

Deliberate Obstacles, Not Failures

Adalah's response to the State Comptroller's Report
on the subject of the housing crisis in Israel
April 2015

As long as the policy persists under which “one hand confiscates and destroys and the other hand builds,” and as long as the state views the Arab minority’s interest as conflicting head-on with the Israeli Jewish majority’s interest, the State Comptroller's recommendations will not be able to solve the housing crisis for Arab citizens.



Approximately two months ago, in February 2015, the State Comptroller released a special report on the housing crisis in Israel. The audit report, covering 295 pages, listed the obstacles that led to the rise in housing prices and indicated the causes and parties responsible. Only a small portion of the report specifically addressed the housing shortage in Arab localities and its causes.

“Housing Crisis” and “Housing Shortage”:

The Comptroller’s report analyzes the major trends in the housing market over the past decade. According to the report, in the years 2008-2013, housing prices rose significantly in a manner that may substantially affect the standard of living and economic strength of households.¹ This analysis of the housing crisis from the perspective of the rise of housing prices and a shortage of housing units enables the Comptroller to provide concrete recommendations on the “deficiencies” or “failures” of the government and planning bodies’ management of the crisis and to offer solutions that, if adopted, would achieve the goal of reducing housing costs.

Yet, while the status of the “housing crisis” for Jewish Israelis is measured primarily by real estate prices in Jewish communities and the shortage of housing units, the “housing crisis” for Palestinian citizens of Israel has different roots, causes and implications. The financial burden involved in purchasing a home is but one indication, among many, of the essence and depth of the housing shortage that Arab citizens have suffered for decades.

Therefore, while the State Comptroller’s recommendations for solving the housing crisis can be relevant for Jewish Israelis, they do not deal with all of the obstacles faced by Arab citizens, and do not provide an appropriate response to them. The housing shortage in Arab communities is not the result of “failures” or “deficiencies,” but is a product of a deliberate, consistent, and systematic state policy, which excludes Arab citizens and sets many barriers to development in their way.

The State Comptroller’s Recommendations:

In order to tackle the flaws that have accumulated over the years, the State Comptroller recommends that the government improve the quality of the information required by the planning bodies to make informed decisions concerning housing. He suggests improving the tools used for data collection and analysis, making the process of construction of housing units more efficient, shortening the regional planning process, and improving the inter-ministerial coordination necessary for the efficient advancement of plans. He also recommends working towards comprehensive regulation of the field of affordable housing as a vital element in the long-term national housing policy, and examining the components of the cost of housing construction and its part in the overall price of apartments, particularly in comparison to tax rates and the state’s role in determining the cost of an apartment.²

Housing Shortage in Arab Communities: Barriers and Obstacles

The Comptroller’s report indicates that the Arab community needs 13,000 new housing units per year, yet in practice only 7000 housing units are built for this population, mostly by means of private, self-construction. The significance of this is that every year there is a shortage of 6000 units.³ As we will show below, this housing shortage is, in fact, the result of a deliberate, decades-long, government policy.

¹ The State Comptroller Report - **The Housing Crisis**, 30, 43, (2015) (hereinafter: “the State Comptroller’s Report”) (Hebrew).

² Ibid, page 16.

³ Ibid, page 208

Below, we will detail the principal characteristics of the housing shortage in the Arab community and its causes, as revealed by various reports and studies compiled by civil society organizations and government officials.

A. Limitation of Housing Units under National Master Plan:

The State Comptroller's report devotes an entire chapter to a discussion of the failures in the implementation of National Master Plan 35 ("TAMA 35").⁴ One of the goals of the plan was to address the construction and development needs of the State of Israel.⁵ Yet, even the successful implementation of this plan will not necessarily lead to a solution of the housing shortage in Arab localities, as this program designates Arab towns as areas "for preservation," which limits their development options.⁶ Additionally, most of the areas adjacent to Arab towns are designated in other master plans, such as National Master Plan 22, as "open areas" or areas of "high landscape sensitivity," and thus the towns' development options are further restricted.

