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**Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms**

## **Report of the Special Rapporteur in the field of cultural rights**

### **Note by the Secretary General**

The Secretary-General has the honour to transmit to the General Assembly the report prepared by the Special Rapporteur in the field of cultural rights, Karima Bennouna, submitted in accordance with Human Rights Council resolution [37/12](#).

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\* [A/74/150](#).



## **Report of the Special Rapporteur in the field of cultural rights**

### *Summary*

The report addresses the importance of public spaces for the exercise of cultural rights and the challenges which must be addressed so that everyone can access and enjoy such spaces. It reviews existing frameworks and proposes a more holistic human rights-based approach for policymaking.

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## I. Introduction

1. In the present report, the Special Rapporteur focuses on the critical role played by public spaces in the enjoyment of human rights, and particularly cultural rights. She also underlines the ways in which respect for cultural rights contributes to vibrant, meaningful and accessible public spaces. She stresses that many human rights guarantees contained in international instruments, notably those relating to cultural rights, must be understood as requiring the enjoyment of adequate public spaces by all, without discrimination. She therefore urges that the question of public space be recognized as a human rights issue, and that a human rights approach which centres cultural rights should be taken to decision-making in these areas.

2. Since the establishment of the cultural rights mandate in 2009, mandate holders have developed a working definition of these rights. They protect, inter alia: (a) human creativity in all its diversity and the conditions for it to be exercised; (b) the free choice, expression and development of identities, which include the right to choose not to be a part of particular collectives, as well as the right to exit a collective, and to take part on an equal basis in the process of defining it; (c) the rights of individuals and groups to participate, or not to participate, in the cultural life of their choice; and (d) the right to interact and exchange, regardless of group affiliation and of frontiers; (e) the rights to enjoy and have access to the arts, to knowledge and to an individual's own cultural heritage, as well as that of others; and (f) the rights to participate in the definition and implementation of policies and decisions that have an impact on the exercise of cultural rights (see [A/HRC/37/55](#), para. 15; and [E/C.12/GC/21](#), para. 15 (c)). Both mandate holders have regularly stressed that the purpose of the mandate is not to protect culture per se, but rather the conditions allowing all people, without discrimination, to access, participate in and contribute to cultural life in a continuously developing manner.<sup>1</sup> Moreover, they have made clear that cultural rights are embedded in the universal human rights framework and do not justify discrimination or violations of other internationally guaranteed human rights.

3. The existence of adequate and accessible public spaces that can be shared and enjoyed by all in equality and dignity is a sine qua non for the fulfilment of universal human rights, including cultural rights, many of which require possibilities for free expression and interaction in public spaces.<sup>2</sup> In particular, the rights to take part in cultural life without discrimination and freedom of artistic expression and creativity, as well as many other rights, including the freedoms of expression, assembly, association and religion or belief, the rights to development, education and adequate housing, and the rights of particular categories of persons such as persons with disabilities and women, cannot be enjoyed in the absence of such public spaces and of equal access to them.

4. Issues pertaining to public spaces have been raised by a variety of stakeholders, who have addressed them mainly within their sector or through the perspective of a specific group. The Special Rapporteur notes that these approaches have often not been holistic or human rights-based. Accordingly, the purpose of the present report is to try to synthesize some of the work in the field and to provide an overview from a human rights perspective, offering a catalogue of key questions regarding access to public spaces for all, the challenges faced by actors across the cultural ecosystem when accessing such spaces, the strategies they use to enjoy them and the impact this

<sup>1</sup> See [A/HRC/14/36](#), para. 9; [A/67/287](#), para. 7; [A/HRC/31/59](#) and [A/HRC/31/59/Corr.1](#), para. 9; and [A/HRC/40/53](#), para. 15.

<sup>2</sup> On the social roles of public spaces, see Eric Klinenberg, *Palaces for the People: How Social Infrastructure Can Help Fight Inequality, Polarization, and the Decline of Civic Life* (Random House, 2018).

has on cultural rights. It insists on the responsibility of States for, and the roles of other actors in, ensuring that public spaces become or remain a sphere for deliberation, cultural exchange, enjoyment of universal human rights, social cohesiveness, *vivre ensemble*, mutual understanding and diversity.

5. For the purpose of the present report, the Special Rapporteur widely disseminated a questionnaire. She received over 70 responses, which are available on the website of the Special Rapporteur. Additionally, she was pleased to consult a selected number of experts from around the world. She thanks all contributors.

## II. Public spaces in the context of cultural rights

6. A number of definitions of public space have been proposed by United Nations agencies, civil society actors<sup>3</sup> and academics.<sup>4</sup> Most definitions require that public spaces be open and accessible to all without discrimination. The United Nations Educational, Scientific and Cultural Organization (UNESCO) stresses that public spaces may refer to gathering places, such as parks and squares; connecting spaces, such as streets and sidewalks; and virtual spaces.<sup>5</sup> For the Special Rapporteur on the rights to freedom of peaceful assembly and of association, public spaces are “the public sphere where discussions and disputes can freely take place with a view to achieving consensus on what is good for society” (see [A/HRC/35/28](#), para. 10). The United Nations Human Settlements Programme (UN-Habitat) lists a number of characteristics public spaces should have to contribute to substantive equality, diversity and dignity, including availability, accessibility, affordability, flexibility and good quality, and adds that, as a common good, public spaces imply a “spirit of public service without any purpose other than contributing to the overall quality of urban life”.<sup>6</sup> Some definitions suggest that, while use of public space should be guaranteed, it is also important to contribute to it in a way that benefits the collective.<sup>7</sup>

7. The precise definition of public spaces used around the world at the national level converge and diverge, and terminology varies,<sup>8</sup> as shown by the many responses received to the questionnaire. Common aspects include the nature of public spaces as places for exercising human rights, the importance of non-discrimination and accessibility being built into the universal design of such spaces and the understanding of such places as spaces of social justice.<sup>9</sup> Some variation is also suggested, such as the blurring of lines between private and public space in rural areas, and the existence of a notion of shared space in some regions.<sup>10</sup>

8. Having surveyed the range of definitions, the Special Rapporteur will consider public spaces as places that are publicly owned and accessible to all without discrimination, where people can share in the project of building a common society based on human rights, equality and dignity, where they can find ways to develop *vivre ensemble*, to build what they have in common and to share their common

<sup>3</sup> See, for instance, the definition by the International Federation of Library Associations and Institutions, and the definition by Charter of Public Space, 2013, para. 6.

<sup>4</sup> For example, in Perla Korosec-Serfaty, “La sociabilité publique et ses territoires: places et espaces publics urbains”, *Architecture & Comportement*, Vol. 4, No. 2 (1988), pp. 111–132.

<sup>5</sup> See [www.unesco.org/new/en/social-and-human-sciences/themes/urban-development/migrants-inclusion-in-cities/good-practices/inclusion-through-access-to-public-space](http://www.unesco.org/new/en/social-and-human-sciences/themes/urban-development/migrants-inclusion-in-cities/good-practices/inclusion-through-access-to-public-space).

<sup>6</sup> United Nations Human Settlements Programme (UN-Habitat), *Global Public Space Toolkit: From Global Principles to Local Policies and Practice* (2015), p. 24.

<sup>7</sup> See contribution by Temba Middelmann.

<sup>8</sup> Related terms include “public domain” (contribution of Argentina) and “civic space” (see [A/HRC/32/20](#)).

<sup>9</sup> See, for example, contributions by Mexico, Norway and Qatar.

<sup>10</sup> See contribution by Mali.

humanity, while still nurturing and expressing their own identities. They include cultural sites, as well as open, natural, virtual, urban and rural spaces, public facilities and streets. Such spaces are inherently diverse and shared by many people in both collective and distinctive ways. The existence and human rights-respecting management of such spaces, without discrimination, is a necessary precondition for the enjoyment of cultural rights and many other universal human rights. The pursuit of social cohesion does not mean that controversies and debate cannot arise in public spaces. They are places where various, sometimes opposing, world visions can at times be expressed and where controversies can be debated in circumstances that respect the human rights of all.

