

Mandate of the Special Rapporteur in the field of cultural rights

24 April 2019

Dear Sir, Madam,

I have the honour to address you in my capacity as the United Nations Special Rapporteur in the field of cultural rights, pursuant to Human Rights Council resolution 37/12.

In my forthcoming thematic report to the General Assembly, I will address the topic of “Cultural rights and public spaces”. I am eager to consult a wide range of stakeholders, including States, United Nations agencies, academics, experts, artists, scientists, cultural workers and practitioners, as well as civil society organizations, in order to benefit from their diverse views and experiences. Many multifaceted issues are indeed at stake, as explained in my questionnaire.

I would like to draw your attention to the fact that I use the term “public space” in its plural form, to underline the plurality and diversity of “public spaces” and their differences in nature and scope. Public spaces may include, for example, not only urban but also rural and natural spaces, real and virtual spaces.

Submissions should be sent electronically no later than **20 May 2019** to srculturalrights@ohchr.org, using the email title: “Submission: Cultural rights and public spaces”. Please feel free to answer only the questions relevant to your work. Kindly limit your responses to **2,500 words** and attach annexes where necessary. To facilitate their consideration, it would be preferable if responses could be sent in the working languages of the OHCHR, English, French or Spanish.

Please also indicate if you have any objections with regard to your reply being posted on the OHCHR website.

I wish to thank you in advance for your cooperation and I hope to continue a constructive dialogue on issues related to my mandate.

Please accept, Sir, Madam, the assurances of my highest consideration.



Karima Bennoune
Special Rapporteur in the field of cultural rights

QUESTIONNAIRE ON CULTURAL RIGHTS AND PUBLIC SPACES

The United Nations Special Rapporteur in the field of cultural rights, Ms. Karima Bennouna, will consider in her next report how actors from across the cultural ecosystem access and use public spaces, identify the challenges they face and the strategies they develop to overcome them, and analyse the impact this has on their cultural rights.

The Special Rapporteur will address multifaceted issues at stake, such as impediments in public spaces to cultural expression, the organization of cultural events, the conduct of cultural practices and the use of languages. She will consider the presence or absence of cultural narratives in public spaces, for example in the form of symbols, memorials, architecture or advertising.

Please note that the term “public spaces” in its plural form aims at underlining the plurality and diversity of “public spaces” and their differences in nature and scope. Public spaces may include, for example, not only urban but also rural and natural spaces, real and virtual spaces. Various degrees of privatization may affect public spaces. This may require different measures be adopted to ensure the realization of cultural rights.

Those submitting information should feel free to answer only specific questions that they find most relevant.

- 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?**
- 2. What are the diverse legal frameworks, trends and practices at the national level that either promote or impede actors from across the cultural ecosystem, including women and persons with disabilities, from accessing and using public spaces? What strategies are most useful in overcoming such challenges?**
- 3. What are the specific characteristics of public spaces that either are conducive to the realization of cultural rights, including of women and persons with disabilities, or are an impediment to them, including in relation to issues of discrimination, equal access, accessibility, availability, and adequacy? Answer this question**

In our answer to this question we would like to focus primarily on Jerusalem’s Historic Basin, which is the main geographic focus of Emek Shaveh’s work on cultural rights. But

much of our analysis and recommendations also apply to historic sites in other parts of the Palestinian Occupied Territories.

Jerusalem's Historic Basin is a composite of ancient strata and sites woven into dense residential areas. Familiar tensions between the necessity to preserve ancient sites, and economic and touristic interests on the one hand, and accommodating the needs of living communities, on the other, are compounded by competing historical narratives and their use in the Israeli-Palestinian conflict.

In the past 20 years, the Historic Basin has become the ultimate battle ground in the bid for establishing exclusive sovereignty, a trend which places archaeological sites at the center of the conflict between government backed nationalist Jewish groups and the local Palestinian residents. The Palestinian Authority and the Islamic Waqf also play a role in this dynamic, particularly on the Temple Mount/Haram al-Sharif, but as it is mostly limited to the boundaries of the Holy Esplanade, which has a unique status, we will not address it in this discussion.

