



MAKAN

Makan
Adalah's Journal for
Land, Planning and Justice

Volume 1, 2006
The Right to the City



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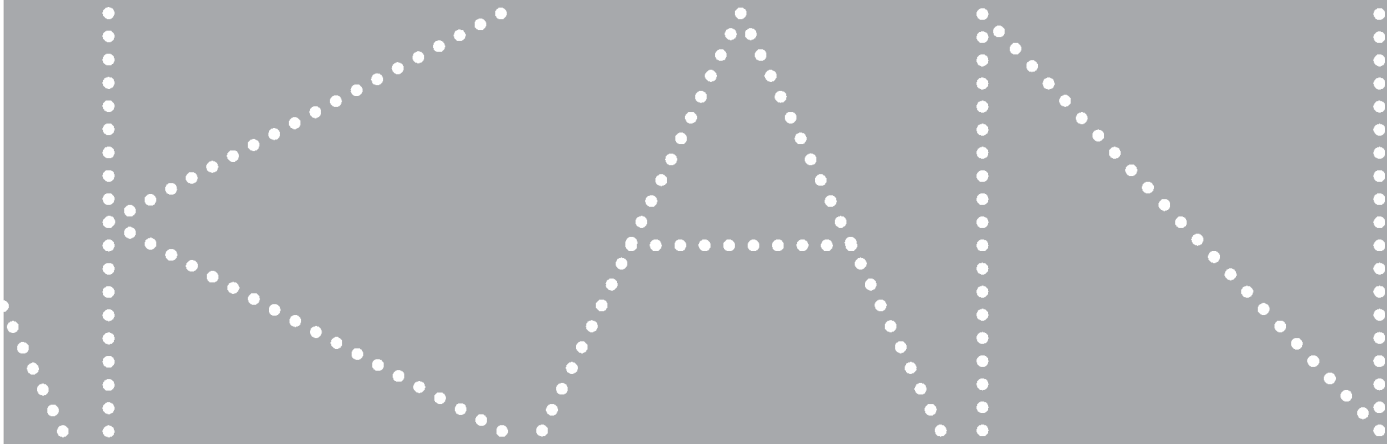
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Introduction

The Editors

Adalah – The Legal Center for Arab Minority Rights in Israel is honored to present the first volume of the journal *Makan* (“Place” in Arabic). To be published periodically in three languages – Arabic, Hebrew and English – the journal was conceived of upon the recognition of the collective power that can be realized through joint efforts of judicial, legislative and planning systems to create a space that provides for the needs of different population groups. Such systems, it should be noted, however, are also capable of creating a space that is insensitive to the social differences which exist between various groups, and of ensuring and maintaining the power that controls and discriminates against minorities and weaker populations. Finally, these systems have the ability to create a space that controls demographic, social and economic characteristics and processes in a defined community.

Makan will apply a critical approach to planning and development, and legal and human rights issues, especially in regard to the Palestinian minority in Israel, in addition to the study and analysis of experiences of different groups in Israel and other minorities in the world. The aims of *Makan* include raising public and academic awareness of issues of

planning, development and human rights; contributing to understanding the gaps that exist in terms of planning and development between different population groups in Israel; advancing topics related to contemporary issues of the environment and sustainability; and, naturally, learning from international experiences in these areas. The editors of *Makan* therefore invite planners, lawyers and researchers in these different areas to submit original, unpublished articles for discussion in the public domain. These articles should be sent following publication of a Call for Papers, which will be published by *Makan* periodically.

The journal consists of academic articles devoted to issues of planning and development, law and human rights and critical analyses of practical aspects of planning and development in Israel, based on case studies of projects undertaken by human rights and social change organizations. *Makan* is open to presentation of issues related to the social, cultural and spatial domains of the lives of the Palestinian minority in Israel, as well as other groups which experience discrimination on the basis of class, religious or ethnic background, or gender.

Each volume of *Makan* will be devoted to a specific topic. The present volume focuses on



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the concept of “the right to the city,” as developed by French philosopher Henri Lefebvre (Lefebvre, 1991, 1996). According to Lefebvre, “the right to the city” is a call for the restructuring of social, political and economic contexts in cities. This in turn requires a restructuring of power relations as a basic consideration in the creation of the urban space, by transferring power from capital and the state to urban inhabitants. As Lefebvre states:

The right to the city is like a cry and a demand... it can only be formulated as a transformed and renewed right to the urban life.
(Lefebvre, 1996: 158)

The concept of “the right to the city” contains a reconsideration of the political content of citizenship. Lefebvre does not define belonging to a political community in terms of a legal, civic status, but rather on the basis of a normative definition of inhabitants; that is, whoever dwells in a city has the right to the city. On the basis of this definition there are two principal components of the right to the city: firstly, the right to appropriation, or the right of inhabitants to use the urban space and shape it as they desire. Secondly, the right to participation, or the right of inhabitants to a central role in decision-making with regard to the urban space in which they are living.

Although contemporary urban space is composed of a variety of groups – minority, ethnic, cultural, native, immigrant, gender-based and other groups, as well as various economic classes – it is generally shaped and managed by a dominant group. The result is the creation of a space that serves the interests

of the dominant group, which, in turn, sustains the exclusion of minority and weaker population groups. The excluded groups are distanced from the centers of decision-making and from the possibility of influencing the processes of urban policy-making that affect to so great a degree the daily lives of the city’s residents. The outcome has been the emergence of a demand to enable different groups to participate in the process of creating and/or altering the urban space, to take their different needs into account and to shape the city according to “the heart’s desire” (Harvey, 2003) in order to attain social justice, among other motives. The creation and design of the urban space are processes in which a person creates and changes the space and at the same time engages in a re-creation of his or her own ego and self. David Harvey describes these processes as follows:

The right to the city is not merely a right of access to what already exists, but a right to change it after our own heart’s desire. We need to be sure we can live with our own creations [...]. But the right to remake ourselves by creating a qualitatively different kind of urban sociality is one of the most precious of all human rights.
(Harvey, 2003: 939)

The articles in the first section of this volume of *Makan* present discussions of the right to the city based upon the urban spatial experiences of different groups in a number of cities in Israel, and London. The volume opens with an article written by Yosef Jabareen – “The Right to the City: The Case of the Shihab el-Din Crisis in Nazareth.” Jabareen examines the concept of “the right to the city” at the theoretical level



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and analyzes how the centralized institutional structure in Israel harms the right to the city of the Palestinian minority. However, as he demonstrates, not only is the minority's right to the city violated, but so is the right to the city of Jewish citizens of Israel.

This violation of the right to the city of the Palestinian minority is attributable to the division of power and the nature of power relations between central and local government, as well as those between the state's majority and minority groups, in combination with the under-representation in or absolute absence of the minority from decision-making mechanisms regarding issues of the development of space, as determined by Israel's legal and ethnic-political structure. The minority is thus incapable of realizing its right to the urban space. This right includes the right to shape an appropriate urban space and to participate in its creation. Beyond the centralization of power, however, is another important factor: the absence of a mechanism to ensure genuine public participation in the process of producing space. Thus, a re-examination of the Planning and Building Law – 1965 clearly reveals the centralization of decision-making and the absence of a mechanism to ensure the public's participation from the preliminary stages and the development of the initial planning concept and its goals, to the stage of implementation. Finally, Jabareen presents a case study detailing the planning of the “central square” in the Palestinian city of Nazareth in the north of Israel. Based upon his empirical study, Jabareen demonstrates how centralization in decision-making and the absence of genuine public

participation in the planning process for the square generated a conflict between the various population groups in the city. At the core of the conflict was the lack of the rights of the inhabitants of Nazareth to appropriate the urban space and to participate in the decision-making processes.

The second article, written by Haim Yacobi – “From Rakevet to the Neighborhood of Neve-Shalom: Planning, Difference and the Right to the City” – discusses the right to the city by means of a presentation of a planning project intended for Palestinian citizens of Israel living in the mixed city of Lod (Lod). Yacobi interprets the right to the city as giving freedom, as the right to an identity and to live an individual as well as a collective life, and as the right to participate in decision-making. His article follows the process of the evacuation of Palestinian residents from the Rakevet neighborhood to Neve-Shalom, a newly-planned neighborhood. He applies a critical perspective to analyze the planning process for the new neighborhood, a process that was blind to the culture of the Palestinian residents and their specific needs. The result was the creation of a space that was foreign to them, as well as being inappropriate for their cultural needs and lifestyle. Accordingly, they resorted to acting on their own initiative so as to alter the architectural order to make it more suited to their social and economic needs. Yacobi argues that these activities were an expression of the neighborhood's residents' struggle for the right to the city and for recognition of their cultural differences.

In her article – “The Right to the City and



Gendered Everyday Life” – Tovi Fenster relates to the urban space in the context of gender, challenges the concept of “the right to the city” from a gendered perspective, and argues that the concept pays insufficient attention to patriarchal relations of power. She examines the everyday experiences of women in Jerusalem and London belonging to different ethnic groups, and how their experiences reflect their varying feelings of comfort, belonging and commitment to the city in which they live. These women’s narratives reflect an unfulfilled right to use the space and to participate in creating a space appropriate for the everyday needs of women, in both private and public spaces. Fenster relates the right to public space in the city to the right to private space. Both spaces are influenced by the patriarchal and cultural structures of the various population groups.

The second section of this issue includes studies of planning and legal cases which expose the policies that create homogeneous ethnic spaces in the state of Israel, or, in other words, spatial separation between Jews and Arabs. The four case studies presented in this section reveal the tools applied to implement a policy of segregation, as developed by the land and planning regime in Israel.

In addition, this section contains excerpts from a petition submitted by Adalah on 13 October 2004 against the Israel Land Administration (ILA), the Minister of Finance, and the Jewish National Fund (JNF), which challenges the ILA’s policy of distributing lands owned by the JNF exclusively to Jewish people. Excerpts from the JNF’s response to the petition

and another petition submitted in this regard by the Association for Civil Rights in Israel (ACRI) and the Arab Center for Alternative Planning (ACAP) are also published in this section.

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The Right to the City: The Case of the Shihab el-Din Crisis in Nazareth

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The creation of a new urban commons, a public sphere of active democratic participation, requires that we roll back that huge wave of privatization that has been the mantra of a destructive neoliberalism. We must imagine a more inclusive, even if continuously fractious, city based not only upon a different ordering of rights but upon different political-economic practices. If our urban world has been imagined and made then it can be re-imagined and re-made. The inalienable right to the city is worth fighting for. (David Harvey, 2003)

Introduction

Cities are the political, social and regenerative well-springs of the daily life of societies. They provide the space for economic, cultural, and social production and reproduction. They are therefore the ideal locations for constructing rights. Many scholars argue that the processes of globalization and the policies of neoliberalism have relentlessly eroded “local” rights, disenfranchised urban inhabitants, and weakened urban democracies. As a result of a growing concern within the social sciences over the hypothesized decline of democracy and the increasing disenfranchisement in cities, the concept of “the right to the city” has won global

popularity and become the mantra for a radical new urban democracy (Purcell, 2002). Celebrated French intellectual Henri Lefebvre (1901-1991) coined the concept of “the right to the city,” which has become an icon for human rights in cities, and a stimulus for attempts to create an inclusive new urban citizenship.

This article aims to introduce Lefebvre’s concept of the right to the city, and to apply it as an analytical tool with which to examine some aspects of the right to the city among the Palestinian minority in Israel in general, and in the case of the inhabitants of the city of Nazareth in particular. Accordingly, the article is composed of four sections. The first section presents the deterioration of urban democracies under the policies of neoliberalism. The second section introduces the concept of “the right to the city” and all it entails. The third section analyzes the right to city in Israel in general, and in Palestinian urban areas in Israel in particular. The final section presents a case study regarding a recent crisis in Nazareth over a plan to develop a central square, or what has become widely known as the “Shihab el-Din crisis.”



Neoliberalism and Urban Democracy

The rise of globalization and neoliberal policies has led to the restructuring of the state through decentralization, privatization, and related processes. This restructuring has in turn eroded local democracy. Some argue that the central problem of neoliberal global restructuring is its disenfranchisement of citizens; control is being transferred from citizens and their elected governments to transnational corporations and unelected transnational organizations. A range of scholars from the social sciences echo this fear. They argue that the current round of global restructuring has increased disenfranchisement, encouraged authoritarianism, and imperiled democracy (see, e.g., Falk, 2000; Held, 1995; Swyngedouw, 2000). Significantly, neoliberal restructuring has entailed extensive transformations in the institutions of urban governance (Brenner, 1999; Jessop, 1997; MacLeod and Goodwin, 1999), which have tended to disenfranchise urban inhabitants with respect to the decisions that shape the city (Peck, 1998; Tickell and Peck, 1996; Ward, 2000).

In the context of the mounting concerns over democracy and enfranchisement in cities, many social scientists have begun to explore the right to the city as a promising antidote to neoliberalism and its destructive impact on urban democracy (Holston and Appadurai, 1999; Isin, 2000; Sandercock, 1998; Sassen, 2000; Smith, 1993; Soja, 2000). The concept has been used to advocate more participatory processes of urban decision-making, and to enhance human rights in cities (Worldwide Conference on the Right to Cities Free from Discrimination and Inequality, 2002).¹

Introducing "The Right to the City"

In this section, I draw primarily on Henri Lefebvre's works, *The Critique of Everyday Life*, *The Production of Space*, and *Writings on Cities* (Lefebvre, 1991a, 1991b, 1996). Lefebvre has provided one of the most important definitions of the urban phenomenon. The city is a *projection of society on the ground*, "that is, not only on the actual site, but at a specific level, perceived and conceived by thought, which determines the city and the urban" (Lefebvre, 1996). "The right to the city manifests itself as a superior form of rights: right to freedom, to individualization in socialization, to habitat and to inhabit. The right to the *oeuvre*, to participation and *appropriation*, are implied in the right to the city" (Lefebvre, 1996). Those who are eligible for the right to the city are those who *inhabit* the city (Lefebvre, 1996: 158). Since the right to the city revolves around the production of urban space, it is those who live in the city and experience it who can legitimately claim the right to the city. The right to the city consists of two principal rights for urban inhabitants: the right to participation and the right to appropriation.

1. The Right to Participation

The right to participation dictates that inhabitants should play a central role in any decision that contributes to the production of urban space. Such a decision could be made under the auspices of the state (for example, a policy decision), capital (including an investment or development decision), a multilateral institution (such as a WTO trade ruling), or any other entity which influences



the production of space in a particular city. Moreover, the decision could be made at a range of scales: at the national, provincial or local levels of the state, or the global, national or local levels of corporations. Thus, for instance, inhabitants enjoying the right to a city would have the right to participate centrally in the investment decision of an international corporation which affects the urban space in their city.

2. The Right to Appropriation

Lefebvre defines “appropriation” as a spatial practice in which nature has been modified in order to satisfy and expand human needs and potentials. The right to appropriation includes the right of inhabitants to physically access, occupy, and use urban space. Therefore, this notion has been the primary focus of those who advocate the right of people to be physically present in the space of the city (Capron, 2002; Isin and Wood, 1999; Lamb, 2002; Salmon, 2001; Mitchell and Staeheli, 2002). Furthermore, Lefebvre imagines appropriation to have a much broader and more structural meaning. Not only does appropriation imply the right to occupy already-produced urban space, but also the right to produce urban space which meets the needs of its inhabitants. As appropriation grants inhabitants the right to the “full and complete usage” of urban space in the course of everyday life (Lefebvre, 1996: 179), space must be produced in a way which allows full and complete usage. Thus, the conception of urban space as private property, as a commodity to be assigned an economic value (or used to assign economic value to other

commodities) by the capitalist process of production is specifically what the right to appropriation stands against.

The Production of Urban Space

The production of urban space entails much more than the planning of physical places in the city; it involves the production and reproduction of all aspects of urban life. For Lefebvre (1996: 158), then, “the *right to the city* is like a cry and a demand... a transformed and renewed *right to urban life*.” This emphasis on the production of urban space clearly distinguishes the right to the city from current forms of enfranchisement in liberal democracies. These forms predominantly revolve around the structures, policies, and decisions of the formal state. Liberal-democratic citizens (whose status of formal citizenship is based on their nationality) have an institutionalized voice in the decisions of the state, and they therefore have some indirect control over any social process in which the state has influence. The right to the city, conversely, enfranchises people with respect to all decisions that produce urban space. Thus, the shift to the right to the city radically expands the scope of enfranchisement beyond the structure of the state. It stresses the need to restructure the power relations which underlie the production of urban space, thereby fundamentally shifting control away from capital and the state in the direction of urban inhabitants.



The Right to the City and Urban Citizenship

Whereas in the nation-state national citizens are eligible to participate in various aspects of state decision-making, under the right to the city membership of the community of the enfranchised is not an accident of nationality, ethnicity or birth; rather, it is earned by living out the routines of everyday life within the space of the city.

Lefebvre argues that the right to the city should modify and render more concrete and practical the rights of the citizen as an urban dweller and user of multiple urban services. It affirms, on the one hand, the right of users to make their ideas on the space and time of their activities in the urban area known. It also covers the right to the use of the center, a privileged place, as opposed to being dispersed and forced into ghettos, for workers, immigrants, the 'marginal,' and even for the 'privileged' (1991, translated in Kofman and Lebas, 1996: 34).

Lefebvre's vision of the right to the city is therefore one of radical transformation of urban social and spatial relations. Lefebvre's ideas entail far more than a simple return to or enlargement of the established structures of liberal-democratic citizenship in the face of change in governance. Rather, for Lefebvre, urban inhabitation directly challenges national citizenship as the dominant basis for political membership. Inhabitants must have a right to participation irrespective of nationality. Therefore, the right to participation is irreconcilable with the Westphalian notion that all political loyalties must be hierarchically subordinate to one's membership of a nation-

state (Hettne, 2000; Krasner, 2000). It proposes a political identity (inhabitation), which is both independent of and prior to nationality with respect to the decisions that produce urban space. Moreover, the right to participation opens up decision-making possibilities beyond the state. In place of the current regime, in which state elites and capital control the decisions that produce urban space, Lefebvre envisages the inhabitants of cities as the majority and hegemonic voice.

Lefebvre's general argument is that *citizenship* entails the process through which individuals are integrated into the community (Lake and Newman, 2002): "By 'citizenship' ... we need to understand not only a bundle of formal rights, but the entire mode of incorporation of a particular individual or group into society" (Shafir, 1998: 23). On this view, we look for citizenship not in the citizen, but as located in the social practices of integration and inclusion exercised by institutions of the state (Young, 2000). For Rawls (1993: 18), the basic definition of a person hinges upon the ability to engage in social life: "A person is someone who can be a citizen, that is, *a normal and fully cooperating member of society*" [emphasis added]. From this perspective, the right of even the most disadvantaged to equal opportunities to social inclusion and integration leads to a category of social citizenship. Harvey states that, "The right to the city is not merely a right of access to what already exists, but a right to change it *after our heart's desire*" [emphasis added] (Harvey, 2003: 939).



The Right to the City for Jewish and Palestinian Citizens in Israeli Cities

Inhabitants of cities in Israel, both Jews and Palestinian Arabs, are to a large extent denied the “right to the city,” however differentially. The weakness of the right to the cities in Israel is reflected in the deficiencies of the practices of ‘appropriation’ and ‘participation.’ This paper argues that Palestinian citizens of Israel are severely denied the right to the city, and to a greater extent than their Jewish counterparts. It will be further argued that this situation directly stems from the legal and ethno-political structure of the state, which determines the distribution of power between the central government and the cities, and between ethnic groups, primarily Arabs and Jews.

In the urban context, a major effect of the war of 1948 on Palestinians in Israel was the loss of their major cities. The majority of the Palestinian urban population was evacuated or forced to flee from their cities and become refugees. In the aftermath of 1948, Palestinians in Israel have been striving to reconstruct and (re-)produce their own physical, economic, and social spaces according to their own needs and culture. However, on the basis of Lefebvre’s concept, urban Palestinians in Israel are particularly denied the right to the city: the rights to participate and appropriate. In other words, they are denied the right to produce physical, cultural, social, and economic urban spaces according to their “heart’s desire,” needs, culture and aspirations.

What, then, is behind the limited nature of Palestinians’ right to their cities? Why do they have a lesser enjoyment of the “right to the

city” than Jewish citizens? The issue of the right to the city entails many different fields. However, this section will focus on the right to produce physical space. There are two main reasons for the limitations on the “right to the city” as experienced by Palestinians citizens of Israel.

The first explanation concerns the legal and institutional distribution of power between the central government and local authorities; in other words, between the state and the cities. An extreme hegemony of the central government over the cities deprives citizens of adequate exercise of their right to the city.

Generally, political power in Israel is concentrated intensely in the central government. Local authorities, which are legal entities, are subordinate to the central government, and often viewed as extremely weak. They exercise power on a partial basis in the following basic areas: legislation, taxation, financial management, and joint activities with other bodies. Their competencies and areas of jurisdiction are spelt out in ministerial orders, mainly issued by the Ministry of the Interior, as authorized by law. However, the local authorities remain largely dependent upon the central government in each of these areas.

Israeli local governmental bodies are legally and financially weaker than those in the majority of Western states (Alterman, 2001: 262). Accordingly, most major budgetary and spending decisions require the approval of central government. Recently, Israeli local authorities have been sinking into deep crisis, with two-thirds of the country’s 255 authorities in arrears. As a result, many cannot provide



their inhabitants with basic services. Israel is one of the few countries with an advanced economy in which no major process of decentralization and devolution of powers has officially taken place. Legally, the central government still retains the majority of the powers it possessed when Israel was in its formative stage (Alterman, 2001: 263).

Local authorities in Israel are doubtlessly weak in terms of resources and lacking in sufficient power for the production of space. The Ministry of Education, Culture and Sport controls almost the entire education system, including the curriculum. In contrast, local authorities are responsible for the provision and maintenance of school buildings and physical equipment. The Ministry of the Interior supervises the activities of the local authorities and is primarily responsible for the following areas: the establishment of local authorities, the approval of their budgets, the provision of a legal framework suited to their needs, the examination of local authorities' by-laws, and assurance that physical planning and development projects conform to national and regional outline schemes.

