

3 June 2014

To the Honorable Members of the UNESCO World Heritage Committee:

WE, THE UNDERSIGNED, representing the University of Virginia School of Law International Human Rights Law Clinic; Boston University School of Law Human Rights Clinic; and esteemed professionals in the fields of law, archeology, landscape architecture, geography, global studies, conflict resolution, political science, Arab studies, housing, physics, journalism, respectfully address the World Heritage Committee regarding the **nomination of the village and landscape of Battir in the State of Palestine as a World Heritage Site in Danger.**

The preservation of Battir is a matter of international concern, as underscored by the International Court of Justice in its Advisory Opinion on the Wall of 2004.¹ The World Heritage Committee is called to take a decision at its 38th Session (Doha, Qatar, June 15-25, 2014) on the submission. The nominated site has been evaluated by ICOMOS with references to the many cultural heritage aspects of the site, such as ancient terraces and irrigation systems, as well as archaeological features and historic landscape values. ICOMOS' May 2014 conclusion not to recommend the Battir landscape for safeguarding directly contradicts the opinion of the World Monument Fund (WMF) issued less than six months earlier. The WMF designated the landscape a 2014 World Monument Watch site at risk.² We write to underscore the human rights concerns, including cultural and historical issues that require special consideration. We hope the concerns highlighted will weigh in further support for listing the Battir landscape as a World Heritage Site. Battir presents an extraordinary and urgent circumstance, and we respectfully request the World Heritage Committee give serious consideration to our submission.

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.³

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. To fulfill UNESCO's priority of mainstreaming human rights in all its areas of action,⁴ it is paramount for the World Heritage Committee to consider those human rights that fall

¹ International Court of Justice, *Legal Consequences of the Construction of the Wall in the Occupied Palestinian Territory (Advisory Opinion)*, 9 July 2004, para.155, ("... the obligations violated by Israel include certain obligations *erga omnes*. . . [which] are by their very nature 'the concern of all States' and, 'In view of the importance of the rights involved, all States can be held to have a legal interest in their protection.>"). Available at: <http://www.icj-cij.org/docket/files/131/1671.pdf> .

² Ancient Irrigated Terraces of Battir, <http://www.wmf.org/project/ancient-irrigated-terraces-battir>

³ Also referred to as "the Wall", we use this term due to the fact that the Israeli High Court has been considering alternatives to the concrete wall originally proposed. However, we firmly believe that any barrier erected through the lands of Battir or within the Palestinian territory demarcating the village land, will impinge on the rights of the inhabitants.

⁴ As declared on: <<http://www.unesco.org/new/en/social-and-human-sciences/themes/human-rights-based-approach/60th-anniversary-of-udhr/unesco-and-the-declaration/>>.

directly under UNESCO's competence. 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."⁵ "To participate" is widely understood to include participation, access to, and contribution to cultural life, according to the Committee on Economic, Social and Cultural Rights.⁶ Access includes access to language, to education in cultural traditions, and to cultural resources like land, water and biodiversity.⁷ Furthermore, "[i]n the Committee's view, culture is a broad, inclusive concept encompassing all manifestations of human existence. The expression 'cultural life' is an explicit reference to culture as a living process, historical, dynamic and evolving, with a past, a present and a future."⁸ The International Labour Organization and the Human Rights Committee have also defined "way[s] of life associated with the use of land resources" as a cultural right.⁹

In Battir, the land and water are the culture of its people. Neighbors share in an ancient tradition of water distribution, rotating access to the irrigation. Children tend to the gardens, alone, or with their mothers and fathers. Elders who grew up sleeping under the olive trees measure the water each day. Harvests facilitate intergenerational gatherings and engagement for those family members who have left Battir and return to participate in cultivation of the fields and other socio-economic activities with their community.

The right to cultural participation is related to the right to education.¹⁰ The human right to education includes "the transmission and enrichment of common cultural and moral values in which the individual and society find their identity and worth."¹¹ Through working together on the land, villagers of Battir pass on values, religion, custom, language, and cultural references. They also invite others to be a part of their living history. The village hosts a guest house, maintains hiking trails, and their eco-museum is visited by travelers from around the world.

The Exceptional and Unique Status of Battir Village and its Land as Part of Palestinian Self-Determination

The human right to cultural participation is interdependent with the human right to self-determination.¹² Conserving Battir through World Heritage status will not only preserve ancient

⁵ Universal Declaration of Human Rights, art. 27, para. 1. *See also* International Covenant on Economic, Social and Cultural Rights, art. 15, para 1(a); International Covenant on Civil and Political Rights, arts. 17, 18, 19, 21, 22, and 27; International Convention on the Elimination of All Forms of Racial Discrimination, art. 5(e)(vi); ILO Convention No. 169 on Indigenous and Tribal Peoples Convention (1989), arts. 13(1) and 7(3); *etc.*

⁶ International Covenant on Economic, Social and Cultural Rights, Gen. Comment No. 21 (2009), paras. 14 and 15.

⁷ *Id.* (n 3).

