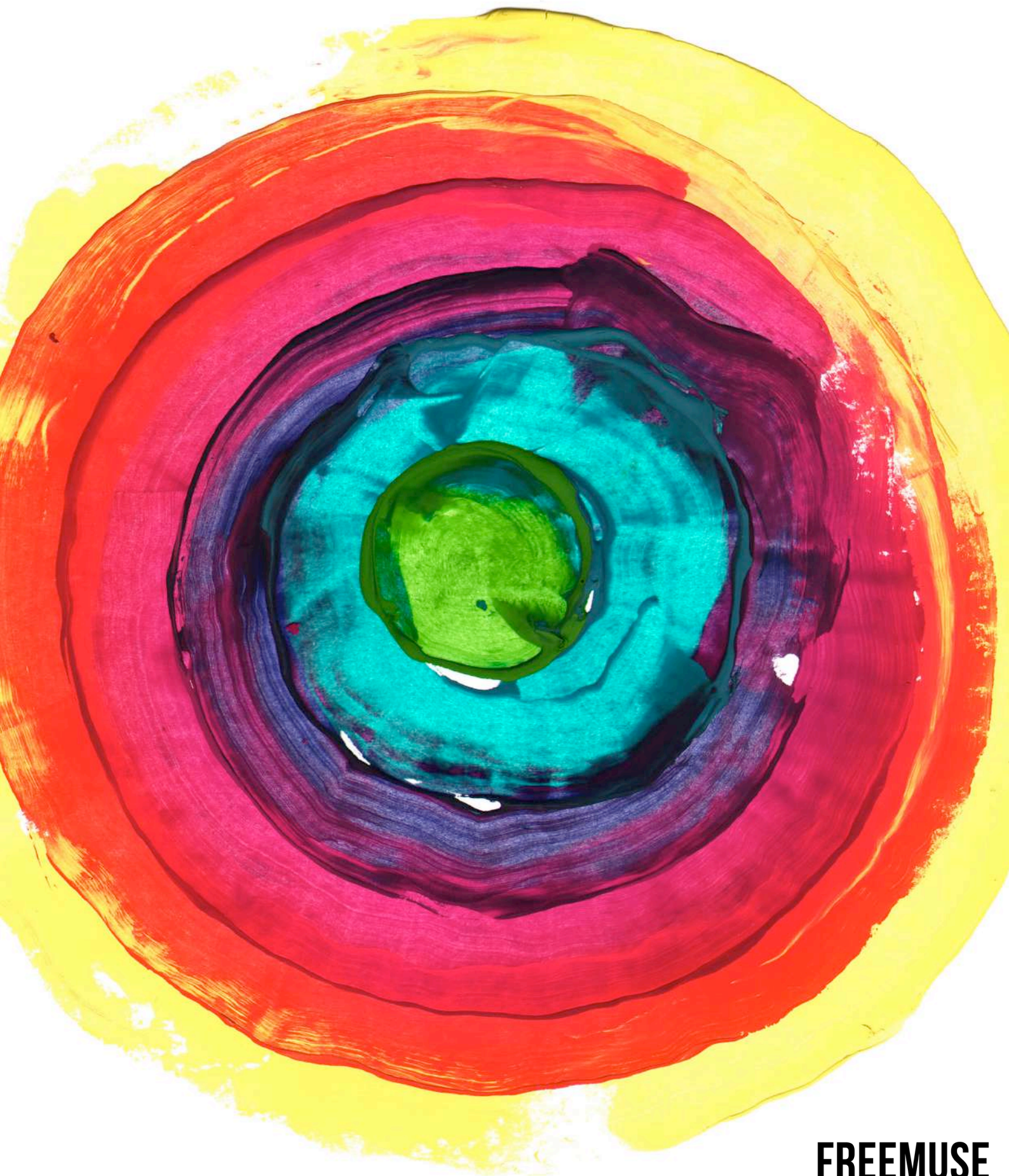


PAINTING THE RAINBOW: HOW LGBTI FREEDOM OF ARTISTIC EXPRESSION IS DENIED



FREEMUSE
DEFENDING ARTISTIC FREEDOM

Freemuse (freemuse.org) is an independent international non-governmental organisation advocating for freedom of artistic expression and cultural diversity. Freemuse has United Nations Special Consultative Status to the Economic and Social Council (UN-ECOSOC) and Consultative Status with UNESCO.

Freemuse operates within an international human rights and legal framework which upholds the principles of accountability, participation, equality, non-discrimination and cultural diversity. We document violations of artistic freedom and leverage evidence-based advocacy at international, regional and national levels for better protection of all people, including those at risk. We promote safe and enabling environments for artistic creativity and recognise the value that art and culture bring to society. Working with artists, art and cultural organisations, activists and partners in the global south and north, we campaign for and support individual artists with a focus on artists targeted for their gender, race or sexual orientation. We initiate, grow and support locally owned networks of artists and cultural workers so their voices can be heard and their capacity to monitor and defend artistic freedom is strengthened.

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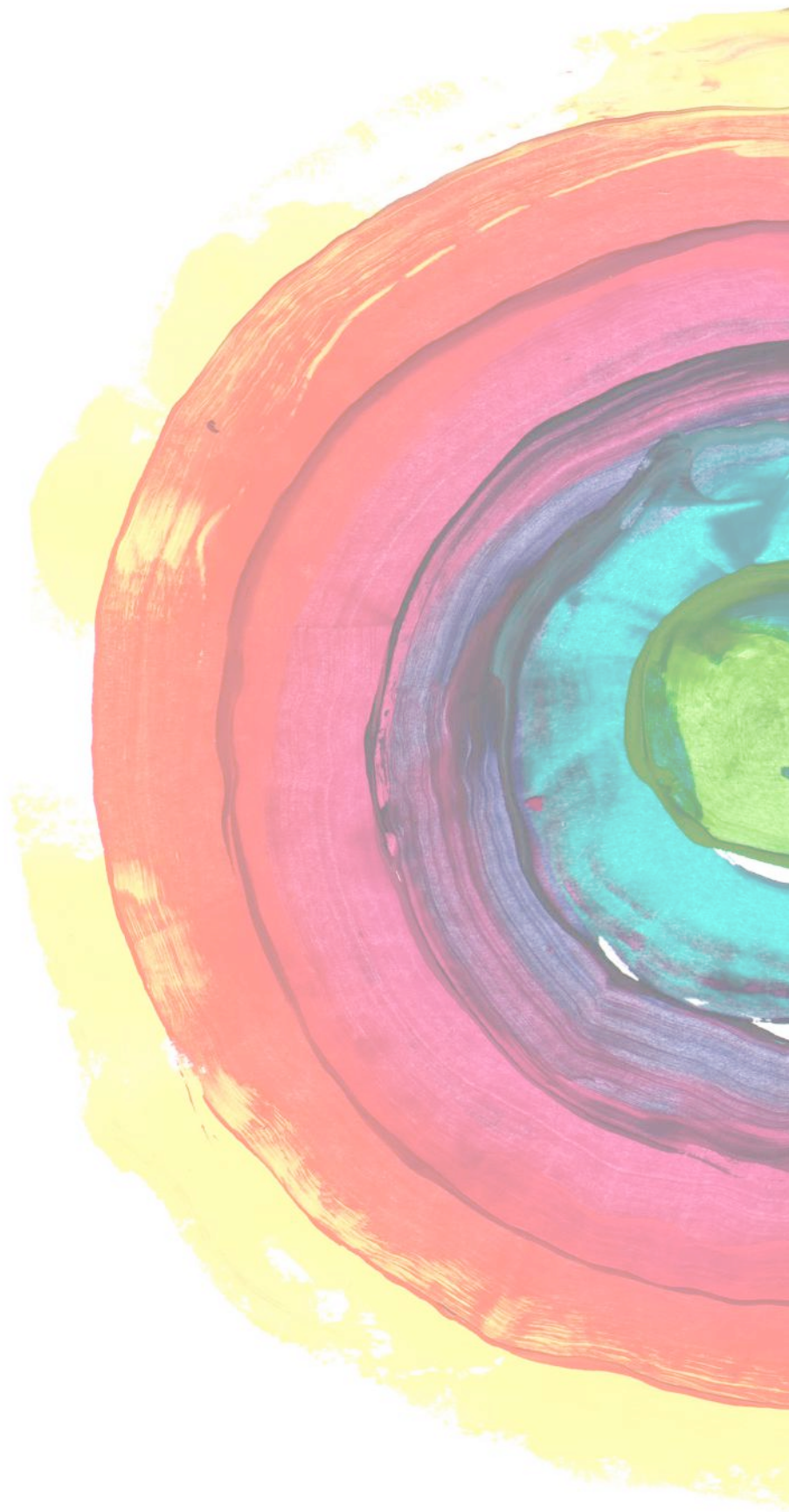
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Every effort has been made to verify the accuracy of the information contained in this report. All information was believed to be correct as of December 2020. Nevertheless, Freemuse cannot accept responsibility for the consequences of its use for other purposes or in other contexts.

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Marie Rouge
Linn da Quebrada

INTRODUCTION

“What people usually consider literature—it is heterosexual literature. And for them, there is queer literature on the other side. But queer literature is also literature.”


Oteosirize Obi-Young, *Freemuse interview*, 28 July 2019

The LGBTI community has long been treated as a minority group subject to discrimination and marginalisation. Its position is heavily dependent on the level of tolerance, perceived fear and openness of political and religious institutions for diversity. In contemporary societies which are turning to nationalism and populism, this fear, intolerance and lack of openness have transformed into new ways of discrimination and marginalisation. In many countries, religious fundamentalism and nationalist ideology are continuously producing new measures to additionally repress LGBTI persons in public spaces. In the past decade, at least 16 countries adopted some legal restrictions limiting the affirmative portrayal of LGBTI persons in the public realm (ten countries which already criminalise homosexuality and seven in which homosexuality is legal). Apart from the adoption of these so-called anti-homosexual propaganda laws, governments also use a variety of new, subtle tactics to drive LGBTI expression to the fringe of society.

LGBTI artistic endeavours have been marginalised globally. LGBTI-themed art is commonly perceived through the prism of the sexual orientation or gender

identity of its authors and categorised as “a queer content”. In this way, it has been distinguished from what is understood as mainstream art. In addition to this trend, which exists to different extents in various contexts, artists tackling LGBTI issues face disproportionate repercussions because of their work across the globe. These efforts to silence LGBTI-related artistic expressions, at the same time limit artists’ abilities to express themselves through art and impose undue restrictions on those wishing to access LGBTI artistic content.

This report nevertheless shows that artistic expression tackling LGBTI experiences exists in most countries, regardless of the political, legal and social hurdles. Despite efforts to the contrary, it clearly demonstrates that no laws, traditions, nor religions can entirely suppress artistic expression on these issues. What differs between these varying contexts is the extent to which artists can access audiences, professional networks, cultural institutions, financial support and platforms to promote their work. They are also subject to varying levels of public disapproval, rejection, threats and violence and other forms of mistreatment. But none of them, regardless of



the progressiveness of the society they live in, are truly exempt from discrimination because of their sexual orientation, gender identity and expression.

Despite compelling improvements achieved at international level in past decades in promoting non-discrimination and equality for LGBTI persons, there is still a significant number of countries in which artists produce artworks knowing that they will most likely never be displayed for public view in their home countries. Even if they demonstrate extraordinary bravery and, in collaboration with alternative cultural centres or with support from human rights organisations, manage to exhibit their work, this is commonly shown in very private settings. The organisers of such events—which are often held on an invitation-only basis—as well as their audiences risk being harassed, exposed to public disapproval, arrested and prosecuted. Some of these forms of persecution also exist in countries in which LGBTI artists and art are not necessarily pushed underground.

In this report, Freemuse analyses how identity-based discrimination—particularly against LGBTI artists and LGBTI-themed artworks—manifests in different countries across the globe. It demonstrates how limitations imposed to artistic freedoms impact and impede the rights of artists to fully and freely express themselves through creative and artistic means. The report examines 149 acts of violations of artistic freedom against

LGBTI artists and art documented in 39 countries and online spaces in the period between January 2018 and June 2020. In order to understand more succinctly how varying legislative and political contexts impact LGBTI artists and LGBTI-themed art, Freemuse also interviewed 65 artists, LGBTI and human rights activists from 30 different countries. The countries analysed in this report were selected to give the reader a varying sense of how national legislations governing LGBTI rights actually impact artistic expression.

Varying from those countries which criminalise homosexuality, penalise so-called “promotion of homosexuality” or impose no legal restrictions for the engagement of LGBTI artists or promotion of queer artworks in public spaces, all of these legislative frameworks leave room for the suppression of artistic freedoms to some degree. This report illustrates that abuses and violations of artistic freedoms occur in all kinds of national contexts. A country’s criminalisation of homosexuality or otherwise sets the tone for the types of values, norms and practices that are acceptable and tolerable to the whole of society, including law enforcement, religious groups and the general public. It shifts the mainstream ideology through which discrimination and marginalisation are developed and practiced. For this reason, Freemuse analysed the violations of artistic freedoms by separately focusing on countries which criminalise homosexuality and those where adult private same-sex sexual intercourse has not been criminalised.

Apart from the impact of national legal frameworks on the state of artistic freedoms for LGBTI artists and art exploring LGBTI themes, Freemuse paid particular attention to the role of the general political atmosphere in one society on the access of LGBTI-themed artworks to public spaces. It determined that with the backsliding of democracy, the looming backlash against progressive discourses and positive representation of LGBTI identities is becoming more prevalent. The rise of populist political movements, largely conservative in nature, is attempting to disassemble many of the victories of the international community and LGBTI rights movement and reassert heteronorms on societies across the globe. It also demonstrates its regressive power in dismantling vital protections. One of the most evident consequences of such negative developments is the adoption of laws restricting freedom of expression on LGBTI issues which exist in at least 35 countries in the world—seven of which do not criminalise homosexuality.

Inevitably, the permeating and regressive influence of these growing forces is also felt amongst those producing LGBTI-themed work. Although already historically sidelined and, in many cases, silenced, today LGBTI-themed artwork is under increasing attack by different actors, from state authorities to non-state actors (including religious and political groups, extremist movements and violent individuals).

The use of a range of mechanisms is also of growing concern. This includes regulatory bodies, as well as conservative cultural institutions, which determine acceptable parameters of discussion around sexuality, stifling and thwarting artistic expression on issues relating to sexual orientation and gender identity and expression.

Focusing on key issues in the exercise of artistic freedoms related to LGBTI experiences, this report does not provide statistical analyses nor compare the scope of violations of artistic freedoms registered in countries which criminalise homosexuality with those where it is legal. It does not deal with the different treatment of gay, lesbian, bisexual, transgender or intersex artists, nor touches upon grounds for violations targeted against any of these particular subgroups. It has not explored the double or triple forms of discrimination which lesbian artists (for example) are exposed to—based on their gender and sexual orientation or where this is compounded by their race and ethnicity. Finally, it has not researched the differing discriminatory experiences LGBTI artists face in the cultural and entertainment industries in comparison to their heterosexual colleagues.

However, the aim of this report is to contribute to the ongoing global debate about the discrimination LGBTI persons are facing and scrutinise the impact on their presence in the sphere of arts and culture. The report should be seen as Freemuse's invitation to different stakeholders to pay closer attention to LGBTI artists as an especially vulnerable group, and to engage with processes that enable better documentation and systematic registering of abuses and violations of artistic freedoms experienced by LGBTI artists and those who create LGBTI-themed artworks. Furthermore, it calls on different stakeholders—international, regional and national—to engage in developing immediate and appropriate short-term and long-term strategies which advocate for better conditions for the exercise of artistic freedoms related to LGBTI issues.



St. Peters Pride
Alba Photography

ON TERMINOLOGY:
**LGBTI ARTISTS
AND QUEER ART**



In this report Freemuse focuses its analysis on the status of '*LGBTI artists*' in different societies and the existence of '*queer art*' in public spaces. However, neither of these terms has been uniformly used by different Freemuse interviewees.

They use a variety of abbreviations to refer to gay, lesbian, bisexual, transgender, transsexual, intersex and other persons whose sexual orientation and gender identity differ from the concept of heteronormativity¹ and the cisgender². Despite these differences, which are usually a product of consensus made within particular organisations or social groups, Freemuse exclusively uses the abbreviation of LGBTI throughout this report.³ This is an umbrella term coined to refer to persons whose sexual orientation is different than heterosexual and who do not necessarily identify

themselves or express their gender identity in line with the sex assigned at birth.⁴

Freemuse's approach has been to refer to interviewees' sexual orientation and gender identity in a way that they desire. The term gay has been used for men who are sexually attracted to men and lesbian for women attracted to women. The term transgender has been used as a generic term for persons whose gender identity or gender expression differs from the sex assigned to them at birth. It has been applied to trans men and trans women who either express their gender in a way opposite to what they were assigned at birth or those who seek medical assistance in order to permanently transition to the gender with which they identify.⁵

Freemuse refers to these persons as trans men, with pronouns 'he/his', and trans women, with pronouns 'she/her'. However, the term transgender also includes those individuals who are not exclusively masculine nor feminine. In this report they are referred to as non-conforming and proper pronouns are used, referring to an individual with "they/their". When analysing legal standards, Freemuse dealt with bisexual persons (a person attracted by both men and women) and intersex persons (a person who is born in a body which does not fit the definitions of a man or a woman). However, none of the Freemuse interviewees identified as bisexual or intersex.

This report also deals with censorship

and other attacks on 'queer art'—artworks whose content is dedicated to LGBTI issues. This art has not necessarily been produced by LGBTI artists, but also by heterosexual artists. The term queer has been widely used for determining festivals which directly tackle the issue of homosexuality through different artistic means, referred to as queer festivals. They are normally open for diverse artists and audiences, although they primarily promote artworks made by and for LGBTI persons.⁶ Film director Sridhar Rangayan told Freemuse that the word queer in the KASHISH Mumbai International Queer Film Festival denotes "the all-inclusive nature of the festival embracing all genders and sexualities".⁷ He elaborated that this festival caters to diverse audiences, including heterosexuals, whom it aims to inform, educate or entertain.

However, the term queer has not always been used in this context. Historically, it has held negative connotations, commonly understood "as a derogatory term for a homosexual".⁸ However, none of the Freemuse interviewees referred to 'queer' in a negative context. Some reaffirmed that they use the term to address all those persons who do not identify as heterosexual. In the Tunisian LGBTI organisation Mawjoudin, they prefer using the term "queerphobia" instead of homophobia, transphobia and biphobia.⁹

Despite this common understanding that the term queer has been reclaimed by the LGBTI community, not all Freemuse

"A lot of people in Kenya identify as 'queer'. Since we reclaimed that word, we do not have problem with it. It is a political term."

Yvonne Oduor, Freemuse interview, 31 July 2019





Paradise

Credit: Elizabeta Ohlson Wallin

interviewees were comfortable with being referred to as 'queer artists'. When asked whether they see themselves or their art as queer, interviewees provided a range of different answers. Some did not hesitate to declare themselves as queer artists who produce queer artwork.

"I am 100 percent a queer artist. The very reason I produce art is because of my sexuality. All these songs I am writing about, where I talk about men and heartbreaks, directly tie to my sexuality. So, when I put my music out there, people listen to it, and associate with me as a queer musician in Malaysia and they get a feeling that we are everywhere."

Alex Bong, *Freemuse interview*, 1 August 2019

"Although anyone can enjoy my artistic male nudes, I primarily aim to communicate with gay people. I wanted to show different aspects of our life, especially of our

sexuality. I wanted to address gay people who never see any representation of themselves in exhibitions. To say that it is okay that we are gay men out there."

Munir Abdallah, *Freemuse interview*, 15 July 2019

However, other artists were reluctant to associate with the queer label for different reasons. Some responded that their artworks were not solely devoted to addressing LGBTI themes and others felt that they did not support creating classifications which define their work solely on the grounds of the artists' sexual orientation or gender identity and expression.

"Although all of us in the band are queer and a lot of our songs deal with queer topics, we are not a queer band. We just follow our 'queer religion' and create songs in which we make fun of our politicians

when they state something stupid about LGBTI people.”

Band Shh... Diam!, *Freemuse interview*, 1 August 2019

“I do not like being put in boxes. Fronting my sexuality is not my main thing as an artist. I am an artist who happened to be gay and passionate about human rights, LGBTI rights in particular.”

Brayo Bryans, *Freemuse interview*, 3 August 2019

Contrary to these views, one Nigerian male writer who wished to stay anonymous told Freemuse that he is a queer writer from the perspective of biology, because he was “born queer”, and not because of the subject of his art. He pointed out that there are heterosexuals who write about queerness, but they are not referred to as queer writers.

“I do not mind being referred to as a queer writer if in the same context one is referring to heterosexual writers as non-queer. But if one is describing me biologically, in a context in which he/she is referring to heterosexual writers socially, I have a problem with that.”

Nigerian writer, *Freemuse interview*, 19 July 2019

Finally, Chinese filmmaker Popo Fan considers himself a queer artist, but only because there are rare examples of openly queer artists from China.

“If it was a trend in China and a lot of artists would label themselves as queer, I would not necessarily use it, but because it is a taboo, I want to emphasise it. Having in mind the current sensitive situation in China, I feel more responsible to be part of queer art scene.”

Popo Fan, *Freemuse interview*, 30 August 2019





Popo Fan

Credit: Photographed by Nadja Wehling





CHAPTER 1: THE VISUAL STORY



LGBT ARTISTS & ART

From January 2018
until June 2020, Freemuse
registered 149 acts of
violations of artistic freedom
related to LGBTI themes in
40 countries and online.

1 KILLED

1 IMPRISONED

22 DETAINED

1 PROSECUTED

5 PERSECUTED

9 THREATENED/HARASSED

**4 DESTROYED/DAMAGED
ARTWORKS**

1 ATTACKED

9 SANCTIONED/FINED

96 CENSORED

LEGAL CONTEXT

45% of violations in 19 countries and online where there is **no law criminalizing homosexuality nor its promotion**

55% of violations in 20 countries and online where homosexuality or its promotion are criminalised

48% of violations in 18 countries where **affirmative depiction of homosexuality is banned**

VIOLATORS

Government authorities were responsible for

53% of documented violations

ARTISTIC COMMUNITY **16%** UNKNOWN **6%**
PRIVATE ENTITIES **14%** PRIVATE INDIVIDUAL **3%**
SOCIAL MEDIA PLATFORM **4%** POLITICAL COMMUNITY **2%**
RELIGIOUS COMMUNITY **2%**

TARGETED ARTFORMS

FILM **34%** MUSIC **22%** THEATRE **17%**
VISUAL ART **14%** LITERATURE **8%**
MULTIPLE FORMS OF ART **3%**
DANCE **2%**

LGBTI EXPRESSIONS RESTRICTED BY ANTI-HOMOSEXUAL PROPAGANDA LAWS

35

COUNTRIES have laws
which ban “homosexual
propaganda”

28

COUNTRIES:
homosexuality is
criminalised

7

COUNTRIES:
homosexuality
is legal

ASIA 16

AFRICA 15

EUROPE 3

LATIN AMERICA 1

ALARMING TREND IN **10 COUNTRIES**

Since 2010, at least 10 countries which already criminalise homosexuality adopted additional laws **BANNING “HOMOSEXUAL PROPAGANDA”**:

ALGERIA · CAMEROON · EGYPT · KENYA KUWAIT · MALAYSIA
NIGERIA · PAKISTAN SINGAPORE · UNITED ARAB EMIRATES

LAW EXAMPLES

KENYA

FILM CLASSIFICATION BOARD, CLASSIFICATION GUIDELINES, SECTION 5(II):

Thematic area Sex, obscenity and nudity restricts: a film, poster or program that portrays, encourages, justifies or glorifies perverted or socially unacceptable sex practices such as incest, paedophilia, homosexuality or any form of pornography; content showing women as tools of sex; content endorsing sexual violence.

NIGERIA

SAME-SEX MARRIAGE (PROHIBITION) ACT, SECTION 5(2):

A person who directly or indirectly makes public show of same-sex amorous relationships may receive a penal sentence of up to 10 years imprisonment.

EGYPT

SUPREME COUNCIL FOR MEDIA REGULATION STATEMENT:

It is forbidden for homosexuals to appear in any media outlet whether written, audio or visual, except when they acknowledge the fact that their conduct is inappropriate and repent for it.

RUSSIA


CODE OF ADMINISTRATIVE OFFENSES, ARTICLE 6.21: "Propaganda" is the act of disseminating information to minors aiming to create non-traditional sexual attitudes, make non-traditional sexual relations attractive, equate the social value of traditional and non-traditional sexual relations or cause an interest in those actions.

USA

ALABAMA CODE, TITLE 16. EDUCATION § 16-40A-2, C(8):

Course materials and instruction that relate to sexual education or sexually transmitted diseases should include... an emphasis, in a factual manner and from a public health perspective, that homosexuality is not a lifestyle acceptable to the general public and that homosexual conduct is a criminal offense under the laws of the state.

COUNTRIES WHERE **LGBTI** **ARTISTIC EXPRESSION** IS UNDER CONSTANT DURESS



USA

11% of all violations documented in USA.

Censorship documented in states with *No Promo Homo Laws*, as well as in those which impose no legal obstacles for LGBTI expressions.

50% of censorship cases occurred in the context of schools, universities, and libraries.

