

## **Public Space – The Conduit for Realizing Human Rights in Cities for All**

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### ***Abstract:***

The paper applies the International Framework of Human Rights standards and principles to the design, development and maintenance of public spaces in cities. It is the argument of the paper that by meeting the human rights standards of accessibility, affordability, availability and quality in the design of public spaces the *duty bearer*, the state (in this context, municipality and the local government officials), is able to realize their minimum core obligation of providing for certain levels of civil, political, social, economic and cultural rights. In turn, the *right-holder*, that is, the people including the marginalized and vulnerable communities, through the use of public space are able to enjoy internationally recognized civil, political, social, economic and cultural rights. Analyzing the best case practices from the UN-Habitat Global Programme on Public Space, the paper advocates for the incorporation of the human rights standards and the participatory principle to realize human rights for all.

### **I. Urbanization and Public Space**

Over half of the world's population (54 per cent) lives in urban areas.<sup>2</sup> While the pace of urbanization carries an enormous potential for economic growth and innovation, it is also perpetuating social inequality and marginalization. New city extensions due to poor planning design is resulting in spatial inequalities creating physical and social divisions between the rich and poor neighborhoods that are limiting social interactions. World's most urban poor now live in slums without access to basic services and employment opportunities, leading to increased crime, gender discrimination, and worsening living standards.

The 'New Urban Agenda' seeks to promote an urbanization model that contains mechanisms and procedures to respect, protect and promote human rights and which promotes sustainable cities. Such a vision is consistent with the evolving Post-2015 Sustainable Development Goals, most particularly the proposed Goal 11 on Sustainable Cities and Human Settlements.

Goal 11.7 aspires 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 by the year 2030.' With support of this Goal, this paper advocates for the availability, access, use and design of affordable and quality public spaces in cities that would respect protect and promote the human rights of everyone including the most marginalized and vulnerable population.

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<sup>2</sup> World Urbanization Prospects, United Nations, Department of Economic and Social Affairs(Population Division, 2014)

Taking into consideration the international human rights instruments and case studies on public spaces, the paper will illustrate how targeted utilization of public spaces can contribute to the progressive realization of several human rights in cities, including access to: work under just and favorable conditions, improved standard of living, education, health, equality, and freedom of expression. It is the argument of the paper that by building public spaces that meet the human rights standards of accessibility, cultural adequacy, affordability, availability and relevant quality, the *duty bearer*, the state (in this context, municipality and the local government officials), are able to realize their human rights obligations for all, at a cost substantially lower than providing the rights through other means. In turn, the *right-holder*, that is, the citizen, through the use of public space is able to enjoy internationally recognized civil, political, social, economic and cultural rights.

Public Space is defined in a multitude of ways. The Charter of Public Space<sup>3</sup> defines public space as: ‘all places publicly owned or of public use, accessible and enjoyable by all for free and without a profit motive.’ Public spaces can include streets, sidewalks, public toilets, entertainment venues (theatres, museums), public markets, libraries, sporting venues, squares, gardens, public hospitals, public schools, parks, and plazas.

## II. The International Human Rights Framework

Human rights are universal legal guarantees of a civil, cultural, economic, political and social nature, protecting individuals and groups, against actions and omissions that interfere with fundamental freedoms, entitlements and human dignity.<sup>4</sup> A human right may be understood as a relationship between an individual who has a right (right-holder) and another individual who has a correlative duty or obligation (duty-bearer).<sup>5</sup> Under international law, states assume obligations and duties to respect, protect and fulfil human rights.<sup>6</sup> The obligation to fulfil requires that states must take positive action to facilitate the enjoyment of basic human rights.<sup>7</sup>

The International Covenant on Civil and Political Rights (ICCPRs), the International Covenant of Economic, Social and Cultural Rights (ICESCR), and the Universal Declaration of Human Rights (UDHR) are considered the International Bill of Human Rights. In accordance with UDHR, “... the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can be achieved only if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights.”<sup>8</sup>

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<sup>3</sup> The Charter of Public Space, adopted at the II Biennial Session of Public Space in Rome in May 2013. Available at, [www.biennalespaziopubblico.it/international/outputs/the-charter-of-public-space/](http://www.biennalespaziopubblico.it/international/outputs/the-charter-of-public-space/)

<sup>4</sup> *Frequently Asked Questions on a Human Rights- based Approach to Development Cooperation* (United Nations publication, Sales No. E.06.XIV.10), p.1.

