called for, restricting not least freedom of expression – especially for artists, journalists and scientific researchers – in ways that cannot be reasonably argued in the context of the pandemic. Some of these measures are obvious, others less so. Deviations from a full return to the ex ante normalcy once the pandemic comes under control, will need to be scrutinized carefully. The international legal framework

indicates that the UN system has a role to play in this regard.

On this basis, it is both critical and timely to promote a renewed UNESCO vision of a cross-sectoral approach to freedom of expression for artists, journalist and scientific researchers. UNESCO has a number of instruments that can be further utilized to counter the increasing number of serious threats to members of these professional groups. Bringing evidence to the attention of the international community is important – regardless of whether these threats concern killings or other forms of attacks on artists, scientific researchers and journalists such as kidnapping, enforced disappearance, arbitrary detention and torture, or they concern indirect interferences and underlying causes in the form of vulnerability of media, culture or science.

UNESCO has a rich history as one of the key organizations engaged in the development of the 1948 Universal Declaration on Human Rights (UDHR). UNESCO's contribution to the UDHR, as explained in Chapter 2, was especially important with regard to the philosophical base of human rights – underlining the universality of human rights and their foundation in the inherent dignity of men and women. Among the human rights identified by the UNESCO Committee was freedom of expression – the right to information, the right to freedom of thought and to free inquiry, the right to express one-self, and the freedom of speech, assembly, association, worship and the press.

UNESCO has since then developed a number of specific instruments dealing with the rights and professional standards of the three professional groups within the core mandate of the organization:

- The UNESCO Recommendation Concerning the Status of the Artist (1980) and the Convention on the Protection and Promotion of the Diversity of Cultural Expressions (2005);
- Decisions of the UNESCO International Programme for the Development of Communication, IPDC (1980), and resolutions of the UNESCO Executive Board and the General Conference, as well as international frameworks such as the UN Plan of Action for the Safety of Journalists and the Issue of Impunity (2012); and
- The UNESCO Recommendation on Science and Scientific Researchers (2017), replacing the Recommendation on the Status of Scientific Researchers (1974).

In respect of these three categories of professionals there are a number of professional codes, guidelines or quality assurance practices, often formalized at national level, but developed on the basis of international standards as discussed and codified among each individual category of professionals. These standards define the boundaries within which professional freedom of expression is exercised.

**Artists:** Based on a review (Chapter 3) of the workings of the UNESCO Recommendation Concerning the Status of the Artist (1980) and the Convention on the Protection and

Promotion of the Diversity of Cultural Expressions (2005), the Report points to some critical areas:

- The need for more Member States/State Parties to fulfil their reporting obligations under the 1980 Recommendation and the 2005 Convention, and for those reports to be thorough, more self-critical and broadly framed;
- The need for a framework for civil society involvement, at national level, not only in the replies to the questionnaires submitted to State Parties to the 2005 Convention, but also in relation to the preparation of Member States' reporting on the 1980 Recommendation;
- The need to further improve civil society participation in the reporting of State Parties to the 2005 Convention; and
- The furthering of UNESCO (Secretariat) monitoring of global developments and trends, as well as development at national level, based both on the reporting of States and other sources of information. This will necessitate more funding, as appropriate, and not only from voluntary sources, for future Global Reports. More detailed indicators based on the new monitoring framework to assess implementation may also be needed, as may encouragement of stronger civil society participation.

**Journalists:** Based on a review (Chapter 4) of the UNESCO International Programme for the Development of Communication, IPDC (1980) and the decisions of the Executive Board and resolutions of the General Conference, as

well as international frameworks such as the UN Plan of Action for the Safety of Journalists and the Issue of Impunity, the Report points to the following critical areas:

- The need for closer collaboration between the UNESCO Secretariat, Member States and CSOs and NHRIs, including associations of media professionals and journalists, to enhance and detail the data underlying the wider analysis of the evolution of media freedom globally and in each Member State, including “media capture”. This would also allow for a more direct engagement of UNESCO in providing the necessary analytical assessment of the effects of COVID-19-related government interventions on freedom of expression in relation to media;
- The need to consider either similar Plans of Action for artists and scientific researchers, or to further develop the existing UN Plan of Action to include artists and scientific researchers as well. It would also be warranted to expand the focus of the UNESCO Director-General's public statements and regular report to cover not only killings of journalists, but also “any physical violence against journalists” in conformity with the mandate of the General Conference in 1997;
- The need for UNESCO to further encourage all Member States to engage with the organization, and not least in responding to their obligations to investigate, and bring to justice, perpetrators of the said crimes against society: not only killings of journalists, but also other forms of severe violations (attacks, detention, prosecution, imprisonment etc.).

**Scientific researchers:** Based on a review (Chapter 5) of the 2017 Recommendation on Science and Scientific Researchers, the Report points to the following critical areas:

- The need to create a more systematic approach for the involvement of civil society in the process of developing Member States' replies to the UNESCO questionnaire, including formal hearings of relevant CSO parties and professional organizations at national level and the inclusion in the Secretariat's data base of "shadow reports" from those parties on Member States' implementation of the Recommendation;
- The need for the Director-General's report to reflect not only the answers given to the questionnaires, but also to include other data from CSOs and professional associations, available to UNESCO, concerning the situation in Member States with regard to the freedom of expression of scientific researchers, which could be done through global reports and/or world trend reports; and
- The need for UNESCO in its analysis to focus especially on the consequences of COVID-19 with respect to limitations on scientific freedom, and on the communication of scientific analysis and results.

The Report argues for the creation of closer relations between UNESCO's human rights instruments and the broader UN human rights system, especially the Universal Periodic Review of the Human Rights Council (Chapter 6). The UPR has become one of the key institutions for dialogue between Member States with respect to the human rights

situation in all countries, seen through the lenses of other Member States. The UPR peer review cannot stand alone as a human rights monitoring mechanism, but it is a significant add-on to the work of Treaty Bodies, Special Rapporteurs and the Human Rights Council itself.

Based on a review of all the UPR recommendations in relation to the human rights of artists, journalists and scientific researchers, which have been accepted by Member States since the start of the UPR – a filtering of relevant data, carried out by the Danish Institute for Human Rights – the Report identifies certain critical areas:

- The need for all Member States to address the overall balance in their UPR recommendations, and to emphasize more strongly, if they so wish, recommendations related to artistic and scientific freedom;
- The need for more precision in recommendations, in order to improve the possibilities for realistic and practical monitoring of the implementation of accepted recommendations. This also relates to specific recommendations on freedom of expression of the three professional groups;
- The need to reflect on how to improve UNESCO's input to the UPR process. This is an important part of the 'inspirational catalogue' of various human rights challenges that Member States should carefully consider in order to further focus their recommendations.

On the basis of the analysis and conclusions in Chapters 1-6, the Report – in Chapter 7 – proposes a renewed inter-sectoral vision and three strategic directions for UNESCO's future human rights work; areas where UNESCO, Member States and civil society should work more closely and actively together:

- To raise awareness about the human rights-related work of UNESCO through more visibility and a stronger profile in condemning cases of violence and attacks on artists, journalist and scientific researchers, but also through stronger emphasis on requesting information from Member States regarding unresolved killings of journalists. Member States should respond in kind, by stepping up their efforts to prevent any form of attacks on artists, journalists and scientific researchers. And civil society should increase its global message in this regard.
- To improve monitoring within the relevant UNESCO instruments in relation to the rights of artists, journalists and scientific researchers, especially their freedom of expression, and with a strong focus on the safety of members of these three professional groups. Improved data collection, including a specific focus on COVID-19 related issues, is called for in relation to all Member States, as is a broadening of the scope for UNESCO's monitoring of serious attacks on journalists to not only include killings, but also physical attacks, disappearances, torture, arbitrary detention and kidnapping, and on indirect interferences. As part of an improved dialogue with Member States, it is also suggested that

these appoint focal points for the issue of safety of artists, journalists and scientific researchers.

- To strengthen UNESCO's engagement in UN coordination in order, inter alia, to consider the feasibility of a UN endorsement of action plans for artists and scientific researchers, in addition to journalists, and to explore the possibility of getting UN human rights bodies to deal with the three professional groups in a holistic manner. This might call for further engagement of, and dialogue with, UN expert bodies and mandate holders.

Within these three strategic directions, the Report puts forward 25 specific recommendations, of which 13 are directed to UNESCO, eight to Member States and four to civil society.

These recommendations are set out on pp 85 to 93 of the Report.





# CHAPTER 1: COVID-19 AND FREEDOM OF EXPRESSION

The COVID-19 pandemic has been a global health crisis, sending shock waves throughout the world. For more than 18 months so far between early 2020 and the autumn of 2021, all governments have faced unprecedented challenges in their response to the pandemic. This has been the case both in relation to their management of healthcare capacities, and in their efforts in general to actively limit the spread of the infectious virus in societies, and to reduce the number of fatalities and seriously affected people. Governments have had to restrict the mobility of people, often in very serious and impactful ways, ordering people to stay at home and imposing severe limitations with regard to the assembly of people, indoor as well as outdoor.

The emergency character of the situation has led to severe restrictions in almost all societies. While some people across the world have staged protests against some COVID-19 measures, most citizens have generally accepted these restrictions, agreeing that they were rational, understandable and proportionate. At the same time, citizens at large clearly expect all restrictions to be lifted ultimately when the pandemic becomes more manageable – primarily through extensive

vaccination schemes – allowing a full return to “normal” as before the pandemic.

There is a fine line between, on one hand, undertaking what is generally accepted by governments and the public at large to be necessary actions in an emergency, setting aside or derogating certain rights and freedoms – and, on the other hand, utilizing the pandemic to limit fundamental rights over and above what the situation prescribes and also maintaining restrictions for longer than necessary. Natural disasters, pandemics, civil strife and unrest can all justify derogation by governments from established human rights – something that would (or should) be unthinkable under more normal circumstances.

Derogations during a state of emergency must be of an exceptional and temporary nature, and must meet two fundamental preconditions before they can be invoked. Firstly, the situation must amount to a public emergency that threatens the life of the nation in question. Secondly, the government must have officially proclaimed a state of emergency and further communicated the date of the derogation's termination, in line with the International Covenant on Civil and Political Rights (ICCPR), article 4(3). In addition, some rights – for instance the right to

life (ICCPR, article 6), free consent to medical or scientific experimentation (article 7) and the right to freedom of thought, conscience and religion (article 18) – are non-derogable.<sup>2</sup>

Other limitations can be undertaken and sustained, even when the State has not declared a state of emergency, when fulfilling the criteria of legality, legitimate aim and necessity. In principle, such legitimate limitations are not necessarily time bound, but the proportionality and necessity test may imply that after a certain period, these criteria can no longer be met. In a democratic society, such limitations would always be based on the rule of law; they would be legitimate and proportionate given the circumstances, and they would be lifted as soon as the situation improves – or even on a step-by-step basis as the situation gradually improves. This implies that limitations should be reviewed and their continued relevance analyzed periodically. The Human Rights Committee’s statement in connection with the COVID-19 pandemic specifically underlines that “freedom of expression and access to information and a civic space where a public debate can be held constitute important safeguards for ensuring that States Parties resorting to emergency powers in connection with the COVID-19 pandemic comply with their obligations”.<sup>3</sup>

These issues are especially pertinent to the freedom of expression of artists, journalists and scientific researchers, as certain restrictions may arguably be in order to avoid unnecessary public disorder or to prevent a loss of trust in public authorities – trust that is necessary in order to overcome the pandemic. The usual “public debate” and established legislative processes involving civil society

and other stakeholders in decision making will often have to be shortened and replaced by speedy action, which is not always based on as thorough an analysis of pros and cons as would normally be expected. The concepts of “emergency action” and “emergency powers” also bypass the established systems of checks and balances, stressing the executive role of governments and public authorities, at the cost of the legislative role of parliaments and the judicial role of courts and legal systems.

We often talk of the press and the news media as the “fourth estate”. In the context of COVID-19, that term could also include scientists potentially addressing the public in media and artists also making use of news media to disseminate their work to a much larger audience than would otherwise be privy to it. With respect to government restrictions of this “fourth estate” it is possible to formulate a number of key questions in relation to COVID-19:

- To what extent may governments, in this kind of health emergency, impose restrictions on the media concerning their reporting on various aspects of the pandemic, including governments’ responses to it?
- Are governments or public authorities allowed to prevent scientific researchers from speaking freely of their concerns – as peer-reviewed scientists – about response strategies related to COVID-19?
- By what means may governments justify the repression of artistic voices seeking to engage critically with

issues relating to the pandemic and responses to it?

- Can and should governments be held accountable for any non-compliance with requirements, criteria and procedures for freedom of expression derogations or limitations established by international legal standards when resorting to state of emergency powers to cope with the COVID-19 pandemic?
- Since one way of raising trust in authorities is through providing transparent and accurate information, why did many States introduce overall restrictions to the right to access information, mainly guaranteed via freedom of expression laws?

Freedom of opinion and freedom of expression are closely linked with the freedom to seek, receive and impart information and ideas, as outlined in Article 19 of both the Universal Declaration of Human Rights (UDHR) and the ICCPR (see Chapter 2).

Under international human rights law governments can impose restrictions on certain human rights to protect public health and safety. In other words, the exercise of the right to seek, receive and impart information may be subject to certain restrictions provided these are necessary to respect the rights of others and to protect national security, public order, or public health.

Restrictions must, however, also be “provided by law”: be adopted by regular legal processes, drafted with sufficient precision to enable individuals to regulate their conduct accordingly, and be made accessible to the public. Restrictions may not be unduly vague or overbroad such that it could confer

unfettered discretion on officials. Secretly adopted restrictions fail this fundamental requirement. The assurance of legality should generally involve the oversight of independent judicial authorities.

According to the principle of “necessity and proportionality”, governments bear the burden of proving a direct and immediate connection between the expression and the threat. They must demonstrate that the restriction actually protects, or is likely to protect, the legitimate state interest at stake. Governments must also prove that the restrictions that they seek to impose are the least intrusive instruments among those that might achieve the same protective function. Where the harm to freedom of expression outweighs the benefits, a restriction on that right cannot be justified.<sup>4</sup>

To be lawful, a restriction must further protect only those interests enumerated in Article 19 (3) of the ICCPR, that is, the rights or reputations of others, national security or public order, or public health or morals. The UN Human Rights Committee has cautioned that restrictions to protect “public morals” should not derive “exclusively from a single tradition”, seeking to ensure that restrictions reflect the principles of non-discrimination and the universality of rights.

In its General Comment No. 34, the UN Human Rights Committee also states that “it is not compatible with paragraph 3 [of article 19], for instance, to invoke [treason] laws to suppress or withhold from the public information of legitimate public interest that does not harm national security or to prosecute journalists, researchers, environmental activists, human rights defenders, or others,

for having disseminated such information".<sup>5</sup>

A number of countries, from various regions, have adopted legislation that criminalizes commentary related to the pandemic and have subsequently prosecuted people for spreading what was seen as false news or obstruction of government decisions. It should be noted that freedom of opinion is seen as more protected than freedom to impart information. However, in specific cases such as the spread of conspiracy theories related to COVID-19, which combine commentary, falsehoods and facts, creating false connections, the distinction becomes blurred. While an opinion should ideally rest on reliable information, it may also be unfounded, or even based on incorrect information. In this grey zone, some governments have conflated the issues, hence leading to a lack of precision for citizens about what is actually illegal.<sup>6</sup>

Some countries, including European countries, have conflated the public health crisis with national security concerns, rushing through national security legislation or bolstering, or threatening to bolster, surveillance capabilities. Furthermore, a number of authorities have punished those who have criticized government actions on COVID-19, have exposed violations in response to it, or have questioned the official narrative around it. Hundreds of people have been detained arbitrarily and, in some cases, charged and prosecuted. In some countries, the government have used the pandemic as a pretext to clamp down on unrelated criticism.<sup>7</sup>

Some governments have taken advantage of the COVID-19 pandemic to intensify restrictions on the rights to freedom of expression,

peaceful assembly and association. In almost every country monitored, some kind of state of emergency was imposed to curb the spread of COVID-19. However, some of these measures were frequently used as a pretext to violate human rights more broadly, including by security forces using excessive force to enforce them.<sup>8</sup>

**Artists** have in a number of cases faced repercussions – censorship, attacks on their physical integrity, threats and harassment, administrative and legal fines, suspensions from cultural professional bodies, or damages and destruction of their works – for expressions characterized as “misinformation” about the COVID-19 pandemic, “likely to cause panic” during a public health crisis. By stifling criticism by artists, some authorities seem to have ‘weaponized’ the pandemic against freedom of expression in the artistic field. This has led to a widespread deterioration of core democratic principles and the rise of authoritarianism. Such actions run counter to the obligations of governments “to publicly condemn, and prosecute, perpetrators of violence and threats against artists, audiences and cultural workers, so as to ensure that violators do not enjoy impunity”, as it was formulated in the UNESCO 2005 Convention Report (2018 Edition).

A number of artists have been detained, prosecuted or imprisoned for being vocal about the way the pandemic has been handled in their countries. Visual artists have been disproportionately targeted, constituting one quarter of all violations related to COVID-19. Especially cartoonists faced consequences for their satirical commentaries

on the pandemic, and one country even appeared especially keen to monitor the work of cartoonists across the world who covered that specific country's handling of the COVID-19 situation. This pulls threads to the question to what extent it is legitimate to link COVID-19-related actions to those situations that normally involve hate speech and physical hate crimes.<sup>9</sup>

A court in a country sentenced a young person to prison for posting a video, imitating a law enforcement official forcing people to respect the COVID-19 restrictions, and alluding to police brutality. Citing an increase in attacks on medical staff dealing with COVID-19, the president of another country announced a new law prescribing harsher penalties for assaulting health workers. Before this announcement, a court had sentenced a folk music singer to 18 months of prison and a fine for a video about the country's response to COVID-19, deemed to contain an alleged verbal attack on medical staff.<sup>10</sup>

A new election code of conduct was introduced in one country, citing non-compliance with COVID-19 regulations by candidates and banning campaign activities. Artists who supported the opposition became targets of arrest and arbitrary detentions. Examples include a filmmaker who was arrested for filming a documentary; an author who was arrested twice under COVID-19-related accusations of "an act aimed to spread a disease" – for writing a novel on high-level corruption in a fictitious country; and a dancehall artist who was arrested upon return from a neighbouring country where he had chanted an opposition slogan. He was accused of violating the COVID-19 regulations by travelling

abroad without permission even though the only legal requirement for returnees was mandatory quarantine with which the artist had complied.<sup>11</sup>

In another country, an internationally renowned cartoonist was arrested under a recently introduced law for publishing a series of cartoons of politicians and their lives during the time of COVID-19. This law has been criticized by various UN Human Rights bodies for being vague and overly broad, and for being used to punish criticism of the government. During his imprisonment, three UN Special Rapporteurs called for the release of the cartoonist on medical grounds. After being imprisoned for over 10 months, the cartoonist was finally released bearing the marks of torture on his body.<sup>12</sup>

**Journalists** have been subject to restrictions and attempts to control their activities in the COVID-19 pandemic. At the same time, the critical role of the media has been more important than ever. In a situation where governmental power increase at the expense of the legislative branch, media platforms will often be the most important place to provide a possibility for dissent and give voice to critical questions in relation to governments' crisis management and response strategies.