In a neoliberal era in which the central state is being "rolled back" in many spheres through privatization, central government has sought to alter relations between itself and local government. Today, there is increased involvement on the part of Israel's central government in the affairs of local government. The Ministry of the Interior has, for example, disbanded nine local authorities and imposed its own leadership, often comprised of technocrats. Central government has also

conditioned extra financial support for local authorities on their adoption of drastic efficiency reforms, often in the form of retrenchments. Furthermore, the government is pressing local authorities to privatize the provision of services. In parallel, the central government has begun to enforce mergers upon local authorities lying in close geographic proximity so as to attain economies of scale.

The second explanation lies in the ethno-political structure of the state. The Palestinian minority in Israel is barely represented in the central government (see **Diagram 1**) and, aside from a few exceptional cases, elected Palestinian representatives and their parties have never been invited to participate in a governmental coalition. As a result, the interests of the Palestinians in general, and their cities in particular, are not represented in the central government or its powerful ministries. In terms of resource allocation and participation in decision-making at the national level as regards Palestinian cities, the Palestinian has almost no power or input, and is left only with the option of resisting centrally-made decisions. Furthermore, Palestinian citizens have almost no representation within the public sector or governmental institutions, making up, for example, just 5.5% of civil service employees in 2003.² Given the highly centralized nature of the state of Israel, Palestinians therefore possess little power with which to shape their cities and produce their desired spaces. The following illustrates this argument.

In the sphere of the physical production of spaces, Israel's Planning and Building Law – 1965 sets forth the principles according to



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which town planning and development are to be undertaken. This law tightly controls all planning and development in Israel. Accordingly, Israel has a centralized planning system for the use of land, in which central government is involved firstly by way of its extensive powers to oversee local-level planning decisions, and secondly through its power to draw up binding national plans for land usage. The involvement of the central government is channeled through the hierarchy of plans, from national plans, to district plans, down to the level of local plans (Alterman, 2001: 272).

The result of the centralized and hierarchal structure of the production of space which arises from the formal planning process is that urban inhabitants are left with almost no power to affect the production of space meaningfully in their locales – cities and neighborhoods. Obviously, the hierarchy of power reflected in the hierarchy of plans weakens the ability of the inhabitants of Palestinian cities to genuinely shape their space. Palestinians are greatly under-represented at the level of government or at the national and district levels of planning committees (see **Diagram 1**). Legally, therefore, in addition to the lack of community participation in the planning process, they have little to say in the statutory planning process, except for the right to submit formal objections to the plans. Diagram 1 illustrates the hierarchy of institutions and their powers, and the level of Palestinian representation within these institutions.

In summary, cities in Israel constitute the space within which the nation-state asserts its presence, thereby “nationalizing” and

“confiscating” what might have remained purely local and communal. The institutional, legal, and ethno-political structure of Israel and the hegemony of the national over the urban scale have resulted in the denial of the right to the city for a majority of the inhabitants of the cities, and the limitation of their ability either to appropriate space or participate in the processes of spatial production. The rights of urban Palestinians to appropriate and participate are restricted to specific scales and fields. Ultimately, urban-dwelling Palestinian citizens of Israel are extremely limited in their capacity to produce their spaces following their ‘heart’s desire,’ aspirations, culture and community vision. The result is that their cities function poorly spatially, environmentally, physically, architecturally, socially and culturally.

Case Study: The Production of Urban Space in Nazareth

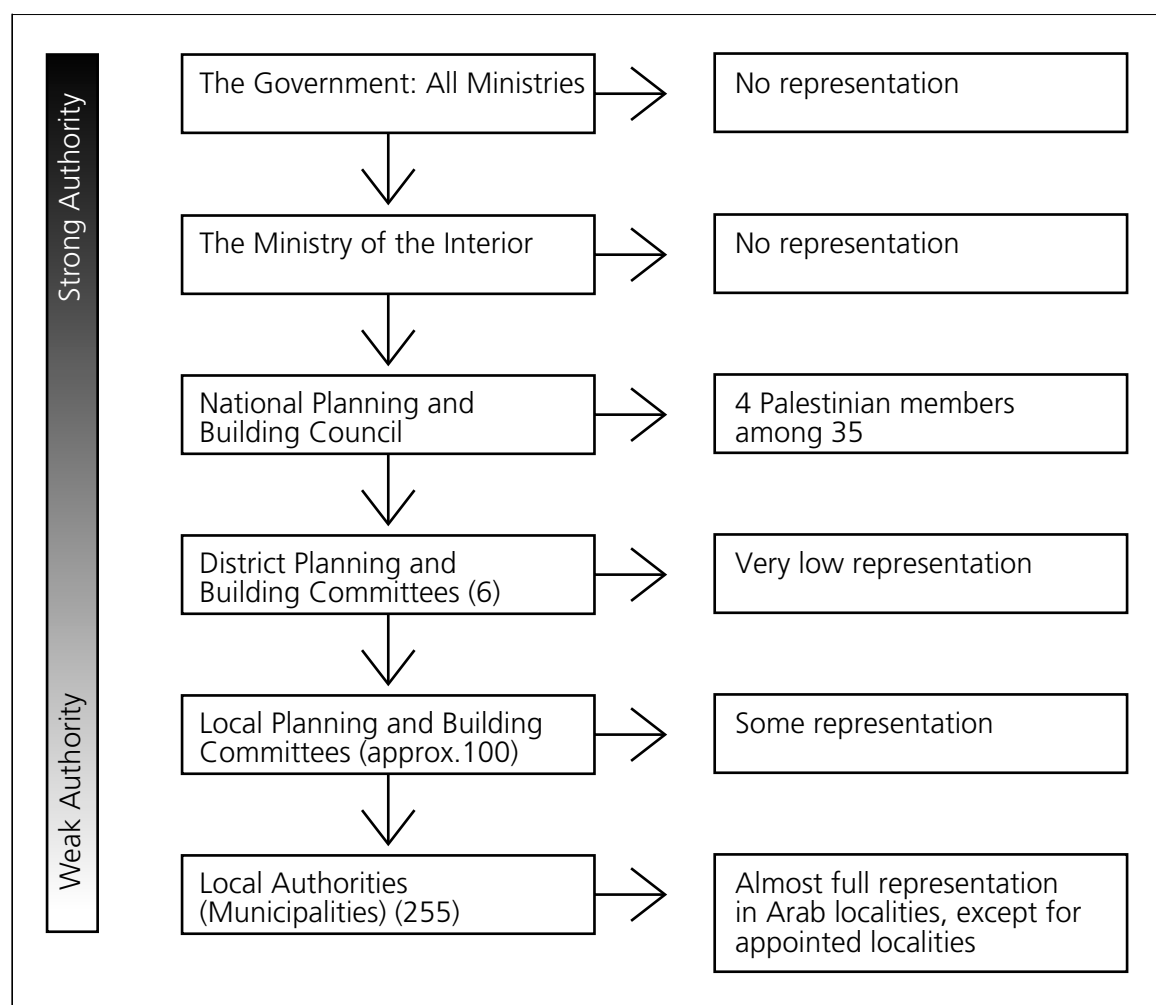
This section analyzes a case of urban spatial production in Nazareth, the largest Palestinian city in Israel, located in the northern Galilee region, where the non-fulfillment of the right to the city among its inhabitants led to violent clashes in 1999.

Clashes in Nazareth

On 16 April 1999, unexpected clashes erupted in Nazareth between thousands of its Christian and Muslim residents. These clashes, which shocked the Palestinian minority in Israel, were the first in history to break out between these religious groups, which had coexisted peacefully in the city for hundreds of years. The source of the tensions was a dispute over a municipal



Diagram 1: The Production of Space in Israel by Hierarchy of Authority and Level of Palestinian Representation



plan to develop a central square in the city, adjacent to the Church of the Annunciation, where the Angel Gabriel is said to have appeared to Mary to announce to her that she was to be the mother of Jesus, as well as to the tomb of Shihab el-Din, nephew of the Muslim hero Salah Al-Din (Saladin), who had ousted the Crusaders from the Holy Land eight centuries

ago. The plan formed part of a project named "Nazareth 2000," which aimed to renovate the city and prepare it for the hosting of millennium celebrations.

Instead of the development of the central square, however, many Muslims in the city wanted to build a mosque next to the Church of the Annunciation. As a response to the



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municipal plan, some of the city's Muslims erected a large tent at the site of the planned central square, laid the foundations for a mosque, and initiated a sit-in protest, which lasted for four years. Following a high profile international intervention from leaders including President Bush, the Pope and President Putin seeking the destruction of the tent and the foundations of the mosque, the government of Israel dispatched hundreds of soldiers to destroy them in April 2003. Thus, what began as a planning project for a small site in Nazareth mushroomed out of control, fuelling an economic, social, cultural and political urban crisis in the city, and, above all, religious conflict.

The "Nazareth 2000" Plan

Nazareth is an ancient city and one of the most holy cities for Christians. Because of its historical and religious significance, Nazareth has always attracted tourists, mainly Christian pilgrims. Approximately 50% of all tourists who come to Israel visit Nazareth, a total of around a million tourists per year during relatively peaceful periods. Despite the uniqueness of Nazareth as a historic site and its attraction for tourists, it has not received proper treatment from the central government. Between 1948 and 1993, the government discriminated against Nazareth in budget provisions for planning and development.³ In 1993, however, a new left-wing government was elected in Israel, led by Prime Minister Yitzhak Rabin, who made some attempts to narrow the developmental and economic gaps between Palestinian and Jewish cities in Israel.

The mayor of Nazareth in 1993, Tawfiq Ziyad (d. 1994), and his administration captured this opportunity and proposed a new and challenging project named "Nazareth 2000," which aimed to restructure the rundown city. The new government officially accepted "Nazareth 2000" and supported the project with a large budget, thereby identifying Nazareth as a city with tremendous potential for tourism. The government, in cooperation with the Municipality of Nazareth and several ministries, drew up a master plan for "Nazareth 2000." The plan was designed and directed by a Jerusalem-based company of Jewish architects (Rahamimov, 1995). "Nazareth 2000" aimed to prepare the city for its millennium celebrations; to develop its tourist and physical infrastructure; to renovate the historical *Suq* (market); and to build museums, and other public buildings lacking in the city. A budget of some US \$70 million was allocated for the project. As the current mayor of Nazareth, Ramez Jaraisy, describes the essence of the project:

For many years, Nazareth has been a neglected city, incapable of fulfilling its tourism potential, its unique crypts and corners remaining hidden under a dusty layer of rundown infrastructure. With the new partnership of the current Israeli government and Nazareth citizenry, a new era has begun for our ancient city [...] The year 2000 is our catalyst for this infrastructural overhaul, as the year "0" began in the city of Nazareth. In order to celebrate this historical moment, we are embarking on a massive project to renovate and develop the tourism infrastructure of Nazareth. It is our intention to beautify our



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ancient city, and preserve the site marked by the birth of Jesus.

“Nazareth 2000” was a major project for the production of physical, cultural, and economic urban spaces, which presented the inhabitants of Nazareth with a unique opportunity to participate in the production of new space in the city. However, as the remainder of this section reveals, events did not proceed as planned.

The Contested Plan

The site of the plan was a central urban area beside a main entrance to the Old City. Surrounding the site is a group of old buildings, including the tomb of Shihab el-Din. According to the master plan for “Nazareth 2000”, “The city’s new central square is to be built south of the Church of the Annunciation... enabling access to the church’s main entrance so that it will no longer be necessary to go in from the side. The square will also serve as a venue for festivals and other outdoor events” (Nazareth Municipality, 2005)⁴. The planners and architects of the central square conceived of it as a place for the anticipated mass of tourists and pilgrims who would celebrate 2000 years of Christianity in Nazareth. The Mayor of Nazareth and his administration also envisaged the square as a location for various festivals and cultural activities not necessarily connected to religious celebrations. For them, the year 2000 presented a unique opportunity to develop the city, its infrastructure and squares. It is clear, therefore, that they imagined the square as a place for all the residents of Nazareth, as well

as for national and international conventions.

The plan for the square was initially designed by architect Arie Rahamimov (Rahamimov, 1995: 79), and approved by Nazareth Municipality and the planning authorities (the Local Planning Committee and the District Planning Committee). When the development of the square began in 1999, an Islamic group connected to the Islamic Movement and the Waqf Committee in Nazareth argued that the land designated for the project was historically *Waqf* land. Under Islamic Law, *Waqf* is an endowment or assignment of revenues for religious or charitable purposes in the form of a trust.⁵ These revenues may not be shifted to other purposes. This claim undermined the legality of the project. As an alternative to the original master plan, this group asked that the municipality build a mosque on the site, as part of the development of the central square. In parallel, some hundreds of Muslims erected a tent on the site itself, which had become a place of protest against the municipal plan in favor of building a mosque. The tent also functioned as a mosque for prayer, where it hosted hundreds of worshippers for Friday prayers (Rabinowitz, 2001).

In September 1999, following the clashes in the city in April, the government decided, as a compromise, to allow the construction of a mosque on an area of 0.17 acres (700 m²) to be attached to the existing mosque (with a part of the mosque to be built over the tomb of Shihab el-Din); the rest of the site was to be developed according to the original master plan for the central square. In addition, the authors of the decision suggested building a separating



wall between the central square and the mosque. The government decided to lay down the cornerstone of the mosque in a ceremony held on 8 November 1999.

The decision roused Vatican ire and angered Christian clergy in the country. The Vatican “deplore[d] the decision by the Israeli government to authorize the start of work.”⁶ The unveiling of the cornerstone for the mosque beside a major Christian holy site in Nazareth reignited a bitter dispute between the Vatican and Israel. The Vatican announced that, “The decision of the Israeli government seems to lay the foundation for future conflicts and tensions between the two communities, Christian and Islam [sic].”⁷ Israel’s Foreign Ministry rejected the charge, claiming that it “unfortunately recalls the ancient practice of pointing the finger at the wrong cause,” in an allusion to anti-Semitism. After intervention by the Vatican, Presidents Bush and Putin and many others, the government decided on 9 January 2001 to halt the mosque’s construction. On 4 July 2003, the government, with the assistance of the police force and the military, destroyed the mosque’s foundations, which had been constructed since the ceremony for the laying of the cornerstone.

Responsibility for the Crisis

In the summer of 2004, an empirical survey consisting of 250 personal interviews based on a questionnaire was conducted in Nazareth in order to investigate the conflict in the city. This paper discusses only the findings of the questionnaire which relate to people’s opinions of the role of formal and informal institutions in creating the conflict. Among the participants, 53% were female and 47% male. Approximately 37% of the participants were Christian Arabs, 38% Muslim Arabs, and the remainder (25%) affiliated themselves as Arabs, declining to disclose their religious affiliation.

As **Table 1**, below, reveals, the vast majority (88.8%) of participants responded that the Israeli government played a strong role in creating the crisis in Nazareth. Many residents of Nazareth accused the government of inconsistency and of bringing about the crisis. Moreover, a majority of the participants believed that the incoherent nature of the decisions taken by the government and its planning authorities, primarily the District Planning and Building Committee, during the crisis was evidence of the government “playing with the fate of Nazareth,” according to many interviewees. A

Table 1: The Role of Various Players in Creating the Crisis in Nazareth, by Percentage

The Players	Strong role	Moderate role	No role
The Israeli Government	88.8	7.9	3.3
The Islamic Movement	65.6	22.4	12.0
The Islamic Waqf Committee	50.2	35.1	14.6
The Planners	47.7	32.1	20.3
The Municipality of Nazareth	37.2	33.9	28.9



The Central Square under construction, 2006



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majority of the participants (65.6%) stated that the Islamic Movement in the city played a strong role in creating the crisis. According to 47.7% of participants, the planners of the central square played a strong role in generating the crisis. Furthermore, over one-third (37.2%) of participants responded that the Municipality of Nazareth, which has historically been dominated by the Communist Democratic Front for Peace and Equality (Hadash), had a strong role in the creation of the crisis.

Discussion and Concluding Observations

This paper has presented Lefebvre's concept of "the right to the city" and applied it as a framework for analyzing the right to the city among the Arab minority in Israel in general, and the inhabitants of Nazareth in particular. As has been shown above, the absence of the right to the city – the rights to participate, to appropriate and produce urban spaces in accordance with the "desires" of urban inhabitants – can harm the socio-cultural and political structures of a city and contribute to the creation of internal conflicts within it.

The avoidable urban conflict in Nazareth was an outcome of the Central Square Plan. Some will argue that this plan stimulated a latent conflict in the city, and ultimately drove and perpetuated it. However, as this brief case study demonstrates, the inhabitants of Nazareth did not participate in the appropriation and production of the new space – the central square. They also lacked participation in the decision-making process that took place during the crisis. Therefore, the absence of the right

to the city is likely to have made a major contribution to the generation of conflict between different groups in the city.

The majority of participants in the survey conducted in Nazareth agreed that the formal institutions and stakeholders – the Israeli government, the planners, the Municipality of Nazareth, and the local Islamic Movement – played a strong or moderate role in creating the conflict in Nazareth.

The government: Around 97% of participants in the survey stated that the government played a strong or moderate role in creating the crisis. It is significant that, since the emergence of the crisis, all decisions regarding the site have been made at the governmental level, where there is very little Palestinian representation. Moreover, the Ministerial Committee established in 1999 by then-Prime Minister Ehud Barak to deal with the crisis excluded the local community in Nazareth, and failed to involve them in the process of decision-making. In contradiction to the right to the city, however, while excluding the local community, the central government did react to external pressures, principally from the US President and the Vatican, which was directed at bringing an end to the crisis without complying with the demands of the Islamic movement.

The Islamic Movement: The vast majority of the participants stated the belief that the Islamic Movement and the Islamic Waqf Committee contributed strongly or moderately to the production of the crisis (88% and 85.3% respectively). The leaders of the Islamic Movement did not oppose the plan for the



development of the central square when it was presented before the city council, and did not alert the council to the likely negative ramifications of its implementation. The Islamic Movement did, however, form the major opposition to the Central Square Plan within the city council on the eve of the crisis. Its leaders unconstructively contributed to this crisis by using the plan for political ends, mobilizing large numbers of Muslims in Nazareth to resist it and the development of the square. In some cases, this resistance was brutal and vocal, and inflicted damage on the social fabric of the city and its economy.

The planners: Approximately 80% of the participants stated that the planners of the central square played a strong or moderate role in generating the crisis. The planners, who complied with the decisions of the central institutions, greatly contributed to the creation of the crisis in Nazareth through their physical design of the square. In several conversations which I conducted in Nazareth, inhabitants of the city frequently argued that the planners of the central square had been indifferent to the local culture and had planned a central place in the city without studying the socio-cultural contexts. The planners did not conduct a deep analysis into the likely socio-cultural and political repercussions of their Central Square Plan, despite the sensitive nature of the site. They were apparently not familiar with the socio-cultural structure of Nazareth or its local politics, and, unfortunately, acted as technocrats, focusing only on the physical aspects of the design. The planning process was exclusionary. The planners did not investigate

the “desires” of the inhabitants of Nazareth, or allow them to participate in the determination of the general concept of the design. Rather, the planners acted in accordance with the prevailing, exclusionary planning culture in Israel.

The Nazareth Municipality: Approximately 71% of the participants expressed the opinion that the Nazareth Municipality played a strong or moderate role in the development of the crisis, with only 29% arguing that it played no role. The democratically-elected city council of the Nazareth Municipality approved the Central Square Plan by a majority vote. At the time, the majority of the council’s members were representatives from the Democratic Front, with the remainder made up of representatives from the Islamic Movement and other parties. In addition, the Local Planning and Building Committee that is under the authority of the Municipality adopted the plan and recommended it for the formal approval of the District Planning and Building Committee. The District Planning and Building Committee subsequently approved the plan. The crisis in Nazareth reveals that the Municipality did not revert to the city’s inhabitants and consult them on the production of such a major space in the city, as it should have according to “the right to the city.” The Municipality is not unique in its exclusion of the city’s inhabitants; such exclusion is the heritage of decision-making in Israel at the local and national levels.

As stated above, the conflict in Nazareth was unintentionally generated by the planners and policy makers. The planners of the site undoubtedly had good intentions to develop



the site, as part of a wider plan entitled “Nazareth 2000.” Nonetheless, as we have seen, the crisis in Nazareth was a product of a conflict between the ways in which the central planning committees and the governmental institutions conceived of the central square and the ways in which the inhabitants of Nazareth conceive of the city and the specific places within it.

Nazareth is a complex context for urban governance, with multiple actors, arenas, and struggles over identities, discourses and practices. The planning of the central square demonstrates a “story of failure” of a planning process that was not a collaborative, participatory, or inclusionary, and which paid no attention to the cultural context or the interests of diverse groups. Healey (2003: 115) argues that an inclusionary, collaborative process does not necessarily guarantee the justice of either process or material outcomes; however, it is ethically appropriate for any planner assessing the effect of interventions on people and places over time to take as inclusionary a view as possible on the range and distribution of impacts. In other words, the crisis in Nazareth might have been avoided had the inhabitants of the city had the ‘right to’ it, and had they had a voice within the central institutions.

Moreover, planning has the power to reshape and foster urban identities. In addition, since spaces and places are situated within relations of power, planners should not overlook the power of place. John Friedmann (1998) suggests that, “one meaning of planning refers to the conscious intervention of collective actors – roughly speaking, state, capital and organized civil society – in the production of urban space,

so that outcomes may be turned to one or the other’s favour.” It follows that planners need to develop a thorough understanding of how processes of city formation work before imposing on them a normative structure or mediating between the interests affected. This formulation posits the processes of city formation as prior to any serious discussion of strategic intervention.

For centuries, both Muslim and Christian Arabs have peacefully inhabited Nazareth. It is believed that Muslims and Christians have coexisted in the city since the Arab Muslims conquered the land of Palestine in 638. Earlier studies written prior to the crisis in Nazareth have described the relations between Muslims and Christians as outstandingly positive. For example, Emmett Chad, in *Beyond the Basilica: Christians and Muslims in Nazareth*, (1994) depicts Nazareth as a surprising example of ethnic harmony in a region dominated by conflict. Chad, who based his research on a survey of 299 families in Nazareth, found that 83% of the 299 participants responded that Christian-Muslim relations were positive, while as few as 3% considered relations negative (pp. 225-6). Moreover, 51% of respondents indicated their belief that these relationships were improving. The Central Square Plan, however, which designated a small piece of land for public use, was able to tear this long-standing social fabric and create new social and political conflicts in Nazareth, because the city’s inhabitants lack “the right to Nazareth.”