9. Though distinct, some privately owned spaces of public use may sometimes function as public spaces and will also receive some consideration here. These may include commercial malls used by people as leisure and gathering spaces, as well as spaces surrounding village wells in rural areas, located on private property but with a customary right for public access and use. The Special Rapporteur notes that some groups, such as indigenous peoples, may at times need their own “common space”, which may not always be accessible to all, or accessible only under certain conditions. Such spaces must be respected, but they are also governed by human rights standards, such as the prohibition of discrimination, including against women.

#### **The diversity of public spaces and related challenges**

10. The Special Rapporteur uses the term “public spaces” in its plural form, to underline the plurality and diversity of these spaces and the ways people use them. Some of this diversity is outlined below.

11. The nature, form and size of the space may vary. As mentioned above, public spaces include not only urban but also rural and natural spaces (including squares, parks, cemeteries, public transportation, forests, mountains and waterfronts), real and virtual spaces, cultural sites, public facilities (including public housing, libraries and museums, public schools and town halls) and streets. Each kind of space may give rise to its own particular human rights opportunities and concerns.

12. In today’s world, rapid urbanization poses many challenges related to public space. Designing inclusive public spaces can be impeded by a lack of knowledge about the needs of different users or a lack of commitment and strategic planning to include them in the process. Corruption in public works and weak communication between stakeholders represent further obstacles.<sup>11</sup>

13. In rural areas, issues surrounding public spaces where people gather to discuss, interact, exercise their citizenship, relate to the environment and access resources such as water and land in conditions of safety, remain crucial. The question of who decides and manages these spaces can have important human rights consequences. The struggle to preserve cultural spaces in rural areas, such as village or mobile libraries, has been difficult in many contexts and should likewise be supported. Questions related to rural public spaces have received less attention and merit further consideration.

14. Virtual spaces add a new dimension, complementing real spaces without replacing them. The Special Rapporteur stresses that the increase of virtual public spaces does not lessen the importance of real spaces where people can meet and interact in person. While virtual spaces afford important new opportunities for exercising cultural rights and making global and local connections, they also raise urgent human rights questions and may undermine real spaces by encouraging people to prioritize virtual rather than actual interactions with one another. Moreover, the

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<sup>11</sup> See contribution by Janett Jimenez Santos.

increasing use of personal electronic devices while in public spaces has also affected human interaction therein.

15. Because they are accessible to all, public spaces fulfil many functions, including providing access to resources, offering a location for cultural practices and allowing for the building of relationships with the spaces. They are used differently by people depending on the day and time.<sup>12</sup> Individuals, depending on their age, gender and cultural background, gather in public spaces, alone or in groups, for many different reasons. For example, they travel from their homes to other places, engage in rest and leisure, interact with their environment, play and practise sports, take part in cultural, traditional and religious events, spend time with their families or socialize, or gather to claim their rights.

16. It is important to consider the conditions of accessibility, including financial accessibility, which can maximize participation and equality in such spaces. While most public spaces are and should be accessible for free, some, like museums and libraries, may entail entrance or usage fees, necessary for the funding of certain programmes. Even if reasonable, these fees can limit access for marginalized sectors of the population and so should be carefully considered. Fees must not be applied in a discriminatory manner or with an intent to exclude certain groups. Where fees cannot be avoided, policies should be developed to minimize potential exclusions, such as by providing free access on particular days or during public holidays and offering free or low-cost entry for the unemployed, youth, students and elderly persons.

17. The multiple dimensions of public space reflect the interdependent and indivisible human rights framework. The civil, or civic, dimension refers to the set of conditions that allow civil society and individuals to exercise their citizenship and influence the cultural, political and social structures around them freely.<sup>13</sup> It is linked to the political dimension, which emphasizes the expression of opinions, public debate and democratic exchange. Parks, squares and streets have been the site of many landmark demonstrations (and attendant repression), which highlights the potential of public spaces as a powerful political tool. Public spaces also have an important social dimension, as they are spaces which are shared, managed and built for common or collective use and where people socialize and learn about others.<sup>14</sup> The economic dimension relates to issues such as access to resources, including land, food and water, and exercise of economic activities in public spaces.

18. From a cultural rights perspective, or cultural dimension, public spaces respond to the need to encounter others and convey important social and cultural meanings.<sup>15</sup> They facilitate a diversity of cultural expressions and social participation. This includes visiting educational and historical sites; enjoying symbolic and architectural landscapes; attending, observing or taking part in art, performances and cultural practices; and interactions with others. The right to take part in cultural life and the right to freedom of artistic expression both imply the possibility of a public, shared dimension. It is necessary to preserve existing public spaces, as well as to create new ones, for people to learn, develop their creativity and experience the humanity of others, and to foster civic engagement.<sup>16</sup>

<sup>12</sup> See, for instance, the spontaneous and organized uses of Zizhuyuan Park, Beijing, in Linnea Hagenbjörk, "An analyse of Chinese urban public space" (2011).

<sup>13</sup> See definition of "civic space" by CIVICUS at <https://monitor.civicus.org/FAQs>.

<sup>14</sup> See contribution by Colombia.

<sup>15</sup> Luc Gwiazdzinski, "Les nouveaux arts du faire" in Fédération nationale des arts de la rue, *Manifeste pour la création artistique dans l'espace public* (2017), pp. 47–51.

<sup>16</sup> A/HRC/34/56, para. 25.

### III. International legal framework

19. The aim to “provide universal access to safe, inclusive and accessible, green and public spaces, in particular for women and children, older persons and persons with disabilities” is enshrined in target 11.7 of the 2030 Agenda for Sustainable Development. This goal must be met as a matter of priority in order to ensure the enjoyment of many human rights.

20. Cultural rights<sup>17</sup> are grounded in numerous international provisions, in particular article 27 of the Universal Declaration of Human Rights and article 15 of the International Covenant on Economic, Social and Cultural Rights, which guarantee the right of everyone, without discrimination, to take part in cultural life, as well as artistic and scientific freedom. They are also found in articles 18, 19, 21 and 27 of the International Covenant on Civil and Political Rights, as well as in provisions protecting the rights of specific categories of persons, including women, children, persons with disabilities, persons belonging to minorities, indigenous peoples and migrants.

21. While account must be taken of national and regional particularities and various historical, cultural and religious backgrounds, it is the duty of States, regardless of their political, economic or cultural systems, to promote and protect all human rights and fundamental freedoms.<sup>18</sup> Thus, “no one may invoke cultural diversity to infringe upon human rights guaranteed by international law, nor limit their scope”.<sup>19</sup>

22. Too often, people refer to the freedoms of expression and assembly only in their civil and political dimensions, forgetting their equally important cultural dimension.<sup>20</sup> Cultural expressions and assemblies in public spaces are equally protected by human rights provisions as political expressions and assemblies, and often overlap (see [A/HRC/23/34](#) and [A/HRC/37/55](#)).

23. Applying limitations to cultural rights may be necessary in certain circumstances, in particular in the case of harmful practices which infringe upon other human rights. Limitations must pursue a legitimate aim, be compatible with the nature of these rights and be strictly necessary for the promotion of general welfare in a democratic society, in accordance with article 4 of the International Covenant on Economic, Social and Cultural Rights. Any limitations must therefore be proportionate, meaning that the least restrictive measures must be taken when several types of limitations may be imposed. Existing international human rights standards governing limitations on rights intrinsically linked to cultural rights, such as the freedoms of thought, conscience and religion, of opinion and expression, and the rights to privacy, peaceful assembly and freedom of association, must be taken into consideration (see [E/C.12/GC/21](#), para. 19, and [A/HRC/14/36](#), paras. 35–36). Therefore, possible limitations to a right to access and enjoy public spaces must be compatible with all these relevant standards, the most stringent always being applied first.