During the pandemic, an increasing number of governments have attacked the messenger and limited reporting rather than acted responsively on information disclosed. The UN Special Rapporteur on freedom of expression has reported on some of the most concerning categories of attacks on journalism: police intimidation of journalists reporting on the pandemic, detention and

questioning of journalists, and other forms of repression of media workers conducting fact-finding inquiries concerning COVID-19. While the global nature of the COVID-19 crisis makes it imperative for reporting to be available across borders, there have also been a number of reported instances of hostility directed by governments at foreign press representatives, taking steps to interfere with reporting on COVID-19 from the international press.<sup>13</sup> A recent UNESCO issue brief points out that “during the COVID-19 health crisis, many governments around the world imposed harsh measures on foreign and local media to control public narratives”.<sup>14</sup>

During the pandemic, moreover, journalists already subjected to arbitrary and unlawful detention, have faced additional risks to their health and lives. WHO has stated that “people deprived of their liberty, and those living or working in enclosed environments in their close proximity, are likely to be more vulnerable to ... COVID-19 ... than the general population”.<sup>15</sup>

A number of international Non-governmental Organizations (NGOs) – including International Press Institute (IPI), Reporters Without Borders (RSF), Article 19 and the Committee to Protect Journalists (CPJ) – track the impact of COVID-19 on freedom of expression of journalists. Their reports are regularly updated, and bear witness to the widespread actions of many governments to curtail media freedom.<sup>16</sup>

In May 2020 for instance, in one country a citizen journalist reporting on the government’s response to COVID-19 was detained. The journalist tried to protest her detention by going on a hunger strike, but was

reportedly forcibly fed through a tube by detention centre authorities. Furthermore, the journalist’s lawyer stated that she had been forced to wear shackles and have her hands restrained for 24 hours a day for at least three months. In December 2020, she was sentenced to four years in prison for “picking quarrels and provoking trouble”.<sup>17</sup>

Journalists in other countries have also been harassed for criticizing their governments’ response to COVID-19.<sup>18</sup> Another illustrative example is the case of a country’s local government officials who launched smear campaigns against a journalist who reported on the lack of beds for COVID-19 patients.<sup>19</sup> Journalists reporting on demonstrations related to COVID-19 have been faced with a notable escalation of attacks. While a UNESCO brief on the topic reports 32 instances of attacks in one full year (2019), the number during the first half year of 2020 already amounts to 21 instances.<sup>20</sup> Members of a country’s internal security forces attacked a correspondent of a media outlet, severely beating him, which necessitated his transfer to hospital, while covering a protest against economic conditions and the extension of the general closure decision.<sup>21</sup>

Other forms of attack by police officials have also been observed. For instance, a national police chief in one country brought a suit against a media co-founder for comments that criticized the lack of health protection provided to the national police. The journalist had tweeted that police officers were seriously exposed to the virus and were given insufficient protective measures. The police chief sued the journalist for violating privacy according to the country’s criminal

code, accusing the journalist of discrediting and dishonouring the police on Twitter.<sup>22</sup>

The editorial independence of media is also being challenged by governments in a number of countries. A country's media regulatory body has put pressure on TV channels, sending them private messages not to air footage of over-crowded congresses by the ruling political party. The events had been highly criticized for being held during the pandemic at the risk of increase in infections. The regulatory body asked broadcasters to show "empty streets" instead.<sup>23</sup> Another illustrative example is that of a press agency in a country being forced, since the beginning of 2021, to operate without public funds guaranteed to it under two separate laws. The contractual dispute manufactured by the government is played out with the aim of forcing the agency to submit to greater government control. Recently, the country's supreme court issued a judgement confirming that the state has a duty to fund the agency in line with the agency's business plan.<sup>24</sup> During the pandemic, the European Federation of Journalists (EFJ) has called on governments to support journalists in an independent way with emergency reliefs and recovery plans. The Federation has published a database mapping the financial support that media outlets and journalists have received.<sup>25</sup>

**Scientific researchers** have faced different reactions. Some have become global heroes, as they have taken part in the development of vaccines, with new vaccine technology being introduced and tested at breathtaking speed.<sup>26</sup> Others have experienced restrictions in their COVID-19-related

scientific work, including attempts to restrict research and the flow of information about the virus.<sup>27</sup> Some academics, health workers and scientists voicing criticism of governmental responses to COVID-19 have been subjected to various attacks and/or intimidations. This clearly contradicts the responsibility of states, according to the 2017 Recommendation, "to facilitate that the scientific researchers freely develop and contribute to sharing data; for taking measures so that benefits resulting from any research and its applications are shared with society; and for providing moral support and public recognition conducive to successful performance by scientific researchers".<sup>28</sup>

In one country, a former senior adviser to the President issued serious life-threatening statements directed towards a senior government health official and infectious disease expert. These serious threats against the medical expert necessitated his constant personal protection by law enforcement agents.<sup>29</sup> The President of the country in question called the medical expert an "idiot" and "a disaster" for presenting scientifically based comments on COVID-19.<sup>30</sup>

Some countries withheld or stopped publishing COVID-19-related information, while others disregarded the World Health Organization (WHO) public health guidance. Some governments also expelled senior WHO staff members from their countries.<sup>31</sup>

During a crucial WHO mission, important data was withheld from the WHO mission whose objective was to study the origins of COVID-19, according to WHO Director-General Tedros Adhanom Ghebreyesus.<sup>32</sup>

Science is always in process, meaning

that evidence can change. Advance in scientific knowledge depends on freedom of expression and access to information. At any given point in time, there is evidence as to what is true, false and still unknown. Hence, what is at stake is the risk of certain pieces of evidence being given inviolate status, with criminal sanction for questioning them or posting different interpretations. Denial of scientific evidence related to COVID-19 has been a matter of great concern in a number of countries. It challenges the right to access information, and puts public health at risk. Having either downplayed the risk of the coronavirus, or advocated treatments without a scientific basis or openly flouted public health restrictions, some world leaders have acted against the UNESCO recommendation to recognize that they, as employers of scientific researchers, have a leading responsibility and should set an example.<sup>33</sup> This can be illustrated by a few examples:

In one country, the President thus ridiculed worries about the pandemic and described it as a “psychosis”, and suggested driving tractors, going to saunas and drinking vodka to fight the virus.<sup>34</sup> In another country, the President advanced the idea of taking the drug chloroquine as preventive medicine against COVID-19, despite medical warnings about the use of the malaria drug.<sup>35</sup> In a third country, the President consistently downplayed COVID-19 and described it as “a little flu” while accusing media organizations of causing hysteria.<sup>36</sup>

While the mapping of the virus, and later of its variants, has triggered open access to information, as part of freedom of expression, and increased international scientific

cooperation, we have also seen cases where scientists have been prevented from speaking freely. In one country, the Ministry of Education issued a directive stating that scientific papers about the origins of COVID-19 must go through several governmental vetting stages before being published.<sup>37</sup> In another country, police and prosecutors during COVID-19 started targeting outspoken scholars.<sup>38</sup> Also, whistleblowing health workers have been targeted for retaliation, as in another country healthcare workers have faced reprisals for raising concerns over shortage of necessary equipment, lack of training, low pay or unsafe working conditions.<sup>39</sup>

Numbers keep changing as the pandemic progresses, but in one year – according to some reports – 561 artists were attacked, and 272 professionals from the world of research were attacked.<sup>40</sup>

The common thread in these reported restrictions on freedom of expression of artists, journalists and scientific researchers is that they do not pursue neither a lawful nor legitimate or proportionate purpose as stipulated in Article 19 (3) of the ICCPR.

In general, attacks on artists, journalists and scientific researchers have a chilling effect on the freedom of expression across all three sectors. Hence, international calls have been made for full investigations of all threats and attacks, and for perpetrators to be brought to justice.

Taking into account the interlinkages with scientific freedom, the Special Rapporteur in the field of cultural rights has called for public health officials to be recognized as



acting human rights defenders in a pandemic given their roles in protecting the rights to life, health and science. For them personally, but also in order that they may defend the rights of others, their human rights must be respected and ensured. The Special Rapporteur calls for full investigations of all threats and attacks against public health officials, and perpetrators must be brought to justice in accordance with international standards. Governments must make clear that such actions are beyond the pale.<sup>41</sup>

## MEDIA CAPTURE

Many governments around the world have thus used the pandemic and its ensuing public health crisis as an excuse to adopt restrictive legal provisions that limit the freedom of expression, beyond what international human rights instruments allow for. At the same time, the profound economic crisis triggered by the COVID-19 pandemic has also pushed many states into economic recession, for shorter or longer time, and recovery is likely to remain uneven across the world, and within regions.<sup>42</sup> This has – and is likely to continue to have – an impact on the funding in areas that are critical for the work environment and conditions of artists<sup>43</sup>, journalists<sup>44</sup> and scientists<sup>45</sup>. The combination of new and harmful restrictions and an increased lack of financial viability make these professional groups vulnerable to government control and to compromising their professional standards. To put it bluntly: increased direct or indirect governmental control results in a weakening of professional independence. This is amplified by a

worsening state of the economy, and leads to increased economic and financial pressure on the professional groups in question.

As an illustrative example, it is worth mentioning that a constitutional court of a country deemed that a legislative decree, signed by the President, on reducing hours of broadcasting, which was enacted under the emergency powers in the context of the COVID-19 pandemic, was unconstitutional. The rationale behind the regulation, as stated by the Ministry, was to avoid greater economic pressure on media operators and artists. The court stated, in its decision, that television is an essential public service with a profound capacity to influence society and, therefore, with a widespread power to impact the exercise of freedom of expression, the right to inform and be informed, the right to communication and the guarantee of democratic participation. It considered that the right to culture, based on constitutional mandates and international instruments, imposes on the State the obligation to respect, protect, promote and guarantee access, participation and contribution to culture for all, within the framework of recognition and respect for ethnic and cultural diversity.<sup>46</sup>

UNESCO has reported that the “COVID-19 crisis further strains the viability of the media sector, forcing many media outlets, especially those with no access to public funds and that are most vulnerable to capture, to either lay off large parts of their staff and trim their operations, or fold altogether”.<sup>47</sup>

This situation presents an increased risk of widespread increase in “media capture”: a phenomenon which UNESCO identifies “as one of the greatest threats to editorial

independence as well as to professional standards" – in addition to the issue of safety of journalists.

"Media capture" is a form of overpowering control of the media that leads to a shrinking of journalistic autonomy and undermines journalism as a public good. The rise of new restrictive legal provisions, exacerbated by the COVID-19 crisis, is one factor that will most likely contribute to an increase in media capture around the world in the coming years. Further to this, UNESCO points to shifts in funding as another trend that is likely to increase media capture in the future. While economic setbacks may prevent states from increasing funding to media, research indicates that governments will remain key media funders, hence maintaining their position as key players in the media industry – and providing for opportunities to increase control.<sup>48</sup> On the other hand, if proper safeguards to guarantee editorial independence are introduced, government funding could be one of the solutions to the media viability crisis.<sup>49</sup>

While the notion of media capture applies to the media sector, it is worth considering the risks of capture in the science and culture sectors as well. Besides reporting on attacks on artists and scientists, the UN Special Rapporteur in the field of cultural rights has pointed out that "the economic crisis accompanying the pandemic has had disproportionate effects on the cultural sectors and those who work in them". The Rapporteur has furthermore noted how officials in some countries had suggested that "those working in the arts should simply get other

jobs", how economic circumstances have forced artists to consider giving up their creative work.<sup>50</sup>

The field of scientific research has also been touched severely, as the crisis has produced unprecedented financial challenges for many universities, threatening some institutions with permanent closure.<sup>51</sup> At the same time, we witness how resources, more than ever before, are being channelled to COVID-19-related research. Other types of research have faced increased funding challenges or even been grounded to a halt.<sup>52</sup>

International calls for action have been made in response to this situation. The UN Special Rapporteur in the field of cultural rights has proposed a framework for action, pointing to the urgency of responding in terms of funding and support for artistic and cultural sectors and those who work in them; and the Rapporteur has stressed that budget cuts in the culture sector should be avoided.<sup>53</sup>

Likewise, governments have been encouraged to include journalism among the financing priorities during and after the COVID-19 pandemic; and it has been suggested that journalists should enjoy more financial security. To prevent economic pressures used to control media outlets and to avoid media capture, states are being encouraged to put in place and enforce rules on fair and transparent allocation of government funding; and finally independent oversight mechanisms have been promoted as good practice to ensure that such rules are implemented.<sup>54</sup>

Most international reports on violations of human rights and on freedom of expression focus almost entirely on media freedom, with limited reference to (self) censorship,

persecution or silencing of artists and scientists. This is partly due to the fact that availability of data – especially concerning scientists, and to some extent also artists – is limited, and that this data relies on bits and pieces from various reports, or occasionally reporting in news media. Systematic global monitoring of violations of artistic and scientific freedom is primarily carried out by a small number of CSOs who monitor, document and/or systematically address violations of scientists and artists' right to freedom of expression.<sup>55</sup>

It has been highlighted by some of the CSOs in the area of artistic freedom of expression that there is no established and connected community of freedom of expression activists in the cultural sector; that threats to artistic freedom are underreported by comparison to threats to journalists and other media professionals; that there is often a disproportionate focus on one country to the exclusion of others; and that this leads to a limited picture of the true scale of the problem, in particular physical threats.<sup>56</sup> It is worth noting that research indicates that the safety of journalists has developed and benefited from the strength of a formal UN framework – the UN Plan of Action on the Safety of Journalists – to tackle the need for strengthening mobilization and strategic organization of stakeholders.<sup>57</sup>

In recent years, the Special Rapporteur in the field of cultural rights has increasingly addressed the challenge of artistic freedom of expression and the right to science and scientific freedom. Moreover, in 2020, the Special Rapporteur on freedom of expression reported on academic freedom (for the

first time), and recognized that the “monitoring bodies of the United Nations and global treaties may seem to be marginal to the pursuit of academic freedom”, but at the same time stated that “they are not”. The Rapporteur’s remark indicates that global awareness of the relevance of UN monitoring bodies in this field should be strengthened.

The Special Rapporteur recommended that the international human rights mechanisms should ensure that reviews of state compliance include consideration of academic freedom; and should seek out cases of academic freedom. CSOs, especially academic communities, were encouraged by the Special Rapporteur to “articulate claims of violation of academic freedom” – and “those who believe that their rights to academic freedom have been subjected to unwarranted interference are encouraged to bring their claims to the attention of the special procedure mandate holders of the Human Rights Council, UNESCO, relevant human rights treaty bodies and other regional and international bodies”.<sup>58</sup>

Since a number of governments are using the COVID-19 pandemic to take intrusive measures to limit freedom of expression, external scrutiny and accountability are becoming extraordinarily important. Taking into consideration the current monitoring challenge as described above, there is a need to seize new monitoring and reporting opportunities. This is key to better understanding the extent of the problem of COVID-19 restrictions, and to holding states accountable for compliance with their obligations to provide an enabling work environment for artists, journalists and scientific researchers.

2  
Art 39  
Tout être humain a droit à la  
vie et à la santé, à l'éducation  
interdiction

Personnellement les droits de la  
vie et de la santé, à l'éducation  
et à l'emploi, à la participation  
à la vie culturelle, à la participation  
à la vie économique, à la participation  
à la vie sociale, à la participation  
à la vie politique, à la participation  
à la vie internationale.

Chapitre IV  
XXX  
Art 38  
Tout homme a le droit  
d'accomplir un travail librement  
choisi et d'obtenir un salaire  
adéquat.

Art 39  
Tout individu a droit à la sécurité sociale.  
La sécurité doit prendre les dispositions nécessaires  
pour empêcher le chômage et organiser l'assurance  
sociale, l'assurance maladie, l'assurance vieillesse et pour  
aider toutes les personnes qui ont des besoins  
physiques et mentaux au travail et les empêcher  
d'exister.

PROJET DE  
GOUVERNEMENT PROVISORE  
REFUGIÉ FRANÇAIS

Préambule

Le Gouvernement provisoire des Français réfugiés en France, République des Nations Unies, reconnaît que l'Organisation et le maintien de la paix et de la sécurité internationale ne peuvent être assurés que par le développement de la coopération internationale et le respect des droits de l'homme et des libertés fondamentales pour tous, sans distinction de race, de sexe, de langue ou de religion.

Il importe que ceux-ci soient protégés par la communauté des États et par les lois et règlements nationaux.

Art 38-50  
Art 38-51  
Art 38-52  
Art 38-53  
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Art 38-67  
Art 38-68  
Art 38-69  
Art 38-70

## CHAPTER 2: HUMAN RIGHTS IN UNESCO

The human and political importance of human rights globally and the recognition of human rights as one of the three pillars of the United Nations – together with peace and security and development – are based on the Charter of the United Nations and the Universal Declaration of Human Rights (UDHR), adopted by the UN General Assembly in December 1948. It was the first of many United Nations human rights instruments. UNESCO, founded in London on 16 November 1945, played a significant role in the framing and formulation of the UDHR.

The UNESCO Constitution set out the universal values of the new international organization for education, science and culture. It reflected the devastating experiences of the Second World War and provided assurances of a better future to come. The first famous words of the Preamble set the stage, “Since wars begin in the minds of men, it is in the minds of men that the defences of peace must be constructed”. All human beings across the world were to overcome ignorance, prejudice and mistrust of each other; they were to stand by the democratic principles of dignity, equality and mutual respect. This could only be achieved if all countries believed in “the unrestricted pursuit of

objective truth, and in the free exchange of ideas and knowledge,” and if they were determined to develop and increase the means of communication that would make such pursuit and free exchange possible.

The purpose of UNESCO, as formulated in Article I of the Constitution, was to promote collaboration among nations “in order to further universal respect for justice, for the rule of law and for the human rights and fundamental freedoms”, affirmed by the Charter of the United Nations. Advancement of education, science and culture – and of knowledge as such – thus served the purpose of enabling all citizens in all countries to live their lives independently, with integrity, in their diversity, and in carrying the responsibilities of freedom.

The main focus of the UNESCO Constitution was on the maintenance, increase and diffusion of knowledge and of culture, and to overcome barriers to such efforts through international cooperation.

The UN Charter, adopted in San Francisco a few months before the UNESCO Constitution, focused primarily on establishing an international framework for the peaceful settlement of disputes through a collective security arrangement, anchored in the

United Nations Security Council (UNSC). Although adding promotion and respect for human rights as one of the purposes of international cooperation and the United Nations, the Charter had only limited references to human rights, but it reaffirmed faith in fundamental human rights, in the dignity and worth of the human person, and in the equal rights of men and women. A number of Member States took the initiative to expand and further the elaboration of human rights, based on the values and overriding principles of the UN Charter. The UN Commission of Human Rights was established in 1946, and entrusted with the preparation and drafting of a general declaration of human rights to be put before the General Assembly.

The United Nations Commission on Human Rights and its Drafting Committee worked diligently on the formulation of what was to be adopted, in the Palais de Chaillot in Paris on 10 December 1948, as the Universal Declaration of Human Rights. As part of these discussions, UNESCO provided invaluable contributions by consulting philosophers and thinkers all over the world – and by assembling their replies, not least with respect to the philosophic base of human rights. As stated by the leading figure in this process, Jacques Maritain, UNESCO attempted to establish “the rational interpretation and justification of those rights of the individual which society must respect”.<sup>59</sup>

The final report of the UNESCO Commission – based on a wealth of contributions from distinguished scholars and philosophers around the world – was published in

July 1948. Already in July 1947, however, the UNESCO Committee on the Philosophic Principles of Human Rights issued a preparatory document – titled *The Grounds of an International Declaration of Human Rights* – and forwarded this to the UN Commission of Human Rights, so as to influence its deliberations of the UDHR to be.

The UNESCO paper highlighted, *inter alia*, that the basic faith in freedom and democracy was founded on the inherent dignity of men and women. On the issue of liberty the paper stated that “by liberty they mean more than only the absence of restraint. They mean also the positive organization of the social and economic conditions within which men can participate to a maximum as active members of the community .... This liberty can have meaning only under democratic conditions, for only in democracy is liberty set in that context of equality which makes it an opportunity for all men and not only for some men. Democratic liberty is a liberty which does not distinguish by age or sex, by race or language or creed, between the rights of one man and the rights of another”.<sup>60</sup>

The UNESCO contribution further stated that “human rights have become, and must remain, universal... not only because there are no fundamental differences among men, but also because the great society and the community of all men has become a real and effective power”. Among the human rights listed in the text, and of particular relevance for this report, were:

- The right to information (“to the fullest and most accurate information from all relevant sources”);
- The rights to freedom of thought and to free inquiry (“to hold such doctrines as he judges to be true” – not to be “hindered in the pursuit of knowledge or in communicating the results of his inquiries...”);
- The right to express one-self (“the right to express himself in art and science...”); and
- Freedom of speech, assembly, association, worship and the press (both “in the exercise of his right to political action... [and in] his right to self-expression, man has the right to set forth his ideas and to seek to persuade others to accept them”).

The UDHR was adopted on 10 December 1948 with 48 votes in favour, none against and eight abstentions. The main emphasis of the UDHR is on individual rights and fundamental freedoms, and on civil and political rights, which are defined fairly precisely in Articles 4-21, while economic, social and cultural rights are formulated in more general terms in Articles 22-27. Two broader Covenants – on Civil and Political Rights (ICCPR) and on Economic, Social and Cultural Rights (ICESCR) – detailing the scope of the UDHR were adopted in 1966. In the meantime, the UN General Assembly also adopted a number of more specific human rights conventions, among which are the Conventions on Racial Discrimination (1966), on Discrimination of Women (1979) and on the Rights of the Child (1989).

There has been a long discussion within the United Nations, not so much on the rights themselves, as on the balance

between individual civil and political rights and fundamental freedoms on the one hand, and economic, social and cultural rights on the other. Human rights encompass both dimensions, as was already stated in the UNESCO report of 1947, but political expediency has often led to different emphasizes, not least during the Cold War (1946-89). The Vienna Declaration and Programme of Action of 1993, however, provided a universally accepted affirmation of human rights after the end of the Cold War, clarifying in Article 5 that “all human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms”. All states have a duty to promote and protect all human rights and fundamental freedoms, regardless of their political, economic and cultural systems.