B. Lack of Updated Master Plans in Arab Communities:

The Comptroller's report refers to the need to update overall planning at the district and local levels. This problem is far more acute in Arab towns, which are the principal victims of the failure to update district and local master plans. Notably, of 139 Arab localities, only 41 have up to date master plans despite the existence a number of government plans ostensibly designed to advance regional planning in Arab communities.⁷ The absence of master plans for these localities, or the reliance on outdated master plans, does not make it possible to assess the needs of residents and to prepare the detailed plans that would allow for the towns' development in a manner that would meet the land, housing, and planning needs of residents.⁸

C. Areas of Jurisdiction:

The areas of jurisdiction of these 139 Arab towns comprise only 2.5% of the territory of the state. The State of Israel has not established even one new Arab town outside of the Naqab (Negev) since 1948. Despite population growth, the towns' areas of jurisdiction have not been expanded, but they have actually been reduced. Thus, for example, since 1948, 70% of the land in the village of Ein Mahal has been expropriated from its Arab owners for the construction of new neighborhoods in the city of Nazaret Illit; the area of Sakhnin has been reduced to include only 15% of the area it

⁴ Adalah submitted a position paper responding to Tama 35 to the Knesset's Interior and Environment Committee in early 2006. Adalah proposed a series of planning principles absent from the Committee's report to achieve spatial equality and justice between Arab and Jewish citizens of the state. Read the position paper: <http://www.adalah.org/uploads/oldfiles/newsletter/eng/mar06/ar1.pdf>.

⁵ Ibid pp. 125-132, 137-147

⁶ Kais Nasser, Housing Shortage and House Demolitions in Arab Society in Israel: Current Obstacles and Recommendations for Change 27 (2012) (hereinafter: "Housing Shortage and House Demolitions").

⁷ Arab Center for Alternative Planning (ACAP) and Bimkom Planners for Planning Rights "Outline Planning for Arab Localities in Israel" – A Current View, 10, 26-29 (2012) (hereinafter "the Outline Plan"); the State Comptroller's report, *ibid*, footnote 1, page 208.

⁸ Another example of inadequate regional planning is the Master Plan that the Minister of Interior has proposed for Mu'awiya, located in the Triangle, in the center of Israel. In 2013, Adalah submitted an objection to the District Land Planning Committee on behalf of the Head of the Basmeh Regional Council and over 400 residents of this Arab village, arguing that the plan contained no vision or consideration for developing the village or for fulfilling the urgent needs of the villagers, including economic development and residential requirements. The Committee rejected the objection in December 2014. Read the press release: <http://www.adalah.org/en/content/view/8234>.

encompassed during the British Mandate.⁹ Arab local authorities submitted many requests to alter the areas of jurisdiction, but, apart from minor changes, the government has rejected these requests.¹⁰ This situation has increased the population density in Arab localities eleven fold,¹¹ and significantly contributed to the shortage of housing.¹²

D. Non-Exploitation of State Land and Lack of Public Building Initiatives:

In addition to the regular public uses, public planning initiatives on state land can be effective tools for providing a measured and immediate response to housing market needs in a particular area. Such initiatives not only increase the supply of apartments in the relevant area, but also do so in a controlled manner by adjusting supply to the population's needs, particularly by means of completion schedules for the construction of housing, and through the efficient exploitation of building capacity. A small portion of the population, however, privately owns most of the land in Arab localities. The supply of public land that remains in Arab towns is very limited and is mostly used by the state, in practice, for granting benefits to discharged soldiers.¹³

Adalah's analysis of tenders published by the Israel Land Authority (ILA) over the past year found that during this period, the ILA published bids for the construction of 38,261 new housing units in Israeli Jewish towns (not including mixed cities), compared with only 1,844 housing units in Arab localities. Put another way, 20% of the population is receiving less than 5% of the new housing units. Tables summarizing the analysis of the ILA's tenders in 2014 appear at the end of this report.

