

Accountability mechanisms for violations of the rights of cultural rights defenders: supporting the role of cultural rights defenders

I will start by delineating the different types of ‘accountability mechanisms’. A preliminary observation on the meaning of the term is warranted: what does ‘accountability’ mean ? In the domestic sphere it is associated with the *rule of law*, processes, policies and strategies by which members of the government and peoples’ representatives may be held accountable. In international law there are no such limitations. Accountability is essentially much broader than the notion of ‘state responsibility’, which refers specifically to breaches of international obligations by acts or omissions of States and their agents.

There are various types of accountability mechanisms for violations of cultural rights that may incidentally involve or impact the work of cultural rights defenders (CRDs). These include first, the rise of individual criminal responsibility for perpetrators of crimes related to the destruction of heritage under international criminal law, as we have seen in *al-Mahdi*. Secondly, actions of the UN political bodies, especially resolutions of the UN Security Council, which stress the importance of collaboration between member States and agencies such as the UNESCO and INTERPOL, as illustrated in Resolution

2347(2017) adopted by the UN SC in relation to crimes related to the looting and trafficking in cultural property. Thirdly, local laws including those set up under international and regional legal instruments that provide for obligations of parties to legislate in the sphere of criminal law. This is the case of the Nicosia Convention, for example, that provides for criminalization of various offences related to cultural property. These types of accountability mechanisms are indicative of a trend within the international community towards ending impunity for the commission of crimes affecting cultural heritage. They impact the work of CRDs on the ground either directly or indirectly, encouraging, supporting or supplementing their actions.

The subsequent question that arises is whether any *other* accountability mechanisms are *directly* available to CRDs for violations of *their* rights. The starting point is the Declaration of Human Rights Defenders ('HRDs'). Article 2 of that Declaration refers to the general responsibility of States to protect, promote and implement all human rights on their territory, and the duty of States to take all necessary steps, in order to ensure that these rights are effectively guaranteed. In other words, the general human rights law framework is always applicable for the protection of the rights of CRDs, as for any individual or legal entity. In case of violations therefore, responsibility will be triggered under relevant human rights treaties ratified by the State concerned, especially the two

major Covenants, as well as customary international law.

Interferences with CRDs rights should be seen as aggravated, in light of the Declaration on Human rights defenders. This is, firstly, because States have positive duties to facilitate the work of all HRDs, including also CRDs, not to interfere with their rights. Secondly, by the very nature of their work, CRDs are in a situation of an increased risk and may be more easily targeted. Thirdly, attacks against CRDs' rights are essentially violations of the entire community's rights to have access not only to information but also culture, and cultural rights. Accountability should also be triggered in the case of States that fail to conduct appropriate, impartial and effective investigations in the case of attacks perpetrated by non-State actors - especially in respect of acutely suspicious incidents. Documentation of violations of CRDs rights and abuses against them is also crucial in this respect, especially those working in the field of cultural property, as well as the establishment of systems of protection and early warning mechanisms. This is in line also with Resolution 13/17 of the Human Rights Council that emphasizes the need to maintain inventories for the protection of cultural property, and the need to need to implement educational programmes on the importance of cultural heritage and cultural rights, as well as training military forces and humanitarian actors.

Accountability mechanisms therefore include recourse to all human rights mechanisms that are normally available to individuals or communities whose rights are violated, including the UN treaty bodies; mechanisms of the Human Rights Council, especially the UPR, as well as regional bodies. In other words, the holistic approach to accountability concerns a variety of different actors of the international community. These actors should be equally concerned with cultural rights considerations. This is also in line with the Fribourg declaration on cultural rights that emphasizes that all Human Rights have a cultural dimension. There are today around the world a number of musicians, performers, artists who are targeted, imprisoned, and threatened, or live in exile, and those who see their right to life, liberty and security of the person and freedom from degrading treatment violated. Accountability for violation of these rights goes way beyond article 15 of the ICESCR and the right to participate in cultural life – and even beyond the right to guarantee artistic freedom. Violations of CRDs rights who fight for the rights of persons of disabilities to access cultural heritage sites for example could be addressed by the CRPD Committee; CRDs’ rights with respect to activities in favour of inclusion should be addressed by the CERD Committee; CRDs rights with respect to the abolition of gender-based discrimination, promoting the right of women to receive, say, fine arts education and participate in music concerts and performances should be addressed by the CEDAW Committee and so on so forth. This is also the point of article 7 of the Declaration of Human rights defenders that states that ‘everyone has the right [...] to develop

and discuss *new* human rights ideas and principles and to advocate their acceptance’.

Last, in situations of armed conflict or occupation the protection of CRDs under human rights treaties does not stop. To the contrary, it is supplemented by rules of international humanitarian law (IHL) on the protection of the lives – and property – of civilians. Military and occupying forces are therefore under obligation not only to refrain from unlawful acts, but also to engage in positive steps, and safeguard and ensure that there is adequate field control so that CRDs working towards preserving endangered cultural property are not attacked, or threatened or inhibited in their work, especially those working in situations at risk.

TO CONCLUDE : The role of CRDs is significant in safeguarding our cultural heritage not only to facilitate transmission to future generations, but also to engage with change to offer to these generations a better future, with more opportunities. Monitoring, compliance and accountability processes therefore should equally inclusive, and not confined to the ICC or the UN Security Council alone. Human Rights bodies can play an important role in ending impunity for violations against the rights of CRDs. The starting point is the creation of a human rights culture, as well as the understanding that the work of CRDs, individuals, NGOs and other actors defending culture is as important as other HRDs.