<sup>5</sup> Human Rights Guidance Note, UN-Habitat, September 2014

<sup>6</sup> Ibid

<sup>7</sup> Ibid

<sup>8</sup> [www.un.org/en/documents/udhr/](http://www.un.org/en/documents/udhr/)

The ICCPR Covenant provides for a range of protections for civil and political rights.<sup>9</sup> The ICESCR Covenant defines a broad set of rights related to the economic, social, and cultural elements of life. These rights include: right to work under just and favorable conditions; an adequate standard of living and the continuous improvement of living conditions; the highest attainable standard of physical and mental health; education for the full development of the human personality and the sense of its dignity and to enable all persons to participate effectively in society; and participation in cultural life.<sup>10</sup> Under ICESCR, state parties are under an obligation to achieving progressively the full realization of the rights'.<sup>11</sup> According to the Committee on Economic, Social and Cultural Rights (CESCR), State parties have a 'core obligation to ensure the satisfaction of, at the very least, *minimum essential levels* of each of the rights'.<sup>12</sup> The provision of minimum essential levels is an immediate obligation.<sup>13</sup> Core obligations on the state to progressively realize the rights are: (1) ensuring *nondiscrimination*; (2) ensuring *equal access* for women and men to goods, services and resources implicit in economic, social and cultural rights; and (3) adopting and implementing *national strategies and plans of action* to realize specific economic, social and cultural rights.<sup>14</sup>

Accordance to the CESCR Committee, there are four human rights standards to be met with in fulfilling the core obligations:<sup>15</sup>

- **Availability:** Facilities, goods and services need to be available in sufficient quantities and equipped with the necessities required to function.
- **Accessibility:** Facilities, goods and services need to be accessible for all sections of the population, especially vulnerable or marginalized groups, such as ethnic minorities and indigenous peoples, women, children, adolescents, older persons or persons with disabilities. There are three dimensions to this- facilities should be **non-discriminatory** in their usage; the facilities should be **physically accessible**- the facilities, goods and services should be capable of being used by the vulnerable communities; and they should be **convenient and flexible** in their usage so that all the sections of the society are able to enjoy them.
- **Affordability:** Facilities, goods and services must be affordable and expenses must not disproportionately burden poorer households. This also requires the removal of

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<sup>9</sup> The Covenant contains the right to self-determination including political status and economic and cultural development; ensure rights without discrimination; equal enjoyment of treaty rights between men and women; the right to life; freedom of assembly and association; freedom of thought, conscience and religion; freedom of opinion and expression; the right to liberty and freedom of movement; the right to equality before law; the right to participate in public affairs, vote, be elected and have access to public service; the rights for children; and the rights for members of religious, ethnic or linguistic minorities, to enjoy their culture, practice their religion and use their language. Available at : <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

<sup>10</sup> Available at : <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>

<sup>11</sup> According to Article 2(1), state parties must take steps 'individually and through international assistance and cooperation ... to the maximum of available resources, with a view to achieving progressively the full realization of the rights' recognized in the Covenant.'

<sup>12</sup> General Comment Number 3, Committee on Economic, Social and Cultural Rights

<sup>13</sup> Ibid

<sup>14</sup> Human Rights Guidance Note, UN-Habitat, September 2014

<sup>15</sup> Human Rights Guidance Note, UN-Habitat, September 2014

administrative barriers that can prevent the poor from accessing facilities, goods and services.

- **Quality:** Facilities, goods and services need to be relevant, culturally appropriate and of acceptable quality.

A human rights standard represents the desirable goal or outcome of the realization of a specific human right.<sup>16</sup>

Besides the above human rights instruments, the Convention on the Rights of the Child, the Convention on the Elimination of all Discrimination Against Women (CEDAW), the Convention on the Rights of Persons with Disabilities, and the International Convention on the Elimination of All Forms of Racial Discrimination, specifically obligates the state to take affirmative measures to ensure that the vulnerable– women, children and disabled are not discriminated , and places emphasis on the equality of outcomes. These Covenants and Conventions are legally binding instruments under international law, and therefore can be enforced against states that fail to meet their obligations.

### **III. Human Rights Realization with the Development of Quality Public Spaces in Cities**

This section analyzes those human rights that are most relevant for public spaces. Through case study analysis this section will argue that one of the means to fulfil the provision of providing the minimum essential level of the rights is that the public space plans, policies, designs, and processes should meet the above mentioned four human rights standards by the state.

#### **1. Right to Equality**

In many cities, access to different public spaces depends on one’s personal knowledge of the location of public spaces, social standing and physical ability.<sup>17</sup> As many other public goods, ‘green’ and open areas tend to be enclosed, restricted, or depleted by unsustainable use.<sup>18</sup> Many public spaces are being acquired for private profit resulting in private ownership of public spaces. In other cities, public spaces remain concentrated in the affluent areas. Young and poor populations are commonly victimized for congregating in city centers over fear of inciting antisocial behavior and offending others.<sup>19</sup> The disabled, old, and mothers with children find it difficult to access public spaces and enjoy them to the same extent as the others due to poor location and design of the place, and lack of facilities to take into account their special needs. The rules and regulations governing access to public space pose challenges to their use by the

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<sup>16</sup> Ibid

<sup>17</sup> Public Space and Sud-Net, A Concept Note, UN-Habitat

<sup>18</sup> Ibid

<sup>19</sup> Ibid

vulnerable communities. Therefore, social, cultural and economic inequalities are still being built into public spaces.<sup>20</sup>

Yet, the right to equality and freedom from discrimination of these vulnerable and marginalized groups is a recognized human right in a number of international human rights instruments, including Article 2 and 26 of the ICCPR, Article 2 and 3 of the ICESCR, Article 2 of the Convention on the Rights of the Child, and Article 1 of CEDAW.