BRAZIL

Despite no legal obstacles for LGBTI expressions, artists and particularly art centering on **transgender experiences are under increasing attack.**

Local political and religious authorities are among the main forces advocating for censorship against LGBTI-themed art.

In 2019, President Jair Bolsonaro requested the **halting of funding for LGBTI films**, but Brazil's Supreme Court found it unconstitutional.



RUSSIA

17% of all violations documented in Russia.

The **2013 Code of Administrative Offenses** which penalise homosexual propaganda was behind $\frac{3}{4}$ of documented violations.

In December 2019, Yulia Tsvetkova was **fined 50,000 Roubles** for spreading “propaganda of non-traditional sexual relations among minors”.

CHINA

8% of all violations documented in China.

Series of regulations **restricting LGBTI content on TV and online platforms** adopted since 2015 have had negative impact also on offline queer cultural events.

In October 2019, Tianyi was sentenced to **10.5 years in prison** for selling her novel online which featured gay sex scenes.

NIGERIA

National legislation heavily restricts artistic expression on LGBTI issues.

Same Sex Marriage (Prohibition) Act (SSMPA) prescribes **imprisonment** for persons who “publicly show same-sex amorous relationship”.

Homosexuality is **punishable with the death penalty** under Sharia law in northern states.

After Chibuihe Obi published his essay *We're Queer, We're Here* in May 2017, he was abducted and questioned about his writings

SILENCED BECAUSE OF LGBTI ARTISTIC CONTENT

At least **126**

artists, members of audience,
artworks, venues and events
were affected by censorship.

In **96** cases

50% OF ALL
CENSORSHIP CASES
WERE RELATED TO **FILM**

DUBAI: The version of **STAR WARS: THE RISE OF SKYWALKER** which entered local cinemas did not contain a kiss between two women (2019).

MALAYSIA: The Malaysian Film Censorship Board cut 20 minutes of **BOHEMIAN RHAPSODY** (2018).

KENYA: The Kenya Film Classification Board banned **RAFIKI** (Friend) because of "intent to promote lesbianism" (2018).

POLAND: A lesbian character from **ONWARD** had her sexuality erased in the Polish release (2020).

RUSSIA: Distributor Central Partnership cut gay sex scenes from **ROCKETMAN** aiming to comply with local laws (2019).

UNITED ARAB EMIRATES: Indian gay romantic comedy **SHUBH MANGAL ZYADA SAAVDHAN** was banned (2020).

UNITED STATES OF AMERICA: Alabama Public Television refused to air the episode "Mr. Ratburn and the Special Someone" of the series **ARTHUR** (2019) for its representation of the wedding of two male characters.

14% OF ALL CENSORSHIP
CASES WERE RELATED
TO **THEATRE**



11% OF
ALL CENSORSHIP
CASES WERE
RELATED TO **MUSIC**

MUSICIANS TARGETED

because of sexual orientation and gender identity and
expression or for open support to LGBTI persons:

American pop star **P!NK**

Bosnian singer **BOŽO VREĆO**

French singer **HOSHI**

Hong Kong musician **DENIS HO**

Lebanese band
MASHROU' LEILA

Lithuanian band **SKAMP**

Tanzanian musicians
RAYVANNY and
DIAMOND PLATNUMZ

CONCERT GOERS

facing consequences for waving rainbow flags:

MASHROU' LEILA · Egypt · 2017

LADY GAGA · China · 2018

EUROVISION SONG CONTEST

broadcast interrupted because of iconography
on and around the main stage and performances
deemed supportive of LGBTI groups:

CHINA	POLAND	TURKEY
2018	2020	2018



2

CHAPTER 2: ARTISTS' VOICES



Linn da Quebrada
Credit: Marie Rouge

LINN DA QUEBRADA

“I start from my experience, my body and my history. But I am discussing bodies. We all have bodies, and all our relationships intersect. That’s what I wonder about, that’s what I question in my work.”

Linn da Quebrada, *Freemuse interview*, 20 August 2019

Linn da Quebrada is a Brazilian transsexual musician and performer who creates art meant to touch everyone. Because of her unconventional fight against imposed norms on gender and sexuality, she is often referred to as a “gender terrorist”. Her performance name is a play on words, with Linda Portuguese for “beautiful”, and Quebrada—broken”. Quebrada is also slang for Brazilian suburbs, overwhelmingly burdened with poverty and crime. “Beautiful Broken” is how this transwoman represents the lives of the queer, black and broken people of São Paulo’s slums.

A biopic of Linn da Quebrada’s youth *Bixa Travesty* explores how the female trans body becomes a political means of expression in both public and private space. It is a topic that Linn da Quebrada continuously explores in her art. *Bixa Travesty* won the Teddy Award for best documentary at the 2018 Berlinale film festival.

As a transgender person, she constantly strives to explore her own femininity.

“I start from my experience, my body and my history. But I am discussing bodies. We all have bodies, and all our relationships intersect. That’s what I wonder about, that’s what I question in my work.”

Linn da Quebrada, *Freemuse interview (online)*, 20 August 2019

Through music, Quebrada fights racism and transphobia and tells her own story. At her concerts, activist groups rally and advocate against the murders of transgender women and transvestites, which is a skyrocketing problem

in Brazil.

Despite enormous energy and dedication, she faces difficulties in accessing public spaces—including LGBTI spaces. She believes that this is in relation to her expression style which is provoking. In 2019, she was not allowed to perform at the João Pessoa Pride Parade in Paraíba, Brazil. Quebrada stated that after negotiations with the organisers of the parade and João Pessoa Cultural Foundation, it was decided that her performance would be cancelled because “she represents political body.”

Quebrada is considered an icon in the trans community, but she does not enjoy being seen as a static image, but rather something dynamic, in constant motion. She applies this approach to everything she does. Instead of complaining about the position of LGBTI persons in Brazil, she does her best to address the issue.

“I’ve been trying to have lower expectations and build strategies how to stay alive and continue what I am already doing. It is our actions that have triggered them [state authorities and far-right groups] to frighten and attack us.”

Linn da Quebrada, *Freemuse interview (online)*, 20 August 2019

She wants to see better protection for LGBTI persons in Brazil: “My main strategy is to stay in the present and access as much information as possible, to know what I’m talking about. I want to strengthen my support to community, to protect us and keep us alive, all by moving forward.”

POPO FAN

“I consider myself a queer artist. The reason I do it is because there are rarely open queer artists from China. If it was a trend in China, I would not necessarily use it, but because it is a taboo, I do.”

Popo Fan, *Freemuse interview*, 20 August 2019

Censorship of LGBTI-themed art is commonplace in China—a stark reality Filmmaker and activist Popo Fan has experienced first-hand.

After his 2012 documentary *Mama Rainbow* disappeared from major online streaming platforms in 2014, Popo Fan tried to get to the bottom of its removal. Chinese streaming sites claimed that they took it down following the request by the State Administration of Press, Publication, Radio, Film and Television (SAPPRFT). Whilst digging further, he learnt that SAPPRFT never ordered the removal of the film.

To determine what exactly happened, he filed a lawsuit and a court determined that SAPPRFT had not released any document calling for *Mama Rainbow* to be taken down. The ruling was recognised as a victory for Popo Fan, but his documentary has not reappeared on streaming platforms. However, the artist hoped that his case would serve as a catalyst to inspire more people to stand up against SAPPRFT.

Popo Fan's films feature topics of same-sex marriage, transgender persons and feminism. His work also centres on exploring familial acceptance of LGBTI persons, or the lack thereof. His trilogy consisting of the movies *Chinese Closet*, *Mama Rainbow* and *Papa Rainbow* focuses on LGBTI families in China.

Apart from film production, Popo Fan has worked on LGBTI visibility through the organisation of the Beijing Queer Film Festival for more than a decade, as well as founded the Queer University Video Training Camp.

Although Popo Fan won the court case against LGBTI-content censors, he asserts that it led to the targeting of his events and activities, stating that “from 2016, I was targeted myself. Some offline screenings were cut off for me.” Being under the authorities' radar, it became increasingly difficult to screen his films offline.

“When my film was screened at the Independent Film Festival in Beijing, the organiser had a space for it, but then the authorities came and cut the power. Then the organisers found smaller alternative places and were screening it over the course of a few weeks. But the authorities still managed to discover some of these screenings and interfered again.”

After finishing the documentary *Mama Rainbow* during which he cooperated with six mothers of LGBTI persons, Popo Fan started working on his counterpart documentary *Papa Rainbow*, which was released in 2016. In this documentary, he worked with six fathers. He recalls how he was suspicious about working with heterosexual men at first, but was proven wrong after getting to know the documented Chinese fathers, finding them to be much more open-minded than he expected.



Popo Fan (left) and Matthias Delvaux shooting Floss

Credit: Yuan Yuan

Cooperating with NGOs and cultural institutes, Popo Fan travelled around China and showed his movies in independent cinemas, galleries, and community centres. However, with difficulties to screen films that came with the victory of the 2015 lawsuit, he decided to leave China, stating “I left in 2017, mostly because of seeking for freedom and looking for more resources to work on art.”

Since he moved to Berlin, Popo Fan participated in Berlinale Talents 2017 and was a jury member of the Teddy Award in 2019.



Chibuihe Obi
Credit: Courtesy of the artist

CHIBUIHE OBI

“The reason I could not write into that piece of paper that night was this: there was no audience for the type of narrative I was about to spin—a narrative where the queer body is documented as wronged, as deserving of justice.”

Chibuihe Obi, *Freemuse interview*, 12 September 2019

On 17 May 2017, Nigerian queer writer Chibuihe Obi published the essay *We’re Queer, We’re Here* about the homophobia he experienced in Nigeria. Two weeks later, he was abducted.

In his essay, Obi describes how the queer body in Nigerian literature is never portrayed with dignity and respect.

“The reason I could not write into that piece of paper that night was this: there was no audience for the type of narrative I was about to spin—a narrative where the queer body is documented as wronged, as deserving of justice... Our school was a secure community where, like every part of this country, the dominant narrative about gays was and still is negative. Gays are monsters, beasts to be exterminated by whatever crude means.”

Obi believes that his abduction was directly connected with this essay. Taken from a public space by an unknown people, he was dragged into a car and held captive for three days. During his captivity, he was interrogated on a number of subjects, including his writings, stating, “I was physically abused while [I was] kept hostage, but I believe that their intention was to scare me to silence.”

Ironically, staying silenced is something Obi explicitly rejected in his essay.

“Some butchered our work in a callous and savage manner in their bid to silence the queer voice. But

we have refused to be silenced. We have refused invisibility. [...] But, finally, we are here.”¹⁰

In Nigeria, there is no protection within the law for LGBTI persons and it seems that the government indirectly empowers citizens to harm them. Obi experienced it himself. “These were ordinary people. There is no legitimacy to the violence. One thing is if I was prosecuted by the government, but it is completely different thing to be taken by a criminal gang.”

Apart from physical violence, Obi had also experienced other forms of violence.

“For to search for one’s self in literature and not find it or to find it perpetually twisted and shunned and vilified is also violence, a different kind of violence. Nigeria’s literary scene has not been fair to the queer body... There are holes and gaps, gullies even, that no one is willing to close.”

Chibuihe Obi, *Freemuse interview*, 12 September 2019

Aiming to close this gap, together with poet Romeo Oriogun, in 2016 he initiated *Kabaka* magazine—space for queer writers. They did it, after both experienced rejections from a lot of magazines, not because of the quality of their work, but because of issues they were exploring.

SRIDHAR RANGAYAN

"We need to tell our stories to the world; we need to say we exist."

Sridhar Rangayan, *Freemuse interview*, 2 August 2019

Sridhar Rangayan is an Indian filmmaker who has been turning LGBTI experiences into motion pictures for almost 20 years. Across that time period, his films illustrate the changing landscape of India, including the perception and reception of LGBTI stories and persons both before and after the decriminalisation of homosexuality in 2018.

His first queer film *Pink Mirror*, released in 2003, features the story on Indian transsexuals. The film was banned by the state censorship body which found it "offensive and vulgar". Despite several attempts of the film crew to challenge the ban, it remains blacklisted in India.

Rangayan had a totally different experience with his latest feature film *Evening Shadows* released in 2018. The film tells the story of the relationship between a mother and her son who comes out as gay. The director found it extremely heartening that parents of LGBTI persons embraced the film as their own. Despite the Central Board of Film Certification's rule that any film mentioning homosexuality must be certified as 'adult' content, *Evening Shadows* received a certificate for unrestricted screening.

Fifteen years in between these two films brought a lot of change for LGBTI film in India.

"While the attitude of the censor board towards films on homosexuality has changed marginally, it is the outlook of general audiences towards such films that has changed dramatically." Filmmaker recalls how back in 2003, people were hesitant to come and watch a film

that totally centres around homosexuality, but today they are more open for such content.

In the past they also struggled to find an actor who would play a role of a gay man, especially for a main character.

"Now actors are not so shy when it comes to playing gay or lesbian characters, though they still are hesitant when it comes to doing a kiss or an intimate scene."

Sridhar Rangayan, *Freemuse interview*, 2 August 2019

Rangayan's documentary film *Breaking Free* (2015) challenges the Section 377 of the 1860 India's Penal Code, which criminalised homosexuality by referring to same-sex sexual activities as "against the order of nature." The film highlights the problems the law posed to the community and the fight by advocates and activists to repeal it. Despite its topic, *Breaking Free* received the National Award for Best Editing from the Indian government in 2016.

Rangayan is also the founder and director of the KASHISH Mumbai International Queer Film Festival, which is the first queer festival to receive an approval from the Ministry of Information and Broadcasting. Rangayan recalls how, in 2010, when the festival was established, they were facing challenges in assuring funding or locations for screening, but in meantime the KASHISH festival managed to enter mainstream cinemas with queer film.

"Now, finally Section 377 has been read down and it has opened the doors for not only personal freedom, but also freedom for artistic expressions. More and more LGBTI events, films, books

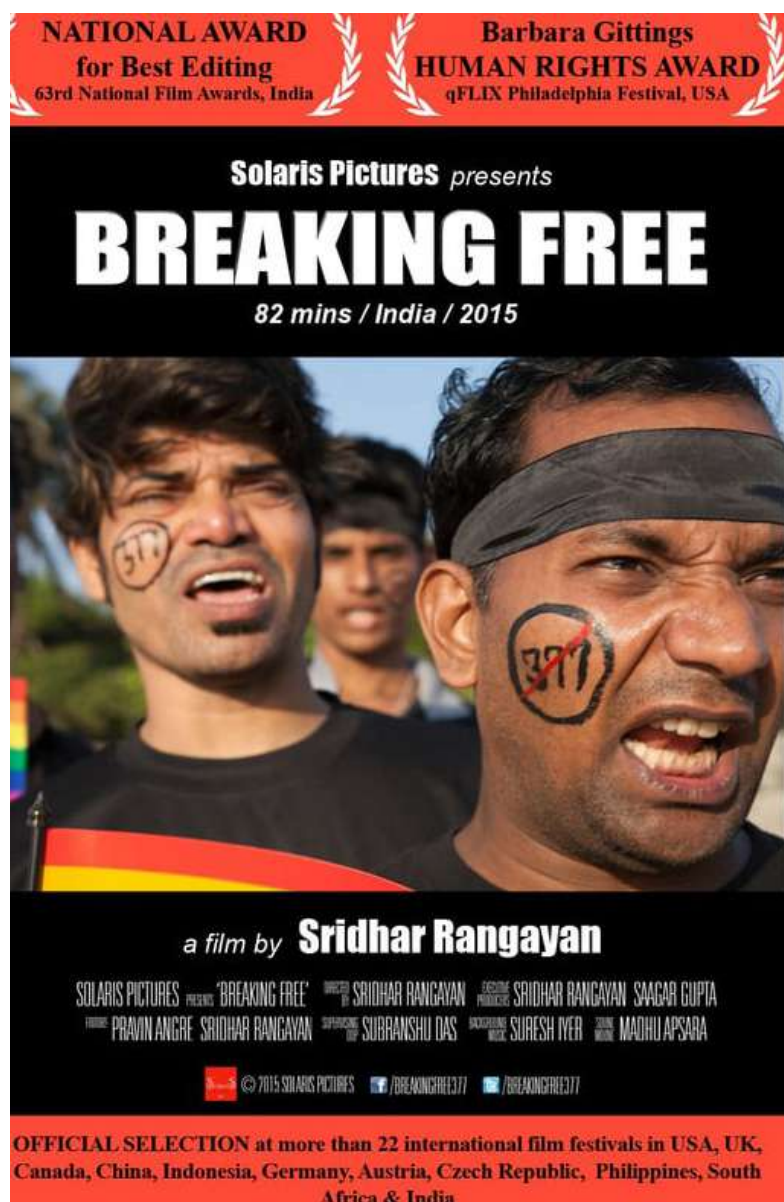


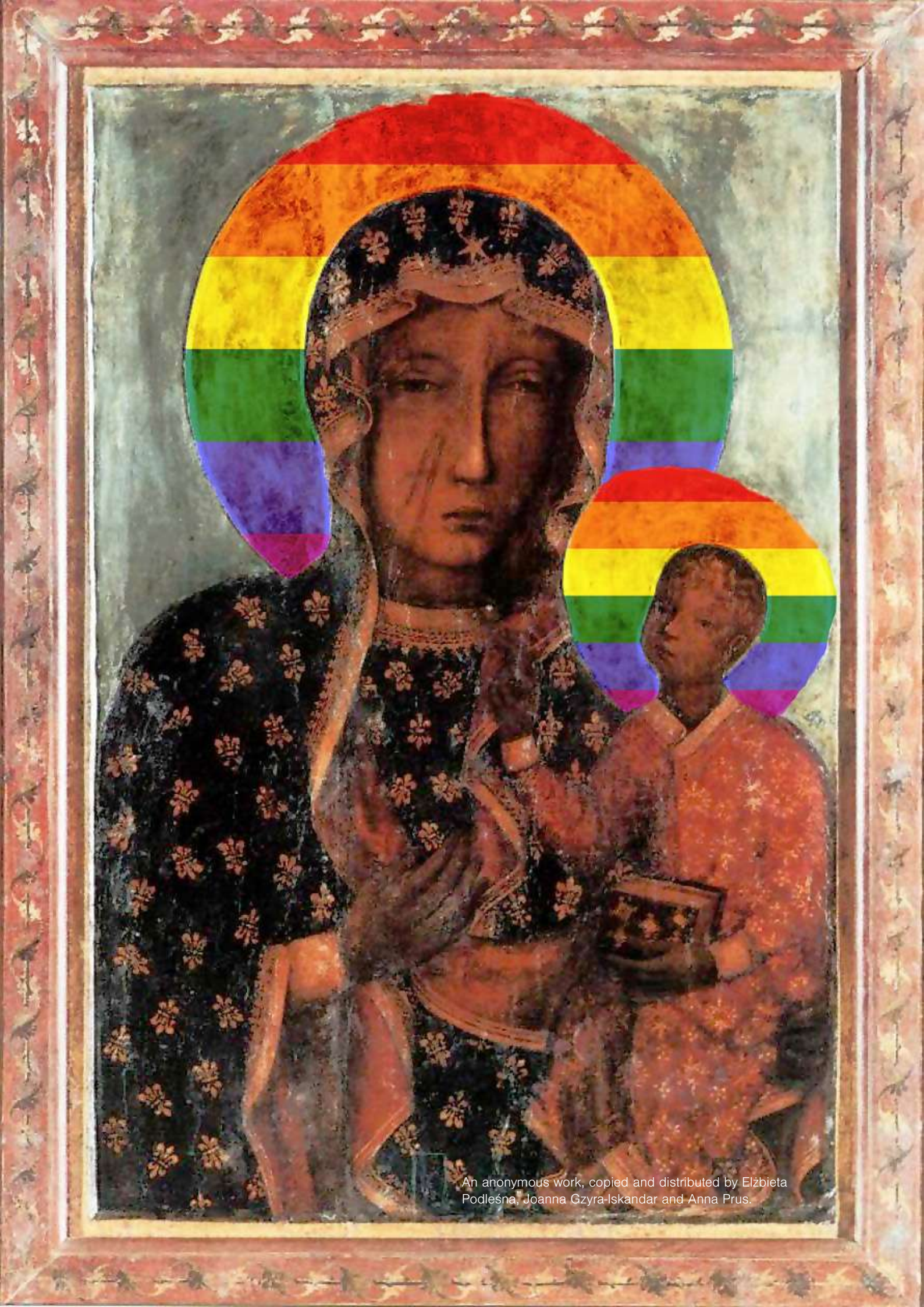
(L-R) Film poster for *Pink Mirror* and *Breaking Free*
Credit: Courtesy of the artist

are being produced. India is bursting with rainbow hues.” However, film funding is still a huge challenge as the industry is hesitant to invest in LGBTI topics.

Sridhar Rangayan, *Freemuse interview*, 2 August 2019

Rangayan believes that there is still a long way ahead. “Stigma and discrimination is so rooted in society due to centuries of wrong preaching, that it will take some time for the closet doors to be finally flung open.”





An anonymous work, copied and distributed by Elżbieta Podleśna, Joanna Gzyra-Iskandar and Anna Prus.

ELŻBIETA PODLEŚNA

The rights of LGBTI persons in Poland have declined over the past decade. The LGBTI and feminist activist Elżbieta Podleśna told Freemuse that LGBTI rights defenders disproportionately face fear in her country. This centres on fear of attack, arrest, and imprisonment, because according to Podleśna, “in Poland you can go to jail for fighting for equality.”

Podleśna shared that her fellow citizens are afraid to publicly discuss LGBTI rights or interfere in church dominion. Many believe that in order to win elections they have to put the human rights agenda on pause.

“The society is not ready for equality and feminism and we should adapt our actions for the ‘not ready’ society.”

Elżbieta Podleśna, *Freemuse interview*, 12 July 2019.

Regardless of potential consequences, she opted to be vocal in advocating for better status of LGBTI persons and non-discrimination. Podleśna says that she is just one among many Polish activists who strive to achieve equality for the LGBTI community. In her case, however, activism did not come without a price.

In 2019, Podleśna was arrested in connection with a poster of the Virgin Mary with the halo painted in the colours of the rainbow flag (symbolising the LGBTI community) which appeared in the city of Płock in late April. The poster became known as Rainbow Madonna. Before the arrest, police authorities searched her home, and confiscated a laptop, mobile phone and memory cards. She was detained for several hours on allegations of “offending religious beliefs”. Although, in July 2019, a court in Płock ruled that her detention was unjustified, the judge still argued that it was legal.

On 29 June 2020, Podleśna was officially charged before the Regional Court in Płock under Article 196 of the Criminal Code for “publicly insulted

an object of religious worship”. Although human rights organisations argue that “having, creating or distributing posters such as the ones depicting the Virgin Mary with a rainbow halo should not be a criminal offence”, she is facing two years of imprisonment.

This activist who has experienced that people familiar with her engagement in the field of equality have been avoiding talking to her in public, recalls how during a Warsaw Pride march, some participants were holding a picture of Rainbow Madonna, while being criticised by others. Arguments, such as, “you should soften their expressions” were coming from, what one would assume, like-minded people.

This is not the only legal battleel Podleśna is facing. She is one of ten individuals accused of attacking a pro-regime journalist, in the aftermath of the murder of the Gdansk mayor Paweł Adamowicz—known for criticism against conservative Poland’s leadership—in January 2019. Although the journalist does not want to pursue with charges, public prosecution is not giving up, despite the fact that initial investigations showed that there were no grounds for prosecution.

As a result of the vilification, Podleśna resigned from her work at a state hospital, due to constant pressure and labels of being unfit to work in a public health-care institution. Ironically, she received a certificate for 15 years of loyal service upon her resignation.

SARAH HEGAZI

“To my siblings, I tried to survive but I failed. Forgive me. To my friends, experiences have been cruel and I’m too weak to resist. Forgive me. To the world, you have been extremely cruel, but I forgive.”

Sarah Hegazi final letter, CNN, 17 June 2020¹¹

On 22 September 2017, Egyptian socialist writer and activist Sarah Hegazi waved a rainbow flag which symbolises the strength and pride for the LGBTI community during a concert in Cairo. What follows is a story of torture, depression and isolation in a foreign country.

After the concert of the Lebanese indie rock band Mashrou’ Leila (whose lead singer Hamed Sinno is openly gay), Hegazi was arrested for waving a rainbow flag. She described the arrest in an essay published in September 2018.

*“The officer blindfolded me in the car that took me to a place I could not know. I was let down in a stairway, not knowing where it would take me. Just the sounds of a man’s voice saying ‘Take her to al basha,’ and a disgusting smell, and the sound of people moaning in pain. I was sitting on a chair, my hands tied, and a piece of cloth in my mouth for reasons I could not understand. I could not see anyone, and no one spoke to me. A short while later, my body convulsed and I lost consciousness for I don’t know how long.”**

In the aftermath of the concert, Egypt’s LGBTI community faced a crackdown, Mashrou’ Leila was banned from performing in the country, whilst the Supreme Council for Media Regulation ordered a media blackout on any form of support to the LGBTI community, calling homosexuality a “shameful disease”. More than 70 concertgoers were arrested and dozens tried for “inciting immorality”.

Sarah Hegazi was facing national security

charges. Her arrest followed three months of detainment, during which she was sexually assaulted, tortured with electricity and held in solitary confinement, what had significant impact on her wellbeing. “Even after my release, I was still afraid of everyone, of my family and of friends and of the street. Fear took the lead.”

