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Universal Rights, Local Realities: Illusion of Artistic Freedom

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ABSTRACT

This study aims to analyze the extent to which international human rights law protects artistic expression and examines how political, cultural, and moral regulations influence the realization of this right across diverse jurisdictions. While often at times, art is perceived as a luxury, artistic freedom is codified as a crucial necessity for human dignity under frameworks such as Article 27 of the Universal Declaration of Human Rights (UDHR) and Article 15 of the International Covenant on Economic, Social, and Cultural Rights (ICESCR). This paper first establishes a comprehensive definition of artistic freedom, highlighting its role as a "warning system" for societal inequality and a cause for social cohesion. It then analyzes the legal instruments and judicial interpretations that have transformed artistic expression from an abstract concept into a codified human right, with an emphasis on regional frameworks and how they influence the matter. The study then offers a compressive comparative case analysis between instances in the Global North and the Global South. Finally, the study evaluates the differences between theoretical international protections and the practical realities of enforcement, considering the impact of censorship and state interference on global artistic landscapes.

KEYWORDS

Article, Rights, Censorship, Jurisdictions, Enforcement

DEFINING ARTISTIC FREEDOM AND SOCIAL VALUE

Artistic freedom allows for artists to imagine, create and distribute diverse cultural expression without international or national pressure, political interference or government censorships¹. Artistic freedom

¹ Culture Action Europe, 'Towards the Culture Compass: A Sector Blueprint' (Discussion Paper, 30 September 2025) <<https://cultureactioneurope.org/advocacy/towards-the-culture-compass-a-sector-blueprint/>> accessed 13 January 2026.

safeguards the right to have one's work accessible to the public and the right for citizens to access and enjoy freely.²

Artistic freedom serves as a dynamic indicator of democracy in a healthy sound society.³ It questions the status quo, often acting as "early warning systems" this is because artists frequently spot societal inequalities before they gain a more boarder societal importance.⁴ Moreover, artistic freedom fosters empathy by allowing people to see the world from other perspectives, literature, cinema and visual arts strengthen social cooperation and cohesiveness.⁵ Lastly, it stimulates creativity by allowing a free exchange of idea valued in a society that safeguards experimental or controversial art.

Art is often viewed as luxury; however, international law treats it as a necessity for human dignity. In fact, participating in a life fueled by culture is fundamental to the human experience, which is the foundation of the belief that art is a human right.

This right is codified in a several international legal frameworks. Article 27 of the Universal Declaration of Human Rights (UDHR) explains that "everyone has the right to freely participate in cultural life of the community and to enjoy the arts." ⁶ Furthermore, the right is also codified in Article 15 of the International Covenant on Economic, Social, and Cultural Rights (ICESCR) mandates nations party to the convention to recognize everyone's right to participate in cultural life and profit from the scientific advancements and their applications.⁷

To protect artistic freedom is not just to protect the form of art, but rather to protect the humanity of the creator therefore, the artist and those who enjoy it, the community.

² UNESCO, 'The rights of artists and citizens regarding cultural life' (Policy Monitoring Platform) < <https://www.unesco.org/creativity/en/policy-monitoring-platform/rights-artists-and-citizens-regarding-cultural-life> > accessed 13 January 2026.

³ Greater Pittsburgh Arts Council, 'When the Arts Are Attacked, Democracy Is at Risk' (14 April 2025) < <https://www.pittsburghartscouncil.org/blog/when-arts-are-attacked-democracy-risk> > accessed 13 January 2026.

⁴ East End Arts, 'Artistic Freedom of Expression' < <https://eastendarts.org/artistic-freedom-of-expression/> > accessed 13 January 2026.

⁵ UNCSA, 'The role of art in building unity and understanding in a divided society' (4 November 2024) < <https://www.uncsa.edu/news/20241104-art-building-unity-and-understanding.aspx> > accessed 13 January 2026.

⁶ Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III) (UDHR) art 27.

⁷ UN Committee on Economic, Social and Cultural Rights (CESCR), 'General Comment No 17: The Right of Everyone to Benefit from the Protection of the Moral and Material Interests Resulting from any Scientific, Literary or Artistic Production of Which He or She is the Author' (12 January 2006) E/C.12/GC/17.