These Conventions promote the notion of 'substantive equality'. According to the CESCR Committee -'substantive equality is concerned, in addition, the effect of laws , policies and practices and with ensuring that they do not maintain, but rather alleviate, the inherent disadvantage that particular groups experience.'<sup>21</sup> While formal equality refers to the adoption of laws and policies that treats everyone equally, substantive equality is concerned with the results and outcomes of these.<sup>22</sup> In the context of the vulnerable population, formal equality by building public spaces that are open to all does not suffice. Substantive equality through meeting the specific needs of the marginalized is needed while designing the public spaces.

Therefore, to ensure the desired outcome of substantive equality, public spaces should have the following characteristics:

- **Be available:** Public spaces and the facilities should respect the needs of the vulnerable population and should be made available in sufficient quantity. They should be **convenient**, so they can be used without undue effort and by accommodating those that have specific requirements.<sup>23</sup> For example, bus stops should have ramps for the disabled for them to be able to enter the buses.
- **Be accessible:** Public spaces should be **physically accessible**- that is responsive to the needs of the vulnerable population. For example, playgrounds for children should be at a safe walking distance. The spaces should be **non-discriminatory** –that is, designed with the vulnerable population in mind and to give them a sense that they have a right to be there. For example, the play facilities should cater to the diverse needs of the children including the disabled, the poor, indigenous and the girls. The spaces should be safe to use, accessible with dignity, practical and a pleasure to use.<sup>24</sup> For example, pedestrian walkways, back lanes and access routes to public spaces such as toilets and metro stations intended for night use should be well lit so that women feel safe to use them.
- **Affordable:** Both the access of the public space and the use of the facilities should not be economically burdensome for the vulnerable population. For example- not only should

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<sup>20</sup> Ibid

<sup>21</sup> General Comment Number 16, Committee on Economic, Social and Cultural Rights

<sup>22</sup> Sandra Fredman, 'Changing the Norm: Positive Duties in Equal Treatment Legislation' (2005) 12 Maastricht Journal of European and Comparative Law 369

<sup>23</sup> 'Inclusion by Design-Equality, Diversity and the Built Environment', UK Commission for Architecture and Built Environment, 27 November, 2008

<sup>24</sup> Ibid

there be well connected public transportation available, it should also be affordable to reach a public space.

- **Quality:** The public spaces and the facilities on the spaces should be culturally appropriate and of an acceptable quality for all sections of the population. They should be flexible in use, and offer choice when a single design solution cannot meet all users' needs.<sup>25</sup>

To meet the above criteria, the state should follow the participatory approach, and engage the members of the vulnerable community in the design, building and management of the public spaces. The engagement of NGOs and other civil society actors to facilitate such a consultative process is also important. This enables participatory planning and is a vital component of the human rights principles.

#### **Lotus Garden, Mumbai, India: Enforcing the Right to Equality**

M ward is the most neglected and poorest area in the city of Mumbai. This is a very densely populated area with almost no public spaces. It is located near the city dumping ground and over 90% of the population belongs to a Muslim community with among the lowest living conditions in the world. The area suffers from major solid waste management issues and the few public spaces that exist are abused, not maintained and under constant threat of encroachment.

UN-Habitat and its implementing NGO partner, the Mumbai Environmental Social Network, selected a garden space site called Lotus Nagar that would service a population of more than 200,000 people. MESN mobilized the community and a garden was built that caters to every section of the population—children, youth, women, and the old. Play equipment for children and fitness equipment for adults has been installed. A walkway, flower beds, benches and water tank has also been installed. There is a demand for high mast and hiring of security guards by the residents to ensure that the Garden was adequately lighted and safe and thus accessible to all.

**Source:** UN-Habitat Public Space Report, 2014

## **2. Freedom of Assembly, Expression, and Participation:**

Parks, squares, avenues and main streets have been the site of many historical and landmark demonstrations that has resulted in the enforcement of democratic ideals across the world. The power of the political, social, and economic protests such as the Occupy movements, the Arab Spring, in Spain, and Israel, highlights the importance of public space as a powerful political tool for the powerless and the neglected voices of the society to be acknowledged by the state officials and other members of the community. This use of public spaces enables in the realization of the rights in ICCPR- freedom of assembly and association; freedom of opinion and expression; and the right to participate in public affairs without discrimination.

