Unofficial translation from the original Hebrew publication (published in ICON-S-IL Blog, June 7, 2021)

Public Obligations of Israel towards the Residents of Sheikh Jarrah

Dr. Ronit Levine-Schnur

Note: On June 7, 2021, the Israeli Attorney-General announced that he will not preside in these cases. As the author argues, this is yet another manifestation of the State's withdrawal of its basic commitments, to the detriment of its residents.

Summary:

On May 9, 2021, shortly before the outbreak of great hostilities related to the large-scale eviction of property holders, which was set to be implemented in the Sheikh Jarrah neighborhood in East Jerusalem, the Israeli Attorney-General announced that he will consider presiding over the legal proceedings of **Ja'ouni VS. Nahalat Shimon Ltd.** case. His response regarding the **Dajani VS. Nahalat Shimon Ltd.** lawsuit was also requested.[1]

In this article, I will argue that, instead of labeling this dispute as a "private-civil" one in which the state is not a party,[2] the Attorney-General should immediately call for fulfilling Israel's public obligations, which are as follows: First, the Attorney-General must recommend to the Minister of Justice to announce the implementation of procedures for settling land-related rights in that site, a process which was not implemented up to this day.[3] Concurrently with that, the Attorney-General must preside over the deliberations and discussions related to these court cases, and to request

[1] Permission for Civil Appeal 2401/21: **Ja'ouni VS. Nahalat Shimon Ltd.** (Attorney-General's notification on 9 May 2021; decision of 9 May 2021; decision of 25 May 2021). Permission for Civil Appeal 2841/21: **Dajani VS. Nahalat Shimon Ltd.** (decision of 9 May 2021; decision of 12 May 2021) (both cases will be referred to together as "*the pending cases*").

[2] Patrick Kingsley, *Evictions in Jerusalem Become Focus of Israeli-Palestinian Conflict*, NEW YORK TIMES (May 7, 2021). Also, please refer to footnote 12 and its related text.

[3] The land is referred to as Block No. 30514, Parcels 54 and 66; Block 30526, Parcel 2; and Block 30527, Parcel 6.

from the High Court of Justice (as well as other courts related to these properties and similar ones) to order the delay of all related lawsuits and court proceedings until the completion of property settlement procedures.[4] Ultimately, and within the framework of property settlement procedures, the State of Israel must call for the fulfillment of all obligations related to ownership rights that were granted in accordance with the law during the Jordanian period, to the property holders or their heirs.

The Nature of the Property Dispute

The dispute related to evicting the residents of Sheikh Jarrah involves two types of claims. The first type is related to claims of protected rent, whose existence is not subject to any debate.[5] The protected rent emanated by virtue of housing agreements made during a period in which the property was under Jordanian rule, and which were conducted by the Jordanian Commissioner of Enemy Property, in accordance with the effective law in that location. The Commissioner handed over that property to the Jordanian government so that the latter would establish a residential neighborhood for refugees coming from Israel. The buildings standing there up to this day are the same ones established by the Jordanian government or on its behalf. Although the right to protected rent was recognized by all parties, there is still a disagreement, whereas some verdicts were issued regarding the pending cases. This includes the question of whether the tenants violated their obligations as protected lessees in a way that leads to their loss of due legal protection from eviction. However, I will not delve into this matter in this article.

As for the second type of claims, which is the main point of focus; it involves claims for property ownership rights. These claims stem from the fact that the housing agreements signed by the Jordanian government with the neighborhood's residents also gave the latter a pledge regarding land ownership rights in addition to their protected rental rights. As mentioned in the agreements, "*If the lessee acts in accordance with this agreement's conditions and the lessor (landlord) is*

[4] In accordance with Article 8 of the Land (Settlement of Title) Ordinance (New Version) of 1969 (5729) [hereby referred to as "*The Ordinance*"].
[5] Civil Appeal 459/79: **General Committee of the Israeli Knesset VS. Al-Ayyoubi**, PD LH(4) 188 (1981) [hereinafter referred to as "**The General Committee case**"].

convinced that the lessee has helped in constructing all the unit, ***the ownership of the lessor would be transferred to the lessee without any payment***".[6]