The fear of rearrest ultimately forced her to leave the country. Although she escaped the violence of Egyptian state, the post-traumatic stress, depression and isolation were not gone. During her asylum in Canada, she still faced fear, alienation and isolation, suicide attempts and memory problems. In meantime, her mother passed away.

On 14 June 2020, Sarah Hegazy died by suicide.

Her death left the LGBTI community and its allies in sorrow. Hamed Sinno wrote a song dedicated to her.

“The thought that someone can leave a society that keeps trying to kill them, and still carry that society inside them, still be moved to taking their own lives, chills me to the bone, as I reflect on my own exile, and the exile of the people I love. We spend the first part of our lives demanding air in our homelands, and then we leave to countries where we are promised air, only to find out we were robbed of lungs.”

Hamed Sinno, @hamed.sinno Instagram, 2020

* Sarah Hegazi’s essay was originally published in September 2018 in Arabic on Mada Masr. The portal published an English translation in June 2020.



Sarah Hegazi
Credit: Image supplied.



Photograph from Tanzania
Mawjoudin Queer Film Festival

Credit: Image supplied.

3

CHAPTER 3: FREEDOM OF EXPRESSION FOR LGBTI PERSONS AND THE
CURRENT LEGAL AND POLICY FRAMEWORKS

Discrimination on the grounds of sexual orientation or gender identity

“Council of Ministers of the Council of Europe recommends that member states ensure that legislative and other measures are adopted and effectively implemented to combat discrimination on grounds of sexual orientation or gender identity, to ensure respect for the human rights of lesbian, gay, bisexual and transgender persons and to promote tolerance towards them.”

Recommendation CM/Rec(2010)5 of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity. **The first international document to call on action against SOGIESC-based discrimination.**

Freemuse research has determined that many artists are discriminated against because of their actual or perceived sexual orientation, gender identity and expression and sex characteristics (SOGIESC). They are routinely exposed to homophobic and transphobic expressions, discrimination, violence, and other repressive measures by both state and non-state actors. Whilst the problems LGBTI artists face mirror those experienced by LGBTI persons, research suggests that LGBTI artists face additional discrimination mostly due to the public nature of their profession.

Despite the decades-long struggle in eliminating discrimination based on sexual orientation and gender identity, LGBTI persons in different legal,

political, social and cultural systems still face unequal treatment at the hands of society, state institutions, religious authorities and their family members and friends. Disapproval of LGBTI persons in public spaces varies depending on the compliance of national legislation and its implementation with international standards, as well as the openness of the society to the acceptance of different sexual orientations and non-binary gender expressions.

In countries which still criminalise homosexuality, LGBTI persons are often exposed to a high degree of brutality and cruelty, manifested through killings, physical attacks, arbitrary detentions, death and violence threats.¹² Since prejudices based on SOGIESC are often the



main motive for these violent attacks, international human rights law categorises them as hate crimes.¹³ Freemuse interviewees indicated that the perpetrators of such crimes are both state and non-state actors—lone individuals as well as groups with nationalist, conservative, extremist and fundamentalist leanings. They further claimed that in countries criminalising homosexuality, LGBTI persons are reluctant to report attacks for fear of further harassment from state authorities. This becomes particularly prevalent in countries where law enforcement is mandated to raid LGBTI persons' gatherings, including those taking place within private residences. If arrested by the authorities, LGBTI persons face prosecution and punishment. These punishments range from public lashings, severe prison sentences as well as capital punishment. They might also be subject to forced medical examinations, including annual examinations, or "conversion" therapy.¹⁴

Reports of hate crimes have also been

documented in countries where homosexuality is legal. In some cases, especially in rural areas, state authorities fail to provide LGBTI persons with adequate protection. In other instances, these attacks stay unreported due to insufficient trust in law enforcement. Observers note that police often reinforce homophobic attitudes in their investigative approach and treatment of hate crime victims.¹⁵ LGBTI persons also face discrimination in employment, health care and education for example. The fear of private and public disapproval can lead to many LGBTI persons opting to keep their identity hidden or revealed only in small circles of close friends and supporters. Combined with bullying and harassment, life under such conditions can cause depression and anxiety, which can lead to suicidal tendencies.¹⁶

LGBTI persons can become targets of attack for several reasons which are primarily determined by the national context in which they live. However, the 2011 Council of Europe study addressing discrimination on the grounds of

sexual orientation and gender identity emphasised that criminalisation and medical classification are key grounds for understanding the roots of globally spread intolerance against LGBTI persons.¹⁷

Consensual same-sex intercourse has been criminalised in many countries through most of the 20th century, attaching a high level of stigma to LGBTI communities. These legal practices are mainly inherited from British and other colonial systems of justice, or otherwise derive from Islamic law (Sharia). The widespread efforts towards decriminalising homosexuality were largely enforced in the second half of the 20th Century and today it is decriminalised in 123 United Nations (UN) member states. However, 70 countries still criminalise either all same-sex relations (44) or sexual acts specifically between men (26).¹⁸ According to the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA World) 2019 report, homosexuality is punishable by life imprisonment in five countries (Barbados, Guyana, Tanzania,

Uganda, Zambia), while in another 11, it is subject to death penalty (Afghanistan, Iran, Mauritania, Nigeria, Pakistan, Qatar, Saudi Arabia, Somalia, Sudan, United Arab Emirates, Yemen).¹⁹

The impact of the 1948 World Health Organization's (WHO) classification of homosexuality as "a sexual deviation that was presumed to reflect an underlying personality disorder" was particularly detrimental.²⁰ Homosexuality was classified as a "mental disorder" until 1992, when the WHO removed it from its International Statistical Classification of Diseases and Related Health Problems (ICD). The treatment of transgender persons has been even more damaging. The WHO stopped treating gender non-conformity as a "mental disorder" in as late as May 2019.²¹ Nevertheless, despite these crucial amendments in medical classifications, homosexuality and transgenderism are still largely referred to as illnesses in many school textbooks, reinforcing negative stereotypes about LGBTI persons from a young age.

These two factors are not the sole



contributing factors feeding global deep-rooted homophobia and transphobia. Through history, the impact of conservative political elites as well as religious tenants—espousing hetero-normativity—have also been crucial factors. They are re-emerging nowadays as key populist doctrines, despite seminal achievements in the promotion of LGBTI rights at the international level. These political and religious groups believe that some human rights, including those belonging to LGBTI persons, should be adjusted to local cultures which are invariably less open to this group. This is compounded by the emergence of national and transnational non-governmental pro-life organisations, which are also strong adversaries of LGBTI advocacy groups. The common ground for many of these conservative political groups is the fight against so-called “gender ideology”—a term defined as “a right-wing invention that intentionally misrepresents feminist, queer, and gender theory in order to justify discrimination against women and LGBTQ people”.²²

The mainstream media, which over the decades spread misinformation about sexual orientation and gender identity, as well as preserved misconceptions in the public sphere, has also contributed significantly to the hostility towards LGBTI communities.²³ Freemuse research indicates that similar trends continue to be registered in numerous countries in how the media reports on sexual orientation and gender identity and expression.²⁴ Recognising the negative impact of such reporting, civil society organisations globally have worked closely with media organisations to strengthen the capacities of journalists to cover SOGIESC-related stories appropriately.²⁵ Despite significant improvements in its reporting, many of the representatives of the human rights organisations Freemuse spoke with asserted that journalists still struggle to use proper terminology, especially pronouns referring to transgender persons, and remain a major source of discrimination on SOGIESC grounds.



Equality and nondiscrimination: fundamental principles protecting LGBTI persons

“Let me say this loud and clear: lesbian, gay, bisexual and transgender people are entitled to the same rights as everyone else. They, too, are born free and equal.”

Ban Ki-moon, ‘Remarks to special event on Leadership in the Fight against Homophobia’, 11 December 2012

Equality and non-discrimination are basic principles of international human rights law. They have been embedded into international law since the adoption of the 1948 **Universal Declaration of Human Rights (UDHR)**, with Article 1 stating that “all human beings are born free and equal in dignity and rights”. These principles are included in subsequent legal instruments, including the 1966 **International Covenant on Civil and Political Rights (ICCPR)** and **International Covenant on Economic, Social and Cultural Rights (ICESCR)**. However, sexual orientation and gender identity are not explicitly mentioned as grounds of discrimination in any of these documents. Despite this, UN commentaries indicate that the open-ended lists on prohibited grounds of discrimination they offer are not exhaustive and that even though sexual orientation and gender identity are not listed, discrimination on these grounds is against international law.

Apart from UN legal instruments, non-discrimination has been embedded in all major regional human rights treaties.

Universal Declaration of Human Rights

Article 2: Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

International Covenant on Civil and Political Rights

Article 2(1): Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 26: All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

International Covenant on Economic, Social and Cultural Rights

Article 2(2): The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

These include: **European Convention for the Protection of Human Rights (ECHR)**, **American Convention on Human Rights**, **African Charter on Human and Peoples' Rights** and **Arab Charter on Human Rights (ACHR)**. These documents also offer open-ended lists on grounds of prohibited discrimination, without specifically mentioning sexual orientation and gender identity. However, except for the ACHR, these lists are also not exhaustive.²⁶

On 31 March 2010, the Council of Europe's Committee of Ministers adopted the first international document recommending a series of measures aimed at combatting discrimination on grounds of sexual orientation or gender identity to its member states.²⁷ The following year, on 7 April 2011, the same body adopted the Convention on preventing and combating violence against women and domestic violence, introducing an inaugural international legally binding instrument to explicitly prohibit discrimination on SOGIESC grounds.²⁸ Parallel to this, the UN system was also working towards recognising sexual orientation and gender identity as grounds for prohibiting discrimination. In June 2011, the Human Rights Council adopted Resolution 17/19—Human rights, sexual orientation and gender identity—which acted as a catalyst for the Office of the High Commissioner for Human Rights (OHCHR) to conduct a global study documenting discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity.²⁹

Almost a decade after these positive developments at international level, the ILGA World report from December 2019 indicates that only 11 UN member

European Convention for the Protection of Human Rights and Fundamental Freedoms 1950

Article 14: The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

American Convention on Human Rights 1969

Article 1: The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.

African Charter on Human and Peoples Rights 1981

Article 2: Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.

Arab Charter on Human Rights 2004

Article 3(1): Each State Party to the present Charter undertakes to ensure to all individuals within its territory and subject to its jurisdiction the right to enjoy all the rights and freedoms recognized herein, without any distinction on grounds of race, color, sex, language, religion, opinion, thought, national or social origin, property, birth or physical or mental disability.

states adopted constitutional provisions protecting LGBTI groups against discrimination based on sexual orientation. The most frequent protection afforded to such groups relates to employment in 77 countries. Only 43 out of 193 UN member states have laws which penalise acts of incitement to hatred, discrimination or violence based on sexual orientation.³⁰

The legal protections for transgender persons from acts of discrimination are even weaker. National legislations



discriminate against these groups by denying them the right to be treated by even weaker. National legislations discriminate against these groups by denying them the right to be treated by the state in line with their self-identified gender. The law grants legal recognition to non-binary gender in only ten countries (Australia, Bangladesh, Canada, Denmark, Germany, India, Malta, Nepal, New Zealand and Pakistan), giving transgender persons—who identify as neither men nor women—the possibility of identifying as a third gender.³¹ Persons who identify themselves as opposite to the sex assigned at birth are also discriminated against and face multiple problems. Even with the possibility to change their gender, transgender persons cannot obtain personal documents solely based on self-determination in many countries and are further required to acquire a mental health diagnosis before approval.

Due to a lack of existing data, it is difficult to determine the scale of discrimination against LGBTI persons. Although many organisations monitor the discrimination targeted at LGBTI persons at the national level, regional and global surveys are relatively rare. In May 2020, the European Union Agency for Fundamental Rights

(FRA) published its second regional survey which showed that little progress has been made since 2012—when the first survey was conducted—in regard of level of discrimination and harassment LGBTI persons in Europe claim to be exposed to because of their sexual orientation.³²

In other world regions, especially those that include a greater number of countries which criminalise homosexuality, it is more difficult to measure the extent of discrimination as LGBTI persons are considerably more likely to refrain from publicly expressing their sexual orientation. In addition, state officials in some of these countries are known to deny the very existence of gay, lesbian, bisexual, transgender and non-conforming persons. In a report published in May 2018, the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity³³ found that data in countries in which LGBTI persons are facing negation is “unreliable, unsystematic and biased”.³⁴ Crucial data on hate crimes, homophobic and transphobic attacks is also flawed and lacking, whilst national information relating to judicial prosecution addressing discrimination and violence on SOGIESC grounds is scarce.

Freedom of Expression, Association and Assembly for LGBTI persons

Freedom of expression, association and assembly are fundamental human rights, guaranteed by all human rights instruments. This corpus of rights assures legal preconditions for activists, human rights defenders and other groups to organise themselves to advocate for improvements in the legal protection of LGBTI persons. However, in many countries these rights are restricted to greater or lesser extents. Even in countries with no legal obstacles, LGBTI persons are often denied public visibility and face prejudice and hostility.

The history of the LGBTI movement is marked by the suppression of freedom of expression, association and assembly. It is a common belief that the turning point for initiating a more systematic campaign for the recognition of these rights were the “Stonewall Riots” of 28 June 1969 in New York City, when LGBTI persons protested their continued police harassment.³⁵ In the aftermath of this event, the LGBTI movement was strengthened and the practice of organising pride parades began. It subsequently led to the introduction of the International Transgender Day of Remembrance (TDoR) in 1999 and International Day Against Homophobia, Transphobia and Biphobia (IDAHOTB) in 2004 (amongst many other key dates of recognition).

The right to freedom of expression, association and assembly are themselves subject to limitations of the law. In Article 29 of the UDHR, it was established that

FREEDOM OF EXPRESSION

Universal Declaration of Human Rights

Article 19: Everyone has the right to freedom of thought and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas.

International Covenant on Civil and Political Rights

Article 19(2): 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.

FREEDOM OF ASSOCIATION AND ASSEMBLY

Universal Declaration of Human Rights

Article 20(1): Everyone has the right to freedom of peaceful assembly and association.

International Covenant on Civil and Political Rights

Article 21: The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.

Article 22 (1): Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

limitations to rights and freedoms must be “determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.” Similar requirements were prescribed in **Articles 19(3), 21 and 22(2) of the ICCPR.**

In order to be justifiable, restrictions to freedom of expression, association and assembly need to be “prescribed by law” and “necessary in a democratic society” for

“respect of the rights or reputations of others and for the protection of national security, public order, public health or morals.” The test of proportionality, legality and necessity has been further developed and elaborated on within the legal practice of the European Court of Human Rights (ECHR).³⁶

However, Freemuse analysis demonstrates that restrictions placed on exercising artistic freedoms related to freedom of expression, association and assembly consistently fail to meet lawful criteria. It further determines that two major obstacles for the unhindered enjoyment of these rights arise from the criminalisation of homosexuality and a barrage of laws commonly referred to as “laws banning homosexual propaganda”.

Criminalised homosexuality—legal basis for denial of LGBTI persons’ fundamental rights and freedoms

Different national legal frameworks which criminalises adult private consensual same-sex intercourse are commonly

“Discrimination has no place in this world. All human beings are born equal. Homosexuality is another form of sexuality that has been suppressed for years.”

Botswana Justice Michael Leburu, *Reuters*, 11 June 201

referred to as “sodomy laws”.³⁷ In some countries, the wording used within these definitions is vague, invoking concepts such as “crimes against the order of nature” or “morality”, or “debauchery”. This practice has its foundation in a larger body of law which was introduced by the medieval Catholic Church, aiming to prevent non-procreative sexual activities, fornication, masturbation and intercourse with animals, for example.³⁸ In most countries which were under colonial rule by European powers—primarily British³⁹—“sodomy laws” were introduced into national legislations of colonised regions during the 19th century, whilst in some, they also existed in pre-colonial times.⁴⁰ Although not initially meant to specifically target LGBTI individuals, during 20th century, these restrictions have been heavily used to punish participation in the same-sex sexual relations. Homosexuality is also illegal in many Islamic countries. Islamic jurisprudence normally prohibits sexual activity outside of marriage and between same-sex persons, but this has not been a case in all Islamic countries.⁴¹ However, in some countries that criminalise homosexuality, LGBTI persons are subject to severe punishments.

Criminalisation of homosexuality constitutes the most explicit form of discrimination against LGBTI persons, denying the identity of gay, lesbian, bisexual, transgender and intersex persons.⁴² This interference in the private space in which

LGBTI persons enjoy intimacy violates their right to privacy. This argument was first formulated in 1981 by the European Court for Human Rights (ECHR) in the case of *Dudgeon v United Kingdom*. The court determined that due to law criminalising homosexuality, the applicant suffered “an unjustified interference with his right to respect for his private life”.⁴³ Similarly, the UN Human Rights Committee (OHCHR) in 1994 ruled in the case of *Toonen v Australia* that Mr. Toonen had been “the victim of an unlawful or arbitrary interference with his privacy.”⁴⁴

Criminalisation also enables authorities to subject LGBTI persons to arbitrary arrest and detention. Individuals attending or assumed to be attending LGBTI gatherings have often been subject to the deprivation of liberty. In the 2003 Annual Report of the UN Working Group on Arbitrary Detention the issue of “arbitrary nature of the detention motivated by sexual orientation” was addressed. The Working Group found that these detentions are in violation of the **Articles 2(1) and 26 of the ICCPR**, which guarantee equality before the law and the right to equal legal protection against all forms of discrimination, including “sex”.⁴⁵

In countries criminalising homosexuality, LGBTI persons are also subject to torture and other forms of ill-treatment,

especially when deprived from liberty. The UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment in 2016 emphasised the clear link between criminalised homosexuality and homophobic and transphobic hate crimes, police abuse, community and family violence and stigmatisation.⁴⁶ In then Special Rapporteur Juan Méndez’s report, it was indicated that “the violence against these persons in custodial settings, whether by police, other law enforcement authorities, prison staff or other prisoners, is prevalent”.⁴⁷ The fact that in the 26 countries which still criminalise homosexuality, the maximum penalty varies between ten years to life imprisonment,⁴⁸ seriously increases the prospect of prolonged mistreatment of incarcerated LGBTI persons.

The death penalty denies LGBTI persons’ right to life. **Article 6 of the ICCPR** requires that the “sentence of death may be imposed only for the most serious crimes”. Although there is no unified understanding at the international level what crimes constitute “serious crimes”, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions in 1999 considered that the death penalty should not be imposed for “actions primarily related to prevailing moral values, such as adultery and prostitution, as well as matters of sexual orientation”.⁴⁹

Universal Declaration of Human Rights

Article 9: No one shall be subjected to arbitrary arrest, detention or exile.

Article 12: No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation.

International Covenant on Civil and Political Rights

Article 6(1): Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

Article 7: No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

Article 9 (1): Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention.

Article 17(1): No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

In some countries, “sodomy laws” exist in criminal legislation, but they are rarely invoked in judicial practice. However, the very existence of these laws still violates international standards. In 1994, the UN Human Rights Committee concluded in the case *Toonen vs Australia* that the right to privacy and non-discrimination were violated even if the law in question was never enforced.⁵⁰ Furthermore, this Freemuse report demonstrates how the abolition of these laws does not bring significant improvements to the status of LGBTI persons, unless it has been followed by effective policy measures, including awareness raising.

Criminalised homosexuality is also often aligned with the lack of protection for LGBTI persons against physical violence. By criminalising homosexuality, governments signal their unwillingness to ensure legal protections from hate crimes. Many Freemuse interviewees commented that the criminalisation of homosexuality has been understood by the general public as a signal that hate-motivated violence against LGBTI persons will be met with impunity.

Freemuse has also found evidence that in some countries the criminalisation of homosexual acts has been used to suppress the right to freedom of expression, association and assembly. In a wider effort to suppress advocacy for improvement of the LGBTI rights, SOGIESC-related public gatherings are banned and applications for registration of LGBTI organisations rejected. In several countries which exercise this practice, this was ruled anti-constitutional. In 2012, the Botswanan organisation Lesbians, Gays and Bisexuals of Botswana (LEGABIBO) filed a complaint before the High Court in which it challenged the government’s refusal to register an organisation advocating LGBTI

rights. The government agency—the Registrar of Societies—argued that registering the organisation would be against Botswana’s constitution which outlaws homosexuality. The Botswana High Court determined that the authorities’ refusal to register the organisation was “a violation of the applicants’ rights to equal protection of the law and to freedoms of expression, association and assembly”.⁵¹ The court further elaborated that national law does not criminalise homosexuality in itself, nor advocate for the reform, but only refers to same-sex intercourse.

In 2015, Kenya’s High Court rendered a similar judgement in a case in which the National Gay and Lesbian Human Rights Commission appealed the decision of the Kenyan NGOs Coordination Board, which invoked moral grounds when refusing to register the organisation. The Board claimed that it was against provisions of the Penal Code, which criminalises “same-sex liaisons”. However, the High Court ruled that “Penal Code does not criminalise homosexuality, or the state of being homosexual, but only certain sexual acts ‘against the order of nature’... More importantly, the Penal Code does not criminalise the right of association of people based on their sexual orientation and does not contain any provision that limits the freedom of association of persons based on their sexual orientation”.⁵²

Both decisions are progressive and the first of their kind in their national contexts. However, although they sparked optimism amongst LGBTI activists, further developments are unpredictable. On 11 June 2019, the Botswana High Court ruled in favour of decriminalising homosexuality,⁵³ whilst in May 2019 the Kenyan High Court upheld the penal code criminalising homosexuality.⁵⁴

Nevertheless, Kenyan activists announced that they would continue to fight, hoping that the case law developed in other countries would spread across the continent.

Legal restrictions on public expressions about homosexuality

Freemuse research has found that the most explicit way of stifling artistic expression relating to LGBTI experiences is through laws which restrict affirmative debate about sexual orientation and gender identity and expression. ILGA World in its report published in December 2019 found that at least 35 UN member states have legal provisions which ban individuals, educators, artists and journalists from publicly expressing “support or positive portrayals of non-heterosexual identities and relationships”.⁵⁵ Although regulations banning or restricting public discussion about LGBTI issues—most commonly referred to as “anti-propaganda laws”—have existed for decades, their adoption has become an emerging trend in the past the two decades.


“Anti-propaganda” laws exist in countries criminalising homosexuality as well as in those where it is legal. They appear either in different sections of penal codes or through separate acts and policies regulating media, cybercrimes, educational systems and motion pictures production. Violations of these regulations constitute either criminal offenses or misdemeanours, which means that anyone violating these laws may be subject to a wide range of sanctions: from financial fines, to years of imprisonment.

The practice of penalising public expressions relating to LGBTI issues and experiences through criminal legislation has been longstanding. ILGA World research

“You cannot achieve anything big in one society with bans on freedom of expression. LGBTI community will anyway exist, but it will be put in corner and operate illegally.”

Goran Miletić, Civil Rights Defenders, Freemuse interview, 2 August 2019

shows that legal provisions banning what is perceived as “promotion” of homosexuality exists in 28 countries in which same-sex relations are *de facto* or *de jure* criminalised.⁵⁶ These articles refer to “indecent” content, content against “order of nature”, “immoral” speech, public “obscenity”, materials which “corrupt morals”, incitement of “debauchery” or “sodomy”, “offensive” public utterances. Most of these provisions have been embedded in national legislations by colonial rulers in the 19th century, but in several countries, they were introduced through recent amendments to criminal codes.



One of the most restrictive laws of this kind was adopted in Nigeria in 2014 through the Same-Sex Marriage (Prohibition) Act. The Section 5(2) of this law states that a person who “directly or indirectly makes public show of same-sex amorous relationships” is committing an offence and is therefore liable for conviction to a term of ten years imprisonment.⁵⁷ This Freemuse report shows that the effect of this legal provision on artistic freedoms in Nigeria has been particularly detrimental.

Motivations compelling political leaders to introduce these laws are varied. Freemuse has observed that in general they relate to growing populism largely based on conservative ideologies. Goran Miletić, from Civil Rights Defenders, elaborates on how the initiators of these laws mostly count on the political (voting) benefits in denying the rights to LGBTI groups, adding, “When you start suppressing these groups, it is globally very popular and opportunistic. It is ‘the cheapest’ move for authorities to show their dedication to ‘get things straight’ in their country by fighting groups which are in general unpopular and the most vulnerable”.⁵⁸

Restrictions imposed over traditional and digital media

National legislations restricting freedom of expression regarding SOGIESC issues

are also emerging in order to govern traditional and online media. As countries begin to regulate communications in the digital space, they have simultaneously started introducing similar restrictive policies relating to online discussions about homosexuality, defining them as cybercrimes. At least 15 countries have adopted such laws, mostly at the beginning of the 21st Century.⁵⁹ In a couple of these countries, more than one regulation has been adopted, covering different forms of public discussion relating to LGBTI issues. Their introduction is part of a wider trend relating to the shrinking space for such discussions in countries where same-sex intercourse has been criminalised, as well as where homosexuality is legal, but authorities have introduced restrictive measures to exercise control over LGBTI-related public debate.