In Israel, the excavation and development of ancient sites in the Historic Basin has become a government priority. Two years ago, the government of Israel announced the '[Shalem Plan](#)' (the 'comprehensive plan'), an overall vision to create a continuum of archaeological tourist sites above and below ground from Silwan (where the archaeological site the City of David is situated) into the Muslim Quarter of the Old City.

At the meeting in May 2017, Minister of Culture Miri Regev was quoted as saying: "these excavations revive the Old Testament and strengthen our greatest "Kushan" (possession title)". Although the project was officially announced in 2017, it has been ongoing since 2005 with substantial support by the government, which, in our assessment, has so far allocated more than 1 billion NIS (around 250 million Euros).

The plan includes massive excavations under the Western Wall plaza, development of sites for tourism and linking the newly excavated spaces to underground tunnels in Silwan/City of David. In 2018 the government announced a special allocation of [47 million NIS](#) over a period of two years for excavations in and around the City of David.

For the purposes of this report we will concentrate on the City of David site, located in the village of Silwan, just outside and to the south of the Old City walls and a few dozen meters from the Temple Mount/Haram al-Sharif. In addition to settlements in the Muslim Quarter, this is perhaps the site in Jerusalem with the highest levels of friction between the Palestinian residents and the Jewish settlers who have taken over parts of the neighbourhood over the last 25 years. The City of David site is the location of ancient Jerusalem and is one of the most heavily excavated sites in the world. This important site is located inside the neighborhood of Silwan, which is home to approximately 50,000 people.

The City of David archaeological park is situated within the Jerusalem Walls National Park which is managed by the Israel Nature and Parks Authority (INPA). The INPA in turn, [has contracted the Elad Foundation](#) (Ir David Foundation), a private ideologically motivated settlers group to manage the archaeological park. Originally, the Elad Foundation was established with a mission to settler Jews in Silwan. But since it has taken over management of the site over 15 years ago, Elad has been initiating archaeological excavations and leading the efforts to develop the site into a number-one tourist destination. Today the City of David

draws approximately 500,000 visitors a year and is a popular destination for school children as well as soldiers in the army.

This state of affairs has impacted the availability and identity of public spaces in two ways: A. Withdrawing public areas from use by the local Palestinian residents and annexing them to archaeological tourism parks and B. The exclusion of the Palestinian communities from the historical narrative and cultural significance of the sites.

- A. Withdrawal of Public spaces from local residents: Most Palestinian neighborhoods in East Jerusalem in general, suffer from overcrowding and an [extreme lack of public spaces](#). In Silwan this is compounded by the fact that it is home to one of the most significant archaeological sites in the region. Particularly in the last 15 to 20 years, areas which were once used by local residents as public spaces (market spaces, a place for community gatherings such as weddings, public pathways) have been excavated and turned into tourist attractions requiring entry fees. For example, in the village of Silwan, tens of dunams of public spaces have been closed off since 1995 including: the Givati Parking Lot (No. 1 on the map), the Shiloah Pool (No. 9), Hagihon Spring/Ein Umm al-Daraj (No. 5). Leaving virtually no public spaces in the Wadi Hilweh area of Silwan for the local Palestinian residents.

These developments have left the neighbourhood of Silwan with very little shared spaces for recreation or community activities. As a result, children living in this neighborhood are taking to the streets where the friction between settlers and Palestinians are high.

In a recent [court case](#) Emek Shaveh filed along with the residents of Silwan with the High Court of Justice regarding the closing off of an area in the archaeological park known as Area G, the judges demanded a response from the Israel Nature and Parks Authority and the Elad Foundation as to why this area, which was opened to the residents since the British Mandate period, is closed to them on the Sabbath and during Jewish festivals. In an earlier court case from [2017](#), the judges told the Nature and Parks Authority and the Elad Foundation that for every public space withdrawn from the residents they will need to provide an adequate alternative.