The UDHR stated, in Article 1, that “all human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood”. Article 19 emphasized that “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media

and regardless of frontiers”.

These defined individual rights became the basis for freedom of expression as a core human right for everyone. In the ICCPR this is further elaborated, in Article 19 of the Covenant:

- Everyone shall have the right to hold opinions without interference.
- Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
- The exercise of the rights provided for in para 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law, and are necessary:
  - a. For respect of the rights or reputation of others;
  - b. For the protection of national security or of public order, or of public health or morals.

These last points are further qualified in Article 20 of the ICCPR, which also limits freedom of expression by stating that “Any propaganda for war shall be prohibited by law”, and that “Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law”.<sup>61</sup>

Freedom of expression is thus not absolute as a human right, but carries with it

adherence to professional standards. Most countries have laws on defamation of individuals, whereby persons can incur liability for spreading false rumours or making false accusations against others. This is considered necessary in order to provide the natural protection of other people’s similar rights and freedoms as stipulated in the ICCPR. Only those interests and rights that are compatible with the nature and principles of democratic societies should be deemed acceptable.<sup>62</sup> Pornographic material is prohibited in many countries on moral grounds and is not covered by the provision of freedom of expression, as indicated in para 3 (b) above, just as national security considerations can restrict how freely citizens can express themselves in certain situations.

Racist expressions are also not covered by freedom of expression. In many countries there are legal provisions making it a criminal offence to threaten, insult, or denigrate others on the ground of their race, skin colour or ethnic origin, religion or sexual orientation. Countries often also have laws against blasphemy, making it a criminal offence to ridicule or insult religious teachings or the worship of God. Precisely what that means for the limits of freedom of expression is normally a matter for the courts to interpret and decide, often based on an assessment of the extent of the insulting behaviour or its threat to public order. In a number of countries such laws are rarely enforced, as freedom of expression here is more broadly defined and restrictions few, and strictly guided by the ICCPR, para 20 (2): that the expressions prohibited by law shall be limited to those that specifically can be categorized as “hatespeech”



in relation to nationality, race or religion and which contain direct incitement to discrimination, hostility or violence in this context.<sup>63</sup> Central to the question of whether hate speech rises to the threshold of being criminal relates to the severity of the speech in question. The Rabat Plan of Action, compiled by experts at a meeting coordinated by the Office of the High Commissioner for Human Rights (OHCHR), proposes a six-part threshold test to establish whether expression is criminally prohibited.<sup>64</sup>

These limitations only emphasize that freedom of expression, like other human rights, is crucial for the freedom and dignity of everyone. There is an obligation for all states to ensure that these rights, including freedom of expression, are valid for all individuals, everywhere and at any time: The “human rights of human beings should be protected by the rule of law”, as stated in the preamble of the UDHR. Freedom of expression and other human rights are not unlimited, as stated above, but the limitations must be formulated within the framework of the rights themselves as set forward in the UDHR.

It is for all Member States of the United Nations to promote universal respect for and observance of human rights and fundamental freedoms, based on a common understanding – and not a national interpretation – and accepting that this common understanding is of the greatest importance for the full realization of the pledge that governments undertake by becoming members of the United Nations and thus accepting the UDHR as a universal standard.

For UNESCO, having contributed very actively to the formulation of these universal and inherent human rights norms and standards, freedom of expression is, of course, part and parcel of the strong legal and intellectual foundation of the organization. If science, art and the public exchange of ideas in general are to progress to the benefit of all, it is a necessity to provide the strongest possible framework for freedom of expression of such ideas, and to reduce limitations of freedom of expression to the bare minimum set out in the foundational and universal human rights instruments, cited above.

As indicated in the UNESCO Strategy on Human Rights, adopted in 2003, “UNESCO has a constitutional mandate to contribute to the promotion of all human rights. At the same time, it has special responsibility with regard to certain rights; in particular the right to education, the right to participate in cultural life, the right to freedom of opinion and expression, including the right to seek, receive and impart information, the right to enjoy the benefits of scientific progress and its applications”.<sup>65</sup>

This report looks at the ever more important issue of freedom of expression of some of the key groups of professionals who work within UNESCO’s mandate areas: artists, journalists and other media professionals, and scientific researchers. These professional groups play a key role in the advancement of public knowledge and information, making it relevant and accessible to all citizens, and should not be faced with threats to their safety or livelihood.

Over time, UNESCO has adopted a number of specific legal instruments and action plans, and established intergovernmental bodies that are of relevance to these three professions:

- The UNESCO Recommendation Concerning the Status of the Artist (1980); and the Convention on the Protection and Promotion of the Diversity of Cultural Expressions (2005);
- Decisions of the Council of the UNESCO International Programme for the Development of Communication (IPDC), of the UNESCO Executive Board and resolutions of the General Conference, as well as international frameworks such as the UN Plan of Action for the Safety of Journalists and the Issue of Impunity (2012); and
- The UNESCO Recommendation on Science and Scientific Researchers (2017), replacing the Recommendation on the Status of Scientific Researchers (1974).

With relation to these three categories of professionals there are a number of professional codes or guidelines, often formalized at national level, but developed on the basis of international standards as discussed and codified among each individual category of professionals. Through the international standards mentioned above, UNESCO has thus provided a set of instruments that allow for a robust framework with regard to the roles, rights and professional standards of artists, journalists/media professionals and scientific researchers.

Going against established or “official” points of view; breaking new ground or

developing new ideas, insights, approaches, knowledge or paradigms; exposing problems, or outright unlawful behaviour in countries, governments or more generally with the powers that be; all this is far from easy to bear for anyone. However, for professionals, working on these issues, and dedicated to their advancement, it is a fundamental issue to do so, and to overcome obstacles in order to contribute to the furthering of professional knowledge and experience – and ultimately the advancement of humankind. All states thus have an obligation to create the proper frameworks – legally and in practice – for these professional groups to be able to fully utilize their rights and their freedom of expression.





# CHAPTER 3: ARTISTIC FREEDOM OF EXPRESSION

UNESCO's primary legal instruments concerning the status of artists, the rights and professional standards inherent in the artistic profession, and the more principled issue of artistic freedom/freedom of expression for artists are the 1980 Recommendation Concerning the Status of the Artist and the 2005 Convention on the Protection and Promotion of the Diversity of Cultural Expressions, which is now acceded to by around 150 countries.

These two instruments are partly based on, and work in conjunction with, other international human rights instruments supporting artistic freedom – even when artistic expressions contest or criticize political ideologies or systems, religions or beliefs, and cultural as well as social norms.

Artists – whether authors, filmmakers, actors, musicians, painters, sculptors, dancers or others of other similar professions – rely on freedom of thought, freedom of expression, freedom of information and communication and the right to take part in cultural life as means to express themselves, and to impact the communities and societies – real or virtual – in which they engage themselves.

The 2005 Convention focuses on the protection and promotion of cultural diversity

as such, including the rights of countries to adopt cultural policies that promote cultural diversity. The Convention also underlines, however, that this diversity can only be protected and promoted if human rights and fundamental freedoms, such as freedom of expression, information and communication, as well as the ability of individuals to choose cultural expressions, are guaranteed [Article 2].

The promotion of human rights and fundamental freedoms, including artistic freedom, is one of the four goals of the Convention, focusing on the rights of those who “produce” cultural content in the form of cultural/artistic activities, goods and services. The core perspective of the 2005 Convention is on the obligations of States, parties to the Convention, to create an environment providing opportunities for the creation of cultural activities, goods and services, including means of production, dissemination and distribution hereof and measures aimed at nurturing and supporting artists and others involved in the creation of cultural expressions [Article 6].

UNESCO defines artistic freedom as “the freedom to imagine, create and distribute

diverse cultural expressions free of governmental censorship, political interference or the pressure of non-state actors". It further specifies that artistic freedom embodies a bundle of rights protected under international law. These include: the right to create without censorship or intimidation; the right to have artistic work supported, distributed and remunerated; the right to freedom of movement; the right to freedom of association; the right to the protection of social and economic rights, and the right to participate in cultural life.<sup>66</sup>

The 1980 Recommendation on the Status of the Artist points out that the arts must be seen "in their fullest and broadest definition" and "should be an integral part of life and that it is necessary and appropriate for governments to help create and sustain not only a climate encouraging freedom of artistic expression but also the material conditions facilitating the release of creative talent" (PP5). The Recommendation calls upon Member States to improve the professional, social and economic status of artists through the implementation of policies and measures related to training, social security and employment. Member States should also ensure that artists are unequivocally accorded the protection provided for in this respect by international and national legislation concerning human rights.

As with the 2005 Convention and other UNESCO recommendations, adopted by the General Conference, the Recommendation Concerning the Status of the Artist is a standard-setting legal instrument and Member States are obliged to submit, at regular intervals, reports on the measures that

they have adopted in relation to the Recommendation. For some countries, the reporting requirements represent a real obstacle due to lack of resources or infrastructure to do proper reporting. As is the case with human rights reporting in general, these countries might request support from the UN system or from other partners in order to overcome these challenges.

## INVOLVEMENT OF CIVIL SOCIETY ACTORS, NATIONALLY AND INTERNATIONALLY

The importance of civil society is recognized in Article 11 of the 2005 Convention, which acknowledges "the fundamental role of civil society in protecting and promoting the diversity of cultural expressions". This role is further elaborated on in the Operational Guidelines of Article 11, which states that civil society plays an essential role in the implementation of the Convention. It brings the concerns of citizens, associations and enterprises to the attention of the public authorities; monitors policies and programme implementation; plays a watchdog role; serves as value guardian and innovator; as well as contributes to the achievement of greater transparency and accountability in governance.

The Convention does not itself address the issue of direct involvement of CSOs in the periodic reporting, as referred to in Article 9 entitled Information sharing and transparency and 22.IV.b. However, the Operational Guidelines to the Convention's Article 9, approved by the Conference of Parties in

2009 and later amended, contain specific demands to Parties to consult also non-governmental actors and civil society in the preparation of their reports.

It is clearly stated that in preparing their reports under the Convention, State Parties shall conduct multi-stakeholder consultations involving governmental and non-governmental actors, in order to capture the entire range of existing levels of engagement and sources of information. In conformity with Article 11 of the Convention and the Operational Guidelines on the role and participation of civil society, State Parties must also ensure the involvement of civil society in the preparation of the reports according to jointly agreed modalities. The reports shall thus indicate the way in which civil society participated in the drafting process.<sup>67</sup>

A crucial element here may be the reference to “jointly-agreed modalities”, which stipulates that it is not for states alone to define how CSOs shall be involved in the process.

To assess whether “Policies and measures that promote and protect artistic freedom are a) established, b) evaluated and c) functioning” (e.g. Core Indicator 10.2 of the Convention’s Global Monitoring Framework), UNESCO is expected to ask for information on “Independent bodies established to receive complaints and monitor violations to artistic freedom (e.g. censorship, persecution, imprisonment)”. In addition, the 2018 Global Report of the 2005 Convention, *Reshaping Cultural Policies*, suggested that CSO involvement (e.g. Core Indicator 4.3 of the Convention’s Global Monitoring Framework) be verified by examining whether or not

civil society is consulted and provides input to Parties’ Periodic Reports; and whether or not CSOs submit information documents to and participate in debates of the governing bodies of the Convention.<sup>68</sup>

This is fully in line with the Operational Guidelines of Article 11, para 9, which states that CSOs may “participate in the meeting of the bodies; be given the floor; submit written contributions relevant to the work... to be circulated... as information documents”. Unfortunately, the potential for enhanced CSO involvement remains more or less untapped. The most recent resolution of the 2021 Conference of Parties seeks to change this, by inviting the Intergovernmental Committee of the 2005 Convention to look for modalities to explore new opportunities within the approved framework.<sup>69</sup>

In practice, the involvement of civil society in the reporting of States Parties is limited by the format of questionnaires issued by UNESCO. In its latest iteration, the format of the Quadrennial Periodic Report (QPR) was based on a questionnaire to State Parties, with short CSO questionnaires attached. The purpose of the CSO questionnaires was only to facilitate the State Party’s reply – since it was for the State Party alone to decide which CSOs should be invited to submit questionnaires to the State Party. The CSO questionnaire is available online for information purposes only; there were no open calls to civil society for input and hence no possibility for CSOs to report independently to UNESCO. Furthermore, the States Parties were not requested to attach the CSO replies that they received to their own replies, submitted to UNESCO, but only to state how the process was organized

and which organizations had contributed (as well as their contact details). Furthermore, the CSO questionnaires focused on activities and positive results, not on critical issues and accountability, and primarily serve to assist States Parties to fill out more easily the – by design positive – civil society-related parts of the questionnaire.

In its actual reporting on the 2005 Convention, UNESCO made use of a variety of sources. The 2018 Global Report of the 2005 Convention, *Re/shaping Cultural Policies*, was based not only on reporting from 62 States Parties replying to the questionnaire but also on “other types of sources”, including reports from the UN human rights system and monitoring reports from international human rights organizations. With respect to the promotion of human rights and fundamental freedoms, the focus was primarily on gender equality and the gender gaps that persist in almost all cultural fields in most parts of the world. However, in Chapter 10, the report also addressed another crucial issue – artists at risk, and the heavy increase in attacks on artists globally over recent years.

The 2018 Global Report documented “a significant rise” in attacks on artistic freedom – which might also reflect the growing awareness of the issue. It furthermore stated that “laws dealing with terrorism and state security, criminal defamation, religion and ‘traditional values’ have been used to curb artistic and other forms of free expression. Reference was made to global data showing that more than a third of the writers put on trial in 2016 faced charges under anti-terror laws, laws that were often imprecise in their

definition of terrorism. In addition, national legislation on religious insult and blasphemy were often used to take legal action against artists, abusing their freedom of expression.<sup>70</sup>

Yet, once again no references were made to issues and challenges to artistic freedom in specific countries. The 2018 Global Report only broke down available data on attacks on artists at regional level, also highlighting that musicians and other performing artists were comparatively more at risk than other artists. The Report also noted that increasingly attacks on artists and artistic freedom all over the world were documented; that more international NGOs and others followed developments closely; and that more protective initiatives have been taken at local level, such as residencies in cities of refuge and grants for threatened artists.

The 2018 Report only names specific countries when they are exemplifying good policy practice. This reflects how the UNESCO Secretariat approaches monitoring of the implementation of the 2005 Convention, as stated in the 2015 Global Report that “the objective of the QPR exercise is to share information and identify global trends and challenges, rather than to compare or rate Parties”.<sup>71</sup> For more in-depth information on the specific countries’ implementation of the Convention, UNESCO has made all QPRs accessible on a dedicated website. However, again the story that is told in the QPRs, including any challenges or issues that may be highlighted, is that of States Parties. Here, it is important to keep in mind that the 2018 Global Report pointed out how “there are gaps between rhetoric and practice”.



Among the 22 states that cite artistic freedom as a legislative right in their systems, several nevertheless curtail this very right. Conversely, countries with strong protection of artistic freedoms do not necessarily have this listed explicitly in their legislation. This observation speaks for the need to bring in other voices, such as CSOs, to provide a more nuanced analysis, and for the Convention's monitoring framework to become a truly effective policy-making tool, reflecting reality on the ground.<sup>72</sup>

## THE ROLE OF ART – AND THE RIGHTS AND PROFESSIONAL STANDARDS OF ARTISTS

UNESCO's 1980 Recommendation on the Status of the Artist recognizes that "the arts in their fullest and broadest definition are and should be an integral part of life, and that it is necessary and appropriate for governments to help create and sustain not only a climate encouraging freedom of artistic expression but also the material conditions facilitating the release of this creative talent".

The Recommendation defines the role of artists as creators of art that is in itself seen as "an integral part of life" (PP5). An artist is "any person who creates or gives creative expression to, or re-create works of art, who considers his artistic creation to be an essential part of his life, who contributes in this way to the development of art and culture and who is or asks to be recognized as an artist..." (I, 1). Although it involves an element of peer review – a qualitative assessment related to the recognition as an artist, including original

creativity in the content of the art in question – the concept "artist" is thus primarily one of self-identification.

In 2013, the UN Rapporteur in the field of cultural rights described the role of the artist in society as "sometimes bringing counter-discourses and potential counterweights to existing power centres", which makes artists and artistic creativity "necessary for the development of vibrant cultures and the functioning of democratic societies".

Artists and their expression are a finely calibrated sensor, which may pick up, in more ways than one, individual or societal distress and/or preoccupations with certain aspects of life in the private or public domain, or circumstances of life in general, not easily seen or recognized by authorities or by society at large. In raising questions related to how things are, or are being perceived, artists may change societal discourse, testing dominant ideas, concepts or realities and in so doing, they challenge existing power structures. The arts may thus be a societal or even political safety valve – and artists the eternally famous canaries in the coalmines.<sup>73</sup>

When it comes to the rights and professional standards of artists, the emphasis in the 1980 Recommendation is understandably more on the responsibilities of the duty bearer (Member States) than on the artists' rights. The rights explicitly defined from the rights holders' perspective are primarily human rights, acknowledged in other international instruments. These are listed in an annex and appendix to the Recommendation and include relevant articles of the UDHR, ICESCR, relevant ILO instruments etc. Read in this light,

the key professional rights of artists set out in the Recommendation, to be honoured and respected by Member States, can be defined as follows:

- The artist's "freedom of creation", supported by "greater freedom for artists, without which they cannot fulfill their mission" (III, 3); also the artist's "freedom of creativity, expression and communication" (PP 15);
- The unequivocal right of artists to be protected by international and national legislation concerning human rights (III, 6 & V, 2);
- The right of artists to establish lively and far-reaching contacts with other cultures, i.e. including in other countries (IV, 1 (j));
- The right of artists to travel and to benefit from free international movement and to practice their arts in other countries (IV, 1 (k));
- The rights of artists to enjoy the same benefits and social protection as other comparable groups with regard to living and working conditions, and their rights to freely organize in trade unions and professional organizations (PP 18; V, 3 and 5; VI, 4 and 5); and
- The rights of artists to be protected by copyright conventions and similar protection of their art, and against commercial exploitation and unauthorized exploitation, modification and distribution, also in respect of new communication and reproductive media (PP 25; V, 4; VI, 6).

Given that art often addresses a number of unknown aspects of life and societies,

and that it often moves into un-chartered waters and territories, it is likewise difficult to establish a professional code for the work of artists (the processes) as well as for their artistic contributions (the material or immaterial content of art as created by the artist).

In PP7, the 1980 Recommendation states that, considering their important role in the life and evolution of society, artists should be given the opportunity "like any other citizen to exercise [their] responsibilities [when] contributing to society's development, while preserving [their] creative inspiration and freedom of expression". The formulation clearly signals that creative inspiration and freedom of expression will always be more important than any responsibility to society.

Unlike scientific researchers and journalist/media professionals, the work of artists is not guided by professional standards or codes. There are no principles and practices for the work process and/or for the content of the art created, to which the artist can be held professionally accountable. It is therefore necessary to address what possible limitations there may be to the overriding principle of self-identification as artist, set out above. Not everything is art, and not everyone is an artist.

As referred to previously, there is a qualitative aspect to art and a notion of original creativity that must be taken into account when assessing what is or what is not "art". Such an assessment must necessarily be very broadminded, open and non-exclusive. It must be undertaken by professional peers, in the public domain, setting out criteria and reflections in detail and in a transparent manner – and not by public

institutions or authorities, who are sometimes criticized by cultural practitioners for working in non-transparent and professionally non-argumentative ways.

## THE IMPLEMENTATION OF THE UNESCO CONVENTION AND RECOMMENDATION

The so-called Global Reports are designed to monitor the implementation of the 2005 Convention. These Reports build on a monitoring framework, agreed to by State Parties, which identifies areas for monitoring and core indicators. This provides the basis for collecting information on what Parties are actually doing to implement their commitments. Parties are expected to follow up on the findings, and specific measures can be decided upon at the intergovernmental meetings of the Convention.

In addition, it has been stated that the purpose of the Global Reports is to provide evidence of how this implementation process contributes to the Sustainable Development Goals (SDGs). The evidence collected by UNESCO on the impact of the Reports shows that the established monitoring framework has been used effectively as a policy tool, as it has been taken as a basis for revising arts policies. For example, it has been taken as a basis for revising national white papers, policies and legislations.<sup>74</sup>

The monitoring of the implementation of the 2005 Convention builds on the QPRs submitted by State Parties every four years, as requested under the Convention. In order to address the current data gap, State Parties have been requested, on several occasions,

to put in place mechanisms to systematically collect information and data, statistics and best practices; and to ensure the full participation of both governmental and civil society actors in this process.

