**Mandate of the Special Rapporteur in the field of cultural rights: Questionnaire**

**Response of European Association of Archaeologists: Community on Integrating Archaeological Heritage Management and Tourism**

**This response is made with particular reference to tourism and ’over tourism’ at archaeological sites that open to the public and tourism within historic cities.**

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 space in legislation is a term that is applied in land use policy and legislation, land use, residential and urban master planning and urban development planning. In principle, public spaces are spaces that are open to all. A place in which no one has more rights than others to use following the definition of the classical Greek “Agora”, especially in an urban context. (Barbara Zibell <https://uniondesvilles.ch/cmsfiles/090827_referat_zibell_f.pdf>).

**United Nations Definition**

*A public space refers to an area or place that is open and accessible to all peoples, regardless of gender, race, ethnicity, age or socio-economic level. These are public gathering spaces such as plazas, squares and parks. Connecting spaces, such as sidewalks and streets, are also public spaces. In the 21st century, some even consider the virtual spaces available through the internet as a new type of public space that develops interaction and social mixing.*

Public spaces (many of them historic/buildings/complexes) can be places of religious life, economic activity (markets), recreation (parks/town squares/waterfronts) and they can also be the setting for public protest.

There are places that are open to the public under certain conditions under public or private ownership: public buildings, hospitals, schools, museums, prisons, theatres, cinemas, hotels, restaurants, shops, shopping centres, public transportation systems, etc.). These are often subject to legal prohibition (drinking, smoking limited access/opening hours, entry fees, etc).

Archaeological museums and many archaeological sites fall into this category.

***Civic Space and Public Domain***

The term ‘civic domain’ refers to shared civic space and suggests an urban setting and a degree of ownership and right of use of the space by the citizens (those that live there) to the space and use the space.

The ‘public domain’ is used as a term for planning, design and definition of the duty of care by a public authority for the space. It can also mean a broader spectrum of users and use of the space. In some legislation, the term public domain is reserved to roads and highways, to lakes and rivers, to natural resources (see Commons), as well as digital space (with ref. to cultural works free of duties or copyright).

In digital cultural heritage the term ‘public domain’ refers to collections that are open and available to all. Within the European Union, copyright expires 70 years after the death of the author. Where copyright in a work has expired or its maker has waived his or her copyright, the work is said to have fallen in the Public Domain. The question whether the scanning of Public Domain material creates new copyright in the resulting scans, or reproductions (https://www.liberquarterly.eu/articles/10.18352/lq.8089/).

***Commons***

Commons comprises those explicitly or, in some cases, implicitly shared resources in which the community as a whole has an interest (https://www.citylab.com). It is a social system for the long-term stewardship of resources that preserves shared values and community identity.(David Bollier). ‘A commons provides... a new way of looking at what is shared or should be shared in the world around us. It focuses on collective action and the importance of understanding who shares what, how we share it and how we sustain commons for future generations.’ (Hess, 2008)

1. 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?

With a focus on youth and disability, on April, 2010, the European Union (EU) declared that travel and tourism is a basic human right. This is a problematic assumption when it comes to rights of access to ‘public spaces’, ‘civic space’ and ‘public domain’.

Overcrowding of public civic spaces and at properties of international cultural and tourism interest now presents a significant challenge and a focus of contest with regard to rights of access, use and the economic benefits of use.

This can be clearly seen within heritage cities and sites of cultural heritage significance that are the focus of mass tourism. The impact of mass tourism and ‘over tourism’ on local communities and the quality of life of communities living within or close to the heritage ‘resource’ is frequently negative, and especially so for women, children and people with disabilities.

Tourism globally is set to rise, mass tourism, and the cruising industry in particular, will therefore continue to have increasingly negative impacts on the culture, daily lives, freedom of movement and association of local communities all over the world.

The tourism industry and many tourists regard access to cultural sites, cultural heritage and archaeological sites, sites of memory and the public spaces of historic cities as entirely supportable because at policy level travel and freedom of movement is seen as a fundamental right. However, access to these locations is part of their product, a product from which immense global profit is gained. All too often visiting times are short and intense and there is little economic benefit locally.

Supported by UNWTO, cultural tourism is looked to, in order to support the Sustainable Development Goals (SDGs). However, policy on benefit share is rarely seen to be exercised successfully in practice:

https://icr.unwto.org/content/tourism-and-sdgs;

http://tourism4sdgs.org/;

http://tourism4sdgs.org/unwto-launches-an-online-platform-to-achieve-sdgs-through-tourism/

Public spaces are used to convey cultural themes. This is particularly important related to one of the main functions of the public space, which is to convey beauty, cultural understanding and interactions.

Visitor access to historic town centres, archaeological sites and museums is unrestricted (gender, age, origin, purpose). Participative actions and events promote access. Universal access (ref. people with disabilities) can be a challenge within historic city centres and on archaeological sites. Efforts to improve disabled access are frequently made at locations that have significant public and tourism access. Modernisation may harm the condition of these locations and affect their integrity and authenticity. Digital presentation solutions are increasing used.

1. 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?

In relation to tourism at cultural sites and in heritage cities mass tourism and tourism-related overcrowding can lead to an appropriate of public spaces and create serious impediments to local cultural rights of access to and use of public spaces. (This has been highlighted as a significant issue in the case of the impact of the cruise liner industry – which is set to continue its rapid growth in the coming years). Tourism in historic town centres can also lead to competition for rights of residence[[1]](#footnote-1) (e.g. change of use of city centre properties from residential to short-term rental accommodation which forces a regrettable change in the demography of town centres and lives of citizens, especially the elderly and traditional traders).

Issues of security also arise where crowding and over-crowding occur.

1. 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?

Restrictions already apply in a great number of places internationally, notably at World Heritage Sites and in World Heritage Cities, where life for local inhabitants became intolerable or a cultural heritage resource could not withstand the damage and loss caused by mass visitor impacts and behaviour. The restrictions are needed to regulate the flow of visitors and regulate their environmental and behavioural impacts. The UNESCO World Heritage Programme’s Sustainable Tourism Toolkit is an admirable tool this regard.

1. 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?

With reference to tourism at cultural sites and cultural heritage cities, the (cultural) rights of occupancy, rights of access and rights of cultural expression of inhabitants must come first and foremost in localities that have become tourist destinations.

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

When associated with tourism, usually negative. Annexation of footpaths and public squares for restaurants and bars is an example.

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

In relation to tourism the right of access, use and enjoyment of citizens comes first.

1. Recently highlighted at the *Sense and Sustainability: Archaeological Heritage Management and Sustainable Tourism* conference Zagreb, Croatia 6-10 May 2019) [↑](#footnote-ref-1)