

Mandate of the Special Rapporteur in the field of cultural rights

24 April 2019

Dear Sir, Madam,

I have the honour to address you in my capacity as the United Nations Special Rapporteur in the field of cultural rights, pursuant to Human Rights Council resolution 37/12.

In my forthcoming thematic report to the General Assembly, I will address the topic of “Cultural rights and public spaces”. I am eager to consult a wide range of stakeholders, including States, United Nations agencies, academics, experts, artists, scientists, cultural workers and practitioners, as well as civil society organizations, in order to benefit from their diverse views and experiences. Many multifaceted issues are indeed at stake, as explained in my questionnaire.

I would like to draw your attention to the fact that I use the term “public space” in its plural form, to underline the plurality and diversity of “public spaces” and their differences in nature and scope. Public spaces may include, for example, not only urban but also rural and natural spaces, real and virtual spaces.

Submissions should be sent electronically no later than **20 May 2019** to srculturalrights@ohchr.org, using the email title: “Submission: Cultural rights and public spaces”. Please feel free to answer only the questions relevant to your work. Kindly limit your responses to **2,500 words** and attach annexes where necessary. To facilitate their consideration, it would be preferable if responses could be sent in the working languages of the OHCHR, English, French or Spanish.

Please also indicate if you have any objections with regard to your reply being posted on the OHCHR website.

I wish to thank you in advance for your cooperation and I hope to continue a constructive dialogue on issues related to my mandate.

Please accept, Sir, Madam, the assurances of my highest consideration.



Karima Bennoune
Special Rapporteur in the field of cultural rights

QUESTIONNAIRE ON CULTURAL RIGHTS AND PUBLIC SPACES

The United Nations Special Rapporteur in the field of cultural rights, Ms. Karima Bennoune, will consider in her next report how actors from across the cultural ecosystem access and use public spaces, identify the challenges they face and the strategies they develop to overcome them, and analyse the impact this has on their cultural rights.

The Special Rapporteur will address multifaceted issues at stake, such as impediments in public spaces to cultural expression, the organization of cultural events, the conduct of cultural practices and the use of languages. She will consider the presence or absence of cultural narratives in public spaces, for example in the form of symbols, memorials, architecture or advertising.

Please note that the term “public spaces” in its plural form aims at underlining the plurality and diversity of “public spaces” and their differences in nature and scope. Public spaces may include, for example, not only urban but also rural and natural spaces, real and virtual spaces. Various degrees of privatization may affect public spaces. This may require different measures be adopted to ensure the realization of cultural rights.

Those submitting information should feel free to answer only specific questions that they find most relevant.

1. **What are the various existing definitions of “public spaces” used in national legislation or proposed by international mechanisms, experts and civil society organizations? Are other terms used such as “civic space” and “public domain”? What is the scope of the concept of such public spaces?**

Public spaces are defined in the Vagrant ordinance, Emergency law and urban councils ordinance acts. However, Sri Lanka should aim at making public spaces as secular as possible if we are to keep people safe and welcoming of all citizens and to ensure democracy in our country. Currently, these public spaces are not LGBTIQ friendly. Permission is required to hold an event for example in any public space. However this permission is not forthcoming to the LGBTIQ community. EQUAL GROUND has tried to obtain permissions, but have been thwarted by the police and the Municipality. Many LGBTIQ persons have complained of police harassment when in public spaces.

2. **What are the diverse legal frameworks, trends and practices at the national level that either promote or impede actors from across the cultural ecosystem, including women and persons with disabilities, from accessing and using public spaces? What strategies are most useful in overcoming such challenges?**

In April, 2019 the Supreme Court of Sri Lanka has given judgement for the petition that ordered the government should provide access to the disability persons. It should be particular method for them legally, Impeding (365, 365A, Vagrants ordinance, urban council act)

3. **What are the specific characteristics of public spaces that either are conducive to the realization of cultural rights, including of women and persons with disabilities, or are an impediment to them, including in relation to issues of discrimination, equal access, accessibility, availability, and adequacy?**

Most laws and government programmes contain no special measures to ensure gender equality and women's equal access and participation. In the Katunayake Investment Promotion Zone (free trade zone), where 86 per cent of workers are women, conditions for factory workers are not regulated, unionization is prohibited and workers are subject to long hours and inadequate remuneration (Bandarage 25-27 May 1988, 158-60).

<https://www.refworld.org/docid/3ae6a80618.html><https://www.refworld.org/docid/3ae6a80618.htm>

Sri Lankan women have a better chance to winning their rights. But at the same time there are difficulties in practical.

4. **What could be the contents and contours of a possible “right to public spaces”, and of legitimate restrictions that could be made to it, in accordance with international standards? Is this concept employed in your country or in your work? Is it helpful?**

Of Course Accepting all gender identities and sexual orientations is a special feature at EQUAL GROUND, Because this is an LGBTIQ community based organization. The contents should contain equal rights for every employee at work places. The respect should be given to their talent and capacity, regardless of their sexual orientation, Gender identity/expression/sex characteristics, Gender, Cast, Religion or Race. But most Employment places doesn't provide these equal rights to the LGBTIQ people, except community based organizations in Sri Lanka.