However, urbanization is resulting in public spaces being taken over by commercial interests with their development into office spaces, shopping plazas, and malls. The status of public

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<sup>25</sup> Ibid

space is not very clear in urban legislations to ensure that private development can preserve sufficient public space. Access to land for the purpose of political expression is at the discretion of the owner. This is increasingly resulting in tension between property rights and freedom of expression as the state authorities have suppressed the political protests. These protests and their suppression have brought to the forefront questions regarding the ownership and usage of public spaces.

#### **Occupy Movement Zuccotti Park, New York**

This was the original site of the Occupy Wall Street Movement where demonstrators raised a variety of political, social, and economic issues. The park is a privately owned public space and has been the site of several 9/11 anniversary ceremonies and remains a popular destination with families and pedestrians.

From September 2011 onwards, the park served as a place of demonstration for Occupy Wall Street and for launching marches to other public spaces. The activities of the demonstrators were immediately adjacent to the public sidewalks and often extended to them. The occupying of the physical space gave the political movement international visibility through the transmission of detailed and evocative images in the media. Despite the seriousness of the demonstrator's concerns, the Park was also the site of social bonding. The demonstrators comprised of people from all the sections of the American society. They raised public awareness of issues of economic inequity making them a topic of public discourse during the 2011-12 Presidential campaign, thereby highlighting the importance of public spaces in fostering democracy and social cohesion.

The Police kept a careful watch over the park, installing a watchtower and keeping people off the adjacent streets with metal barricades. Demonstrators were legally able to occupy the space because of the existing regulations about its use. Eventually, new rules were adopted, which were upheld by the court and the police were able to move the protestors out. The new rules were challenged again. This case also highlights the tension between citizen's use of public spaces to express dissent and authorities' exertion of control to maintain public order.

**Source:** Franck, Karen A., & Huang, Te-Sheng. (2012), 'Occupying Public Space, 2011: From Tahrir Square to Zuccotti Park.'

Rules, bylaws and regulations on the use of public spaces for demonstrations or public gatherings should support the furtherance of democratic participation and not be overly restrictive or vague. Public spaces should be clearly defined. When there are conflicts over the use of public space, cities should grant priority to uses that enable the citizens to more actively engage in democratic governance.<sup>26</sup>

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<sup>26</sup> Glasius, Marlies, 2011, 'Doing Democracy in the Square: Reflections on Occupy, the Indignants and the Tahrir Demonstrators', Society and Space. Available at : <http://societyandspace.com/material/discussion-forum/forum-on-the-occupy-movement/marlies-glasius-doing-democracy-in-the-square-reflections-on-occupy-the-indignants-and-the-tahrir-demonstrators/>

### **Jeevanjee Gardens and Silanga Community Complex, Nairobi, Kenya: Owning Public Space**

In 2012, UN-Habitat signed an Agreement of Cooperation with the Nairobi City Council to develop a citywide public space strategy, and to work with at least two pilot project sites in order to demonstrate participatory and integrated public space development approaches.

In March 2013, Kenya held their national elections, putting the implementation of the project sites on hold, with the consequence of a number of illegal structures and businesses being constructed on sites.

The above challenges notwithstanding, the project realized some gains, largely as a result of the City County leadership embracing the issue of public space as an important political agenda. For instance, the city has started to pull together an inventory of all the public spaces in the city, which also includes assessing how the space is used, who uses the space and to establish ownership of the space.

**Source:** UN-Habitat Public Space Annual Report, 2014

### **3. Right to Education**

As sites of learning and social interaction, public spaces are often central to empowering the lives of children and youths.<sup>27</sup> Public spaces give children the opportunity to develop their social skills by interacting with people coming from various socio-economic statuses, and different race, religious, political backgrounds. It helps them to learn from others who are different and shape their perspectives on the important political, environmental, social and economic issues by observation and interaction.

However, urbanization has left children and youth with little ability to experience the urban environment due to lack of common public spaces, and high population density resulting in severe traffic congestion and unfriendly streets for access to public spaces.

Article 13 of the ICESCR provides that 'education shall be directed to the full development of the human personality, and to enable all persons to participate effectively in a free society.' The Convention on the Rights of the Child gives every child the right to engage in play and recreational activities.<sup>28</sup> In the context of public space, the state has an obligation to provide the environment that is conducive for realizing the human right to education for all. There is a core obligation on behalf of the state to meet with the human rights standards of availability, accessibility, affordability and quality while designing the public spaces, and to ensure non-discrimination by catering to children with special needs, the poor, indigenous children, and girls.

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<sup>27</sup> Supra Fn. 16

<sup>28</sup> Article 31- 'Every child has the right to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.'