In 2009, only 1.2% of all new construction in Arab towns (with more than 10,000 inhabitants) was the product of a public initiative, compared to 16.3% in Israeli Jewish communities of the same size.¹⁴ This fact, combined with data on tenders marketed in Arab communities and on the government's subsidy policy, leads to the conclusion, as will be explained below, that no change occurred in this policy.

State lands adjacent to Arab localities do not provide a solution to the problems of these communities as for the most part, they are designated by national master plans as forests and nature reserves. This classification prevents the expansion of Arab towns' areas of jurisdiction or a change of designation of these lands to residential areas or lands to be allocated for other community needs.¹⁵

⁹ Awni Banna "Housing Shortage in Arab Society in Israel" (2011).

www.acri.org.il/he/wp-content/uploads/2011/08/housing-arabcitizens0811.pdf 7.

¹⁰ Authority for Economic Development of the Minorities' Sector in the Prime Minister's Office, **Proposal for the Solution of the Issue of Planning and Housing in the Arab Sector**, submitted to the deputy team on housing in the Economic and Social Change Committee headed by Prof. Manuel Trajtenberg (2011) (hereinafter: "The Authority for Economic Development's proposal").

afed.gov.il/Documents/%D7%9E%D7%97%D7%A7%D7%A8%D7%99%20%D7%9E%D7%9E%D7%9E/aravi_m_diur5.pdf

¹¹ Banna, *ibid.* footnote 7, p. 8.

¹² The use of "Admissions Committees" is another discriminatory practice which contributes to the growing population density in Arab towns. This policy, which was enacted later into law, is used to filter Arab citizens out of hundreds of small communities built on 'state land' throughout the country. Adalah filed a petition against the law in 2011, arguing that it "entrenches racial segregation," but the Supreme Court dismissed it in a 5-4 decision in 2014. Despite the widespread exclusion of Arab families over the years pursuant to this policy, the Court found that the case was "not ripe" for review. PR: <http://www.adalah.org/en/content/view/8327>

¹³ The Authority for Economic Development's proposal, *Ibid.*, footnote 8, p. 4.

¹⁴ Sikkuy – The Association for Advancement of Civic Equality "The Equality Index of Jewish and Arab Citizens in Israel", **The Equality Index** 4, p. 37 (2010).

¹⁵ The Authority for Economic Development's proposal, *ibid.*, footnote 9, p. 4.

E. Failure in the Marketing of Tenders:

The State Comptroller's report refers to the barriers that hinder the marketing of land and insists that the marketing of a significant proportion of planned housing units remains, in practice, unrealized.¹⁶ This problem is much graver in Arab communities.¹⁷

Research conducted by Sikkuy indicates that despite the housing shortage in Arab towns, when the state publishes tenders in Arab communities, 80% are eventually abandoned, compared with a rate of 30% in Jewish communities.¹⁸ 65% of tenders issued in Arab localities between 2003 and 2010 failed because of the lack of bids.¹⁹ This data indicates the existence of barriers that prevent the Arab community from bidding for tenders. Two of these barriers are as follows:

A. The introduction of a system of "sale to the highest bidder." Due to the severe shortage of housing and the scarcity of state land in Arab communities, this system has resulted in a dramatic increase in the cost of land and has done nothing to alleviate the situation of the impoverished members of the population who do not own homes.²⁰

B. The density level of residential units proposed in tenders. The planning authorities have adopted a policy of saturated building to enhance the processes of urbanization in the Arab towns. However, the Arab community is accustomed to building rural detached houses on a plot of land. As a result, tenders offered to Arab communities include several housing units per lot and are priced higher than expected by the target population. This provokes a reluctance to participate in these tenders, and the low number of bidders eventually leads to the disqualification of the tender.²¹

F. Problems Relating to Local Authorities:

Local authorities play an important role in the planning and development of a town. Local authorities are largely responsible for the implementation of planning and building laws, especially if there are local planning and building committees. These committees can advance plans and meet community needs more efficiently and accurately than the original planning committees, precisely because, as "local" authorities, they are, in theory, committed to their residents' interests, and independent from the interests of other local authorities or the central government that regional committees must account for.²² Only five Arab local authorities act as local planning and building committees.²³