It should be noted that the City of David archaeological park is a public space on week days, in that anyone who would like to can visit various areas within the site for free or pay a fee to visit other areas, such as the water tunnels or the Pool of Siloam. But once the spaces which were once used by the local Palestinians were annexed to the park, their identity has been transformed from a local communal space to a touristic space which is culturally exclusive. As a result, even those spaces which are accessible on weekdays to the public for free are not used by the local residents.

- B. The exclusion of the Palestinian communities from the historical narrative and cultural significance of the cultural sites: The City of David has become an important national park over the past 20 years. It is the site of ancient Jerusalem, and marketed by the Elad Foundation as first and foremost the palace of the biblical King David, the first King of the United Kingdom of Israel. While many archaeologists [dispute the claim that evidence was found](#) to support the existence of a significant palace from the time of King David, this has not stopped the Elad Foundation from presenting remains

as evidence of King David's existence and curating the site as a theme park dedicated to King David.

The other two periods highlighted in the park are the period of the Judaeen Kingdom (8th-6th Century BCE), for which a wealth of cultural material has been found, and the Second Temple or Roman period of the 1st Century BCE to 1st Century CE .

The [Judeo-centric narrative](#) which characterizes the site leaves very little scope for inclusiveness and although the figure of King David is also a prophet in Islam, there is no mention of this fact in the signs placed throughout the site. Thus, are Palestinian or Muslim visitors conceptually excluded from this space. The site goes even further by inviting visitors into a Palestinian neighborhood without identifying it to them as such, turning the Palestinians into foreigners in their own home.

4. What could be the contents and contours of a possible “right to public spaces”, and of legitimate restrictions that could be made to it, in accordance with international standards? Is this concept employed in your country or in your work? Is it helpful?

There is a direct link between the right to public spaces and the recognition of a community's historic affiliation to a space. Today in the Historic Basin, and especially in the City of David archaeological park, the implementation of the right to public spaces creates a zero-sum game that completely denies the Palestinians' historic affiliation to the area.

International charters that address the impact of the right to public spaces on cultural rights try to create more inclusive policies that allow the transformation of the public space and especially contested cultural heritage sites that serve as public spaces – such as the City of David – into spaces that can create dialogue between contested identity groups.

The Burra charter (1979) advocates that any process of conservation begin with an in-depth examination of the cultural significance that all groups affiliated with the site attach to it, and that any conservation process take them into account.

The Washington Charter for the Conservation of Historic towns and Urban areas (1987) calls for the safeguarding of historic landscapes from development processes that may damage urban patterns, the relations between built areas and open areas, and the appearance of historic urban areas as defined by scale, size, style, etc. In the City of David/Silwan, the development of the archaeological park undermines the unique character of Palestinian Silwan. The archaeological park is eating up all the remaining public spaces, while at the same time, the NGO managing the site has also been leading an effort for nearly three decades to take over Palestinian homes in the village and replace the local residents with settlers.

Finally, the charter on the Built Vernacular Heritage (1999) calls conservation processes to recognize the importance, not only of monumental sites, but also the importance of the vernacular architecture. In Silwan the sole emphasis is put on the monumental buildings that were uncovered in the archaeological excavations, undermining the vernacular architecture of the Palestinian village of Silwan.

Thus, a better understanding of the right to public spaces is one that understands the public space as one that takes into consideration the contested meanings associated with them and attempts to promote a dialogue between them.

5. What is the role of cultural rights in ensuring the existence, availability, accessibility, and adequacy of public spaces that are conducive to widespread participation in cultural life, the realization of citizenship, cultural democracy, as well as the realization of other human rights?