Certainly it is helpful to identify the Talented persons from the community and give best citizens to our country. All employers should have this quality to respect everyone and give them a chance to prove their talents.

Sri Lanka is still far behind in providing equal rights to everyone especially to the LGBTIQ people.

5. **What is the role of cultural rights in ensuring the existence, availability, accessibility, and adequacy of public spaces that are conducive to widespread participation in cultural life, the realization of citizenship, cultural democracy, as well as the realization of other human rights?**

Cultural rights play a major role in the lives of LGBTIQ people. People in our society believe that homosexual, bisexual and living as a transgender are not good things according to their religion or culture. They consider these kind of issues are destroying their culture. They have made strong cultural frames or comfort zones according to their beliefs and their always trying to live in these frames or comfort zones. When their child is a homosexual, bisexual or a transgender they think that

their child is breaking that comfort zone and it is a crime. So Because of their wrong belief they don't allow their child to be their own.

Most of the People in Sri Lanka have some wrong beliefs like A man should love only a Woman, They should get married to each other, a boy or girl should live within the limitations which are created by the society. This vision should be changed. Until the society stop judging people and include the people in cultural frames, There will be an obstacle for LGBTIQ people in getting their rights.

6. What is the impact on the enjoyment of cultural rights of trends regarding privatization, which may affect a variety of public spaces?

In Sri Lanka most of the LGBTIQ people are facing many problems regarding the enjoyment of cultural rights. and there is a belief among most of the Sri Lanakan people that LGBTIQ people are harmful to the public spaces because of their behaviours. For example there a trans woman or trans man has no freedom and security to go to public spaces like hospitals, religious places, parks, beaches and roads etc because of their gender identity and sexual orientation. They are treated as victims and as people those who have been destroying the culture.

Major problems for most of the LGBTIQ/ transgender people is to gain their Health services at Public Hospitals because of the way they are treated at Hospitals. Most of LGBTIQ people are considered as people who are spreading sexually transmitted diseases. Getting Health Care Services is an important right for every citizen of this country. Due to these kind of issues most of the LGBTIQ people have a stigma to go to the Public Hospitals and take medical services.

Some of the public spaces provide equal rights to everyone for enjoyments like restaurants, beaches, Public parks etc. But it is an obstacle for LGBTIQ people for getting their rights for enjoyments when they behave according to their gender identity and sexual orientation. Some time they have been abused by people at these kind of public places apparently or not apparently.

Most of the LGBTIQ people have been arrested at many public spaces by police under section 365 and 365A of the Sri Lankan penal code without evidence. Some time police officers violate human rights when they treating them or investigating them. Most trans women have been forced into sexual harassment at police stations. At these stages LGBTIQ people have no equal rights to get justice.

Getting their education is another obstacle for the LGBTIQ community members at schools and universities. They have been bullied at schools. They have been treated badly by other students and teachers. They have to lose their education at last. Without education they will not be able to get an employment either in Government Sector or private sector. In some cases even though they have qualification and education, they will be rejected for only because of their gender identity and sexual orientation.

Using public toilets is another barrier for trans women and men. For example a transwoman will not be allowed to use a female washroom. In some cases Transmens are mistreated at male washrooms. These are the problems faced by

LGBT people at public spaces in their day to day life. These obstacles are affecting their life severely.

7. What recommendations should be made to States and other stakeholders concerning these topics?

First and huge change must start from the Sri Lankan Government. The law 365 and 365A should be amended at first. Many LGBTIQ people are considered as victims and they have been arrested without evidence at public spaces due to this law. So Government must give equal rights to the LGBTIQ community members and accept their gender identities and sexual orientations without considering them as victims.

It will be a great benefit if schools started to create awareness among the Teachers, Parents and Students about sexual orientation and gender identities. They can include this topic in their syllabus also. It will create a better understanding between LGBT persons and other students in their childhood itself. Then only there will be peaceful society in the next generation which contains equality for every person.

Most of the mental health units at hospitals are understandable of LGBTIQ issues. But a huge change should be brought to the other all units at both public and private hospitals. All Non-Government Organizations those who are working for the wellbeing of the LGBTIQ people should come forward to educate the doctors and nurses about the LGBTIQ issues in through various activities. Fortunately EQUAL GROUND and some other organizations have been involved in such kind of activities and still we are working hard for bringing a brightness in LGBTIQ people's lives.

Even though it is hard we should try to create an awareness among the grassrooted people. Because there are LGBT people those who are in grassrooted levels. We should educate them and their parents about these kind of issues. Most of LGBTIQ people don't know about their rights. So it is an important thing to educate them about their rights.

An awareness and change should be brought to the employment sectors. Still employment is a dream to some Trans Women and men. Since unemployment most of the Transwomen have become as sex workers. It will make a huge change in transgender's life if they will get proper education and job opportunities with equal rights.