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Notes

- 1 Report available at: <http://www.unhabitat.org/conference/m.htm>
- 2 Yackov Berger, Report of the Knesset Constitution, Law and Justice Committee, "Fair Representation among State Service Workers," May 2004 (Hebrew).
- 3 According to the municipality's Financial Report of 1993, the budget for development was as little as \$30,000 in 1993.
- 4 <http://www.nazareth.muni.il/home.html>
- 5 According to Islamic Law, this is a permanent endowment or trust, usually of real estate, the proceeds of which are spent for purposes designated by the benefactor. Usually these proceeds are designated for charitable purposes, such as the upkeep of a mosque or hospital. Waqf properties could be religious buildings, educational establishments, hospitals, etc.
- 6 Quotation from Vatican spokesman Joaquin Navarro-Valls, CNN, "Nazareth mosque dispute divides Israel, Vatican," Vatican spokesman Joaquin Navarro-Valls, November 23, 1999.
- 7 See note 5.

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From Rakevet to the Neighborhood of Neve-Shalom: Planning, Difference and the Right to the City

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Spaces are experienced by the many different people who inhabit them. What is “Culture” to one group may be “oppression” to another. (Zukin, 1995: 293-294)

Introduction

Henri Lefebvre expanded the discussion on urban space to include aspects related to identity, culture, social difference, protest, and opposition (Lefebvre, 1996). The concept of “the right to the city” that he proposed included not only a change in the class system, but also other manifestations of social power relations, such as ethnicity and migration. My interpretation of Lefebvre in regard to the right to the city is based upon the claim that his analysis – which views the spatial experience as an expression of power relations and the construction of difference – while being rooted in Marxist thought, also opens the way to understanding the politics of space in other critical fields, such as feminism and post-colonialism (Deutsche, 1988: 29). Lefebvre expands the concept of the right to the city beyond the allocation of material resources – an approach anchored in the Marxist thought from which his writing grew. For Lefebvre, the right to the city means being granted freedom,

the right not to be excluded, the right to establish an individual and collective identity and way of life, and the right to participate in decision-making.

Given this background, I wish to claim that spatial planning can serve as an effective way to realize the right to the city if, in addition to relating to universal planning needs, planning needs derived from the specific and distinctive cultural characteristics of the various groups at which planning is targeted are also taken into account. Ethnic and civic identities are always in tension, particularly when we are speaking about a national context in which the ethnic identity of a minority group “endangers” the homogeneity sought through a nationalistic project. This having been said, there are those who will claim that it is patronizing to draw a distinction between ethnic and civic belonging within the context of planning, because reference to an ethnic identity is supposed to be an integral part of the definition of the rights of a community. However, the reality of life in multi-ethnic societies has demonstrated, especially in most planning systems that function according to the principles of rational-comprehensive planning, that there is a need for such a distinction, since rational-



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comprehensive planning does by its very nature support the needs of the state by defining them as the “public interest,” while ignoring needs that derive from the identities of minority groups (Sandercock, 1998).

In this article, I expand the discussion of the right to the city beyond the political-economic dimension. To do so, I will present a specific planning project which provides us with an example of an initiative by the authorities – a project in which Arab families from the Rakevet neighborhood were evacuated to the Neve-Shalom neighborhood in the mixed city of Lod (Lod). The article is based upon field work conducted in the city of Lod in which I interviewed residents, activists from non-governmental organizations and representatives of the authorities.

The Rakevet Neighborhood

The Rakevet neighborhood of Lod was established during the period of the British Mandate as a residential neighborhood for the British employees of the railroad and their families. It was built as an isolated urban entity, according to the principles which characterized British colonial planning (Yacobi, 2003). Following the 1948 War, Rakevet served as a source of high-quality residential units for Jewish immigrants who were settled in Lod.

A report published in 1969 by the “Authority for the Evacuation and Construction of Rehabilitation Areas” described the changes that had taken place in the northern area of Lod, including the Rakevet neighborhood (Hashimshoni, 1969). The report includes details of the deterioration of the buildings,

infrastructure, and municipal services in the area. Another report published by the Authority in 1972 detailed the changes that had taken place in Rakevet: among 243 families that lived in the area (1,206 persons), 176 were Arab families (919 persons) who could be characterized as socially and economically disadvantaged. Further, the report cites that around 70% of the area’s Jewish population immigrated from Asia or Africa and that the size of the Jewish families was an average of 4.3 persons, in comparison with an average of 5.2 persons among the Arab population.

According to the report, there were 242 buildings in the neighborhood, of which 190 or 79% were residences. The segregation which existed in the neighborhood, too, was noted: two-thirds of the residents, the Arabs, were concentrated in the heart of the neighborhood and in Pardes-Snir, while the remaining one-third of the neighborhood’s residents, the Jews, lived in an area adjacent to the Lod-Ramla highway. At the time that the report was written, buildings in the Rakevet neighborhood were single-storey structures: approximately 73% were built of stone and the remainder were made from light materials such as sheet metal and wood. Although a majority of the houses were constructed of sturdy materials, the authors noted, exactly, that “only 19 families lived in buildings that could be called good” (The Authority for the Evacuation and Construction of Rehabilitation Areas, 1972: 1).

What, then, were the causes of the aforementioned change in the demographic composition of the area, and the deterioration in the state of the buildings and level of services?



From Rakevet to the Neighborhood of Neve-Shalom

The answer to this question can be found, in my view, in the ongoing conflict that has been playing out in this mixed city. Before presenting the Neve-Shalom project that is the focus of this article, it should be recalled that, as part of the authorities' policies in the 1950s and 1960s, Bedouin Arab families migrated to the area from the Negev and the Sharon. Some of these families, in particular those who came from the area of Sheikh Munis and the Triangle, received agricultural land in Lod as compensation, representing approximately 10-15% of the land that had been expropriated from them.

Overcrowding of the homes in the Rakevet neighborhood continued and worsened when two processes observed in other mixed cities occurred in parallel there: the standard of living of the Jewish population improved, and Jewish families left for new, more spacious homes elsewhere, while the Arab population which had arrived in the city settled in the neighborhood, which increasingly took on a Arab character. The housing demands of the Arab population, which had been relocated to Lod in order to solve its housing problems, were not met and as a result buildings and additions to buildings began to be built without permits, with occasional encroachment onto state land. As a result, the issue was raised for discussion in the Knesset. Former MK Rafael Swisah (Labor), who in early 1990s raised a Point of Order before the Knesset on the issue of "Dealing with Poor Neighborhoods in Lod-Ramla," stated the following:

If I saw hundreds of mice and rats in Ramla, in neighborhoods like these in Lod you can see packs of thousands of rats the normal size of cats... a

year ago I asked in the Knesset what was being done to develop these neighborhoods and was told that the matter was undergoing planning. Since then and until today nothing has changed... tourists and guests who come to the Arab neighborhoods see neglect, negligence, filth, a lack of aesthetics and inequality (Algazi, 1991).

Built at the beginning of the 1970s, the Neve-Yerek neighborhood of Lod consisted of approximately 300 residential units, and was intended for the Arab population registered as living in the Rakevet neighborhood. The planning of this neighborhood was one of the first initiatives that sought to address the housing shortage of the Arab residents of Lod. However, the project did not assign any importance to the social and cultural needs of the population, principally Arab Bedouin families who migrated to Lod following the expropriation of their land. These planning needs included consideration of the number of persons in the nuclear family, and the desire for proximity to the extended family. As a result, many of the residents of Rakevet refused to move to the new neighborhood. Furthermore, some of the families claimed that the Neve-Yerek project would only strengthen their feelings of "ghettoization":

Today the neighborhood has two entrances, two openings. However, previously there was only one entrance. I mean, it is a road, and it is supposedly okay, but there was only one place to enter and to leave. Everything moves in as if it is a trap, okay? You know, like, those paintings of mouse traps? That is what it was like (Interview with Hanan, 25 April 2001).¹



RAKEVET

In a meeting that I had with representatives of the Arab neighborhoods of Lod in April 2000, the representatives of Neve-Yerek claimed that even those families which did move to the new neighborhood at the beginning of the 1970s encountered a housing crisis, due to the natural growth of the population. Most had already expended the building rights granted to them and, since their needs had not been met, they began to build without permission.

From the 1970s onwards, an increasing area of government land in the Rakevet neighborhood was taken over and additional structures were built without permits. The former mayor of Lod, Maxim Levi, advanced a unequivocal approach which called for the “elimination” of these areas. He stated that, “Within the framework of the acceleration of evacuations, I eliminated entire neighborhoods, whose residents were transferred and dispersed among the new neighborhoods and properly integrated into the life of the community” (*B’eretz Israel*, 1983). However, in 1986, Levi admitted that this approach had failed and claimed that the wave of Arabs arriving in the city was out of control. According to Levi, the orders issued and the actual demolition of houses did not assist in solving the problem. Levi stated that:

... these are Israeli citizens. They have identity cards. But the Ministry of Interior, which issued them, is not willing to recognize them as residents, because they are not registered in the census. The city does not have a budget for the neighborhood... none of the authorities recognize them. It is as if they are anonymous people... I acted like a big hero when I said I am going to

destroy houses, but immediately I saw that there is no other place to throw these people. It was a huge mistake to destroy those houses. We have demolition orders, but no one is interested in a solution. Everyone shirks away from it (Capra, 1986).

In November 1983, the Knesset decided that the Interior and Environment Committees in the Knesset should attend to Rakevet, especially since the attention required was beyond the fiscal capacity of the Municipality of Lod. Accordingly, they recommended that responsibility for the neighborhood be transferred to the Ministries of Interior, Construction and Housing, Education and the Israel Land Administration (Municipality of Lod, 2000: 19). However, it appears that the demographic changes in Lod in general, and the Rakevet neighborhood in particular, remained out of control. A report from 1987 by the Municipality of Lod and the Ministry of Construction and Housing determined that the Arab population in the city was continuing to grow, and that none of the official agencies knew the exact proportion Arabs made up of the population, since they were not included in official surveys of the Central Bureau of Statistics (Municipality of Lod and the Ministry of Construction and Housing, 1987: 2). This situation has not changed, according to a report issued by the Municipality of Lod in 2000:

Residents of the Rakevet neighborhood do not reside on land they own, but rather on land they encroached upon that is privately owned or that belongs to the Israel Land Administration. All of this has been declared as agricultural land.



From Rakevet to the Neighborhood of Neve-Shalom

Buildings are not supposed to be built upon it; rather, is only for agricultural purposes... residents of the neighborhood are enclosed within themselves socially, are not economically viable and are involved in all kinds of questionable jobs. Sanitation and environmental quality are low and the housing is in an inhumane condition (Municipality of Lod, 2000: 19).

A spatial consequence of the abovementioned process has been the development of an informal housing market in the Rakevet neighborhood. Through such a market it is possible to rent housing in residences that were built without a permit. Furthermore, it is also possible to “purchase” building rights from private persons who have attained illegal control of state land, and who sell this land to others. This housing market is run by persons who control local social networks, and access to them was limited during the field study.

“The Sooner the Better”

A decision to vacate the Rakevet neighborhood was made in 1985. All residents registered in the area were asked to conduct negotiations with the authorities regarding evacuation and compensation. The negotiations were intended to convince families to leave Lod and to move to other Arab cities, such as Rahat and Kfar Kassem (Meeting with representatives of Arab neighborhoods in Lod, 11 April 2000). Families agreeing to this arrangement received far higher levels of compensation than those which refused. The processes of evacuation and compensation were an attempt to control the “demographic balance” of the city, as Mayor

Levi declared:

In consideration of the city’s special demographic nature... it is worth considering unconventional solutions and to act to disperse the population beyond the city of Lod and to prevent, entirely, the continuation of illegal encroachment of residents into the city in the future.

The problem of Lod’s Arab population is, as I said, difficult, immediate and requires a comprehensive, deep and immediate solution, as had been said, “the sooner the better” (Municipality of Lod and Ministry of Construction and Housing, 1987).

What, then, is the operational mechanism of this policy and how is it implemented? In order to answer these questions, I interviewed a number of employees of the Loram Company, responsible for development in the Lod-Ramla area. Loram is a joint governmental company, 75% of the stock shares of which are held by the Ministry of Construction and Housing, with the Israel Land Administration holding 20% and the Municipality of Lod the remaining 5%. The company was established in 1964 for purposes of the planning, development and construction of residential infrastructures. Its policies are formulated “with an overall view of the needs of the government, the residents and the regions in which it operates.”² Loram declares that it regulates the price of housing, thereby enabling young couples to purchase housing in the areas in which it operates. The company is also involved in evictions, demolitions, and the rehabilitation of neighborhoods, as well as the management and inspection of building work (Loram, 1995).



NAKAR

The company's engineer, Michal Berkowitz, stressed in an interview conducted on 29 January 2000 that official decision-makers establish the planning principles, and that, "the company is responsible only for their implementation." The responsibility for the eviction of Arab families from the Rakevet neighborhood was turned over to "private sub-contractors," who conduct the actual negotiations (Interview with Micah Abraham, Loram Projects Director, 29 January 2000). Hanan Shachar, an eviction contractor for Loram, related that his salary is determined on the basis of the number of evictions completed, and that the evictions often involve violence (Interview, 1 April 2001). From the figures presented to me, only 40 from a group of 200 families with whom Shachar conducted negotiations over the last 15 years received monetary compensation and voluntarily left the city. Households not owning property elsewhere and which agreed to be evacuated to the new housing project, Neve-Shalom, received compensation according to detailed criteria.

The basis for negotiations is established according to information collected by the contractor responsible for evacuations. The information gathered by Loram on the property designated for evacuation is compared with that held by the settling body involved, which in most cases is Amidar. Hanan Shachar noted that, "in the majority of cases there is a discrepancy between the structure targeted for evacuation in terms of its size and the area on which it is built and what is registered at Amidar. This is the result of the fact that, in the absence of a law, the residents took the law

into their own hands. They built additions and took control of land."

The criteria for determining compensation relate to this reality: a family that is being evacuated from an apartment in which they are living will receive compensation at a rate of 100% for the structure legally registered with Amidar, at an approximate rate of NIS 4,650 per legally-built square meter. The remuneration residents receive for additions built without a building permit is 75% of the previous amount per square meter. However, according to Shachar, it seems that there is such a great desire to evacuate the residents from the area that, in cases where the living space including its additions is less than 50 square meters, residents receive an additional 35% so that they can purchase an alternative apartment. Furthermore, families with many children receive, according to certain criteria, an additional 25% of the value of the evacuated property. A report of Contemporary Israel Investments and Development, Inc. entitled, "Evacuation Report According to Actual Demolition Date," which relates to the Rakevet neighborhood, reveals that 75 families have been evacuated from 29 residential lots, and the total amount of compensation paid was NIS 28,421,386 (2001).

In spite of the many efforts and resources invested in the evacuation of families from the Rakevet neighborhood, there remain tens of registered families who refuse to be evacuated. In addition, tens of unregistered families live in the area, although the exact number is difficult to ascertain, since they are undocumented. In an interview conducted with



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Hanan Shachar (1 April 2001), he estimated that there were around 100 such families living in Rakevet. Eviction and demolition orders have been issued against their properties, but, according to those responsible for the evacuations, “It is possible that no official body will be able to implement these orders. The police are reluctant to add to the tension and the City Council, where there are Arab representatives, is unwilling to engage in a confrontation. From what I have heard, even Court clerks are unwilling to issue orders.” An engineer employed by the Municipality of Lod, Oded Arnon, similarly claimed that, following the destruction of the houses of residents who had been evacuated, the empty land was taken over by other residents, who subsequently built houses on it (Interview, 13 December 2000). In order to prevent an ongoing struggle for control over lots whose residents have been evacuated, Loram has begun to place large boulders on land following the demolition of structures. As can be seen from **Illustration 1**, it appears that the boulders have prevented the initiation of construction without permits following evacuations.

At the Corner of Salah al-Din & Rabin

I asked Tallal, one of the residents who moved to the Neve-Shalom neighborhood, if this is the first time that a street in Lod had been named after a historic figure such as Salah al-Din? “True,” he said with pride, “but you have to see the name of the main street at the corner. Do you see what is written there?” We came closer to the street corner and I saw that we were standing at the corner of the streets – Salah al-

Din and Rabin. (Interview with Tallal A’,³ a resident of the Neve-Shalom neighborhood, 10 May 2001).

In addition to the attempt at the beginning of the 1970s to move Rakevet residents to the neighborhood of Neve-Shalom, a neighborhood named Varda was built at the end of the 1980s, with four housing blocks containing a total of 80 apartment units. The planning for the project called for residents of Rakevet to be evacuated to this new neighborhood. However, Varda was constructed without consultation of the residents’ representatives. As a result, the neighborhood was inappropriate for the lifestyle of the Arab Bedouin families, who refused to live there. Ultimately, only eight families relocated to Varda, and the remaining apartments were allocated to families of “collaborators” (meeting with representatives of Lod’s Arab neighborhoods, 11 April 2000; Interview with Hanan Shachar, 1 April 2001). In an attempt to learn lessons from the failures of the Neve-Yerek and Varda projects, the authorities endeavored to offer the residents of Rakevet neighborhood a tempting alternative in the form of the Neve-Shalom project. This project was intended to house 200 families at a cost of approximately NIS 110 million. To date, only a few of the planned units have actually been constructed.

From a distance, it does appear that a distinction can be drawn between the Rakevet and Neve-Shalom neighborhoods. The area of Neve-Shalom has a system of perpendicular streets, the lengths of which are lined with cubical structures covered in colored plaster.



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Houses are one or two-storeys high and enclosed within a fence. The roads are paved and the sidewalks constructed of interlacing pavement blocks. Street lights extend along the streets and all the houses are connected to the city's infrastructure systems. The criterion for allocating apartments to families evacuated from the Rakevet neighborhood is based upon the size of the nuclear family: families of up to four persons will receive an apartment with a surface area of 80 square meters; families of up to seven persons will receive an apartment of 100 square meters; and families of more than eight persons will receive one of 130 square meters. Here it is important to note that all the apartments were planned so that they can be extended in the future. In a report presented at a UN Habitat conference, the Neve-Shalom project was cited by the State of Israel as a positive achievement (Ministry of Construction and Housing, 2000). At a ceremony held on 17 September 2000 to mark the inauguration of the neighborhood, former Minister of Construction and Housing Benjamin Ben-Eliezer praised the project:

These days, when the extremists in the Arab sector seek to inflame hostility towards the state and its institutions, I am happy to inaugurate the Neve-Shalom neighborhood in Lod, built to replace the Rakevet neighborhood, known for many years as a center of crime and drugs. Instead of deteriorating shacks, today residents are receiving beautiful, single-storey houses, and instead of negligence and filth they will now attain comfort and dignity.⁴

According to Ben-Eliezer, the project is

exemplary of what can be achieved in other mixed cities, such as Jaffa, Ramla and Acre, if "residents will cooperate with the Ministry of Construction and Housing on the basis of trust and good will."⁵ The Minister even promised that a health center, elementary school, infant and early childcare centers, a kindergarten and a public garden would soon be built. He stated that many persons doubted whether such a project could be successful, "but those who succeeded were those who believed in Jewish-Arab co-existence in the State of Israel." However, quite a different picture emerged from my own observations and the series of meetings which I conducted with groups of residents of the neighborhoods of Neve-Shalom and Rakevet.⁶

Planning, Ethnic and Civic Needs

On 11 April 2000, soon after the first 50 families moved into Neve-Shalom, I visited the neighborhood for the first time. Already discernible at that time was the gap between how the agencies involved – the Municipality of Lod and the Ministry of Construction and Housing – perceived the project, and the cultural use of the space intended to enable residents to "attain comfort and respect."

The work of Tovi Fenster (1996) concerning the inter-relationship between the definition of planning needs and the rights of communities suggests that analytical tools from the field of gender research can assist in establishing the parameters for assessing planning and development programs for ethnic communities. The logic behind the employment of this methodology is derived from the similarities



1. The Rakevet neighborhood: boulders placed to prevent construction



2. The Neve-Shalom neighborhood: a store



3. The Neve-Shalom neighborhood: a *sheig* construction at the front of a house



4. The Neve-Shalom neighborhood: additions attached to the fences and stairs of houses



between gender relations and majority-minority relations. Just as in gender relations, where fundamental assumptions are biased by a masculine perception of the world which excludes women, so, in the case under discussion, the dominance of the majority group creates disregard for the unique planning needs of the “Other.” On this basis, two categories can be defined: “civic-planning needs,” which refer to a situation where different groups, be they ethnic or gender-based, receive identical treatment in similar situations. In such cases, the principle of equality is realized in fields such as infrastructure, employment and access to municipal services. “Ethnic-planning needs,” by contrast, are properly fulfilled when different ethnic groups receive differential treatment in similar situations, on account of the fabric of their cultural-social characteristics, including the system of internal community relations, gender or inter-generational relations, and traditional patterns of land ownership.

The question remains of how cultural dimensions can be translated into ethnic planning needs. According to one definition (Duncan, 1985), “culture” signifies the way of life of a specific group with a shared worldview, realized by their shared lifestyle and by their economic and symbolic allocation of resources. It is my claim, in relation to the meaning of the concept of culture with regards to planning and development, that the issue cannot be examined through an anthropological lens, *per se*, since culture is a socio-political factor which incorporates exclusion and social change (Zukin, 1995).

An examination of the Neve-Shalom project

that compares the *civic* and *ethnic* planning needs of the local population brings into sharper focus the issue of the right to the city. The planned area did offer residents significant improvements in environmental conditions relative to those in their former surroundings in Rakevet, from which they came. Such improvements did address their *civic* planning needs for electricity, sewage, water and roads. However, a closer examination of the standard of the infrastructure, the quality of the construction of the housing units, and the nature of the development of the surroundings reveals clear discrimination at the civic level, principally in comparison with Jewish neighborhoods built in the city during the same period. Thus, for example, the paving of streets and development work were not completed and, as a result, rain pooled during winter, creating a safety and environmental risk. The low standard of construction of the residential units was evident not only from the cracks which opened up in the walls of the houses and the fences shortly after the completion of building works, but also in the seepage of rain into the houses.