The Convention's 2018 Global Report was based on only 62 QPRs (out of 146 Parties). In 2020 alone, 64 reports were received out of 104 reports due that year, which leaves a significant room for improvement, but also marks progress over time. In total, 61.5% of the periodic reports due in 2020 were submitted, representing a twofold increase in the submission rate compared to 2016, the equivalent year in the previous cycle. For transparency, the Secretariat publishes information on Parties that did not submit their reports.<sup>75</sup>

Keeping in mind that Parties have an active duty to enable civil society involvement in the implementation of the Convention, including in the periodic reporting exercise, it should be noted that 79% of the 72 reports, submitted under the framework for quadrennial periodic reports in force since 2019, include measures or initiatives undertaken by CSOs. This could be interpreted as Parties having directly implemented Article 11 of the Convention (Parties should encourage the active participation of CSOs), including the Operational Guidelines (para 14 on information-sharing and transparency). However, a 2018 survey among the most active CSOs in the culture field points out that it is difficult to determine when QPRs directly represent civil society's voice, and that consultations with CSOs have been limited: only 49% of CSO respondents report having been in some way involved in the preparation of the QPRs.<sup>76</sup>

The fact that almost half of the CSOs, normally highly active on cultural policy issues, are not participating in UNESCO's reporting systems has, not surprisingly, led to the conclusion that outreach should be broadened. Interviews with experts, as well as feedback gathered by UNESCO, have identified certain key challenges. The most important of these is a lack of understanding among public officials concerning what civil society is, how it works and how to engage with it.<sup>77</sup>

The findings also showed that civil society is not always seen as an equal partner, and that the ideas and initiatives emerging from it may not be recognized as having the same validity as those coming from government agencies. Furthermore, some civil society actors may not see any value in participating in UNESCO reporting processes. Others are afraid to be seen as legitimizing governmental processes that appear to offer consultation, but no opportunity for genuine influence. This is particularly true under conditions where there is little trust between governments and society. The findings also showed that when there is limited space for civil society, voices offering criticism may not be invited to participate in the QPR process.

With a view to promoting human rights and fundamental freedoms and to keeping the debate on these issues alive after the launch of the 2018 Global Report, the UNESCO Secretariat have sought to maximize the use of information collected through the periodic reports. This has resulted in the 2020 special edition, which demonstrates linkages between artists and journalists in relation to

human rights issues. This edition highlights, for example, that artists and journalists share the same struggles over gender equality, media independence and diversity, and censorship. It recommended awareness raising with regard to artistic freedom among journalists, since "much of the information-base relies on what is reported in the local and international press and by organizations that monitor media freedoms and general human rights violations".<sup>78</sup> Whereas CSOs representing artists in general have promoted social and economic rights, they do neither have professional experience nor funding available to document and monitor violations on artistic freedom.

In terms of the legal protection of artistic freedom and the protection of the economic and social rights of artists, the special edition points to "an ecosystem for the protection of artistic freedom that links the international, regional and national levels is progressively developing in all regions". This includes increased capacities for monitoring as well as for the development of good practices in legislation and jurisprudence.

As pointed out in Chapter 1, the 2020 special edition also emphasized how COVID-19 is disrupting the entire cultural value chain. Artists are increasingly relying on the internet, which raises new challenges for their online safety, and media organizations are increasingly taking artistic expression into account, particularly online. This is a recognition of the fact that just like journalists, artists are exposed to risks when they share their work online. As a demonstration of this, the 2020 edition refers to findings in the annual Freedom on the Net report, which makes specific

reference to artistic freedom in relation to the use of technical means to block websites, as well as in relation to the existence of specific laws criminalizing online expression protected under international laws.

In recent UNESCO World Press Freedom Conferences, more space has been given to debates on artistic freedom. For instance, the 2019 Addis Ababa World Press Freedom Declaration asks governments to “put in place transparent and effective systems to protect journalists, including press cartoonists, artists, activists and others who are at risk of attack for exercising their right to freedom of expression, thereby ensuring that they can carry out their public watchdog role effectively, including during elections”. Two years before, in 2017, UNESCO developed a training module on artistic freedom, which is now being offered to governments in collaboration with civil society. The objective is to strengthen the focus on artistic freedom in QPRs, and could most likely also facilitate the topic’s inclusion into the Universal Periodic Reviews (see Chapter 6).

Already in 2015, more than 53 states declared their commitment to the right to freedom of expression, including creative and artistic expression, in a statement at the Human Rights Council. In 2016, the Nordic Ministers of Culture issued a statement on the World Press Freedom Day: “Culture constitutes one process of, and space for, democratic debate. The freedom of artistic expression forms its backbone. There is compelling evidence that participation in culture also promotes democratic participation as well as empowerment and well-being of our citizens”. The Nordic Ministers of

Culture “welcome the important steps taken by UNESCO... to enhance global monitoring in areas such as artistic freedom, gender equality and civil society participation”. The 2020 Special Edition points out that these efforts may be seen as building blocks, paving the way for and solidifying the increasing recognition of artists in the promotion and defense of human rights within the UN system.<sup>79</sup>

The next (3rd) Global Report, initially scheduled for June 2021, will be issued on the occasion of the 15th session of the Committee of the 2005 Convention in February 2022. 96 periodic reports will serve in the preparation of this 3rd edition, which is 55% more than the 62 reports considered for the 2nd edition. While some efforts have been made in previous years to ensure financial predictability in UNESCO’s regular budget (C5), it is worth noting that the Global Reports, in spite of playing a key role in the work of the Convention, are still heavily dependent on voluntary contributions. Hence, the publication of future Global Reports relies, to some extent, on UNESCO’s capacity to mobilize voluntary contributions.

Like other similar recommendations, the 1980 Recommendation does not have specific institutional mechanisms for follow-up. This instead falls within the purview of the Committee on Conventions and Recommendations (CR Committee)<sup>80</sup> and its specific multi-stage procedure, as set out in relevant Executive Board decisions (177 EX/Decision 35.I and 196 EX/Decision 20). Reporting on the action taken upon the 1980 Recommendation is one of the Member States’ obligations under Article VIII of UNESCO’s

Constitution. Member States will report on their implementation of the recommendation every four years, based on a questionnaire from the Secretariat. UNESCO also collects information from its various partners such as CSOs. The Secretariat prepares a report based on the information collected for the attention of the Executive Board, which in turn submits it to the General Conference together with the Board's comments.

The most recent round of consultation on the implementation of the 1980 Recommendation was launched in 2018, and its results were summarized in a report, first to the Executive Board, and thereafter to the General Conference in 2019. To that end, UNESCO launched a new survey with three thematic focus areas: 1) digital environment, 2) mobility and flow of artistic works, and 3) human rights and fundamental freedoms, including social and economic rights, artistic freedom and gender equality.

It is clearly stated on UNESCO's website that "both UNESCO Member States and national and international non-governmental organisations with extensive experience had been invited to participate". Five questions in the questionnaire relate to artistic freedom: 1) "Does your country have an official policy relating to artistic freedom? Please describe", 2) "Are there bodies established to receive complaints and monitor violations of artistic freedom (e.g. censorship) in your country? Please give examples", 3) "What challenges does your country face that may limit freedom of artistic/creative expression as prescribed by the guiding principles of the 1980 Recommendation?", 4) "With respect to public

funding programmes, whether administered by the State, and arts council, cultural agency or other public body, are there mechanisms in place to ensure transparent decision-making on funding/grants/awards? If so please describe," and 5) "Has your country taken initiatives to protect artists at risk, such as providing safe houses, safe cities, guidance and training, etc.? If so, please describe".<sup>81</sup>

The rate and quality of the Member States' reporting on the implementation of the 1980 Recommendation remain weak, as only 52 Member States (26 %) participated in the consultation. There were also 39 responses from NGOs. Under the headline "Human rights and fundamental freedoms", the Secretariat's consolidated report points out that NGO respondents noted how the shift towards "precarious" work continues for artists in many countries. International experts have also pointed out that much more can be done by states in terms of providing more substantial replies to the questions on artistic freedom than merely citing existing legislation.<sup>82</sup> It is worth noting that both the 2005 Convention and the 1980 Recommendation could and should be used by national courts when taking decisions about cases related to artistic freedom. In general, national legal systems should, if feasible, incorporate in their decisions those international instruments that have been agreed by their countries.

## PRELIMINARY CONCLUSIONS:

The discussion above identifies some critical areas

- The need for more State Parties/Member States to fulfil their reporting obligations under the 1980 Recommendation on the Status of the Artist and the 2005 Convention on the Protection and Promotion of the Diversity of Cultural Expressions; and for those reports to be thorough, more self-critical and broadly framed;
- The need for a framework for civil society involvement, at national level, not only in the replies to the questionnaires submitted to State Parties to the 2005 Convention, but also in relation to the preparation of Member States' reporting on the 1980 Recommendation;
- The need to further improve civil society participation in the reporting of State Parties to the 2005 Convention;
- The furthering of UNESCO (Secretariat) monitoring of global developments and trends, as well as development at national level, based both on the reporting of states and other sources of information. This will necessitate more funding, as appropriate, and not only from voluntary sources, for future Global Reports. More detailed indicators based on the monitoring framework to assess implementation may also be needed, as may encouragement of stronger civil society participation.





# CHAPTER 4: SAFETY OF JOURNALISTS AND THE ISSUE OF IMPUNITY

While UNESCO's normative work related to artists and scientific researchers is based on legal instruments, such as recommendations and a convention, covering rights issues more broadly, the work related to journalists is based on a number of basic texts such as resolutions, decisions, declarations and frameworks (all set out in the datalink), designed to raise awareness and promote standards specifically about freedom of expression, the safety of journalists and the issue of impunity.

Among UNESCO's flagship activities in this area are World Press Freedom Day, celebrated every year on 3 May, and the UNESCO/Guillermo Cano World Press Freedom Prize, intended to honour the work of an individual or an organization defending or promoting freedom of expression anywhere in the world, especially under dangerous conditions. UNESCO also mobilizes stakeholders on other important International Days, for instance to end impunity for crimes against journalists (2 November) and to promote the right to information (28 September). With Resolution 29, of the 29th session of UNESCO's General Conference, the Director General of UNESCO has since 1997 been requested publicly "to condemn assassination

and any physical violence against journalists as a crime against society", and to urge the relevant authorities to discharge their duty of preventing, investigating and punishing such crimes.<sup>83</sup> Further to this, more than 23,000 judicial operators, including judges and prosecutors, from 150 countries, have engaged in UNESCO's flagship training activities for the judiciary on legal standards on freedom of expression.<sup>84</sup>

UNESCO's International Programme for the Development of Communications (IPDC) conducts holistic work in all aspects of media development, including research, normative work, monitoring, standard setting and project implementation. IPDC plays an important normative role. It has raised awareness of the hatred directed at journalists and of the threats they receive, and it has also demonstrated how currently most killings of journalists occur in situations where there are no armed conflicts. Working on the basis of internationally agreed standards for free, pluralistic and independent media, IPDC plays a particular role in promoting the safety of journalists and combating impunity. In practice, this means developing projects to address this issue, and encouraging Member States to submit information on

a voluntary basis on the status of the judicial inquiries conducted on each of the killings condemned by UNESCO. This information is then included in a public report submitted by the Director-General, every two years, to the intergovernmental IPDC Council. This is in line with the Decision adopted by the IPDC Council at its 26th session in 2008. Every other year, the information gathered through this monitoring and reporting mechanism is included in the World Trends Report on Freedom of Expression and Media Development. The IPDC Council meets once every two years to set its policy, while the IPDC Bureau selects projects and allocates funds every year.

The UN Plan of Action on the Safety of Journalists and the Issue of Impunity (UN Plan of Action) was developed upon request of the IPDC Council due to a pressing need for the various UN agencies, funds and programmes to develop a single, strategic and harmonized approach.<sup>85</sup> The UN Chief Executives Board (CEB), the highest-level coordination mechanism in the UN system, endorsed the UN Plan of Action in 2012. In its resolution 68/163, the UN General Assembly asked UNESCO to be the overall coordinator of the Plan. The Action Plan notes that intergovernmental organizations are well placed to encourage Member States to cooperate and to share best practices, as well as to exercise “quiet diplomacy” with Member States. Many of the proposals for action are directed towards governments. These are asked:<sup>86</sup>

- to develop legislation and mechanisms guaranteeing freedom of expression

and information, including requirements that States effectively investigate and prosecute crimes against freedom of expression;

- to fully implement existing international rules and principles, as well as to improve, where needed, national legislation on safeguarding journalists, media professionals and associated personnel in conflict and non-conflict situations;
- to play an active role in the prevention of attacks against journalists, and take prompt action in response to attacks by establishing national emergency mechanisms to be adopted by various stakeholders;
- to comply fully with UNESCO General Conference Resolution 29, Condemnation of Violence against Journalists, and to adopt the principle that there should be no statute of limitations on persons guilty of crimes against freedom of expression; to refine and promote legislation in this field and to ensure that defamation becomes a civil, not a criminal action;
- to comply with the IPDC’s Decisions on the Safety of Journalists and the Issue of Impunity, and to submit information on the actions taken to prevent impunity for killings of journalists, and on the status of the judicial inquiries conducted on each of the killings condemned by UNESCO;
- to explore ways of broadening the scope of Security Council Resolution 1738, and to include the promotion of the safety of journalists and the fight against impunity in non-conflict situations as well.

Deploying a narrow definition, UNESCO relates the safety of journalists to their physical, psychological and digital security, and to the related problem of impunity for those who violate this security.

Special Journalist Safety Indicators (JSIs) have been developed within the framework of IPDC. The indicators are promoted by UNESCO as an analytic tool covering a range of possible factors that can influence the safety of journalists within a given Member State. UNESCO emphasizes that the indicators are not merely prescriptive; they are an instrument to identify salient aspects of journalists' safety issues, and to track any changes to these over time. Not all indicators may be relevant to a given country. Nevertheless, UNESCO stresses that published findings on the JSIs should highlight any cases in which certain indicators have not been included, and should explain the reasons why.

JSIs allow for the assessment of particular problems as well as of the systems in place, and of the actions of the various actors and institutions concerned. These actors are grouped into four major categories: (i) state and political actors; (ii) civil society and academia; (iii) the media and intermediaries; and (iv) UN and other intergovernmental bodies operating directly in a country. While a comprehensive set of indicators, sub-indicators and means of verification are directed towards all four categories, it is highlighted that the primary responsibility for the protection of journalists, as with any other citizen, rests with the Member State. The key indicators related to state and political actors seek to reflect core challenges, the degree to which States have the necessary

instruments in place, and whether these are working transparently and effectively. The issues here are primarily whether States have laws that protect journalists; whether there are appropriate normative statements, policies and institutional frameworks that safeguard the importance of journalists' safety; whether the criminal and civil justice system deals effectively with threats and acts of violence against journalists; and whether States take other effective measures concerning journalists' safety.<sup>87</sup>

## INVOLVEMENT OF CIVIL SOCIETY ACTORS, NATIONALLY AND INTERNATIONALLY

In the UN Plan of Action, civil society and academia are recognized as important actors. NHRIs, CSOs, NGOs and academics working in the field of media development and the protection of free expression or related fields of human rights can play an important role in protecting journalists from the risks they face on account of their work. While the Plan of Action recognizes that civil society groups lack the formal authority and powers of state institutions, it also stresses that CSOs can warn, advise and counsel a range of other actors about the nature of the problem and possible solutions. Last, but not least, civil society can influence public opinion and provide direct support, including training, to journalists.

For these reasons, both the UN Plan of Action and the JSIs promote the involvement of civil society. They propose to strengthen partnerships between the UN, CSOs

and professional associations dedicated to monitoring the safety of journalists and media workers at national, regional and international levels. This includes sharing up-to-date information and best practices as well as conducting joint missions and investigations into particular cases (the UN Plan of Action, para 5.13). Another focus area relates to how CSOs and academia monitor safety and share information. For instance, many CSOs analyze data in order to better understand circumstances of and causes behind killings and impunity, just as they provide information to UN agencies and to the Universal Periodic Review process about journalists' safety.

Civil society also plays a crucial role in collecting data, and in providing the means of verification to assess whether the proposed actions/indicators are actually being implemented. UNESCO's JSIs draw on the following CSOs as data sources (the list is not exhaustive):

- The International News Safety Institute (INSI) Safety Code Online
- International Media Support (IMS): <http://www.i-m-s.k.dk>
- Article 19: [www.article19.org](http://www.article19.org)
- Freedom House: <http://www.freedomhouse.org/>
- Committee for the Protection of Journalists: <http://www.cpj.org/>
- Reporters Without Borders: <http://en.rsf.org/>
- World Association of Newspapers: <http://www.wan-ifra.org>
- World Association of Community Radio

Broadcasters: <https://amarc.radio.home/>

- Rory Peck Trust: [www.rorypecktrust.org](http://www.rorypecktrust.org)
- International Freedom of Expression eXchange – information on safety of journalists: [www.ifex.org](http://www.ifex.org)
- International Research and Exchanges Board: [www.irex.org](http://www.irex.org)

Other relevant CSOs with monitoring activities are the International Press Institute, the Federations of Journalists, as well as regional media organizations, such as the Safety of journalists in Africa – Digital Platform for media safety.<sup>88</sup>

## THE ROLE OF THE MEDIA – AND THE RIGHTS AND PROFESSIONAL STANDARDS OF JOURNALISTS

The UN Plan of Action states that without freedom of expression, and particularly freedom of the press, it is not possible to have an informed, active and engaged citizenry. When journalists are safe, and can exercise their job in a free, independent and pluralistic media environment, it is easier for citizens to access quality information. This, in turn, makes it possible to achieve a number of positive results: democratic governance and poverty reduction; conservation of the environment; gender equality and the empowerment of women; justice and a culture of human rights, to name a few. The problem of impunity is not restricted to the failure of investigating murders of journalists and media professionals; it deprives society as a whole of journalistic contributions and results in a climate of intimidation and

violence leads to self-censorship.

Journalists generally carry out professional duties that enable the media to provide a public platform for the exchange of ideas, opinions and information. The higher the visibility of journalists, the easier it is for the public to discover when they are attacked and whether or not this is with impunity for the attackers – and the less safe members of the public feel when they themselves want to speak up. In this way, attacks on journalists have wider societal implications. In some countries journalists are often faced with very low payment and may rely on so-called brown envelopes during press conferences and/or accept to be freelance without social security. This creates a very vulnerable situation for journalists, which States have a responsibility to remedy.

The UN Plan of Action further states that the safety of journalists and the fight against impunity for their attackers are essential to preserve the fundamental right to freedom of expression, guaranteed by Article 19 of the Universal Declaration of Human Rights. As previously mentioned, this comprises the right to freedom of opinion and expression, including to hold opinions without interference, and the rights to seek, receive and impart information and ideas through any media and regardless of frontiers.

The Plan furthermore specifies that freedom of expression is both an individual and a collective right. At collective level, freedom of expression empowers populations through facilitating dialogue, participation and democracy, thereby making autonomous and sustainable development possible (para 1.4).

In addition, the JSIs refer to journalists' right to life and to the integrity and security of persons as fundamental human rights, recognized in and guaranteed by international conventions and instruments. Journalists similarly have to abide by professional standards to uphold the principles of neutrality, impartiality and humanity in their professional activities (IPDC Council Decision, 2008). UNESCO's work on professional journalistic standards and code of ethics consists of a public knowledge resource – a dedicated webpage – that provides an overview of relevant ethical and professional media standards for different countries. A UNESCO publication states that there are "certain accepted principles – a respect for truth and for the right of the public to truth; the right to fair comment and criticism; factual and objective reporting; the use of fair methods to obtain information; the willingness to correct mistakes; respecting the confidentiality of sources. These draw upon what is usually regarded as the essential elements of journalism".<sup>89</sup>

## MEMBER STATES' IMPLEMENTATION OF THE UN PLAN OF ACTION

The monitoring of the status of the implementation of the UN Plan of Action takes the form of a progress report, which is submitted to UNESCO's Executive Board on a regular basis. The most recent report was submitted to the Spring Board of 2021. The progress report provides an overview of activities in support of the implementation of the UN Plan of Action. However, it does not report in a systematic manner on the progress of

each of the proposed actions in the UN Plan of Action. Neither is it possible to track outstanding issues that have not (yet) been implemented. The Executive Board is expected to make decisions based on this report. It is worth noting that the most recent Executive Board decision (spring 2019) explicitly confirms that the implementation of the UN Plan of Action by Member States is voluntary.<sup>90</sup>

A key feature in the UN Plan of Action pertains to the role of Member States in conducting the judicial inquiries on the killings condemned by the UNESCO Director-General. UNESCO plays an increasingly important role in the monitoring of the judicial follow-up on killings through the Director-General's Report on the Safety of Journalists and the Danger of Impunity. The Director-Generals' Report takes stock and provides an analysis of 1) the cases of killings of journalists, 2) the status of judicial enquiries, and 3) the Member States' reporting on preventive measures taken and actions taken to address the specific risks faced by women journalists.