Since 2015, China has adopted several regulations banning the televising and digital broadcasting of content containing “abnormal sexual relationships and behaviours”. This includes same-sex relationships, alongside incest and sexual violence.⁶⁰ However, Freemuse research found that these restrictions were behind decisions to cancel many onsite LGBTI-related cultural activities. Chinese filmmaker Fun Popo told Freemuse that in the aftermath of 2015, some cultural institutions hesitated to host LGBTI-related activities due to fear of potential consequences.⁶¹

Several restrictive policies were also adopted in Egypt in the wake of the crackdown on LGBTI rights following the

Mashrou' Leila's concert held in Cairo in September 2017. After two activists unveiled a rainbow flag openly supporting LGBTI rights during the Lebanese band's concert, dozens of concertgoers were arrested and prosecuted. The Supreme Council for Media Regulation subsequently issued an order banning all forms of support towards LGBTI communities by media outlets.⁶² Discussion about SOGIESC issues was further restricted by the adoption of the Anti-Cybercrime Law in 2018, which punishes online content deemed to "violate the family principles and values upheld by Egyptian society".⁶³

Freemuse research has found that official laws and regulations are not the only means by which journalists are prevented from affirmative portraying LGBTI persons in media. Although there is no official law in Malaysia which restricts media reporting about SOGIESC, Faris

Saad, lead singer of the band Shh...Diam! told Freemuse that when he worked as a journalist several years ago, he and his colleagues were given a directive by management not to portray LGBTI persons in a positive light.

"We were not allowed to write about LGBTI persons unless it is a negative story, or there was an element which stipulated that 'this person has returned to a proper pathway'. We could not have used expressions such as 'this successful transwoman'."

Shh...Diam!, Freemuse interview, 1 August 2019.

Shh...Diam!

Credit: Sshdiam Instagram, 26 February 2020





In addition to regulating the media, provisions governing the portrayal of LGBTI persons in cultural industries have recently been enacted in at least two countries. In 2012, the **Kenya Film Classification Board** adopted Guidelines which classified “promotion or glamorization of homosexual lifestyle” as restricted/banned.⁶⁴ Similarly, the 2010 edition of the Malaysian Film Censorship Act stipulates that gay men can be depicted in films “so long as they repent or even go straight in the end”.⁶⁵ When explaining the rules, Mohd Zamberi Abdul Aziz, chairman of the Malaysian Film Censorship Board, stated in July 2019 that, “any film with LGBT elements, whether directly or indirectly promoting or propagandizing this element, will be banned”.⁶⁶


Restrictions within educational systems

Freemuse has also noted increasing restrictions on the right to freedom of expression imposed within educational systems. Such measures are being adopted under the guise of “protection” of children from exposure to information, which authorities claim can “harm” their development. These legislations exist primarily in countries where homosexuality is legal. While most of the laws

preventing children from access to information about LGBTI issues were adopted in past two decades, they have existed in the US and UK⁶⁷ since the 1980s.

In the US, these restrictions are often referred to as “No Promo Homo Laws”. They appear in state education laws preventing health and sexuality educators from discussing LGBTI topics in a positive light.⁶⁸ Although legal provisions stipulate that these policies should be applied to classes on health and sexuality education, in practice they have much broader applications, affecting syllabuses in other courses as well as extracurricular activities. Adopted in 1980s and 1990s in light of strategies to prevent HIV/AIDS, most of these provisions have since been removed from actual educational policies.⁶⁹ However, they still exist in six states—**Alabama**, Louisiana, Mississippi, Oklahoma, South Carolina, and Texas.⁷⁰ However, some of these provisions are outdated, such as one in Texas which requires schools to teach that homosexuality is a criminal offence, although this has not been the case since 2003.⁷¹

Freemuse has also noted an alarming trend emerging in various parts of Central and Eastern Europe and Central Asia in which the “protection” of children is promoted as the primary motivation for the adoption of restrictive legislation. These laws have been passed in three countries—Belarus, Lithuania and



Russia—while similar attempts were registered over the course of the past six years in another eight countries—Armenia, Hungary, Latvia, Moldova, Poland, Turkey and Ukraine in Europe and Kazakhstan and Kyrgyzstan in Central Asia.⁷²

The first of these laws was introduced in Russia on 29 June 2013, aiming to “protect children from information advocating for a denial of traditional family values”.⁷³ It prescribes financial punishments for individuals, both Russian nationals and foreigners, as well as organisations, found to have flouted these laws. In addition, organisations can be ordered to suspend their activities for up to 90 days.⁷⁴ Similar restrictions of children’s access to LGBTI content were passed by the Lithuanian parliament in 2014, the Law on the Protection of Minors Against the Detrimental Effect of Public Information, and in Belarus in 2017, the Bill on the Protection of Children from

Information Harmful to Their Health and Development.

Due to vague definitions of what constitutes “propaganda of homosexuality”, these laws may be used broadly for suppressing any public discussion about LGBTI issues, not necessarily those targeting minors. Human rights organisations are also concerned that they can weaken LGBTI persons’ legal protections. Such legislations may have a negative impact on prosecutors who would refrain from adequately addressing hate crimes against LGBTI persons, instead treating them as regular crimes for fear that they will be accused of disseminating LGBTI “propaganda”.⁷⁵ In those countries where the attempts to adopt these laws have been unsuccessful, the public discussion around banning “homosexual propaganda” has had a detrimental impact on the status of LGBTI persons, allowing space for “negative and demeaning discourses”.⁷⁶

Kenya Film Classification Board, Classification Guidelines, Section 5(ii):

Thematic area Sex, obscenity and nudity restricts: a film, poster or program that portrays, encourages, justifies or glorifies perverted or socially unacceptable sex practices such as incest, pedophilia, homosexuality or any form of pornography; content showing women as tools of sex; content endorsing sexual violence.

Alabama Code Title 16. Education § 16-40A-2, c(8).

Course materials and instruction that relate to sexual education or sexually transmitted diseases should include... an emphasis, in a factual manner and from a public health perspective, that homosexuality is not a lifestyle acceptable to the general public and that homosexual conduct is a criminal offense under the laws of the state.

Article 6.21 of the Code of Administrative Offenses of the Russian Federation

“Propaganda” is the act of disseminating information to minors aiming to create nontraditional sexual attitudes, make nontraditional sexual relations attractive, equate the social value of traditional and nontraditional sexual relations or cause an interest in those actions.

Illegitimate suppression of freedom of expression on the grounds of “traditional values”

“No one may invoke cultural diversity as an excuse to infringe on human rights guaranteed by international law or limit their scope, nor should cultural diversity be taken to support segregation and harmful traditional practices which, in the name of culture, seek to sanctify differences that run counter to the universality, indivisibility and interdependence of human rights.”

“Human Rights are essential tools for an effective intercultural dialogue”, statement by a group of United Nations experts on the World Day on Cultural Diversity for Dialogue and Development, 21 May 2010.

The UN pays respect to traditions in some countries and does not as such disapprove of their incorporation into national legal practices. However, while some traditions contribute to the promotion and protection of human rights, others collide with international human rights standards and have detrimental effects. When the Vienna Declaration and Programme of Action was adopted at the Human Rights Conference in 1993, the UN recognised the significance of “national and regional particularities and various historical, cultural and religious backgrounds.” In parallel, it also emphasised that “it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms”.⁷⁷

Being “highly subjective and dependent on societal power structures”,⁷⁸ traditional values can be easily misused as a

tool for the repression of fundamental human rights. They are often used to “justify” negation of the rights of already marginalised groups who have historically been excluded from positions of power to shape public opinion and influence decision-making processes. In addition, groups engaged in campaigns to advocate for the rights of LGBTI communities are usually perceived by authorities, as well as large segments of society, as those who challenge well-established norms. In some societies, governmental structures argue that sexual orientation and gender identity are a “Western invention” and not inherent in local traditions. In others, LGBTI rights have been faced with negation on the grounds of religion and attempts to assert “traditional” notions of family, as well as binary concepts of sexual orientation and gender identity. This is particularly present in countries with laws “banning homosexual propaganda”.

Misuse of the protection of public morals

International human rights law recognises the protection of public morals as a legitimate ground for the restriction of freedom of expression. In order to be legitimate, such restriction must be subject to what is known as a three-part test, which measures whether the restriction is provided by law, necessary and proportional. However, the scrutiny of the application of public morality for legitimately restricting freedom of expression often reveals highly subjective interpretations.⁷⁹ This normally occurs due to lack of a global consensus as to what constitutes a legitimate restriction when structured on the basis of public morality.

Referring to the ECHR practices, the Venice Commission (the Council of Europe's advisory body composed of independent experts in constitutional law) argues that "the right to freedom of expression to campaign for the recognition of sexual minorities' rights narrows the state's margin of appreciation concerning the necessary measures for the protection of public morality."⁸⁰ The particularly problematic aspect of

restrictive laws in the sphere of freedom of expression is that they do not ban sexually explicit content in itself, but any content that relates to LGBTI experiences. This understanding that homosexuality is something "immoral" goes against international standards, which protects individuals from discrimination based on their personal characteristics connected to sexual orientation and gender identity and expression.

These laws are usually justified by the authorities' claims that most of the population denies LGBTI rights as well as by narrow and conservative interpretations of religious doctrines. However, both grounds are heavily criticised as unlawful and understood as an abuse of legal provisions. The Council of Europe considers that "neither cultural, traditional nor religious values, nor the rules of a 'dominant culture' can be invoked to justify hate speech or any other form of discrimination, including on grounds of sexual orientation or gender identity".⁸¹ In addition, in 1976, the ECHR determined that "demands of pluralism, tolerance and broadmindedness without which there is no 'democratic society'" require equal access to expressions which are "favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population".⁸²

"Negative attitude of even a large part of the public opinion towards homosexuality as such, can neither justify a restriction on the right to respect for the private life of gays and lesbians, nor on their freedom to come true for their sexual orientation in public, to advocate for positive ideas in relation to homosexuality and to promote tolerance towards homosexuals."

Opinion on the issue of the prohibition of so-called "propaganda of homosexuality", in the light of recent legislation in some member states of the Council of Europe, Venice Commission, 14-15 June 2013, p 15.

LGBTI persons and the notion of a “traditional family”

In many societies, the public image of LGBTI persons is increasingly projected as “a threat” to nations and what is perceived as “traditional” notions of gender and the family. They are seen as “transgressing the normative perceptions and boundaries of what it entails to be a ‘man’ or a ‘woman’”.⁸³ These ideas come from the narrative that LGBTI persons are incapable of procreating, which is understood as a serious threat to the future of population growth trajectories for nation states. The level of harassment transgender and non-conforming persons faced shows that their status has been even less comprehensible than that of gays, lesbians and bisexuals, and is thus more frightening.

Freemuse determined that in the countries where laws restricting freedom of expression on LGBTI issues are adopted, they have the effect of suppressing public debate about homosexuality, rather than protecting the “traditional family” or preventing children from potential harm. This is underscored by the Venice Commission’s findings, which determine that the advocacy efforts for improvement to LGBTI rights “do not preclude that traditional family values and the importance of traditional marital relations are propagated and strengthened.”⁸⁴ Furthermore, the Commission’s findings determine that the blanket nature of ban on “promotion of homosexuality” cannot be considered “necessary in a democratic society” for the protection of family in the traditional sense.⁸⁵

Banning children’s exposure to LGBTI content

Recalling “religious doctrines and the moral value of the majority, as well as potential harm for children and vulnerable adults”, the Russian government has banned hundreds of LGBTI public gatherings since the mid-2000s.⁸⁶ Further, in May 2012, a Moscow district court banned pride parades in the capital city until May 2112. However, the presumption that exposure of minors to LGBTI-related content can do them harm due to their lack of maturity has been highly denounced by many international human rights organisations.

International law recognises that special protections are needed in relation to information where children are concerned. It also supports the need for limitations regarding the availability of information on sexuality, setting in place standards regarding what is age appropriate. However, the laws allegedly “protecting” minors from exposure to homosexuality have been criticised due to negative consequences they have on LGBTI youth, depriving them from access to vital information on sexual and reproductive health which are crucial for their physical and mental development.⁸⁷

In the case *Alekseyev vs Russia*, the ECHR argued that “there is no scientific evidence or sociological data at the Court’s disposal suggesting that the mere mention of homosexuality, or open public debate about sexual minorities’ social status, would adversely affect children or ‘vulnerable adults.’”⁸⁸ The UN Human



Tanzania Mawjoudin
Queer Film Festival

4

CHAPTER 4: ARTISTIC FREEDOMS IN COUNTRIES CRIMINALISING HOMOSEXUALITY

“When Saagar Gupta and I started making our first film from 2002 onwards, there was always this fear of the law over our head – that we are doing something that is abetting a criminal offence. Now in 2018 finally Section 377 has been read down and it has opened the doors for not only personal freedom, but also freedom for artistic expressions.”

Sridhar Rangayan, *Freemuse interview*, 2 August 2019

Chapter 4 of this report unpacks how the state of artistic freedoms on LGBTI issues is directly linked with the general treatment of LGBTI persons in countries that criminalise homosexuality. It highlights that legislations which criminalises homosexuality are particularly detrimental to the freedom of expression, association and assembly of LGBTI persons. Since artistic freedom is directly dependent on these three rights, it has been heavily suppressed in countries where adult private consensual same-sex intercourse is punishable by law.

By focusing the analyses on a few selected countries, Chapter 2 illustrates how criminalised homosexuality ensures the suppression of LGBTI voices in public spaces. Due to different restrictions on LGBTI artistic expression in these countries, artists are compelled to produce queer art underground. Despite continued efforts to promote their art publicly, expression through LGBTI art remains clandestine. When LGBTI artists in these contexts opt to promote their work publicly, they are often exposed to criticism, persecution and violence. In cases of physical attacks, they hesitate to report the violence due to a fear of

repercussions prescribed by laws criminalising homosexuality.

Furthermore, LGBTI artists in these countries face serious obstacles to create queer artworks. They are often unable to secure the prerequisite licenses, fund-raise for their artistic projects, recruit industry professionals who are willing to engage or collaborate in any such projects. These difficulties also extend to when artists attempt to promote their work. Many of them are unable to secure spaces for exhibiting their art. They also struggle to legally register entities, which can serve as platforms for the promotion of LGBTI-themed art.

All of this serves to ensure that LGBTI artistic expression is plagued by the same issues that these communities experience when expressing themselves more generally. These disabling factors can result in preventing many aspiring LGBTI artists even venturing into public spaces, as well as forcing them to leave their home countries to pursue professional careers in societies where their lives would not be endangered in the same way.

Criminalised homosexuality, legitimised violence

“Most of the cases of abduction, killing, or lynching that happen to Nigerian LGBTI community are not done by government, but by the citizens. The Same Sex Marriage (Prohibition) Act indirectly empowers citizens to attack the members of the community and provides them with no protection.”

Chibuihe Obi, *Freemuse interview*, 12 September 2019

More than three billion people, around 40 percent of the world population, live in countries where criminal legislation openly discriminates against LGBTI persons and denies their sexual orientation or gender identity and expression.

⁹²While in 68 countries, homosexuality is penalised through penal codes, it is de facto criminalised in two other.⁹³ Primarily deriving from different colonial legacies or Islamic tenants embodied in legislation, legal provisions outlawing same-sex relations vary from strictly banning sexual intercourse between men, to more broad definitions—such as “acts against order of nature”—applying to any gender.

The severity of punishments in these countries vary from one year in prison to the death penalty. In some, prosecution mechanisms against LGBTI individuals are extensively used, while in others, they exist in legal provisions that are barely used or never applied.⁹⁴ However, even if they remain dormant, these provisions are a violation of international standards, and, as such, should be repealed.

“One society is unable to move forward and adopt a legal framework for comprehensive protection of LGBTI rights unless these laws are abolished. It is a very concrete measure, a key measure, and it is up to state authorities to get rid of it.”

Goran Miletić, *Freemuse interview*, 2 August 2019

In countries where homosexuality is illegal, the contextual complexity in which LGBTI artists produce and publicly exhibit queer art is precariously balanced on the general status of the LGBTI persons. International human rights law recognises that criminalised homosexuality denies LGBTI persons’ right to dignity, privacy, as well as equal and non-discriminatory treatment. The criminalisation of homosexuality also deprives these groups of necessary and crucial protections—pertinent because of their specific vulnerability—including against arbitrary detention, torture, as well as inhumane and degrading treatment and punishment. In cases where homosexuality is punishable by death, this extreme response denies LGBTI persons the fundamental right to life. Finally, these punishments for homosexuality seriously

“The homosexuality is not mentioned in the law treating debauchery, but in Egyptian judicial system it is used against male homosexuality. Many people end up imprisoned based on this law.”

Egyptian activist, Freemuse interview, 19 July 2019

impede individuals from exercising their right to freedom of expression, association and assembly. All these factors, either directly or indirectly, impact and influence the ability of artists to express themselves—placing undue restrictions on their ability to create and promote art without fear of repercussions.

Public exposure of LGBTI-themed artworks in countries where homosexuality is criminalised is most commonly followed by moral judgment. It invariably attracts criticism as to the artists’ actual or presumed sexual orientation or gender identity, making them vulnerable to unwelcome scrutiny. However, public exposure can also result in other, more threatening, consequences. For many, exposure leads to calls for censorship, threats of violence, legal prosecution, extending to attacks on their physical integrity and in the most extreme cases, killings.

Freemuse analysis of the impact of criminalised homosexuality on artistic freedoms which are specifically related to LGBTI topics clearly reaffirmed that the situation significantly varies from one national context to another. It found that artistic freedoms for LGBTI persons and communities are not only heavily dependent on the legal, political, social, economic and cultural contexts in which they live, but also the level of support and

interaction with civil society. This is in addition to the existence of independent media willing to carry alternative narratives and stories, access to mainstream public discourses and spaces to allow for artwork to be shown and discussed, tolerance towards diversity in society, people’s ingrained attitudes towards violence, and so on.

Aside from being subject to legal prosecutions due to their sexual orientation and gender identity or expression, LGBTI artists also suffer attacks on their physical integrity. Reportedly, these attacks are carried out by both state authorities as well as non-state actors. In the interview with Freemuse, an Iranian gay filmmaker who wished to remain anonymous, spoke about the fear he was exposed to because of the intimidating tactics and actions of state police.

“On multiple occasions I have experienced hostility and harassment by the Islamic Revolutionary Guard, as well as by individuals who did not officially appear to be policemen, but for whom I had reason to believe were associated with state authorities. After a series of physical attacks and intimidation I had been exposed to, I decided to flee the country.”

Iranian filmmaker, Freemuse interview, 14 August 2019

Although victims of physical attacks remain extremely reluctant and scared to share their stories publicly—especially



Photograph from the Tanzania Mawjoudin
Queer Film Festival

“The majority of persons who face legal prosecution in Egypt are gay men and trans women. Judges and prosecutors do not understand transsexuality and they perceive transgender persons as gay men. The same is with majority of people.”

Egyptian activist, *Freemuse interview*, 19 July 2019

when it comes to being identified by their full names—human rights organisations continuously register attacks directed at LGBTI persons carried out by both state and non-state actors. These attacks are often driven by individuals’ actual or perceived sexual orientation or gender identity and expression, or because of perceptions about their physical appearance. The extent to which LGBTI persons feel endangered by physical abuse—related to their choice of clothing and the way they appear in public spaces—varies

from one to another country. For LGBTI artists, this can have a particularly damaging impact, as their artistic expression sometimes takes on specific forms of self-expression which can be related to their choice of attire.

Nearly all Freemuse interviewees from countries criminalising homosexuality testified that gay men and trans women are the most common targets of attacks perpetrated by non-state actors. In addition, Freemuse analysis shows that

the individuals who express their gender differently than what is perceived as a normative—being too feminine for a man, or too masculine for a woman—are also frequently abused. This also applies to all non-conforming people including trans men and women.⁹⁵

In Nigeria, wearing dreadlocks, jewellery, tattoos or flamboyant dressing is commonly perceived as “gay characteristics” and many men face harassment as a result.⁹⁶ In July 2017, Karar Nushi, an Iraqi actor and model studying at the Institute of Fine Arts, was tortured to death, reportedly as a result of “the way he dressed, his long hair and his platonic friendship with female actors”.⁹⁷ Writer Nour Al Nour told Freemuse that radical Islamists (who reportedly have a history of targeting and executing people due to perceived homosexuality) were believed to be behind his murder.⁹⁸

National legal framework can have significant impact on the level of violence exercised against LGBTI persons. Freemuse interviewees from Nigeria claimed that the violence and attacks targeted at LGBTI individuals intensified upon the introduction of a repressive law in 2014. They claimed that when the Same Sex Marriage (Prohibition) Act (SSMPA) was adopted, it signalled impunity for physical attacks on LGBTI persons. This included

lynching, disownment, mob violence and forceful evictions by citizens. Further, the Nigerian Police Force also used the SSMPA as a tool to blackmail and extort LGBTI persons on an extreme scale.⁹⁹ Since the introduction of the law, the legitimisation of various forms of social stigma has contributed towards increasing levels of violence and discrimination, ensuring that LGBTI individuals refrain from approaching relevant government agencies for redressal.¹⁰⁰ In May 2017, two Nigerian writers were affected by this violence. Romeo Oriogun was physically attacked and abused online after winning a prize for his LGBTI-themed poems, while Chibuihe Obi was abducted after publishing the essay *We’re Queer, We’re Here*.¹⁰¹

On the other hand, Iraq has no laws banning affirmative depiction of homosexuality, but it is nearly impossible for LGBTI artists to exercise their right to free expression on LGBTI issues. Nour Al Nour, who fled Iran, told Freemuse that she could not imagine engaging in the production of queer artworks—even within a private space—without the fear of possible repercussions.

“If caught engaging in production of LGBTI-themed artworks, apart from their confiscation [of the artworks] or prevention from exhibition, one might expect leaking this information to the public. This would lead

to death threats by religious extremists and their militia who are ruling the streets of the country.”

Nour Al Nour, Freemuse interview (online), 5 August 2019

This allegation is supported by LGBTI rights organisation IraQueer and its partners. The organisation found that in 2017, at least 220 persons were killed in Iraq because of actual or presumed homosexuality. Iraqi state authorities not only hesitate to investigate these killings, but more worryingly, stand accused of being complicit in these actions. IraQueer—located in Sweden—found government authorities and affiliated armed groups to be allegedly responsible for 53 percent of crimes and violations against LGBTI persons.¹⁰² The context in which LGBTI artists operate in Iraq—despite the absence of any laws criminalising homosexual propaganda—ensures that artists rightly fear the consequences of publicly exhibiting or promoting their work and do not even attempt to assert their artwork or their identities.

The violence connected with sexual orientation and gender identity and expression has a strong impact on LGBTI artists in most of the countries where homosexuality is criminalised. LGBTI persons produce art with the awareness of the potential consequences they might face. However, although this can be strong motivation for self-censorship, many of the artists Freemuse spoke to produce their artwork despite the fear of physical abuse.

On the other hand, several artists Freemuse interviewed in Malaysia and Lebanon felt less threatened, despite living in countries which criminalise homosexuality. Malaysian punk band Shh... Diam!, whose lead singer is a trans man,

reiterates this sentiment, elaborating that they have not suffered any form of violence or harassment. This experience, however, is rare for trans persons in Malaysia, where attacks and killings based on gender identity and expression are frequent. In cases documented by Human Rights Watch between late 2018 and early 2019, trans women who work as sexual workers were particularly vulnerable to attack.¹⁰³ Shh... Diam! members believe that they have not yet attracted negative attention given their moderate public profile. However, they fear public disapproval, with concern that local media will expose them to people who will question their sexuality or gender identities once they start getting more attention.¹⁰⁴

In addition, several Freemuse interviewees from Lebanon claimed that the violence has not been their main fear when it comes to their work as LGBTI artists. Furthermore, in Lebanon “unnatural intercourse” is publishable with up to one year in prison, but in recent judicial practice, the number of judges who refused to categorise sexual intercourse between two men as “unnatural” is growing.¹⁰⁵ However, this inconsistent application of the law means that although LGBTI persons may not be sentenced to imprisonment, they can still be arrested on the same grounds. Once they are arrested, they can face the harassment and intimidation exercised by police, especially in smaller cities. According to local human rights organisations, this results in the practice in which LGBTI persons are hesitant to report the violence that they are experiencing, fearing the possibility of arrest.¹⁰⁶

Interrelatedness between artistic freedoms and freedom of expression, association and assembly

Shrinking spaces for freedom of expression

In the past several decades, two major global trends in LGBTI-related legislation have emerged. Whilst the total number of countries criminalising homosexuality has been on the decrease, the number of countries imposing restrictions on public discussion about sexual orientation and gender identity and expression has been in perpetual increase. Since 2010, homosexuality has been decriminalised in thirteen countries.¹⁰⁷ However, this is paralleled by regressive developments in at least ten countries, which continue to criminalise homosexuality, but have additionally adopted legal provisions which

criminalise the public promotion of LGBTI rights.¹⁰⁸

Such regulations predominantly affect the activities of human rights organisations and activists who are at the forefront of advocating for LGBTI rights. The vagueness and ambiguity around what constitutes the “promotion of homosexuality” have generated institutional unease amongst these constituencies—who work closely with LGBTI groups—and fear that their work may be construed as an expression of support for same-sex relations. In a case tried before the Uganda High Court in 2014, the judge found that persons participating in an advocacy workshop on LGBTI rights held in 2012 were guilty of “promoting” or “inciting” same-sex acts. In its determination, the court added that even distributing condoms to gay and bisexual men would

“Queer art always existed in Africa, but the visibility was the problem. Suddenly, in 2016/2017 different queer artistic initiatives emerged in Nigeria and people started talking about new trend. I find it problematic to call it a trend. Queer writing always existed but was not recognised as such. Today it is easier for people to find the way to voice themselves.”