Minister Ben-Eliezer’s promise that the neighborhood would be provided with municipal services such as “an elementary school, child and infant care centers, and a public garden with playground equipment” was not upheld.⁷ There are still no municipal services in the area, except for a kindergarten and women’s health care center that were completed in February 2002. An additional kindergarten classroom and an elementary school were opened in 2004, but access to some



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of the buildings is via a dirt path. The absence of commercial urban services on a neighborhood-wide scale led one of the families to open a grocery store in the ground floor of their home, which serves the residents of Neve-Shalom, as can be seen in **Illustration 2**. Undertaken without a permit and in violation of the planning regulations, this store provides an example of how residents of the neighborhood are forced to find informal solutions to their *civic* needs.

In response to the only partial addressing of their *civic* planning needs, residents in the new neighborhood have acted to take care of specific aspects of their daily needs. Their reaction to the neglect of their cultural needs, however, has been much more intensive and revealing of the gap between the planners' intentions and daily use of the space. In opposition to planning dictated "from above," the residents have disrupted the architectural order planned for the neighborhood by adding extensions without acquiring permits to do so. In my view, such architectural actions "from below" are an additional expression of the struggle by the residents of the new neighborhood for the right to the city. Such actions encompass not only the struggle for the material right for a roof over one's head, but also a struggle for the recognition of cultural difference as a central component of daily life in the space.

There are two primary types of identifiable cultural needs on the part of Arab Bedouin families living in Neve-Shalom which did not receive attention from the planners, or which were only attended to only in part. The first relates to symbolic aspects of Bedouin culture.

The most visible example is the construction of *sheig el-mik'ad*, a traditional tent in which men gather. In the new neighborhood, the *sheig* has become a structure constructed of solid materials, such as wood and bricks. Similar to the traditional *sheig*, it is a place where guests are received, and as such it controls movement from the public space (the street in this case) to the private space (the house). The *sheig* of the Abu-Udah family, for instance, was built in such a way that it leans against the walls of the house and serves as the place where men of the extended family and guests can meet and be hosted. During the period in which the field work and observations were undertaken, many structures that serve this function were built, with most facing the street, as **Illustration 3** demonstrates. It is important to note that this phenomenon – the construction of a permanent *sheig* structure in violation of the planning regulations – is common in other government-planned Arab Bedouin towns in the Negev (Yacobi, 2004).

The second type of cultural needs relates to the division of roles between men and women in a traditional society. The gender division of everyday space and the existence of spaces "forbidden" to women (Fenster, 1999: 235-239) are characteristic of such societies, a fact which explains women's absence from the public space in Neve-Shalom. The planners' neglect of this cultural factor can be discerned through the architectural modifications undertaken by residents immediately upon moving into the new neighborhood. In **Illustration 4**, we see that various kinds of additions have been attached to most of the



fences surrounding the houses, in order to raise them and to create a clear separation between the public space (the system of streets) and the private space (the houses' courtyards). Also discernible from the illustration are the sheet metal and plastic sheets which have been attached to the guardrails of the exterior stairs leading into the houses. These additions shield the movements of women in and out of the house from public view. An additional architectural change can be seen in the houses located along the margins of the neighborhood. There the area outside of the lots has been fenced off by residents and appropriated as part of their land. According to the original plan, the courtyards were located so as to create a direct connection with the street, that is, the public space. However, such spaces are used by women for activities connected with the household, such as cooking or raising animals, hence the need to fence them off and add them to the private space.

"A Maze of Autonomous Activity"

The fieldwork I conducted included interviews with many residents of Lod. Among them was Tamer al-Nufar, who lives in the Ramat Eshkol neighborhood, one of the neighborhoods which has been undergoing "Arabization" since its establishment in the 1970s. We met at the neighborhood grocery, a sheet metal shed built without a permit at the edge of a main street. Dressed in the garb of a rapper, Tamer led me to his parent's house – a typical but well-kept apartment which stood out markedly from the neglected stairwell and the street. Much can be gleaned about the meaning of the spatial

processes that have been taking place in Lod from the feelings which Tamer expressed:

Let's compare it with an all-Jewish neighborhood, say Ganei Aviv, in terms of how it looks, or the "Build-your-own Home" neighborhood. Now give me two Arab neighborhoods ... say, Rakevet. Now you see the differences. Terrible! Been there? ... Did you see the bridge when you entered Ganei Aviv? Nice, huh? Did you see the "stops" [from the Hebrew word "tach'anah," which refers to a place where drugs are bought and sold] here and there when you entered Rakevet? Now, if you are a kid, you look around to see where you live. There everyone is Jewish and you see how nice they look. Rakevet people, all of them are ugly (Interview with Tamer al-Nufar, 22 January 2001).

From what Tamer al-Nufar and other interviewees⁸ told me, it is clear that the spatial dimension represents the power relations in the city, which is expressed clearly by the images used to describe the Arab neighborhoods in the city and their social meanings. Lod is described as a city of walls and ghettos, of order and disorder, of filthy and clean places, all of which creates the distinction between "permitted" and "forbidden" places, and accordingly "the Arab place" and "the Jewish place." The borders between these spaces, symbolic borders connected to ethno-national association, are constructed as part of the struggle over the identity of the city, but also create tension and segregation through their symbolic meanings. One aspect which appeared clearly in all of the interviews conducted is the use of different places in the city, "representational spaces" in



Lefebvre's terminology, that are distinguishable by the use of metaphor in descriptions, the use of symbols, and in the creation of connections between "ethno-national" association and "a place."

However, in this regard, I would like to propose an alternative, less binary interpretation. The physical space in Lod's Arab neighborhoods, such as Pardes-Snir and Neve-Shalom, provides the most prominent expression of protest by the Arab residents of Lod. The phenomenon of construction without a permit is undoubtedly a private reaction to the absence of a public response to the basic need for housing. However, the appearance and extent of structures without permits, and the inability of municipal authorities to deal with them provide an opportunity for an alternative view of this phenomenon. Construction without a permit may not only be a housing solution, but also an expression of protest that extends beyond the binary definition of opposition and non-opposition as two extremes – one an expression of collective and conscious organizing, the other indicative of passivity. I propose that we rather recognize it as a tapestry of personal actions, which usually take place without coordination and which in their strength undermine the hegemonic interest.

I do not claim that these are conscious actions. Yet, the presence and appearance of structures built without permits do stake out entire areas of Lod as Arab, and in doing so "threaten" an urban landscape which seeks to be Jewish, Western and modernist. We should abstain from idealizing construction without a permit, as it jeopardizes the capital of the city's residents

and does not allow for the provision of services and infrastructure at a reasonable level. However, such activities strengthen the presence of Arab residents in Lod and serve as a form of spatial declaration and protest, with the appearance of a subversive act against the "Judaization" of the city.

This conclusion is the first step in an attempt to describe the strength of everyday practice. Following the insights of Michel de Certeau (1997), this is an effort to challenge the view which sees the nature of everyday actions as a dark background of social activity. This position is further supported by the research of Adriana Camp (2000: 42), who claimed that the binary distinction between "small," daily forms of opposition and between conscious, "political" protest misses the principal issue. According to Camp, practical, daily forms of opposition always move between the unconscious and the conscious, between the direct and the indirect. These statements, which are based upon de Certeau's approach, support the importance of research involved in activities of users that are commonly thought of as passive and disciplined (de Certeau, 1997: 15). Furthermore, the strength of such activities, according to de Certeau, extends beyond the dichotomous division between opposition and non-opposition, and reveals a "maze of autonomous actions," which have the power to challenge the appearance of total control.

On the basis of this discussion, I have sought to illustrate the symbolic meaning of the "small" protest and to claim that, in spite of the substantial strength of the professional domain, which translates power relations into a spatial



product, the built-up area of Lod is characterized not only by its top-down planning and control. One of the patterns of the landscape which dominates in Lod is informal building which, while seeking to provide for residents' basic needs, at the same time presents a threat to the cultural existence and image of the city as a Jewish city. Thus, the autonomous action which is at the center of the right to the city also undermines the achievements of the professional domain, which is closed to anyone who is not a member of the professional community: contrary to the many efforts and resources invested by Lod's planners, the city is becoming "Arab."

Notes

- 1 Fictitious name.
- 2 See, the Loram Company Internet site, <http://www.loram.co.il>.
- 3 Fictitious name.
- 4 Office of the Spokesperson, Ministry of Construction and Housing, 17 July 2000.
- 5 Ibid.
- 6 The meetings with residents of the Rakevet and Neve-Shalom neighborhoods took place on 11 April 2000, 10 May 2001, 8 November 2001, 19 February 2002.
- 7 Office of the Spokesperson, Ministry of Construction and Housing, 17 September 2000.
- 8 For a broad narrative analysis of interviews I conducted with residents of Lod, see Yacobi, 2003.

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The Right to the City and Gendered Everyday Life¹

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Introduction

This paper discusses new forms of belonging and citizenship in cities in the age of globalization from a gendered and feminist perspective, and connects them to women's everyday lives and to the planning and governance of cities. In doing so, it challenges the Lefebvrian notion of "the right to the city" using a gendered and feminist critique, by arguing that the identification of the right to the city according to this notion pays insufficient attention to patriarchal power relations, and therefore does not produce a relevant standpoint for this discussion. This critique will be developed by looking at women's everyday experiences and their reflections on their feelings of comfort in, and sense of belonging and commitment to, the city in which they live.

Some of the current discussions on citizenship in this era of political and economic restructuring indeed point to the reconstruction of forms of citizenship and belonging. While traditional definitions of citizenship discuss the legal and jurisdictional aspects of the concept, referring mainly to equality, communality and homogeneity as components of the meaning of citizenship, new forms of this concept

incorporate normative expressions of belonging which highlight issues of difference, and cultural, ethnic, racial and gender-based diversity.² The result is a shift in the discussion from the widely-used conceptualization of citizenship to more complex, sophisticated, and for some less optimistic, interpretations of exclusion, and towards new formations and normative definitions of belonging, particularly on a gendered basis (Kofman, 1995; Yuval-Davis, 1997, 2000).

The current literature on citizenship shows how women have been the object of discrimination in numerous cultures and political contexts at all levels and within all sectors, from the private - the home - to the public - the city and the state - in economic, social, welfare-related and political contexts (Yuval-Davis, 1997; McDowell, 1999; Lister, 1997; Young, 1990).

Within this framework, this paper attempts to shed a gendered light over the discourse on citizenship and belonging in the city, rather than the state. In particular, it looks at the Lefebvrian idea of 'citadenship,' that is, the right to the city. This idea connects the everyday life of the individual to local governance activities and, as argued in this paper, is blind to the



effects of gendered power relations on the fulfilment of women's right to the city. The paper demonstrates how, in fact, the abuse of the right to the city has become a daily experience for many women, as is expressed in their narratives.

The paper begins with a brief contextualization of the notion of the right to the city within the discourse on new forms of citizenship. It then analyzes the right to the gendered use of the city, by revealing the tight links between the discussion on the right to use public spaces – the city – and the right to use private space – the home. This analysis is followed by a discussion of everyday belonging and gendered practices, gendered exclusions from the right to the city resulting from issues of fear and safety, and the practices of 'sacredization' of public spaces.

The analysis in this paper is based on research carried out between 1999 and 2002, in the course of which residents of London and Jerusalem³ were interviewed about their everyday experiences as they relate to comfort, belonging and commitment, as three elements which together comprise quality of life. They presented their interpretations of these three components with regard to the various scales which form part of their daily environment: home, building, street, neighbourhood, city centre, city, and urban parks (Fenster, 2004).

Citizenship and Belonging in the Era of Globalization

As Purcell notes, radical reconstructions of formal citizenship point to three main changes in its formation (Purcell, 2003). The first is a

rescaling of citizenship, whereby the former hegemony of the national scale is weakened by the creation of other scales of reference.⁴ The second change involves a *reterritorialization of citizenship* so that the tight link between the nation state's territorial sovereignty and political loyalty to the nation state is called into question. Such a situation follows from a redistribution of authority to the local – to the city. The third change entails a *reorientation of citizenship* far away from the nation as the predominant political community and from citizens as homogenous entities. Here the notion of differentiated citizenship introduced by Iris Marion Young (1998), or the multi-layered citizenship introduced by Nira Yuval-Davis (2000), replace the ideal of universal citizenship according to the liberal democratic approach. As Purcell argues (2003), this reorientation of citizenship leads to a proliferation of identities and loyalties to multiple political communities.

One of the alternative voices in the growing discourse on traditional and legal forms of citizenship is the normative notion of "the right to the city" developed by Lefebvre (Lefebvre, 1991 a, b; Kofman and Labas, 1996). Lefebvre's right to the city constitutes a radical rethinking of the purpose, definition and content of belonging to a political community. Lefebvre does not define belonging to a political community using the terminology of formal legal citizenship status, but grounds the right to the city in a normative definition based on *inhabitation*. Those who inhabit the city have a right to the city. The right to the city is earned by living in the city, and belongs to the urban dweller, whether citizen or stranger.



Lefebvre's concept of the right to the city evolves within it two main further rights (Purcell, 2003):

- *The right to appropriate* urban space in the sense of the right to use: the right of inhabitants to 'full and complete use' of urban space in their everyday lives. It is the right to live in, play in, work in, represent, characterize and occupy urban space in a particular city.
- *The right to participation*: the right of inhabitants to take a central role in decision-making processes surrounding the production of urban space at any scale, be it the state, capital, or any other "actor" which partakes in the production of urban space.⁵

The specific rights to appropriate and to participate are earned by meeting particular responsibilities and obligations, through which each person helps to create the city as an artwork by performing one's everyday life in urban spaces.⁶ This perspective expands the discussion on citizenship and views citizenship as a 'spatial strategy,' as a spatial process whereby identities, boundaries and formations of belonging are fixed and then deconstructed (Secor, 2004).

Within this conceptual framework, the first question that comes to one's mind is to what extent this notion of the right to the city is sensitive to issues of identity difference. Lefebvre indeed includes the right to difference as a right which complements the right to the city (Dikec, 2001). In this he relates to, "the right not to be classified forcibly into categories which have been determined by the necessarily homogenizing powers" (1976, in Dikec, 2001: 35). However, as Dikec notes, Lefebvre's

emphasis is on the 'be' of the right to be different rather than the 'different' itself. As such, his definition does not relate to the notions of power and control, which are identity and gender-related. Therefore, it does not challenge gendered power relations as one of the dominant factors affecting the potential to realize the right to use the city, and the right to participate in urban life. The gendered aspect is not the only aspect absent from Lefebvre's model. Other identity-related issues and their affect on the fulfillment of the right to the city also seem to be missing (Mitchell, 2003).⁷

The Right to Gendered Use of the City – The Private and Public in Lefebvre's Theory

A large amount of work has been dedicated to different definitions and perspectives of the 'private' and the 'public': their cultural orientation (Charlesworth, 1994; Fenster, 1999b); their associations (at least the public space) with the political sphere (Cook, 1994; Yuval-Davis, 1997); their roots in Western liberal thought and different forms of patriarchy (Pateman, 1988, 1989); and their feminist perspectives. In this context, Lefebvre's right to the city clearly refers to the public – to the use of public spaces, those which create the *oeuvre* – a creative product of and context for the everyday lives of its inhabitants. However, the *oeuvre*, the 'public,' is perceived by some feminist critics as the domain of the white, upper-middle class heterosexual male. This means that women in cities, both Western and non-Western, simply cannot use public spaces such as streets and parks, especially when alone



(Massey, 1994), and in some cultures cannot wander around in them at all (Fenster, 1999a). Women belong to the 'private' sphere.

However, what women's narratives uncover is that their right to use is denied even in the 'private.' This means that we must look at the right to use from both private and public perspectives in order to fully understand the roots of the abuse of the right to use. Therefore, the discussion in this paper on the right to use public spaces and the right to participate in decision-making must begin at the level of the home. As the narratives below show, in spite of the idealized notion of the 'home,' the 'private' - the women's space, the space of stability, reliability and authenticity, the nostalgia for something lost which is female (Massey, 1994) - home can be a contested space for women, a space of abuse of the rights to use and to participate. Two narratives follow which exemplify how the rights to use and participate at the level of the home are abused when women talk about their feelings of comfort or discomfort:

I feel very uncomfortable and like I don't belong to the home because I live with my partner and he has his own needs and his own tastes, which are different from mine. The way the house is arranged is not exactly how I would have arranged it. It is too neat. I don't like the furniture...it makes me feel less like I belong. Belonging for me means to be in my own space, and that I decide what will be in it. Total control. (Amaliya, 30's, married with one child, Jewish-Israeli (living in London), London, 22 August 1999).

This narrative⁸ in fact illustrates the extent to

which the right to use and the right to participate is sometimes abused at the level of the home because of patriarchal domination, which for many women around the world becomes a daily routine. For Amaliya, the order and arrangement of space in her home, which was made without her participation, is what makes her feel a lack of comfort and belonging. This experience perhaps reinforces the feminist critique of the division between the 'private' and the 'public' inherent in Lefebvre's ideas. As feminists argue, these divisions are invoked largely to justify female subordination and exclusion, and to conceal the abuse of human rights at home from the public sphere (Bunch, 1995). By isolating the discussion on the right to the city from the right to the home, Lefebvre creates a rather neutral 'public' domain, which ignores gendered power relations as a dominant factor in the realization of the right to use, and which therefore has no relevance to the reality of women's everyday lives in cities. Obviously, this does not mean that women who experience strong patriarchal control at home also necessarily suffer from restricted use of the city, but it is important to highlight the strong linkages between the 'private' and 'public' when evaluating Lefebvre's notion of the right to the city.

These strong links sometimes find contrasting expressions, as Fatma's narrative shows. She describes a situation of strong patriarchal power relations at the level of the home, which makes her feel less comfortable in and less like she belongs to the home than to the city. For her, as her control within her home is very restricted, the city becomes a liberated space:



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Home – prison! Although in my room I have all I need to ‘get out’ – computer, internet, video, T.V. Cables with 50 channels... I have everything, but this is not enough.

City – freedom, personal freedom, atmosphere, spring.

For Fatma, an unmarried Muslim woman in her 40’s who lives with her mother, home is a place of no rights whatsoever. It is a culturally-constructed space in which she feels constrained by the strong patriarchal control of the extended family and local community, while the city is where she feels liberated, a place where it is easy for her to practice her citizenship as a negotiated process. It is as if the city becomes her ‘private’ or ‘intimate’ space, where she is able to be herself. “These cities,” writes Elizabeth Wilson in her book, *The Sphinx in the City* (1991), “brought changes to the lives of women. They represented choice” (p. 125). Here she refers to the new colonial cities of West Africa. However, the role of cities in providing choice in women’s lives also seems relevant to women in other places.

The above examples emphasize the necessity of discussing the right to use at the level of the home as part and parcel of the discussion of the right to the city. The narratives suggest that many women, even those who identify themselves as ‘Western’ or part of the majority, experience gendered, controlled, power relations at home. However, some narratives show that those who experience strong patriarchal power control at home may find the city an easier space in which to negotiate their sense of belonging and citizenship. These narratives emphasize the

importance of connecting the private and public domains in the discussion of the right to use.

The dominance of patriarchal power relations in the private domain obviously affects the different ways in which women fulfill their right to the public sphere - to the city. For example, women cannot always leave their homes and engage in activities in the public sphere, such as studying, let alone partake in political activities, which usually take place in the public sphere. Moving onward in the discussion, let us now explore the right to use the city, and the different formations of belonging in the narratives of women.

Everyday Belonging and Gendered Practices

The right to belong inheres in the right to use the city. In fact, the possibilities of the daily use of urban spaces are what create a sense of belonging to the city. De Certeau’s book, *The Practice of Everyday Life* (1984) connects between these two elements of ‘use’ and ‘belonging.’ Belonging for him is a sentiment, which is built up and grows with time out of everyday life activities and use of spaces. De Certeau terms it ‘a theory of territorialization’ through spatial tactics: “*Space is a practical place*. Thus, the street geometrically defined by urban planning is transformed into a space by walkers” (p. 117). For de Certeau, everyday corporal activities in the city are part of a process of appropriation and territorialization. He actually defines the process through which a sense of belonging is established by a repeated fulfillment of the right to use. Belonging and attachment are built here upon a base of accumulated



knowledge, memory and intimate corporal experiences of everyday use, mainly by walking. These daily practices of appropriation and re-appropriation of space – ‘tactics’ in de Certeau’s terminology – become the means of encountering and contesting the hegemonic notion of citizenship (Secor, 2004). Citizenship is thus viewed as a technique of spatial organization in which gendered identities, gendered roles and patriarchal powers become markers in negotiations and contestations over rights and formations of belonging in city spaces. For de Certeau, citizenship is a strategy which works to define and lay claim over a bounded space of belonging (de Certeau, 1984; Secor, 2004).⁹

Claim and appropriation of space are a construct of the everyday walking practices as noted by de Certeau, and are part of the strategies used to define and position claims to a specific space. These practices, which are repetitive, engage what Viki Bell (1999) defines as ‘performativity and belonging.’¹⁰

Using urban spaces for the practice of belonging and the spatial negotiations of citizenship results in the sense of spatial knowledge which women experience in their environment, a spatial knowledge which comes out of claims to and symbolic appropriation of spaces:

I know the street. I live here. I know the building – every stone of it. I know it more and more. A very intimate knowledge. (Susana, 30’s, married with one child, Jewish-Israeli, Jerusalem, 13 July 2000).

I feel connected to Salah al-Din and some places in the Old City. I have memories from my school

days and boarding school in front of the Orient House. I used this area a lot in my life so I feel connected to it (Saida, 30’s, single, Palestinian-Muslim, Jerusalem, 30 December 2000).

The use of space and knowledge of it is an expression of the right to use and the right to appropriate public spaces. Knowledge comes with intimacy of use and a sense of belonging. Everyday practices are expressions of gendered role definitions within households. Women experience their daily practices - their strategies and tactics of formulating their frameworks of belonging - when they fulfill their gendered roles and responsibilities for maintaining the cultural norms of their communities by raising children or cooking. To perform their social and familial duties, they must negotiate their spatial practices of citizenship in order to ensure that they can realize their right to use, so that they can go to work, do their shopping, take their children to educational and health services, and so forth. Here, the right to use public spaces engages ‘fundamental human rights,’ to food, shelter, health and employment: the basic necessities of human survival (Kaplan, 1997). Here, too, the connection between the ‘private’ and the ‘public’ becomes clear. For women to fulfill their duties in the private sphere, they must negotiate their ‘public’ citizenship.