This short article will not fully address the allegations about the existence of procedural barriers to hearing these claims in court, whereas the claims were never subject to proper review. I believe that, in general, there should not be any barriers for properly considering the claims, neither in terms of a court action, nor in terms of a legal consent or statute of limitations. But in any case, the blocking of hearing a claim does not mean the cancellation or elimination of that claim, and should not undermine the rights of third parties who were not a side in the litigation (especially vis-à-vis the State of Israel). The blocking of hearing claims should also not affect the property rights settlement procedures whose purpose is to fully clarify the various rights. Moreover, the registration of these properties in the name of Sephardic and Ashkenazi religious committees [hereby referred to as "*the Committees*"], or, later, under the name of the property purchaser, even if the properties were duly registered (although the allegations against that are numerous), it would still not block the normative power to present counterclaims that were not previously expressed.[7] This is especially true because these claims of rights were well-known to both the committees and the purchaser, in a way that denies the latter's power to solely rely on the registration.[8]

The dwellers' claim of ownership has not been heard yet, but the lawsuit is based on the governmental obligation that was lawfully created during the Jordanian rule. This lawsuit was "dragged" (so to speak) from one court to another for many years without the proper procedures

[6] Article 11 of the standard text of the Sheikh Jarrah housing units contract. The quotation was taken from the agreement of 2 August 1956 between the Jordanian Housing and Construction Minister and Al-Sabbagh. This contract was attached to Permission for Civil Appeal 2401/21 (the request's appendices are on file with the author).
[7] A clause similar to Article 81 of the Ordinance (and also in Article 93 of the Ordinance) does not apply to the proceedings related to the renewal of registration in accordance with Article 135 of the Land Law of 1969 [5729].
[8] Therefore, Article 10 of the Land Law does not apply in this case because the issue at hand is not a regulated property. Also, Article 9 of this Law does not prevent property holders to counter the purchaser since the latter clearly **knew** about the existence of obligations (towards the property holders) and they also have obligations towards the committees with regard to releasing the committees' rights, "while taking the rights of third parties under consideration". See the **General Committee** case mentioned in footnote 5. This was also seen in the purchase agreements signed with the Committees (especially Article 4 of the agreements that were attached to Permission for Civil Appeal 2401/21). Therefore, their reliance on Article 9 of the Law cannot be considered "in good faith". The property registration has nothing that can establish a defense because the Israeli registration method is subject to deferral protections and does not apply to the case. There could be cancellation of registration retrospectively if it turns out that the conditions of Article 9 of the Law have not been met; see Civil Appeal 1117/06: **Al-Quds Corporation VS. Heirs of the late Abdul-Rahman** (14 April 2010).

for examining the settlement of property-related rights despite repeated requests to implement the relevant process.

Why were the Properties not Settled Yet?

The land in question was not formally settled during the Jordanian period due to its temporal removal from the procedures by the Jordanian Land and Measurement Administration.[9] However, for the past 20 years, there were several requests for settling the property rights in this site. At the same time, the leading Israeli approach was to avoid any actions or procedures for settling property-related disputes in East Jerusalem, except if the issue was for the protection and defense of Jewish residents' rights, as seen in the western part of this neighborhood.[10] Concerning **Hijazi**'s petition/plea regarding these particular properties, the State declined the request, stressing its position of refraining from performing any property settlement procedures in East Jerusalem due to political and practical considerations.[11] After several years, some property holders filed a petition to issue an order that forces the government to execute settlement of rights procedure. However, the court outrightly rejected the petition, stating that "*the place for clarifying the question of ownership in that location is in the civil courts, and not by filing a petition to this court. This must not be circumvented by raising artificial claims regarding a property settlement*".[12] This rejection should not have taken place, whereas the State's failure to settle the different rights in this location – and [intentionally] refraining to do so – is a privatization of its duties and should be considered a violation of its obligations for equal treatment under the law.[13]

The reluctance to settle property rights in East Jerusalem was criticized in literature.[14] Consequentially, the government announced (in 2018) that it will resume the property settlement

---

[9] Their notification regarding this matter was seen in some appendices of Permission for Civil Appeal 2401/21.

[10] The arrangement was done in light of the cancellation of property settlement procedures related at that area during the Jordanian rule, by virtue of Jerusalem court case decision 2/72: **Administrator General for Absentee Properties VS. Property Settlement Clerk**, Jerusalem District Verdict A.T.134 (1972). See: Civil Appeal 8954/06: **Waqf M. VS. Administrator General** (26 September 2010); High Court of Justice 2996/21: **Sheikh Jarrah Welfare Association VS. Property Settlement Clerk Jerusalem** (Decision dated 13 May 2021).