UNESCO identifies the cases of killings based on reports from multiple sources, including from international, regional and local monitoring groups; UNESCO field offices; UNESCO Permanent Delegations; and other UN bodies. The Report's analysis of the status of judicial investigations is based on the responses (and non-responses) provided by Member States to the Director-General's request for information on the killings.

The responses are made public on the UNESCO web observatory of killed journalists with the approval of Member States. For instance, Denmark's response to the UNESCO

request regarding judicial follow-up on the killing of the Swedish journalist Kim Wall is accessible. It is worth noting that while the United States withdrew from UNESCO on 31 December 2018, the USA has continued supplying information to UNESCO on the cases of killings in the USA.<sup>91</sup>

While Member States' judicial follow-up on cases of killings is receiving much attention, it should be noted that the UN Plan of Action also calls on Member States to develop and improve national legislation and mechanisms to foster an enabling environment for press freedom. Especially, the requirements to: 1) investigate and prosecute, 2) safeguard journalists, media professionals and associated personnel, and 3) prevent attacks against journalists. Hence, since 2017, UNESCO has included in the requests to those Member States where a case of killing has occurred, an invitation to also report on actions taken by the State in general to improve the safety of journalists.<sup>92</sup> It could be argued that there is also a need to consider including consideration of so-called SLAPP (Strategic Lawsuits Against Public Participation); measures that have increased in some countries, as a means to silence journalists, artists and scientists by forcing them to be busy on their own cases instead of doing their crucially important job. The European Commission has taken an initiative, in the form of a directive, to urge their Member States to introduce legislation that can hinder SLAPP.

The UNESCO Director-General's Report on safety and impunity is submitted to the IPDC Council every two years, the latest in 2020.<sup>93</sup> The Report is intended to serve as a basis

for the Council's deliberations on global developments and challenges. It is followed-up by IPDC Council decisions that outline actions to be taken by Member States such as:

- To continue “to inform the Director-General of UNESCO, on a voluntary basis, on the status of the judicial inquiries conducted on each of the killings condemned by the Director-General”;
- To authorize UNESCO to make the information on judicial follow-up publicly available on the UNESCO webpage, for the purposes of transparency, in line with previous Decisions;
- To appoint a focal point on the issue of safety of journalists and impunity with the remit to coordinate the monitoring of the safety of journalists as part of Member States' fulfillment of SDG 16, Target 10, and to report nationally and internationally on this.<sup>94</sup>

In 2018-19, UNESCO recorded a total of 156 killings of journalists worldwide. As far as UNESCO is concerned, future tasks include to continue to provide to the Council of the IPDC an analytical report on the killing of journalists, media workers and social media producers who are engaged in journalistic activities based on the Director-General's condemnations, including information on the judicial inquiries which is based on the information provided by Member States on a voluntary basis.

Furthermore, UNESCO shall officially inform relevant counterparts of the publication of this report, notably OHCHR, ECOSOC, UN Women and other relevant UN bodies

and mandates. UNESCO will also continue to support Member States in their monitoring and reporting mechanisms on journalists' safety and the issue of impunity. And, finally, it is for the Bureau of the Council of the IPDC to continue to support projects that further the objectives of the UN Plan of Action on the Safety of Journalists and the Issue of Impunity.

UNESCO promotes the JSIs as a tool to assess on a periodic basis the extent to which the implementation of the UN Plan of Action has contributed to improving the security of media professionals in the countries participating in the roll-out of the UN Plan of Action. UNESCO has developed a Guidebook for anyone – be it UNESCO staff, independent researchers or other stakeholders – seeking to apply the JSIs in practice. The Guidebook provides essential guidelines for implementing the JSIs in a given country, and how the findings can be utilized. The Guidebook states that a large array of stakeholders is likely to be interested in the assessment process and should be involved in it in one way or another, including the UN Resident Coordinators and UNESCO staff; state and political actors, human rights commissions, ombudsmen, police forces, military; CSOs and academics; and media actors.<sup>95</sup>

In 2017, stakeholders agreed on possible ways to improve the implementation. The 2017 Consultation Outcome Document is the result of a multi-stakeholder consultation process that was launched to identify ways to strengthen the implementation of the

UN Plan of Action. The Document outlines a number of options that various actors may consider.<sup>96</sup>

As the lead UN agency, UNESCO is invited to (selective paras 1.3, v-viii):

- Enhance the roll-out of Journalists' Safety Indicators studies in more countries;
- Strengthen reporting and responses to the UNESCO Director-General's requests for information from Member States on judicial follow-up on killings of journalists;
- Deepen work with OHCHR in developing comprehensive safety reporting on SDG indicator 16.10.1 as per terms of the indicator, and assist Member States in their own monitoring in this area; and
- Strengthen UNESCO's convening role in reporting on SDG indicator 16.10.2, which is relevant to public access to information and transparency concerning official information on journalist safety and related impunity issues.

The UN coordination has proved to be an important part of efforts to mobilize and engage the freedom of expression community in the promotion of the safety of journalists. Hence, the Document also outlines options for the Office of the High Commissioner for Human Rights (OHCHR) (selective paras 1.2, i, iii, v):

- To mainstream safety into the Universal Periodic Review (UPR);
- To continue to support increased engagement by human rights treaty bodies with the issue of safety of journalists, in

particular through consideration of States Parties' periodic reports, individual complaints and country inquiries; and

- To ensure, as custodian agency for SDG indicator 16.10.1, improved global reporting on this indicator, and, in collaboration with UNESCO and other stakeholders, broaden the scope of monitoring journalists' safety beyond cases of killing to include enforced disappearance, torture, arbitrary detention and kidnapping.

Options for Member States are (para 2.1, iii-v, para 2.2, iv, v, xii):

- To consider greater inclusion of the issue of the safety of journalists in the processes of the relevant UN human rights bodies, including the UPR, Special Procedures, Treaty Bodies, Special Procedures and SDG reporting processes;
- To demonstrate their interest in ending impunity for killings of journalists through their cooperation with the UNESCO reporting mechanism on judicial follow-up on such killings;
- To consider increasing the engagement with UNESCO's reporting mechanism on judicial follow-up on killings, including by strengthening support and accountability for the Member States not providing information to UNESCO regarding this judicial follow-up;
- To encourage increased quantity and quality, and transparency, of Member States' responses in this area; and encourage those Member States who do respond to make their responses publically available; and request those Member States



- who do not respond to make public their reasons why;
- To consider, in the light of SDG 16.10, developing a national plan for the safety of journalists that includes establishing multi-stakeholder protection and/or accountability mechanisms that may include dedicated units for monitoring, investigation and prosecution;
  - To encourage, in the context of the UPR and where applicable, the State under Review to ensure the safety of journalists, to ensure accountability in connection with violations committed against journalists and to report on progress on these issues at its next review; and
  - To advance monitoring and reporting on SDG 16.10.1; respond to UNESCO's requests on judicial follow-up on killings, engage with UN human rights mechanisms, in particular the UPR; strengthen related data collection, including through partnerships with UN entities, civil society and other stakeholders; consider using SDG indicator 16.10.1 as part of national monitoring and reporting on journalist safety issues; and ensure that monitoring and reporting efforts include the digital, physical and psychological safety of journalists, and incorporate gender-sensitive analysis.

Options for civil society include (para 3.2, i-iii):

- To promote harmonization of efforts within civil society, including through using the same or comparable categories for monitoring, in light of frameworks such as the Journalists' Safety Indicators

and the SDG indicator 16.10;

- To continue to maintain, and develop, means of monitoring attacks against journalists and systems of alerts; and
- To make better use of UN reporting processes and mechanisms, such as UNESCO's annual reports on killings and judicial follow-up, and the mechanisms supported by OHCHR.

Finally, it should be noted that UNESCO's annual letters of request for information from Member States are targeting those Member States in which cases of killings have occurred. Hence, the system lacks information from other Member States with no such cases. Consequently, the status of Member States' judicial follow-up on other forms of severe violations – such as journalists who are persecuted, attacked, detained, prosecuted, imprisoned and censored – go unreported. With a narrow focus on countries with cases of killings – in 2020, 63 countries (out of 193 Member States) were requested by UNESCO to provide information – it may be argued that the current monitoring system lacks a truly global scope, and that it does not represent the totality of efforts by all Member States to implement the UN Plan of Action.<sup>97</sup> It has been argued that expanding the call to all Member States (beyond those with killings) may require an explicit mandate from the Member States through IPDC. Moreover, it recommends that States have dedicated mechanisms for safety of journalists, including a system of criminal codes that register when the victim is a journalist.

It should further be noted that Resolution 53 (2011) of the 36th General Conference

calls for UNESCO to monitor the status of press freedom and safety of journalists, with emphasis on impunity for violence against journalists. This opens up for a broader monitoring scope. The Resolution triggered the development of an additional biennial UNESCO report: The World Trends Report, which covers the latest trends in media freedom, pluralism, independence and the safety of journalists. To date, UNESCO has produced two such reports, in 2014 and 2018. These reports have been accompanied by six regional reports covering freedom of expression and media development trends

in Africa, Arab Region, Asia and the Pacific Central and Eastern Europe, Latin America, and the Caribbean, Western Europe and North America respectively.

The World Trends Report is complemented by so-called In Focus Series. The latest edition is from 2020: Reporting Facts: Free from Fear or Favour. The implementation of 36 GC Resolution 53, which prompted the World Trends Report, is reported to the General Conference. The next edition of the World Trends Report is expected to be published towards the end of 2021.<sup>98</sup>

## PRELIMINARY CONCLUSION:

Whereas the UNESCO mandate on the safety of journalists and the issue of impunity, anchored in the UN Plan of Action, is well developed, the discussion above still identifies some critical areas:

- The need for closer collaboration between the UNESCO Secretariat, Member States, NRHIs and CSOs, including associations of media professionals and journalists, to enhance and detail the data underlying the wider analysis of the evolution of media freedom globally and in each Member State, including “media capture”. This would also allow for a more direct engagement of UNESCO in providing the necessary analytical assessment of the effects of COVID-19-related government interventions on freedom of expression in relation to media (see Chapter 1);
- The need to consider either similar plans of action for artists and scientific researchers, or to further develop the existing UN Plan of Action to include artists and scientific researchers as well. It would also be warranted to expand the focus of the UNESCO Director-General's public statements and regular report to cover not only killings of journalists, but also “any physical violence against journalists” in conformity with the mandate of the General Conference in 1997;
- The need for UNESCO to further encourage all Member States to engage with the organization, and not least in responding to their obligations to investigate, and bring to justice, perpetrators of the said crimes against society: not only killings of journalists, but also other forms of severe violations (attacks, detention, prosecution, imprisonment etc.).



# CHAPTER 5: SCIENTIFIC RESEARCHERS

According to the SDG Review Report from 2019, “UNESCO’s recommendation for scientific researchers represents an important tool for ethical guidance and defining rights and responsibilities in research”. In particular, the SDG Report stresses that more direct collaboration between scientific researchers, policymakers, civil society and business (the private sector) is needed to address the ecological and social crises.<sup>99</sup>

UNESCO’s Recommendation on Science and Scientific Researchers was adopted by consensus on 13 November 2017 during the 39th session of the UNESCO General Conference. The Recommendation replaced the 1974 Recommendation on the Status of Scientific Researchers, and seeks to reflect contemporary ethical and regulatory challenges relating to the governance of science and the science-society relationship. To this end, the Universal Declaration on Bioethics and Human Rights (2005), the Declaration on the Responsibilities of Present Generations towards Future Generations (1997) and the Declaration on Science and the Use of Scientific Knowledge (1999) served as inspiration.

Most of the specific recommendations are directed towards Member States, underlining the obligations of States to ensure, as part of

their human rights obligations, appropriate conditions for the progress of science and the status of scientific researchers, responsible for and engaged in scientific research and development. According to the Recommendation, the obligations of Member States refer, *inter alia*, to the responsibility of States to recognize that they have, as employers of scientific researchers, a leading responsibility and should attempt to set an example (para 43). Other recommendations promote in different ways the facilitation of scientific communities and cooperation, including via access to and sharing of data:

- Ensuring equal access to science and the knowledge derived from it... [This is] essential for realizing the full potential of scientific communities worldwide (para 18 (b));
- Putting in place policies aiming to facilitate that the scientific researchers freely develop and contribute to sharing data and educational resources (para 18 (c));
- Establishing and facilitating mechanisms for collaborative open science and facilitating sharing of scientific knowledge while ensuring other rights are respected (para 21);

- Promoting the interplay of ideas and information among scientific researchers throughout the world, which is vital to the healthy development of the sciences; and to this end, should take all measures necessary to ensure that scientific researchers are enabled, throughout their careers, to participate in the international scientific and technological community (para 31).

Another group of recommendations refers to State responsibilities with specific focus on human rights-related issues:

- Endeavouring to ensure that research and development undertaken, funded, or otherwise pursued in whole or in part in different States, is consistent with principles of conducting research in a responsible manner that respects human rights (para 20);
- Ensuring the human right to health, take measures so that benefits resulting from any research and its applications are shared with society as a whole and within the international community, in particular with developing countries (para 22).

The recommendations also set standards for the work and employment conditions of scientific researchers. Member States should:

- Provide material assistance, moral support and public recognition conducive to successful performance in research and development by scientific researchers (para 24 (a));

- Ensure that scientific researchers enjoy equitable conditions of work, recruitment and promotion, appraisal, training and pay without discrimination on the basis of race, colour, descent, sex, gender, sexual orientation, age, native language, religion, political or other opinion, national origin, ethnic origin, social origin, economic or social condition of birth, or disability (para 24 (b));
- Develop policies with respect to employment that adequately cover the needs of scientific researchers, in particular by ... [direct employment, necessary funds, training opportunities etc.] (para 27);
- Enable and facilitate mobility of scientific researchers between public sector, private sector and higher education employment, as well as outside of research and development (para 29).

The Recommendation furthermore outlines specific obligations in relation to the safety of scientific researchers and monitoring. Member States should:

- Guarantee that, for the health and safety of scientific researchers as of all other persons likely to be affected by the research activity, all national regulations, and the international instruments concerned with the protection from hostile or dangerous environments will be fully met; and accordingly ensure that the managements of scientific establishments enforce safety standards, monitor all persons at risk; take due note of warnings (para 32);
- Ensure professional standards for the work of scientific researchers. This

includes appraisal systems (for scientists) that promote independent, transparent, gender-sensitive and tier-based performance evaluation (para 34).

Referring to “the significant value of science as a public good”, the pre-ambular part of the Recommendation recognizes that hypotheses and opinions lie at the very heart of the scientific progress. As suggested by the phrase “academic freedom”, this provides the strongest guarantee of accuracy and objectivity of scientific research (PP 4 (c)).

Other specific recommendations are directed at persons or institution that employ, fund, govern or guide researchers and/or research. These persons or institutions should, inter alia, facilitate the rights and responsibilities of scientific researchers, as set out elsewhere in the Recommendation, ensure scientific researchers’ protection from retribution (para 16 (b) (ii)); and fully respect the intellectual property rights of individual researchers (para 16(b) (iii)).

## INVOLVEMENT OF CIVIL SOCIETY ACTORS, NATIONAL- LY AND INTERNATIONALLY

One part of the 2017 UNESCO Recommendation specifically pertains to the involvement of civil society. In the follow-up to the Recommendation, Member States are told to:

- Recognize it as wholly legitimate, and indeed desirable, that scientific researchers should associate to protect and promote their individual and collective interests, in bodies such as trade unions, professional

associations and learned societies.... In all cases where it is necessary to protect the rights of scientific researchers, these organizations should have the right to support the justified claims of such researchers (para 42).

- Strive to cooperate with all national and international organizations whose activities fall within the scope and objectives of this Recommendation, in particular National Commissions for UNESCO; international organizations; organizations representing science and technology educators; employers generally; learned societies, professional associations and trade unions of scientific researchers; associations of science writers; women in science associations; youth and student organizations (para 44); and
- Support the work of the bodies mentioned above by the most appropriate means, including relevant policies (para 45).

As the General Conference considered it essential to re-conceive the scope of monitoring and to revise the guidance for Member States’ reports on the Recommendation accordingly, the UNESCO Secretariat organized an open call for advice and comments from National Commissions, UNESCO Chairs and other partners in relation to the future monitoring. 35 replies were received, including seven from National Commissions. On the basis of these inputs, the UNESCO Secretariat developed a draft questionnaire for Member States, which was then adopted by the Executive Board.

It is worth noting that the approved performance indicators recognize the

important role of CSOs in the implementation of the Recommendation with relation to Science, Technology and Innovation. The role played by society and by public engagement through, for example, formal procedures for citizens' involvement, citizen science projects and advisory bodies with CSOs as members are also acknowledged.

## THE RIGHTS AND PROFESSIONAL STANDARDS OF SCIENTIFIC RESEARCHERS

The 2017 Recommendation sees science and scientific research – and scientific discoveries and related technological developments and applications (PP 3 (a)) – as an integral and intergenerational part of human development and as a public good. Optimal utilization of science and scientific methods enables progress for the benefit of humankind, but it is also recognized that science may, at the same time, entail certain dangers if scientific results are used against humankind's vital interests in order to prepare wars involving destruction on a massive scale or for purposes of exploitation of one nation by another, or to the detriment of human rights or fundamental freedoms or the dignity of a human person (PP 3 (a)).

In its General Comment No. 25, the UN Committee on Economic, Social and Cultural Rights stated that “the intense and rapid development of science and technology has had many benefits for the enjoyment of economic, social and cultural rights. At the same time, the risks – and the unequal distribution of these benefits and risks – have prompted

a rich and growing discussion on the relationship between science and economic, social and cultural rights”. Importantly, while noting that “science is one of those areas to which States Parties give least attention”, the General Comment also refers to “the role of science in informing critical and responsible citizens who are able to participate fully in a democratic society”.<sup>100</sup> The benefits of scientific progress involves not only material products of science and technology, but also the development of knowledge.

In her report on COVID-19, culture and cultural rights the Special Rapporteur in the field of cultural rights recognized that the right to science is essential for the enjoyment of many other human rights, including the right to the highest attainable standard of health. This particular human right is especially critical during a pandemic: “In such a context, science can save lives; the undermining of science kills. Moreover, the right to science is to be enjoyed by everyone, without discrimination.”<sup>101</sup> The role of scientific researchers in society can thus be described as:

- Contributing to “the benefit of humankind and... the preservation of peace and the reduction of international tensions”, thereby enabling progress on a broader scale by exploiting “the positive prospects inherent in such discoveries, technological developments and applications” (PP 3 (a));
- Contributing to setting up societies “that will be more humane, just and inclusive, for the protection and enhancement of the cultural and material well-being of... present and future generations... while giving sufficient place to science per se” (para 4); and



- Contributing to “tackling various world problems on a broad international basis, thereby strengthening cooperation among nations as well as promoting the development of individual nations” (PP 5).

Above all, the 2017 Recommendation contains a set of defined rights and professional standards for scientific researchers that may guide them in their fulfilment of the role set out above. These rights and professional standards are defined in para 16 of the Recommendation. Throughout the Recommendation, rights and professional standards are interwoven, and complementary, but it is possible to present both elements separately. Scientific researchers have the right (quotes below are verbatim from para 16):

- (i) to work in a spirit of intellectual freedom to pursue, expound and defend the scientific truth as they see it, an intellectual freedom which should include protection from undue influences on their independent judgement;
- (ii) to contribute to the definition of the aims and objectives of the programmes in which they are engaged (...);
- (iii) to express themselves freely and openly on the ethical, human, scientific, social or ecological value of certain projects, and in those instances where the development of science and technology undermine human welfare, dignity and human rights or is “dual use”, they have the right to withdraw from those projects if their conscience so dictates and the right and responsibility to express themselves freely on and to report these concerns: [and]
- (v) to promote access to research results and engage in the sharing of scientific data between researchers, and to policy-makers, and to the public wherever possible, while being mindful of existing rights.

Conversely, scientific researchers have the obligation to abide by relevant professional standards (quotes below are verbatim from para 16 as well):

- (ii) (...) [to contribute to] the determination of the methods to be adopted which should be humanely, scientifically, socially and ecologically responsible; in particular, researchers should seek to minimize impacts on living subjects of research and on the natural environment and should be aware of the need to manage resources efficiently and sustainably;
- (iv) to contribute constructively to the fabric of science, culture and education, and the promotion of science and innovation in their own country, as well as to the achievement of national goals, the enhancement of their fellow citizens' well-being, the protection of the environment, and the furtherance of the international ideals and objectives;
- (vi) to disclose both perceived and actual conflicts of interest according to a recognized code of ethics that promotes the objectives of scientific research and development;
- (vii) to integrate in their research and development work in an ongoing manner:

- disclosures to each human research subjects so as to inform their consent, controls to minimize harm to each living subject of research and to the environment, and consultations with communities where the conduct of research may affect community members; [and]
- (viii) to ensure that knowledge derived from sources, including traditional, indigenous, local, and other knowledge sources, is appropriately credited, acknowledged, and compensated as well as to ensure that the resulting knowledge is transferred back to those sources.