Gendered Exclusions from the Right to the City

The narratives presented so far have exposed everyday practices in which the right to use has been fulfilled to a certain extent within the context of women’s traditional gendered roles.



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However, there are other experiences, which indicate the violation of the right to use and belong to the city by patriarchal, cultural and religious powers' construction of public spaces as forbidden.

Legitimized forms of exclusion are usually associated with traditional definitions of citizenship.¹¹ These definitions are viewed as identity-related, in that they dictate which identities are included within the hegemonic community, and which are excluded. These definitions can have negative effects on women, children, immigrants, people of ethnic and racial minorities, gays and lesbians and sometimes also on elderly people. In this respect, the normative definition of the right to the city seems to be inclusive with regards to marginal groups, such as transnational migrants or people of different identities living in the city, and also to women. However, these inclusive practices are not always fulfilled, precisely because of patriarchal domination at the various levels discussed in this paper: home, building, street, neighborhood, city, and so on. In the previous section we saw how the dominance of patriarchy abuses the right to use at the level of the home. At the level of the city, patriarchal practices are expressed in feelings of fear and safety, and in gendered exclusions from public spaces, in accordance with religious and cultural norms. Both practices create 'forbidden' spaces for women and limit their right to the city.

1. Fear and Safety

Fear of using public spaces, especially the street, public transportation and urban parks, is what prevents many women from fulfilling their right

to the city (Valentine, 1998; Pain, 1991; Madge, 1997).¹² Fear and safety can be seen as a social as well as a spatial issue connected in many cases to the design of urban spaces:

The avenue in my street is scary because there is only one exit to it – you can't leave it from everywhere. And there are benches where weird 'creatures' can sit and molest you and you feel trapped... so it is not so pleasant... if you get into the avenue you are lost... it is really male-planned – 'they' did it because of the transportation, but it prevents me from walking in the avenue. (Rebecca, 30's, married, Jewish-Israeli, Jerusalem, 3 February 2000).

Rebecca expresses an experience common to many women when their daily use of the city is disrupted because urban spaces are designed in such a way that they become a 'trap' for women, unpleasant and thus unused. They become a 'planned trap.' That is, planners created or designed those spaces without paying sufficient attention to gendered sensitivities, and again created unused spaces in the city. Here women voluntarily restrict their mobility and movement, and reduce their right to use. Resisting these male spatial constructions of space can be part of women's negotiations over the expansion of their use of public spaces.

Urban parks have the same association. Some women perceive parks as 'hostile male areas': "They are 'conquered' areas. I feel angry that I can't use them." (Aziza, 30's, single, Palestinian citizen of Israel, Jerusalem, 7 August 2000). What Aziza expresses here is mainly a sense of exclusion from public spaces because of fear and lack of safety, but perhaps she is also



expressing her anger at the misuse of public spaces in a way that prevents her from using them, because they are controlled and dominated by men. It seems that fear is a feeling which transforms urban parks into forbidden spaces after a certain time of day. Most women in both Jerusalem and London avoid using this space at night. Indeed, other research (Madge, 1997) shows that fear of urban parks, especially at night, is the main common denominator in their lack of use, not by women but also by men.

What, then, are safe spaces? These are the spaces which allow for practices of citizenship and the fulfillment of the right to use. Aziza's narrative illustrates the characteristics of such areas:

I feel most comfortable in this neighborhood because it is the most beautiful place in the city of Jerusalem. I am a person of constraints: I am a woman, Palestinian, alone, [this neighborhood is like] a microcosm – it reminds me of London; a variety of people... in such places I bloom, like a fish in the water, this is my sea. I feel very protected because this neighborhood is on the border between West and East Jerusalem and it is the ideal place for me. I lived once in Rehavia [a Jewish neighborhood] and felt suffocated. From here I can easily get to the Old City. (Aziza, 7 August 2000).

What Aziza expresses here is precisely what is incorporated in the notion of the right to the city. For her, a safe space is an urban space, which allows her to live as an anonymous person. This is a space which allows her to negotiate her rights as a citizen. As a single

Palestinian woman, she acknowledges the constraints which exist for women in her culture, and also for people of her nationality in the current political situation of the occupation. The right to the city is therefore fulfilled when the right to difference on the basis of nationality is also fulfilled, and people of different ethnicities, nationalities and gender identities can share and use the same urban spaces.

2. 'Sacredization' and Gendered Exclusion as a Result of Religious & Cultural Norms

The second example of gendered exclusions in the city is expressed through the cultural and religious norms of the body and its representations. The 'cultural guards' of society, i.e., men and elderly women, dictate the boundaries of sacred spaces and privatize them so that only those who follow restrictive rules of clothing can use them (Fenster, 1999a). Such symbolic spaces are often the symbol of a particular national collectivity, its roots and spirits (Yuval-Davis, 1997). Therefore, women's spatial mobility is very much dictated, if not controlled, by these cultural-symbolic meanings of space. In this way, religious and cultural norms create 'spaces of belonging and dis-belonging,' which then become, for example, forbidden and permitted spaces for women in certain cultures, and certainly have their effects on practices of 'the right to use' as expressions of citizenship (Fenster, 1998, 1999b).

In 1999, I wrote about the cultural construction of space of Arab Bedouin women living in the Negev [Naqab], in the south of Israel (Fenster, 1999b, c). There I mentioned



the construction of the public/private dichotomy as forbidden/permitted cultural constructs of space, which become restrictions on Arab Bedouin women's movement within their towns. The narratives of women living in Jerusalem and London reveal that these terminologies are relevant not only for Arab Bedouin women, but also for women in other cities around the world. In Jerusalem, for example, most women I talked to, both Jewish and Palestinian, mentioned the ultra-orthodox Mea Shearim neighborhood as an area they associate with discomfort, because they have to dress according to certain cultural codes. They therefore avoid walking in this area because of the sense of threat they feel there. (Fenster, 2004).

Conclusions

This paper exposes the multi-layered nature of the everyday gendered belonging and citizenship entailed in the Lefebvrian right to the city, and presents a feminist critique of this notion. The basic premise of the paper is that citizenship and belonging should be seen as spatial dynamic processes, and not as static definitions which are articulated in women's everyday lives and identities.

The paper highlights the extent to which the right to the city, that is, the right to use and the right to participate, are violated because of gendered power relations. These violations are expressed through women's daily lives in Jerusalem and London when they talk about their sense of comfort in, belonging and commitment to their cities.

To conclude, "the right to the gendered city"

means that evaluations of the right to use and the right to participate must be included in any serious discussion of patriarchal power relations, both in the private and the public spheres, as well as of the extent to which these power relations harm the realization of the right to the city for women, people of ethnic and racial minorities, etc. Such a discussion is missing from Lefebvre's current conceptualization of the right to the city, an omission which makes this concept rather utopian.

Notes

- 1 An elaborated version of this paper entitled, "Identity Issues & Local Governance: Women's Everyday Life in the City" appears in *Social Identities*, 11(1) (2005), pp. 23-39.
- 2 Nevertheless, one of the most widely-used interpretations of citizenship remains the one Marshall defined (1950, 1975, 1981) as "full membership in a community", encompassing civil, political and social rights. Critiques of this definition have based their arguments on current political and social crises, wherein the exercise of the power of the nation state is challenged.
- 3 The reason for the selection of these two cities is that they reflect contrasting images and symbolisms. Jerusalem is a home to people of diverse identities, especially in light of its image as one of the holiest cities in the world; a place of symbolism for Muslims, Christians and Jews. Jerusalem is also a city associated with rigidity, perhaps fanaticism, strict rules and boundaries, which sometimes find their expressions in spaces of sacred belonging. These spaces sometimes exclude women (B'Tselem, 1995; Bollens, 2000; Cheshin, Hutman & Melamed, 1999; Romann & Weingrod 1991; Fenster (forthcoming). London is a city famous for the impacts which globalization has had on it, and for its cosmopolitanism, openness, and tolerance, but also for negative and depressing connotations, especially for non-English people (Fainstein, 1994; Forman, 1989; Jacobs, 1996; Pile, 1996; Raban, 1974; Thornley, 1992). Analyzing the narratives of women living in these two cities helps to expose the multi-layered nature of gendered belonging, which is constructed through daily urban practices.
- 4 This change works in two directions: either *upscaling*, including EU citizenship, which results in new forms of cosmopolitan citizenship and global democracy, or *downscaling* citizenship, which refers to shifts to subnational scales, such as municipalities, neighborhoods, regions, or districts, particularly in cosmopolitan cities.
- 5 As Dikec (2001) points out, the right to participation entails

- the involvement of inhabitants in institutionalized control over urban life including participation in the political life, management, and administration of the city.
- 6 For Lefebvre, the city should be thought of as a work of art. The artist is the collective routines of daily life of urban dwellers and inhabitants. The city is a creative product of and context for the everyday lives of its inhabitants.
 - 7 Mitchell (2003), for example, examined how homeless people were excluded from using public spaces through their regulation in such a way that aesthetics are elevated above people's survival needs. Anti-homeless laws, he argues, undermine the very right to the city. This example again demonstrates the sometimes opposed and contradictory meanings of citizenship, and the extent to which new formations of belonging can be identified when expanding definitions of citizenship.
 - 8 Due to limitations of space, only a few narratives are presented as examples in this paper. For an elaborated analysis, see Fenster, 2004.
 - 9 Examples of such practices are the different uses of public spaces, mainly urban parks, by individuals and groups, which occur as part of casual daily encounters between people or groups: individuals wish to appropriate sections of public settings in order to achieve intimacy or anonymity, or for social gatherings. These appropriations are mostly temporary, but even temporal appropriations are sometimes negotiations over the rights to belong, to be part of a community, and to be visible (Fenster, 2004).
 - 10 Performativity is the replication and repetition of certain performances, which are associated with the ritualistic practices through which communities colonize various territories. These performances are in fact the realization of the right to use in certain spaces, and through them a certain attachment and belonging to a place is developed (Leach, 2002).
 - 11 Many critics from both the left and right recognize that citizenship is by definition about exclusion rather than inclusion for many people (McDowell, 1999).
 - 12 Fear of harassment in public spaces cuts across women's everyday life experiences in both London and Jerusalem. It also cuts across other identities, such as nationality, marital status, age, sexual preference, etc.
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Spatial Violence on Behalf of the Homogeneous “Order”

The Editors

Urban planning deals principally with directing the design and development of the physical, social and economic space on different levels: national, regional, urban, neighborhood, through to the level of the individual home. In this respect, planning is a critical tool in the hands of public institutions for making decisions over the allocation of land, in order to develop the lives of the citizens of the state. The significance of planning is all the greater when the state and its related institutions own 93%¹ of the country's land, as in the case of Israel.

Similar to the Israeli political, social and economic regimes, the land regime in Israel developed into a violent regime, lacking the capability, and indeed the desire, to accept differences on the basis of ethnicity, class and communality. Hence, the regime created, and indeed continues to create, “conflicts” over space and housing, homogeneous spaces which express the vision of “land redemption” and endless spatial violence.

A review of the terminologies used by the authorities with regard to issues of space and majority-minority relations reveals a militaristic discourse expressive of a desire to conquer and control the ‘other’ (i.e. the Palestinian citizens

of the state), as well as a view of the same ‘other’ as a threat, simply by virtue of their being present in the space. Thus, for example, senior officials have been quoted as stating the following in reference issues of spatial settlement:

- “If we do not settle the land someone else will do so.”²
- “The settlements were intended to stop the expansion of illegal Arab settlements.”³
- “We have a circle of settlements surrounding Beer-Sheva... we need to establish a parallel arrangement in order that Beer Sheva will not be strangled. The settlements along Highway 31 are essential in order to prevent [Beer Sheva's] being cut off from ‘Arad.’”⁴
- “In carrying out my various tasks, I always acted to preserve the nation's land, to keep a tight grip on it in order to prevent its coming under the control of foreign elements [...]”⁵

In such a spirit, successive Israeli governments have developed policies to ensure “preservation of national lands,” prevent “control by foreign elements” and promote solely Jewish settlement over significant areas of the state in order “to stop the expanding settlement of Arabs.” This



policy led to segregated housing, the division of the land for separate use by Arab and Jewish citizens of the state and created large gaps between the jurisdictional areas available to Arab and Jewish towns and villages. This policy is also responsible, among other things, for the following:

- Although the Arab population in Israel accounts for approximately 19% of the country's entire citizenry, the area over which Arab local authorities have jurisdiction covers a mere 2.5% of the land area of the state (Yiftachel: 2000: 7). The overwhelming majority of the remaining area is under the control of Jewish local authorities (Yiftachel and Kedar: 2000: 84).
- The Central Bureau of Statistics in Israel defines approximately 89% of all towns and villages in the state as Jewish.⁶ Arabs are not allowed to live in approximately 78% of these towns and villages, owing to the fact that admissions committees monitor applications for housing units, partly in order to filter out the Arab population.⁷
- Arab citizens of the state are not permitted to lease or purchase approximately 80% of the land (Yiftachel and Kedar: 2000: 85).

This policy of segregation is implemented in practice by use of planning, building and land laws, as well as use of the authority granted by these laws. The "Four Cases of Segregated Spaces," presented in this section of *Makan* exemplify this policy at different levels and describe the different means used by the government to achieve the goals behind this policy. The case of the Sawaed family clearly demonstrates how the well-oiled bureaucracy

of planning prevented the issuance of a permit to allow the family to build a house on their privately-owned land for eight years. While the land is designated for residential use, it is located in the "incorrect" place – amidst Mitzpeh Kamoun, a settlement in the Galilee in the north of Israel intended for Jewish residents only.

The second case exemplifies an additional step in the policies of segregation employed by the authorities to divide the Arab and Jewish populations when the two communities live alongside each another. In this case, in the mixed Arab-Jewish city of Led (Lod), a wall was planned to achieve the separation of the Palestinian citizens of Israel who reside in the neighborhood of Shanir from the Jewish residents of the nearby *moshav* (agricultural settlement) of Nir Zvi.

The case of Arab Bedouin living in the unrecognized villages Umm al-Hieran and Atir in the Naqab (Negev) reveals details of a second attempt to expel the villagers from their homes, the first expulsion having taken place at the time of the establishment of the state. The reason given for the second expulsion is that the location of the village produces a "special problem," given the plan to establish a Jewish settlement named Hiran on the site.

The other side of the coin of the same policy becomes clear in the fourth and final case, which describes how vast areas are allocated to Jewish families in the Naqab under the "Wine Path Plan," intended as a way of guaranteeing exclusive Jewish use of the land.

The section concludes with excerpts from a petition submitted to the Supreme Court by



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Adalah on 13 October 2004 against the Israel Land Administration (ILA), the Minister of the Finance, and the Jewish National Fund (JNF), which challenges the ILA's policy of distributing lands owned by the JNF exclusively to Jewish people. Additional excerpts are presented from the JNF's response to this and another petition submitted in this regard by the Association for Civil Rights in Israel (ACRI) and the Arab Center for Alternative Planning (ACAP).

A review of the JNF's response to the petitions reveals that it has failed to deal with a number of claims made concerning the source of its ownership of its lands, its authority, and the impact of the policies for the marketing of its lands. For example, no response is given to the fact raised in Adalah's petition that a large portion of the lands currently owned by the JNF were previously transferred to it by the state of Israel. For its part, the JNF claims that, since it purchased these lands with funds contributed by Jews throughout the world, the organization is permitted to allocate them as it sees fit, even where this contradicts the principle of equality. Such a position contradicts the spirit of the Israeli Supreme Court's decision in the *Qa'dan* case,⁸ which forbids the transfer of resources of public land to organizations which operate, essentially, for the sole benefit of the Jewish population, and which admit that they are not committed to the principles of proper administration and equality. The JNF's response also fails to deal with arguments made regarding the public authority awarded to it in accordance with the state's laws, the extensive power which has been granted to the JNF to determine the state's land policies, and the

contradiction which exists between these responsibilities and the JNF's claim that in all matters related to land ownership it can act as though it were a private company. Finally, the JNF's response clearly demonstrates that, since the organization defines the state as Jewish, it can therefore market JNF-owned lands exclusively to Jews, in fact creating areas of segregation on the basis of national belonging. For instance, in its response, the JNF states that 500 agricultural settlements, solely Jewish of course, have been built on its lands.

Notes

- 1 <http://www.mmi.gov.il>.
- 2 Prime Minister Ariel Sharon, as quoted from a governmental meeting convened on 21 July 2002 in a report by Diana Bachor entitled, "Arab Settlement," source: <http://www.ynet.co.il>, 21 July 2002.
- 3 Minister Itzhak Levi, as quoted from a governmental meeting convened on 21 July 2000 in a report by Diana Bachor, *ibid*.
- 4 Pinni Badash, Head of Omer Municipal Council; as quoted by Nir Hasson in, "Where to Live – in Archovit or Omrit?" *Ha'aretz*, 16 July 2002.
- 5 Former Minister of Infrastructure in his response to the State Comptroller of December 1999 regarding policies on individual settlements. State Comptroller's Report, 50B, 2000, p. 605.
- 6 According to the Statistical Abstract of Israel, a settlement is defined as Jewish or Arab according to the "decisive majority" of the settlement's population.
- 7 Compilation based on data from the Statistical Abstract of Israel 2004, No. 55, Table 2.9.
- 8 H.C. 6698/95, *Qa'dan v. The Israel Land Administration*, P.D. 54 (1) 258.

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Four Cases of Segregated Spaces¹

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Case 1: A Home for the Sawaeds

Adel Sawaed has tackled obstacle after obstacle in his quest to fulfill the simple dream of building a home on his family's privately-owned land in Kamoun.

From his home in Kamoun in northern Israel, Adel Sawaed has a hilltop view that most real-estate developers can only dream of. On a clear day, the valley before him exposes not only the Sea of Galilee, but also stretches to reveal the Golan Heights. It is an awe-inspiring sight, and not one he will surrender without a struggle.

Since June 2000, Adel, a Palestinian Bedouin citizen of Israel, has been fighting a court order to demolish his family home, obtained by the Misgav Local Planning and Building Committee (MLPBC). According to the MLPBC, Adel built his house "illegally" because he failed to gain its permission to build on his family's land. Adel had applied for a building permit following his marriage to Itaaf in 1997, but after failing to receive a response from the MLPBC, he decided to go ahead with the construction of a temporary home in 1998. In 1999, Adel was criminally indicted for building this home without a permit. He had to wait until August 2004 for the MLPBC to decide whether or not it would grant him permission

to build a permanent home. Ultimately, the MLPBC decided to reject his application.

The challenge of achieving a building permit on this particular hilltop is the direct result of his home's apparently awkward location. Although the Sawaed family bought the land on which Adel's home now sits in 1919, and settled on it shortly afterwards, the construction of the Jewish settlement of Kamoun during the 1980s and 1990s has frustrated the family's attempts to build on its own land.

Family roots

With a population of 500, the gated community town of Kamoun now surrounds the Sawaeds' land, effectively encircling it with family villas developed in the style of American suburbia. In the midst of this Jewish town, the Sawaeds present an Arab anomaly – a Palestinian Bedouin family in the heart of a Zionist community. Adel believes that the MLPBC refused to issue him a building permit because it wants to drive him and his family away in order to create an exclusively Jewish settlement. He says that the Ministry of Construction and Housing has actively encouraged him to move to Kamaneh, a Palestinian village located further down the hill, by offering financial incentives.



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Adel's claims are supported by the three master plans that have been drawn up for Kamoun. The first master plan, approved for the site in 1984, disregarded the presence of the Sawaeds' plot in the area it designated as "residential." However, this approach proved unsustainable. When the land and planning authorities realized the Sawaeds would not voluntarily make way for new Jewish villas, they began to implement a different strategy.

Planned isolation

The master plan approved in 1995, and that submitted to the Northern District Planning and Building Committee (NDPBC) in March 2005, both illustrate that the MLPBC, the Misgav Regional Council (MRC) and the Kamoun Local Committee (KLC) have been intensifying their attempts to isolate the Sawaeds' property from the surrounding infrastructure. For Adel and his family, this strategy presents a double bind. On the one hand, Adel is told he is denied permission to build on his own land because it lacks the requisite infrastructure. On the other hand, consecutive master plans clearly advertise an intention to ensure that the Sawaeds' plot becomes increasingly isolated from the surrounding infrastructure. The conclusion is clear: permission to build on the Sawaeds' plot will only be granted when ownership is transferred to the state; in other words, when the Sawaeds themselves leave.

But Adel feels a strong connection to his family's land, and is determined not to be moved. He says his father, now 80-years-old, was born on this land, and that his grandfather

also lived in the area. Since the end of the Ottoman era and the beginning of the British mandate period, his family has maintained a presence here, he says.

Hostility and friendliness

The Sawaeds' historic attachment to their land has failed to impress Kamoun's Jewish residents, some of whom complain that their decision to move to Kamoun was taken following assurances from the Jewish Agency that the Arab family in their midst would be moved elsewhere. However, the Sawaeds have encountered friendliness as well as hostility. Itaf is very active in the local women's groups, says Adel, and points with pride to the framed samples of his wife's craftwork hanging on the wall in their living room. One neighbor even offered to connect Adel's home to his own electricity network after the authorities refused to allow Adel to link his home to the electricity grid serving the Jewish community.