INTERNATIONAL HUMAN RIGHTS LAW

The legal international framework for artistic freedom is developed upon three fundamental treaties, with each of them taking a different perspective and focus on the issue at hand: individual artistic liberty, cultural participation and, developmental rights.⁸

1. *Universal Declaration of Human Rights (UDHR)*

Article 27 UDHR provides for a dual protection; it establishes the right of every person to “freely participate in the cultural life of the community and enjoy the arts” while protecting the material and moral interests of the artist as an author of their work.⁹ This provision is crucial because it doesn’t frame the art as a product of an artist but, also a public good that the entire society has the right to access and enjoy.

2. *International Covenant on Civil and Political Rights (ICCPR)*

The most cited legal protection of artists is Article 19 of the ICCPR, because it expressly declares that the right to receive, seek and disseminate information and ideas also includes expression in the form of art.^{10;11} This provision encompasses an negative obligation on the state; it forbids states party to the convention from interfering with artistic productions unless they meet the strict criteria of Article 19(3) which follows a three part test based upon legality, legitimacy and necessity.¹²

3. *Convention on the Rights of the Child (CRC, 1989) – Article 31*

Lastly, often thought this framework and article are overlooked, article 31 of the CRC safeguards the right to “participate in cultural life and arts freely”.¹³ Meaning that the provision places a positive obligation on states party to the convention to encourage and provide opportunities to artists for activity. The provision views art as a crucial element in a child’s healthy upbringing and environment.

⁸ Council of Europe, *Free to Create: Artistic Freedom in Europe* (Council of Europe Publishing 2023) 13.

⁹ UDHR (n 6) art 27.

¹⁰ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) art 19.

¹¹ UN Human Rights Council, ‘Report of the Special Rapporteur in the field of cultural rights, Farida Shaheed: The right to freedom of artistic expression and creativity’ (14 March 2013) UN Doc A/HRC/23/34.

¹² ICCPR (n 10) art 19(3).

¹³ Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3 (CRC) art 31.

REGIONAL INSTRUMENTS

As established above, international treaties set international standards states must adhere to, however regional frameworks provide more detailed and specific enforcement mechanisms.

The European Convention on Human Rights (ECHR) protects expression with Article 10. The court has clarified that this includes artistic expression, “which is vital for the exchange of political, social and cultural information.”¹⁴ Furthermore, the American Convention on Human Rights (ACHR) also safeguards artistic freedom with Article 13, where it encompasses a dual dimension meaning that on one hand the individual’s right to create is protected and, the society’s right to receive the creation is protected.¹⁵ It goes even further to forbid entirely censorship.¹⁶

Lastly, the African Charter on Human and People’s rights (or Banjul Charter) focuses on the right to receive information and express opinions which is covered by Article 9 of the convention, but, to be read in conjunction with Article 17 of the convention which guarantees the right to take part in the cultural life of the community.^{17;18}

INTERPRETATION BY COURTS AND UN BODIES

1. *UN Human Rights Committee: General Comment No. 34*

The UN Human Rights Committee issued an interpretation of Article 19 of the ICCPR. The General Comment clarified that protected expression includes “nonverbal expression such as images and objects of art”.¹⁹ Furthermore, the protection extends to subjective forms of art, those considered to be offensive to the state, highlighting that the law must protect all and any forms of art even the controversial ones.²⁰

2. *Handyside v. UK (1976)*

The most significant legal precedent for artistic freedom is the landmark case of the European Court of Human Rights (ECtHR) of

¹⁴ *Müller and Others v Switzerland* (1988) 13 EHRR 212.

¹⁵ American Convention on Human Rights (adopted 22 November 1969, entered into force 18 July 1978) 1144 UNTS 123 (ACHR) art 13.

¹⁶ *Ibid.*

¹⁷ Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR) art 9.

¹⁸ ECHR art 17.

¹⁹ UN Human Rights Committee, ‘General Comment No 34: Article 19: Freedoms of opinion and expression’ (12 September 2011) CCPR/C/GC/34.