Otosirize Obi-Young, *Freemuse* interview, 12 September 2019

amount to “direct or indirect promotion of same-sex practices.”¹⁰⁹

This verdict was delivered in 2014 when the Parliament of Uganda adopted the very restrictive Anti-Homosexuality Act, penalising any attempts to promote LGBTI rights. Although the Constitutional Court annulled this act on 1 August 2014 on the grounds that it was passed in the parliament “without the requisite quorum”,¹¹⁰ Ugandan artist Brayo Bryans elaborates that the space for public discussion in Uganda has been nevertheless decimated.

“The moment we try to organise something, the Minister of Ethnicity and Integrity, Simon Lokodo, who heads the fight against LGBTI groups, ends up sending police to prevent us. In combination with censorship imposed on media reporting about LGBTI topics, we are compelled to assemble primarily in private settings.”

Brayo Bryans, *Freemuse interview*, 3 August 2019

Freemuse found that this observation was also similarly shared in countries which had witnessed the introduction of laws banning the “promotion of homosexuality”. Artistic expression amongst the LGBTI community or for LGBTI-themed artworks in these countries has been crippled. Such regulations—but also prevailing debates—which stigmatise LGBTI identities prevent artists dealing with queer experiences from producing their artwork. Many feel creatively and emotionally stunted knowing that their films face the real possibility of being banned, that prerequisite permissions required for filming or releasing films



Portrait of Brayo Bryans

Credit: Courtesy of the artist NEED PERMISSIONS

and its accompanying music will also be rejected. Many fear that books will be removed from fairs and bookstores and concerts will be banned. In such circumstances, artists feel compelled into creating work clandestinely. They remain deprived from free and equal access (as compared to other mainstream artists) to cultural institutions and networking opportunities, public spaces and audiences, as well as any form of financial support, which might be available in their country.

Kenyan national legislation imposes bans or restrictions on the basis of age-appropriateness of material, governing film and stage productions deemed to “glamorise a homosexual lifestyle”.¹¹¹ Under this regulation, in April 2018, the Kenya Film Classification Board (KFCB) refused to grant permission for the screening of the Wanuri Kahiu’s film *Rafiki* (*Friend*). In its decision, KFCB stated that the film was banned “due to its homosexual theme and clear intent to promote lesbianism in Kenya contrary to the law and

dominant values of the Kenyans.”¹¹²

Although this ban was temporarily lifted in September 2018 by the High Court of Kenya (which allowed the film to be screened for one week in local cinemas, aiming to meet criteria for the submission to the Best Foreign Language film at the 2019 Oscar Academy Awards),¹¹³ 22 in April 2020, the same court ruled that the legislative measures used to censor the film did not breach Article 33 of the Constitution of Kenya, which guarantees the freedom of expression.¹¹⁴

Local activists assert that Kenyan authorities usually do not interfere with the organisation of LGBTI-related activities and gatherings, but they attack freedom of expression on LGBTI topics exercised through film by classifying any LGBTI-related content as pornographic.

“I believe that the government wants to erase LGBTI persons from the media and other formats watched by great number of people. In this way, Kenyans can get a sense that queer people do not exist in their country. Authorities might do this in order to support their narrative—we are African, we are Kenyan, and queer is a ‘Western ideology’.”

Yvonne Oduor, *Freemuse interview*, 31 July 2019

Apart from adversely impacting any possibilities for LGBTI persons to publicly exhibit their work, the laws banning the “promotion of homosexuality” subsequently also diminish the space for media discussion on LGBTI-themed artwork. On 30 September 2017, Egypt’s Supreme Council for Media Regulation published a statement on “prohibiting the appearance of homosexuals or their slogans in the media”.¹¹⁵ In response, Mahmoud Khaled, a visual artist from Cairo, commented that the measure ended up silencing artists. He added that the regulation eliminates any chance for interaction with the media because “journalists can be perceived as ‘promoting homosexuality’ making them subject to shutting down”.¹¹⁶

In 2014, Nigeria adopted a regressive legal law—the Same Sex Marriage (Prohibition) Act which prescribes 14 years imprisonment for any persons “who enters into a same sex marriage contract or civil union”,¹¹⁷ as well as penalises any “public show of same sex amorous relationship”.¹¹⁸ Although meant to suppress public discussion about LGBTI experiences, these provisions sparked considerable



protest and resistance, including by artists themselves. One of the initiatives directly connected with the adoption of this law was the collective called “14”—named after the maximum prison penalty for the violation of this law. Established in 2016, the collective published a two-volume anthology of queer literature in 2017 and 2018¹¹⁹ and contributed to a greater visibility of already created art threatening SOGIESC issues.

Challenges in exercising freedom of association

In many countries which criminalise homosexuality, major queer cultural activities take place within the scope of programs run by LGBTI and human rights organisations. In order to organise such activities, these institutions need to be officially registered in their respective countries. The registration gives them the basic preconditions to operate legally, open bank accounts and publicly fundraise for their activities. However, in many countries national legislations prevent LGBTI persons and groups from openly engaging in public activities. Under such circumstances, LGBTI organisations function clandestinely—operating in absence of formal registrations, or by registering the organisation without specifically mentioning sexual orientation and gender identity within its mandate.¹²⁰ Many are compelled to devise and implement alternative fundraising strategies and communicate with their constituencies using secure, secret and alternative modes of communication.

National legislations which criminalise

homosexuality often penalise civil society organisations by specifically banning the registration of entities which deal with LGBTI rights or those that mention the terms ‘gay’, ‘lesbian’, ‘bisexual’, ‘transgender’ or ‘intersex’ in their names. In order to avert the possibility of being refused registration, many associations opt for neutral terms and proffer vague definitions in their mandates, registering themselves as organisations which deal more widely with human rights, vulnerable groups, health and education issues.¹²¹

However, there are several legal cases (initiated before national courts) in which determinations have ruled against provisions found to unlawfully restrict freedom of association for LGBTI persons. The downside is that court rulings do not necessarily function as precedents to be applied for all organisations. Although on 22 March 2019, the Court of Appeal of Kenya ruled that the National Gay and Lesbian Human Rights Commission should be allowed to officially register,¹²² the organisation Gay and Lesbian Coalition of Kenya (GALCK) has not yet been officially registered.¹²³

Ambiguous situations related to registration of LGBTI associations are also present in Tunisia. The organisation Mawjoudin was registered in 2014 as a non-governmental organisation dealing with the wider- and less-contentious mandate of gender and sexuality. In 2018, however, they changed their status and started officially working on issues specifically related to sexual orientation and gender identity, allowing them to operate freely—particularly in remote areas.¹²⁴

gender identity, allowing them to operate freely—particularly in remote areas.¹²⁵

Unlike them, the organisation SHAMS had the opposite experience. Although registered in May 2015 as a non-governmental organisation working to support sexual and gender minorities, the Tunis-based SHAMS association still struggled to operate throughout most of 2019 as government officials tried to unlawfully interfere with their work, engaging in relentless attempts to challenge the registration of the organisation.¹²⁶

There are several countries in which it is virtually impossible to register LGBTI organisations, despite human rights organisations' attempts to legally challenge discriminatory national legislation. Pamela Adie from the Lesbian Equality and Empowerment Initiative in Nigeria filed a suit challenging the Corporate Affairs Commission's (CAC) refusal to register her organisation because of the word "lesbian" in its title. In November 2018, the Abuja Division of the Federal High

Court dismissed the suit as lacking merit and ruled that the CAC decision was in compliance with the 2004 Companies and Allied Matters Act (CAMA) Cap C20 Laws of Federation of Nigeria. Justice Nnamdi Dimgba cited the Section 30(1)(c) of CAMA which reads "No company shall be registered under this Act by a name which in the opinion of the Commission is capable of being misleading as to the nature or extent of its activities or is undesirable, offensive or otherwise contrary to public policy."¹²⁷

An activist from Egypt (who wished to remain anonymous) told Freemuse that their organisation—which deals explicitly with LGBTI rights—cannot be officially registered. The inability to secure registration precludes them from being able to apply for, or secure, funds. Since the lack of registration prevents them from opening bank accounts, when they manage to secure some financial



support—mainly from embassies and foreign foundations—they are forced to travel outside of the country to physically collect the money.¹²⁸

“If we would have a bank account in Egypt, we would be monitored and might face some troubles. The draconian 2017 civil society law prescribed imprisonment and punishment for receiving financial support from abroad.”

Egyptian activist, *Freemuse interview*, 19 July 2019

This law was amended in July 2019, but it still includes the requirement for government approval when receiving funds from abroad. It also sets a fine for organisations which spend their funds in ways that the government deems to be “activities other than specified or in violation of laws and regulations” or for “refusing

to provide any data or information the government requests about the organisation’s activities.”¹²⁹

In addition, Freemuse spoke to two activists from Sudan (who wished to remain anonymous) whose organisation also functions underground. They claimed that at least three organisations in Sudan are forced to operate in this way—illegally and with no bank accounts.¹³⁰ However, despite these difficulties, they continue to overcome unnecessary hurdles and conduct their activities. In 2018, members of the local LGBTI community and their allies celebrated the IDAHOTB day in the premises of the Dutch Embassy in the capital city Khartoum. On this occasion the screening of the documentary film *You Are Not Alone* and photo exhibition *Ownership Certificate* were organised.¹³¹


Ownership Certificate photo exhibition

Credit: Eythar Khaleel

These hurdles prevent organisations from establishing and institutionalising







long-term stability in their project work. Such situations also affect their ability to engage with artists and support or promote their work within their organisational activities. For this reason, many artists are compelled to work with virtually no financial support. In Nigeria, Freemuse documented several projects working in the sphere of queer arts and culture, which document LGBTI voices through different platforms. Most of these have been created on a voluntary basis. Freemuse spoke to Chibuihe Obi, one of the editors of *Kabaka*, a queer literature magazine, who underlined that they do not receive financial support for their publication.¹³² Writer Oteosirieze Obi-Young told Freemuse that LGBTI artists cannot officially apply for money for these initiatives nor write project proposals because it might be considered as “promoting homosexuality” punishable under the Same-Sex Marriage (Prohibition) Act.¹³³ However, despite the fear of legal repercussions, there are many ongoing activities—most of which operate online to circumvent any reliance on steady financial resources.

Other artists adopted alternative strategies to fundraise. This includes using entities registered abroad. Nigerian writer and activist Unoma Azuah, who fled her home country in 1990s, uses Cooking Pot Books, a publisher she established in Tennessee, USA, for publishing books with LGBTI themes related to Nigeria. These include *Blessed Body: Secret Lives of LGBT Nigerians* (2016) and *Mounting the Moon: Queer Nigerian Poems* (2018). Financial resources for the subsequent anthology, written jointly with Michelle Omas, were assured through a crowdfunding campaign.¹³⁴

Artistic expression against all odds

Producing art in hiding

In countries which criminalise homosexuality, artists face many problems in the process of producing queer art. These obstacles can vary depending on the artform in question. While writers, painters and composers may solely create their work in the safety of personal or private spaces, film and theatre producers are unable to operate in this way—often requiring huge teams to work in different locations. These necessary requirements mean that artistic projects can hardly be produced clandestinely and essentially entail risks for anyone associated with the project.

Those who work on LGBTI-themed films report that they routinely face hurdles in securing obligatory licenses required for filming. Given the likelihood that they will not be granted these prerequisite licenses—because of existing laws criminalising homosexuality as well as legal provisions banning “homosexual

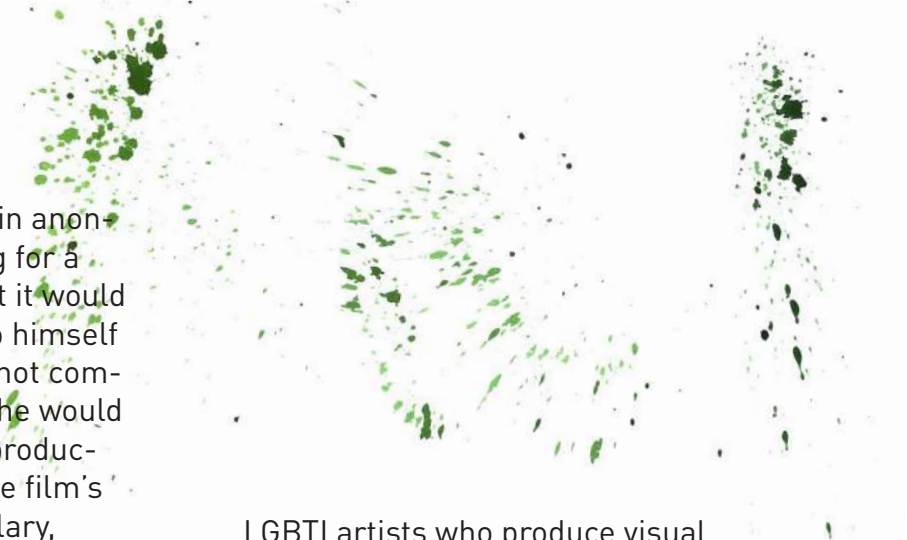
propaganda”—some have reported that they avoid even applying. Being aware that they would be not be able to obtain the license or legally screen films in their country, film crews opt for creating these without the authorities’ approval.¹³⁵

Sudanese law requires the obtainment of formal authorisation for filming in public unless working for an official media outlet. Aware of the unlikelihood of securing the prerequisite permissions, the production crew of the documentary film *Queer Voices from Sudan* made alternative arrangements. During digital security trainings organised before they started working on the film, the crew developed detailed plans on how to film on location without being caught and enacted various negative scenarios so that they could identify what they needed to do to if caught filming without official approval.¹³⁶ When a cameraman was subsequently arrested by authorities, he was prepared to hand over fake camera memory cards.¹³⁷

Similarly, when working on his first LGBTI-themed film in 2005, an Iranian

“Despite the fact that our lives have been criminalised and we are not allowed to share and publish anything that expresses who we are, or anything that speaks to our reality, we have created our own outlets and platforms as a space for ourselves.”

Unoma Azuah, Freemuse interview (online), 25 July 2019



filmmaker (who wished to remain anonymous) decided against applying for a license because he believed that it would attract unnecessary exposure to himself and his work. However, this did not completely protect him from issues he would later face in the process of the production. Once the editor learnt of the film's theme, he asked for a higher salary, apprehensive about his involvement. The filmmaker was also forced to engage in subterfuge. Only the main protagonist (whose life inspired the film) knew the entire plot. Additional actors who were less essential to the plot were deliberately kept uninformed about the storyline and never saw the film.

Licenses are similarly difficult to secure for those working in the music industry. However, in order to avoid being dependent on record labels, musicians are increasingly releasing their music digitally. Malaysian singer Alex Bong uses this as the sole strategy for releasing his songs and finances his own projects to ensure his creative independence.¹³⁸ Malaysian band Shh... Diam! also release their music on their own label to avoid scrutiny from state regulatory bodies.¹³⁹

Releasing music in countries where homosexuality is illegal is particularly challenging if musicians do not have a regular trusted set of associates to work with. Ugandan artist Bryans shared how he struggled to find people willing to collaborate with him.

"Since no professional studio is willing to work with me because of the subject I am tackling, I produce my music in my bedroom. There are people in the music industry who respect me, tell me that I am talented and that they love my music, but in cooperating with me, they risk losing their funds."

Brayo Bryans, *Freemuse interview*, 3 august 2019

LGBTI artists who produce visual artworks or literature are also often forced to apply security measures and caution to ensure that their work is safe from being confiscated or raided by authorities. Wesam AlMadani, a writer who fled from Gaza, explained how she started working on her book about lesbians in Arab countries five years ago. In the process of searching for lesbians from the region, some people outside trusted circles found out about her intention and she became the target of violent threats. She feared that officials from Hamas would raid her house (which she shared with her extended family and children) and find her work. Given this alarming possibility, AlMadani regularly shared copies of her work with trusted friends and deleted it off her computer. By implementing this strategy, AlMadani felt reassured, safe in the knowledge that if something happened to her, they could possibly find ways of publishing it.¹⁴⁰

Access and push back: Queer art in public spaces

Despite attempts to confine queer art out of the public sphere, Freemuse has observed many ingenious ways artists are able to access the public domain to share their work. Sometimes the promotion of art treating LGBTI issues is subtle and

in other instances it is covert. In very rare occasions, LGBTI artistic expression has been promoted and presented overtly.

Lebanese photographer Munir Abdallah has been taking nude male pictures for most of his professional career. Although the photographer did not expect that he would ever exhibit in his home country, in November 2018, he held his first ever solo exhibition 'Fleeting Acts' at the private ARTLAB Gallery in Lebanese photographer Munir Abdallah has been taking nude male pictures for most of his professional career. Although the photographer did not expect that he would ever exhibit in his home country, in November 2018, he held his first ever solo exhibition *Fleeting Acts* at the private ARTLAB Gallery in Beirut.¹⁴¹ Apart from several surprising or mixed reactions, the artist did not face any major negative consequences, despite homosexuality being criminalised in Lebanon.¹⁴²

However, in societies where homosexuality is illegal, these scenarios are extremely rare. Even in Lebanon, a country perceived to be relatively open to queer art, artists' reports on problems in securing access to mainstream venues, publishers and networks are very common.

In 2018, following months of exhausting negotiations, writer Souhaib Ayoub managed to publish his first homosexual erotic novel *A man of satin* in Beirut. The writer told Freemuse that he struggled to find a publisher for this book because of its topic which centres on homosexuality.

"Even with this publisher, it took a long time to figure out how the book would be published. Initially, they requested to publish it with the cover enveloped in a plastic bag. When I refused this, we discussed putting age restrictions on the cover. That was also unacceptable for me".

Souhaib Ayoub, *Freemuse interview*, 13 August 2019

Ultimately, a French publishing house based in Beirut agreed to print the book, but Ayoub reports that they did not promote it. Concerned that the book would be confiscated by police, the publisher decided against promoting it at book fairs across the country. The book is, however, available in a handful of bookstores.

Even well-established artists sometimes struggle to promote their art in public spaces. Mashrou' Leila is a Lebanese indie rock band—whose lead singer is openly gay—which has released some of songs centring on homosexuality. Although they have been blacklisted in Egypt and had two of their concerts banned in Jordan, they had avoided censorship in their home country for some time. However, in July 2019, the organisers of one of the Lebanon's most famous cultural festivals—Byblos International Festival—cancelled the band's concert scheduled for 9 August. The performance was cancelled reportedly to avoid "bloodshed" following a week of threats from individuals and Christian groups.¹⁴³ Instead of having these death threats against them investigated, two band members were summoned by the public prosecutor to testify for "insulting religious sentiments". Although no official charges were filed, Judge Ghada Aoun ordered the band to pledge to remove "offensive"

“From the very beginning I needed to be an actor myself to find the way to work on this film as well as later to screen it.”

Egyptian activist, *Freemuse interview*, 19 July 2019

content from their social media accounts (a meme of the Virgin Mary with her head replaced with the pop musician Madonna published on the band’s lead singer Hamed Sinno’s Twitter feed in 2015), issue a public apology and remove songs deemed to be offensive to Christianity from their concert setlists.¹⁴⁴

Freemuse research determines that in countries criminalising homosexuality, some artists find inventive ways to promote their LGBTI-related artwork in public spaces despite the risk of negative consequences. The Iranian filmmaker (who wished to remain anonymous) elaborated that he screened his first LGBTI-related film at the premises of a university in his hometown. In his communication with university management, he presented the movie’s theme as centring on the damaging effects of drugs, alluding to certain sequences within the movie he believed would ensure the screening was granted. Although he did not experience any problems at the premiere (aside from verbal abuse from some audience members after the screening), the artist believes that this incident put him on the radar of Iranian authorities. He alleges that they continue to follow what he does.

In 2012, when Ugandan artist Brayo Bryans was a member of the performing art group *The Talented Ugandan Kuchus*

(the term “kuchus” originates from Swahili and is used to refer to LGBTI persons), the group produced the LGBTI show *Alighting the Shadows—We are One*. In order to stage the show at the National Theatre in Kampala, the play crew lied to the theatre’s management about its content.

However, their performance was interrupted by police midway through.¹⁴⁵ At the same time, whilst British producer David Cecil was waiting for permission to stage his play *The River and the Mountain* (dealing with the difficulties of being gay in Uganda) at the Kampala National Theatre, the play was performed in two other smaller theatres without permission. Some days later, Cecil was informed that the Ugandan Minister of State for Ethics and Integrity Simon Lokodo had denied permission for the play to be staged at the larger national theatre on the grounds that it “promoted homosexuality” and the producer was arrested because of other two performances.¹⁴⁶ Although the charges for “disobeying lawful orders” were dropped, in February 2013, Cecil was deported from Uganda as an “undesirable person”.¹⁴⁷

The inhospitable environment in which LGBTI artists survive often compels them to seek alternative spaces—even if this means leaving their country. Nour al Nour is one such artist. When living in Iraq writing about LGBTI experiences, she was never able to publish any of her work. She explained to Freemuse that she decided to leave her home country to finally publish her works. The writer moved to Lebanon, where she published her first book.¹⁴⁸

Some other artists Freemuse interviewed fled their home countries due to death threats. When people learned that Wesam AlMadani was writing a non-fiction novel about lesbians in Muslim countries (detailing how these women have either been killed or committed suicide) she received multiple death threats.¹⁴⁹ When this pressure became overwhelming, she applied for the ICORN Cities of Refuge program and fled the country.¹⁵⁰ While living in Norway, she finished her book and is now searching for a publisher.

In 2018, when the Iranian filmmaker (who wished to remain anonymous) was caught by authorities filming in a park for his LGBTI-themed production, his camera was confiscated and he was instructed to pick it up from the premises of The Islamic Revolutionary Guard Corps. He was able to retrieve the camera, but not memory card. When he returned home to his parents, they had already been informed that he was found filming LGBTI-related content. He was physically attacked by two unidentified men whilst walking in Tehran a few days later. As this incident of street violence was the second over a span of several years, the filmmaker decided to leave Iran and continue telling LGBTI-related stories in safer spaces.¹⁵¹

Attacks on queer festivals

In many countries in which homosexuality is illegal, SOGIESC-related activities are often organised using high-level security precautions. Due

to the fear that state authorities will raid these events, as well as the possibility of violent attacks by non-state groups, LGBTI organisations are forced to pay special attention to ensuring their events do not impose security threats to their organisers or audiences. This determines the way they plan, promote and advertise their activities. Sometimes they are forced to place these gatherings in closed settings, inviting only known allies and supportive representatives of civil society organisations, as well as human rights defenders. Announcements for these events often do not mention addresses or times and instead rely on word-to-mouth channels to communicate these details.¹⁵²

These precautions are also applied to cultural activities related to LGBTI issues. While measures for keeping these events secret require extensive planning, it is especially challenging for festivals. When organising the first Queer Kampala International Film Festival held in December 2016, requirements included “screening of attendees [and] keeping the venues secret and mobile daily”.¹⁵³ Essentially, different venues were used for morning and evening screenings, and the locations were only announced shortly before the event. Despite these measures, police raided one of the screenings held during the second festival and ordered that the entire festival be shut down alleging that they found “pornographic” films.¹⁵⁴

“We need to promote our activities, but at the same time protect the identities of people behind these activities.”

Egyptian activist, *Freemuse interview*, 19 July 2019

Organisers of Tunisia's Mawjoudin Queer Film Festival are also careful and use rigorous security measures, especially as audiences attending such events are from local communities and want to avoid creating problems with their families.

¹⁵⁵They hire friendly security and rent safe spaces. For the inaugural festival in 2018, the opening was held at the French Institute in Tunis, while the rest of the program was organised in a theatre known to be friendly to the LGBTI community. Organisers also followed a strict protocol banning audience members from taking pictures or video during festival proceedings.