24. Limitations on the exercise of rights within public spaces must be tailored to the specificities of the spaces, the time and the users. For example, city parks have specific opening hours that take into account potential nuisances for neighbours and environmental preservation. Limitations may be imposed to protect the rights of

<sup>17</sup> See definition at [A/HRC/14/36](#), para. 9; [A/67/287](#), para. 7; and [A/HRC/31/59](#) and [A/HRC/31/59/Corr.1](#), para. 7.

<sup>18</sup> Vienna Declaration and Programme of Action, para. 5.

<sup>19</sup> United Nations Educational, Scientific and Cultural Organization (UNESCO) Universal Declaration on Cultural Diversity, art. 4.

<sup>20</sup> Mylène Bidault, *La protection internationale des droits culturels* (Brussels, Bruylant, 2009), pp. 23–24.

specific groups that may enjoy a stronger relationship with a place, land or site.<sup>21</sup> For example, access by tourists to a particular site may sometimes be restricted to safeguard access by locals, or national parks may close to the general public several times per year to allow indigenous peoples to celebrate their special relationship with the place. Any such distinction needs to be carefully evaluated in the specific context, taking into consideration the rights of all persons concerned.

25. According to article 5 (1) of the International Covenant on Economic, Social and Cultural Rights, the right of everyone to take part in cultural life may not be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized in the Covenant or at their limitation to a greater extent than is provided for therein.

26. Direct or indirect references to public space are found in the work of many United Nations human rights mechanisms. Successive Special Rapporteurs in the field of cultural rights have addressed these issues in thematic reports,<sup>22</sup> country reports<sup>23</sup> and communications. Communications have raised cases of destruction of public spaces, either in the context of conflict or for renovations.<sup>24</sup>

27. In its general comment 21 (2009) on the right of everyone to take part in cultural life, the Committee on Economic, Social and Cultural Rights addressed the issue of accessibility for older persons and persons with disabilities, as well as for those who live in poverty, to places where cultural performances or services are offered, such as theatres, museums, cinemas and libraries and, to the extent possible, to monuments and places of national cultural importance (see [E/C.12/GC/21](#), paras. 16 and 31). It has also systematically reiterated the obligation of States to protect and promote the use of the languages of ethnic minorities and indigenous peoples in public life (see, for instance, [E/C.12/POL/CO/6](#), para. 58; and [E/C.12/AGO/CO/4-5](#), para. 55). The Human Rights Committee has addressed the issue of restriction of public meetings (see [CCPR/C/SDN/CO/5](#), para. 45), closing down of public space through suspensions of social media (see [CCPR/C/COD/CO/4](#), para. 39), prior authorization regimes for public gatherings (see [CCPR/C/MAR/CO/6](#), para. 45), “criminalization of homosexual acts which are punishable when they take place in public spaces” (see [CCPR/C/BHR/CO/1](#), para. 23) and non-inclusion of sexual harassment in public spaces in a sexual harassment bill (see [CCPR/C/JAM/CO/4](#), para. 23). The Committee on the Elimination of Discrimination against Women has addressed the prevalence of violence against women and girls in public spaces and on public transportation (see [CEDAW/C/CRI/CO/7](#) and [CEDAW/C/VNM/CO/7-8](#)). The Working Group on the issue of discrimination against women in law and in practice has found that only 8 out of 100 States have enacted laws prohibiting sexual harassment in public places, and indicated that patriarchal and discriminatory family law or practice may limit women’s freedom of movement in public spaces (see [A/HRC/26/39](#), para. 104; and [A/HRC/23/50](#), para. 58). The Committee on the Rights of the Child has addressed the

<sup>21</sup> See, for example, in relation to cultural heritage, [A/HRC/17/38](#), paras. 62–63.

<sup>22</sup> See, for example, [A/HRC/25/49](#), [A/69/286](#), [A/HRC/23/34](#), [A/HRC/34/56](#), [A/72/155](#), [A/HRC/37/55](#), [A/67/287](#) and [A/71/317](#).

<sup>23</sup> See reports on missions to Austria, Bosnia and Herzegovina, Cyprus, Morocco, the Russian Federation, and Serbia and Kosovo (references to Kosovo shall be understood to be in the context of Security Council resolution [1244 \(1999\)](#)).

<sup>24</sup> Communications to the Governments of Bahrain (BHR 9/2014 of 11 July 2014), Singapore (SGP 2/2012 of 29 May 2012), Pakistan (PAK 1/2016 of 12 January 2016), Saudi Arabia (SAU 7/2015 of 14 October 2015 and 3/2017 of 27 March 2017), Turkey (TUR 5/2016 of 21 September 2016 and 13/2018 of 23 November 2018) and the United Kingdom of Great Britain and Northern Ireland (GBR 3/2017 of 20 July 2017).

issue of the barriers facing children with disabilities in the enjoyment of their rights, such as access to public buildings and public transportation.<sup>25</sup>

28. On the basis of article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination, States parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone to the enjoyment of the “right of access to any place or service intended for use by the general public”. Nevertheless, the Committee has expressed concern over the exclusion of non-citizens or exclusion on the basis of race or nationality from some public places and facilities of general use (see [CERD/C/JPN/CO/7-9](#)), restrictions of the freedom of movement of asylum seekers in some municipalities’ public spaces (see [CERD/C/CHE/CO/7-9](#)) and de facto segregation of some groups, in particular in rural areas, in access to places of worship, housing, education, water sources, markets and other public places (see [CERD/C/IND/CO/19](#)).

29. According to the Special Rapporteur on the rights to freedom of peaceful assembly and of association, the full and free exercise of the right to freedom of peaceful assembly is possible only where an enabling and safe environment for the general public, including civil society and human rights defenders, exists and where access to spaces for public participation is not excessively or unreasonably restricted. Excessive and disproportionate punishments for violations of the law and unreasonable restrictions on the use of public spaces negatively affect freedom of peaceful assembly.

30. A number of United Nations agencies and the Office of the United Nations High Commissioner for Human Rights have also worked on public spaces. The United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women) advocates for improving women’s safety by “creating safe public spaces”<sup>26</sup> in the context of its “Safe Cities” initiatives. UNESCO promotes the social integration of migrants through access to public space<sup>27</sup> and asserts that: “As cultural heritage assets for all citizens that foster social inclusion, vibrant public spaces should be accessible to all.”<sup>28</sup> In each of these examples, public spaces are deemed necessary for achieving core aspects of the human rights agenda.

31. Local governments have also contributed to developing standards relevant to the governance of public spaces given that many are under their purview. Declarations and documents such as Agenda 21 for Culture, adopted in 2004, and toolkits such as Culture 21: Actions, approved in 2015, both developed by United Cities and Local Governments (UCLG), promote cultural rights as the foundation of urban policies. Culture 21: Actions contains an entire section on culture, urban planning and public spaces and promotes the use of cultural impact assessments in all urban planning processes.

#### **IV. Key questions for policymaking regarding public spaces: a cultural rights checklist**

32. The creation and maintenance of adequate public spaces for the enjoyment of cultural rights by all requires thoughtful, comprehensive human rights-based public

<sup>25</sup> See [CRC/C/BEL/CO/5-6](#), para. 40; [CRC/C/LAO/CO/3-6](#), para. 39; [CRC/C/SLB/CO/2-3](#), para. 34; [CRC/C/ECU/CO/5-6](#), para. 24; and [CRC/C/VCT/CO/2-3](#), paras. 43 and 56.

<sup>26</sup> UN-Women, “Safe cities and safe public spaces: global results report” (2017).

<sup>27</sup> UNESCO and UN-Habitat, *Migrants’ inclusion in cities: innovative urban policies and practices*, 2010.

<sup>28</sup> UNESCO, *Culture: Urban Future – Global Report on Culture for Sustainable Urban Development* (Paris, 2016), chap. 7.

policies, at the national and local levels, which respect international standards and are fully implemented. The Global Public Space toolkit, developed by UN-Habitat to translate global principles into local practice, identifies several constraints on the creation, management and enjoyment of public spaces which must be addressed.<sup>29</sup> Some such constraints have particular relevance to cultural rights, such as the growing commodification of urban sociality, decreasing investment in public spaces and insecurity in these spaces.