²⁰ *Ibid.*

Handyside v UK.²¹ The case centers around a controversial schoolbook titled “The Little Red Schoolbook” which ultimately ending up getting banned therefore, in the court agreeing in favor with the UK to ban the book under the “Margin of Appreciation” (notion that national authorities are better placed to judge local morals than high courts).²²

However, with this case, the court established a critical principle, the “Shock, Offend or Disturb” principle. This principle allows for all forms of art to be “favorably received”, the court went further to highlight that in a democratic society the existence of “pluralism, tolerance and broadmindedness” must be present for the democratic society to exist.²³

COMMON CHALLENGES TO ARTISTIC FREEDOM: GLOBAL SOUTH PERSPECTIVES

International law emphasized the principle of “Shock and Offend”, however many Global South states follow an instinct hierarchy of values very different from the generalized notion.²⁴

1. *National Security and the Sedition*

In post-colonial states such as Myanmar, Egypt or Thailand artists who critique the regime status of the state or military are often charged with “threatening national security”.²⁵ In most states of the global south, the law is used as a tool to protect the state rather than protect its artist citizens.

Laws regarding sedition against the state are inherited from past colonial penal codes which were used to silence artists who protested via their art.²⁶ Take as an example the Indian colonial-era penal code which was developed by the British with the intention to stop criticism and nationalist movements.^{27;28}

²¹ *Handyside v UK* (1976) 1 EHRR 737.

²² *Handyside* (n 21).

²³ *Ibid*.

²⁴ Tobias Berger, ‘The “Global South” as a relational category – global hierarchies in the production of law and legal pluralism’ (2021) 42(9) *Third World Quarterly* 2001.

²⁵ US Senate, Committee on the Judiciary, *The Constitution of the United States of America: Analysis and Interpretation* (112th Cong, 2d Sess, Senate Doc No 112-9, 2012).

²⁶ Columbia Law School Human Rights Institute, ‘Sedition in India: The Use and Misuse of Section 124A of the Indian Penal Code’ (April 2022) <<https://hri.law.columbia.edu/sites/default/files/publications/sedition-report-april-2022.pdf> > accessed 13 January 2026.

²⁷ Indian Penal Code 1860, s 124A.

²⁸ Columbia Law School Human Rights Institute, ‘Sedition in India: The Use and Misuse

In fact legislation of this type is left intentionally vague, allowing the state to label any “offensive” art as a threat to the public, therefore also of national security.²⁹

The case of *Luis Manuel Otero Alcántara* from Cuba perfectly represents the weaponization of vague laws to criminalize art. Luis is a self-taught Cuban visual and performance artist. He is a prominent figure in the San Isidro Movement which aims to protect artists and activists who are rebelling against a law requiring artists to get government permission for any art activity, known as Decree 349.^{30;31} Luis in an expression of art, wore the Cuban flag for a whole day and performed acts while wearing it. He was charged with “insulting national symbols” and “contempt”.³² Cuba argued that his art expression was a threat to “national dignity” and was arrested more than 20 times between 2017 and 2021.³³

Another perfect illustrating example of sedition is the *Fiji Times Limited Seditious Trial*.³⁴

This case is often cited in debates of creative dissent and the voices of the pacific islands. In 2016, a journalist of the Fiji Times was charged with sedition over a column written about Muslims published in their indigenous language newspaper, Nai Laklaki. The journalist Waqabaca was charged with sedition for making an ill distinction between Muslims and non-Muslim on the island.³⁵ The prosecutors backed the charge up by stating “communal

of Section 124A of the Indian Penal Code’ (April 2022) <<https://hri.law.columbia.edu/sites/default/files/publications/sedition-report-april-2022.pdf>> accessed 13 January 2026.

²⁹ Amnesty International, ‘Luis Manuel Otero Alcántara’ <https://www.amnesty.org/en/petition/free-luis-manuel-otero-alcantara/> accessed 13 January 2026.

³⁰ Ibid.

³¹ ‘Luis Manuel Otero: Cuba’s most famous political prisoner speaks from jail’ *El País* (14 July 2024) <<https://english.elpais.com/international/2024-07-14/luis-manuel-otero-cubas-most-famous-political-prisoner-speaks-from-jail-ill-either-be-a-martyr-or-ill-leave-the-political-prison.html>> accessed 13 January 2026.

³² PEN America, ‘Authorities Must Stop Harassment and Arbitrary Detention of Writers and Artists’ (Press Release, 9 August 2021) <<https://pen.org/press-release/authorities-must-stop-harassment-and-arbitrary-detention-of-writers-and-artists/>> accessed 13 January 2026.

³³ Ibid.