## MEMBER STATES' IMPLEMENTATION OF THE 2017 RECOMMENDATION

For more than two decades, the UNESCO Science Report series has been mapping science, technology and innovation around the world on a regular basis. Towards 2030 from 2015 covered key influences – such as geopolitical events, environmental crises, energy efficiency and growth strategies – on science, technology and innovation policies and governance, including the freedom of scientific research and academic freedom. The most recent report, *The Race Against Time for Smarter Development*, launched in June 2021, focuses on the scientific challenges reinforced by the Paris Agreement on Climate Change (2015) and by the COVID-19 pandemic, calling for a further increase in investments in research, development and innovation.<sup>102</sup>

The UNESCO 2017 Recommendation on Science and Scientific Researchers does not

have specific institutional mechanisms for follow-up – like IPDC in relation to journalists and media development. Instead, the follow-up to the Recommendation falls within the purview of the CR Committee and its specific multi-stage procedure, as set out in relevant Executive Board decisions (177 ExB/Decision 35.I, and 196 ExB/Decision 20). This implies that all Member States are required to report on their implementation of the Recommendation every four years, the first reports covering 2017-2020.

Each national report is considered as an evidence-based self-assessment in which compliance should be substantiated by documentation and references, involving analysis that typically would be based on data collection and consultation to assess the impact of policy measures that have been taken. UNESCO is promoting the view that national reports on the Recommendation are important not only from an accountability perspective. If properly and regularly conducted, reporting can become a powerful and useful exercise that permits Member States to better understand their science system, identify patterns, derive actionable insights, and accordingly take measures for advancing their science agenda.

The national reports from Member States are based on a questionnaire from the Secretariat, issued in May 2020 and returned by the end of March 2021. The Director-General's report to the Executive Board and the 41st General Conference on the implementation of this UNESCO Recommendation – is based on the replies from Member States. The Secretariat questionnaire consists of ten parts, reflecting the various elements of

the Recommendation. Two of those parts pertain to human rights and to the rights and responsibilities of scientific researchers (6 and especially 7). In this context, the following performance indicators are developed in Part 7 in order to promote the existence of policies and measures on:

- The respect for the autonomy and freedom of research;
- Freedom of inquiry;
- Freedom of opinion and expression;
- Freedom to challenge conventional thought;
- Freedom from institutional censorship.
- The right to disseminate research results and the protection of publication by copyright law;
- Freedom of movement;
- Freedom of association; and
- Freedom of conscience

At the institutional level the indicators pertain to the number of institutional policies and funding guidelines recognizing freedoms and responsibilities; the number of reports produced by institutions on the policies that they have on these matters; the number of complaints; and/or actions/events held to increase human rights knowledge.

At the same time, in Part 7 the questionnaire also sets out perception indicators which are formulated so as to focus on whether the human rights and freedoms of scientific researchers, are duly guaranteed, protected and respected, and whether the freedoms and responsibilities mentioned in the Recommendation are well known.

In 2013, an ad hoc expert group prepared the Preliminary Study on the desirability of revising the 1974 Recommendation. The group pointed out that “consideration could be given to an explicit linkage between monitoring of the implementation of the Recommendation and UNESCO’s inputs to the Universal Periodic Review, under the aegis of the Human Rights Council, as well as cooperation with the Committee on the Economic, Social and Cultural Rights, which monitors the implementation of the ICESCR and its Article 15(1)(b) on the right to benefit from scientific progress and its applications”.<sup>103</sup>

In her recent report on COVID-19, culture and cultural rights, the Special Rapporteur mentions a number of threats to and violations of the right to science and scientific freedom: “Bureaucratic, political and economic concerns have been allowed to interfere with, impede or delay the process of applying science and public-health expertise to policy-making”, “the misuse of religious or cultural arguments, or tradition and superstition, to convince people to disregard scientific arguments”, “denial of science... and downplayed the risk... advocated treatments without a scientific basis”, “the suppression or denial of scientific evidence... and reluctance to adapt to evidence-based policies”, “scientists have been prevented from speaking freely” and “threats and attacks against public health officials in a number of countries”.<sup>104</sup>

The first cycle of periodic reporting on the 2017 Recommendations took place in 2021. Only 35 Member States submitted their

reports to UNESCO, which makes it difficult to justify very affirmative conclusions on how the Recommendation is implemented. Nevertheless, the Director-General's consolidated report, which is submitted to the General Conference in 2021, does point out some important major trends and issues. A large majority of Member States already have adopted the norms and standards of the 2017 Recommendation; however, it seems that almost none of them has taken new measures.

While CSOs were consulted by UNESCO on the design of the questionnaire to Member States, only a minority of Member States have conducted consultations with the scientific community. Scientific freedom is highlighted as one of the major issues. In particular, the report points out

that in many countries, public budgets to finance researchers' freely-chosen research is decreasing, and in other countries, academics have been jailed on charges suspected of being intended to silence their voices, tending to chill the atmosphere of freedom and opportunities that is so central to conducting quality research. It is further noted that no Member State reported having put in place any new measures for the protection of scientific freedom. On the contrary, it is stressed that the Director-General is aware of several existing, new and proposed legal measures that are susceptible to suppress or chill scientific freedom. Finally, the report recommends that Member States equip themselves with better measurements to assess the situation.<sup>105</sup>

## PRELIMINARY CONCLUSIONS:

The 2017 Recommendation on Science and Scientific Researchers is a fairly recent UNESCO instrument, and practical experiences from its applications are limited. The questionnaire developed for the 2020-21 reporting from Member States is quite comprehensive, and there might be a need for developing a simplified indicator framework drawing on analogies and successful practice in the area of freedom of journalists. The discussion above nonetheless also identifies certain critical areas:

- The need to create a more systematic approach for the involvement of civil society in the process of developing Member States' replies to the UNESCO questionnaire, including formal hearings of relevant CSO parties and professional organizations at the national level and the inclusion of "shadow reports" from those parties in the Secretariat's data base on Member States' implementation of the Recommendation;
- The need for the Director-General's report to reflect not only the answers given to the questionnaires, but also to include other data from CSOs and professional associations, available to UNESCO, concerning the situation in Member States with regard to the freedom of expression of scientific researchers, which could be done through global reports and/or world trends reports; and
- The need for UNESCO in its analysis to focus especially on the consequences of COVID-19 with respect to limitations on scientific freedom, and on the communication of scientific analysis and results.



# CHAPTER 6: UPR – COMMITMENTS OF GOVERNMENTS

The reforms of the architecture of the UN Human Rights system in 2005-06 and the establishment of the new 47-member Human Rights Council (HRC), replacing the Commission on Human Rights, also created the UPR. In the UPR all 193 members of the United Nations agreed to submit to a voluntary review of their human rights standards and practices, once every 4-5 years. UPR is a Member State-driven process, organized by the OHCHR, and undertaken under the auspices of the HRC.<sup>106</sup>

In the UPR process, now in its third cycle (which started in May 2017), all countries can reflect on the human rights performances and experiences of each other and may also in this context present specific recommendations to the Member State under review.

The government of the country under review may – or may not – accept the recommendations provided by other Member States. If a government under review accepts a recommendation, this acceptance provides a – sometimes broadly framed, sometimes more specific – consensual approach to advancing human rights, often indicating a commitment of that government to actions for improving its human rights situation in a certain area. Referring to accepted

UPR recommendations is thus not politically sensitive or controversial, as these have already been accepted by the Member State in question.

Since the first cycle of UPRs in 2007, Member States have received a total of around 80,000 recommendations from other Member States. The numbers vary from country to country. Of these around 80,000 recommendations, Member States have accepted (technically: supported) around 60,000 recommendations from their peers. Member States generally prefer to accept recommendations, thereby stating their openness to the idea that all countries face challenges in this area, and underlining that there is room for improvement in the human rights records of all countries. No country is perfect; every country can do better.

In this context, Member States may also rely on their own interpretation of the scope of the recommendations in question. They may interpret it more narrowly, or more broadly, so as to be able to better live up to the commitments made. Often, their acceptance of recommendations will also depend on their specific understanding of concepts and basic ideas, and on their national interpretation of

various fundamental rights and professional standards.

For UN Member States presenting recommendations to other Member States, the political dimension may explain why some recommendations are formulated in very broad terms. As one observer has put it, “states seem reluctant to criticize each other too harshly, to avoid jeopardizing their diplomatic relations”.<sup>107</sup>

It may furthermore be argued that practical and implementable recommendations are often a practical prerequisite for committed governments to implement their accepted UPR recommendations. This suggests that UPR recommendations should preferably be: 1) specific and measurable; 2) achievable within a specific timeframe; and 3) able to take into account the national context of the reviewed states. Based on the filtering of data done by the Danish Institute for Human Rights (DIHR), it appears that a large number of recommendations are if not fully, then still more or less, in line with these standards.

A research study indicates that the nature of bilateral relations – between the presenting and receiving country – play an important role, not only in the formulation of the recommendation, but also in the decision of the receiving country whether or not to accept it; and, if accepted, in the country's efforts to implement it.

The study argues that since the accepted recommendations are not endorsed by all states participating in the UPR, but rather take the form of bilateral recommendations,

they become political commitments between countries with strong political implications. As a result, these commitments are more likely to be adhered to, especially “when recommendations are delivered by a country with whom the reviewed state aims to maintain positive diplomatic relations”.<sup>108</sup>

Field research work conducted during the first UPR cycle concurs with this observation, highlighting cases where receiving countries feel compelled to accept recommendations, in order to please; or where presenting states may “offer what were judged as ‘easy’ or friendly recommendations, thus crowding out... recommendations addressing a state's deficiencies and/or misdeeds”. It also appears that countries often direct such friendly recommendations towards members of their own regional bloc. So-called friendly recommendations have been justified as a gesture of solidarity, or as a necessity for maintaining cordial relationships and protection in times of tense/conflictual relationships with other countries.<sup>109</sup>

Around 2% of the accepted UPR recommendations – a little more than 1,200 accepted recommendations since 2007 – pertain to the freedom of expression, at national level, of either artists, journalists or scientific researchers, calling for, and often providing concrete guidance on, measures to improve the freedom of expression of these professional groups.

Relying on the data provided by the DIHR, this chapter will zoom in on those 2%, illustrating key issues in relation to Member States' commitments to the freedom of expression for artists, journalists and scientific



researchers. It will do so by presenting approximate numbers and identifying some trends and tendencies. The purpose is to present a bigger picture, while breaking the 2% down into different topics, based on questions such as:

- How is the situation of artists, journalists and scientific researchers reflected in the UPR recommendations that are accepted by governments?
- What are the critical factors for raising awareness of the particular challenges of these professions in the UPR process, and for ensuring that accepted recommendations reflect key issues? What is the role of states, CSOs and UN entities?
- How do commitments to UPR recommendations reflect the situation in the country, including lessons learnt and recent relevant activities?
- How do governments follow up on their commitments? What are the critical incentives for implementation?

All together, the various insights triggered by the data from DIHR seek to shed light – from different perspectives, both technical and political – on some challenges and opportunities in relation to the commitments of governments to improve the freedom of expression for artists, journalists and scientific researchers.<sup>110</sup>

Very few UPR recommendations – and therefore also very few of the accepted recommendations – address the situation of artists and scientific researchers: Only about 20 recommendations have

been accepted in relation to scientific researchers, and 23 in relation to artists. Almost all the commitments made by states to improve freedom of expression for professional groups relate to journalists.

This distribution of (accepted) UPR recommendations between the three professional groups is quite striking. As stated in Chapter 1, we are at present witnessing an increase in attacks on both artists and scientific researchers who, like journalists, provide their critical voices on important topics such as governments' handling of the COVID-19 pandemic. All three professional groups are often prosecuted under the same laws, or attacked by the same actors, and similarly susceptible to self-censoring. Many of the UN mechanisms they indirectly can turn to are also the same, such as the UPR.

## ARTISTS AND SCIENTIFIC RESEARCHERS

As reports from CSOs and UN entities often constitute an important part of the knowledge base for Member States' formulation of recommendations, it may be surmised that lack of awareness across the UN system, as well as shortage of CSOs capacities to monitor and report, may partially explain why governments only rarely formulate recommendations to each other with regard to the freedom of expression of artists and scientific researchers. Another explanation is that two rights important to them, the right to take part in cultural life and the right to enjoy the benefits of scientific progress, are amongst the least developed human rights.

This is also a valid assumption with regard

to UNESCO. So far, in stark contrast to UNESCO's more forward-leaning approach to freedom of expression for journalists, no country-specific UPR-related input from this organization seems to have dealt with either artistic or scientific freedom. At the same time, the normally highly profiled media rights organizations have generally not included artists or scientific researchers in their advocacy work. Within the UPR framework, science and scientific freedom is probably one of the areas to which Member States collectively have so far given the least attention.<sup>111</sup>

Input, and some lobbying, from research institutions have probably helped to inform the Special Rapporteur in the field of cultural rights on her mandate regarding the rights to benefit from scientific progress and to scientific freedom. These rights are considered as closely interlinked with the right to take part in cultural life, "since both relate to the pursuit of knowledge and understanding and to human creativity".<sup>112</sup>

The recent publication of the ICESCR General Comment No. 25 from 2020 is another important contribution. It stresses the specific duty of states to "respect the freedom indispensable for scientific research", and it explains that this freedom includes the protection of researchers from undue influence; autonomous research institutions; the right freely and openly to question the ethical value of research projects; cooperation with other researchers; and the sharing of scientific data and analysis.<sup>113</sup>

Over time, the further elaboration of General Comment No. 25 may prove to be important – in synergy with possible NHRI and CSO submissions to the OHCHR's compilation of

UPR information – for increasing the number of references to freedom of expression of scientific researchers in future UPR cycles.

A few UPR recommendations include stronger wording of the importance of scientific freedom. China has committed, for example, "to consider strengthening the positive engagement with civil society, nongovernmental and academic institutions, with a view to enhancing the promotion of human rights and fundamental freedoms of its people". Likewise, Poland has pledged to "reconsider, with regard to concerns raised by the International Holocaust Remembrance Alliance, legislation that restricts open and honest scientific research and that can serve to intimidate researchers".<sup>114</sup>

While some capacity-building activities, involving local arts and human rights organizations, have been undertaken in recent years to enable CSO submissions to the UPR, it has been argued that working with UN human rights mechanisms requires time, expertise and financial resources that are not readily available to most arts organizations. It has also been noted that only very few cultural institutions devote time and resources to promote artistic freedom, because they rely on government and/or corporate funding and are reluctant to do anything that would negatively impact future support or sponsorships.

Likewise, "artists, who are generally not supported by trade unions, can be reluctant to become known as "trouble-makers" and lose access to exhibition space, grants and other support". Going forward, it has been suggested that artists and CSOs who work with UN bodies on freedom of expression

begin to collaborate: “such collaboration would be mutually beneficial: arts organizations being able to tap into the NGOs’ expertise, and the artists in turn enriching and expanding the NGOs’ reach and influence”.<sup>115</sup>

Only a few years ago, UNESCO initiated measures to monitor, document and address the issue of violations of artists’ right to freedom of expression. Global advocacy and systematic monitoring have been carried out mainly by international CSOs, primarily PEN International and Freemuse, while others such as Article 19, include freedom of artistic expression as part of their broader freedom of expression work.<sup>116</sup>

During the biennium 2014-2015, Freemuse made it a priority to disseminate UPR-related input on artistic freedom, by preparing seven submissions in collaboration with national, regional and international partners on the state of artistic freedom (in Belarus, Egypt, Iran, Lebanon, Turkey, USA and Zimbabwe).<sup>117</sup>

Submission of such information from CSO stakeholders may be said to represent a turning point, creating broader awareness of these issues. For instance, by accepting a proposed UPR recommendation, Lebanon has committed to “ratify the UNESCO Convention on the Protection and Promotion of Diversity of the Cultural Expression”.<sup>118</sup>

Likewise, Egypt has accepted a recommendation, presented by Norway, to “guarantee that freedom of expression is ensured in all its forms, including artistic expression, online and offline”. Turkey has agreed to “refrain from censoring social and conventional

media and ensure that freedom of expression is safeguarded in all forms, including arts”; and to “guarantee freedom of expression and opinion, especially for journalists, writers and editors”.

In these contexts, increased CSO submissions and other CSO information may have raised awareness of the challenges of artists in relation to freedom of expression, and hence the need to include more recommendations on this in Member States’ approach to UPR. However, it cannot be taken for granted that CSO submissions, providing information on the situation of artistic freedom of expression in countries, are automatically prioritized by Member States and will result in these being put forward as UPR recommendations. CSO submissions may inspire, but Member States will make their decisions on what to recommend based on a wide number of considerations.

As a Member State normally only provides a limited number of UPR recommendations to another Member State, there is a degree of “competition” between various specific human rights challenges to be addressed. Countries may approach the situation in other Member States from a position of principle, or they may zoom in on processes already under way in a country. Providing an additional push of support, they may submit a recommendation that countries can more readily accept, and thereby contribute to progress.

The “competition” also pertains to the different aspects of human rights. Issues relating to civil and political rights such as freedom of expression for journalists and

other media professionals have traditionally attracted significant interest. The same is not true for economic, social and cultural rights-related issues or the rights of other professionals. This is very clearly expressed in the number of recommendations on journalists' freedom of expression compared to the number of recommendations with respect to artists and scientific researchers.

On this background, and inspired by the capability of media and human rights organizations to place the safety of journalists high on the international agenda, it has been recommended, within the framework of the UNESCO 2005 Convention, that artists be included in approaches taken with regard to journalists. More specifically, it has been suggested that Member States take "initiatives that engage UN mechanisms and Member States with the promotion and protection of freedom of artistic expression... including through a UN Plan of Action for the safety of artists".<sup>119</sup>

Sweden has taken such an initiative, not by developing another national mechanism specifically for artists, but by establishing a national mechanism that covers the safety of both artists and journalists as part of the implementation of the UN Plan of Action mentioned in Chapter 4.<sup>120</sup>

## JOURNALISTS

As already stated, it is not surprising that the bulk of UPR recommendations with respect to freedom of expression concerns journalists and the issue of media freedom. In this context, efforts to promote the safety

of journalists play a particular role. UNESCO has taken a new strategic step to further support relevant stakeholders to improve their engagement with the UPR process by developing new guidelines to the UN Country Teams.<sup>121</sup> It appears that when States make recommendations to each other in the area of safety of journalists, these recommendations very often encourage cooperation with the UNESCO Director-General, requesting information on impunity.

One might think that countries with a high number of attacks on journalists would receive (and accept) a high number of recommendations, seeking to improve the dire situation. Yet this is only sometimes the case.

Various data shows that the countries with the highest number of killings of journalists neither receive nor commit to the highest number of UPR recommendations. The overall picture is somewhat mixed. A few country examples, across regions, may serve to illustrate this.

Within its region, Mexico<sup>123</sup> has the highest rate of journalists killed. This is reflected in the UPR, both in terms of the high number of recommendations received, and in terms of what these recommendations are about. Journalists are explicitly referred to as a profession. Human rights defenders are often also included as a group at risk, and the category may, of course, also comprise artists, journalists and scientific researchers addressing human rights issues in their work. A large number of the recommendations cover aspects such as the need to ensure that existing laws and mechanisms are fully implemented and functioning. This signals that

the overall legal framework for protection of journalists and the media is already in place, and that measures to improve the situation should focus on implementation capacities.

A few recommendations do, however, stress the need for new policies and strategies. Several recommendations reflect, in a more or less detailed manner, the three P's: Prevention, Protection and Prosecution, which represent the key areas of the UN Plan of Action. The most evident takeaway from a large majority of the supported recommendations is the need to ensure the necessary human and financial resources to support the national mechanism for the safety of journalists. By contrast to UPR recommendations presented to other countries, such as Thailand and Guatemala<sup>124</sup>, none of the 67 UPR recommendations to Mexico mentions the UN Plan of Action explicitly, but the substance is covered.

The Mexican government has underlined its commitment to improve the situation by announcing, on the 2019 International Day to End Impunity, the creation of a fund to be managed independently by UNESCO.<sup>125</sup>

Within the African region, Somalia<sup>126</sup> has both the highest number of journalists killed and the highest number (28) of accepted UPR recommendations, referring to the challenges of freedom of expression for journalists in Somalia. The various recommendations are less comprehensive and they differ in content and focus from the recommendations presented to Mexico. One prominent message is the need for new laws and law reforms; clarification of (too) generally formulated clauses; and compliance with international

standards. Emphasis is less on implementation; instead, the recommendations focus on improving the legal framework, which constitutes a challenging working environment for journalists.