33. Public spaces convey messages and meanings, and may reflect specific worldviews or be designed to fulfil particular functions, all of which can evolve over time through the use made of them. Legal frameworks and social norms shape the spectrum of actions and interactions accepted in these spaces. The impact of these contours of public spaces on human rights, cultural rights and cultural diversity should be regularly reassessed.

34. From a cultural rights perspective, a problem may arise when a particular narrative or worldview, whether commercial, religious, political, national or exclusively reflecting the viewpoint of a majority group, becomes overly dominant and renders diversity invisible. The effect, intentional or not, is that public spaces may not be considered as shared spaces welcoming for all. This situation becomes critical when those who have the resources to fill these spaces have an anti-human-rights message. Policies regarding public spaces should give clear priority to messages that promote human rights and inclusion and find ways to respond to and challenge anti-rights or exclusionary agendas.

#### **A. The use of public spaces by all**

35. Ensuring that public space is the space of all is vital for cultural rights. Obstacles to inclusive public spaces generally include exclusionary policies, social norms or practices; lack of public knowledge about the location and uses of existing public spaces; and threats, violence and harassment.

36. Authorities should: (a) make public spaces and the right of all to access them more widely known; (b) take steps to make these spaces more welcoming; and (c) provide further opportunities for social interaction in them. For example, the Madrid Plan on Social and Intercultural Co-existence<sup>30</sup> is aimed at introducing migrants and newcomers to the city's public spaces, fostering positive interactions between diverse residents and developing a shared culture around the use of public spaces.

37. While the goal should be inclusion of all sectors of society, some groups of people face particular obstacles in accessing public spaces, which require additional attention. Owing to space restrictions in the present report, not all relevant groups can be covered here. The situation of others, such as migrants and older persons, likewise needs targeted attention.

#### **Women**

38. The full participation of women in public spaces allows them to enjoy their equal cultural rights and to visibly manifest equal citizenship. Gender equality is “an enabler and beneficiary of safe, inclusive and accessible public space”.<sup>31</sup> Taken

<sup>29</sup> UN-Habitat, *Global Public Space Toolkit*, annex 1.

<sup>30</sup> Available at [www.madrid.es/UnidadesDescentralizadas/Inmigracion/EspInformativos/MadridConvive/Presnt/Ficheros/ResumINGLES%20PLAN%20Madrid-WEB-1.pdf](http://www.madrid.es/UnidadesDescentralizadas/Inmigracion/EspInformativos/MadridConvive/Presnt/Ficheros/ResumINGLES%20PLAN%20Madrid-WEB-1.pdf).

<sup>31</sup> *The Conference: The United Nations Conference on Housing and Sustainable Urban Development (Habitat III)* (Habitat III secretariat, 2017), p. 92. Available at

together, articles 3, 7 and 13 of the Convention on the Elimination of all Forms of Discrimination against Women guarantee equality in public and cultural life, underscoring that women have equal rights to access and enjoy public spaces. In their public space policies, public authorities must fully implement commitments in the 2030 Agenda for Sustainable Development to gender equality (Goal 5), including full equality in public life (target 5.5), and must pay “special attention” to the needs of women in providing adequate hygiene and sanitation (target 6.2) and safe, accessible transport systems (target 11.2).

39. In practice, women – half the public – often face considerable obstacles in accessing the public sphere and participating in public life in equality, owing to threats, harassment and violence,<sup>32</sup> as well as socially constructed gender norms.<sup>33</sup> As one woman expressed it: “When we visit public space, we visit the space of men.” According to a social geographer, oftentimes “men control public space”.<sup>34</sup> This may be reflected in restrictions on women going out alone or at night and the imposition of “modest” dress. Public authorities must respond effectively to gender-based threats, violence and exclusion.

40. De facto and de jure norms which exclude women altogether from certain public spaces, such as stadiums, mixed concerts, cafés, places of worship or heritage sites, are incompatible with international human rights norms and must be abrogated. Advocacy efforts such as the Open Stadium campaign in the Islamic Republic of Iran,<sup>35</sup> or working for the right of women to attend sporting events with men, to “take back the night” in many places, or to document harassment in public places, such as the HarassMap of Egypt, are vital and merit support. Culture, tradition and cultural rights are not acceptable justifications for excluding women from enjoying their rights to access and enjoy public spaces in equality and dignity. The Special Rapporteur salutes the recent judgment of the Supreme Court of India, sparked by women’s campaigns for access, recognizing that exclusion from a temple violates the fundamental rights of women to equality, liberty and freedom of religion.<sup>36</sup>

41. Additionally, specific characteristics of public space may be conducive to, or restrict, women’s enjoyment of their cultural rights. The involvement of experts with a gender-sensitive perspective in public management can create more inclusive environments, as conscious and unconscious gender biases are deconstructed.<sup>37</sup> Authorities can, for example, improve municipal transportation by remodelling bus and trolley stops to provide secure transfer and waiting areas, and train staff to intervene in cases of harassment. Well-designed public spaces can also improve the safety of public streets for increased freedom of movement for women, or ensure access to adequate menstrual hygiene in safe, adequate public restrooms in public places, including schools.<sup>38</sup> Positive collaborations with local authorities to adopt

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<http://habitat3.org/wp-content/uploads/Habitat-III-the-conference.pdf>.

<sup>32</sup> UN-Women, “Safe cities and safe public spaces: global results report”; and [CCPR/C/JAM/CO/4](#).

<sup>33</sup> See [A/67/287](#), para. 47; see also International Action Network for Gender Equity and Law, “Women, cultural rights and public spaces; analysis and recommendations to advance women’s human rights” (2019); contribution from Mali; and <http://www.npr.org/sections/goatsandsoda/2018/01/11/577154367/apps-let-women-say-metoo-about-street-harassment?t=1563710749649>.

<sup>34</sup> Milota Sidrorova, “Woman’s Rights to the City. Amman in Context”, interview by Women Public Space Prague (24 February 2017).

<sup>35</sup> See [@OpenStadiums](#) handle on Twitter.

<sup>36</sup> *Indian Young Lawyers Association vs The State of Kerala*, writ petition (civil) No. 373 of 2006, Supreme Court of India, judgment of 28 September 2018.

<sup>37</sup> Family restrooms and lactation spaces can make public spaces more welcoming to women who have childcare responsibilities. See URBACT Gender Equal Cities initiative.

<sup>38</sup> “Women’s menstrual health should no longer be a taboo, say United Nations human rights experts”, 8 March 2019. Available at [www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24256&LangID=E](http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24256&LangID=E).

gender-based approaches to new urban planning projects have been developed in 27 cities participating in the “Safe cities and safe public spaces” initiative of UN-Women.<sup>39</sup>

42. Women’s roles in and their contributions to public spaces should be recognized and encouraged.<sup>40</sup> For example, in the United Republic of Tanzania, women market vendors came together to form associations and unions to make markets safer for women vendors.<sup>41</sup> In rural areas, women may use access to farmlands to promote cultural rights, such as efforts in Guatemala to develop health and nutrition projects that preserve cultural identity through the Mayan-Achi food system.<sup>42</sup> Through participation in policy development, public art, planning and design, or event programming, women can feel they too actually “own” the public spaces and claim their rights to be in and use them.

### Persons with disabilities

43. Accessibility is a precondition for the enjoyment of human rights and a means for economic, social, cultural and political empowerment, participation and inclusion. For persons with disabilities, lack of accessibility in built environments, from roads and housing, to public buildings and spaces, directly affects their capacity to live independently and to fully participate in all aspects of life, including cultural life.