³⁴ Amnesty International, ‘Fiji: Drop politically motivated sedition charges against The Fiji Times’ (Press Release, 28 March 2017) <<https://www.amnesty.org/en/latest/press-release/2017/03/fiji-drop-politically-motivated-sedition-charges-against-the-fiji-times/>> accessed 13 January 2026.

³⁵ *The Fiji Times*, ‘Times case ends after DPP drops appeal’ (10 June 2018) <<https://www.fijitimes.com.fj/times-case-ends-after-dpp-drops-appeal/>> accessed 13 January 2026.

antagonism".³⁶ However, in May of 2018 the defendant was found to be not guilty and was acquitted.³⁷ This case highlights how the threat of a long prison sentence for "seditious" forms of expression can instill fear in communities.

2. *Blasphemy Laws and Religious Sensitivities*

Another defense often used by the Global South jurisdictions is that of religious emotions or values. It's one of the main areas of conflict between universalism and legal practices and ideas in the Global South. Western courts have abandoned blasphemy laws but, these laws are still enforced in many countries of the MENA region and South Asia.^{38,39}

Many legal scholars and the international community from the Global South contend that a community's right to freedom of religion also encompasses the right to have their holy symbols or beliefs documented via art.⁴⁰

3. *The Colonial Legacy*

Many of the conservative moral regulations in the Global South ironically are not indigenous but are fragments left behind by the European colonial rule.

For instance, the British Empire enforced strict "obscenity" and "public nuisance" laws throughout its colonies. These rules were intended to impose on various populations a certain European moral standard.⁴¹

Artists in the Global South today must deal with a double burden: they must deal with both the legacy of colonialism and modern nationalist movements that view progressive art as a manifestation of western cultural imperialism.⁴²

³⁶ Ibid.

³⁷ Ibid.

³⁸ Voice of America, 'Blasphemy Laws Reign in Many Muslim Countries' (11 May 2017) <<https://www.voanews.com/a/blasphemy-laws-reign-many-muslim-countries/3844962.html>> accessed 13 January 2026.

³⁹ Tariq Ahmad, 'Where is Blasphemy Criminalized Around the World?' (*Library of Congress Blog*, 2 May 2017) <<https://blogs.loc.gov/law/2017/05/where-is-blasphemy-criminalized-around-the-world/>> accessed 13 January 2026.

⁴⁰ Art Index Africa, 'Faith and Form: How Religion Shapes Contemporary African Art' (*Substack*, 12 May 2023) <<https://artindexafrica.substack.com/p/faith-and-form-how-religion-shapes>> accessed 13 January 2026.

⁴¹ Columbia Law School (n 26).

⁴² UN Special Rapporteur (n 11).

COMPARATIVE CASE ANALYSIS

In the context of the Global South, the law of censorship isn't the threat, it's the states failure to protect artists from non-state actors.

1. Heckler's Veto

Soft censorship occurs when a political or religious group or organization attacks a gallery or a theater, and the authorities rather than arresting the attackers, they arrest the artist in order to "keep the peace".⁴³

A challenge that artists face is the phenomenon of a heckler's vote. A heckler's veto occurs when the state suppresses an artist's expression to prevent a violent reaction from a hostile audience.⁴⁴

In the case of *Nelson v Streeter*, the late Chicago mayor Harold Washington was painted in a woman's underwear in a piece called "Mirth and Girth".⁴⁵ Washington was the Chicago's first mayor of color, a prominent figure in the Chicago's community, who died months earlier to the painting being relieved.⁴⁶ The artwork was inspired by a (likely false) rumor that the mayor was wearing women's garments after his fatal heart attack.⁴⁷

Mirth and Girth was on display in 1988 by the then School of the Art Institute of Chicago student, David Nelson. The painting was displayed in the private and student-only exhibition.⁴⁸

When the City Hall and authorities came to knowledge about the painting, it caused outraged in the community with three aldermen marching into the exhibition without the legal basis or authority and removed the painting.⁴⁹ During the removal, the painting was got destroyed by a gash that was sliced into the canvas in response to the

⁴³ Ibid.

⁴⁴ Kimberly Armstrong, 'The Artist as Witness: The Role of Artistic Expression in Post-Conflict Reconciliation' (*Cornell Journal of Law and Public Policy* Paper) <<https://ww3.lawschool.cornell.edu/research/JLPP/upload/Armstrong-note-final.pdf>> accessed 13 January 2026.