The role played by security forces is another issue that features prominently. There are several calls upon the national security forces to refrain from, more and less, violent acts against journalists. Likewise, it is suggested that governmental actors should actively seek to redress the situation by speaking publicly in favour of freedom of expression and the role of journalists.<sup>127</sup>

At the time of writing, the Somali government has not responded to UNESCO's requests for judicial follow-up information on a number (16) of cases of killings during the period of June 2016 and August 2019.<sup>128</sup> However, this is not reflected in any of the UPR recommendations. Two recommendations capture the main thrust of the commitments made by the Somali government: 1) The recommendation to adopt clear by-laws and regulations to the new Media Law clarifying the general clauses for the benefit of the journalists instead of further reducing the space of free media, and 2) the recommendation to ensure that the National Intelligence and Security Agency refrains from detaining journalists, closing media outlets, confiscating media equipment and other law enforcement activities, which are beyond its mandate.<sup>129</sup>

Iraq accounts for the highest number of cases of journalists killed, not only in the Arab region but also across regions.<sup>130</sup> Yet the country has only been invited to commit to

11 recommendations related to this within the UPR framework. Most of the recommendations are broadly formulated, with few concrete elements, hence being less operational and difficult to include in a meaningful oversight exercise. Nevertheless, one concrete point appears several times: the need for law reforms. This is reflected in the rather precise recommendation to revise the existing legislation, in particular the “Protection of Journalists Law number 21” with a view to removing all restrictions on the freedom of the press and to ensuring full protection of journalists and other media workers.<sup>131</sup>

UNESCO has been spearheading the implementation of the UN Plan of Action in Iraq, in cooperation with the UN country team, the Iraqi authorities, media representatives, as well as national and international specialized CSOs. A national mechanism monitors attacks on journalists in Iraq, and after a series of registered attacks during protests in 2019, the Minister of Interior declared his readiness to dispatch security forces to any media at risk, and to deploy a Special Investigative Unit to conduct investigations into these attacks.<sup>132</sup>

Though the Philippines have the highest number of killings of journalists in its region<sup>133</sup>, the country has only accepted one UPR recommendation out of the ten received in total on this issue, which brings to the forefront the matter of uneven country approaches to UPR commitments. At the same time, and like Mexico, Somalia and Iraq, the Philippines is among the countries that have created a national mechanism for the protection

of, prevention against and prosecution of attacks against journalists.<sup>134</sup>

In 2021, the investigative journalist and media executive – and most recently also Nobel Peace Prize winner – Maria Ressa of the Philippines was nominated to the UNESCO/Guillermo Cano World Press Freedom Prize. In recent years, she has been the target of online attacks and judicial processes relating to her investigative reporting and status as manager of an online outlet. She has been arrested for alleged crimes related to the exercise of her profession, and has been subject to a sustained campaign of gendered online abuse, threats and harassment.<sup>135</sup> Stakeholders perceive the nomination of Ms. Ressa as helpful in sustaining attention to the challenges of journalists in the Philippines, but also globally.

In general, high-profile cases such as this one tend to considerably increase the global awareness of the issues related to freedom of expression of journalists. This is also reflected in the accepted UPR recommendations. For instance, a little over a quarter of the (15) recommendations accepted by Saudi Arabia explicitly mention the case of journalist Jamal Khashoggi, and impartial investigation is a repeated key word. Saudi Arabia has in this context agreed to:

- Ensure the full and impartial investigation of incidents and violence against human rights defenders, in particular journalists, including the death of Jamal Khashoggi;
- Disclose all information available on the disappearance and killing of Saudi

journalist Jamal Khashoggi, and cooperate with and lead a credible and impartial investigation bringing those responsible to justice;

- Conduct a full, credible, transparent and independent investigation into the alleged killing of journalist Jamal Khashoggi;
- Ensure that the investigation of the assassination of Saudi journalist Jamal Khashoggi carried out by Saudi Arabia in cooperation with the Turkish authorities is comprehensive and transparent, and concluded promptly so that those responsible for these very serious events are brought to justice.<sup>136</sup>

A recent Investigation Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions points out that “Mr. Khashoggi’s killing constituted an extrajudicial killing for which the State of the Kingdom of Saudi Arabia is responsible”. Further to this, the Special Rapporteur recommends that UNESCO and UN Network of Focal Points “take actions to ensure the implementation of the UN Plan of Action on the Safety of Journalists and the Issue of Impunity at local level in the concerned countries”. In the same vein, the Special Rapporteur urges Saudi Arabia and Turkey to “Reply exhaustively to the UNESCO Director-General’s request for information...”.<sup>137</sup>

Among other high-profile cases is the killing of Maltese journalist Daphne Caruana Galizia. Malta has committed to ten recommendations in total. Of these, several appear to address issues relating to the case of Daphne C. Galizia. One mentions the case explicitly:

“in the light of the killing of the journalist Daphne Caruana Galizia, take all measures to protect and support journalists working to uncover corruption and other matters of the highest public interest”. A few accepted recommendations concern ensuring accountability through the conduct of independent, impartial, prompt, thorough, effective, credible and transparent investigations into all cases of violence, threats and attacks against journalists and media workers. Others point to the need for a full investigation into all threats, harassment and violence against journalists, bringing to justice not only the direct perpetrators, but also those who incited them to commit those deeds.<sup>138</sup>

Another country in the European region, Slovakia, has accepted 12 recommendations; of which several appear to address issues that characterize the case of the killing of journalist Ján Kuciak and his fiancée, Martina Kúšnírová.

Again one recommendation mentions the case explicitly. Other recommendations suggest that the government take all necessary steps to strengthen anti-corruption laws, ensure independence of the judiciary and protect the rights and safety of journalists. In addition, some recommendations address the need to ensure that public broadcasters remain free from political pressure and that journalists are protected, including by prompt and effective investigations.

Highlighting specific cases like the ones mentioned above may raise public awareness and provide insights into the specific journalistic duties that put journalists at

risk. A second and interrelated feature is political interference and media ownership. Playing a prominent role in the recommendations to Slovakia, it runs throughout many UPR recommendations to countries in the European region.

If the economic situation in some countries worsens in the aftermath of COVID-19, the risks of media, or art or science capture, are likely to increase, as illustrated in Chapter 1. It will also be important to track emergency measures restricting the freedom of expression. A recent research paper recommends investigation into whether the UPR is responding to the COVID-19 crisis both in terms of recognizing, in the recommendations presented by Member States, the adverse and disparate impact of the pandemic on human rights and on vulnerable groups. But also, and more broadly, by way of good practices on how to frame a human rights response to the new challenges as countries seek to “build back better” in the post-pandemic world.<sup>139</sup>

As these country examples demonstrate, combatting impunity remains a major challenge across regions. Research has pointed out that this is “due to lack of political will, weak institutions overseeing law and order and slow moving courts”.<sup>140</sup> At the same time, the accepted UPR recommendations reflect governments’ commitments to improve the situation. Follow-up on these commitments will require continuous attention, and States must recognize the need to ensure follow-up on previous commitments.

Between the end of one UPR review and the start of the next, States are to take

practical steps to implement the recommendations that they have accepted. Different actors, including governments, National Human Rights Institutions and CSOs, have developed tracking methodologies and tools to monitor progress on the implementation of UPR recommendations. Such tools may include the development of a matrix with the accepted recommendations and an explanation of position and intended follow-up by the responsible ministries for each recommendation. Ideally, such a matrix should be revisited once or twice during the cycle.<sup>141</sup>

Further to this, States, stakeholders and UN entities can submit, on a voluntary basis, mid-term reports or annual updates to reflect the current situation and the extent to which recommendations are being followed. The so-called Mid-Term Reports (MTRs) allow for assessments of how far States have come towards implementing their accepted UPR recommendations. MTRs also represent “an opportunity for national actors to detail the steps they are taking, including advocacy, institutional building and the development of implementation tools and strategies, towards implementation”. This practice has furthermore “allowed for different perspectives on human rights in a given country to be reflected in the government reports”. It has also paved the way for individual or collective submissions from CSOs, which have “brought necessary independent perspectives”.<sup>142</sup>

While 76 States have voluntarily submitted MTRs, only seven States are among the country examples highlighted previously in this chapter.<sup>143</sup> Zooming in on the MTRs, it has been explained by one country under review (Somalia) that lack of functional state institutions



for several decades, due to conflict, has negatively impacted the ability of the country to meet its reporting obligations. While it has been recommended that the country “utilize international financial and technical assistance to discharge its human rights reporting obligations”, only three donor countries (Sweden, Norway and Denmark) “have put money into the kitty”. While the Somali government has committed to 28 recommendations, specifically dealing with freedom of expression and journalists, the MTR provides information on only three of these recommendations.<sup>144</sup>

In general, one lesson learnt from countries having submitted MTRs is that “these reports have considerably assisted in illuminating the monitoring and implementation practices, including rating systems, underway in the states across the world”. An international consultant for OHCHR recommends that all Member States should employ the practice of preparing MTRs to assess progress mid-way between the UPR cycles. They should also ensure that the attention at the national level remains focused on the UPR.<sup>145</sup> The bilateral nature of UPR recommendations has been stressed throughout by the country examples presented in this paper: Recommendation by x-country to y-country.

Data indicates that the countries proposing the highest number of recommendations on freedom of expression are European countries. When it concerns journalists, Norway ranks as number two among the top-five countries, including France, Canada, Austria and the Netherlands. Sweden figures as number 11 on the list. While on a significantly lower scale, Norway is the

country that has issued the highest number (five) of recommendations on artists, followed by the USA (three), Canada (two) and about 20 other countries, including Sweden (one). On the issue of scientific researchers, Iceland appears among the countries having submitted most recommendations (three), followed by about 15 other countries, including Norway, having issued two recommendations.<sup>146</sup>

## PRELIMINARY CONCLUSIONS:

The Human Rights Council's Universal Periodic Review is undoubtedly the most important innovation – and improvement – of the UN Human Rights system in recent years. UPR covers human rights in their totality and involves all members of the United Nations on an equal footing: as subjects to peer review and as proponents of recommendations to each other on improvements of the human rights situation in the country under review.

Still, the discussion above also identifies certain critical areas:

- The need for all Member States to address the overall balance in their recommendations, and to emphasize more strongly, if they so wish, recommendations related to artistic and scientific freedom. This will be part of a wider approach to freedom of expression for key professional groups (artists, journalists and scientific researchers);
- The need for more precision in recommendations, in order to improve the possibilities for realistic and practical monitoring of the implementation of accepted recommendations. This also relates to specific recommendations on freedom of expression of the said professional groups;
- The need to reflect on how to improve UNESCO's input to the UPR process. This is an important part of the “inspirational catalogue” of various human rights challenges that Member States should carefully consider in order to further focus their recommendations.





# CHAPTER 7: UNESCO AND THE WAY AHEAD

UNESCO has a long track record of contributing to the promotion and advancement of human rights, in particular the right to freedom of expression. UNESCO's efforts go all the way back to the drafting of the UDHR. As set out in this report, UNESCO has over time developed and revitalized a number of normative instruments that seek to guide Member States in their efforts to establish a sound and enabling working environment for artists, journalists and scientific researchers, including for the protection of their freedom of expression.

These three professional groups play a vital role for open and democratic dialogue and discussions in society. They contribute with new ideas, new approaches, key insights and – especially for journalists – with means to safeguard the rule of law and maintain a system of political accountability, where civil society can play a decisive role in holding public officials accountable. They all represent the critical voices that are part and parcel of public discourse, innovation and progress. At the same time, the professions are subject to professional standards – artists maybe less than journalists and scientific researchers – to ensure that their practitioners execute their critical functions as independently, honestly and fairly as possible.

The emphasis of the various UNESCO instruments differs, but they all cover, to some degree, freedoms, rights and socio-economic conditions as well as safety. Addressing the issue of impunity figures most prominently in the instruments relating to journalists. It is common for all three professional groups that the various steps undertaken by authorities to deal with the COVID-19 pandemic – some well-founded, some less so – risk undermining their professional working conditions unless actions are taken to roll back the emergency measures that currently and disproportionately restrict their freedom of expression. Furthermore, the financial viability of these sectors must be stabilized in a manner that ensures that government funders do not attach new and more dominant political strings to their financial support, but on the contrary guarantee that due criticism and pluralism of everyone or anything is acceptable in a free and open society.

Independent oversight has been highlighted as critical to ensure that COVID-19 restrictions are legal, in accordance with universal values and international standards, and include sunset clauses. The United Nations Human Right system can provide some of this oversight, utilizing the strengths

of Treaty Bodies, Special Rapporteurs, the good offices of OHCHR, and the UPR to coordinate data collection and analyze developments in and across countries. UNESCO should be part of this common endeavour with its focus on freedom of expression for artists, journalists and scientific researchers.

It is thus both critical and timely to promote a renewed UNESCO vision of a cross-sectoral approach to freedom of expression. Hence, this chapter proposes a vision that takes as its starting point the worrying fact that critical voices of artists, journalists and scientific researchers are under growing threat in many societies. This is increasingly the case, as countries around the world have used the COVID-19 pandemic to further limit freedom of expression. All such threats must be countered. Bringing evidence to the attention of the international community is important – regardless of whether these threats concern killings or other forms of attacks on artists, scientific researchers and journalists, such as kidnapping, enforced disappearance, arbitrary detention and torture, or they concern the underlying causes of these professions' vulnerability to media, culture or science capture.

As we have seen, artists, journalists and scientific researchers are facing fairly similar challenges with respect to their freedom of expression. Standing up to and defending the unique roles of these professional groups – and doing so jointly – may therefore strengthen not only the individual voices within each profession, but also strengthen them as a collective group. The benefits of a cross-

sectoral approach are numerous. It may pave the way for new opportunities; develop joint messaging; deliver collective impact; and uphold freedom of expression as not only an individual right, for which no critical voices should be silenced, but also as a collective right that empowers people at large.

As the UN specialized agency with a mandate to “promote the free flow of ideas by word and image”, UNESCO should always be at the forefront in the defence of freedom of expression. This implies a global standard-setting that provides a baseline for the establishment of national policies, as well as for the promotion of evidence-based action. To that end, UNESCO's monitoring system is key. Monitoring current developments constitutes an essential element in enabling UNESCO to play an efficient and credible normative role, ensuring the protection of the right to freedom of expression within its area of competence. At its best, monitoring provides a global picture of the situation, tracks progress, highlights promising policies, identifies challenging areas, and hence becomes a fundamental prerequisite for taking future action.

Seeking new and strengthened partnerships with CSOs, nationally as well as internationally, can help optimize UNESCO's monitoring system. Such partnerships entail opportunities for further diversification of UNESCO's data sources, hence contributing to more robust mechanisms for monitoring and evaluating impact. New cross-sectoral monitoring activities can facilitate joint calls

for action and follow-up, just as it can send an important message of zero tolerance against attacks on critical voices.

Hence, meaningful civil society involvement in UNESCO's monitoring systems can strengthen the global knowledge and evidence base; contribute to improved diagnosis of the problems; and better inform policy-making. CSOs can help to identify critical issues: How are policies affecting the working conditions of various groups of professionals? What can be done to further enhance an enabling environment for freedom of expression? Many CSOs are important "watchdogs", focusing on how to improve transparency and accountability in the national implementation of global normative instruments. A more systematic participation of CSOs in UNESCO's governing bodies is important, and implies a civil society infrastructure that both includes and amplifies diverse voices.

Promotion of human rights is the responsibility of every UN actor. Respect for human rights must also permeate everything UNESCO does, in the field, at regional level, at Headquarters and in the wider UN system. The immense challenge presented by emergency measures and COVID-19 restrictions on freedom of expression further underlines how vital it is for UN agencies to have a coordinated response. A single, strategic and harmonized UN approach that promotes the safety of both artists, journalists and scientists – and which addresses the issue of impunity across the three sectors – may be the way forward. To that end, close cooperation with OHCHR is important to raise the awareness of the international community

about this agenda. Data collection and evidence gathering are key elements – building blocks – and can be further enhanced through the sharing of information within the framework of Treaty Bodies, UN Special Rapporteurs, as well as the UPR process. Information compiled from CSOs and UN entities, including UNESCO, is meant to offer UPR a comprehensive overview of the freedom of expression situation on the ground. This implies that UNESCO covers both journalists, artists and scientific researchers in its UPR-related input to OHCHR.

Based on this cross-sectoral UNESCO vision, three strategic directions and accompanying recommendations are outlined below. These recommendations are generally more limited, and more targeted, than the broader framed preliminary conclusions set out at the end of Chapters 3-6 above, as the actual recommendations in this report are all based on the following practical approaches in order to increase their chances of succeeding:

- Use existing decisions of UNESCO governing bodies, as well as the UNESCO strategy on human rights and other relevant frameworks to promote the replication of good practices and develop new actions;
- Take advantage of lessons learnt in relation to the implementation of the UN Plan of Action;
- Seek inspiration from the good practices undertaken in the UNESCO science and culture sectors, as well as the communication and information sector;

- Combine transparency and accountability with the recognition that Member States are, within some frameworks, only expected to act on a voluntary basis;
- Address the weak spots by proposing relatively simple measures and avoiding complexity; and
- Build on existing reflections, as documented in UN reports or shared by consulted experts, on how to improve the system as well as national implementation.

On this basis, three strategic directions are suggested as follow-up on the findings of this report, supported – in total – by 25 specific recommendations:

## STRATEGIC DIRECTION NO. 1: AWARENESS RAISING

### **UNESCO should:**

- More actively promote and facilitate cross-sectoral messaging, events and activities to display the commonalities of artists, journalists and scientific researchers in relation to freedom of expression. This may be done within the framework of the World Radio Day (13 February), the World Press Freedom Day (3 May), the World Day for Cultural Diversity (21 May), the Universal Access to Information Day (28 September), the International Day to End Impunity for Crimes against Journalists (2 November), the World Science Day (10 November) and the Human Rights Day (10 December).
- Publicly condemn verified cases of violence and attacks against artists, journalists and scientific researchers, and request governments to investigate such crimes and prosecute the perpetrators. This implies a mainstreaming of UNESCO's approach to the crosscutting protection of freedom of expression for all three professional groups. In practice, this will call for intensified mapping by CSOs and others who can provide the necessary information to UNESCO, and the establishment of new partnerships on this, building on the good practice of the Communication and Information sector.
- Consider concrete ways to revitalize UNESCO's practice of requesting information from Member States regarding unresolved cases of killings of journalists. At present this practice includes a news release on UNESCO's website: "Challenging impunity: UNESCO invites Member States to report on the killings of journalists", where UNESCO informs that it had just sent its regular request to Member States to report on the judicial follow-up on killing of journalists – with a deadline for Member States to respond (approximately three months later). While this approach allows for raising public awareness, it may also, if communicated strategically, contribute to the mobilization of CSOs. UNESCO should seek ways to fine-tune this approach in terms of strategic communication. For instance, by listing the countries that are receiving the request, but also by continuing to provide social media materials for campaigns, and by sending a circular letter to National Commissions and UNESCO's CSO partners to mobilize their attention.<sup>147</sup>



**Member States should:**

- Demonstrate, on an urgent basis, their concern of the evidence of the scale and number of attacks against artists, journalists and scientific researchers by making statements and declarations, or adopting proper legislation to redress this situation – and enforce it.
- Take an active role in the prevention of attacks whether it be against artists, journalists or scientific researchers, and take prompt action in response to such attacks by establishing national emergency mechanisms. To this end, Member States may seek inspiration from UNESCO's capacity-building activities, such as the training module on artistic freedom, the toolkit on legal standards on freedom of expression for the judiciary, as well as the Guidebook for Journalist Safety Indicators.

**Civil Society, including UNESCO National Commissions, National Human Rights Institutions (NHRIs) and professional associations should:**

- Organize national or regional events to support the global messaging and the awareness of UNESCO's instruments and activities..
- Engage with partners to explain the purpose of UNESCO's procedures, and build capacities to formulate communications to UNESCO on cases relating to artists, journalists and scientific researchers. The 2015 and 2018 Global Reports of the 2005 Convention outline and explain the procedure as part of efforts to raise awareness.

**STRATEGIC DIRECTION  
NO. 2: MONITORING****UNESCO should:**

- Develop a cross-cutting perspective on the implementation of its profession-related normative instruments as set out in this report: the 1980 Recommendation on Artists, the 2005 Convention on Diversity of Cultural Expressions, the UN Plan of Action on journalists and the 2017 Recommendation on scientific researchers. This should be done – through the existing UNESCO reporting mechanisms (e.g. surveys, questionnaires, letters) – by obtaining periodical information from Member States on: 1) COVID-19-related issues, including on efforts of Member States to comply with restrictions being lawful, necessary and proportionate, and time-bound – and the inherent obligation to roll back emergency measures and related restrictions on the freedom of expression for artists, journalists and scientific researchers on that basis, 2) measures to prevent media, art and science capture, and 3) the state of safety for artists, journalists and scientific researchers based on, and inspired by, the Journalists Safety Indicators.
- Replicate the good practice of launching Open Calls in relation to the development of questionnaires, in order to align and mainstream its monitoring approach across the various sectors in the organization. UNESCO could invite CSOs to provide inputs on the formulation of questions in surveys to be submitted to Member States, and to be involved in Member States' response to the questionnaire.