44. Recent evidence reveals a widespread lack of accessibility to public spaces for persons with disabilities,<sup>43</sup> even in countries where a reasonable adaptation of infrastructure to meet their needs is embedded in legislation.<sup>44</sup> Accessibility or inclusive “universal design” principles, including tactile and audio cues for blind persons, should be used from the initial stages of designing, as well as in building and restructuring public infrastructures, facilities and services. Successful efforts have been documented<sup>45</sup> and studies have shown that, if integrated from the initial stages, universal design adds almost no or only 1 per cent in additional costs.<sup>46</sup> It is also the responsibility of States to guarantee that public spaces are not fragmented and that persons with disabilities can transit from one built environment or public service area to another without physical obstacles.<sup>47</sup>

<sup>39</sup> See UN-Women, “Safe cities and safe public spaces: global results report”, for examples from these participant cities. Montevideo received a 2018 special mention of the jury for “cultural policies with a perspective on gender equality” (see [www.agenda21culture.net/award/award-editions/3rd-edition-2017-2018](http://www.agenda21culture.net/award/award-editions/3rd-edition-2017-2018)). See also Women Public Space Prague, a network of women experts in urban planning, [www.wpsprague.com/about-the-project](http://www.wpsprague.com/about-the-project).

<sup>40</sup> See International Action Network for Gender Equity and Law, “Women, cultural rights and public spaces”, p. 15.

<sup>41</sup> UN-Women, “Case study: Tanzania – making markets safer for women traders”, 8 March 2017, available at <http://untf.unwomen.org/en/news-and-events/stories/2017/03/tanzania-making-markets-safer-for-women-traders>.

<sup>42</sup> Groundswell International, “Women’s project preserves cultural heritage of Mayan food system in Guatemala”, 8 June 2018; see also [A/67/287](#).

<sup>43</sup> See *Good Practices of Accessible Urban Development: Making Urban Environments Inclusive and Fully Accessible to All* (ST/ESA/364).

<sup>44</sup> See contributions by Collectif des experts et entrepreneurs culturels on Cameroon and by Escola de Gente on Brazil.

<sup>45</sup> See, e.g., the adaptation of children’s games in the Parque de la Amistad, Uruguay, to follow inclusive design. Information available at [www.montevideo.gub.uy/areas-tematicas/personas-y-ciudadania/personas-con-discapacidad/accesibilidad/parque-de-la-amistad](http://www.montevideo.gub.uy/areas-tematicas/personas-y-ciudadania/personas-con-discapacidad/accesibilidad/parque-de-la-amistad).

<sup>46</sup> “Accessibility and disability inclusion in urban development”, paper prepared by the Secretariat for the Convention on the Rights of Persons with Disabilities (2015), p. 2.

<sup>47</sup> See contribution by Janett Jimenez Santos.

### Segregation policies

45. Even in countries where non-discrimination is enshrined in the law, the Committee on the Elimination of All Forms of Racial Discrimination has expressed concern over practices of segregation preventing marginalized castes, including Dalit (CERD/C/NPL/CO/17-23), non-citizens and asylum seekers from accessing some public places and facilities of general use such as places of worship, restaurants and stores, in violation of articles 2 and 5 of the Convention (see CERD/C/JPN/CO/7-9, para. 15; and CERD/C/CHE/CO/7-9, para. 17). Public authorities must take effective action to end any such discriminatory practices, including on the basis of origin, nationality and ethnicity, in compliance with international human rights standards.

### Sexual orientation and gender identity

46. Utilizing public spaces has been a critical tool in the struggle for dignity and equality and for increasing the visibility of the rights claims of those facing discrimination and violence on the basis of their sexual orientation or gender identity. Pride and other commemoration marches take place in most regions of the world.

47. At the same time, public spaces are still the site of human rights violations, hate crimes, discrimination, including through laws and regulations, and violence and harassment of persons on the basis of their sexual orientation and gender identity. Oftentimes, these violations are justified in the name of “public morals”.<sup>48</sup> This must be effectively tackled.

48. There is a need for public authorities to take action to ensure the protection of lesbian, gay, bisexual, transgender, gender-diverse and intersex persons from shaming, exclusion and abuse in public spaces, including by changing discriminatory attitudes. Such a change in mindsets requires continued engagement and strong signals of inclusion and official support, such as awareness-raising campaigns and the display of rainbow flags on publicly owned buildings.

### Children and youth

49. “Adolescents’ right to rest and leisure and to engage and participate freely in play, recreational and artistic activities, both online and offline, are fundamental to their exploration of identity, enabling adolescents to explore their culture, forge new artistic forms, create relationships and evolve as human beings”.<sup>49</sup> Public spaces are often the only places adolescents can pursue these objectives and develop who they are in relation to other adolescents and the rest of society.<sup>50</sup>

50. Fear of and hostility towards adolescents in public spaces, and a lack of adolescent-friendly urban planning and educational and leisure infrastructure, can inhibit their freedom to engage in recreational activity and sports. Curfews and high-

<sup>48</sup> See contribution by the International Commission of Jurists and its report *Living with Dignity, Sexual Orientation and Gender Identity-Based Human Rights Violations in Housing, Work, and Public Spaces in India* (June 2019), p. 104. See also contribution by Equal Ground asking for the amendment of Laws 365 and 365A in Sri Lanka; CCPR/C/BHR/CO/1, paras. 23–24; and the 2019 report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity to the General Assembly (A/74/181), in particular its paragraphs 29–32 and 101 (e).

<sup>49</sup> Committee on the Rights of the Child general comment No. 20 (2016) on the implementation of the rights of the child during adolescence (CRC/C/GC/20, para. 75).

<sup>50</sup> Karen Malone, “Street life: youth culture and competing uses of public space”, *Environment & Urbanization*, vol. 14, No. 2 (October 2002).

frequency sound devices audible only to children and adolescents are sometimes used abusively to deter their presence in public spaces.<sup>51</sup>

51. While recognizing that restrictions may sometimes be needed to keep public spaces accessible to all, States should make efforts to guarantee the right of the child to freely engage in age-appropriate recreational activities, cultural life and the arts, based on the principles of inclusion, participation and non-discrimination, including by ensuring their access, irrespective of nationality or ethnic origin, to adequate public spaces. In doing so, they should pay specific attention to children with disabilities.

### **Homeless persons**

52. Access to and the security of public spaces are a particular concern for homeless persons and children in street situations, as they do not have other alternative private space. They live and engage in a range of activities in public spaces, including work, socialization and leisure, shelter, sleeping, cooking and washing, and also depend on publicly accessible toilets and washrooms to preserve a minimum of privacy and human dignity in a situation of distress.

53. In many countries, public authorities have adopted targeted rules and regulations that further impair their human rights<sup>52</sup> and installed a variety of devices in public spaces to discourage their presence. Gentrification processes, sometimes entailing displacement of homeless persons, increased video surveillance and the presence of patrols in the streets, reducing the sense of privacy, can also deter vulnerable persons from being in public spaces.

54. Homelessness should be prevented in a human rights-compliant manner, in line with the recommendations of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, and general comment No. 21 (2017) of the Committee on the Rights of the Child on children in street situations (see [A/HRC/31/54](#), [A/71/310](#) and [CRC/C/GC/21](#)).

## **B. Securing public spaces**

55. Securing public spaces is an important aspect of guaranteeing accessibility. Measures to guarantee safety and prevent crime in public spaces should be effective and in accordance with international standards. Authorities can adopt legislation, for example, by establishing penalties for harassment in public places and regulating safer markets.<sup>53</sup> Measures to improve the sense of security can also take the form of improving public lighting, integrating urban equipment to make spaces more inviting<sup>54</sup> or promoting the development and use of technologies or hotlines to report incidents of violence. In natural spaces, measures can include providing adequate information to avoid danger or physically securing spaces, for instance, with railings on cliffs or mountain areas. Securing public spaces also includes providing protection against harassment online.

<sup>51</sup> See Council of Europe recommendation [1930 \(2010\)](#) on youth dispersal devices and Patsy Eubanks Owens, “No teens allowed: the exclusion of adolescents from public spaces”, *Landscape Journal*, vol. 21, No. 1 (January 2002).

<sup>52</sup> Amounting in certain places to a criminalization of living and sleeping in public spaces. See [A/HRC/31/54](#), paras. 23–24; and communication OL HUN 4/2018 of 20 June 2018.

<sup>53</sup> UN-Women, “Safe cities and safe public spaces: global results report”, pp. 13–14.