In addition, it is not possible for the committees that do exist to directly issue building permits under most of the updated plans for Arab towns because they mandate additional procedures necessary before the committees can issue permits. Some of these procedures, such as preparing and advancing local master plans, are the responsibility of the local authorities. However, the vast majority of Arab local authorities lack the financial ability to do this task.²⁴

¹⁶ The State Comptroller's Report, *ibid*, footnote 1, p. 217

¹⁷ For example, in March 2015, Adalah sent a letter to the Minister of Housing and Construction and the head of the Israel Lands Authority demanding that they immediately begin to market construction tenders in the Arab village of Al Kamanneh in the north. The government recognized Al Kamanneh in 1995, however, it did not have an adequate master plan until 2013. Since then, the plan's implementation has continued to be delayed by the ILA's refusal to market the available tenders. <http://www.adalah.org/en/content/view/8482>.

¹⁸ Sikkuy – The Association for Advancement of Civic Equality, "The Marketing of State-Owned Land for Development and Construction in Arab Communities" **Barriers for Possibilities** 3, p. 36 (2011).

¹⁹ *Ibid*, p. 31.

²⁰ *Ibid*, pp. 23, 42.

²¹ *Ibid*. p. 45.

²² **Housing Shortage and House Demolitions**, *ibid*, footnote 5, p. 22.

²³ The Authority for Economic Development's proposal, *ibid*, footnote 9, p. 4.

²⁴ **The Outline Plan**, *ibid*, footnote 6, p. 13.

Furthermore, local authorities are responsible for the development and construction of infrastructure in towns. The State Comptroller's report refers to the fact that most local authorities in Israel have difficulty arranging for financing development costs, causing construction delays.²⁵ Most Arab local authorities face an additional obstacle, because they are financially unable to solve the problem of wastewater and sewage, which is a compulsory pre-condition for the issuance of permits.²⁶ For example, the Northern District Planning and Building Committee's professional committee on water and sewage decided not to submit local master plans or new detailed plans for 25 Arab communities until this issue is resolved.²⁷

G. Government Plans for Affordable Housing Overlook Arab Localities:

Although the State Comptroller devoted an entire chapter to the issue of affordable housing and the need for comprehensive regulations on all aspects of this matter, including all aspects of planning and land ownership, the absence of any concrete reference to developing affordable housing in Arab society is conspicuous. The aim of the state's current intervention in the housing market is to lower housing costs. The State's withdrawal from its involvement in the affordable housing market, whether through building public housing or subsidizing mortgages held by the low-income population, has a negative impact on the ability of weak groups to realize their right to adequate housing. The problem is that the Comptroller's recommendations are irrelevant to the Arab citizens.

Although the State Comptroller recommends the formulation of a precise definition of the population that is eligible for affordable housing, and proposes an estimation of the scope of this group. There is no reference to the fact that the very term "affordable housing" is a foreign concept to Arab citizens. An examination government-initiated plans and benefits over the years reveals that they were tailored to Israeli Jewish communities and overlooked the Arab communities. Thus, for example, in the framework of the "Target Price" plan, the implementation of which began in 2014, 66,000 housing units will be marketed in the years 2015-2019. 80% of the apartments included in these tenders will be sold at a price that is 20% lower than the average apartment price in the same area. Not one Arab locality is included in the 30 communities where this plan will be implemented. As a result, Arab citizens will not directly enjoy the benefits included in the plan in question, and there will be no reduction in housing prices in Arab towns.²⁸

Furthermore, the planning initiatives announced by the government following the social protests in 2011 for the acceleration of construction (known as the "Lahav" plans), which will be deliberated on a special fast track, were not applied to the majority of Arab local authorities. Of the 71 master plans introduced into this track, there are only three for Arab local authorities, and of the 69,260 housing units advanced within this framework, less than 3% were allocated to Arab localities.²⁹ The above also holds true for other plans referred to by the State Comptroller's report, such as the program "Apartment Price for the Homeowner" and the "Long Term Rental" track.³⁰

²⁵ **The State Comptroller's Report**, *ibid.*, footnote 1, p. 233.

