

Submission: Cultural rights and public spaces (Mauritius)

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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?

Various definitions of "public spaces" in national legislation:

The Public Health Regulations 2008:

- "public conveyance" means any means of transport carrying passengers for hire or reward;
- "public place" – (a) means – (i) an indoor area which is open to the public or any part of the public; (ii) a public conveyance; (iii) a workplace, but excludes an area demarcated for that purpose;
- "place of public entertainment" means any theatre, picture house, cinematograph or dancing hall and includes any premises used temporarily or permanently for the exhibition of any film, the performance of any play, or the holding of any concert, dance or charity bazaar but excludes a nightclub. As per the Places of public entertainment (closing time) act.

The Public Gathering act

- "public entertainment" means dancing, singing or music, a charity bazaar, a stage play or performance, a cinematograph exhibition given or held indoors or outdoors, to which the

public has been convened or has or is entitled or permitted to have access, whether on payment or otherwise; “public gathering” means a public meeting or a public procession; “public meeting”— (a) means a meeting held or to be held in a public place; (b) includes a meeting of school children, a sports meeting and a meeting for public entertainment; but (c) does not include a meeting held exclusively for a religious purpose; “public place” means any place in which the public has or is entitled or permitted to have access, whether on payment or otherwise; “public procession”— (a) means a procession in, to or from, a public place consisting of 12 or more persons proceeding on foot or in more than one vehicle; but (b) does not include— (i) a procession held exclusively for a religious purpose; (ii) a marriage or funeral procession;

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?

The Public Gathering Act defines a public place as : “ ‘public place’ means any place in which the public has or is entitled or permitted to have access, whether on payment or otherwise;” This is the closest we get to a legal definition and is understood to include beaches, roads, public plazas as well as entertainment spaces such as clubs, theatres and restaurants that require payment. The ‘public place’ is posited in terms of restrictions in the law. For instance, it takes centre stage in the legislation against tobacco smoke and closure times for places of entertainment but isn’t subject to any clarification as a standalone concept. What is understood as public place is thus at the discretion of the regulatory authority.

Various offices act as regulatory authority in guaranteeing the “right to assembly” (Public Gathering Act) and/or usage of public commodities such as beaches and roads for demonstrations and group activities. The commissioner of police as well as relevant municipal councils are other stakeholders in the regulation of public space access. Even then, access to public places is further regulated by cultural and social norms of who is “acceptable” and what is

considered legitimate use of the public place. Sex workers, the homeless and often vulnerable groups represent a blindspot in our cultural understanding of who gets to access and use public spaces and to what end.

Access to public places isn't guaranteed as a right in the constitution of Mauritius while the various legislations that deal with potential "public places" infrequently carry clauses that protect the right to access. In 2018, the yearly pride march in Mauritius was cancelled due to the inability of the state to guarantee that "usage" of the public space by the LGBTQ+ community and their allies would not result in violence by a small group of citizens opposing the march. This is telling of the extent to which regulatory authorities can protect "right to access" of public infrastructure in the face of social pressure. In practice, points of public interest have been designed with the bare minimum accessibility features for persons with disabilities. (hospitals, government buildings and public educational institutions tend to have wheelchair access) while the public infrastructure connecting public places only rarely follows through on the state's commitment to inclusion of persons with disabilities. The office of the Attorney General announced in 2019 the imminent proposal of The Disability Bill but nothing definite has been made public as of now. The absence of such protections means that there is hardly any incentive for the "public place" to be a space that can be accessed by anyone. Public beaches for instance have seen an unprecedented scale of privatisation of surrounding lands, resulting in minimal- if any- public pathways left for access to the beach. While in theory, the Pas Géométriques Act guarantees the unalienable right to areas of public domain, the enforcement of such laws remains shaky in the face of rapid development of coastal regions by private stakeholders.

In simple terms, the state views inclusion in economic terms. The conversations surrounding inclusion of women or persons with disabilities into the public sphere tend to centre around the economic potential of their contribution to the state. Thus, strategies to tackle the exclusion of actors across the cultural ecosystem have the tendency to take into account the economic value as well as the time-scale for these contributions to come to fruition.

Alternative strategies need to create a shift in mindset that reflects the aspirations of the population. While economic prosperity is a serious consideration, the pace of past development has further widened the socio-economic gaps and alienated the most vulnerable from enjoyment of the public domain. The strategies to tackle this impediment need to first build an understanding of how public spaces can and have historically been used to reduce social inequality and level the playing field. This would be the basis of any policy grounded in data and multi-sectoral expertise.