The Committee on the Convention on the Rights of the Child has provided the following policy recommendations for Municipal Planning to realize Article 31 of Convention:

- **Availability** of inclusive parks, community centres, sports and playgrounds that are **safe and accessible** to all children;
- Creation of a **safe living environment** for free play, including design of zones in which players, pedestrians and bikers have priority;
- **Public safety measures** to protect areas for play and recreation from individuals or groups who threaten children's safety;
- **Provision of access** to landscaped green areas, large open spaces and nature for play and recreation, **with safe, affordable and accessible transport**;
- **Road traffic measures**, including speed limits, levels of pollution, school crossings, traffic lights, and calming measures to ensure the rights of children to play safely within their local communities;
- Provision of clubs, sports facilities, organized games and activities **for both girls and boys of all ages and from all communities**;

**Source:** General Comment No. 17, Committee on the Convention on the Rights of the Child

#### **Villa El Salvador, Lima, Peru, Enforcing Inclusive Right to Recreational Activities**

In Lima, Peru, UN-habitat is supporting the Municipal Parks Service, SERPAR, to develop a plan for the revitalization of a public park in the area of Villa El Salvador. There is little support from local authorities. The maintenance and public construction work is carried out by community members.

The park is 7,200 m<sup>2</sup> in size and contains facilities such as retaining walls, a sport slab, damaged children's games and a small chapel. Some recreational, sport, cultural and social activities take place with minimal, limited and inadequate facilities.

A participatory design workshop using Minecraft was held that highlighted a series of interventions necessary, including upgrading of sports facilities, the need for sanitation facilities, community gardens and street lighting.

**Source:** UN-Habitat Public Space Report, 2014

## **4. Right to Health**

Urbanization is causing a number of health problems in the cities due to overcrowding, high-volume traffic, poor air quality and lack of safe public spaces for recreation. Urbanization is

considered to be a key driver in the rise of non-communicable diseases such as hypertension, obesity, and diabetes.<sup>29</sup>

Under Article 12.1 of the ICESCR, States parties recognize ‘the right of everyone to the enjoyment of the highest attainable standard of physical and mental health’. The CESCR Committee has observed that, ‘citizens have the entitlement including the right to a system of health protection which provides equality of opportunity for people to enjoy the highest attainable level of health.’<sup>30</sup> The right to health is also recognized in the Convention on the Rights of the Child, CEDAW, and the International Convention on the Elimination of All Forms of Racial Discrimination.

Public spaces that provide facilities for recreation enable the facilitation of improved health outcomes for the community and reduce health costs. According to a 2012 study by the Canadian Public Health Association, it costs 27 times more to achieve a reduction in cardiovascular mortality through clinical interventions than it does to achieve the same result through local public health spending by the development of landscapes.<sup>31</sup>

The right to health must be understood as a right to the enjoyment of a variety of facilities, goods, services and conditions necessary for the realization of the highest attainable standard of health.<sup>32</sup> This conceptualizes the right to health as a ‘state of complete physical, mental and social well-being’, and thereby puts an obligation on the state to embrace a set of socio-economic factors to realize the right.<sup>33</sup>

To realize the right to health in the context of public space, adequate number of well-designed, good quality, and well-managed public spaces should be made available. Spaces that provide safe passage for pedestrians enable physical exercise, social interaction and community cohesion. Public spaces should be accessible without any discrimination by being within safe reach of ethnic minorities, women, children, elderly persons, persons with disabilities and persons with HIV/AIDS. The use of the spaces should be affordable, culturally appropriate and sensitive to gender requirements.

#### **The Greenlink Motherwell, Scotland, Improving Health Outcomes**

In Scotland’s former capital of steel production, Motherwell, a 7km cycleway is changing lives. A recent study showed that the benefits of increased exercise, a safer, greener community, and the opportunity for people to learn new skills, is delivering a social return of £7 for every £1 invested. The Greenlink is an important project because it has created enormous improvements in an area where many of the neighborhoods that it runs through are defined as being among the 15 per cent most deprived in Scotland.

**Source:** Public Health and Landscape, ‘Creating Healthy Places’, Landscape Institute Position Statement, 2013

<sup>29</sup> WHO, Noncommunicable Diseases, Fact Sheet, January, 2015

<sup>30</sup> CESCR General Comment Number 14 on the Right to Health

<sup>31</sup> Public Health and Landscape, ‘Creating Healthy Places’, Landscape Institute, November, 2013.

<sup>32</sup> Supra Fn. 28

<sup>33</sup> Ibid

The right of everyone to participate in cultural life is a recognized right under Article 15 of the ICESCR.<sup>34</sup> It is also recognized under various other international human rights instruments.<sup>35</sup>

The right to culture also includes cultural heritage as the “the concept of culture must be seen not as a series of isolated manifestations or hermetic compartments, but as an interactive process whereby individuals and communities, while preserving their specificities and purposes, give expression to the culture of humanity”.<sup>36</sup>

In cities, culture is recognized as an identity-builder that strengthens the social dimension of sustainable development. Cities that support culture are more competitive, generate more creativity, more cultural ownership, further democracy, and more inclusiveness. Culture seeks to widen access to and participation in the arts, utilize the arts to strengthen community identity and to revitalize disadvantaged neighborhoods.<sup>37</sup>

Public spaces allow the expression of diverse urban cultures and the building of civic identities and responsibilities. Preserving museums, heritage sites and creating public spaces where the cultural diversities of minorities can be preserved is to realize the right to cultural identity. Protection and promotion of culture in public spaces enables the realization of a multitude of interdependent rights including freedom of opinion and expression, cultural development, right to adequate standard of living, and right to education.