<sup>54</sup> Joseph Rowntree Foundation, “The social value of public spaces” (2007), p. 11.

56. After traumatizing events have taken place in public spaces, returning to these spaces has been used as a means of resilience. Within a few hours of the 27 June 2019 terrorist attacks in Tunis, Tunisians gathered in cafés and streets to show their solidarity, resistance to terrorism and determination to maintain public life.<sup>55</sup>

57. In providing security measures, States should take into account that assemblies are an equally legitimate use of public space as commercial activities and guard against disproportionate impacts that may discourage spontaneous encounters and interactions and result in exclusion or discrimination.

### C. Cultural practices, events and artistic expression in public spaces

58. Cultural initiatives can help design inclusive spaces and promote human rights. Many artists are socially engaged and their works address political and social issues (see [A/HRC/37/55](#) for examples). In Algeria, since 2017, the “Art is public” initiative has organized street art projects and neighbourhood clean-ups involving youth, as a means of civic mobilization and social transformation.<sup>56</sup>

59. Many cultural practices are carried out in public spaces. This can take different forms, including street fairs, festivals, parades, concerts, markets, holiday celebrations or commemorations of special events, performances, art projects and processions. Sport, leisure and other recreational activities may also be undertaken in public spaces.

60. Cultural events in public spaces should be considered as important as political events, and be subject to the same international human rights standards and limitations as any other assembly.<sup>57</sup> States have a positive obligation to facilitate and protect cultural events as peaceful assemblies and legitimate exercises of the right to take part in cultural life. A presumption in favour of this freedom should be clearly and explicitly established in law and translated into policies, subject only to the limitations permitted in relevant international standards.<sup>58</sup> Local authorities should respect and protect cultural rights, including artistic freedom, in particular as regards forms of art that are specifically designed to be presented in public spaces.

61. In many countries, permits might be required for different purposes, such as managing noise levels, liquor licensing, public safety and traffic control. Different processes and rules apply depending on the type, size and location of events. It is the duty of organizers to comply with legal obligations and the duty of designated authorities to implement those rules in a transparent and non-discriminatory manner, in accordance with international standards.<sup>59</sup>

62. Whenever notification to public authorities is necessary to use public spaces, it is the primary responsibility of the State to put in place adequate mechanisms and procedures that will not hinder the exercise of cultural rights. Processes should not be onerous, bureaucratic or unnecessarily lengthy and should allow for decisions to be challenged. To help organizers comply, good practices such as guides providing clear

<sup>55</sup> See [kapitalis.com/tunisie/2019/06/27/attaques-a-tunis-les-ministres-de-linterieur-et-de-la-sante-au-chevet-des-blesses](http://kapitalis.com/tunisie/2019/06/27/attaques-a-tunis-les-ministres-de-linterieur-et-de-la-sante-au-chevet-des-blesses) and [www.linternaute.com/actualite/monde/2222407-direct-attentat-a-tunis-le-scenario-des-attaques-precise](http://www.linternaute.com/actualite/monde/2222407-direct-attentat-a-tunis-le-scenario-des-attaques-precise).

<sup>56</sup> See [www.facebook.com/notes/lart-est-public/lart-est-public/265507707728233](https://www.facebook.com/notes/lart-est-public/lart-est-public/265507707728233) and the Right to the City global platform (<https://righttothecity.org>).

<sup>57</sup> See Human Rights Committee concluding observations cited in paragraph 27 above.

<sup>58</sup> See, for example, in France, *Mission nationale pour l'art et la culture dans l'espace public* (June 2016).

<sup>59</sup> See contribution by United Cities and Local Governments, citing Municipal Decree No. 031/2018 in La Paz, Plurinational State of Bolivia, and Municipal Law 9.902/2016 in Santo André, Brazil.

and transparent information should be encouraged.<sup>60</sup> Dialogue with organizers about the security requirements for cultural activities in public spaces should be a priority in order to avoid negative consequences for cultural expressions and interactions between artists and their audience.<sup>61</sup> The cost of providing adequate security and safety of public spaces (including traffic and crowd management) should generally be covered by the public authorities.

63. Artworks in public spaces make significant contributions to cultural landscapes. Public authorities<sup>62</sup> should promote the presence of arts in public spaces as part of the right to have access to a wide variety of artistic expression, and consult local populations when taking decisions about the art to be displayed. Interesting initiatives in this regard include devoting a percentage of the cost of all work on public buildings to the realization of artworks to be integrated in the projects.<sup>63</sup> Artworks can sometimes provoke controversies and debates and there have been examples of artworks, including commissioned art, being removed from public spaces following complaints.<sup>64</sup> Public authorities should strive to uphold the principle of artistic freedom in accordance with international standards to avoid violating both the artist's freedom of expression and the right of the public to enjoy the arts.

#### **D. Memorials, advertising, architecture and the use of languages in public spaces**

64. Many built elements displayed in public spaces recount the history of a place, from sculptures of political figures to religious symbols, memorials, artworks and buildings. The human rights impacts of memorials and advertising in public spaces have been addressed in detail in past reports by this mandate (see [A/HRC/25/49](#) and [A/69/286](#)).

65. Urban design and architecture, as well as policies regarding the use of languages,<sup>65</sup> must also be given careful consideration by policymakers. Both contribute to the accessibility of public spaces and physically shape cultural and symbolic landscapes in a way that can be more or less inclusive and welcoming of different groups.

66. In certain contexts, construction of some types of buildings or the imposition of one language may be used to mark symbolic dominance. In May 2019, the residents of Yekaterinburg, Russian Federation, protested against the building of a new cathedral in one of the few green spaces left in the city and demanded a referendum on the use of the space.<sup>66</sup> Decisions about what is built, displayed or changed in public

<sup>60</sup> See, for example, Cabinet Office of the United Kingdom, "Guidance: organising a voluntary event: a 'can do' guide" (February 2019), available at [www.gov.uk/government/publications/can-do-guide-for-organisers-of-voluntary-events/the-can-do-guide-to-organising-and-running-voluntary-and-community-events](http://www.gov.uk/government/publications/can-do-guide-for-organisers-of-voluntary-events/the-can-do-guide-to-organising-and-running-voluntary-and-community-events); and Artcena, *Comment organiser un événement dans l'espace public* (2017).

<sup>61</sup> See contributions by In Situ and Fédération nationale des arts de la rue.

<sup>62</sup> Some countries, like Australia and Germany, have dedicated commissions.

<sup>63</sup> Fédération nationale des arts de la rue, *Manifeste pour la création artistique dans l'espace public*, p. 29.

<sup>64</sup> National Coalition against Censorship, "Nude sculpture removed from public view in Michigan", 25 June 2009.

<sup>65</sup> Jorge Garza, "The role of language in the use of public spaces in Montréal", Master's research project, McGill University (2015).

<sup>66</sup> See BBC, "Activists storm Yekaterinburg Russia park in protest against new church" (15 May 2019), available at [www.bbc.com/news/world-europe-48276170?intlink\\_from\\_url=&link\\_location=live-reporting-story](http://www.bbc.com/news/world-europe-48276170?intlink_from_url=&link_location=live-reporting-story); and Leonid Bershidsky, "Modern Russia Is Putin deciding a park use dispute", Bloomberg, 20 May 2019, available at [www.bloomberg.com/opinion/articles/2019-05-20/yekaterinburg-cathedral-dispute-shows-how-russia-and-putin-work](http://www.bloomberg.com/opinion/articles/2019-05-20/yekaterinburg-cathedral-dispute-shows-how-russia-and-putin-work).

spaces and why, including changes of place names, should not be taken without adequately consulting all stakeholders, and especially minority groups.

## E. Natural spaces

67. People may wish to access natural spaces for recreational activities (walking, sightseeing, family gatherings), for cultural and spiritual practices or rituals or for their symbolic and historical significance.<sup>67</sup> Whether natural spaces are publicly or privately owned, their enjoyment can directly affect the exercise of cultural rights. Natural spaces should be made as accessible as possible to the public, subject only to the limitations permissible under international standards.