⁴⁵ Artist Rights, 'Nelson v Streeter' <https://www.artistrights.info/decision_nelson-v-streeter> accessed 13 January 2026.

⁴⁶ Ibid.

⁴⁷ NTT InterCommunication Center, 'The Museum Inside The Network: Nelson v Streeter' <https://www.nttic.or.jp/en/feature/1995/The_Museum_Inside_The_Network/fileroom/documents/Cases/330nelson.html> accessed 13 January 2026.

⁴⁸ 'Mirth and Girth' *Art and Popular Culture* <http://www.artandpopularculture.com/Mirth_and_Girth> accessed 13 January 2026.

⁴⁹ Artist Rights (n 42).

artwork.⁵⁰ When the local authorities arrived, rather than protecting the art (the institute's property) or the artist, they took the artwork into "custody" with the justification that were doing so to prevent a riot. The painting was held for 24 hours. Nelson sued the City of Chicago and the aldermen for first amendment violation and the fourth amendment violation of the American Constitution. The case reached the Court of Appeals in which the court ruled in favor of Nelson for the first amendment violation.⁵¹

The issue with this case is that the Aldermen were the censors themselves, even if they really thought they were preventing a riot, the court argued that the administrative convenience of "keeping the peace" by silencing the victims of violence is subordinated to the fundamental nature of freedom to expression.

This case demonstrates that art as a human right mandates that the state must protect art rather than to order individual to remove it.

2. Chilling Effect

A "chilling effect" on creative expressions results in directly from a state's inability to prosecute, investigate or punish those who harass, threaten or abuse artists.⁵² Without the official protection, artists frequently have to resort to self-censorship as a survival tactic, trying to steer clear of conversative or contentious subjects to avoid becoming targets.⁵³

In the case of *Perumal Murugan*, the writer wrote a novel entitled "One Part Woman". The novel was deemed controversial and conservative because of the story of the very novel.⁵⁴ The novel was protested by caste-based groups who viewed that the novel was depicting a fertility ritual at a local temple in Tamil Nadu, accusing it of hindering religious values, defaming women and misrepresenting culture.⁵⁵ These opinions lead to threats, protests, book burnings etc. against the Author, Murugan.^{56;57} The author, in a fit of rage and frustration,

⁵⁰NTT InterCommunication Center (n 44).

⁵¹ Ibid.

⁵² Human Rights Foundation, 'The Silencing of Dissident Artists' (17 January 2024) <<https://hrf.org/latest/the-silencing-of-dissident-artists/>> accessed 13 January 2026.

⁵³ Ibid.

⁵⁴ G Sampath, 'The Perumal Murugan book controversy and the Madras High Court' *The Hindu* (10 July 2016) <<https://www.thehindu.com/opinion/lead/perumal-murugan-book-controversy-and-madras-high-court/article14476037.ece>> accessed 13 January 2026.

⁵⁵ Ibid.

⁵⁶ Ibid.

⁵⁷ Vivek Santhosh, 'The Censor Within: Perumal Murugan and the ghost of censorship' *The Caravan* (1 October 2016) <<https://caravanmagazine.in/literature/censor-within->

posted on Facebook that he had died. This was of course a rhetorical figure of speech, indicating that his career as a writer had finished.⁵⁸ The Madras High Court “resurrected” him in a landmark judgement, citing that “if you do not like a book, simply close it. The answer is not its ban”.^{59,60}

The very moment the chilling effect comes into scene here can be pin pointed. The constant harassment drove the author to declare himself deceased, meaning that he would never write again.

In the Global South often the law is reactive.⁶¹ It’s a tool used to regulate society’s reaction to art rather than to protect the artists. The state has therefore, a positive obligation to protect.

3. Spark in a powder keg

A case where the court deals with positive obligation in terms of art is the case of *S. Rangarajan Etc v P. Jagjivan Ram*.⁶² The artwork in question here was a film that critiqued India’s caste-based reservation policy; it suggested that certain quota’s (reservations systems) should be based on economic status of a family rather than the caste they were born into.⁶³ The story revolved around a girl who faked a caste certificate to be able to work and various homage’s to the idea that merit and economic needs should be the bare minimum.⁶⁴

The artwork’s status of censorship was the main controversy in this case because the initial committee refused the universal certificate but a standing “Revising Committee” ended up issuing the universal certificate on a conditional basis; that some scenes get removed from the final cut.⁶⁵ The challenge was society, various groups including but not limited to the Republican Party of India fueled petitions in the Madra high court with the reasoning that the film would provoke a

perumal-murugan> accessed 13 January 2026.