Cultural rights as an evolving branch of human rights has received very little attention in Israel and is certainly far from being implemented in the management and curation of historical sites in Jerusalem's Historic Basin. While archaeological parks or sites are open to anyone who wishes to visit, they are far from inclusive. The discourse on cultural rights and the need to preserve Jerusalem's multilayered heritage is seen as a threat to the role allocated to ancient sites of justifying exclusive Israeli sovereignty over Jerusalem.

The massive investment in the excavation, preservation and presentation of sites considered important to Jewish history and identity is transforming the physical, cultural and religious identity of these seemingly public places and at best underplaying, but often effacing cultural material associated with other cultures and faiths. Although the archaeological tourist sites are for the most part open to anyone who wishes to visit, the narrative at the sites clearly promotes an attitude of non-negotiable historical rights where Jews are presented as the rightful heirs to the land while the Palestinians' claims to being indigenous are completely absent from the cultural landscape taking shape at ancient sites throughout the Historic Basin. An example for this can be seen at the Davidson Center archaeological park in the Old city. The archaeological remains surround the walls supporting the Temple Mount/Haram al-Sharif to its south and west. Structures from various periods were discovered in excavations at the site from the early Islamic, Byzantine, Roman, Second Temple, Hellenistic periods and more. In the last 15 years, only structures associated with a Jewish narrative underwent conservation and restoration. In 2011 the center launched the "[Solomon Wall area](#)" at the foot of the southern wall of the Temple Mount/Haram al-Sharif, and in 2017 a project was completed of preserving the [Ritual Bath Trail](#), a route through pools identified as ritual baths associated with purification rituals of Jewish pilgrims prior to their ascension to the temple, during the Second Temple period. Although the massive Umayyad palaces and many of the Byzantine structures are extremely apparent in the landscape, information about them at the site is very limited.

One of the key structural problems facilitating tangential development and a disregard of the variety of cultural remains is the absence of a master plan for Jerusalem's antiquities. This fact enables the various actors in the Historic Basin to implement projects in a piecemeal fashion, ignoring the variety of stakeholders, their cultural heritage and human rights.

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

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

Jerusalem's Old City and its walls is a [World Heritage Site](#), central to Jews, Muslims and Christians worldwide. We believe that urgent action is needed in order to preserve Jerusalem's multilayered past, its multicultural social fabric in the present, and the possibility that a future political solution will reflect and safeguard Jerusalem's pluralistic identity.

We recommend the formulation of a set of principles and practices which would govern the excavation, conservation, presentation and management of ancient sites in the Historic Basin. This could be formulated by a Palestinian-Israeli-international working group tasked with drafting a workable comprehensive master plan for Jerusalem's ancient sites. The document titled "[Guiding Principles for a Jerusalem Antiquities Master Plan](#)" drafted by a group of Israeli heritage professionals in 2016, was a first step in that direction.

Within such a masterplan we would like to emphasize the role of archaeological tourism and the infrastructure serving these sites. In our view, a masterplan for tourism and transportation in Jerusalem's Historic Basin should be based on the guidelines for safeguarding world heritage sites. As a World Heritage site we strongly feel that the historic city must comply with the standards set forth in relation to World Heritage Sites throughout the world. Infrastructure and development should all contribute to a comprehensive solution to the challenges of historic Jerusalem, rather than cater to the needs of a specific public in a single location

The premise which would guide the committee is that in the absence of a political agreement, major decisions about excavation, preservation, development and presentation of sites in the Historic Basin should be based on a commitment to preserving Jerusalem's multi-layered and multicultural historic narrative. Activities and development in the historic basin must be based on the following principles: Active stakeholder involvement on the location and timing of the excavations, joint decisions on which periods, remains or artefacts should be preserved and presented to the public, and, at a later stage, who will manage the sites and how they should be managed. Priorities for site presentation will be based on a commitment to be faithful to Jerusalem's multicultural heritage and subject to mutual agreements. Thus, for example, archaeological sites such as the City of

David, will present the importance of the site throughout the ages and its significance across different cultures and faiths.

Archaeological Areas in Silwan