²⁶ The Authority for Economic Development's proposal, *ibid.*, footnote 9, p. 3.

²⁷ **Housing Shortage and House Demolitions**, *ibid.*, footnote 5, p. 34.

²⁸ Adalah sent a letter to the Minister of Housing (MOH), the Director of the Israel Lands Authority (ILA), and the Attorney General in March 2015 to protest this exclusion. Adalah argued in the letter that, "the criteria takes into consideration the data and market needs of Jewish and mixed towns only, and ignores the different conditions of Arab towns." Read the press release: <http://www.adalah.org/en/content/view/8481>.

²⁹ **Housing Shortage and House Demolitions**, *ibid.*, footnote 5, p. 63.

³⁰ Arab Center for Alternative Planning (ACAP) "The State Comptroller's Report Ignores the Housing Shortage in Arab Towns" (Press release in Arabic, 27.2.2015): ac-ap.org/?mod=articles&ID=515.

Summary:

As shown above, the housing shortage in Arab communities is greater and far graver than the "housing crisis" that characterizes the housing market in Israel as a whole, which the State Comptroller's report addresses.³¹ As such, recommendations that only address the rising price of housing and "failures" and "deficiencies" existing in the legal, governmental, or planning systems, do not provide a solution to the housing shortage in Arab communities. This omission is because barriers resulting from deliberate, consistent, and systematic policy giving preference to the settlement of the Jewish population at the expense of the development of Arab communities stand in the way of the progress of Arab towns and the resolution of their housing shortage.

While the State Comptroller uses terms such as "deficiencies" or "failures" to describe the state's shortcomings in managing the housing crisis in Jewish localities, the terminology most appropriate to the Arab community's housing crisis would derive from the expressions "obstacles" or "barriers." The distinction between the terms "failure" and "obstacle" is not only a matter of semantics, but also one that goes to the root of the real problem that created the housing shortage in Arab society. This problem stems from the state's lack of willingness and honest resolve to amend the historical wrong caused to the Arab community in, among other matters, planning and building. As long as the state's policy under which "one hand confiscates and destroys and the other hand builds" persists, and as long as the state views the Arab minority's interest as conflicting head-on with the interest of the Jewish majority, the State Comptroller's recommendations will not be able to solve the housing crisis in Arab society in Israel.

³¹ The State Comptroller's Report also fails to take into account the role that the State's policy of home demolitions plays in the shortage of housing for Arab citizens. For example, the Negev Coexistence Forum has reported that from July 2013 to June 2014, 859 structures were demolished in the Naqab, the overwhelming majority of which were in Bedouin localities. Adalah has been engaged in a legal battle against the destruction of two such villages, Atir and Umm el-Hieran, for over 10 years. The state seeks to destroy Atir to expand a forest called "Yatir" and to build a new Jewish town called "Hiran" over the ruins of Umm el-Hieran. See (Supreme Court) Appeal 3094/11, Ibrahim Farhood Abu al-Qi'an, et al. v. The State of Israel (case pending). Read press release: <http://www.adalah.org/en/content/view/8292>

Annex A – Analysis of Israel Lands Authority Tenders, 2014

Comparison Table 1: Number of housing units marketed in Jewish communities and Arab communities in 2014

	Jewish Towns	Arab Towns
Housing units marketed	38,261	1,844

Comparison Table 2: Number of housing units marketed in the settlements in the Occupied Palestinian Territory (OPT) and in Arab communities in 2014

	Settlements (OPT)	Arab Towns
Housing units marketed	3,163	1,844
Inhabitants	Approximately 550,000	Approximately 1,200,000

Comparison Table 3: Number of tenders published for industrial and commercial zones in Jewish and Arab towns

	Jewish Towns	Arab Towns
2014	36	0
2009-2014	328	13

Table 4: Number of refugee properties (“absentee properties”) sold in recent years

2007-2014	2014
Over 830	77

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