[11] High Court of Justice 660/00: **Hijazi VS. Head of Property Registration and Settlement Division** (28 May 2002).

[12] High Court of Justice 6358/08: **Al-Kurd VS Property Settlement Bureau** (20 November 2008).

[13] Ronit Levine-Schnur, "*Privatization, Separation and Discrimination – the Cessation of Land Settlement in East Jerusalem"* 34 **Tel Aviv University Law Review**, 183 (2011).

[14] Ibid; Ronit Levine-Schnur, LAND REGISTRATION LAW: REGISTRATION AND SETTLEMENT, AND THEIR IMPLICATION, IN ISRAEL AND THE WEST BANK (2012); and Maayan Nesher "ILLEGAL CONSTRUCTION, BLOOD FEUDS AND TWO

procedures in East Jerusalem.[15] Hence, property settlement procedures should advance forward without any delay, and an order of property settlement must be immediately declared for the specific area under discussion prior to performing any additional actions related to the property (such as an eviction or additional court decisions).[16]

The Nature of the Ownership Lawsuits

It is important to emphasize that my argument for the need to fulfill property settlement procedures is not only at the procedural level. Therefore, it is strictly necessary to hear the parties' claims of ownership.

During the Jordanian rule in which the lands were granted to the Jordanian Commissioner of Enemy Property, the original owners' (i.e. Jewish Committees) connection to the property was interrupted and nullified. Hence, they no longer have an independent proprietary connection to the property, which would have otherwise allowed them to demand the return of properties or payment of their worth.[17] The interruption of the proprietary connection between the owner and his/her property as a result of granting the assets to the Commissioner was recognized even in cases related to properties owned by Holocaust victims. In fact, it was previously stated that, "*despite the distress in seeing Holocaust victims as an "enemy", the legal principle of interrupting the proprietary connection is also relevant in this case*".[18]

After the occupation of East Jerusalem in 1967, there was the issuance of a military decree in which the army commander ordered that all the assets that used to belong to, or were registered in the name of, the Jordanian state and other authorities would be transferred to the exclusive

---

BILLION SHEKELS PER YEAR: THE PRICE OF THE ABSENCE OF RIGHTS TO PROPERTIES IN EAST JERUSALEM" (Jerusalem Institute for Policy Research, 2018).

[15] See Decision 3790 of the 34th Israeli government: "Reducing Social and Economic Disparities and Enhancing Economic Development in East Jerusalem" (13 May 2018), which instructed the completion of East Jerusalem property rights settlement procedures within a specific period of time.

[16] This position is accepted by the property holders who, during the discussions/deliberations in the pending cases, expressed that they are willing to pay rental fees to the court clerk until the issue of ownership is concluded within the property settlement framework while each side holds on to its position regarding ownership claims and rights. However, the respondents vehemently refused this offer and demanded that the petitioners would declare them as the owners of the property in an absolute and irrevocable manner (based on information received from the petitioners' attorney, Adv. Dr. Sami Irsheid, 24 May 2021).

[17] High Court of Justice 3198/05: **Lamla VS. Tel Aviv Municipality**, paras 39-40 (Justice Procaccia; 13 June 2011).

[18] Civil Appeal 5580/13: **Meyer VS. The Company for Locating and Returning the Assets of Holocaust Victims**, Para 25 (Justice Amit; 24 November 2014).

possession of the army and would fall under their administration.[19] The document granted the military commander, in line with international law, temporary powers to administer the assets held by the Jordanian Commissioner of Enemy Property.[20] Several weeks afterwards, in late June 1967, the Israeli law became applicable in that territory, which undermined the powers granted to the military commander. Therefore, the rights of the Jordanian Commissioner of Enemy Property – along with the rights of other official authorities – are still applicable vis-à-vis the Israeli State's properties.[21] But since the rights of the Jordanian Commissioner and other authorities were subject to the legally established rights of third parties, the rights of the Israeli State would also be subject to them. This is what was adjudicated in the case of **Yafia**, where it was ruled that transferring the assets of the British Mandate to the Israeli State - in accordance with Article 2 of the State Properties Law - does not release the State's binding obligations towards third parties. It was also ruled that "*the legislator should not be regarded as having any intention to cause such outrageous outcomes and deny vested rights in an indirect manner*".[22] Therefore, the law should not be interpreted in a way that denies existing rights.[23]