⁵⁸ G Sampath (n 51).

⁵⁹ The Hindu Centre for Politics and Public Policy, ‘Resurrecting the Author: The Perumal Murugan Judgment’ (15 July 2016) <<https://www.thehinducentre.com/resources/article8815833.ece>> accessed 13 January 2026.

⁶⁰ BBC News, ‘Perumal Murugan: The Indian writer who “returned from the dead”’ (5 July 2016) <<https://www.bbc.com/news/world-asia-india-36711399>> accessed 13 January 2026.

⁶¹ Michael McAllister, ‘Artistic Expression and the Law’ (Berkeley Law Paper) <<https://www.law.berkeley.edu/files/McAllisterpaperforKaganpdf.pdf>> accessed 13 January 2026.

⁶² *S Rangarajan v P Jagjivan Ram* (1989) 2 SCC 574.

⁶³ Ibid.

⁶⁴ Ibid.

⁶⁵ Ibid.

violent reaction amongst groups.⁶⁶ Following this, the Madras High Court revoked the film's certificate, the court didn't find the film to be de facto illegal, but they're arguments were coming from a security concern. The court used Article 19(2) of the Indian Constitution which encapsulated the "public order" defense of the state, in which they argued that the state could not guarantee the safety of viewers when enjoying the film in theaters.⁶⁷

The artists' argument was that freedom of expression also included the right to criticize a way a government works. The Supreme Court of India reversed the ban on the film and held that a state cannot suppress artistic expression based on "remote, far-fetched fears".⁶⁸ The court went further to reiterate that it's a state's duty to prevent the "powder keg from exploding" by controlling the crowd, not by silencing the "spark" therefore the artist.⁶⁹ They went on further to state that a state cannot use its own inability to maintain law and order as a reason to evade a fundamental right such as art.⁷⁰

COMPARING THE "HARM PRINCIPLE" AND THE "SENTIMENT PRINCIPLE"

The main difference between the Global North and the Global South frequently stems from a basic disagreement over what constitutes "harm".⁷¹ In the North there are various legal restrictions and limitations which are governed by the "harm" principle. This principle suggests that a state should only intervene into matters relating to society that directly incite violence or infringed liberty on others.⁷² In the context of art, therefore, the state should only interfere in regulating art only when it incites violence or when the psychical or mental liberty of another is compromised.

In the South there is a more advanced notion of society, where society is a collective entity.⁷³ The harm here is defined by a group rather than by one single person. As cited before, some reactions to art such as "insult

⁶⁶ Ibid.

⁶⁷ Ibid.

⁶⁸ Ibid.

⁶⁹ Ibid.

⁷⁰ Ibid.

⁷¹ Polsci Institute, 'India-Foreign Policy: North-South Divide Environmental Governance' <<https://polsci.institute/india-foreign-policy/north-south-divide-environmental-governance/>> accessed 13 January 2026.

⁷² Ethics Unwrapped, 'Harm Principle' (University of Texas at Austin) <<https://ethicsunwrapped.utexas.edu/glossary/harm-principle>> accessed 13 January 2026.

⁷³ Wageningen University & Research, 'Development perspectives from the Global South' <<https://research.wur.nl/en/publications/development-perspectives-from-the-global-south/>> accessed 13 January 2026.

to national dignity” are seen as tangible injuries to the societal fabric.

Consequently, the North prioritizes an artists’ autonomy, while the South will prioritize communal harmony, seeing that they view the protection of traditions or national symbols as a necessary element for a stable society.⁷⁴

CHALLENGES IN ENFORCEMENT

1. *Lack of Binding Enforcement*

There are significant obstacles in protecting artists, however the international human rights law mechanisms aren’t the easiest to enforce.⁷⁵ Treaties such as the ICCPR are binding, however, the mechanisms of enforcement are limited.

