

# HUMAN RIGHTS AND WORLD HERITAGE IN TRANSVERSE CONTEXT

## *Derechos Humanos y Patrimonio Mundial en un context transversal*

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### 1. INTRODUCTION

On Sunday, January 4<sup>th</sup>, 2015, Israel's High Court ruled to freeze state plans to build a part of Israel's "separation" barrier that would have gone through the middle of Battir, a victory for the farming village of 5,000 people located west of Bethlehem in the southern West Bank and 7 kilometer south of Jerusalem.

The decision comes after years of resistance from locals as well as outside forces that worked to achieve recognition of Battir as a UNESCO World Heritage Site in Danger, and to raise awareness in the international community of how the environment would be negatively impacted by construction of the separation wall in the area.

Battir is a Palestinian village located on the border which separates the West Bank from Israel since 1948; its human historic landscape, characterized by dry-stone terraces and ancient irrigation systems dating back to pre-roman times, yet in use according to traditional agricultural practices, is menaced by the construction of the Separation Barrier, which, if built, will irreversibly damage the site and disrupt the way of living of its inhabitants.

In November 2000 Israeli Prime Minister Barak (Labour Party) approved the first project to build a "barrier". Construction of the Wall, including land confiscation and the uprooting of trees, began in June 2002 west of Jenin. As of summer 2010, 520 km of the planned 810 km, or 64%, had been completed.

The Wall is not being built on, or in most cases near the 1967 Green Line, but rather cuts deep into the West Bank, expanding Israel's theft of Palestinian land and resources. In total, 85% of the Wall is located in the West Bank.

When completed, the Wall and its associated regime will de facto annex some 46% of the West Bank, isolating communities into Bantustans, ghettos and "military zones". This means that the Palestinian population in the West Bank and Gaza Strip, including almost 1.5 million refugees, will be encircled on only 12% of mandate Palestine.

## 2. BATTIR A LIVING LANDSCAPE

In 2013, the Palestinian government has submitted to the World Heritage Committee the nomination dossier of *The Cultural Landscape of Southern Jerusalem, Battir* as a pilot site of the serial nomination *Palestine, Land of Olives and Vines*.

This nomination dossier attests to the role that Palestine has played throughout History as a meeting place for civilizations and a cultural bridge between East and West and to its pivotal role in the evolution of humanity, as attested by evidences of the existence of successive cultures all over its land, from prehistory onwards. It also manifests, through its exceptional variety of cultural properties, archaeological sites and finds, distinctive Collections and their associations that Palestine is a cradle of the three monotheistic religions.

This nomination dossier aims to protect the traditional practices that are still in use by the local community until this day and maintain the agricultural practices that lie at the basis of this living landscape, which embody one of the oldest farming methods known to humankind and constitute an important source of livelihood for the local communities.

The Cultural Landscape of Southern Jerusalem, Battir is an organically evolved landscape, which initially resulted from social and economic activities, and also religious imperatives, according to the oral history of the local inhabitants.

Being deeply rooted in traditional knowledge, dry-stone vernacular architecture represents the continuity and permanence of the culture and identity of many local rural landscapes. It is a testimony to ancestral human activity that progressively modeled what can be considered a specific type of landscape, the dry-stone landscape.

The man-made terraces that surround the valley are planted mainly with olive trees, some of which are ancient. This adaptation of the landscape has created a stunning landscape. Similar terraces have characterized all the central hills of Palestine from ancient times until the present. Visible signs of the dynamic relation between humans and the landscape are deeply integrated into this area, which is a living marker of the history and development of the traditional construction techniques used in the area. The dry-stone vernacular architecture represents one of the most evident elements of the process of adapting the landscape, embodying the materialization of centuries of ability, knowledge, and modes of production.

The traditional cultivation of olive trees is an essential component in the historical development of the cultural landscape systems in this area, and has multiple functions and meanings at the environmental, agricultural, socio-cultural, and symbolic levels.

The choice to plant olive trees away from the village, where there are more springs than in Wadi Al-Makhrour, is due to two major factors. The first is that olive trees do not require care year round, and thus they do not require farmers to visit their fields to look after the trees frequently. The second is that the olive trees do not require irrigation, so planting them away from the springs spared the water for vegetables and fruit trees.

During the olive picking season, which lasts from October to November, the whole family would leave their houses in the village, and move to the agricultural watchtowers (*manatir*) in the hills. This would allow the farmers to watch over their lands. The watchtowers were another significant feature that characterized the slopes extending from Al-Makhrour towards the village of Battir.

Not surprisingly, in a cultural landscape that depended on the cultivation of olives for the production of olive oil, many traditional olive presses were found among the fields and near the watchtowers that are scattered along the field, since it was easier for the farmers to press the olives in the fields than move them to other location. In addition, the remains of two olive presses were found in Khirbet Bardama and Khirbet Al-Qasr. Although the terraces near the village have a few scattered olive trees, they are mainly associated with other crops, including grapevines, fruit trees, seasonal vegetables, and herbs.