In August 1968, a law called "Legal and Administrative Matters Law" was enacted. This law states, in a retroactive manner, that, with regard to properties located in the area of applicability of the [Israeli] Law Enforcement Order, if, on the day the area came under the Israeli Defense Forces, a property was held by the Jordanian Commissioner of Enemy Property – or if the property ownership had been transferred by that Commissioner to one of Jordan's authorities, these properties shall be granted to the Administrator General.[24] Hence, the legislator transferred the State's rights to properties to the Administrator General. This means that the State transferred the rights of the Jordanian Commissioner of Enemy Property and other relevant authorities in a way that keeps the validity of their obligations towards third parties. But the rights of **original owners** (i.e. the Committees) were <u>not</u> transferred to the State of Israel since they were no longer effective, thus the State of Israel is unable to grant these rights to the Administrator General.

---

[19] Article 4 of the Decree related to the Rules of Governances and Law (West Bank area) (No. 2), 1967 (5727] **File No. 1 of Publications, Orders and Appointments** (dated 7 June 1967).
[20] See: High Court of Justice 3103/06: **Valero VS. State of Israel** (6 February 2011).
[21] Articles 2 and 3 of the Israeli State Property Law of 1951 [5711].
[22] Case No. 10/76: **Local Council of Yafia VS. State of Israel**, PD 31(2) 605, 613 (1977) (Chief Justice Laudau).
[23] Ibid., p. 614.
[24] Article 5 of the Legal and Administrative Matters Law of 1968 [5728], Law Book # 542.

According to the Legal and Administrative Matters Law, the Administrator General was authorized "to release" the land "to those who were its owners before they were granted" to the Jordanian Commissioner of Enemy Property. The use of the verb "release" is not correct in this case because the rights of original owners have discontinued and their connection to the property was interrupted. All that the State can do is to create a new proprietary right, which requires that the land would be in the hands of the State. But if the State no longer has any rights to that property (which is the case here since the Jordanian Commissioner of Enemy Property did not retain these rights to himself) or if a right did remain but was confined to some restrictions due to third party rights, it would be impermissible to transfer or create any rights related to that.

Granting the land to the Administrator General and authorizing it to "release" the property constitutes a violation of the State's public obligations. For example, there was no preliminary, detailed and public inquiry of the rights of property holders and the content of the State's obligations towards them. Moreover, the property holders were not given the right to make any claim or appeal, and the decisions have not been published. The granting and "release" of the said properties constituted a violation of basic rights and principles.[25]

Moreover, within the framework of the Legal and Administrative Matters Law, two exceptions were explicitly stated. First, if the lands were purchased for public purposes after the area's annexation but before the release of the lands, the original owners would have a right to compensation only, in accordance with the laws concerning purchases for public purposes. Second, if the land included **a public building** constructed after granting the land to the Commissioner but before the annexation order, the ownership will be ascribed to the property holders and not to the "original" owners of the land,[26] and "**the land shall be part of the State's assets**". However, the original owner/s would have the right to compensation, which shall be determined only by the value of the land when it is vacant.[27]

---

[25] See: High Court of Justice 7446/17**: Sarhan VS. Administrator General and the Official Receiver**, Para 47 (Justice Barak-Erez, 21 November 2018).

[26] Article 12 of the Land Law (enacted after the Legal and Administrative Matters Law).

[27] Article 5(d) of the Legal and Administrative Matters Law of 1968.

These provisions have remained unchanged even after the publication of the consolidated version of the Legal and Administrative Matters Law.[28] They also indicate the existence of governmental obligations related to such properties – both with regard to purchasing properties for public purposes and also in terms of establishing public buildings during the Jordanian rule. This in turn ties the hands of the State. These aspects were not taken into consideration during the "release" decision, although it should have been easy for the State to find that the buildings constructed therein by the Jordanian government can be considered "public" ones in case they are not considered as privately owned by the property holders. In any case, the government's public obligations apply to these properties and must be fulfilled. Since the release of properties is considered an action that "has great ramifications for the property rights"[29] of third parties, the examination of these rights must be taken into consideration in any relevant decision.