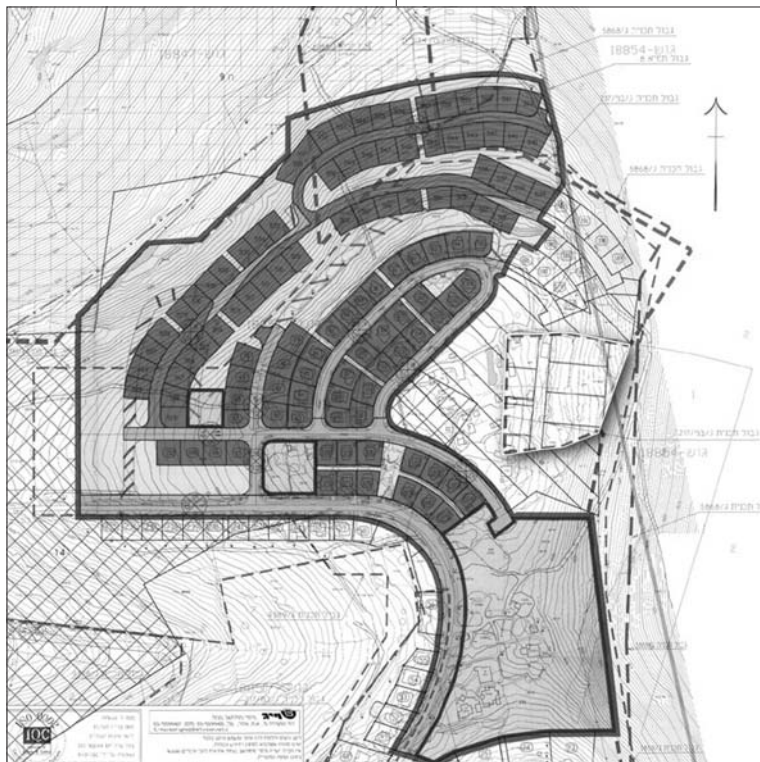
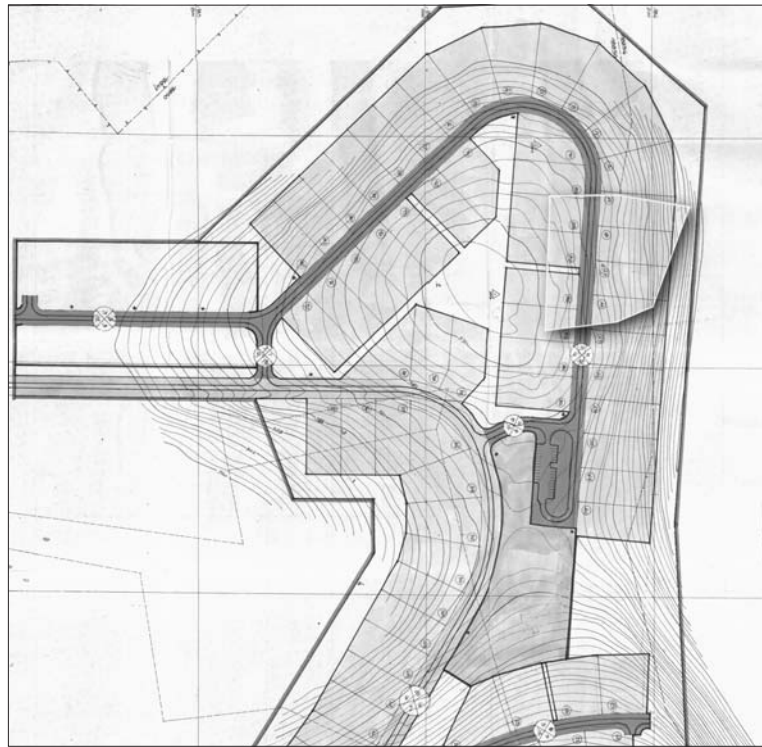
Then, when Adel bought a generator to provide his home with electricity, some of Kamoun's residents began to complain that it made too much noise. This drew the attention of the MRC, which suggested that he build a room in which to house the generator. Adel replied that if he were to build a room, he ought to be allowed to live in it, and was eventually granted permission to connect his home to the grid.

Staying optimistic

Following Adalah's legal intervention on his behalf in July 2003, Adel secured an agreement that his temporary home would not be



An aerial photograph of Kamoun houses surrounding the Sawaeds' plot



Planned isolation: the increasing isolation of the Sawaeds' plot from the planning environment



Four Cases of Segregated Spaces

demolished, pending the MLPBC's decision on his application for a building permit. The agreement also contained provisions to ensure that if the MLPBC decided to reject Adel's request for a building permit and ordered the demolition of his home, it had to provide 30 days' advance notice to enable him to file an appeal.

In August 2004, the MLPBC rejected Adel's application, recommending that he either apply to lease a plot of land in the nearby Arab village of Kamaneh, or exchange his plot of land for land in Kamaneh in co-ordination with the Israel Land Administration (ILA). Announcing its decision to reject Adel's application for a building permit, the MLPBC based its reasoning, in part, on the argument that it "cannot ignore the social problems that arise from different communities living together in the same small community town, such as Kamoun. For this reason too, the option of [the Sawaeds] living in Kamaneh is preferable."

Both the ILA and KLC adopted the same position as the MLPBC, objecting to the Sawaeds' application for a building permit. In September 2004, Adalah filed an appeal against the MLPBC's decision to the Northern District Appellate Committee (NDAC). As if in response, in February 2005, the MLPBC filed two indictments against Mr. Sawaed, for failing to comply with the demolition order and for building a bathroom without a permit.

In June 2005, however, the Sawaeds finally received a good piece of news. After seven years of legal and bureaucratic struggle, the NDAC decided to accept the Sawaed family's appeal and to grant a permit for the couple to build

a family home on their land in Kamoun. The NDAC's acceptance of the appeal is subject to the fulfillment of a number of conditions, toward which the Sawaeds are now working.

Provided these conditions are met, the decision will offer a welcome reward for the Sawaeds' steadfast approach to their predicament. Despite the numerous obstacles they have encountered, Adel has always remained positive about his quest to stay on his family's land. Asked how he feels about the progress of his struggle, his reply is emphatic. "My existence here proves that I am optimistic about the case," he says.

Case 2: Another Separation Wall

Supposedly a security measure, a separation wall in Led – echoing the widely-condemned wall snaking through the occupied West Bank – highlights the problem of institutionalized racism.

"We are in the middle of a struggle," says Arif Muharib, a Palestinian town councilor from Led (known also by its Hebrew name, Lod), in central Israel. Heavy-set, with broad shoulders and a thick neck, Arif could certainly pass for a warrior – as his surname suggests in Arabic – but his battle is of a legal, not a physical nature. Since July 2003, Arif has been challenging the legality of erecting a tall concrete wall between the Jewish *moshav* (agricultural settlement) of Nir Zvi, and the Palestinian residential neighborhood of Shanir in Led, where he lives.

Led's separation barrier is ostensibly being built for "security" purposes. Jewish Israelis living in the *moshav* complain that Palestinian



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drug addicts from Led enter the *moshav* and burglarize their homes to fund their habit. But for Arif this argument is disingenuous. “They say they have the right to build a wall around the *moshav*, but it surrounds us, not them,” he explains. “They claim that thieves come from this side. This is a great lie. If you go to the *moshav*, there are no fences around the houses there. They could have built fences around their own houses if they were concerned about thieves.”

Inevitable illegality

The 3,000-strong Palestinian community of Shanir is accustomed to its collective characterization as criminals. Since the neighborhood lacks a finalized master plan, all of the houses built there were constructed without a building permit, and are therefore deemed illegal by the state. The *moshav*, established by Jews from Argentina in the 1950s, is keen to have the 1.6km wall incorporated into the master plan currently being drawn up for the area. The residents of Shanir, however, reject this idea and have sought the help of Tel Aviv University’s Law Clinic to take legal action against the wall’s construction. With the clinic’s guidance, Arif and other residents have filed petitions to the courts and submitted objections to the relevant planning committees. The planning committees rejected their objections to the construction of the wall, however, in January 2004 and in February 2005 the Supreme Court and the Tel Aviv District Court respectively both issued a temporary injunction halting the wall’s construction, pending a final decision on its legality.

Now considered a “mixed city,” up until the war of 1948 and the creation of Israel, the city of Led was Palestinian. After 1948, the city experienced the twin processes of rapid Judaization through the settling of Jewish immigrants on the one hand, and de-Palestinianization through the expulsion of most Palestinians on the other. However, the neighborhood of Shanir, named after the family who owned the land prior to Israel’s establishment, began to grow, following the arrival of Palestinians from elsewhere in the new state, including many internal refugees and Bedouin who came to the city in search of employment. According to the Central Bureau of Statistics, today Led is home to about 14,000 Palestinians, representing roughly 21% of the total population in the city.

Institutional distinctions

For Palestinian citizens of Israel such as Arif, the wall’s construction is both symbolic and symptomatic of Israel’s approach to Jewish-Arab relations among its own citizenry. Successive Israeli governments in the self-defined “Jewish state” have not only privileged the state’s Jewish citizens to the detriment of its non-Jewish Palestinian indigenous population, but have also taken care to maintain an institutional distinction between Jews and Arabs in Israel. In effect, this leads to policies of segregation. “The problem is not with the residents of the *moshav*, but with the government,” says Arif. “Instead of encouraging cooperation, they separate us. The taxes we pay should not go to such projects.”

Ordinarily, the funds for a project such as



this would be provided from the budget of the relevant local authority, but in the case of Led, the government is prepared to foot the bill. In July 2002, the Sharon-led government decided to ask the Ministry of Transportation and the Ministry of Construction and Housing to jointly fund the construction of what they described as “an acoustic wall” between Shanir and Nir Zvi. The government asked the ministries to jointly allocate NIS 3 million (almost US\$ 700,000) for the project.

Arif, however, believes the reasoning behind the wall’s construction has nothing to do with aural aesthetics. “The reason is racism,” he says simply. “Racism is very common in this state. The residents of the *moshav* don’t want to see Arabs.”

Case 3: The Road to Nowhere

As if living beside desert highways in makeshift homes with no facilities were not enough, Palestinian Bedouin villagers in Umm al-Hieran and Atir now face their second, forced, exodus in 50 years.

Drive along the desert highways around Beer el-Sabe (Beer Sheva) in the south of Israel, and it does not take long to notice clusters of makeshift houses set in from the side of the road. These Bedouin villages are “unrecognized” by the state of Israel, and consequently have no official status. They are absent from state planning and government maps, and receive little or no basic public services such as electricity, water, telephone lines, educational or health facilities. In total, about 40 unrecognized villages exist in the Naqab (Negev) desert.

The twin unrecognized villages of Atir and Umm al-Hieran, situated about 30km from the city of Beer el-Sabe, are prime examples. Surrounded by an expanse of the Naqab desert, and constructed largely out of corrugated iron and breeze-blocks, these Bedouin villages seem a world away from the nearby Jewish towns of Omer and Nevatim. There, the residents enjoy first-class suburban living conditions, in homes boasting generous, well-watered gardens. The living conditions in unrecognized villages like Atir and Umm al-Hieran resemble those of Third-World shanty towns.

First displacement

The residents of Atir and Umm al-Hieran, all of them Palestinian Bedouin citizens of Israel, have lived on these lands since 1956, after the Israeli army uprooted them from their homes in Wadi Zuballa. Now, nearly half a century after their original transfer, the Sharon government is attempting to expel the community once again, and has filed lawsuits to evict the villagers from their homes.

The older members of the community vividly recall their original transfer. According to 85-year-old Sheikh Haj Abu el-Qian, the community was ordered to evacuate their homes in Wadi Zuballa over 48 years ago by a written order delivered by the Military Governor. When the community raised objections to this order, the Israeli military began forcibly removing the elders of the tribe, who were then either imprisoned or scattered among different Bedouin communities.

Haj Abu el-Qian remembers very clearly that his own father, Issa, was imprisoned on 20



The Palestinian neighborhood of Shanir in Led



The separation wall between the Palestinian neighborhood of Shanir in Led and the Jewish *moshav* of Nir Zvi



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October 1956. He remembers that the army completely demolished his family's home, along with all other Arab Bedouin homes in Wadi Zuballa. They were then brought to Umm al-Hieran with other families of newly-created refugees from the region. He says they were provided with 3,000 dunams of land to live on and cultivate.

When they first settled there, the populations of Atir-Umm al-Hieran numbered under 100 people in total. The combined population of the two villages is now approximately 1,500 people, living in over 200 homes.

Warning notices

Two years ago, warning notices for the demolition of these homes began to arrive, informing residents that the Ministry of Interior was aware of building taking place without permits. Then, in April 2004, the state of Israel filed a lawsuit to evacuate the villagers from their homes, claiming that the families living in Atir and Umm al-Hieran are trespassing on "Israel Lands." Some houses now have demolition orders hanging over them. Residents say that homes are threatened with destruction every week. They argue that they have been living on this land for over 48 years, on the instructions given by the military in 1956. Their land in Wadi Zuballa is now being cultivated by Jewish Israelis living in Kibbutz Shuval, with the government's consent.

Launched in April 2003, the "Sharon Plan" for the Naqab, as it is euphemistically known, may indicate the location to which the government expects to transfer these Palestinian citizens of Israel. A prime ministerial initiative,

the plan aims to concentrate the Bedouin in the Naqab in seven new development towns to complement the seven townships established for the Bedouin of the Naqab from the 1970s to the 1990s. To that end, 38% of the plan's NIS 1.175 billion (US\$ 265 million) budget is allocated for home demolitions, land dispossession and community transfer.

New Jewish town

According to Adalah's correspondence with the Minister for Industry, Trade and Employment, Ehud Olmert, who is also charged with ministerial responsibility for the Israel Land Administration (ILA), in 2003 alone, the authorities demolished 120 buildings in unrecognized villages throughout Israel. Most of these buildings were homes.

The lawsuits for the evacuation of the residents of Atir-Umm al-Hieran were filed to make way for a new Jewish town. In July 2002, the government announced that a Jewish town named Hiran would be established in the area currently inhabited by these Arab Bedouin citizens of Israel. The government's decision on this issue draws heavily on an ILA report from 2001, which recorded plans for the construction of 2,000 housing units for Jewish families in the prospective town of Hiran, and explicitly identifies the Bedouin presence there as "a special problem."

However, faced with the prospect of their further evacuation, the villages' residents appear defiant. Having experienced the ordeal of transfer 48 years ago, they are not willing to be moved again. "Atir is in our blood," says Sheikh Khalil Abu el-Qian. "We have been



The unrecognized Palestinian Bedouin village of Umm al-Hieran



building this village since 1956 and we don't know anywhere else. We want our rights to be recognized here. We will not leave."

On 20 February 2005, Adalah submitted a letter to the Attorney General, the Minister of Interior and the Minister of Trade and Industry, calling on them to cancel the evacuation lawsuits against villagers from Atir and Umm al-Hieran and to afford the twin villages state recognition in the regional planning for the area. In a reply received by Adalah from the ILA, the state rejected the claims that it had discriminated against the Bedouin residents of the twin villages, or that it had violated their housing rights, arguing that housing solutions exist in the recognized Bedouin townships.

Case 4: Bitter wine in the desert

With their ancestral homes already under pressure, the Arab Bedouin of the Naqab desert now face the dubious "Wine Path Plan" of vast, ranch-like "individual settlements."

Fifty-seven years after the establishment of the state of Israel, Zionist settlement of the land continues apace. In addition to the traditional settlement methods, whereby entire Jewish towns are established at once, another strategy has been gaining governmental popularity in recent years. Individual Jewish homes, surrounded by hundreds or even thousands of dunams of land, and fenced off from the general public, are being established at an accelerated rate.

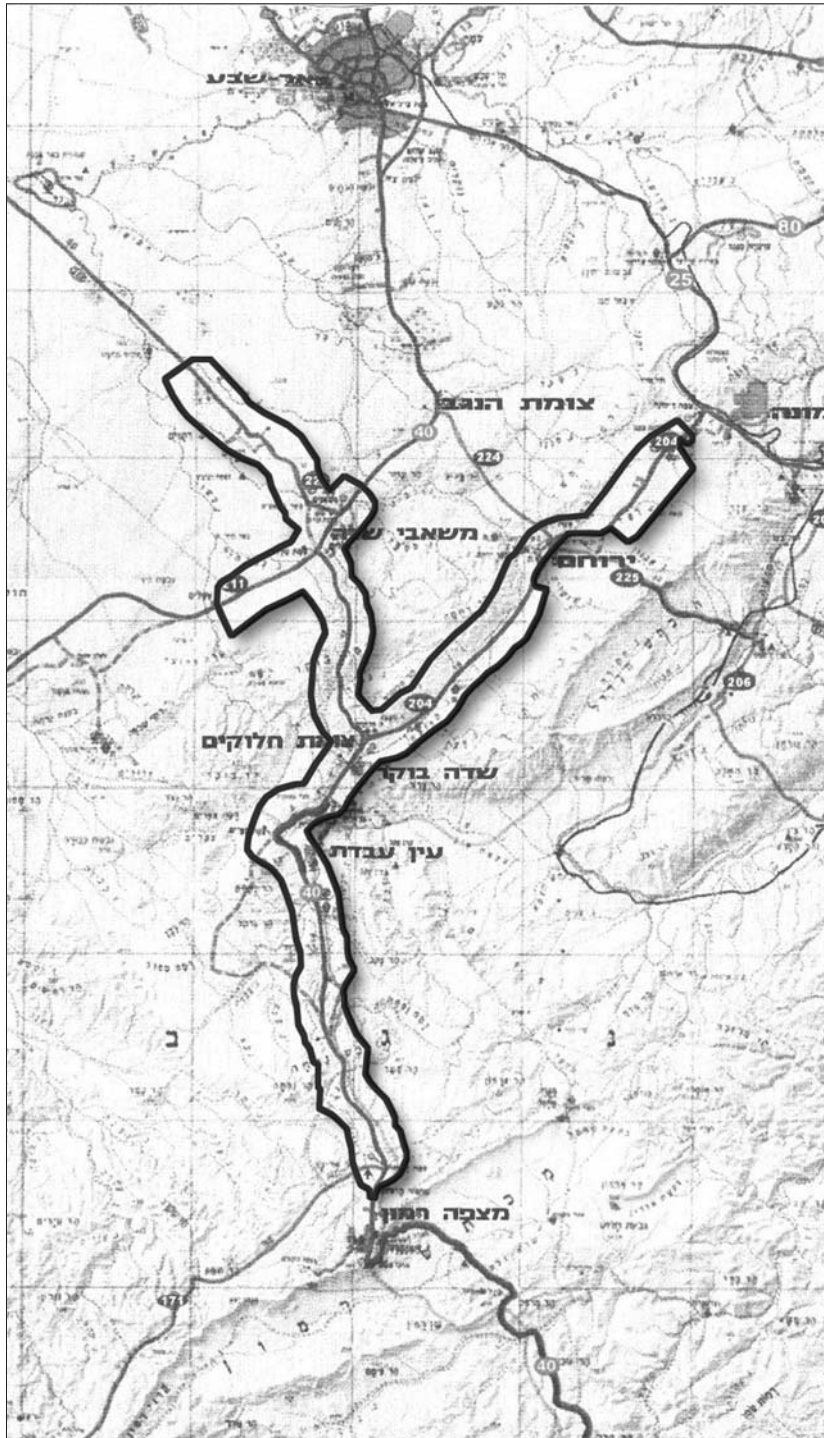
Known as "individual settlements," these residential-territorial projects are being set up to "Judaize" otherwise unsettled spaces, particularly in the Naqab (Negev) desert in the

south of Israel. The strategy aims to prevent Palestinian Arab Bedouin citizens of Israel, indigenous to these areas, from expanding beyond the limited territory on which they are currently located.

"Stealing the land"

Although established illegally on non-residential lands, the individual settlements are founded with the knowledge and cooperation of state institutions. The thinking and impetus behind their establishment was well illustrated by the comments made during a meeting in December 1999 of the National Council for Planning and Building (NCPB). The NCPB, a statutory body established under the Planning and Building Law (1965), currently sits within the Ministry of Interior. It is the highest planning authority in the state, mandated to review and decide upon plans at both the district and national levels.

According to the protocols of the meeting, Shmuel Rifman, the Head of Ramat Ha'Negev Regional Council, expressed the need for individual settlements in the following terms: "I'm telling you again, they are stealing the land. About one million dunams are being stolen by the Bedouin." At the same meeting, Dr. Hanna Swaid, an Arab member of the NCPB, reportedly told his colleagues: "The intent here is that you want to protect the state's land from Arab intrusion. This is how I understand things and we shouldn't cover them up in any other way."



Master Plan No. T.M.M. 4-14-42: the borders of the Wine Path Plan



Unjust desert

The phenomenon of individual settlements is particularly acute in the Naqab, where approximately 150,000 Palestinian Bedouin citizens of Israel live. The Bedouin have been viewed by successive Israeli governments as, at best, a backward community of non-nationals, and at worst, a potential fifth column endangering the 'Jewish' state. A State Comptroller's Report from 2000 quotes then-Minister of Infrastructure, Eli Suissa, as stating in 1999, "Within my different duties, I have always worked to protect the lands of the nation, [including] actually seizing it in order to prevent its control by foreign elements."

As part of this effort to "protect the lands of the nation" from "foreign elements," Prime Minister Ariel Sharon initiated the individual settlements policy in 2002. A governmental decision taken in November 2002 in approval of the policy states that: "It is a tool to fulfill the government's policy for developing the Negev and Galilee, and for safeguarding state land in the Negev and Galilee."

The pressure increases

In parts of the Naqab, the Arab Bedouin are already feeling the pressure that individual settlements impose upon their towns and villages. Salem Abu el-Qi'an, a resident of the unrecognized Arab Bedouin village of Umm al-Hieran, says that the three individual settlements established near his village in the 1980s were founded specifically "in order to evict Atir and Umm al-Hieran residents from their homes." According to a governmental draft report obtained by Adalah, these three

individual settlements hold a total of 7,758 dunams between them.

The same report states that, as of February 2003, there were a total of 59 individual settlements in the Naqab, covering over 81,000 dunams of land. Individual settlements range in size from tens to thousands of dunams of land. Prime Minister Ariel Sharon's own individual settlement, often referred to as his "ranch," stretches over 1,261 dunams.

Agri-tourism as aggression

In March 2004, a year and a half after Prime Minister Sharon had launched the individual settlements policy, Adalah appeared before the NCPB to raise objections against a new individual settlements initiative proposed for the Naqab, named "the Wine Path Plan." Formulated by the Israel Land Administration (ILA) and the Ramat Ha'Negev Regional Council, if implemented, the plan would affect tens of thousands of dunams of land. According to the plan, its goals are: "designating spaces for the development of the Wine Path area in Ramat Ha'Negev, combining tourist, agricultural and scenic uses, and setting instructions for preserving and developing them"; and "setting purposes and permitted uses in the Wine Path area in Ramat Ha'Negev for the establishment of up to 30 agricultural tourist farms."