Open Calls should also be launched to proactively invite CSOs to submit written contributions relevant to the work of UNESCO in relation to freedom of expression for artists, journalists and scientific researchers, and in line with existing rules and guidelines.

- Strengthen outreach to civil society for the purpose of data collection in order to enhance the monitoring of the implementation of UNESCO's profession-related instruments. Such efforts should include strategic communication on the value of contributing to reporting processes. It should also draw on existing good UNESCO practices of identifying and documenting the CSOs which are relevant data partners.<sup>148</sup>
- Seek concrete ways to respond to the need for broadening the scope of monitoring by including other violations than killings of journalists, such as enforced disappearance, torture, arbitrary detention and kidnapping. As stated in Chapter 4, the General Conference Resolution 29 (1997) invites the Director-General not only to condemn assassination but also “any physical violence against journalists as a crime against society”. Today, UNESCO's approach of listing countries focuses exclusively on verified cases of killings. However, according to the basic text from 1997 it may be possible to apply the same approach to Member States with “verified cases of (killing,) kidnapping, enforced disappearance, arbitrary detention and torture of journalists, associated media personnel (...) in the previous 12 months” in order to support the implementation of SDG indicator 16.10.1.<sup>149</sup>
- Pursue this idea by inviting NHRIs and CSOs to report to UNESCO on such cases, following the same procedure as for the cases of killings, and request information from Member States on the status of these cases. The scope of the dedicated UNESCO webpage should be broadened to include the tracking of the status of the verified cases of “any physical violence”. UNESCO should apply the same methodology of categorizing cases (resolved, unresolved, no information received) and with the Member State's consent publish the reply on the webpage.
- Collect information from all Member States on actions taken by Member States to promote the safety of journalists and to combat impunity. The 2016 IPDC Decision on Safety of Journalists “Invites the Director-General to further reinforce this analytical report [the UNESCO Director-General's biennial report] by collecting information on actions taken by Member States, to promote the safety of journalists and to combat impunity as a way to share good practices”. Today, UNESCO is collecting this information only from Member States with unresolved cases of killings, while it would be possible, and fully in line with the IPDC decision, to collect this information from all Member States.
- Pursue this idea by designing a UNESCO questionnaire that Member States are invited to reply to every four years, following the same structures and procedures as for the 2005 Convention, or the 1980 Recommendation or the 2017 Recommendation.

This questionnaire should include questions structured around four main headlines: 1) Member States' efforts to implement the UN Plan of Action, 2) efforts to implement the Journalist Safety Indicators, 3) efforts to implement SDG target 16.10 and indicators 16.10.1 and 16.10.2, and 4) efforts to implement the Human Rights Council recommendations related to Article 19.<sup>150</sup> While the main purpose would be – in compliance with the 2016 IPDC Decision – to feed the Director-General's biennial Report with data and strengthen the analysis, it would, at the same time, provide information to the Executive Board Report on the status of the implementation of the UN Plan of Action, which is submitted by the Secretariat to UNESCO's Executive Board on a regular basis. Finally, it would also contribute – in terms of transparency and accountability – to the efforts of the wider UN system.

#### **Member States should:**

- Appoint a focal point on the issue of safety and impunity with the remit to coordinate the monitoring as part of Member States' fulfillment of the implementation of UNESCO's normative instruments in relation to artists, journalists and scientific researchers.
- Demonstrate their political support for UNESCO's normative role by participating in periodic monitoring exercises and by putting in place mechanisms to systematically collect information and data, statistics and best practices that will feed into UNESCO's report on the implementation of its profession-related

standard-setting instruments.

- Ensure meaningful involvement of their civil society in the various processes related to UNESCO's periodic reporting and requests for information. This would be in line with the UN Secretary-General's Call to Action for Human Rights. It would join the follow-up efforts of Member States in other UN fora that, based on extensive action-oriented discussions between Member States and civil society on lessons learned and opportunities for strengthening meaningful participation, have presented concrete recommendations endorsed by 52 Member States and 264 CSOs.<sup>151</sup>

#### **Civil society, including National Commissions, National Human Rights Institutions and professional associations, should:**

- Seek ways to monitor, document and verify attacks against artists, journalists and scientific researchers – based on the lessons learnt from the implementation of the UN Plan of Action at country level, in order to play the critical function that underpins national mechanisms for the protection of these professional groups.<sup>152</sup> In order to enhance collective action as well as impact, CSOs from the culture and science sectors could engage with the media rights organizations and others working in defense of human rights. Such partnerships could develop the expertise in documenting, monitoring and advocating freedom of expression as a cross-sectoral challenge. Focus could be on the exchange of best practices for providing information to UNESCO and

other UN agencies, as well as conducting investigations into particular cases.

## STRATEGIC DIRECTION NO. 3: UN COORDINATION

### **UNESCO should:**

- Officially inform relevant counterparts of the publication of UNESCO reports that cover the issues of artistic freedom, scientific freedom, media freedom and freedom of expression of professional groups, notably OHCHR, relevant Treaty Bodies and Special Rapporteurs, ECOSOC, UN Women and other relevant UN agencies, entities, and funds and programmes.
- Consider the feasibility of facilitating a UN endorsement of action plans for artists and scientific researchers, based on the lessons learnt regarding the work on the safety of journalists. A first step could be to raise this issue within the UN Chief Executive Board.
- In line with UNESCO's mandate replicate the good practice of the CI Sector to contribute with information on the safety of journalists, and thus to engage more actively in submitting information to UPR processes, also in the CLT sector, to report on the safety of artists and artistic freedom – and in the SHS sector to report on the safety of scientific researchers and scientific freedom. The UNESCO Guidelines for UN Country Teams with practical advice could serve as inspiration.

### **Member States should:**

- Consider greater inclusion of the issue of the safety of artists, journalists and scientific researchers in the processes of the relevant UN Human Rights bodies, including the UPR and National Voluntary Reviews in relation to the SDG implementation. For instance, States, ahead of suggesting UPR recommendations, may consult the UNESCO observatory of killed journalists, and other relevant sources related to artists or scientific researchers, to see whether the country under review has responded to UNESCO's request for information or periodic report.
- Encourage, in the context of the Universal Periodic Review, the State under review to ensure that safety issues, not only in relation to journalists, but also artists or scientific researchers, will be addressed more actively in accordance with the relevant normative instruments, and to report on progress on these issues at its next review. This would promote accountability and facilitate efforts to improve the situation of freedom of expression.
- Demonstrate political support to UNESCO as convener of a possible inter-agency meeting for all relevant UN agencies. The purpose should be to promote enhanced UN coordination of the handling of issues related to the safety of both artists, scientific researchers and journalists. An inter-sectoral approach should be promoted as a key feature going forward.

**Civil society, including UNESCO National Commissions, National Human Rights Institutions and professional associations should:**

- Cooperate and undertake capacity-building activities to enable CSO submissions to the UPR, providing information on the situation of freedom of expression for artists, journalists and scientific researchers. The UN system relies increasingly on input from National Human Rights Institutions (NHRI) to assess the human rights situation in countries. NHRIs with a significant international mandate, such as the Danish Institute for Human Rights, play a crucial role in developing the capacity and influence of other NHRIs. Such CSO information may also be referenced within the framework of UNESCO's monitoring system with the view of strengthening the global knowledge base and facilitating joint calls for action and follow-up, sending the important message of zero tolerance against attacks on critical voices.

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considers all questions entrusted to the Executive Board concerning the implementation of UNESCO's standard-setting instruments; accordingly, CR examines reports received from Member States. On the other hand, the Committee examines communications relating to cases and questions concerning the exercise of human rights in UNESCO's fields of competence.

<sup>81</sup> 204th Session of UNESCO's Executive Board, Document 204 EX/18 Part III, pp 6-7.

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<sup>87</sup> UNESCO Journalists Safety Indicators: <https://en.unesco.org/themes/safety-of-journalists/journalists-safety-indicators>.

<sup>88</sup> European Federation of Journalists, International Federation of Journalists, European Centre for Press and Media Freedom, Media Freedom Rapid Response, International Press Institute, Free Press Unlimited.

<sup>89</sup> Andrew Puddephatt: The Importance of Self Regulation of the Media in Upholding Freedom of Expression, 2016, p. 13.

<sup>90</sup> 206 EXB Decision – 5.I.B Safety of journalists and

the issue of impunity, para 7: "Encourages Member States to continue to ensure the voluntary implementation of the United Nations Plan of Action on the Safety of Journalists and the Issue of Impunity at the national level, inter alia through the development of national information, prevention, protection and prosecution systems, as well as reporting on Sustainable Development Goal (SDG) indicator 16.10.1".

<sup>91</sup> UNESCO observatory of killed journalists | UNESCO.

<sup>92</sup> Since 2017, UNESCO includes in its letters to States an invitation to report on "actions taken by [the] country to promote the safety of journalists and to combat impunity, as a way to share good practices". This request is based on the 2016 IPDC Decision on Safety of Journalists: "Invites the Director-General to further reinforce this analytical report by (...) collecting information on actions taken by Member States to promote the safety of journalists and to combat impunity, as a way to share good practices." It allows UNESCO to share good practices undertaken by its Member States to improve safety of journalists in their respective countries. The 2018 IPDC Decision on the Safety of Journalists specifies that the sharing of good practices should include information on "action taken to monitor and tackle gender-specific risks".

<sup>93</sup> Protect Journalists, Protect the Truth, Report of the UNESCO Director-General 2020, doc. CI-20/Council 32/4.

<sup>94</sup> Protect Journalists, Protect the Truth, Report of the UNESCO Director-General 2020, doc. CI-20/Council 32/4.

<sup>95</sup> Applying UNESCO's Journalists' Safety Indicators (JSIs) – a Practical Guide to Assist Researchers, 2015. <https://unesdoc.unesco.org/ark:/48223/pf0000260894>.

<sup>96</sup> Strengthening the Implementation of the UN Plan of Action on the Safety of Journalists and the Issue of Impunity, 2017. [https://en.unesco.org/sites/default/files/options\\_geneva\\_consultation.pdf](https://en.unesco.org/sites/default/files/options_geneva_consultation.pdf).

<sup>97</sup> According to the UNESCO Director-General's 2020 Report on the Safety of Journalists and the Danger of Impunity submitted to the IPDC Council. In 2017, UNESCO sent letters to 62 Member States requesting information on the status of unresolved cases that occurred between 2006 and 2016

<sup>98</sup> Reporting Facts: Free from Fear or Favour,

2020. <https://unesdoc.unesco.org/ark:/48223/pf0000375061>; World Trends Reports: <https://en.unesco.org/world-media-trends>.
- <sup>99</sup> The UN Global Sustainable Development Report 2019 – The future is now: Science for achieving sustainable development, p. 114.
- <sup>100</sup> General comment No. 25 (2020) by UN CESCR: UN document: E/C.12/GC/25.
- <sup>101</sup> A/HRC/46/34.
- <sup>102</sup> Available at: [unesdoc.unesco.org](https://unesdoc.unesco.org)
- <sup>103</sup> Preliminary Study on the technical and legal aspects relating to the desirability of revising the 1974 Recommendation on the Status of Scientific Researchers, Revised First Draft, May 2013 (SHS/2013/PI/H/2 REV.2).
- <sup>104</sup> A/HRC/46/34, paras 47-51.
- <sup>105</sup> 212 EX/23.III, paras 6, 8, 10, 12, 20-22.
- <sup>106</sup> See: [OHCHR.org](https://www.ohchr.org)
- <sup>107</sup> Promoting Compliance with Human Rights: The Performance of the United Nations' Universal Periodic Review and Treaty Bodies, Valentina Carraro, Maastricht University, International Studies Quarterly (2019), 63, p. 1087.
- <sup>108</sup> Promoting Compliance with Human Rights: The Performance of the United Nations' Universal Periodic Review and Treaty Bodies, Valentina Carraro, Maastricht University, International Studies Quarterly (2019), 63, p. 1090.
- <sup>109</sup> Between learning and schooling: the politics of human rights monitoring at the Universal Periodic Review, article in Third Quarterly, June 2015, Jane Cowan (University of Sussex), Julie Billaud (Graduate Institute of International and Development Studies), pp 1180-81, 1186-87
- <sup>110</sup> The Danish Institute for Human Rights have compiled a list of all accepted recommendation pertaining to artists, journalists and scientists. The full dataset is available through [unesco.um.dk](https://unesco.um.dk)
- <sup>111</sup> General Comment No. 25, Committee on Economic, Social and Cultural Rights, 2020, related to article 15 (1) (b), (2), (3) and (4) of the International Covenant on Economic, Social and Cultural Rights, para 2
- <sup>112</sup> A/HRC/20/26.
- <sup>113</sup> General Comment No. 25, Committee on Economic, Social and Cultural Rights, 2020, related to article 15 (1) (b), (2), (3) and (4) of the International Covenant on Economic, Social and Cultural Rights, para 13.
- <sup>114</sup> Data concerning accepted recommendations compiled by the Danish Institute for Human Rights, 2021.
- <sup>115</sup> 2018 Global Report, p. 219.
- <sup>116</sup> UNESCO 2015 Global Report presents a new global monitoring framework, which includes artistic freedom as a monitoring area.
- <sup>117</sup> 2018 Global Report, pp. 195 og 197.
- <sup>118</sup> According to UNESCO's website (10/07/2021), Lebanon has not yet ratified the 2005 Convention.
- <sup>119</sup> 2018 Global Report, p. 223.
- <sup>120</sup> Informed by UNESCO/CI sector.
- <sup>121</sup> UNESCO launches new guidelines for UN Country Teams to promote freedom of expression through the Universal Periodic Review.
- <sup>122</sup> UNESCO observatory of killed journalists | UNESCO; Freemuse 2020 Report, Scholars at Risk 2020 Report. Data by Danish Institute for Human Rights.
- <sup>123</sup> UNESCO Observatory of killed journalists (accessed 03.09.2021).
- <sup>124</sup> Guatemala accepted the recommendation to "Adopt a framework for the protection of media professionals, based on the United Nations Plan of Action on the Safety of Journalists and the Issue of Impunity"; and Thailand accepted to "inform UNESCO of the actions taken to prevent the killing of journalists and notify UNESCO of judicial inquiries conducted" and to "inform UNESCO of the actions taken to prevent impunity...", which are all key elements of the UN Plan of Action.
- <sup>125</sup> The UN and the Safety of Journalists, Resource Kit for UN Staff, by the UN Focal Points Network on the Safety of Journalists, UNESCO and OHCHR, 2021.
- <sup>126</sup> UNESCO Observatory of killed journalists (accessed 03.09.2021).
- <sup>127</sup> Data concerning accepted recommendations compiled by the Danish Institute for Human Rights, 2021.
- <sup>128</sup> UNESCO observatory of killed journalists | UNESCO.
- <sup>129</sup> Data concerning accepted recommendations compiled by the Danish Institute for Human Rights, 2021.
- <sup>130</sup> UNESCO Observatory of killed journalists (accessed 03.09.2021).
- <sup>131</sup> Data concerning accepted recommendations compiled by the Danish Institute for Human Rights, 2021.
- <sup>132</sup> The UN and the Safety of Journalists, Resource Kit for UN Staff, by the UN Focal Points Network on

- the Safety of Journalists, UNESCO and OHCHR, 2021.
- <sup>133</sup> UNESCO Observatory of killed journalists (accessed 03.09.2021).
- <sup>134</sup> Data concerning accepted recommendations compiled by the Danish Institute for Human Rights, 2021.
- <sup>135</sup> World Press Freedom Day: Philippines journalist Maria Ressa to receive 2021 UNESCO/Guillermo Cano World Press Freedom Prize.
- <sup>136</sup> Data concerning accepted recommendations compiled by the Danish Institute for Human Rights, 2021.
- <sup>137</sup> Annex to Report of the Special Rapporteur, 19 June 2019, A/HRC/41/CRP.1.
- <sup>138</sup> Data concerning accepted recommendations compiled by the Danish Institute for Human Rights, 2021.
- <sup>139</sup> Study on emerging Good Practices from the Universal Periodic Review (UPR), Miloon Kothari, June 2021, p. 23.
- <sup>140</sup> Defending Journalism – How national mechanisms can protect journalists and address the Issue of Impunity, A publication by International Media Support, October 2017, p. 24.
- <sup>141</sup> Practice developed within the Danish Inter-ministerial Human Rights Committee, and recommended as Good Practice: Study on emerging Good Practices from the Universal Periodic Review (UPR), by Miloon Kothari, UPR Info, June 2021.
- <sup>142</sup> Study on emerging Good Practices from the Universal Periodic Review (UPR), by Miloon Kothari, UPR Info, 2021, p. 11
- <sup>143</sup> Egypt, Somalia, Bulgaria, Montenegro, Poland, Serbia, Slovakia.
- <sup>144</sup> Mid-Term Report on progress made by Somalia on the implementation of accepted recommendations from the second cycle review, January 2019, p. 7.
- <sup>145</sup> Study on emerging Good Practices from the Universal Periodic Review (UPR), by Miloon Kothari, UPR Info, 2021, p. 23.
- <sup>146</sup> Data concerning accepted recommendations compiled by the Danish Institute for Human Rights, 2021.
- <sup>147</sup> <https://en.unesco.org/news/challenging-impunity-unesco-invites-member-states-report-killings-journalists>.
- <sup>148</sup> For instance, the UNESCO Guidebook associated with the Journalists Safety Indicators provides a list of data sources, and the 2015 Global Report of the 2005 Convention outlines organizations advocating for artistic freedom, Box 10.2, p. 198.
- <sup>149</sup> The 2017 Consultation Outcome Document, para 1.2, v: "Ensure, as custodian agency for SDG indicator 16.10.1, improved global reporting on this indicator, and, in collaboration with UNESCO and other stakeholders, broaden the scope of monitoring journalists' safety beyond cases of killing to include enforced disappearance, torture, arbitrary detention and kidnapping."
- <sup>150</sup> The key indicators regarding Member States are: 1) State has laws which can protect journalists, 2) There are appropriate normative statements, policies, and institutional frameworks that safeguard the importance of journalists' safety, 3) Criminal and civil justice system deals effectively with threats and acts of violence against journalists, 4) The State takes other effective measures in regard to journalists' safety.
- <sup>151</sup> Recommendations transmitted to the UN Secretary-General (21 May 2021) by Denmark and Costa Rica, with the view to ensure meaningful civil society participation at the United Nations, para 3 (b): "The UN and its Member States can also seek opportunities to allow substantive civil society engagement, also in the preparation phases; for instance by formally recognizing independent civil society reports in intergovernmental processes, including the High-level Political Forum and Voluntary National Review processes, following the example of the Universal Periodic Review (UPR) in the Human Rights Council." The recommendations are endorsed by 52 Member States and 264 Civil Society Organizations.
- <sup>152</sup> Publication by International Media Support, Defending Journalism – How national mechanisms can protect journalists and address the issue of impunity, p. 43.

The COVID-19 pandemic has led governments to adopt restrictive emergency measures in order to overcome the spread of the virus. Some of these measures have gone beyond what can reasonably be argued as responses to the health crisis, based on the general principles of necessity, legality, proportionality and transparency.

This is especially true for limits on freedom of expression for artists, journalists and scientific researchers. The voices of these professional groups – and their freedom of expression, their artistic freedom and their scientific freedom – are critical for democratic discourse and innovation in any society.

The international community must monitor the full roll back of COVID-19 emergency measures as the crisis comes under control in more and more countries. The United Nations Educational, Scientific and Cultural Organization, UNESCO, has an important role to play in this endeavour. As the guardian of a number of specific instruments covering the rights and professional standards of artists, journalists and scientific researchers, UNESCO must intensify its monitoring of developments in these areas.

Similarly, UNESCO must strengthen its cooperation with other parts of United Nations human rights system, especially its evidence gathering in the context of the Universal Periodic Review (UPR). This will allow dialogue between Member States on the situations in all countries with respect to the rights of the three professional groups.

This Report proposes a vision of alliances across the three professional groups. It contains 25 specific recommendations – to UNESCO, to Member States and to civil society – to strengthen the human rights work of the organization, both in raising awareness and in monitoring the freedom of expression of artists, journalists and scientific researchers, with a strong focus on the safety of members of these three professional groups.