Violations of LGBTI-related artistic expression

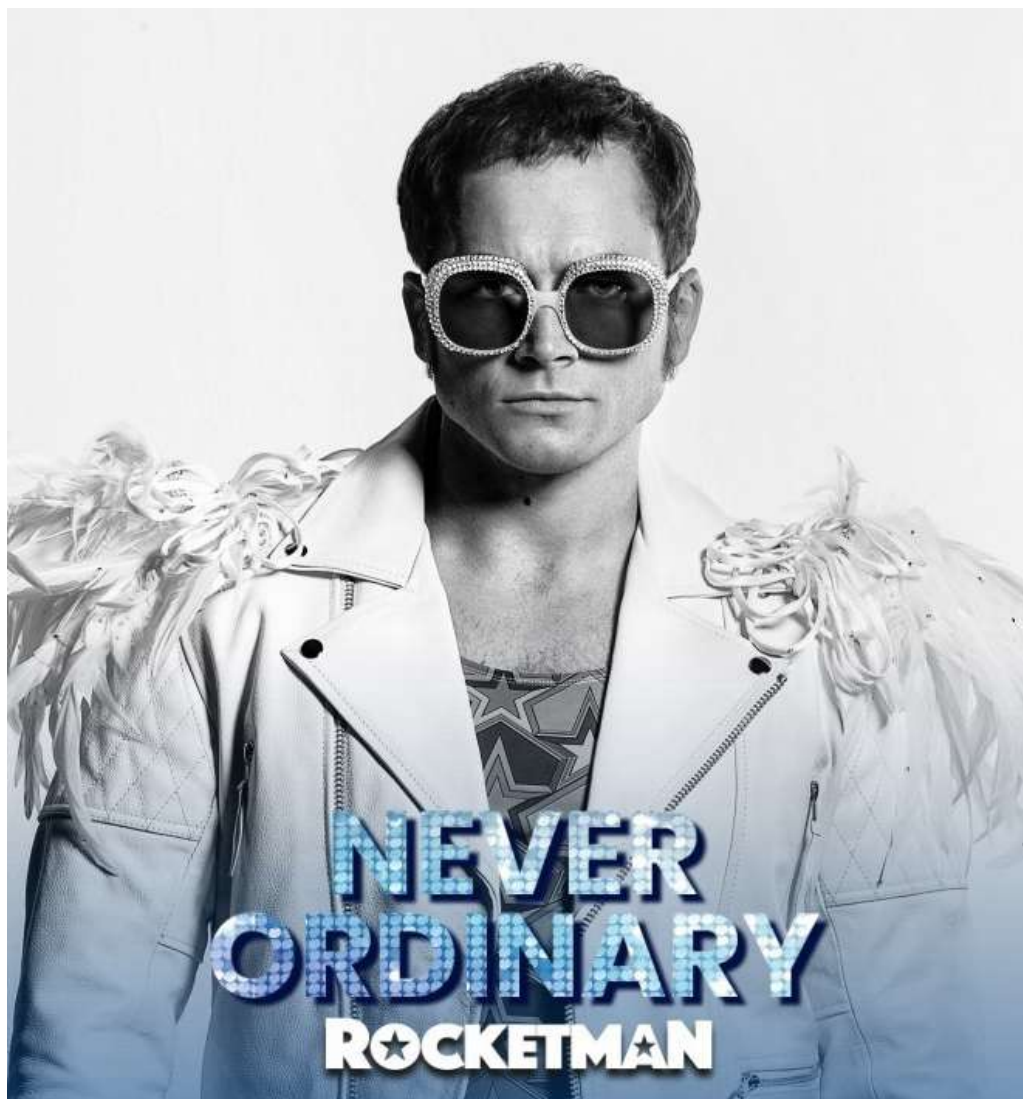
In countries criminalising homosexuality, LGBTI-themed artworks are rarely displayed for public view by mainstream audiences. They are instead exhibited within small, established circles of LGBTI community members and allies. Unless promoted in the digital space—under the real names of the artists or pseudonyms—these artworks usually occupy private and secretive spaces. If not promoted in this clandestine way, artists risk being subject to serious repercussions.

Over the course of past five years, Freemuse has

documented many LGBTI films (which have been either promoted, or planned to screen in mainstream, commercial theatres or on television stations) have been censored. This censorship has often been exercised by state censorship bodies, either through a refusal to grant permission to screen these films or by cutting scenes deemed 'inappropriate' for their viewers. The most commonly, films in which gay and lesbian themes were central to the plot are targeted.

In 2020, the Disney film *Onward*, with the first openly lesbian character—a purple cyclops officer named Specter, was banned in Kuwait, Oman, Qatar and Saudi Arabia.¹⁵⁶ In June 2019, the *Rocketman*, which focused on the life of the English pop musician Elton John, was

Rocketman, the biopic centering on openly gay musician Elton John was censored in numerous countries.



banned outright in Samoa and Egypt.¹⁵⁷ In 2018, *Call me by your name* was banned from being screened in Tunisia, while Malaysian authorities cut more than 20 minutes of LGBTI scenes from the *Bohemian Rhapsody*, biopic about LGBTI icon Freddie Mercury, a lead vocalist of the British rock band Queen.¹⁵⁸

The practice of either banning or altering scenes in LGBTI films has been common in countries which criminalise homosexuality in previous years.

Another award-winning film, *The Danish Girl* (inspired by the story of Lili Elbe, one of the first people to undergo a sex reassignment surgery) was banned in India in 2017 and Bahrain, Jordan, Kuwait, Oman, Qatar and UAE in 2016.¹⁵⁹ In 2017, American musical romantic fantasy film *Beauty and the Beast*, featuring Disney's first ever openly gay character LeFou was banned in Kuwait and Malaysia, while authorities attempted the same in Singapore.¹⁶⁰

Aside from international films, locally produced films featuring LGBTI themes are also regularly censored, and in some countries, subjected to increased levels of scrutiny. In November 2018, the Lebanese censorship body banned a short film by director Laura El Alam, *Nocturnal Deconstruction*, from being screened at the Beirut Maskoon Fantastic Film Festival, despite it being listed in the competition program for the best film.¹⁶¹ Although banned for "linking drug abuse to sexuality", the film remained in the main festival competition. Joseph Aoun, a LGBTI activist from Lebanon, told Freemuse that he finds some decisions of local censorship body hypocritical—specifically in cutting gay and sex scenes from international films and letting them

be screened, while at the same time completely banning locally produced films.¹⁶²

Aside from banning films, state authorities in countries criminalising homosexuality employ other forms of censorship in order to target local and foreign artists vocal about LGBTI issues. In September 2018, Mooreyameen Mohamad's photo exhibition *Stripes and Strokes* was censored under the orders of the Malaysian Minister for Islamic Affairs, Mujahid Rawa. Following a smear campaign on social media, Rawa ordered that organisers of the George Town Festival—funded by the state and held in the northern state of Penang—to remove two portraits of LGBTI activists.¹⁶³ These portraits were of Nisha Ayub, a transgender activist and Pang Khee Teik, co-founder of the human rights festival Seksualiti Merdeka.

This exhibition marked 60 years of Malaysian independence and it featured a series of photographs of different Malaysians posing with the country's flag. The artist had planned to include 60 Malaysians whom he "had come to respect, admire and love in all sorts of ways". He elaborated that he felt both Ayub and Khee Teik were prime examples of individuals who he had great respect for, in part because of their outstanding contributions to their respective fields. The artist told Freemuse that during the preparation for the exhibition, he thought there would be issues regarding the inclusion of images belonging to politicians, rather than those of the LGBTI persons/activists. The potential exclusion of both Ayub and Khee Teik based on their identity or proximity to LGBTI and LGBTI issues was never one of the artist's considerations, believing that they were unthreatening to the government's



Stars and stripes photo exhibition
Credit: Mooreyameen Mohamad

“The unreasonable censorship imposed by the Malaysian government is a major setback to the advocacy of diversity and inclusion, which should be embraced and protected at all costs.”

Denise Ho, *Twitter*, 15 February 2018

sensitivities or sensibilities.¹⁶⁴

Apart from direct acts of censorship, LGBTI artists are also subject to travel restrictions. When the Malaysian government denied Hong Kong pop star Denise Ho a permit to perform in Kuala Lumpur in February 2018, this outspoken LGBTI activist and openly lesbian artist posted the information about the government’s decision on her social media profiles. She explained that the concert, scheduled for 14 April 2018, was cancelled because her application for a work visa was denied, allegedly “because she is an active supporter of the LGBT community”. However, the Malaysian Ministry of Communications and Multimedia provided an ambiguous explanation of its decision, stating, “there are a number of issues needed to be addressed if the artist is brought in for the performance in the country”.¹⁶⁵

Freemuse research has shown that censorship is the most frequently exercised form of suppression of artistic freedom tackling LGBTI issues in countries which criminalise homosexuality. However, despite fewer queer

cultural activities organised in these contexts, some artists and audience members have experienced severe violations. In the aftermath of Mashrou’ Leila’s concert held in Cairo on 22 September

2017, Egyptian police arrested at least 75 people on charges of “inciting immorality”, mostly by identifying them through video footage from the concert and dating apps.¹⁶⁶ This massive repercussion was incited by the gesture of two activists who waved a rainbow flag during the concert. Amnesty International reported that whilst in detention, some of those arrested were exposed to forced anal examinations, in an alleged attempt by the Egyptian Forensic Medicine Authority to “determine participation in same-sex intercourse”.¹⁶⁷ This practice has been recognised as a form of cruel, degrading, and inhuman treatment which can rise to the level of torture.

An activist Freemuse spoke with (who wished to remain anonymous) elaborated that most of those arrested were tried by civil courts, and while some were released, others were sentenced to a few months in prison.¹⁶⁸ The two

“Although major crackdown on LGBTI rights occurred after the Mashrou’ Leila concert, arrests are going on right now targeting high number of people. However, media is not reporting about it now.”

Egyptian activist, *Freemuse interview*, 19 July 2019

individuals who waived the flag—Ahmed Alaa and Sarah Hegazi—were prosecuted under national security legislation and before military courts. Activist Sarah Hegazi spoke about the torture she was exposed to in detention by members of the Egyptian police, who used electric shocks and solitary confinement on her.¹⁶⁹ After a three-month long detention, they were released on bail and soon after both fled to Canada. On 14 June 2020, Sarah Hegazi died by suicide.

In the aftermath of this concert, the authorities intensified their crackdown on the LGBTI community. Egypt's Musicians Syndicate banned Mashrou' Leila from performing in the country, whilst the Supreme Council for Media Regulation ordered a media blackout on any form of support to the LGBT community, calling homosexuality a "shameful disease." They further added that the only way homosexuals could appear in the media is if they admit their "non-acceptable behaviour" and "show repentance" in public.¹⁷⁰

On 1 June 2017, queer writer Chibuihe Obi was abducted in Nigeria. The writer told Freemuse that he believes that his abduction was directly connected with his essay *We're Queer, We're Here* published on the platform Brittle Paper on 17 May 2017—the IDAHOTB day.¹⁷¹ In this essay, he elaborates on the homophobia he experienced in Nigeria.

"At that time, I was very active on social media. I shared my essay on Facebook and it went viral. People were sharing it and mentioning me. I was not very

cautious and never thought that it would have these consequences. I thought it was happening on the internet."

Chibuihe Obi, *Freemuse interview*, 12 September 2019

Obi was released three days after his abduction by unknown persons, during which he was interrogated on a number of subjects, including his writings. He told Freemuse that local organisations dealing with LGBTI issues were involved in communicating with police to securing his release. They advised him not to share the reasons for his abduction with the state authorities in order to prevent his further harassment. After his abduction, Obi stopped attending public events in his home country. The writer believes that whilst the abductors' intentions were not to cause him physical harm, but instead, they wanted to scare him, and more importantly, to silence him.

Image of Nigerian writer Chibuihe Obi

Credit: Courtesy of the artist





Linn da Quebrada
Credit: Marie Rouge

5

CHAPTER 5: ARTISTIC FREEDOMS IN COUNTRIES WHERE
HOMOSEXUALITY IS LEGAL

In Chapter 5, Freemuse research explores the silencing of LGBTI artists in countries where homosexuality is legal, highlighting the significant hurdles they encounter in accessing their right to free and unhindered expression. Freemuse determined that although same-sex intercourse is not punishable by the law in these countries, many governments struggle to assure the necessary conditions to enable access of LGBTI artists and queer art to public spaces. Furthermore, the trend of the emergence of a series of laws banning the affirmative depiction of homosexuality has been particularly harmful. Apart from negatively affecting the possibilities for the promotion of LGBTI-themed artworks in public spaces—particularly in or around spaces in which minors gather or in the digital realm—these laws have also had a chilling effect on numerous cultural institutions' willingness to engage in production or promotion of LGBTI art.

Linn da Quebrada
Credit: DAMOTTA

In countries where homosexuality remains legal, LGBTI artistic expression is also being increasingly impaired by prevailing notions of “traditional values”, conservative religious beliefs, as well as emerging contemporary norms for what constitutes public morality. Both state and non-state actors are using these grounds as means for limiting or suppressing artistic voices tackling LGBTI experiences. In this chapter, Freemuse expresses concern about the particularly negative impact of the emergence of populist regimes across the globe which commonly target LGBTI rights as their inaugural action.

The chapter presents trends of violations of freedom of artistic expression in countries which have enacted laws banning “homosexual propaganda”, and analyses the state of artistic freedoms in countries with no legal obstacles for the enjoyment of freedom of expression related to LGBTI issues. Although the national legislative framework constitutes a significant factor

which determines the atmosphere in which queer art has been promoted, Freemuse research shows that the lack of legal obstacles does not necessarily create an environment in which LGBTI-related freedom of artistic expression is unhinderedly exercised. Apart from the varying level of willingness of the state authorities to provide spaces for LGBTI voices to be heard in public discourse (manifested, among other ways, through artists' access to financial support and state-funded cultural institutions), artists are also directly silenced by different governmental bodies.



An alarming trend of political radicalisation and its impact on the place of SOGIESC issues in public space

“People are disappointed with recent political regimes and they look for someone to blame. Anyone who is charismatic, populist and creates the discourse of “the other” who holds the guilt gets their support. In such atmosphere LGBTI persons are an easy target.”

Daniela Marin Platero, *Freemuse interview*, 1 August 2019

As of September 2020, homosexuality is legal in 123 UN member states. In most, it was decriminalised over the past five decades. The development of relevant international human rights laws, as well as the efforts of human rights and LGBTI movements globally, who have relentlessly campaigned for decriminalisation, have contributed significantly to this process. However, the legal protection of LGBTI rights nowadays still significantly differs between regions.

The contribution of some regional human rights organisations in setting standards for the level of protection of LGBTI rights has been important. In 1980s, the European Court for Human Rights (ECtHR) established a legal standard which prohibited governments from interfering with the sexual orientation of their citizens. This had a significant impact on the decriminalisation of homosexuality and on the development of additional legal provisions for the protection of

LGBTI persons in the framework of the Council of Europe (CoE).¹⁷² It further influenced many member states to amend national legislations and abide to any new standard established in the framework of this regional mechanism. However, although homosexuality has been legal in all member states of the CoE, additional legal standards are yet to be fully adopted.

Similarly, the Inter-American Commission on Human Rights and the subsequently established Inter-American Court of Human Rights, play a significant role in promoting LGBTI rights in Northern and Latin America (primarily among members of the Organisation of American States), by being determined to push for improvements to legal protections for LGBTI persons.¹⁷³ However, in practice, the power of the American and European human rights protection systems to advocate for the actual amendments in existing national

“When I am censored by people from the LGBTI movement itself, I realize how much dialogue is still needed. And how much we still have to work to be more cohesive, despite differences among us.”

Linn da Quebrada, *Freemuse interview (online)*, 20 August 2019

legislations has been different. Apart from Belarus, all European countries are members of the CoE, signatories to the European Convention on Human Rights and do not criminalise homosexuality. Comparatively, only 25 out of 34 members of the Organisation of American States have ratified the American Convention on Human Rights, but four continue to criminalise homosexuality.¹⁷⁴

Other geographical regions—Africa, Asia, and Oceania—also do not have coherent regional policies on LGBTI rights. Furthermore, regional mechanisms for the protection of human rights in Asia and Oceania do not exist, which prevents crucial regional cooperation on key human rights issues. Violations associated with the criminalisation of homosexuality are not seen as a priority, which results in a lack of regional consensus on the need for its legalisation. In all these regions, there is still a significant number of countries which criminalise homosexuality: in Africa 33 out of 54, in Asia 22 out of 42 countries, while in Oceania 6 out of 14.

However, despite all of the positive trends in protecting LGBTI rights achieved in past decades and the constant increase in the number of countries which legalise same-sex relations, Freemuse recent research registered the emerging backlash against LGBTI rights across the globe, largely influenced by the rise of populist regimes. Apart from those countries where groups opposing “gender ideology” have been present for decades

(for example Austria, Costa Rica, France or Poland), this backlash has also been registered in countries which were understood to be pioneers in their commitment to improve SOGIESC rights.

In many countries, the need to fight against “gender ideology” has brought together conservative politicians, civil society and churches.¹⁷⁵ Combined with the efforts of transnational movements such as *Con mis hijos no te metas* (*Don’t mess with my children*), they push against inclusive education and dictate how public spaces should be used.¹⁷⁶ The accusation that “gender ideology” has insinuated itself into mainstream USA politics¹⁷⁷ is evident when observing the UN meeting on social, humanitarian and cultural rights held in October 2018, during which the American administration attempted to remove the word “gender” from UN documents. They instead advocated that the term is replaced with “woman”, arguing against treating gender as an individual way of self-expression rather than an unchangeable biological fact.¹⁷⁸

Human rights organisations have made similar observations about developments in Brazil where conservative right-wing politics are jettisoning LGBTI rights. Since the last presidential elections in which the conservative politician Jair Bolsonaro was elected, LGBTI persons have come under significant attack. Linn da Quebrada, trans woman singer and performer from São Paulo, believes that there has always been an element of



Linn da Quebrada
Credit: DAMOTTA



Özgürcan Taşçı

In 2018, Özgürcan Taşçı intended to enter the Istanbul metro with his large-framed painting, but he was forced by metro security to cover it because they found it “not suitable to public moral”.

Credit: Courtesy of Özgürcan Taşçı

political and social conservatism in her country, but that politicians now increasingly act on fear. She elaborated that tense political environments, such as that being witnessed in Brazil, are disabling individuals from openly speaking on issues they are facing, what leads to censorship. The singer told Freemuse that in the beginning of August 2019, her participation at the João Pessoa Pride Parade in Paraíba was cancelled.¹⁷⁹

“Mainly because of my style and topics my speech triggers, recently I have been facing difficulties in accessing some spaces, including LGBTI spaces. They resist hiring me because of the political moment we are living in. They do not want to feel threatened with losing financial support.”

Linn da Quebrada, *Freemuse interview (online)*, 20 August 2019

In Turkey, political instability and the 2016 attempted coup continue to have detrimental impacts on the rights of LGBTI communities. The lack of legal protections for LGBTI persons in national legislation during the state of emergency enabled the authorities to disproportionately repress LGBTI persons.¹⁸⁰ This is compounded by the impunity afforded to perpetrators of hate crimes. Relying on conservative segments of Turkish society imposes these groups to moral judgement on the grounds of religion and “traditional family values”. Further, the current regime extensively uses the political crisis to attack LGBTI advocacy groups undermining their credibility.

Freemuse determined that in many other



countries with legalised homosexuality, LGBTI persons are under the constant threat of violence. In some instances, there has been a resurgence in attacks. For example, gay men have been facing renewed levels of violence in the Russian Chechen Republic. Since 2017, there has been a “vicious large-scale anti-gay purge”, resulting in torture and killings.¹⁸¹ Gay men and trans women in central America—El Salvador, Guatemala, Honduras—are also frequently subjected to violence.¹⁸² In October 2018, police authorities in Indonesia subjected local LGBTI communities to a series of arrests and public humiliations.¹⁸³ Under the recent political crises in Venezuela, LGBTI groups have been declared enemies of the ruling Nicolás Maduro’s regime, heightening their existing vulnerability.¹⁸⁴

Despite decriminalised homosexuality, LGBTI groups in many of these countries are not able to fully and equally exercise their rights to freedom of expression, association and assembly. Over the past three years, Freemuse documented dozens of cases in which LGBTI artists have faced the rejections of their requests for the release of films, books and other artworks. These violations occur in different countries with differing levels of protection for LGBTI rights, but they all have a detrimental impact on LGBTI individuals wishing to exercise their rights to freedom of artistic expression. Although they are more frequently present in countries where national legislation bans affirmative depiction of LGBTI communities, they can still be traced back to any country where homosexuality is legal.

Artistic expression in countries with laws restricting freedom of expression on LGBTI issues

The ILGA World 2019 report indicates that in at least seven UN member states where national legislation does not criminalise homosexuality, there are legal provisions which restrict the freedom of expression of LGBTI rights in varying ways.¹⁸⁵ These countries are: Belarus, China, Indonesia, Jordan, Lithuania, Paraguay and Russia.¹⁸⁶ The limitations they impose usually refer to discussions about LGBTI content in online spaces or in public arenas which are likely to be shared with minors.

Freemuse research determined that while discrimination on the grounds of sexual orientation and gender identity and expression exists to some extent in all of these countries, the situation in Jordan appears to be the most detrimental for artistic freedoms. When Jordan gained independence from British colonial authorities in 1951, its Penal Code did not criminalise homosexuality. However, LGBTI persons in this country have still been targeted through a law regulating “public morality”. Furthermore, Article 37(viii) of the Jordanian Press and Publication Law prohibits the publishing of content that “encourages perversion or” could “lead to moral corruption”.¹⁸⁷

In July 2017, this law was used by Jordan’s Media Commission to justify the ban of a local online magazine My.Kali,

which was created in 2007 and published LGBTI content. Access to the magazine was allegedly blocked because its founder had not applied to the Minister of Information and Communications Technology for a license in accordance with the law.¹⁸⁸ The ban was requested by Dima Tahboub, a member of parliament for The Islamic Action Front. This decision catapulted LGBTI issues into mainstream political debate and resulted in a series of harsh statements from the Minister of Interior and the Minister of Justice against the LGBTI community. Both Ghaleb al-Zu’bi and Awad Al-Mashagbeh published separate letters in which they asserted that recognising LGBTI rights is considered “a deviation from Islamic law and Jordanian constitution”.¹⁸⁹ Ironically, the magazine founder, Khalid Abdel-Hadi, stated that since 14 July 2016, the domain mykalimag.com had been unavailable to Jordanian users and that My.Kali was published on the online platform Medium.com.¹⁹⁰

Jordanian MP Dima Tahboub was one of several state officials from Amman who also called for the cancellation of a concert of Lebanese band Mashrou’ Leila in June 2017. Interior Minister Ghaleb al-Zu’bi refused to grant permission for this concert, claiming that instigating a ban would avoid “the exploitation of such performances for the implementation of certain agendas that may lead to internal

disagreements".¹⁹¹ Mashrou' Leila's concert was similarly cancelled in April 2016 when they were due to perform in the Roman Theatre in Amman. They were given the explanation that, despite having performed in the amphitheatre on three occasions, their music was "at odds with the 'authenticity' of the site".¹⁹²

In this landscape, other LGBTI artists are unable to fully exercise their right to creative and artistic expression. Safi, a gay artist from Jordan, has been running a theatre group which at times secretly focuses on LGBTI topics in the plays they produce. In 2017, Safi worked on staging a play about a trans man living in Jordan. This play could only be performed once in front of audience members who consisted primarily of young people the crew knew and a very small network of LGBTI activists.¹⁹³ Safi told Freemuse that he felt constantly under threat and that he had no means of public self-expression.

"We had a situation when some people found out that we were working on a play about a transgender person and they started threatening us. This was a reason why I was fired from the youth theatre where I worked at that time."

Safi, *Freemuse interview*, 5 July 2019

In addition, the crew performed the play on two further occasions outside of Jordan—in Istanbul and in Beirut. In September 2018 they staged the play as a part of the program of the regional LGBTI conference organised by the Arab Foundation for Freedoms and Equality in Lebanon. However, this conference was raided by police. General Security Officers shut it down and took the details of all conference participants from the hotel registry.¹⁹⁴ Safi told Freemuse the entire crew has subsequently been black-listed from Lebanon.

Artistic freedoms in Eastern European countries banning "homosexual propaganda"

The 2013 legislation in Russia which prevents minors from accessing information on LGBTI topics has been mirrored through the introduction of similar laws in Lithuania in 2014 and in Belarus in 2017. These laws prohibiting "promotion of non-traditional sexual relations" to minors do not only affect the information which primary and secondary schools can share with pupils, but in practice they have negative impact on freedom of expression on SOGIESC issues in general. Over the past couple of years Freemuse has documented various violations of artistic freedoms in Eastern Europe, which have taken place either in schools or other premises frequented by minors.

One of the direct outcomes of the implementation of this law can be seen through the Russian version of a children's book *Good Night Stories for Rebel Girls* published in 2018. This book which has been published world-wide features 100 real stories about extraordinary women from the past and the present. Russian version does not include the story of Coy Mathis—a young trans girl who in 2013

took her home state of Colorado to court in order for her to be able to use the girls' bathroom. Instead of 100 stories, the edition printed in Russia contains 99 stories and one blank page—supposedly for readers to add their own.¹⁹⁵

Freemuse has also documented cases in which Russian state authorities have intervened in cultural activities falsely suspecting that these events are addressing homosexuality. In November 2018 local police in the city of Yekaterinburg in Sverdlovsk region confiscated 17 children's drawings dealing with the topic of tolerance, allegedly because some of these art pieces depicted "same-sex couples". Reportedly, police later stated that it found no evidence of "promotion of homosexuality".¹⁹⁶


In March 2019, police officers in the city of Komsomolsk-on-Amur questioned schoolchildren belonging to the youth activist theatre Merak, who were engaged in preparations for the performance *Blue and Pink*. Children were asked about the content of the play and the nature of their conversations with the director Julia Tsvetkova. The director stated that although the play deals with gender equality, the authorities suspected it of including a degree of propaganda about homosexuality.¹⁹⁷ They banned the play, but it was still performed behind closed doors. However, due to fear of further repercussions, the director subsequently ceased her activities within the Merak theatre.¹⁹⁸ Later, in December 2019, Tsvetkova was found guilty of "propaganda of non-traditional sexual relations among minors" and fined 50,000 rubles (approx. 730 EUR), because of two LGBTI-themed social media groups she administrated.¹⁹⁹

The government policy allegedly aiming

to "protect" children from "harmful" exposure to topics deemed detrimental to their development has also impacted films screened in mainstream Russian theatres. In May 2019, the Russian film company Central Partnership cut scenes including gay sex from the *Rocketman*, the biopic about British musician Elton John. Although the film was "not for minors" (R-rated), the local distributor edited the scenes in order to ensure that it had not violated Russian law.²⁰⁰

On the other hand, in April 2019, two weeks before the premiere of its major blockbuster *Avengers: Endgame*, Disney announced that it would not be screened in Russia with English subtitles. This decision was taken allegedly because the movie contains a scene in which one male character relays a story of a romantic date with another man. Subsequently, when the film was released, the Russian subtitles were altered during this conversation, replacing "date" with another man with "dinner". Although a minor change in the context of a three-hour movie, this edit undermined the message about the Marvel's first openly gay character.²⁰¹

Furthermore, some LGBTI-related cultural activities in Russia are organised against a backdrop in which violence and hostilities pose real threats. Sasha Babenko from the LGBT group *Coming Out*, which organises the Queerfest in St. Petersburg, told Freemuse that a series of fake bomb threats—which were very common in the early years of the festival's establishment—were experienced once again in 2018. Two panel discussions announced for the 27 September were cancelled because of the threats.²⁰² Although reporting fake threats is a criminal offence in Russia, and organisers have always filed complaints in such circumstances, no one has ever been prosecuted



for them. On the contrary, investigations are invariably closed because of police claims of a lack of sufficient evidence to determine links between the violation and the suspects.²⁰³ This practice causes serious problems for organisers of LGBTI activities across Russia when renting spaces. Cultural venues fear losing money if someone reports fake bomb threat, which would mean that they need to cancel all other events happening in their premises at the same time.