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?

1. Permits and checkpoints: Excessive policing remains an impediment to the enjoyment of public spaces by minorities and vulnerable groups. In addition, the various requirements needed for the use of public spaces for events/ gatherings and demonstrations give a few, the power to regulate the type of cultural exchange that is deemed "acceptable" and "desirable" .

"The Commissioner of Police shall be notified prior to a public gathering, and access to a garden for example shall be granted by the mayor or chairperson of the local authority. "

2. Inclusivity: The needs of the people with disabilities are barely met in public spaces. Access to public transportation is limited as buses are not properly equipped with accessibility features such as ramps for wheelchair users, p.a systems announcing the next stop for visually impaired citizens or staff trained in sign language. A public service accessibility regulation would be very impactful for people with disabilities.
3. The existence of socio-cultural groups, as regulated and protected by the state: The implication of protected socio-cultural groups is a point of contention in the individual's ability to fully engage with their culture and cultural expression in that these provide a

monolith of cultural expression. Mauritius is a country where one contains many and that aspect of cultural identity and legacy is lost in the narrow protections provided in the guise of preserving diasporic cultures.

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?

The concept of a "right to public spaces" could take the shape of an anti-discriminatory measure, emphasising the state's responsibility towards all citizens, regardless of gender, sexual orientation, disability or health status and socioeconomic background. This provision would be the basis of public infrastructure accessibility best-practice and further expand on other forms of accessibility that need to be guaranteed in the public domain (transport for instance). The limitations of such a concept is that it doesn't account for the fast-changing mediums of cultural and public life. Would the internet be considered a public space and thus, would the state be responsible for the "right of access"? Further legitimate lines of investigation would tackle the "preservation" of public space in terms of climate change action, adaptation and readiness as well as the problematisation of what constitutes public morality (as is employed in local legislation) when it comes to the use of public space.

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?

The protection of endangered cultural practices and freedom to equally enjoy the cultural rights is related the freedom of expression and the choice to freely choose whatever culture that the citizen might want to participate to. The development of each one cultural identity is however biased by the presence of socio-cultural associations, lobby, the mingling religious practices and

cultural heritage, thus binding cultural expression to narrow forms of engagement with the multitudinous realities that exist within the land.

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

Trends in privatisation have had a tremendous impact on the enjoyment of cultural rights in Mauritius. More and more, places of public life and engagement have been shrunk in favour of private businesses and the development of real estate designed for a foreign market. Where you would find groups of people socialising in the past, you will now find gated communities, hotels as well as commodified forms of "cultural life." Mauritians are thus at the mercy of economic realities and growing social boundaries that regulate the expression and enjoyment of art, culture and scientific progress. Conversations surrounding privatisation often preclude the shrinking spaces of fauna and flora which are part and parcel of the cultural legacy of the country.

In the field of artistic expression, art and artistic expression takes place almost entirely at the behest and convenience of private stakeholders as they are the primary investors in artistic expression (e.g. privately commissioned street art). The impact is that the cultural scene is hardly inclusive of dissenting voices or able to express the diversity of Mauritian realities.

The incessant tide of privatisation has further distorted the understanding what belongs in the public domain and what belongs in the private sphere. We have come to accept that artistic and cultural expression are bound to private interests without questioning how it excludes the most vulnerable and perhaps those who can contribute to culture, art or science from a perspective that doesn't fit the narrative of economic growth.

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

In light of its absence, states and other stakeholders should be encouraged to investigate and formulate:

1. A comprehensive and inclusive definition of public space that allows for the multiplicity of environments in Mauritius.
2. Policies that express and firmly guarantee (a) right of access, (b) right of occupation and (c) protections against the encroachment of the above rights to public spaces.
3. Protections of the public place/space/domain as unalienable, guaranteeing the preservation of the environment as well as of a set percentage of spaces for public life in light of the predatory development practices of the past.
4. An expansion and the establishment of clear a distinction of what constitutes public domain from private businesses in order to simplify the enforcement of anti-discrimination measures and build best-practices and incentives for all stakeholders.
5. Policies that encourage public voices to contribute to what the "right to public space" should entail while also problematising current understandings of where cultural life fits into the public/private realm.
6. Protections of the right to public space for enjoyment and participation in cultural life; thus guaranteeing that economic considerations do not take precedence over the freedom of citizens to express their cultural contributions.