To meet these goals, the plan seeks to retroactively legalize and re-designate established individual settlements for residential and other purposes, such as restaurants, shops, and motels. New individual settlements will also be established, thereby creating a total of 30 such



The entrance gate to the *Aof Hahol* Ranch. Photograph by Alberto Denkberg



The *Yishai Eldar* Ranch: the paved road leading to the ranch. Photograph by Alberto Denkberg



settlements in the plan's area, including one token tourist settlement run by an Arab Bedouin.

At the hearing, Adalah argued that by ensuring that "Israel Lands" are used exclusively for the benefit of Israel's Jewish citizens, the policy of establishing and supporting individual settlements is discriminatory; that it fails to address the current needs of the local Arab Bedouin population; and that the retroactive legalization of the seizure of "Israel Lands" violates the Planning and Building Law (1965). Adalah urged the NCPB to propose an alternative plan based on an equal and just distribution of land, which takes into consideration the future needs of the Arab Bedouin in the Naqab and aims to eliminate the socio-economic gaps between Jewish Israelis and the Palestinian minority in the region.

Despite Adalah's arguments, the NCPB decided to approve the Wine Path Plan, with certain conditions, for submission on 30 March 2004.

On 24 February 2005, Adalah submitted an objection to the NCPB against the Wine Path Plan in the name of the Regional Council for Unrecognized Villages in the Naqab and in its own name. Adalah argued that, although the plan has been presented as being beneficial to tourism, its real and primary objective is to "preserve state land" from "foreign entities," that is, from Arab citizens of the state.

Note

- 1 These case studies were first published by The Foundation for Achieving Seamless Territory (F.A.S.T.) for an exhibition "One Land Two Systems" held from February to March 2005.



Challenging the Prohibition on Arab Citizens of Israel from Living on Jewish National Fund Land

Excerpts from Supreme Court Petition: H.C. 9205/04, Adalah v. The Israel Lands Administration, the Minister of Finance and the Jewish National Fund

**Before the Supreme Court in Jerusalem
Sitting as the High Court of Justice**

H.C. 9205/04

The Petitioner

1. Adalah – The Legal Center for Arab Minority Rights in Israel represented by attorneys Suhad Bishara and/or Hassan Jabareen and/or Marwan Dalal and/or Orna Kohn and/or Gadeer Nicola and/or Morad El-Sana and/or Abeer Baker and/or Adel Bader of Adalah – The Legal Center for Arab Minority Rights in Israel, PO Box 510, Shafa'amr 20200. Tel. 04-9501610, Fax. 04-9503140.

– v. –

The Respondents

1. The Israel Land Administration
 2. The Minister of Finance
- Respondents 1 and 2 represented by the Office of the Attorney General, 29 Salah al-Din Street, Jerusalem.
3. The Jewish National Fund, 1 Kakal Street, Jerusalem 91002.

Petition for an Order Nisi and Temporary Injunction

A petition is hereby filed for an order nisi against the Respondents ordering them to show cause:

1. Why Regulation 27 of the Regulations of the Obligations of Tenders (1993) should not be cancelled. The aforementioned regulation declares that “in a transaction involving land of the Jewish National Fund that requires issuing a tender according to these regulations, the Israel Land Administration is authorized to conduct the tender in accordance with the Covenant agreed upon between the state and the Jewish National Fund on November 28, 1961” [...]



2. Why not to cancel the policy of Respondent 1, which determines that only Jews have the right to participate in tenders it administers for Jewish National Fund-owned lands.
[...]

The Grounds for the Petition

Introduction

1. “The principles of public law are, by their nature, cognate – they are but a branch of the tree of public welfare – and are in the public domain. The principles of public law are in the blood of the public authority, and the blood is its soul. All these principles are known and dear to us: fairness, honesty, good faith, the prohibition of arbitrariness, the obligation to use discretion in a matter on its own merits, the prohibition of discrimination, the prohibition of extraneous motives, the obligation to act according to the principles of natural justice, etc. Tenders laws are rooted in public law and, by definition, assume all of these principles: the latter are assumed in tenders laws, and tenders laws are assumed in them. Just as these principles of public law have been adapted to each and every field of public law [...] so they should be adapted to the field of tenders. All principles of public law should be directed at the tenders laws: [...] the principle of fair competition, the principle of equality between bidders, and all remaining characteristics of a tender as such.”

Justice Heshin, Civil Appeal 6926/93, *Israel Shipyards Inc. (Ltd). v. Israel Electric Co.*, PD 48(3) 749, pp. 769-770.

2. The Israel Land Administration (henceforth “the ILA”) is legally authorized to administer Israel’s lands, including the land of the Jewish National Fund (henceforth “the JNF”). This petition is concerned with an ILA policy that prevents Arab citizens of the state from participating in tenders that the ILA organizes for the purpose of the distribution of JNF land. The ILA claims that the reason for this policy is based on the Covenant signed in 1961 between the State of Israel and the JNF that requires the ILA to honor the registered objectives of the JNF.



3. The Petitioner will claim that the ILA is obliged to act in accordance with the principles of public law, and first and foremost the principle of equality. The policy that is the subject of this petition is not based on primary, but only on secondary legislation – Regulation 27 of the Regulations of the Obligation of Tenders (1993). This regulation is contrary to the law which authorizes the enactment of these regulations, namely, the Obligation of Tenders Law (1992), as well as general tenders laws. In addition, the petitioner will claim that the respondent's policy and Regulation 27 referred to above are inconsistent with the limitations clause of the Basic Law. [The Basic Law: Human Dignity and Liberty]
4. While the ILA is authorized to engage with any third party, as a public body it is not authorized to adopt a stance and/or goals that are in opposition to the basic principles. Engagement with a third party does not release a public body from compliance with constitutional law requirements. A discriminatory policy undertaken by Respondent 1, such as the policy which is the subject of this petition, transmits a negative message towards the Arab citizens by the state, and makes the state a partner in an action that discriminates against, harms and humiliates an entire population – one which is a national minority in Israel.
5. At present, two and a half million dunams [1 dunam = 0.001 square kilometers] of land are registered under the ownership of the JNF. The continuation of the ILA's policy may lead to the creation of segregated public spaces on the basis of nationality; that is, settlements or neighborhoods in which only Jews can live and the land of which other citizens are forbidden from purchasing the rights to or from building a house on. This geographic spatial vision, which in and of itself is unacceptable under any democratic regime, is sufficient to necessitate a ruling that will order an immediate cessation of the aforementioned ILA policy.
[...]



The Facts

The ILA's Policy in Administering JNF Land

1. State, Development Authority and JNF lands were placed under the trusteeship and administration of the ILA. Article 2(a) of Israel Lands Administration Law (1960) determines that the government shall establish the ILA for the purpose of administering Israel's Lands. Article 1 of the Basic Law: Israel Lands defines Israel's lands as including lands owned by the JNF. There is no primary legislation that establishes that administration of the land by the ILA shall be done in accordance with the JNF's registered objectives.
2. Despite the absence of any form of authorization in primary legislation, and in contradiction of the Obligation of Tenders Law (1992) (henceforth "the Obligation of Tenders Law"), Regulation 27 of the Regulations of the Obligation of Tenders (1993) stands as the sole reference that establishes that the ILA is authorized to conduct a tender in relation to a transaction involving JNF lands, in a manner consistent with the Covenant signed between the State of Israel and the JNF in 1961. Article 4 of this Covenant establishes that:

Israel's lands shall be administered in accordance with the Law, that is to say, on the principle that land is not sold, but only given on lease, and in accordance with the land policy laid down by the Board established under Article 9. The Board shall set the land policy with a view to increasing the absorptive capacity of the land and preventing the concentration of lands in the hands of individuals. The lands of *Keren Kayemeth LeIsrael* [the Jewish National Fund] shall, moreover, be administered subject to the Memorandum and Articles of Association of the *Keren Kayemeth LeIsrael*.

[...]
3. Article 3(a) of the Memorandum and Articles of Association of the JNF establishes that the objectives of the JNF shall be:

To purchase, acquire on lease or in exchange, to receive via lease or in another manner – lands, forests, possession rights... and all the rights attenuate therein, and, too, any type of permanent properties in the



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prescribed region (which expression shall in this Memorandum mean the state of Israel in any area within the jurisdiction of the Government of Israel) or any part thereof, for the purpose of settling Jews on such lands and properties.¹

4. Respondent 1's policy of excluding Arab citizens from participation in tenders that it manages and administers can be found in many documents published for the purpose of marketing ILA-administered lands. For example, [the ILA's] Procedure 37.01, the "Fiftieth Anniversary of the Leasing of Urban Lands," clarifies that:

The ILA is authorized not to extend the lease [in an urban area] or to establish special conditions that will apply to an additional period in certain cases, and especially if [...] the leaser is a "foreign citizen" or someone with whom the Covenant with the JNF restricts the ILA from entering into an agreement. [...]

[...]

5. Furthermore, the information sheet about tenders for the lease of land in accordance with ILA Procedure 31.02, Art. 2.1 declares that:

Every citizen has the right to participate in the public tender. Participation in the bidding for land of the JNF will be undertaken in accordance with existing restrictions that exist in the Memorandum and Articles of Association of the JNF.

[...]

6. In a rental contract with a kibbutz, Respondent 1 makes a statement of clarification based upon Directive No. 53 of the [ILA's] Agricultural Department (1996):

Since in accordance with the directives of the Covenant between the State of Israel and the Jewish National Fund (henceforth the JNF) [...] the management of the land owned by the JNF, including its lease and the agreement or rejection to the transfer of rights in it, are to be undertaken by the ILA as directed in the Memorandum and Articles of Association of the JNF, the cooperative settlement declares that it is aware that only upon this prior and basic condition is the ILA willing to establish an engagement with it through this contract.

[...]



14. Thus, Respondent 1 is acting as a public body in contradiction of the law when it excludes Arab citizens from participation in civic tenders, claiming that “they are not Jews.” Such an act contradicts judicial rulings regarding the validity of the principles of public law and is contrary to the provisions of the Obligation of Tenders Law, which require maintaining the principle of equal opportunity in the administration of such tenders.

The Extent of JNF Lands and the JNF’s Institutional Relationship with the ILA

15. Today, the JNF owns approximately 2,555,000 dunams of land, or close to 13% of the area of the state. These lands are spread out throughout the state and divided according to district as follows:

Table 1: Division of JNF Lands by District, as of 2003,² [by square km.]

District	JNF
Jerusalem	508
Northern	1,031
Haifa	207
Tel Aviv	24
Central	403
Southern	382
Total	2,555

[...]

17. Approximately 2 million dunams of the JNF’s lands were state-controlled lands transferred to the JNF by the state. The first million was transferred to the JNF in 1949,³ and the second million was transferred in 1953.⁴ These transfers led to the JNF’s being conferred a special legal status, as well as to the JNF’s being perceived as having a decisive role in public discourse in all that relates to land policy in Israel.
18. Accordingly, a review of Israel’s laws reveals the JNF’s special status with regard to the determination of land policy, the possibility of the transfer of state lands to it, and its having the authority to



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expropriate land for public use. Thus, for example, Article 2(6) of the Israel Lands Law (1960) declares that ownership of lands can be transferred between the state, the Development Authority and JNF; Article 6 of the JNF Law [(1953)] and Article 22 of the Land (Acquisition for Public Purposes) Ordinance (1943) provide the JNF with status equivalent to a local authority for purposes of expropriation in accordance with the Ordinance.

19. Article 4A of the Israel Lands Administration Law (1960) establishes that half of the members appointed to the ILA Council shall represent the JNF, and in accordance with its recommendation. This provides the JNF with decisive influence in the determination of land policy in Israel in all matters related to land administered by the ILA.
[...]

22. The large extent of the lands registered in the name of the JNF and the institutional relationship it has with the ILA led then-Attorney General Elyakim Rubenstein to note the following in a speech before “The Israeli Forum on Land Policy” in 2000:

Questions also arise about the spirit of the times, as well as questions about ‘how it [the division of lands between the JNF and the rest of the lands administered by the ILA] will look’ and is it ‘a wise maneuver’ – do these lands of which we are speaking actually belong solely to the JNF. These are issues that need to be related to wisely, since we do not live in a reality where matters can be undertaken ‘behind closed doors,’ but rather in an ‘open and transparent’ manner.

[...]

Cumulative Effects of the Discriminatory Land Policy

23. The discriminatory policy of Respondent 1 in administering registered JNF-owned land is severe, extreme and totally unreasonable, among other reasons due to its being conducted in conjunction with other discriminatory policies of the ILA against Arab citizens in the allocation of lands, the expropriation of lands, the establishment of settlements, etc.



24. Since the establishment of the state, much land has been expropriated and/or transferred to the possession and/or ownership of the state and/or to the possession of Zionist bodies such as the Jewish Agency and the JNF, whose mission, according to their own definition, is to serve the Jewish population exclusively.⁵ The result of this policy is state control of an overwhelming majority (93%) of land in the state, a resource considered to be the most important for economic and social development. *The Official Commission of Inquiry to Investigate the Clashes between the Security Forces and Israeli Citizens in October 2000* (henceforth “the Commission of Inquiry”) related to this subject and made clear that:

Expropriation activities were directed clearly and overtly to serve the interests of the Jewish majority. The lands were transferred to bodies such as the JNF, whose declared mission is to serve Jewish settlement, or to the ILA, who on the basis of its pattern of management served the same mission.⁶

25. This control renders governing bodies and government policy the main and even the sole decisive factor in the matter of distribution of these land resources. This situation provides the state with extensive powers that should be used with care, fairness, equality, and due consideration to the just allocation of resources and to ensuring sustainable development of all the state’s population. With near total control of the land resources in the state in the hands of the state and its governing bodies, the state’s policies have the most decisive influence in regard to the division among different population groups of this important resource.
26. However, land policy in Israel has two dominant characteristics: (a) a nationalization of its ownership and centralization of its control; and (b) an unequal and selective distribution of rights to possess the land.⁷ Respondent 1 applies a discriminatory and inequitable policy in all matters pertaining to the allocation of land and its development for the betterment of the population. The lands have been allocated on the basis of nationality and for the betterment of the Jewish population.
[...]



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29. As a result of the application of such mechanisms, Arab citizens of the state are prevented from purchasing rights to land in hundreds of community settlements distributed throughout the state, and are limited to narrow spaces within their towns and villages, which existed prior to the establishment of the state.
[...]
35. The result of this continuous policy is, *de facto*, that the Arab citizens of the state are not able to lease or to purchase land in over 80% of the state.⁸ This appalling fact, together with the absence of government initiatives to build public housing in Arab towns and villages, has led to a housing crisis, overcrowding, and a severe shortage of land for development and housing.
[...]

Continuation of the Policy: Creation of Separate Spaces Based on Race/
Nationality

39. The continuation of the policy of Respondent 1, the subject of this petition, may well lead to severe consequences, which are contrary to democratic values. Thus, for example, a situation may be created of neighborhoods of cities and/or in settlements and/or regions where Arab citizens are forbidden from residing, and which are open only to Jews. Such was the situation in Givat Makush in Carmiel, where only Jews were allowed to present their candidacy [for bids in the neighborhood] [...] and such was the case in the petition submitted by the Abu Ria family, [...] when Respondent 1 refused to authorize a transaction that would have transferred the rights to an apartment in Carmiel from a Jewish family to an Arab family, claiming that such rights can only be transferred to a Jewish family.
40. Such an outcome is harsh in and of itself, but is all the more severe in light of the extent of the land owned by the JNF, which stretches, as noted previously, over 2.5 million dunams throughout the expanse of the country. The vastness of the land owned by the JNF and the extent of the land administered by Respondent 1 grant the ILA a decisive role in shaping the space in the state. ILA policy in this



matter has, to date, created “homogeneous” spaces designated solely for Jews.

[...]

42. Furthermore, the lessons that can be learned from certain cases in the history of other peoples lend support to the values and morals that are the basis for basic constitutional principles. For example, among the prominent laws in South Africa, until their annulment with the declaration of the end of the Apartheid regime, were ‘The Native Land Act’ (1913, 1936), which prohibited the black population from purchasing land outside their designated areas; and the ‘Urban Areas Act’ (1923), which was established for the purpose of creating separate residential areas for blacks, and in order to move them from mixed living neighborhoods to areas on the margins of urban spaces. In 1950, the ‘Group Areas Act’ was enacted, which enabled blacks to be moved to areas designated for them and black townships that had grown near the expanding white areas to be relocated.⁹

[...]

45. As an additional example, the “zoning” laws legislated in the beginning of the 20th century in the United States sought to strengthen racial segregation. The first urban planning regulation based on racial zoning was implemented in Baltimore in 1910, and then later in several cities in California. According to this regulation, separate areas in cities were designated on the basis of race: there were neighborhoods or buildings that were designated for whites only, and other neighborhoods and buildings for blacks only.¹⁰ A U.S. Supreme Court ruling in *Buchanan v. Warley*, 245 U.S. 60 (1917) harshly attacked laws and regulations establishing racial zoning and cited that states cannot restrict the African-American population to a certain residential areas.



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For all of the above reasons, the Honorable Court is requested to grant the remedies set forth in this petition, and to order the Respondents to pay the costs herein.

[signed]

Suhad Bishara
Advocate, Counsel for the Petitioner

Notes

- 1 The Official Gazette, 354, 10 June 1954, p. 1196. (Hebrew)
- 2 Israel Lands Administration (2004), Yearly Report of Activities - 2003. (Hebrew)
- 3 Arnon Golan, "The Acquisition of Arab Land by Jewish Settlement in the War of Independence," *Catedra*, Vol. 63 (1992), pp. 122-154 (Hebrew); Ruth Kerk (1993), "The Buds of the Design of Authorities and Official Land Policies in the State of Israel," *Karka'* Vol. 36, pp. 31-44 (Hebrew); Yif'at Holman-Gazit (2002), "Use of the Law as a Symbol of Status: The Jewish National Fund Law, 1953 and the Battle of the JNF to Establish its Status in the State," *Iyoni Mishpat* 26(2), p. 636. (Hebrew)
- 4 Ibid.: Arnon Golan, p. 152; Ruth Kerk, p. 33; Yif'at Holman-Gazit, p. 637.
- 5 In regard to this matter, see: Oren Yiftachel (2000), "Land, Planning and Inequality: The Division of Space between Jews and Arabs in Israel." Position Paper, Adva Center (2000) (Hebrew).
- 6 The Official Commission of Inquiry to Investigate the Clashes between the Security Forces and Israeli Citizens in October 2000, Report, Volume 1, Jerusalem, 2003, p. 42. (Hebrew)
- 7 Alexander (Sandy) Kedar, "Weak Regions: Israeli Law and the Ethno-National Region in Israel," unpublished manuscript. See also, Oren Yiftachel and Alexander (Sandy) Kedar (2000), "On Power and Land: Israeli Land Regime," in *Theory and Criticism* 16 (2000): 67-100 (Hebrew).
- 8 Ibid., p. 85.
- 9 Scott Bollens (1999), *Urban Peace-Building in Divided Societies: Belfast and Johannesburg*, Boulder, CO: Westview Press; Grant Saff (1995), "Residential Segregation in 'Post-Apartheid' South Africa: What Can Be Learned From the United States Experience," in *Urban Affairs Review*, 30(6) pp. 782-808.
- 10 Marsha Ritzdorf (1997), "Locked Out of Paradise: Contemporary Exclusionary Zoning, the Supreme Court, and African Americans, 1970 to Present" and Christopher Silver (1997), "The Racial Origins of Zoning in American cities," both in June Thomas and Martha Ritzdorf (eds.), *Urban Planning and the African American Community: In the Shadows*, Thousand Oaks, CA: Sage Publications, pp. 43-57 and pp. 23-42 respectively.



Excerpts from the Jewish National Fund's Response to H.C. 9205/04 and H.C. 9010/04

**Before the Supreme Court in Jerusalem
Sitting as the High Court of Justice**

**H.C. 9010/04
H.C. 9205/04**

Regarding:

The Petitioners in H.C. 9010/04

1. The Arab Center for Alternative Planning
2. The Association for Civil Rights in Israel
represented by attorneys Awni Bana and/or Dan Yakir and/or Dana Alexander and/or Avner Pinchuk and/or Lila Margalit and/or Fatmeh El-A'jou and/or Banna Shughry-Badarne and/or Sharon Abraham-Weiss and/or Limor Yehudah and/or Sonia Bulus and/or Oded Feller of the Association for Civil Rights in Israel, 9 Sderot Hanadiv, Haifa 34611.

The Petitioner in H.C. 9205/04

Adalah – The Legal Center for Arab Minority Rights in Israel
represented by attorneys Suhad Bishara and/or Hassan Jabareen and/or Marwan Dalal and/or Orna Kohn and/or Gadeer Nicola and/or Morad El-Sana and/or Abeer Baker and/or Adel Bader of Adalah – The Legal Center for Arab Minority Rights in Israel, PO Box 510, Shafa'amr 20200.

– v. –

Respondent No. 1 in H.C. 9010/04 and in H.C. 9205/04

1. The Israel Land Administration

Respondent No. 2 in H.C. 9205/04

2. The Minister of Finance
Respondents No. 1 and 2 represented by the Office of the Attorney General, 29 Salah al-Din Street, Jerusalem.

Respondent No. 2 in H.C. 9010/04 and Respondent No. 3 in H.C. 9205/04

3. The Jewish National Fund
Represented by attorneys S. Horowitz & Associates, and attorney Meir Alfaya, 31 Ahad Ha'am Street, Tel Aviv 65202.



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Response by the Jewish National Fund to the Petitions for an Order Nisi and Temporary Injunction

A. Introduction

[...]

JNF [Jewish National Fund] lands are not state lands. The JNF is the sole owner of the lands in its possession. JNF ownership of JNF lands is total, private, and separate from the state. The JNF purchased all of the land in its possession from previous owners by means of funds donated incrementally by Jews from all over the world for the purpose of purchasing land in Eretz Israel to be held and developed on behalf of the Jewish people. JNF trusteeship is not and cannot be given or granted to the entire Israeli public. JNF trusteeship is preserved solely for the Jewish people, on whose behalf it was founded and acts.

[...]