The right to culture requires the state to fulfil the preconditions for participation, facilitation and promotion of cultural life, and access to and preservation of cultural goods.<sup>38</sup> The state is under a core obligation to design public spaces that provide effective and concrete opportunities for individuals and communities to enjoy culture fully, within physical and financial reach for all, without discrimination. The states should promote the right to culture by adopting policies and public space plans that establish, support and maintain institutions including cultural heritage sites for the protection and promotion of cultural diversity. Libraries, museums, theatres, cinemas and sports stadiums; the shared open spaces essential to cultural interaction- such as parks, squares, avenues and streets, should be made available in sufficient quantity.<sup>39</sup> The spaces must be culturally appropriate and acceptable for all sections of the society, including the marginalized. The needs of everyone should be met to enable the realization of the right to participation by being able to engage in one’s cultural practices,

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<sup>34</sup> Article 15: The States Parties to the present Covenant recognize the right of everyone: (a) To take part in cultural life;

<sup>35</sup> Article 27 in UDHR, Article 7 in International Convention on the Elimination of All Forms of Racial Discrimination, Article 13 in CEDAW, Article 29-31 in Convention on the Rights of the Child, and Article 30 in Convention on the Rights of Persons with Disabilities.

<sup>36</sup> CESCR Committee, General Comment No. 21 on Right to Culture, Article 15, 2009

<sup>37</sup> ‘Cultural Development Strategies and Revitalization’, Carl Grodach and Anastasia Loukaitou, Available at: [http://eprints.qut.edu.au/74438/1/Cultural\\_Strategies\\_IJCP\\_prepub.pdf](http://eprints.qut.edu.au/74438/1/Cultural_Strategies_IJCP_prepub.pdf)

<sup>38</sup> Supra Fn. 34

<sup>39</sup> Ibid

develop cultural knowledge and expressions and to share them with others, as well as to act creatively and take part in creative activity.<sup>40</sup>

### **Kirtipur, Nepal- Reinforcing the Right to Culture**

Open spaces have been and still are important elements in the traditional settlements of the Kathmandu Valley giving the cities their identity. These have been inbuilt in the form of public and private courtyards, chowks, pati's and water ponds in the core settlement areas. The open spaces in the historic area of Kirtipur have been used for performing personal daily and leisure activities, for celebrations and festivals, socio-cultural and religious activities, as a place to shelter during earthquake, and preserving the agricultural land that formed the basis of subsistence in the agriculture based society.

However, many such open spaces are losing their traditional character in the context of urbanization and are in urgent need of revitalization and proper management. The spaces are being increasingly encroached. Consequently, social activities are decreasing, interaction among old people, recreation by youth, women and children- all have been diminishing.

UN-Habitat, Mojang and the Centre for Integrated Urban Development (CIUD), the local implementing partner, partnered to conserve and enhance one of the key open spaces in Kirtipur- the Bagh Bhairav temple and its periphery as the pilot project for demonstrating people centric open space management. The project engaged the elderly, youth and women's group towards, the design, implementation and the management of open spaces. It also involved the capacity building of local community and municipality.

The general strategies that were adopted for the improvement of the open space included:

- Improvement of the physical environment (lighting, seating etc.)
- Renovation of the courtyards in the vicinity
- Improving the linkages between the open space, streets and the squares
- Enforcement of strong rules and regulations on encroachment of public spaces
- Adding recreational activities for all age groups to make the space more lively
- Setting up a framework for the maintenance of the pond walls, water spouts

Revitalization of traditional inner core was important to improve the image of city and enhance the quality of life. It was essential to create a network of quality streets and spaces that enabled to bring measurable economic benefits, stimulating growth in tourism, raised property values and increased commerce for local business. This included:

- Improving the image of city in order to create it manageable, livable, traditional and historical city
- Community planning and sustainability aspect of the program - operation and maintenance aspect of the program
- Local fundraising and ownership of the program
- Creating a vibrant, dynamic and inclusive city that encourages the greater use of city and its assets
- Making it more economically sustainable and environmentally healthy by welcoming the tourists and encouraging the pedestrian routes
- Enhancing and preserving city's unique identity and history through traditional design approach
- Enhancing the use of the open space and manage it properly for the effective use of the public open space
- Using traditional construction technique so as to preserve and maintain the historical identity of this place.