The traditional irrigation system, which continues to be used today, has been used by the peoples of Battir for centuries, presumably all the way back to Roman times. The ancient rock-hewn canals are still in use and stand out in the distinctively built terraces. This water distribution system that has been used for millennia depends on dividing the water that is collected in a retaining pool during the night in equal portions among the local families and their individual members. Battir has eight families that benefit from the system, and each family has the right to use the water for one full day on an eight-day rotation.

This unique water system is the result of an ancient democratic distribution system that delivers water to the terraced agricultural land based on a simple mathematical calculation and a clear time managed rotation scheme. The system is described by the farmers as just and fair, and satisfies the needs of the landowners. These two facts have contributed to its sustainability throughout the years. Battir has more than ten water springs. The most important springs are Ain Al-Balad and Ain Jama'. The water from these springs is collected in two pools and used to irrigate the surrounding man-made dry-stone terraces. The water from these two fountains and the irrigation system, including the canals and pools, are public property, and are managed by Battir's eight main families.

### 3. WH COMMITTEE AND ICOMOS EVALUATION:

ICOMOS evolution for the site based its assessment on two issues. The first one is whether the emergency character of the site is justified, and the second one is whether property justifies OUV.

For the first issue: ICOMOS consider that “the threat does not constitute a potential danger to the cultural property”. this assessment is based on three sets of arguments;

- 1- No final decision has been taken yet regarding the construction of the separation fence.
- 2- Although the visual impact of the fence will be negative but may be reversed by removal of the structure at one point in the future.
- 3- Any decision of the committee could not ensure the safeguarding of the property, since such decision can not influence the action of the state party that is not associated with the nomination (meaning Israel).

These issues were address through the WH committee meeting and in particular in Jad Tabet, ambassador of Lebanon, speech. For the first argument, Tabet think that this argument is not convincing, he says:

*since the decision to construct the fence has already been taken by the concerned authorities. The details plans for the fence are ready and the green light for construction waits only the final decision of the higher court. So the threat is thus effective and any delay of WH committee decision may end up with harm and changing the characteristic of the property.*

The second issue is also not convincing and seems naïve also by tabe he says

*“it seems ICOMOS dies not know what is a security fence . A security fence means that you have to create a security zone to control any particular infiltration. It means that you have to cut pushes and trees, get rid of any obstacle where suspects may hide. . it means that you have to transfer the land into no man land. This is a security fence; it is not a fence in any agricultural land in the English countryside. How can an image of such a fence be reversible?”*

The third argument by ICOMOS to deny the emergency character of the site was not also convincing, Tabet sates in his speech in front of the WH committee,

*Article 6 of the convention states clearly “ the protection of WH is the duty of the international community as a whole and that each state party to the convention undertake not to take any deliberate measure which might damage directly or indirectly the heritage situated into the territories of state parties to the convention . This means if the committee considers the site justify the OUV and inscribe it into the World heritage list. Then such decision should directly affect any action of State parties to the conventions. Denying this means that the conventions is useless and that the international community is not capable of protecting the endanger heritage.*

#### **4. COMMUNITY RESISTANCE TO THE WALL**

On 22 August 2011, the Israeli Finance Minister signed a new land confiscation order in Battir village for the purpose of the Wall construction. The order was published on 19 September 2011 in the Israeli Official Gazette. An additional order was issued by the Military Governor in the West Bank. The order carried the number of 05-85, and it postulated the confiscation or seizure of the land in which the Wall is to be erected.

In the last response dated 15 January 2013, the army informed the Court that with regard to the small section of the wall which is about 500 meters long, instead of using reinforced concrete blocks the army will use fence and that it sees no possibility to change the route of the Wall. Moreover, the army said it will keep the route of the Wall as it is reserving at the same time its right to reconstruct the Wall using reinforced concrete blocks if it found the fence would not endure. In its response, the army asked as well for the reconsideration of the restraining order and its quick annulment since the army was desirous to start the construction of the Wall as soon as possible. Now we have the right to respond to the army's response mentioned above and then the Court will issue a decision on how to proceed in handling the case.

If Israel is allowed to continue with its unilateral security decisions, the illegal Separation Barrier will rob the indigenous people of Battir of their right to economic, social, and cultural rights not to mention that Israel's actions will invalidate the 65 year old Rhodes Armistice Agreements between Israel and the people of Battir. These agreements stipulate that the people of Battir have access to their lands that fell within the Israeli state and retain ownership of them in exchange for their security cooperation regarding the 'Jerusalem-Jaffa' railway that runs through the village. Until today, there has not been one Palestinian

violation to this agreement. Peculiar enough, but not eccentric for Israel, the Separation Barrier is to be built running through the village of Battir for ‘security reasons’ to protect the seldom-used railway which Palestinians are not permitted to use. Meanwhile, a modern light railway is being built elsewhere by the Israeli government to service the same route faster.

