

FREEMUSE

FREEDOM OF MUSICAL EXPRESSION

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STAKEHOLDER
SUBMISSION

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

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SUMMARY

1. In her June 2013 report entitled “The Right to Artistic Freedom and Creativity,” the United Nations Special Rapporteur in the field of cultural rights, Ms. Farida Shaheed, observed that “[t]he vitality of artistic creativity is necessary for the development of vibrant cultures and the functioning of democratic societies. Artistic expressions and creations are an integral part of cultural life, which entails contesting meanings and revisiting culturally inherited ideas and concepts.”ⁱ

2. During its previous Universal Periodic Review (UPR) in 2010, the Islamic Republic of Iran accepted numerous recommendations relevant to the freedom of its citizens to create, produce, and share artistic work. This UPR stakeholder submission provides evidence of the state's failure to implement these recommendations, particularly in regard to guaranteeing the right to liberty and security of person; the right to protection against arbitrary or unlawful arrest, detention, or arbitrary interference in privacy, family, home, or correspondence; the right to a fair trial including access to legal assistance; the right not to be subjected to cruel, inhuman or degrading treatment or punishment; the right to freedom of expression; and the right of women to equality under the law.

PREVIOUS UPR

3. Several recommendations made during the 2010 UPR that enjoyed the support of Iran concern general commitments to respecting universal human rights standards and the rule of law; namely, the recommendation by New Zealand that the state under review comply fully with the international human rights obligations to which it is bound;ⁱⁱ the recommendation by Chile to guarantee the protection of the civil and political rights of all, particularly dissidents and members of minority groups;ⁱⁱⁱ and the recommendation by the Netherlands to take measures to ensure an effective and impartial judicial system in conformity with the International Covenant on Civil and Political Rights (ICCPR).^{iv}

4. Iran also accepted the following recommendations, inter alia, relevant to freedom of expression: take timely and extensive measures to guarantee to its citizens the right to express dissent (Denmark^v); allow freedom of expression, freedom of the media and of assembly (Germany^{vi}); fully guarantee the right to freedom of expression, press and political activity, including through the adoption of concrete measures aimed at the implementation of articles 24, 25, 26 and 27 of the Iranian Constitution (Italy^{vii}); conduct a review of legislation to ensure that it complies with article 19 of ICCPR (Slovenia^{viii}); guarantee free and unrestricted access to the Internet (Netherlands^{ix}); amend its press law to define the exceptions to article 24 of its Constitution in specific terms that do not infringe upon the internationally guaranteed rights of free speech and a free press (Canada^x).

5. Furthermore, the state under review accepted the following recommendations, inter alia, on the equality of women and protection against gender discrimination: the recommendation that Iran redouble its efforts to prevent any form of discrimination (Nicaragua^{xi}); enhance efforts to further promote economic and social rights, as well as the rights of vulnerable groups, including women, children and people with disabilities (Viet Nam^{xii}); adopt measures to guarantee women's equality under the law (Chile^{xiii}); ensure the equal treatment of women and girls in law and practice (Austria^{xiv}); continue to improve its policies and programs to advance the status of women and girls, and protect children, including those with disabilities (Indonesia^{xv}); step up efforts to enhance

the participation of women in all spheres of socio-economic life, in keeping with the progress made in women's education (Bangladesh^{xvi}).

6. Finally, the state under review accepted recommendations concerning due process and protection from cruel, inhuman or degrading punishment: to ensure, in law and practice, all guarantees of due process of law established in ICCPR, including the principle of presumption of innocence, as well as avoiding any punishment for the exercise of other rights recognized under the Covenant, such as freedom of expression and the right to association and assembly (Mexico^{xvii}); take measures to ensure that no torture or other cruel, inhuman or degrading treatment or punishment occurs (Netherlands^{xviii}); take further steps to eliminate torture and other forms of ill treatment, and ensure an effective and impartial judicial system (Denmark^{xix}); respect the human rights of prisoners and detainees, and investigate and stop immediately any alleged abuses (Ireland^{xx}); ensure that the treatment of detainees duly follows international standards and that irregularities to those standards are properly investigated (Estonia^{xxi}).

FREEDOM OF EXPRESSION

7. In February 2010, the distinguished composer Hossein Alizadeh, spoke with journalists and musicians in Hormoz province about the government's regime of prior censorship for which the Ministry of Culture and Islamic Guidance is primarily responsible. Alizadeh highlighted the effects of the onerous procedural burdens placed upon artists: "Censorship, and the lengthy application process that must be negotiated in order to perform music in public, is stopping Iranian music from evolving. They should not try to control music by distracting the minds of our artists and attempting to control what they think or do."^{xxii}

8. Alizadeh also commented on the lack of transparency and the arbitrary discretionary powers granted to cultural authorities: "We have to ask the cultural authorities why some music is getting performance permissions in Tehran, but the same music is not getting permission to be performed in another city. This shows discrimination on the part of the government between the people of Tehran and the people of other cities. Unfortunately, many individuals in smaller towns make arbitrary and hasty decisions about music. If

they wish, they allow the concert to happen and if they do not, they just cancel it as they wish. . . . If we had diversity in Iranian music, and a democratic-thinking government . . . then not just one person would be able to decide what is music and what is not music based on personal or religious preferences.”