11. The Basic Law: Israel Lands, the Israel Lands Law (1960) (henceforth “the Israel Lands Law”), the Israel Lands Administration Law (1960) (henceforth “the ILA Law”), and the Covenant signed between the state and the JNF in 1961 (henceforth “the Covenant”), recognized the separate and special status of the JNF, as well as the independent, private, and protected status of JNF lands that are not part of state lands. The three abovementioned laws and the Covenant assign to the ILA [the Israel Land Administration] the obligation of administering JNF lands in accordance with its directives and Memorandum that establishes their use by Jews. The three laws intended that the separate existence of JNF lands should be preserved, through their special mission as lands of the Jewish people.
12. Whoever seeks to prevent the allocation of JNF lands solely to Jews must confront the assertions of these laws and provide a reason for why they should be annulled, entirely or partially. What is the purpose for the state of Israel, of the Status Law, of the JNF Law, of the Covenant, of the separation that exists as defined by the Basic Law: Israel Lands between state and JNF lands, of the prohibition established



Excerpts from the Jewish National Fund's Response

in the Israel Lands Law for the sale of JNF land without its permission, and of the obligation imposed on the ILA to administer JNF lands in accordance with its directives and Memorandum, if JNF lands will be considered to be the same as all other state lands and will be marketed to any person, in complete opposition to the purpose of the existence of the JNF?
[...]

27. The JNF will claim that it should not be obliged to allocate lands in its possession to non-Jews. In regard to all matters concerning JNF lands, the imposition of an obligation to allocate them to Jews and to non-Jews will not only disrupt and damage the organization's activities and tasks, but will also nullify entirely the special role of the JNF as the owner of an eternal possession of the Jewish people. The imposition of such an obligation would amount to a declaration of the illegality of the JNF, as well as the illegality of the multitudes of contributions made by Jews who have sought to redeem the land for over a hundred years.
28. Further, the JNF will demonstrate that its activities in purchasing land by means of the funds of the Jewish people, for the benefit of the Jewish people, and in their allocation to Jews is in complete accord with the founding principles of the state of Israel as a Jewish state and that the value of equality, even if it applies to JNF lands, would retreat before this principle [sic]. In addition, the JNF will cite that the Petitioners did not attempt to deal with the property rights of the JNF, of its donors, and of the entirety of the Jewish people, even though these rights are basic rights that were anchored explicitly in the Basic Law: Human Dignity and Liberty.
[...]

- B. Revealing the Petitions' Disguise: It is not a "Policy" of the ILA that is Being Tested, nor the Validity of a Secondary Law, but Rather a Demand to Annul an Explicit Constitutional and Legal Structure, the Meaning of which is Tantamount to the Expropriation of JNF Lands**
[...]



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38. The true essence of the petitions is evidently different. The Petitioners seek the annulment of the status, mission and function of the JNF and seek to impose on the JNF the use by all concerned of land purchased by the JNF for the explicit purpose of serving as an eternal deposit of the Jewish people and their descendants.
[...]
40. [...] the allocation of JNF lands to Jews by the ILA has been conducted since the founding of the ILA over 40 years ago.
41. The allocation of JNF lands to the entire population of Israel is not impeded by the policies and internal directives of the ILA, or by the Regulations of the Obligation of Tenders.
[...]
47. It is clear from the petitions, however, that the Petitioners ultimately seek, *de facto*, that the Supreme Court should instruct the JNF and the ILA to market JNF land also to non-Jews. In this regard, the Petitioners claim, in detail, that the Arab sector is experiencing a land and housing crisis, and that on the basis of the principle of distributive justice, among other reasons, the ILA is obliged to market JNF lands also to non-Jews (as is detailed in Section G, below, JNF lands are private and purchased by funds provided by the Jewish people, in order that they should remain an eternal possession of the Jewish people and not state lands. Because of this, too, the petitions, which have different assumptions, are unfounded).
[...]
48. The Petitioners' claims are in direct opposition to the purpose of the existence of the JNF; to the obligation it has undertaken towards its donors; to the Covenant between the state and the JNF, which regulates the relations between the two; to explicit legislation established by the legislature; and to constitutional axioms of the state of Israel as the state of the Jewish people. All of the above establish the authority of the JNF and the ILA's obligations towards it.
[...]



53. The Memorandum of the JNF establishes that its principal goal is to purchase lands “for the purpose of Jewish settlement” on JNF lands. The JNF’s Memorandum was approved on May 9, 1954 by the Minister of Justice, who was specifically authorized to do so by the JNF Law [...]. The JNF Law regulated the establishment of the JNF as “an incorporated entity in Israel, that will continue the activities of the existing company, which was established and incorporated in the Diaspora” (Article 2). Thus, the legislature and the government gave legitimacy to the activities of the JNF to purchase land for the purpose Jewish settlement.
54. As noted previously, the Covenant between the state of Israel and the JNF was signed on November 11, 1961. The Covenant established that the ILA is to administer JNF lands “subject to the Memorandum and Articles of Association of Keren Kayemeth LeIsrael [the JNF]” (Article 4).
[...]

C. Preliminary Arguments that Justify Outright Rejection of the Petitions

61. The petitions are situated at an ideologically-constitutive intersection. Therefore, they require discussion and decision on questions about the character and identity of the state of Israel as a Jewish state, about the joint responsibility and shared fate of the Jewish people in the Diaspora and its organizations and the Jewish people living in Zion, about the core of the lands regime in Israel, and about the network of relations between the different sectors of Israel’s population.
62. Such questions must be enunciated and clarified through public discussion – ideological, social and political – and should be decided upon by decisions reached by the legislature.
[...]
96. The JNF was established in 1901. Over four generations, JNF lands have been allocated to Jews. Nearly fifty years have passed since the enactment of the Status Law and the JNF Law, and since the validation



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of the JNF's Memorandum and its official publication. The Basic Law: Israel Lands, the Israel Lands Law and the ILA Law were enacted by the legislature over 40 years ago. The Covenant that establishes the activities of the JNF in accordance with the Memorandum, too, was signed over 40 years ago. The policies of the ILA in the allocation of JNF lands are as old as the ILA. The exemptions regulation [Regulation 27 of the Regulations of the Obligation of Tenders] was promulgated more than 11 years ago.

97. It is only now, in 2004, that the Petitioners have remembered to protest the validity of this legislative structure. As such, these petitions are extremely belated. Such a delay also has significance, and is justification for the outright rejection of the petitions.
[...]

104. In regard to its ownership of land, the JNF is not a public body that serves a public function according to the law. Under these circumstances, irrespective of their intentions, it is doubtful whether the petitions, as long as they are aimed at obliging the JNF to distribute its lands to the public at large, are within the jurisdiction of this Honorable Court.
[...]

D. The JNF – 100 Years at the Forefront of Zionist Activity
[...]

130. In Israel's first years, the JNF was asked by the state to purchase lands from the state. The state was in need of fiscal exchange for the land in order to meet the young state's pressing security needs. In 1949 and 1950, the state decided to sell to the JNF lands called "the first million" and "the second million" [...]. The price of the first million (consisting of approximately 1,100,000 dunams) was set at approximately 29 million Israeli Liri. The price of the second million was established as 66 million Israeli Liri. The price of the land was established in accordance with its real market value, as determined by a committee of experts from both parties, and chaired by the advisor to the Prime Minister on land matters. [...]



Excerpts from the Jewish National Fund's Response

131. In order to purchase the land the JNF obtained contributions from Jews in the Diaspora and assumed loans from American banks.
132. In the end, the purchase transaction was not fully completed. The purchase deal was partially accomplished – the JNF received only around a million and a quarter dunams, the value of which was paid for in its entirety.
133. This being the case, to the million dunams purchased by the JNF prior to the establishment of the state was added approximately a million and a quarter dunams, which the JNF fully paid for with monies from the people of the state in the earliest period of its existence [...].
134. The Petitioners' claim that of the JNF's 2.5 million dunams, approximately 2 million dunams of the aforementioned land was transferred to it by the state from lands that were in its possession is baseless [...]. [A]s noted above, approximately a million dunams were purchased by the JNF prior to the establishment of the state, and not from the state's possessions, and approximately an additional million were purchased by the JNF in the early days of the state. The state of Israel did not transfer to the JNF approximately a million and quarter dunams; rather, it sold them in return for full payment. All the lands of the JNF are the full, complete and sole property of the JNF.
[...]
143. Today, a hundred years after its establishment, the JNF continues to fulfill its mission and the Zionist vision. It has in its possession approximately only 10% of the land in the state (approximately 2.5 million from among 22 million dunams). Over the course of its one hundred years of activity as the trustee of the Jewish people on its land in *Eretz Israel*, hundreds of settlements have been established on the land of the JNF and with its assistance.
144. A majority of JNF lands were given decades ago to meet the needs for agricultural settlement on *kibbutzim* or *moshavim* (approximately



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500 agricultural settlements over the length and breadth of Israel).

145. The JNF functions as an independent body with a separate administration and budget from those of the state. Extremely large sums of money have been donated to the JNF over the years from all over the world, in order to dedicate them to the fulfillment of its mission, as well as to create and preserve the Jewish people's possession. The JNF is not funded by the state.
[...]

E. The JNF – Its Normative Umbrella

[...]

163. As approved by the Minister of Justice, the JNF's Memorandum establishes among other matters the goals of the JNF, as follows:

“3. The goals for which the organization was established are – according to the following detailed directives:

a. **To purchase**, acquire on lease or in exchange, to receive via lease or in another manner – **lands**, forests, possession rights and liens and all the rights attenuated therein, and, too, any type of permanent properties in the prescribed region (which expression shall in this Memorandum mean the state of Israel in any area within the jurisdiction of the Government of Israel) or any part thereof, **for the purpose of settling Jews** on such lands and properties.” [Emphasis added in original]

[...]

165. Other articles of the JNF's Memorandum emphasize that its funds are designated “to bring direct or indirect benefit to those of the Jewish religion, race or Jewish origins...” (Article 3(c)).
[...]

167. Legislation of a special law that establishes the incorporation of the JNF as an independent Israeli company for the purpose of continuing its activities, as well as the special arrangements for submitting the JNF's documents of association to the Minister of Justice for approval and official publication, serve as repeated and specific recognition by the legislature of the mission of the JNF, “as a very valuable body



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for our national renewal" [...] in addition to recognition of the JNF as a branch of the World Zionist Organization, as defined in the Status Law.
[...]

168. A Covenant was signed between the state of Israel and the JNF on November 28, 1961 [...].
169. There are three fundamental principles to the Covenant.
170. The first is the retention of the separate status of the JNF and its lands as lands that are independent of the lands owned by the state of Israel (clauses c(1), c(16) of the Covenant).
171. The second is that JNF lands will not be sold and will remain eternally the property of the Jewish people (clause a of the Covenant).
172. The third is that **the ILA is obliged to administer JNF lands subject to the JNF's Memorandum; that is, for the purpose of settling Jews** (clause c(4) of the Covenant). Deviation from this principle requires the agreement of the JNF (clause c(5) of the Covenant). Every act of the ILA in regard to JNF lands is undertaken on behalf of the JNF, and the ILA serves solely as its agent (clause c(6) of the Covenant).
[Emphasis added in original]
173. The signing of the Covenant was undertaken after the state guaranteed, through legislation, the three aforementioned principles manifest in the Basic Law: Israel Lands, in the Israel Lands Law, and in the ILA Law. The Covenant establishes that it will come into effect from the day of the activation of the Basic Law: Israel Lands (clause c(6) of the Covenant).
[...]
185. The ILA Law was intended to serve as an operational means of implementing the Covenant between the state and the JNF. It **obliges** the ILA to administer JNF lands in accordance with the goals and directives of the JNF, as detailed in the Covenant and the documents



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of association of the JNF. The legislature thought it right to instruct the continuation of the administration of JNF lands in accordance with the principles which guided the JNF's administration of its lands in the past. [Emphasis added in original]

[...]

G. JNF Lands are not State Lands: JNF Trusteeship is not Given to the Entirety of the Population, but Rather is the Sole Preserve of the Jewish People.

[...]

207. [...] The Petitioners claim that the JNF's lands are "public land resources," that they are "the property of the entire public," meaning state lands for all purposes. The Petitioners continue and claim that the land was given to the ILA "as a trustee of the public and for the entire public."

208. [...] JNF ownership of JNF land is total and separate from the state. JNF trusteeship is not given nor can it be given to the entirety of the Israeli public. The JNF was established and functions solely for the benefit of the Jewish people. Any attempt to impose upon the JNF an obligation to allocate its properties to those who are not Jews amounts to the abolition of the JNF, as well as the Jewish state's turning its back on its donors in the Diaspora and in Israel.

[...]

220. It is not only the case that the JNF has no obligation to act for the benefit of all the citizens of Israel, but also that the JNF is obliged to act to acquire land for the use of Jews. The allocation of lands for the use of all of the citizens of the state directly contradicts the goals of the JNF and the purpose of its existence. The JNF is forbidden from allocating lands to all residents of the state. Requiring that the JNF allocate its land for the benefit of all of the citizens of Israel is tantamount to its liquidation and the nationalization of its possessions.

[...]



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233. The JNF is a private, limited company, which was established in Great Britain and later registered as an Israeli company. The JNF was founded as a voluntary association. As a landowner, the JNF is not a governmental authority, a governmental corporation, or a public body. The JNF did not receive and is not receiving funds from the government to support its operations.
234. The JNF has many tasks and different functions. Some of these tasks have a more public nature (such as the forestation of Israel's lands), while others are related to the JNF's being a private landowner, whose goal is to redeem the lands of *Eretz Israel* as the representative of the Jewish people in Israel and in the Diaspora.
235. The petitions are dealing with the **private** task of the JNF as the representative of the Jewish people, which is involved in the collection of funds from Jews in the Diaspora in order to redeem the land. The JNF serves as a trustee for the lands purchased by the Jewish people throughout the generations. [Emphasis added in original]
[...]
237. The JNF, as the Land Division of the World Zionist Organization, is a Jewish, Zionist corporation, and is required to act for the benefit of the Jewish people. Among its other activities, it makes its lands available to Jews (this status is even recognized in Israeli legislation), just as the Muslim Waqf is a Muslim body that acts for the benefit of Muslims. [...]
[...]
241. The Petitioners point out that the JNF has representatives on the ILA Council. This is indeed the case, and it is in accordance with instructions included in Article 4(a) of the ILA Law. Furthermore, it is natural that the JNF would have representatives in the body which is appointed by it to serve as the JNF's emissary in administering its lands. This fact does not transform the JNF's lands into a public possession.
[...]



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246. There can be no disagreement that, when administering state land, the ILA must act as a public trustee bound by equality, among other things. However, when acting in regard to JNF lands, the ILA is obliged to administer them in accordance with the Covenant, the ILA Law, the directives of the JNF, including the JNF's Memorandum. In regard to JNF lands, the ILA does not act as a public trustee, but rather as a trustee of the JNF, which acts on behalf of the Jewish people (just as the custodian of absentees' property, when administering consecrated Muslim property, does not act for the benefit of the public at large, but rather for the benefit of Muslims). [...]

H. The Allocation of JNF Lands to Jews is not a Discriminatory Act
[...]

249. As a private landowner and as a trustee of the Jewish people, the JNF is not obliged to act equally towards all of the citizens of the state in the allocation of lands. The JNF's responsibility is to generations of the Jewish people, to ensure that it will continue to use lands it acquired through funds donated by and for Jews, for generations to come.

250. As a landowner, the JNF is not a public body which acts on behalf of all the citizens of the state. Its loyalty is to the Jewish people and its responsibility is to it alone. As the owner of JNF land, the JNF does not have to act with equality towards all citizens of the state. This is not the case when the JNF acts on behalf of all of the Israeli public, for example, when it works on forestation or the development of state lands. [...]

251. Even if a judgment is made in opposition to the stance of the JNF that it is a body with a dual character in regard to allocation of JNF lands, in any event, all of the obligations of public law cannot automatically be imposed on JNF lands [...]
[...]

256. The principle of equality is always relative. "It cannot be the prophecy



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of all matters, as other interests may be stronger.” “[Equality] is not an absolute but rather a relative value, as are all other values. When equality is in opposition to another value, or even with another principle or public interest, a balance should be achieved between them.”

H.C. 1703/92, *K.A.L. Cargo Airlines v. The Prime Minister*; H.C. 1438/98, *The Conservative Movement v. The Minister of Religious Affairs*; H.C. 246/81, *Derekh Eretz Association v. The Broadcasting Authority*; H.C. 953/87, *Poraz v. The Mayor of Tel Aviv-Yaffa*.

[...]

257. The JNF will demonstrate that its activities in acquiring lands with funds from and on behalf of the Jewish people, as well as their allocation to Jews, are a realization of a fundamental principle of the State of Israel and of our legal system, and that, even if the value of equality were to be applied to JNF land, it would retreat before this fundamental principle.

[...]

269. The Petitioners' claim that the principle of equality should be applied to JNF lands should be withdrawn, due to the fundamental constitutional foundation of the state as a Jewish state, the meaning given to it by Israel's Knesset and this Honorable Court. In and of itself, this is sufficient to reject the petition.

[...]

273. Contributors to the JNF have known for a hundred years that their donations will be used for Jewish settlement in *Eretz Israel*. This is the purpose for which they donated these funds. Funds donated to the JNF are intended to serve the Jewish people. They were not donated to the state of Israel in its entirety, nor for all of the citizens of Israel. The JNF and its contributors cannot be obliged to designate resources for the purpose of settling on the land those who are not considered to be members of the Jewish people.

[...]

276. The allocation of JNF lands to non-Jews clearly undermines the



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autonomy of the multitudes of contributors to the JNF, which is a part of their human dignity. It is also fatally damaging to the organizational freedom of the JNF (including its freedom to establish and to realize its own goals) as a Jewish Zionist body established to assist Jews. It threatens seriously to damage the shared fate of and mutual responsibility between Jews in the Diaspora and Jews residing in Zion, and could be responsible for the historical, political and economic consequences resulting from such damage. The ongoing flow of donations from Jews throughout the world that are received by the JNF and other Zionist bodies could become a mere drip.
[...]

279. In any event, whether or not the status of equality is similar to that of all other fundamental values and whether or not it has been given explicit constitutional grounding, when in the balance there is on the one hand, the Petitioners' demand that JNF lands be allocated to non-Jews and, on the other hand, the Zionist and Jewish values of the state of Israel, the right to property of the JNF and generations of the Jewish people, the honoring of the autonomy of multitudes of contributors, the value of preserving the courageous connection between Jews in the Diaspora and Israel, the freedom of association of the JNF, and political – security – considerations, the latter are a higher priority.
[...]
281. It should be pointed out that the allocation of JNF lands to non-Jews will be extreme damaging, retroactively, to the rights of the JNF and of the Jewish people, as well as to their future rights, as JNF lands are for future generations.
[...]
285. Israel's Knesset and Israeli society have expressed their view that the distinction between Jews and non-Jews that is the basis for the Zionist vision is a distinction that is permitted and is not discriminatory, at least in regard to resources held by the Zionist movement.
286. Such a decision by the state cannot be viewed as an abdication of



the principle of equality. The state did not extricate itself from its governmental authorities and from its obligations towards citizens of the state. The Zionist bodies, including the JNF, act alongside the state, as voluntary bodies. They represent the interests of the Jewish people and they are supported by their contributions. They seek to attain their goals through the use of their own resources. They do not act in place of the state, nor are they assuming either its roles or its obligations.

[...]

290. [...] the JNF assumes that the exemption regulation is extraneous to this matter. The JNF is not among the bodies to which the Obligation of Tenders Law (1992), (henceforth “the Obligation of Tenders Law”) applies (Articles 1 and 2 of the law). The obligations assumed by the ILA in transactions involving JNF lands are obligations undertaken in the name of the JNF and on its behalf, and thus there is no obligation of tenders in regard to the allocation of JNF lands.

[...]

292. [...] Article 2 (c)(2) of the Obligation of Tenders Law declares that the “distinction necessary due to the nature or essence of the tender should not be seen as discriminatory.” [...] With regard to the matter addressed here, tenders related to the allocation of JNF lands are tenders which require, by their nature and essence, a distinction between Jews and non-Jews.

[...]

294. The secondary legislation is permitted to prefer some values to equality and to exempt governmental bodies from the obligation to issue a tender when allocating resources to different sectors. This Honorable Court dismissed a claim of discrimination in regard to a regulation among the Regulations of the Obligation of Tenders (1993), when it declared a distinction between groups assumed by the state based upon an ethical obligation “towards populations that took part in its establishment” is a justified distinction that does not undermine the principle of equality.

[...]



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299. [...] the exemption regulation does not undermine equality [...] equality does not require the allocation of specifically JNF lands to someone who is not Jewish.
[...]

I. The Remedies Asked for in the Petitions Do not Help the Petitioners
[...]

305. **The revocation of the exemption regulation does not release the state from its obligation towards the JNF to administer JNF lands in accordance with the JNF's Memorandum. The state's obligation to the JNF, in this regard, has been established in the ILA Law and in the Covenant, *inter alia*.** [Emphasis added in original]

306. **Furthermore, JNF lands will remain the JNF's, whether or not the exemption regulation remains as is. The right of the JNF, as the landowner, to establish the use to which its lands shall be put will remain, irrespective of the status of the exemption regulation.** [Emphasis added in original]

307. **Should the judgment be that the ILA is not permitted to market JNF land solely to Jews, contrary to the stance of the JNF, the JNF will be forced to market its land itself, as required by its role as the land division of the World Zionist Organization and due to its obligation to act in order to preserve the right of ownership of the Jewish people, as an act of loyalty towards its contributors.** [Emphasis added in original]

308. The Covenant that manages relations between the state and the JNF provides that each of the parties may annul this Covenant (clauses c(17) – (19)). Annulment of the Covenant is not desired by the JNF by any means. However, if the state is unable to fulfill its obligations towards the JNF and the Jewish people (an obligation that is the foundation of the Covenant, among others), then the JNF will be forced to pursue an annulment of the Covenant in order to administer its lands independently, in accordance with the goals and historic



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role of the JNF.

309. Action that will lead to an end to the administration of JNF lands by the ILA will disrupt, entirely, the existing laws. *Inter alia*, it will stand in complete contradiction to the ILA Law, the Israel Lands Law, and the other laws referred to above.
[...]

J. A Final Word

333. For each and every claim detailed above, as well as their accumulative weight, the Honorable Court is requested to dismiss the petition outright or alternatively on the merits, as well as to deny the temporary injunction and require the Petitioners to pay the expenses of the JNF, including lawyers' fees and VAT, as required by law.

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