**Source:** Kirtipur, Nepal, UN-Habitat Report on Public Space, 2014

## 6. Right to Work

The Right to Work is essential for realizing other human rights and forms an inseparable and inherent part of human dignity.<sup>41</sup> Article 7 of the ICESCR recognizes the right of everyone to the enjoyment of just and favorable conditions of work, in particular the right to safe working conditions.<sup>42</sup> The right to work is recognized in several other international legal instruments.<sup>43</sup>

Under ICESCR, there is an obligation on the state to *facilitate*, that is, to take positive measures for the individual to realize its right to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.<sup>44</sup> The state is under an obligation to assure individuals their right to freely chosen or accepted work, including the right not to be deprived of work unfairly.<sup>45</sup> There is a further obligation on the state to *fulfil* (provide)- to take effective measures to increase the resources and to adopt an employment policy for the realization of the right.<sup>46</sup> The state is under a core obligation to ensure the right of access to employment, especially for disadvantaged and marginalized individuals and groups, permitting them to live a life of dignity.<sup>47</sup>

Public Space provides the backbone of the urban economy and serves a critical role in the livelihoods of the urban poor.<sup>48</sup> Streets facilitate economic activities such as street vending, retail and wholesale shops, filling stations, as well as a range of services.<sup>49</sup> Much of the urban poor derive their income through small or informal service enterprises, which depend on access to a high volume of pedestrian traffic as the consumer base.<sup>50</sup> However, this remains largely neglected in the urban policy of many low-income countries.<sup>51</sup> Exclusion from public spaces severely restrains the ability of urban dwellers to access meaningful work, engagement and earnings.<sup>52</sup> Eviction of vendors and street hawkers on the pretext of illegal encroachment is also common. Marginalized community- including women, older persons, and people with

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<sup>41</sup> General Comment, CESCR Committee, Right to Work

<sup>42</sup> Ibid

<sup>43</sup> The right to work is contained in article 8, paragraph 3 (a), of the International Covenant on Civil and Political Rights (ICCPR); in article 5, paragraph (e) (i), of the International Convention on the Elimination of All Forms of Racial Discrimination; in article 11, paragraph 1 (a), of the Convention on the Elimination of All Forms of Discrimination against Women; in article 32 of the Convention on the Rights of the Child; and in articles 11, 25, 26, 40, 52 and 54 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

<sup>44</sup> Supra Fn. 39

<sup>45</sup> Ibid

<sup>46</sup> Ibid

<sup>47</sup> Ibid

<sup>48</sup> Supra Fn. 16

<sup>49</sup> Ibid

<sup>50</sup> Ibid

<sup>51</sup> Ibid

<sup>52</sup> Ibid

disabilities find it difficult to compete with the others in selling their products in public spaces because of several physical and social impediments and lack of facilities.

In the context of the fulfillment of the right to work in public space, the state must ensure that legislations regulating the use of public spaces for trading activities do not unduly restrict the economic activities of informal street vendors. The state should ensure there is adequate space earmarked for the vendors to trade (availability). Public spaces must be open to everyone, without discrimination to conduct business (non-discriminatory). The state should ensure there is access to basic services such as water supply, sanitation/waste collection and power supply for the vendors to conduct their business (access).<sup>53</sup> There should also be good connectivity to the public spaces including both motorized and non-motorized modes of transportation, and for persons with disabilities.<sup>54</sup> Public spaces should enable the protection of the right to work, including safe working conditions. Roads should accommodate bus lanes, bus stops, cycle paths, pedestrian crossings and on-street parking (acceptable, safe and inclusive). Pavements should be wide, well lit, well maintained with comfortable benches and public art to attract customers (quality).

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<sup>53</sup> Ibid

<sup>54</sup> Ibid

### **Warwick Junction, Durban, South Africa: Participatory Approach towards Realization of Right to Work**

Due to years of apartheid planning that aimed to separate different ethnic groups, the Warwick Junction area was poorly designed. The ever-increasing number of traders caused congestion and crime was rife.

In 1995, the council set aside R4.72 million to start the regeneration of Warwick Junction. The project grappled with issues of maintaining a basic level of safety, cleanliness and hygiene.

There were two fundamentals for the project:

- Area-based management and inter-departmental collaboration
- Commitment to participation and consultation

The project team to improve safety carried out targeted measures. For example-, easing congestion, reducing concealed spaces, improving street lighting, increasing police presence and investing in community policing. The city's health department started to work with the street traders and trained them on minimum health standards. The Department also compiled a preliminary database of street vendors detailing their activities and documenting what infrastructure they needed. Street traders also started becoming better organized and the Informal Traders Management Board was set up in 1995.