EQUALITY OF WOMEN

9. Iranian artists who are women face the additional compounding difficulties presented by living under a state that continues to practice systematic discrimination against women in breach of its international commitments. According to the Islamic Penal Code, for example, the testimony of a woman in a court of law has half the value of that of a man. In sentencing, a woman’s life is also valued as half that of a man’s. Article 1117 of the civil code is of specific relevance to women engaging in artistic activities. According to this article: “the husband can prevent his wife from occupations or technical work which is incompatible with the family interests or the dignity of himself or his wife.” This law may be used to stop women from pursuing artistic activities of their choice.

10. In addition, there are many legal, political, economic, social and cultural barriers generally hindering free artistic activities in Iran that have a disparate impact on women. To take one example, Article 640 of the Penal Code provides fines, prison sentences from three months to one year, and up to 74 lashes for any individual “who publicizes any picture, text, photo, drawing, article, newsletter, newspaper, movie, or any other thing that violates public morals.” The artistic work of women is more likely to become subject to accusations of indecency, impropriety, or immorality. Furthermore, the prohibition of performances by female solo vocalists before mixed-gender audiences continues to be enforced.

DUE PROCESS AND TREATMENT OF PRISONERS

11. Security forces arrested the singer and recording artist Arya Aramnejad for the first time in Babol in February 2010. In a statement before the court, Aramnejad asserted, “the intelligence ministry agents broke into my house. They smashed up our furniture and rummaged through our belongings just to maximize their intimidation. This was all

because of a song I had written that according to the gentlemen had ‘endangered the national security’. After that, I spent 44 days in solitary confinement where I was put under a series of emotional, mental and physical tortures.”

12. The first legal proceedings against Aramnejad concerned the song “Ali Barkhiz” (“Ali Rise Up,” or “Wake Up, Ali”), which employs religious imagery to decry the regime’s crackdown against the opposition activities surrounding the presidential elections in 2009. He told representatives of Freemuse that he did not have legal assistance. On 8 November 2011, Aramnejad was again arrested. Upon his return home from attending the court in the city of Sari that was reviewing his appeal for a previous sentence, he was beaten by intelligence agents, handcuffed and then taken to an unknown location. The intelligence agents are reported to have searched the musician’s house and confiscated his handwritten notes, documents, computer and other personal belongings.

13. A second court case was opened against the singer, charging him with acting against national security and spreading propaganda against the regime with songs he had released on the Internet since 2010. Two of these songs are “Yek ruze khoob” (“A Fine Day”) and “Deltangi” (“Nostalgia”), which express support of the opposition movement. Penal Code Article 500 provides that “[a]nyone who engages, in any manner, in propaganda against the Islamic Republic of Iran or does so on behalf of dissident groups or organizations is condemned to imprisonment for a period of three months to one year.” In December 2012, Aramnejad was given a one-year prison sentence, which was later changed to 91 days. Again, he was not represented by a lawyer. After serving several weeks in Babol Prison (Mati Kala Babol) he was released due to “international reaction,” according to Freemuse sources.

RECOMMENDATIONS

14. Freemuse observes that the state under review is failing to abide by its international commitments. We therefore offer the following recommendations:

1. The government of the Islamic Republic of Iran should replace the present censorship regime with a system of age-based classification that refrains

from deleting or modifying content and accords due representation to artists in its administration.

2. The government should amend national legislation criminalizing expression—including Article 500—so as to bring it into conformity with international standards, including the Rabat Plan of Action” six-part threshold test that considers the context, speaker, intent, content, extent, and likelihood of harm.
3. The government should take all necessary steps to implement the recommendations it has accepted by amending national legislation to end discrimination against women, including restrictions on female vocalists.
4. The government should ensure that its treatment of prisoners satisfies the Standard Minimum Rules for the Treatment of Prisoners, including:
 - a. access to legal counsel;
 - b. availability of medical care;
 - c. family visitation privileges;
 - d. freedom from unnecessarily cruel treatment and punishment;
 - e. adequate leisure, rest, diet and space; and
 - f. the right to receive and send mail.

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

ⁱⁱ Report of the Working Group on the Universal Periodic Review: Islamic Republic of Iran, A/HRC/14/12, 15 March 2010, para. 90(2).

ⁱⁱⁱ *Ibid.*, para. 90(102).

^{iv} *Ibid.*, para. 90(107).

^v *Ibid.*, para. 90(52).

^{vi} *Ibid.*, para. 90(54).

^{vii} *Ibid.*, para. 90(55).

^{viii} *Ibid.*, para. 90(57).

^{ix} *Ibid.*, para. 90(58).

^x *Ibid.*, para. 90(122).

^{xi} Ibid., para. 90(31).

^{xii} Ibid., para. 90(7).

^{xiii} Ibid., para. 90(33).

^{xiv} Ibid., para. 90(34).

^{xv} Ibid., para. 90(36).

^{xvi} Ibid., para. 90(60).

^{xvii} Ibid., para. 90(46).

^{xviii} Ibid., para. 90(41).

^{xix} Ibid., para. 90(42).

^{xx} Ibid., para. 90(43).

^{xxi} Ibid., para. 90(44).

^{xxii} Voice of America Persian News Network, "Censorship has Harmful Affects on Iranian Music," March 12, 2011, <http://www.voanews.com/persian/news/iran-music-alizadeh-12-03-2011-117861934.html>. Discussed in Mostafa Khalaji, Bronwen Robertson, & Maryam Aghdami, *Cultural Censorship in Iran: Iranian Culture in a State of Emergency* (Small Media Foundation, 2011).