68. Some States have adopted policies and legislation to grant access to natural spaces for recreation<sup>68</sup> – land, forests, mountains, lakes and rivers – whether public or privately owned. In other countries, this right is limited to some natural spaces, for instance, waterfronts. While granting the right of passage and enjoyment of the seashore, States in some cases still impose limitations on, for example, bathing or the use of drones for safety reasons. Following her visit to Saint Vincent and the Grenadines, the former Special Rapporteur recommended that specific legislation be passed making it obligatory for all private proprietors to provide a thoroughfare for public access to beaches (see [A/HRC/23/34/Add.2](#), para. 64). Some countries have established public footpaths and signed voluntary agreements with farmers to give general access to the countryside, while in many other countries accessing nature is limited and depends on the granting of permits that are hard to obtain.<sup>69</sup>

69. Natural spaces also face grave risks from climate change, such as erosion of waterfronts or fires owing to resulting droughts. Effective and timely response to the climate emergency will be essential to preserve the ability to enjoy cultural rights related to these spaces. Recently in Australia, indigenous peoples from low-lying islands have claimed that their right to maintain their culture is being violated owing to the failure of the State to act on climate change.<sup>70</sup>

## F. Cyberspace

70. In the digital age, public spaces are no longer limited to strictly physical spaces but also include cyberspace. This implies that human rights guarantees continue to apply online, subject to the same regime of limitations recognized in international human rights law for distinctive rights<sup>71</sup> and that public powers, to fulfil their human rights obligations, may need to take measures to ensure access to and participation in cyberspace for all. This issue is broad, deserving of a dedicated future report from this mandate.

## V. Privatization of public spaces and impact on cultural rights

71. In many contexts, trends towards privatization may have a significant impact on the accessibility and suitability of public spaces for the enjoyment of human rights.

<sup>67</sup> See contribution by Brazil.

<sup>68</sup> Including Austria, Czechia, Estonia, Finland, Iceland, Latvia, Lithuania, Norway, Sweden and Switzerland.

<sup>69</sup> See contribution by the national human rights institution of Argentina for examples of lakes in Patagonia that are inaccessible due to their being located on private property.

<sup>70</sup> For information on the complaint submitted to the Human Rights Committee, see <http://ourislandsourhome.com.au/#about>.

<sup>71</sup> See Human Rights Council resolution 20/8.

The Special Rapporteur on extreme poverty and human rights explained that: “Privatization is a process through which the private sector becomes increasingly, or entirely, responsible for activities traditionally performed by government, including many explicitly designed to ensure the realization of human rights” (see A/73/396, para. 1). Because “profit is the overriding objective” of privatization, he expressed concern that this might systematically eliminate human rights protection and sideline considerations such as equality and non-discrimination (Ibid., para. 82).

72. Privatization of public spaces and the creation of quasi-public spaces may undermine the enjoyment of cultural rights. These spaces are privately owned and developed but open for use by the public, either for free or for a fee, such as malls, food courts and theme parks, and may replace the main street as a gathering place. People might feel as if they were in a public space, but the rights they enjoy might be fewer. Malls, for example, are designed for the purpose of consumption, not for the expression of ideas or opinions or mutual interactions. Spontaneous dancing or singing might be restricted, demonstrations can be prohibited and security guards or surveillance devices can restrict access by certain persons – mainly groups of youth, elderly persons and people with low incomes. Openness and accessibility are therefore not fully guaranteed. Due to restrictions on certain activities, these spaces may be considered more comfortable than actual public spaces, especially for those with money,<sup>72</sup> leading to class-based spatial divisions. In Togo, authorities consider that privatization of public spaces is leading to discrimination based on social categories.<sup>73</sup> In Croatia, observers highlight that urban spatial planning is now dominated by investors.<sup>74</sup>

73. In many cities, waterfronts are increasingly becoming “privatized public spaces” dedicated to commercial usage. Moreover, gated communities and the privatization of streets also reduce freedom of movement in public spaces. All such privatizations of previously public spaces can have an adverse effect on the cultural diversity once manifested in these spaces.

74. Civil society organizations have addressed privatization processes and initiated consultation processes regarding them. In Comodoro Rivadavia, Argentina, the group *Centinelas del patrimonio* indicates that privatization initiatives often happen without prior consultation, without environmental impact studies and without providing access to information.<sup>75</sup>

75. Privatization of public spaces raises the question of who secures the right to public spaces, their sustainability and the role of public authorities in protecting and maintaining such spaces for the public good. One solution to address this challenge is to establish zoning regulations requiring that every locality have meaningful public spaces, including green spaces, that are central enough for people to actually gather, practise their cultures, express themselves, including artistically, engage in commerce, work, travel, socialize and share ideas and different points of view. “A government that claims to guarantee rights to speech, expression, assembly and association but provides no space in which to do so makes a hollow promise to its citizens.”<sup>76</sup>

<sup>72</sup> Marco Kusumawijaya, “Common space and public space in contemporary urbanization” in *Public Space in Urban Asia*, by William S.W. Lim (World Scientific Publishing Company, 2014), pp. 138–153.

<sup>73</sup> See contribution by Togo.

<sup>74</sup> See contribution by Ana Zuvela.

<sup>75</sup> See their contribution.

<sup>76</sup> Gregory Smithsimon, “The right to public space”, 10 March 2015, available at [www.metropolitiques.eu/The-Right-to-Public-Space.html](http://www.metropolitiques.eu/The-Right-to-Public-Space.html).

76. Privatization and overreliance on private sponsorship of cultural events may also affect cultural activities in public spaces, such as festivals. The attendant risks include censorship by private sponsors, when freedom of artistic expression is no longer guaranteed by public authorities, and decreasing diversity.

77. In public-private partnerships, governments should retain authority in terms of governance. They continue to have human rights obligations. Public-private partnerships are based on long-term and inclusive contracts, which should include the protection of human rights from abuses by private actors. According to UN-Habitat, almost all countries around the world have experienced some form of public-private partnership investment since the 1990s. These can be important instruments to save costs, and to enhance timely delivery and public management, but there are also risks of loss of accountability or reduced control of public assets that should be addressed.

78. Public-private partnerships can be effective in providing safe and clean public spaces. While this focus has led to exclusion in some contexts, in others it has resulted in the provision of relatively open and accessible spaces that can foster inclusion. For instance, Gandhi Square in Johannesburg, South Africa, while leased to a private company and privately managed, is in some ways an intensely public space. This openness is important for grounding cultural rights in diverse places.<sup>77</sup> Denying any possibility of private sector involvement in public spaces can be equally dangerous, especially in cities where local governments are overworked, underresourced and/or suffering from corruption.

79. In certain circumstances, private spaces may allow some forms of expression that are otherwise unavailable in public spaces. For instance, in Karachi and Lahore, Pakistan, the opening of private creative spaces is seen as a very positive development and a continuation of the tradition of mela, or village fairs, used as public entertainment spaces. In 2019, 10 such privately owned spaces existed in Karachi, providing for open dialogue on culture, human rights and gender balance, and encouraging emerging artists.<sup>78</sup> States must consider how they can recognize and promote these creative spaces as part of the cultural landscape, including through funding, while ensuring that freedom of expression and the principle of non-discrimination continue to be respected in these spaces. In any case, the maintenance or development of adequate fully public spaces remains essential from a human rights perspective.

### **Tourism and heritage**

80. Tourism can also have an impact on access to and enjoyment of public spaces. While the development of tourism as an economic asset can have very positive impacts on restoration and preservation of heritage, it should be strategically conceived and managed in order not to create exclusion. Urban centres are increasingly subjected to branding strategies aimed at attracting tourists, which can increase gentrification processes and exclude those who do not fit the chosen branding image.<sup>79</sup> There is also a risk of watering down cultural assets for tourist consumption and a “theatricalization” of public spaces.<sup>80</sup>

81. The inscription of a site on a national or international heritage list implicitly recognizes the significance of the site for a larger group of people (national or even

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<sup>77</sup> Contribution by Temba Middelmann.