⁸ *Id.* (n 3) at para. 11 (emphasis added).

⁹ ILO Comments, Day of General Discussion on "the right to take part in cultural life" (ICESCR, Art. 15), 9 May 2008.

¹⁰ International Covenant on Economic, Social and Cultural Rights, arts. 13 and 14.

¹¹ World Declaration on Education for All: Meeting Basic Learning Needs, art. I-3.

¹² International Covenant on Economic, Social and Cultural Rights, art. 1.

architecture (including archeological remains from the Bronze Age, the Iron Age, Roman and Byzantine periods), but it will conserve a traditional, deliberate way of life. It is truly a *living cultural heritage* site. The individual and collective choice to participate in or carry on cultural traditions “should be recognized, respected and protected on the basis of equality.”¹³

The villagers are persisting – against all odds – to keep these traditions alive, even in the face of threats and regulations imposed by the Israeli Defense Forces. It is clear that they wish to continue participating in this living history. As a Battir landowner said, “We stick with the land. It doesn’t matter what government is here – British, Ottoman, Palestinian, Israeli – we stick with the land.”¹⁴

International UNESCO World Heritage recognition may be the only mechanism able to persuade Israel not to interfere with the people and their land. Not only does the village of Battir and its cultural landscape independently feature ancient human-made relics, the living history of its people deserves heightened protective status and recognition.

As signatories, we support Battir and recognize the importance and authority that human rights brings to bear in conserving cultural and ancient heritage.

APPEAL TO INSCRIBE THE CULTURAL LANDSCAPE OF SOUTHERN JERUSALEM – BATTIR IN THE WORLD HERITAGE LIST

1. **AN ORGANICALLY EVOLVED LANDSCAPE:** The cultural landscape of Battir (historic-human-living landscape) embodies the concept and assets of an organically evolved landscape, yet in use as of today, according to UNESCO-WHC terminology.
2. **A CULTURAL HERITAGE SITE:** This includes 554,000 linear meters of hand-made dry-stone terraces within an area of 12 sq. km, encompassing a variety of rain-fed cultivations including multi-centenary monumental olive trees, and, in the proximity of seven springs, ancient irrigation systems made of channels and pools enabling the cultivation of vegetable gardens; as well as archaeological sites and features, e.g. prehistoric hilltops, fortifications and Roman graves.
3. **HUMAN CREATION:** This is a human creation produced by centuries of hard work that can be destroyed in days by ill-considered actions.
4. **HUMAN RIGHTS:** 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).

¹³ International Covenant on Economic, Social and Cultural Rights, general comment No. 21 (2009), para. 7.

¹⁴ Conversation with Mustafah Iweineh and University of Virginia School of Law International Human Rights Law Clinic delegation, Battir, October 5, 2013, on file with the Clinic.

5. THREATS AND IRREVERSIBLE DAMAGE: 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. A WORLD HERITAGE SITE IN DANGER: Inscribing Battir on the World Heritage List in Danger, as a property nominated by the State of Palestine in January 2014, is the most immediate and effective remedy to achieve its concrete protection from the imminent threat represented by the construction of the Separation Barrier. Its inscription will play a key role in the ongoing court case at the Israeli High Court of Justice, where the State of Israel would have to consider the implications of damaging a World Heritage property bordering its territory.
7. INTERNATIONAL RECOGNITION: The values of the cultural landscape of Battir have been recognized internationally through the award of the UNESCO-Greece Melina Mercouri International Prize for the Safeguarding and Management of Cultural Landscapes (2011),¹⁵ the inclusion as a Watch site by the World Monuments Fund,¹⁶ which every two years selects the most endangered heritage sites in the world (2014).
8. LOCAL COMMUNITY: The Palestinian local community (as well as the Israeli communities living across the Armistice Line) are proactively participating in the preservation of this cultural landscape, enabled by seven years of multi-faceted and multi-stakeholder projects, led by UNESCO and supported by the international community.
9. CROSS-BORDER COOPERATION: These populations are working to conserve this unique cultural landscape, and have together submitted a petition to the Israeli High Court of Justice against the building of the Separation Barrier, slated to be built through the terraced landscape site. This is an extremely important show of cross-border stakeholder support, showing vested interests in the preservation of this ancient cultural landscape. The Israeli Nature and Parks Authority has expressed its concerns regarding the construction of the Separation Barrier and supported the integral safeguarding of the site, including participating in the lawsuit against the Israeli Barrier encroachment in Battir.
10. MEDIA ATTENTION: The case was brought to the attention of local and international media which have reported about it in hundreds of articles and other media features.
11. WHY WE MUST PROTECT BATTIR: The safeguarding of the living landscape of Battir and its inhabitants embodies the respect of mutual interests, protects both history and human rights, and encourages the possibility of dialogue between Israel and Palestine.

¹⁵ http://www.unesco.org/new/en/media-services/single-view/news/armenian_and_palestinian_sites_share_2011_cultural_landscape_prize/#.U0IUqvldXT0

¹⁶ <http://www.wmf.org/project/ancient-irrigated-terraces-battir>

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