These bomb threats are most often compounded by protests against LGBTI-themed cultural events. On 13 February 2016, Orthodox activists from the Narodny Sobor (People's Assembly) group, led by the MP Vitaly Milonov, attempted to stop the Konstantin Raikin's gay play *All Shades of Blue* at the Baltic House theatre in St. Petersburg. Outside the venue where the play was taking place, the People's Assembly handed out fliers protesting against the play because it contained "a gay character of perverted nature".²⁰⁴ The play was eventually disrupted when a bomb threat was called in, forcing everyone inside to be evacuated. The same events were repeated the following evening. However, organisers elaborated on how the play was performed both nights, because audience members were determined to wait and watch it.

Freemuse also spoke to Anastasia Patlay, the director of the Moscow-based Teatr.DOC's documentary play *Out of the Closet*, who said that this play has been on the regular Teatr.DOC repertoire since 2016. In order to avoid problems with authorities, the company has taken on the responsibility of making sure that everyone in the audience is older than 18 years, by checking their ID's.²⁰⁵ Although the performances have occasionally triggered

negative comments by right wing groups, on 28 August 2019 it was interrupted by members of the South East Radical Block (SERB) movement²⁰⁶ who accused the theater of illegally exposing minors to "gay propaganda", claiming that one audience member was under 18.²⁰⁷ Upon the arrival of the police, it was determined that a person in the audience, who reportedly was affiliated with the SERB movement, entered the theatre with a doctored ID indicating his age as 19, while his real age was 15. The policemen brought the play director Anastasia Patlay to police station for questioning about this incident, while those who interrupted the play faced no consequences.

LGBTI artistic content has been under attack also in Belarus. In 2018 six members of the Belarus Free Theatre were arrested and prosecuted in two separate cases for their involvement in LGBTI artistic productions. Svetlana Sugako, Assistant to Theatre Director informed Freemuse that whilst these individuals' LGBTI artistic content has been under attack also in Belarus. In 2018, six members of the Belarus Free Theatre were arrested and prosecuted in two separate cases for their involvement in LGBTI artistic productions. Svetlana Sugako, Assistant to Theatre Director, informed Freemuse that whilst these individuals we whilst these individuals are officially arrested for staging illegal protests, the general belief amongst those

working for the Belarus Free Theatre is that state's real motivation was because of their work on LGBTI issues.

"We are certain that it was because of this topic. Otherwise, if it was several people dancing in public space for some other reasons, they would not be arrested."

Svetlana Sugako, *Freemuse interview*, 17 July 2019

These two incidents occurred in May and December 2018. Both were connected with performances staged in the public space developed by members of the Belarus Free Theatre Studio Fortinbras which embraces activism (art and activism). The first action was organised in May as a protest to the statement made by the Ministry of Interior in which it was said that the "same-sex relationships are fake".²⁰⁸ The Belarus Free Theatre's Studio Fortinbras students staged the protest by painting rainbow-colored footprints and pots of flowers at the base of a policeman

Belarus Free Theatre protest

Credit: Courtesy of Belarus Free Theatre

statue outside the Ministry of Interior. On 28 June 2018, three students were arrested.²⁰⁹ After being kept in detention overnight, they were tried in three different courts and fined 73.5 rubles (31.5 euros) each for disobeying police.²¹⁰ In the second incident, another three students were prosecuted because of a performance staged on 28 November 2018 in which they dressed as police officers with rainbow epaulettes. In mid-December, all three were convicted for staging an unauthorised mass event and fined 15 basic values (equivalent to about 150 euros).²¹¹

Censoring LGBTI content in American schools and libraries

Six states in the USA still have so-called *No Promo Homo Laws* which outlaw discussing LGBTI topics in a positive light during health and sexuality classes, commonly held as part of the school



curriculum. Since these laws are usually used very broadly, affecting curricula in other courses as well as extracurricular activities, they have had a significant impact on freedom of expression as well as artistic expression. Furthermore, Freemuse documented that restrictions on artistic freedoms have been exercised to prevent LGBTI content from being displayed in and around schools and other premises in which minors gather—not just in the six states where there are *No Promo Homo* Law, but throughout the USA.

In 2019 the National Coalition Against Censorship (NCAC) initiated the project ‘Uncensored Pride’, as a response to what they have documented as a disproportionate and an increasing pushback on LGBTI content in schools and public libraries. Although primarily dealing with the censorship of books and education materials, NCAC has also noticed an intensified effort to restrict access to art and other cultural products which present LGBTI experiences in libraries and other youth spaces.²¹² The findings published by the American Library Association on books which are reported as inappropriate because of their LGBTI content additionally emphasises this problem. Their researchers found that in compiling their annual list of the Most Challenged Books more than a half of books reported by US libraries members for their problematic content in 2018 included LGBTI characters.²¹³ The same trend continued through 2019.²¹⁴

The cancellation of a drag-queen-related event scheduled to be held at Ohio public library—Delaware County District Library—in June 2019 during Pride Month further exemplifies this problem. The announcement of the organisers that the event would provide a tutorial in which event goers would be shown how to apply

makeup for dressing in drag and a guide to safe sex sparked a huge backlash. Republican House Speaker Larry Householder sent a letter in which he said that public libraries “should not be a resource for teenage boys to learn how to dress in drag.”²¹⁵ Subsequently, following extensive consultations with law enforcement officers, library management cancelled the “Drag 101” event.²¹⁶

Another LGBTI Pride Month related activity staged in the context of educational institution was censored in June 2019 in Arkansas. The president of the University of Central Arkansas Houston Davis ordered the removal of the sign which contained the quote of popular singer Lady Gaga about LGBTI. The sign put up by the library to celebrate Pride Month reads: “Being gay is like glitter. It never goes away. Lady Gaga”. Arguing that there is “fine line between individual freedom of speech and institutional voice”, the president ordered its removal in case minors attending summer school programs may see it.²¹⁷

Furthermore, in early September 2019, author Julia Watts was removed from the list of the participants at the teen literary festival LitUp, due to be held at the Knox County Public Library in Tennessee on 13 October. The writer who has won many awards for her LGBTI-themed writing was removed from the festival over some of her work “described as lesbian erotica” and thus inappropriate for teens.²¹⁸

The practice of sanctioning writers because of their LGBTI-themed works has been also registered at the Olivet Nazarene University in Illinois. On 28 June 2019, Professor T.J. Martinson was dismissed from this private Christian university because of fictional novel *The Reign of the Kingfisher* he had published

in March 2019. An anonymous person complained to the faculty management that the novel included profanity and what were deemed objectionable characters, including a lesbian, a sex worker, and a character who “decides to hope instead of pray”.²¹⁹ In a Facebook post, Martinson stated that his novel was already published when he applied for job, and that the university was aware of his support to LGBTI community when they review his application.

Chinese authorities censoring LGBTI art in online spaces

Since 2015 the Chinese authorities have adopted several policies, which ban LGBTI-themed content from circulation on television and via online platforms.²²⁰ These regulations have significantly and predominantly impacted the promotion of queer art in the online space, but they have also affected cultural events organised in offline settings. Film director Popo Fan told Freemuse that even though legal regulations target online speech, in his opinion these things are connected, and that censorship is getting tighter in China.

In late 2014, Popo Fan noticed that his documentary *Mama Rainbow*—featuring stories of six mothers and their gay and lesbian children—released in 2012, was no longer available for viewing on three major video streaming sites in China. Some of these platforms claimed removed from the festival over some of her work “described as lesbian erotica” and thus inappropriate for teens. longer available for viewing on three major video streaming sites in China. Some of these platforms claimed that they had received

order from the SAPPRFT—the State Administration of Press, Publication, Radio, Film and Television—to remove his film because it violates its guidelines.²²¹ In February 2015, he requested that the SAPPRFT provides him with a document outlining the official reasoning for blocking his film. However, regulatory body responded that they had never issued such an order. Popo Fan filed his case in a court in Beijing, which confirmed that SAPPRFT had not released any such document, but it remains unclear why the film is still not available on online platforms.²²²

“After filing the lawsuit, some of my screenings were cancelled and organisers would always tell me that police came and that they cannot screen my film. I was really upset because of this and in 2017 I left China mostly because of seeking for freedom of speech and looking for more resources to work on art.”

Popo Fan, *Freemuse Interview*, 30 August 2019

Originators of other LGBTI-themed artworks have also faced severe consequences for promoting them on digital platforms. In November 2018, writer known by internet alias Tianyi was sentenced to 10.5 years in prison for allegedly “producing and selling pornographic gay erotic novel” titled *Occupy (Gongzhan)*.²²³ It was reported that because her book had earned a profit from the sale of more than 5,000 copies which included a gay protagonist, it made her crime particularly serious.

Government authorities are also determined to shut down online websites and platforms which sell content with LGBTI themes. In May 2019, following a complaint by a pornography watchdog, China’s National Office Against Pornographic

Film poster for *Mama Rainbow*
Credit: Courtesy of Popo Fan

彩虹伴我心 MAMA RAINBOW



一部关于同志母亲的纪录片

A documentary about mothers of gays and lesbians

导演/Director: 范城城Fan Popo

监制/Executive Producer: 阿强Ah Qiang

制片人/Producers: 魏建刚Xiaogang Wei, 徐建平Stijn Deklerck

平面设计/Graphic Design: 陈文杰Charlie Chen

出品机构/Production Organizations:



and Illegal Publications ordered the Jinjiang Literature City's website to shut down some of its online sections which promoted LGBTI fiction.²²⁴ Although this platform already practices self-censorship, and provides its users an option to report content they find "harmful", they were forced to suspend publication of all new content for 15 days.

China's restrictive policies on LGBTI content have also impacted television programming. In February 2019, Chinese TV station Mango censored Rami Malek's speech at the Oscar Academy Awards. It heavily edited a reference to homosexuality during the speech delivered by the actor who got Oscar for his role of Freddie Mercury in biopic *Bohemian Rhapsody*.²²⁵ The same TV station blurred rainbow flags during the transmission of the Eurovision song contest in May 2018 and additionally did not

air two performances, including performance of the Ireland representative Ryan O'Shaughnessy, which featured two male dancers enacting a gay love story. In a retaliatory move, the European Broadcasting Union (EBU) has barred TV Mango from airing the Eurovision song contest.²²⁶

Finally, Freemuse registered that Chinese regulatory bodies were also engaged in queer film censorship by cutting its content referring to homosexuality. Censorship authorities have given permission for the release of the *Bohemian Rhapsody*, but they however cut more than two minutes from the movie which provided key information about the frontman of the band Queen, an LGBTI icon who died of AIDS-related illnesses at the age of 45.²²⁷ In the version released in China in March 2019, scenes of two men kissing and the word 'gay' were removed.

Bohemian Rhapsody, the biopic centering on openly gay musical group had the word 'gay' removed and was censored in many forms.



Artistic expression in countries with no legal obstacles for discussion about LGBTI issues

Nearly two thirds of UN member states impose no legal obstacles to freedom of expression about LGBTI issues. Their legislations largely comply with international human rights standards, promoting equality and anti-discrimination. However, despite these legal protections, violations of artistic expression still take place, ultimately impeding the freedom of expression for LGBTI artists or those working with LGBTI themes. In a handful of countries there are emerging trends of a crackdown on LGBTI rights, also affecting artistic expression, while in others they appear as violations of artistic expression in sporadic cases.

LGBTI artists in these contexts have been impacted in different ways. They face prosecution, are subject to censorship or limited financial resources. In addition to these issues, state officials have been known to openly discriminate against LGBTI artists and queer artworks in their public statements. These hostile and divisive statements often issued as part of a wider populist narrative can have a hugely detrimental impact on the status of sexual minorities and those individuals whose gender identity does not match the traditional binary normative. Demands for censorship of LGBTI artworks are not only expressed by representatives following politically right-wing ideologies, but also by conservative religious groups and violent individuals.

Governments suppressing queer art

Brazil is one of the countries where LGBTI community is stretched among ambiguous legal and political practices. While on one hand, in June 2019 the Federal Supreme Court voted to criminalise discrimination and acts of hatred against LGBTI persons,²²⁸ on the other hand the country's president constantly makes statements openly discriminating on SOGIESC grounds. Since taking office in January 2019, President Jair Bolsonaro removed LGBTI rights portfolio from the Ministry of Human Rights and strongly advocated for removing homosexuality from school textbooks.²²⁹ Parallel to this, violence against LGBTI persons in Brazil has been very frequent. Human rights organisation Grupo Gay da Bahia which monitors hate crimes on SOGIESC grounds reported that in the first five months of 2019 at least 141 LGBTI persons were killed.²³⁰

Since early 2019, president of Brazil has been sparking outrage because of his negative attitudes against LGBTI persons, but these protests got a pick in the beginning of March during famous Brazil Carnival. Many people took creative ways to point out on president's notorious homophobic politics. In order to hit back at criticism he was exposed to, president

Bolsonaro tweeted a video filmed during a carnival in São Paulo which showed one man pleasuring himself before being urinated on by another.²³¹ This video was extracted from a three-hour guerrilla performance by a six-person art collective, in which artists Paulx Castello and Jeffe were involved. Although two of them initially fled São Paulo due to fear of consequences after president exposed them via his Twitter account, they came back to the capital city and continued performing.²³²

Furthermore, in August 2019 Brazilian president suspended state funding for LGBTI films. Before this decision was announced on the government's official website, he stated in speech streamed online that he asserted that he would change the strategy for government-funded film projects, specifically mentioning that "funding LGBTI-themed screenplays is throwing money away".²³³ This decision was found unconstitutional by the Brazil's Supreme Court in October 2019.²³⁴

This move has been paralleled with moves by the authorities in which they are increasingly interfering in the editorial policies of cultural events. In September 2019, the mayor of Rio de Janeiro's Marcelo Crivella demanded withdrawal of the comic book *Avengers: The Children's Crusade* from sale at Rio's biennial book fair.²³⁵ The Mayor, who is closely affiliated with the evangelical Universal Church of the Kingdom of God, targeted Marvel's book because its cover showed male superheroes Wiccan and Hulkling kissing. In spite of this demand, the call had an adverse effect. The book was sold out almost immediately and all the negative publicity brought the image on the books cover to the front page of the *Folha De São Paulo* newspaper.²³⁶

The debate surrounding sexual orientation and gender identity and expression in Turkey is similarly suffering under the ongoing political crisis in which the conservative views of ruling politicians are stifling LGBTI debate and all forms of creative expression on this crucial issue. Under the state of emergency following the 2016 attempted military coup, the Ankara governor, who was appointed by President Recep Tayyip Erdoğan (unlike city mayor elected on local elections), introduced a ban on any public LGBTI events, taking place in Turkey's capital city which would take effect from 18 November 2017.

The ban was declared on the grounds of "protecting public health, morality, and the rights of the others," and applied to any LGBTI activity: film screenings, art exhibitions, debates, in any public space.²³⁷ Local activists believe that the capital city was targeted because of its reputation throughout the country as a bastion for the LGBTI movement.²³⁸ They also believe that this ban was directly inspired by a social media campaign, which was orchestrated against the German-language film festival *Pink Life QueerFest*. The festival was due to be held in Ankara on 16 and 17 November 2017 with official support from the German Embassy. However, the Turkish authorities banned it, using the threats made on social media to highlight "security concerns", adding that "certain groups with certain social sensitivities would react negatively to the festival."²³⁹ In addition, in a televised speech one week before the ban President Erdoğan attacked Ankara authorities elected on local elections for their support to the LGBTI community.²⁴⁰

Although the state of emergency was

terminated in July 2018, the ban on LGBTI events continued to stay in force until April 2019 when an Ankara court finally lifted the ban, ruling that it was unlawful and “restricted rights and freedoms in an unconditional, vague, and disproportionate ways”.²⁴¹ However, the ban ensued dozens of cultural activities relating to LGBTI issues were either cancelled, pushed underground or moved to other Turkey’s cities.²⁴²

During this period, Freemuse also documented a case in which the Turkish media outlet was faced with punitive action. In an unprecedented move in September 2018, the Turkish Radio and Television Supreme Council (RTUK) fined AS TV 17,000 Turkish liras (approx. 2000 euros) for playing the music video for the Pink’s song “Secrets”. The channel was penalised by the television watchdog for broadcasting the video which featured “erotic dance figures of a homosexual nature,” during hours when children and young people could watch it and “be negatively influenced”.²⁴³

Poland is another country in which LGBTI community has been recently facing increasing pushback on achieved protections, including cutting financial assistance for organisations defending SOGIESC rights. This trend is the best illustrated by the fact that in 2019 at least 80 local governments run by ruling Law and Justice Party declared themselves as “LGBTI free zones”.²⁴⁴ In such atmosphere, queer artistic expression is also under duress. In March 2020, a 16-year-old boy from Jordanów was brought before Family Court in Sucha Beskidzka on allegation for violation of the Article 137 of the Penal Code (insulting state symbols). The complaint against him was made by the mayor Andrzej Malczewski because of the graphic boy published in a Facebook’s closed group on 14 February depicting the coats of arms of his city against a rainbow background.²⁴⁵

The 16-year-old created this artistic piece as a reaction to the decision of the local council to declare Jordanów “LGBTI free zone” in May 2019.

Due to general restrictive environment, in the version of the fantasy film Onward which in March 2020 entered Polish cinemas a lesbian character was removed. Following the move done in Russia, the film distributor replaced the phrase in which cyclops cop Specter refers to her “girlfriend’s daughter” with “stepdaughter”.²⁴⁶ Freemuse documented the act of censoring LGBTI content also at the national broadcaster TVP1. On 16 May 2020, during the special edition of the Eurovision: Europe Shine a light, it aired commercials for about 10 minutes, while the Dutch transgender youtuber Nikkie de Jager, known as NikkieTutorials, run the segment of the program.²⁴⁷

Artistic expression on LGBTI themes is not under attack only in countries where political leadership systematically targets SOGIESC debates or LGBTI communities. On 4 August 2019, Venezuelan police arrested four individuals involved in the production of the theatre play *Dos policías en problemas* (*Two Cops in Trouble*) which had been staged in a theatre for almost a month prior to their arrest. Two actors, the director and the producer were accused of “usurping public function when pretending to present a theatrical piece while wearing the regulatory uniform”.²⁴⁸ The key focus of the script is a romantic story between two gay policemen and therefore required those acting in it to wear police uniforms. The authorities found the performance and the donning of police uniforms for the play to be an act of “ridicule” in which those involved in the production of the play were deliberately distorting “the true functions

of police.” They were released once they had provided the police with statements and the play was soon resumed with the lead actors instead wearing facsimiles of uniforms. However, photographs of those acting in the play giving statements at the police station were leaked and went viral on social media. Responding to the leak, actor Isaias Ovalle who plays one of the policemen, asserted, “If I wake up chopped up, incinerated, kidnapped or dead, you’ll know why. It’s not a game, it’s serious, so come and see the show before it gets closed down”.²⁴⁹

On 13 February 2019, a Kosovo official Xheladin Krasniqi from the Ministry of Justice posted incendiary comments on the Facebook page of a theatre company Qendra Multimedia which at the time was promoting its play *55 Shades of Gay*. In his comments he called for the murder of the theatre members and added that “LGBTI persons should all be beheaded”.²⁵⁰ He was subsequently arrested and kept in detention for 48 hours. The script writer Jeton Neziraj stated that while working on the play the crew members

were receiving death threats and hate comments on social media which they did not take seriously, but they took it serious when the author of those comments was a known employee of the Kosovo Government.²⁵¹

Freemuse has observed similar moves of censoring LGBTI artistic expression by other state-funded institutions. In March 2019, the public North Sumatra University (USU) in Medan, North Sumatra province in Indonesia, ordered the shutdown of the Suara USU (USU News) website because it featured a fictional love story between two women. The editorial team of the university portal run by students was given 48 hours to shut down the website and vacate the newsroom.²⁵² This order came almost two weeks after a story *Semua Menolak Kehadiran Diriku di Dekatnya* (*Everyone Refuses My Presence Near Her*), written by Yael Stefany Sinaga, was published. However, although Suara USU website was suspended, its editors managed to switch to another

Photograph from 55 Shades of Gay

Credit: Jetmir Idrizi



web provider and republished its entire content.

Suppressing artistic freedoms on religion grounds

In a growing trend, Freemuse has found that governments in countries in which homosexuality is legal are increasingly engaging with and leveraging the voice of religious authorities to galvanise public debate on LGBTI rights. In some countries—especially in Latin America—different churches have strong alliances with governments and sometimes they act as a legislator.²⁵³ These connections between political and conservative religious elites also have negative impact on LGBTI community and are visible in violations of artistic freedoms.

Brazil has been a leading country in this sense. On 19 July 2019, the mayor of the Brazilian city Belo Horizonte Alexandre Kalil cancelled *Coroação de Nossa Senhora das Travestis* (*The Coronation of Our Lady of the Transvestites*)—a theatre performance which was due to be staged at the city-sponsored local festival. Prior to this ban, the archbishop Walmor Oliveira de Azevedo released the statement in which he targeted the play as “a prejudiced and criminal action of disrespect of the Catholic Christian faith.” In the response to the archbishop’s statement against the play produced in 2017 by the group of transgender artists known as Academia Transliteraria (Transliterary Academy), the mayor twitted: “I defend all liberties. I’m a Catholic, devoted to Saint Rita of Cascia. Don’t worry, nobody will attack any religion. This is not culture”.²⁵⁴

Furthermore, the Netflix film *A Primeira Tentação De Cristo* (*The First Temptation of Christ*) which features the story of Jesus Christ coming home for his 30th birthday with his boyfriend Orlando sparked criticism in Brazil on grounds of insulting of religious sentiments. Soon after this Christmas special film produced by Porta dos Fundos was released, an online petition calling for its ban was initiated and generated approximately two million signatures.²⁵⁵ On 24 December, the headquarters of the Porta dos Fundos was attacked with two Molotov cocktail bombs.²⁵⁶ Among the attackers was a businessman Eduardo Fauzi who fled to Russia and from there took a credit for the attack in a video published online. In addition to this, a Catholic organisation the Don Bosco Center for Faith and Culture filed a complaint against the film, arguing that it hurt “honor of millions of Catholics”. Responding to the complaint, on 7 January 2020, the Rio de Janeiro judge Benedicto Abicair ordered Netflix to temporarily remove the film from its platform.²⁵⁷ However, two days later the president of the Brazil’s Supreme Court judge Dias Toffoli, rejected the lower court’s decision and allowed Netflix to continue streaming the film.²⁵⁸

Similar cases of state-authorities decisions made in order to protect religious beliefs are registered in other countries. On 6 May 2019, Elżbieta Podleśna, an activist from the city of Płock in central Poland, was detained for several hours on suspicion of “offending religious beliefs”. She was arrested in connection with a poster of the Virgin Mary with a halo painted in the colours of the rainbow (symbolising the LGBTI community) which appeared in her city in late April. Before her arrest, police authorities searched her home and confiscated her laptop, mobile phone and memory cards.²⁵⁹ On 29

June 2020, Elżbieta Podleśna was officially charged before the Regional Court in Płock under Article 196 of the criminal code for publicly insulting an object of religious. If found guilty, she could face up to two years in prison.

A similar case of alleged “offending religious sentiments” was registered in Serbia after the Belgrade Pride Parade which took place on 15 September 2019. While walking in the Pride march, Nik Jovičić Sas—violinist, an LGBTI activist, and believer of Orthodox Christianity—carried an icon of the Virgin Mary with her halo painted in rainbow colours. Sas believed that by carrying this icon through the parade, he was communicating the centrality of his religious beliefs in his activism. In the days following the Pride Parade, a number of complaints was filed against him and other participants who carried religious symbols, by various individuals, including the President of a Police Syndicate.²⁶⁰

There are instances documented by Freemuse in which religious authorities have directly attempted to exercise censorship against queer artworks, in the absence of support from government authorities. In June 2019, the Romanian Orthodox Church called for a ban on a gay-themed theatre play *I am Too, So What?*, which was due to be staged during Pride Week in the city of Cluj in the Romanian Transylvania region. The Church asserted that the play was an attempt to make a “mockery of religious feelings that transmitted a ‘deliberately blasphemous’ message”.²⁶¹ In

its public statement, Church authorities recalled that Romanian criminal law prohibits any form of religious defamation or public offence towards religious symbols. In response to the statement, the organisers of the Pride Week cited that the play was intending on opening up the discussion about “religious extremists” and the “fake religiosity” used by some to attack those who are vulnerable, rather than spreading anti-religious sentiments.