The major infrastructural changes included:

- Increased pedestrian walkways
- Improvements in trading conditions and providing opportunities
- Spatial redesign of the informal economy
- Providing trader storage
- Providing street trader sites, tables and shelters
- Providing water and electricity

The "face-lift" operation was a milestone in the regeneration of Warwick Junction in that it showed that a lot could be achieved through inter-departmental co-operation in partnership with the street traders. The project reversed the status of Warwick in three years, from a perceived center of "crime and grime" to a spacious shopping concourse. The final design improved the working conditions of the traders and gave them greater recognition.

**Source:** The City at Eye Level, Lessons for Street Plinths, UN-Habitat Public Space Report (Forthcoming)

#### IV. Conclusion

Article 11 of ICESCR affirms the right of the individual to an adequate standard of living. Linking this with the ‘capability approach’, human life is seen as a set of “functionings”—and it relates the evaluation of the quality of life to the assessment of the capability to function.<sup>55</sup> The central emphasis is on human dignity.<sup>56</sup> The right to an adequate standard of living is enshrined in a number of other international human rights instruments.<sup>57</sup> The designing, building and maintaining of public spaces that meet with the human rights standards of availability, accessibility, affordability, and quality result in an improved standard of living for all by the realization of a multitude of interdependent rights. These rights include: right to work, access to basic services such as health and education, freedom of expression, cultural identity, and equality.

While providing for public spaces, the state- the municipality and the city government officials, are under a core obligation to achieve substantive equality by ensuring the realization of the rights of the urban marginalized and vulnerable population. The realization of these rights though public spaces enables the marginalized to live a life with dignity.

For the city government to successfully discharge its obligations, *participatory approach* by involving the community including the marginalized population should be followed. The officials should train the civil society to organize the community and create awareness of the use and maintenance of public spaces. The community should be given ownership of the public spaces -both in design of the space and in its maintenance. The *rule of law* is yet another important human rights principle. Urban legislations that impact public space should be drafted in a manner that they are able to determine the more qualitative values of public space such as quality and accessibility for use for demonstrations, economic activities, artistic performances, and so as to provide more value to the community. The laws of acquisition of public spaces in the process of urbanization can be complex resulting in litigation and claims on the land. It is important that such rules are clear. Regulatory instruments to transfer ownership or control of an existing space from the local government to a private business owner should be interpreted in a manner that it enables the community to access and use the public spaces. The state must consider *innovative financing* for design, maintenance, and building of public spaces. Public–private partnerships is one option. Another is levying a contribution or a tax on private owners. For example, in Colombia, the “Contribucion por Valorizacion” is a mechanism to finance public infrastructure and public spaces.<sup>58</sup> It is not a tax

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<sup>55</sup>Amartya Sen, ‘Development as Capability Expansion’, Available at:

[http://morgana.unimore.it/Picchio\\_Antonella/Sviluppo%20umano/svilupp%20umano/Sen%20development.pdf](http://morgana.unimore.it/Picchio_Antonella/Sviluppo%20umano/svilupp%20umano/Sen%20development.pdf)

<sup>56</sup> Polly Vizard, Sakiko Fukuda Parr & Diane Elson, ‘Introduction: The Capability Approach and Human Rights’, *Journal of Human Development and Capabilities: A Multi-Disciplinary Journal for People-Centered Development*, 2011

<sup>57</sup> See also Article 25 of UDHR, articles 5(e)(iii) and 7 of the Convention on the Elimination of All Forms of Racial Discrimination (CERD), article 14(2)(h) of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), articles 24(2)(c) and 27 of the Convention on the Rights of the Child (CRC) and article 28 of the Convention on the Rights of Persons with Disabilities (CRPD).

<sup>58</sup> UN-Habitat Global Public Space Toolkit, ‘Public Space in the Global Agenda for Sustainable Urban Development’, 2014. Available at: [http://www.urbangateway.org/sites/default/ugfiles/Global\\_Toolkit\\_for\\_Public\\_Space.pdf](http://www.urbangateway.org/sites/default/ugfiles/Global_Toolkit_for_Public_Space.pdf)

but a contribution that has a specific objective: raise funds to build a public space or street, or other kind of infrastructure, by charging property owners whose assets will increase in value as a result of public investment.<sup>59</sup> It has financed more than USD 1 Billion of public works, including 217 street, bridge and drainage improvements.<sup>60</sup>

Sustainable urban development respects, promotes, and protects human rights of all including the marginalized communities. Public Spaces are the backbone of sustainable cities. By designing, developing and maintaining public spaces that meet the human rights standards, the city government can realize the human rights for everyone including the most marginalized populations in a cost efficient and expedient manner.

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<sup>59</sup> **Ibid.** The Constitution approved in 1991 by the Republic of Colombia (art. 82) states: “It is the duty of the State to protect the integrity of public space and its assignment to common use, which has priority over the individual interest. Public entities will share the surplus values generated by their urban planning activities and will regulate land and urban air space uses in order to protect the common interest.”

<sup>60</sup> **Ibid**