The preservation of the Battir landscape is of international concern. It is a contemporary cultural and archaeological gem, facing certain irreversible damage from Israel’s planned expansion of the “security barrier”. The International Court of Justice stated in 2004 that the “current route of the Wall” is illegal, primarily because it is within Palestinian territory.

In their letter to UNESCO, 50 experts in the fields of law, archeology, landscape architecture, geography, global studies, conflict resolution, political science, Arab studies, housing, physics, and journalism, they said

*“We urge the World Heritage Committee, in addition to evaluating retrospective historical and present conditions, to consider a counterfactual prospective inquiry. Should Battir not be protected, the irreversible destruction of the site, and its living history in which its people engage, will be accelerated due to Israel’s plans for the Security Barrier”.*

## 5. HUMAN RIGHTS AND CULTURAL RIGHTS

Human Rights are essential factors to consider in deciding whether to list Battir as a World Heritage Site. The impact of the planned Israeli measures to the historical landscape of Battir is a UNESCO concern. Inscription on the World Heritage List will aid in preventing violation of these rights in Battir. Cultural rights are protected human rights essential to human dignity and to self-determination, and are just as much a part of world heritage as are ancient olive groves and irrigation systems forming a unique terraced landscape.

The human right to cultural participation is guaranteed in the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights (ICESCR), among other treaties: “Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

The people of Battir continue to cultivate their land according to unaltered traditional practices, including water allocation, over more than twenty centuries; as this has long been a cultural pattern in their lives, the people of Battir have the right to “freely participate in the cultural life of the community, to enjoy the arts

and to share in scientific advancement and its benefits” (Universal Declaration of Human Rights, Art. 27).

The Government of Israel is undertaking unilateral security measures such as the construction of the Separation Barrier which, if implemented, will irreversibly destroy one of the most precious portions of the landscape of Battir, notably the irrigated terraces named Al-Jinan (the Gardens of Paradise). While the Separation Barrier is planned to be built primarily on Israeli territory bordering the West Bank, its construction will nonetheless cut the terraces, irreversibly affecting the integrity of the site, the continuity in the agricultural practices, and the ecosystem as a whole.

## 6. CONCLUSION

Human right issues have been an integral dimension of UNESCO’s mission and work since its establishment. While rights issues are not explicitly mentioned in the 1972 World heritage convention, its strategic objective “to ensure the role of communities in the implementation of the World heritage convention underscores the need to respect and support communities to be involved in World heritage processes. The Universal declaration on Human Rights was adopted by the united nations General Assembly” on 10 December 1948 remains the first pillar of rights law and practice. Many state parties to the World heritage convention have cited the Deceleration or included its provisions in their basic laws or constitutions and further human rights covenants, conventions and treaties concluded since 1948 have built on its principles.

In the context of the implementation of world heritage convention, there were few cases where world heritage processes intersect with the right of indigenous people, cultural group local communities.

Not to be forgotten in these talks are the people of Battir. In addition to the awe of their agricultural persistence, the fate of Battir is of international concern because of the potential human rights violations that will affect generations by ill-considered actions that cannot be reversed. If Battir cannot be saved by UNESCO’s World Heritage Program as it rightfully should, Israel’s illegal Separation Barrier (International Court of Justice’s Advisory Opinion in 2004) will destine Battir to a common Palestinian fate: an uprooted people, an eternal lack of contiguity between families and friends, and a people deprived of their rights to cultural participation, self-determination, and dignity.

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#### WHC DECISIONS:

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For the first issue: ICOMOS consider that “the threat does not constitute a potential danger to the cultural property” this assessment is based on three sets of arguments

4. No final decision has been taken yet regarding the construction of the separation fence. Jad Tabet, the Lebanese ambassador, comments is that “ this argument is not convincing, since the decision to construct the fence has already been taken by the concerned authorities. The details plans for the fence are ready and the green light for construction waits only the final decision of the higher court. So the threat is thus effective and any delay of WH committee decision may end up with harm and changing the characteristic of the property.

5. Although the visual impact of the fence will be negative but may be reversed by removal of the structure at one point in the future. This argument considers by Tabet is naïve. He said . “it seems ICOMOS does not know what is a security fence . A security fence means that you have to create a security zone to control any particular infiltration. It means that you have to cut bushes and trees, get rid of any obstacle where suspects may hide. . it means that you have to transfer the land into no man land. This is a security fence , it is not a fence in any

agricultural land in the English countryside. How can an image of such a fence be reversible?

6. The third argument by ICOMOS to deny the emergency character of the site is that “ any decision of the committee could not ensure the safeguarding of the property, since such decision can not influence the action of the state party that is not associated with the nomination ( meaning Israel). Article 6 of the convention states clearly “ the protection of WH is the duty of the international community as a whole and that each state party to the convention undertake not to take any deliberate measure which might damage directly or indirectly the heritage situated into the territories of state parties to the convention . this means if the committee consider the site justify the OUV and inscribe it into the World heritage list. Then such decision should directly affect any action of State parties to the conventions. Denying this means that the conventions is useless and that the international community is not capable of protecting the endanger heritage.