In September 2017, the president of the Catholic association which runs a private primary school Notre-Dame du Sacré Coeur in the French city of Senliz, requested that the management of the local Jeanne d’Arc cinema remove the poster

Nik Jovičić Sas

Credit: Courtesy of Nik Jovičić Sas



advertising the film *Nos Années Folles* (*Golden Years*) from its walls. He claimed that the poster featured nudity and a transvestite man—content he believed was inappropriate for children to see on their way to school.²⁶² The cinema, however, refused to comply and urged those who requested removal to do it themselves. On 22 September 2017 one person asked for the key to access the poster. He took it down, but never gave the key nor poster back.

Non-state actors suppressing artistic freedoms

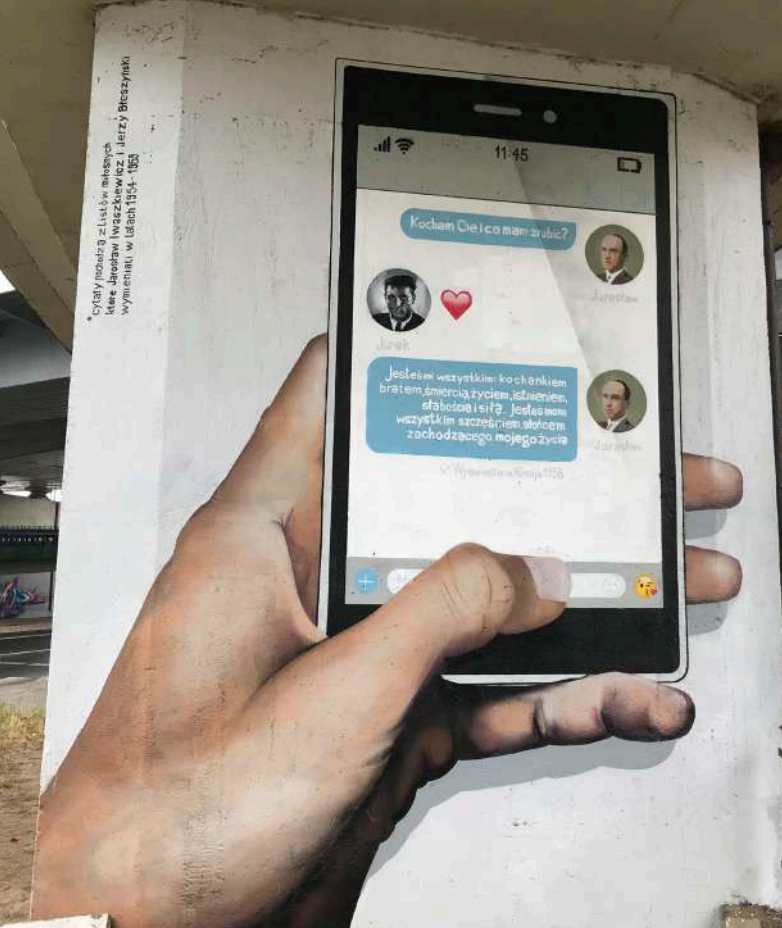
In some countries in which homosexuality is legal, Freemuse documented cases of violation of artistic freedom on the SOGIESC grounds which involved radical, conservative or extremist groups attempting to suppress the discussion on LGBTI issues. These groups have employed various tactics, most notably protesting against events where LGBTI themes are in a focus, or instead they have exercised violence. In some actions aimed against queer art, the narrative and terminology used by these groups closely resemble narratives of religious groups.

In October 2018, four shows of *Shiva*, a theatre play about gender identity and sexuality directed by Dayasindhu Sakrepatna, were cancelled at Jagriti Theatre in Bengaluru in India, after protest staged by right-wing groups. Threatening to “create trouble”, members of a right-wing religious group gathered in front of the theatre on 13 October, demanding the cancellation of the play which they found “offensive”, although

they had not seen it.²⁶³ Theatre director announced that he had to postpone the show due to lack of capacities to provide the audience and the crew with required protection.

On 10 September 2017, Santander Bank’s cultural center in the Brazilian city of Porto Alegre closed an art exhibition *Queermuseu—Cartografias da Diferença na Arte Brasileira* (*Queer Museum—Cartographies of Difference in Brazilian Art*) a month ahead of schedule. The decision to close the exhibition featuring 85 artists and 263 artworks was made following pressure and a social media campaign run by religious groups and protestors aligned to the Free Brazil Movement.²⁶⁴ The exhibition, which had already been on display for a month, was besieged with protestors from the Free Brazil Movement—known for organising street demonstrations—who gathered in front of the cultural centre and began vandalising the building. In a video they posted online, the Free Brazil Movement stated that they had targeted the exhibition because of alleged “promotion of blasphemy, paedophilia and bestiality”. The organisers were subsequently forced to shut the Queer Museum. However, the protestors did not face any consequences for causing damage to the building. Instead, the curator Gaudencio Fidelis, was summoned to testify before the Senate in Brasilia, due to allegations of “mistreatment of children and teenagers” in the exhibition.²⁶⁵

Queer art has also been exposed to acts of vandalism, primarily when an artwork is exhibited in a public space. In May 2019, the mural depicting Martin Fierro and Cruz—in which protagonists from the epic poem by the Argentine writer José Hernández are kissing—was covered with white paint in the Argentinian city



of San Martín.²⁶⁶ This mural painted as a memorial to their symbolic efforts in fighting for LGBTI rights was originally painted in November 2017 during the International Festival Martín Fierro. The mural has been damaged twice since November 2018. Every time the mural has been vandalised, artists Teresa Pérez and Adrián Medina have restored the original artwork.

Similarly, in the beginning of July 2019 the mural *El Amor No Tiene Género* (*Love Has No Gender*) by Ecuadorian illustrator, graphic designer and urban artist Apitatán (real name Juan Sebastián Aguirre) was vandalised by unidentified perpetrators.²⁶⁷ This mural painted on a wall in the city of Quito, Ecuador's capital, depicted three LGBTI couples kissing. Vandalisers damaged the painting by adding blue lines to separate the two men and two women kissing.

On 22 June 2020, the mural designed by Monika "Pacyfka" Tichy, Łukasz Jurewicz

'I love you. What should I do?' – asks Jarosław. Jerzy answers with a heart emoji. 'You are all to me: lover, brother, death, life, existence, weakness and power.' – Jarosław continues. 'You are all my happiness, the sunlight of my decaying lifetime.'

Mural before and after damages.

Credit: Michał Gliński

and Miki Starzyński depicting the conversation between a prominent Polish writer Jarosław Iwaszkiewicz and his partner Jerzy Błeszyński (extracted from love letters Iwaszkiewicz sent to Błeszyński between 1954 and 1959) was vandalised in the Polish city Szczecin.²⁶⁸ Pacyfka believes that local neo-Nazi groups, who unofficially cooperate with Church and the ruling Law and Justice politicians were behind this act.²⁶⁹ She told Freemuse that because of the mural design, which did not apparent LGBTI content, she believed that it would last for weeks, but the mural was covered in red paint just two days after it was put on display.

LGBTI artists are also exposed to online threats in the digital space and largely on social media platforms. In January 2019

Moroccan-French singer Bilal Hassani, the contestant selected to represent France at the Eurovision song contest in Israel was subjected to death threats and intimidation via social media.²⁷⁰ This openly gay musician—known for The colourful wigs and heavy makeup—faced an onslaught of threats in which both his sexuality and appearance were targeted. He reported these threats to the French authorities.

His female colleagues, French singer Hoshi also was exposed to harsh digital campaign, including receiving insults and rape and death threats, after on 14 February 2020 she kissed one of her dancers on stage during the ceremony of “Les Victoires de la Musique”.²⁷¹ The song she performed *Amour Censure* (*Love Censorship*) was an anthem against homophobia and the movement *Manif pour tous*, which advocates against same-sex marriage and children adoption by homosexual couples.

Similarly, in April 2020, Sarajevo-based Sevdah singer Božo Vrećo announced on

his Facebook wall that he had reported to Bosnian police threats he received that day.²⁷² The singer who is a cross-dresser was targeted because of his physical appearance and blamed for insulting the religion through the way he performs his music—particularly how he interpreted some famous songs from local Islamic heritage.

Finally, on 23 May 2020, an anonymous individual sent threats to activists and media correspondents of the Cuban LGBTI community, including visual artist Nonardo Perea and writer Jorge Ángel Pérez. The threats were sent as direct messages from a false Facebook profile, which was reported to Facebook and deactivated soon after. Nonardo Perea wrote on his Facebook wall that he was threatened that something could happen to his family, and it would look like an accident, or a medical problem.²⁷³

French singer Hoshi live television kiss

Credit: @Hoshi Instagram



Lack of sustainable strategies for the promotion of LGBTI artwork

“It is still a huge challenge to find funding for LGBTQ films in India, because the industry is still not convinced about investing in a LGBTQ film and the returns the film may bring in. Everyone is waiting for that one big sleeper hit to come along and then everything will follow.”

Sridhar Rangayan, Freemuse interview (online), 2 August 2019

Even in countries in which homosexuality is legal, artistic expression on LGBTI issues has been subject to various limitations in relation to securing both short- and long-term financial support for their cultural production. This also extends to those wishing to access public spaces to promote their queer artworks. Almost all interviewees claimed that financial support for their LGBTI-themed art has been limited. In spite of the existence of some government resources to assist artists in production or the promotion of queer art,²⁷⁴ as well as the fact that the number of organisations which specifically finance LGBTI activities (including cultural events) has been in increase globally,²⁷⁵ investment in queer art has still been limited. Furthermore, the fact that some countries offer more opportunities for support to queer art than others has been a strong push factor for LGBTI artists in leaving their home countries.

Several Freemuse interviewees observed how donor funding largely focuses on extending money for basic issues such as providing the LGBTI community with vital health services as well as in promoting HIV/AIDS protection or

combating widespread social prejudices against LGBTI people. However, they also asserted that investing in art specifically aimed at LGBTI communities continues to be very low in funders' priorities. Freemuse believes that an investment in arts and culture helps to raise awareness about crucial societal issues such as types of discrimination meted out to LGBTI communities and can play a significant role in changing people's perceptions and attitudes.

In such an environment, LGBTI artists are forced to look for alternative channels for financing their activities. In Latin America women's funds play a central role in financing and financial support of queer art as well as providing security to queer artists.²⁷⁶ The Belarus Free Theatre gets money for their activities through a company registered in London.²⁷⁷ A large percentage of artists often sponsor and find alternative private means for funding their own projects. Sridhar Rangayan told Freemuse that almost 90 percent of Indian films screened at the KASHISH Mumbai International Queer Film Festival (33 in 2018 and 31 in 2019) were self-funded by filmmakers with

“We tried to rent state galleries for Queerfest, but we have constantly been refused. And always because ‘there are no available rooms. Even if we apply long in advance.’”

Sasha Babenko, *Freemuse interview*, 12 August 2019

support from their friends and colleagues or crowdsourced, because funding for studio productions are limited. Freemuse also registered cases in which artists engage in projects with virtually no financial support, motivated by their desire to raise awareness about the vulnerability of LGBTI communities. Anastasia Patlay’s play *Coming out of the Closet* was produced in 2016 at the Russian private Teatr.DOC company with no money.²⁷⁸

Another problem LGBTI artists encountered is related to access to state-funded cultural institutions. The staging of the play by the established Russian theatre director Konstantin Raikin at the state-funded the *Satiricon Moscow Theater* has been a rare exception. Regardless how openminded, management of

cultural institutions, especially in countries with laws banning “homosexual propaganda”, often rejects hosting queer content due to fear of consequences.²⁷⁹ The organisers of the Queerfest in St. Petersburg in 2010 rented the state-funded Exhibition Center of the Union of Artists for the opening of the festival which was unforeseeably cancelled a day before

the opening of the festival, what led to urgently moving to a new venue and changing the schedule.²⁸⁰ Indian filmmaker Sridhar Rangayan who runs a queer film festival in Mumbai which by entering commercial cinemas got an image of mainstream festival, also believes that “it is still a long way for state-funded cultural institutions to accept and embrace LGBTI films.”²⁸¹

In some countries, there are state regulatory bodies operating in the sphere of arts and culture, mandated by the government to approve the release of artistic and entertainment content. Such bodies often exercise discriminatory policies against queer content, subjecting it to personal moral judgment. Despite rare exceptions, such as the Indian KASHISH

“All film festivals held in India have to have a clearance from the Ministry of Information and Broadcasting that exempts each film from having to pass through the censor certification process. Though it is procedural, we were thrilled when we received the clearance, granting a LGBTQ film festival a stamp of approval by the government. The first ever LGBTQ event to obtain such a clearance!”

Sridhar Rangayan, *Freemuse interview (online)*, 2 August 2019

festival, which received the Ministry of Information and Broadcasting's clearance during a period in India when homosexuality was still criminalised, filmmakers in some countries with legalised homosexuality still struggle to secure vital official approvals. Some governments have extended their regulatory oversight to domestic films also being shown overseas. Popo Fun informed Freemuse that in order to be screened either in China or abroad, films in his country first need to secure governmental approval, which is difficult for LGBTI-themed films. In instances where film makers have attempted to broadcast films without prerequisite license, they have faced punitive consequences.

"This is multiphase process which allows authorities to oversee your initial synopsis, but they can also ask for script as well as request editing of some parts once the film is finished. You are not allowed to start shooting without approval. If you do so, you might be fined. If you make film with support of some Chinese companies, they can also be fined if you do not have approval."

Popo Fan, *Freemuse interview*, 30 august 2019

Freemuse has documented a number of instances in which the authorities have compelled organisers of LGBTI related events to cancel them, signalling that threats of violence and or actual violence itself are legitimate tools for expression of disagreement in public space. Goran Miletić insists that the role of state authorities in these situations should be to provide such cultural events with

necessary protections and prosecute perpetrators found to have breached the law through threats or their violent behaviour.

²⁸²He mentioned the case of the queer photo exhibition *Ecce Homo* by a Swedish artist Elisabeth Ohlson due to be displayed in the capital of Serbia during Belgrade Pride Week in 2012. Criticized because of the way it "treated Christianity", the exhibition triggered right-wing groups' protests, including counter-rallies. It was eventually exhibited, but hundreds of riot policemen had to be deployed in the area where exhibition was held to ensure that the event proceeded unhindered. ²⁸³

RECOMMENDATIONS

In order to overcome multifaced problems LGBTI artists and queer art have been subjected to and create global environment in which artists are able to openly and fully exercise artistic freedoms related to LGBTI issues and the audiences have unhindered access to queer art promoted in public spaces, Freemuse recognises that joint efforts by international, regional and national stakeholders are required and therefore recommends:

Reiterating that artistic expression and cultural rights are an integral part of human rights, that these rights are universal, inter-related and indivisible, as well as that equality and non-discrimination on the grounds of sexual orientation, gender identity and expression and sexual characteristics (SOGIESC) are strictly prohibited;

Recalling the 2013 Report of the UN Special Rapporteur in the field of cultural rights, para. 3 in which Farida Shaheed ascertained that “artists may entertain people, but they also contribute to social debates, sometimes bringing counter-discourses and potential counterweights to existing power centres. The vitality of artistic creativity is necessary for the development of vibrant cultures and the functioning of democratic societies. Artistic expressions and creations are an integral part of cultural life, which entails contesting meanings and revisiting culturally inherited ideas and concepts”;

Reiterating the ICCPR General Comment 34 para. 25 that laws imposing restrictions on freedom of opinion and expression “must be formulated with sufficient

precision to enable an individual to regulate his or her conduct accordingly and it must be made accessible to the public. A law may not confer unfettered discretion for the restriction of freedom of expression on those charged with its execution. Laws must provide sufficient guidance to those charged with their execution to enable them to ascertain what sorts of expression are properly restricted and what sorts are not”;

Upholding the Venice Commission’s 2013 findings in which it stated that statutory provisions of anti-homosexual propaganda laws are incompatible with international human rights standards by being ambiguous and including blanket restrictions aimed at legitimate expressions of sexual orientation. Noting that, in addition to these laws lacking sufficient precision required to satisfy Article 19(3), “‘public morality’, the values and traditions including religion of the majority, and ‘protection of minors’ as justifications for prohibition on ‘homosexual propaganda’ fail to pass the essential necessity and proportionality tests”;

Upholding the 2012 findings of the UN Human Rights Committee in their engagement with states which determined that legislations allegedly “protecting children from homosexual propaganda” do not make sufficient distinctions between “actions aimed at involving minors in any particular sexual activity or at advocating for any particular sexual orientation” from acts of “giving expression to [one’s] sexual identity” and “seeking understanding for it”;

Reiterating the 2015 call of the UN Committee on the Rights of the Child which found that “anti-homosexual propaganda laws are discriminatory in nature, and specifically stigmatise and discriminate against LGBTI youth, depriving them from access to vital information on sexual and reproductive health which is crucial for their physical and mental development”;

To create an inclusive and enabling environment where the right to freedom of artistic expression of LGBTI artists, persons and organisations and other LGBTI-themed art creators are respected, protected and fulfilled, Freemuse recommends that national governments, UN and other intergovernmental organisations, and media outlets take following actions.

TO ALL STATES:

To better safeguard freedom of artistic expression, cultural rights and related human rights of LGBTI persons and LGBTI-themed artworks creators, Freemuse recommends that states take the following steps with a sense of urgency:

- Respect and fulfil its obligations in upholding the right to freedom of expression, association and assembly without discrimination on the basis of sexual orientation or gender identity and expression as central to its efforts of promoting social cohesion, pluralism and building diverse and tolerant, democratic societies. Any limitations to exercise of these rights must be introduced through laws or policies which strictly comply with permissible restrictions under the Article 19(3) of the ICCPR and the principles of equality

and non-discrimination.

- Review and repeal laws and discriminatory provisions criminalising the same sex relations and the “propaganda of homosexuality” which place undue restrictions on freedom of expression, including artistic expression.
- Include sexual orientation, gender identity and gender expression as grounds in laws penalising acts of incitement to hatred, discrimination or violence and ensure that any such acts are promptly investigated.
- Refrain from the practice of legal prosecution of artists on the grounds of protection of public moral, as well as release all artists imprisoned because of their sexual orientation, gender identity or expression or for producing artworks dealing with LGBTI issues.
- Protect those who exercise cultural rights and the rights to freedom of expression, association and assembly from acts of violence and other forms of harassment and intimidation by private parties. They should assure that unlawful interferences in the enjoyment of the right to freedom of expression by LGBTI persons is subjected to criminal prosecution and treated as hate crime based on SOGIESC grounds.
- Promote a climate of openness, inclusion and tolerance including public debates on sexual orientation, gender identity and expression both in online and offline platforms with an aim to strengthen participation and inclusion of LGBTI persons. This practice should be specially applied when adopting key

governmental policies which should take into consideration problems, concerns and suggestions of LGBTI persons.

- Take steps to ensure the establishment of directories of governmental and non-governmental services available for individuals who have been subjected to violence because of their sexual orientation, gender identity and gender expression. These services should be developed in collaboration with appropriate civil society groups and information distributed to law enforcement, judiciary, health care providers and schools.
- Assure that LGBTI organisations function without being subjected to discriminatory measures and prevent application of administrative procedures disproportionately exposing these organisations to lengthy or challenging registration process.
- Develop and implement public campaigns aimed to promote understanding, inclusion and tolerance towards LGBTI-related artistic and cultural expressions, applying key human rights frameworks which guarantee freedom of expression and access to cultural rights based on principles of participation, accountability, equality and non-discrimination on SOGIESC grounds.
- Ensure that national budgets allocate adequate resources to cultural programmes and policies on principles of non-discrimination through which LGBTI artists and organisations are able to raise awareness against homophobia, biphobia and transphobia without fear.
- Eliminate any discriminatory measures limiting LGBTI persons and organisations to unhinderedly fundraise for the promotion of queer art and use it as a tool for raising awareness against homophobia, biphobia and transphobia.
- Assure that public gatherings promoting queer art and cultural events centred on LGBTI rights organised in public spaces are held without interference of state authorities or any non-state actors. They should refrain from misusing administrative provisions for shutting down these events, as well as prosecute those who initiate the attacks on them.
- Establish independent equality bodies or extend the mandate of these institutions in countries where they already exist to monitor and redress artists whose rights to artistic freedoms related to SOGIESC issues have been violated.
- Treat with caution the asylum-seeking applications by artists from countries in which they are subjected to systematic and serious repercussions on SOGIESC grounds and unable to freely promote their work.

TO THE UN, EU AND OTHER INTERGOVERNMENTAL ORGANISATIONS:

With aim to strengthen the protection of freedom of expression, association and assembly of LGBTI persons, including those creating LGBTI-themed art, through

international human rights framework and contribute to do the harmonisation of national legislations with international standards, Freemuse recommends that UN, EU and other intergovernmental organisations to:

- Take steps to urge member states to promptly review and repeal those laws and policies which embody discriminatory provisions undermining the right of LGBTI persons to equality before the law. In particular:

ON THE CRIMINALISATION OF HOMOSEXUALITY:

- Uphold the principles of equality and non-discrimination and right to privacy by urging states to repeal laws criminalising private adult same-sex intercourse, recognising that they breach fundamental human rights and arbitrarily criminalise identities, reinforce social and cultural exclusion and undermine the exercise of the right to freedom of expression for LGBTI persons. Any discussions addressing the unlawful restrictions placed on freedom of expression through laws criminalising persons engaged in private adult same-sex intercourse should recognise the specific harmful impact on the right to artistic expression as guaranteed under Article 19 of the International Covenant on Civil and Political Rights (ICCPR).

ON HOMOSEXUAL PROPOGANDA LAWS:

- Take steps to encourage and assist member states to repeal laws

which impose unlawful restrictions on freedom of expression related to sexual orientation and gender identity and expression. By recognising that restrictions based on the grounds of protecting 'public morality', 'minors from detrimental effect of public information' or religious sentiments fail to pass necessity and proportionality tests, they should assist national governments in enacting legislations which protect freedom of expression for LGBTI persons and without delay abolish laws which discriminate on SOGIESC grounds.

- Develop mechanisms for the systematic monitoring and data collection on violations of artistic freedoms on the grounds of sexual orientation and gender identity and expression. They should work closely with national and transnational LGBTI and other human rights organisations in order to comprehensively document violations of the freedom of expression of LGBTI artists and those creating LGBTI-themed artworks.
- Take a strong public position in defending the artistic freedoms for LGBTI artists and the audience's access to queer art. By recognising that the artistic freedoms related to LGBTI issues are curtailed, they should contribute to efforts in raising awareness about the scope of this problem.

TO MEDIA OUTLETS:

Having in mind that media play a vital role in shaping societies in which the rights of LGBTI persons are respected and protected as guaranteed by international

human rights law and ensuring that LGBTI voices are heard and taken into consideration, Freemuse recommends that media outlets:

- Refrain from encouraging negative stereotypes against LGBTI persons and report in a manner which promotes inclusion and tolerance contributing to combating discrimination, misinformation and spread of hatred, incitement of violence, prejudice, and intolerance against LGBTI persons.
- Editorial directives instructing journalists to refrain from writing on issues affecting the LGBTI persons, or to depict and stereotype LGBTI persons in a negative light should be immediately revised in line with international standards governing freedom of expression and the principles of non-discrimination and equality on SOGIESC grounds.
- Review and repeal regulations which ban or censor televising or digitising broadcasting of content containing references to sexual orientation, gender identity and gender expression on the pretext of “protecting children” or “defending family values” which fail to pass the test of necessity and proportionality.

ENDNOTES:

1. Understanding that heterosexuality is the preferred sexual orientation.
2. Term used for persons whose gender identity matches the sex assigned at birth.
3. Freemuse interviewees either included or excluded “I”, “Q” and “+”, using LGBT, LGBTQ, LGBTQ+, LGBTIQ.
4. If these persons do not identify as a man or a woman, some national legislations recognise the third gender.
5. These persons, usually referred to as transsexual, may use hormone replacement therapy or undergo sex reassignment surgery in order to harmonise their body with the gender they identify with.
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7. Sridhar Rangayan, Freemuse interview, 2 August 2019.
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11. S. El Sirgany, ‘How one gay Egyptian woman stood up to homophobia and paid the ultimate price’, CNN Online, 17 June 2020, <https://edition.cnn.com/2020/06/17/middleeast/sarah-hegazi-egypt-intl/index.html>, [accessed on 16 October 2020].
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practitioners, Strasbourg, Council of Europe, 2017.

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Freemuse is an independent international organisation advocating for and **defending freedom of artistic expression**.

We **monitor and document** violations of artistic freedom, expose laws and policies that enable and sustain these violations, and leverage **evidence-based advocacy** for systemic structural changes at international, regional and national levels.

Working with partners, artists and activists in the global south and north, we **campaign for and support** individual artists, focusing on women artists and other vulnerable groups of artists. We facilitate and grow locally-owned **national coalitions** in their campaigns and capacity building to monitor and defend artistic freedom.

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