<sup>78</sup> See contribution by Sumatra Malik.

<sup>79</sup> On cultural policies and tourism, see examples cited in United Cities and Local Governments about Lisbon, Amsterdam and Montreal, Canada. See also contribution by Les oiseaux de passage on the tax to enter Venice, Italy, and its consequences.

<sup>80</sup> This implies staging entertainment rather than letting normal interactions unfold. See Marcus Zepf's contribution, p. 2.

global), thereby implying to a certain extent some rights, for example, the right of these persons to access it. It is important to safeguard the rights of all to access cultural heritage, including that of others. Nevertheless, access to certain heritage may legitimately be restricted at times to preserve the right of certain persons or groups, like indigenous peoples and locals, who have a different relationship with the concerned heritage, to exercise traditional cultural uses and practices.<sup>81</sup> In order not to result in discrimination, differentiated access must be considered carefully and justified within the complexity of each context, and should never be granted on an arbitrary basis.

82. While providing certain additional legal protections to the site, for instance, from development, construction or other types of alterations, inscription on an international heritage list also increases the interest of the tourism industry and may lead to increasing limitations on use and access for preservation purposes. This is particularly true for monuments or archaeological sites but also for natural heritage sites,<sup>82</sup> and should be addressed by policymakers.

## VI. Conclusions and recommendations

### Conclusions

83. **Public spaces are conduits for realizing human rights for all.<sup>83</sup> The human rights framework should be applied to the design, development and maintenance of public spaces in urban, rural, natural and digital spaces. If States, international organizations and the international community do not take the issue of public space seriously and fail to understand it as a basic question of human rights, it will be impossible to fulfil cultural rights, and indeed many other universal human rights.**

84. **Given that many human rights are contingent on the availability of public spaces, these rights must be understood as requiring the enjoyment of adequate public spaces by all, without discrimination. Such a right to access and enjoy public spaces is to be recognized as grounded in many human rights provisions across the spectrum of civil, cultural, economic, political and social rights, in particular the right to take part in cultural life, freedoms of expression, assembly, association and religion or belief, and the rights to development, education and adequate housing. Local authorities are often given the responsibility to guarantee the collective and participatory character of public spaces and should promote the creation and regeneration of public spaces in conditions of quality, equality, inclusiveness, accessibility and universal design.**

85. **Some experts have claimed a free-standing human right to public spaces,<sup>84</sup> and some States have recognized it.<sup>85</sup> This idea merits serious consideration.**

86. **As part of their internationally guaranteed human rights, including their cultural rights, all persons have the right, without discrimination, to access, use**

<sup>81</sup> See contribution of UNESCO on how this question was addressed in the 2003 Convention for the Safeguarding of the Intangible Cultural Heritage.

<sup>82</sup> See contribution by Emek Shaveh on tensions between tourism and usage by residents, and the 2017 decision by the High Court of Justice of Israel that public spaces cannot be closed without an alternative for residents.

<sup>83</sup> Jasdeep Randhawa, “Public space: the conduit for realizing human rights in cities for all” (UN-Habitat).

<sup>84</sup> Gregory Smithsimon “The right to public space”, and Global Platform for the Right to the City and Habitat International Coalition. See also contributions by Barcelona and Buenos Aires.

<sup>85</sup> See, for example, contribution by Mexico.

and enjoy public spaces or spaces of public use that are available in sufficient quantity, freely accessible, adequate, affordable and of good quality, and which reflect cultural diversity. Everyone has the right to exchange, interact and gather in public spaces, to socialize, to enjoy their urban, rural and natural environment, to express their identities and to manifest cultural practices and expressions of their choice, including in the form of art, subject only to limitations in accordance with international human rights standards.

87. The State has the main responsibility to guarantee the accessibility and inclusiveness of public and green spaces as a condition for the enjoyment of the full range of human rights, including cultural rights, and must respect human rights in public places. Public spaces should remain a sphere for deliberation, cultural exchange, social cohesiveness, diversity and enjoyment of all human rights. Particular attention should be paid to the needs of specific groups, such as women and persons with disabilities, and the particular challenges they may face in enjoying these rights. In the design of public spaces, civil society and the public should be consulted.

## Recommendations

88. States should:

(a) Recognize the importance of available inclusive, open and accessible public spaces for the enjoyment of human rights and take a human rights approach to public spaces which centres cultural rights;

(b) Respect, ensure, protect and fulfil human rights in public spaces;

(c) Design, build and maintain public spaces consistent with human rights standards relating to quality, equality, inclusiveness, accessibility and universal design of such spaces;

(d) Favour free access to public spaces when possible. When entrance fees apply, States should promote free access at particular times and consider reduced fees for marginalized groups such as the unemployed, youth and elderly persons. States should also periodically analyse obstacles to access and work towards encouraging access for all;

(e) Recognize the importance of a diversity of cultural events in public spaces and, to that end, establish transparent and non-discriminatory processes for the organization of such events;

(f) Encourage the display of artwork in public spaces and, to that end, establish public art committees that include artists, urban designers and inhabitants, with clear rules;

(g) Ensure that administrative processes do not represent an excessive burden for the use of public spaces, including by publishing transparent information about them;

(h) Adequately secure public spaces in accordance with international standards.

89. States and local authorities should review legal frameworks and revise public policies in line with the Sustainable Development Goals, with “inclusion” as a cross-cutting goal. In particular, they should encourage the design of inclusive public spaces through:

- (a) **Adopting measures to ensure that all persons can effectively access, enjoy and contribute freely to public spaces, and facilitating such opportunities for groups facing obstacles in this regard;**
- (b) **Adopting a gender approach to urban planning and systematically accounting for the needs of women and girls, including by investing in public infrastructure such as safe water and streets, adequate hygiene facilities and better lighting, developing and implementing comprehensive laws and policies to prevent and respond to gender-based violence in public spaces and carrying out research to ensure understanding of sexual harassment and violence in public spaces to inform the most effective policies to combat them;**
- (c) **Abrogating de facto and de jure norms which exclude women from public spaces;**
- (d) **Encouraging data collection on how and why women use public spaces to understand women's relationship to public spaces and the cultural benefits that result from such use;**
- (e) **Involving women in land use and physical planning committees;**
- (f) **Adopting preventive measures, deterring and punishing all forms of human rights violations, violence, threats and sexual harassment against women, children, migrants, lesbian, gay, bisexual and transgender persons or persons with disabilities in the public arena, including on public transport, in educational institutions, on streets and in cyberspace, whether perpetrated by State agents or private persons;**
- (g) **Providing training for relevant public officials on the concept of inclusive public spaces.**

90. **Authorities must establish specialized, cross-disciplinary professional teams responsible for the design, maintenance and conservation of public spaces that are welcoming for all and create mechanisms for citizen participation in the management of such spaces.**

91. **Decisions to nominate spaces for inscription on national and/or international heritage lists should be the result of inclusive processes and be taken with the free and informed consent of all relevant stakeholders.**

92. **Relevant authorities should consider legal recognition of the right to the city and the right to public spaces as a means to develop human rights-based public policies.**

93. **Further consideration should be given by States, international bodies and experts to the question of adequate and accessible public spaces in rural areas, which are equally important.**

#### **On natural spaces and the right to public space**

94. **Public authorities should take effective steps to protect natural spaces, including from the effects of the climate emergency, and should facilitate access to natural spaces for all, promoting environmentally sound practices and expression in those spaces.**

95. **States should make sure protection policies include natural sites that are important in the culture of specific parts of the population, including indigenous peoples.**

**On accessibility**

**96. Accessibility should be actively promoted as a collective good that benefits all. This requires the active and meaningful participation of persons with disabilities and their organizations, as rights-holders and as agents and beneficiaries of development, during all stages of the development and preservation of public spaces.**

**97. The cost of accessible transportation, especially adapted transport for persons with disabilities, should not be borne fully by users who require these services to ensure opportunities for full and effective participation in cultural life.**

**98. States, international organizations and civil society organizations should address public spaces in a holistic manner using a human rights approach.**

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