For example, the UN Human Rights Committee can review cases and issue opinions on such but, there is no direct enforcement mechanism to compel a sovereign state to release an artist from custody for example or, amend or void a censorship law.⁷⁶ The first optional protocol of the ICCPR allows for individuals of the signatory states to bring individual complaints to the UN, however, many jurisdictions with strict art censorship laws haven’t and won’t sign and ratify the protocol, isolating themselves from any international legal scrutiny.⁷⁷ For the protection of artists, special rapporteurs get assigned or general comment often come to light but, the issue with soft law is that there is no enforcement mechanism.⁷⁸

2. *The Cultural Shield*

In the context of the Global South, the relationship between collective

⁷⁴ Nomadit, ‘The Global South as a relational category’ (RAI 2018 Conference) <<https://nomadit.co.uk/conference/rai2018/p/6133>> accessed 13 January 2026.

⁷⁵ Article 19, ‘UN HRC: Artistic expression must be protected’ (11 June 2014) <<https://www.article19.org/resources/un-hrc-artistic-expression-must-be-protected/>> accessed 13 January 2026.

⁷⁶ IPU and OHCHR, *Human Rights: A Handbook for Parliamentarians* (2016) <<https://www.ohchr.org/sites/default/files/Documents/Publications/HandbookParliamentarians.pdf>> accessed 13 January 2026.

⁷⁷ OHCHR, ‘Background: International Covenant on Civil and Political Rights and Optional Protocols’ <<https://www.ohchr.org/en/treaty-bodies/ccpr/background-international-covenant-civil-and-political-rights-and-optional-protocols>> accessed 13 January 2026.

⁷⁸ Centre for Global Law and Justice, ‘United Nations Human Rights Council Special Procedures: Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression’ <<https://cgjlj.org/human-rights-oversight/united-nations/human-rights-council/special-procedures/special-rapporteur-on-the-promotion-and-protection-of-the-right-to-freedom-of-opinion-and-expression/>> accessed 13 January 2026.

sensitivity and individual expression is not seen as a failure of law but, a legal priority.

Some argue that the justification of “moral sensitivity” is a valid legal justification that authoritarian regimes utilize in an effort to suppress political dissent.⁷⁹ When states label artwork, as “immoral” or “blasphemous”, the conversation always shifts from a politically driven state censorship to the protection of state values. This essentially makes it more challenging on international institutions to intervene or give recommendations without it appearing that the institution is attacking a local culture.⁸⁰

3. *The Sovereignty Gap*

Conflicts between national sovereignty and international law always derives from how a state integrates international treaties into its domestic legal system. This a challenge that not only the field of art law faces but, various fields of international law.

In monist systems the international law becomes automatically part of the domestic legal system and code.⁸¹ However, in a dualist system, one of which many Global South states are part of, the international law must be followed by an act of domestic law in order of it to be transposed into domestic law, this is usually by the state’s parliament.⁸² This leaves a lot of room for legislation to be pushed back or transposed too late.

CONCLUSION

Artistic freedom must be recognized as a fundamental human right. It is a vital indicator of a healthy and sound democracy. Article 27 of the UDHR provides that participating in a cultural environment is a crucial element of the human experience which allows for fostering empathy, raising emotional awareness and the exchange of ideas, visions, perspectives.⁸³ The current status of censorship our society is at reveals a

⁷⁹ George Katsarov, ‘Moral sensitivity can vary significantly among people, emotions towards actions and situations’ (2023) Springer <<https://link.springer.com/article/10.1007/s40889-025-00225-4>> accessed 13 January 2026.

⁸⁰ Freemuse, *The State of Artistic Freedom 2025* (Report, April 2025) <https://www.freemuse.org/wp-content/uploads/2025/04/SAF-2025_web.pdf> accessed 13 January 2026.

⁸¹ ‘Art Law’ in *Oxford Bibliographies* <<https://www.oxfordbibliographies.com/display/document/obo-9780199796953/obo-9780199796953-0168.xml>> accessed 13 January 2026.

⁸² Ibid.

⁸³ UDHR (n 6) art 27.

large gap between objective international framework shared values.

When law remains reactive rather than proactive, it prioritizes the management of society over the protection of idea and methods in which these ideas can be manifested. When there is a priority on the management it subconsciously releases a chilling effect on society that silences artists and enforce cultural inequalities.

States must recognize that if something isn't working or working against you, you should take another look at the system that is enforced rather than silencing the cause.