Therefore, it was not sufficient to note in the statement of release that "this release was done subject to third party rights, if exist" and "this certificate of release does not prove the ownership of the aforementioned owner".[30] It is also not enough to say that "the certificate of release in itself does not directly effect the rights of third parties".[31] In fact, the Israeli State and Administrator General have the duty of identifying these third-parties' rights and protecting them, and not to "throw away" the third parties to defend their rights on their own against the original owners.

To summarize, the granting of properties that were transferred from the Jordanian Commissioner of Enemy Property to the Administrator General, and the release of properties to the original owners in accordance with the Legal and Administrative Matters Law, are restricted by three complementary matters: First, the granting and release of the properties must be executed in accordance with the administrative law standards; which include the duty to conduct a detailed and public verification of all rights related to that matter. These obligations were clearly breached in the current case. Second, if any private rights related to third parties have emanated from that property, these rights must not be denied, and they continue to be valid and effective and obligate the State and the original owners. The State must ensure the protection of these rights, especially because they stemmed by virtue of governmental obligations. Third, if a public building was

[28] Article 5 of the Legal and Administrative Matters Law (Consolidated Version) of 1970, Law book # 603.
[29] The case of **Sarhan**, see footnote 25, Para 55.
[30] Certificate of Release dated 11 September 1972.
[31] The case of **Sarhan**, see footnote 25, Para 58.

constructed on that land, the ownership of the land and building shall be kept in the hands of the State, whereas the original owners have the right to compensation only (if any).

Hence, it must be noted that the Committees (along with the purchaser related to them) can only receive what the State can "release". And the State has to adhere to third party rights, in particular to the obligations towards the property holders created by the State's predecessors: the Jordanian Commissioner of Enemy Property and the Jordanian Housing Ministry. These obligations have not been eliminated or expired, whereas the State is required to hand over the full property ownership rights to them.

Implementation of Public Obligations

Since the ownership claims of property holders have not been examined, and in view of the violation of their respective rights, it is important to cancel the previous judgments in the pending cases.[32] Moreover, instead of verifying the claim of proprietary ownership before a trial court, the Minister of Justice should, first and foremost, declare the area as one which is subject settlement of property rights procedure, and he must determine the date of commencing the property settlement process at the earliest date possible.[33] Within the framework of land settlement procedures, all the relevant parties must submit their memoranda of claims. Moreover, the State ought to fulfill its obligations related to the ownership rights of property holders. Additionally, the Jerusalem District Court should determine the contradictory claims with regard to ownership, without having any restrictions on procedural claims (which arose from previous proceedings).[34]

The State neglected its legal obligations towards the property holders (i.e. dwellers), as a result of "releasing" the properties for the benefit of the original owners without protecting the rights of the dwellers, and refraining from conducting property settlement procedures until today. Therefore, the State must fully recognize the dwellers' ownership rights within the property settlement framework. If for some reason these rights won't be respected, Israel should expropriate the rights

[32] Civil Appeal (Jerusalem Division) 57595-11–20: **Ja'ouni VS Nahalat Shimon Ltd.** (Not published, 10 February 2021); Civil Appeal (Jerusalem Division) 1759-11-20: **Hammad VS. Nahalat Shimon Ltd.** (Not published, 3 March 2021).
[33] According to Article 9 of the Ordinance, it is vital that the property settlement clerk would publish a prior notice at least 30 days before the property settlement commencement.
[34] Article 43 of the Ordinance.

to those properties and attribute them to the current property holders. In this particular context, the protection of the *bona fide* lawful property holder who has resided therein in a continuous manner is preferable to the strictly financial interest of the original owner; whose original right was actually discontinued and had an interrupted connection to the property for several decades. However, the latter party can be protected if required, through the alternative means of monetary compensation.

In conclusion, the deliberations that took place in civil courts have thus far reflected the Israeli State's failure to fulfill its public obligations. These obligations must be undertaken as soon as possible, and if that were not the case, it would lead to a severe and unjustified violation of basic human rights: of property rights; equal treatment under the law; right to shelter; community life; security; and minimal living conditions.

Dr. Ronit Levine-Schnur *is a Senior Lecturer at the Harry Radzyner Law School, the Interdisciplinary Center in Herzliya, Israel. This article was written in a very critical period with several time constraints. A full discussion of the above-mentioned claims will be published in a separate manner.*