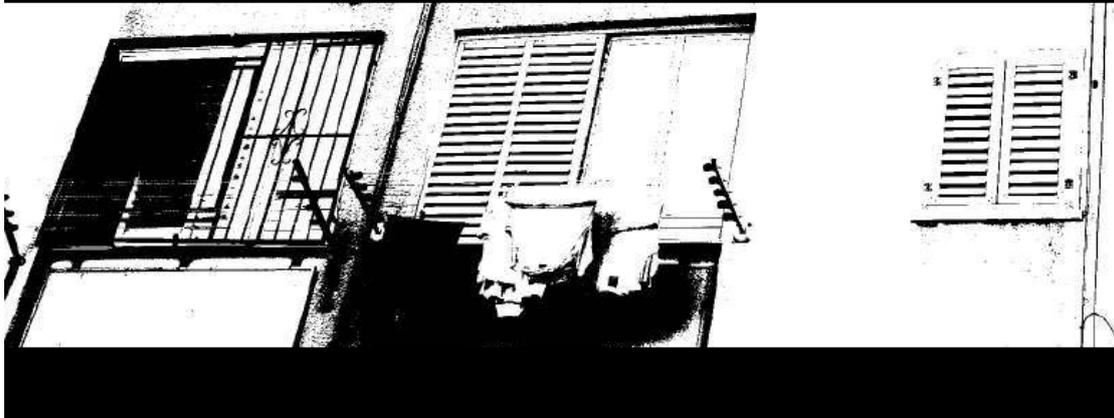


האגודה לזכויות האזרח בישראל
جمعية حقوق المواطن في اسرائيل
The Association for Civil Rights in Israel



**Real Estate or Rights:
Housing Rights and
Government Policy in Israel**



**An English Summary of ACRI's Report on the Right to Housing
(July 2008)**

Written by: Attorney Gil Gan-Mor

Introduction

Housing – A Human Right?

The term “the right to housing” raises eyebrows among some listeners, but it is not clear why this is the case. Why is it easier to accept the notion that everyone has the right to live freely or to demonstrate, but harder to accept that everyone also has the right to housing? Why does it seem self-evident that the state must provide education for every child, but not clear that the state must take responsibility to ensure that every child has a roof over his or her head? Why is it easier to understand that health is a human right and not a commodity, and therefore medical attention and medicines must be ensured for those without means, but it is harder to understand that housing is also a human right and not just a piece of property, and therefore adequate housing should also be ensured for those who cannot afford to buy or rent a home in the private market?

Perhaps the reluctance around the term “right to housing” stems from the fact that this concept has not yet become part of the public and legal discourse, and therefore it evokes surprise and questions. Does the right to housing mean that the state must provide an apartment to every citizen? Does it mean that every person has the right to own an apartment or perhaps the more narrow right to a shelter for the homeless? Under what circumstances can an individual claim that his or her right to housing was violated? What are the obligations of the state toward such an individual?

Many confuse the right to housing with the right to property, even though the right to housing does not mean the right to own an apartment. This is not essentially a property right, but a social right – the right to some form of adequate housing. One of the main purposes of this report is to infuse the term “right to housing” with clear and concrete meaning, and then to show how this is reflected in Israeli housing policies, and how these compare with the housing policies of other developed countries.

The right to housing is a source of empowerment to those who are homeless: It can protect people against decisions made by the authorities that harm their home; it allows an individual to demand that the state take action to protect his or her right to housing and allocate the needed resources;¹ and it obligates the authorities to set policy and priorities. This seems to be the reason why decision makers are reluctant for housing to enter the discourse of human rights. In the absence of an enshrined and protected right to housing, the authorities need follow only vague housing policies that are subject to frequent change without public critique or judicial review.

The right to housing may sometimes conflict with other rights, such as the right to property, or with economic interests. The right to housing could put a brake on some

¹ In South Africa, for example, the right to housing is enshrined in the constitution. A group of several hundred families who waited a prolonged period for public housing assistance filed a petition to the court against the intent to evict them from where they had squatted without a permit. The Constitutional Court examined the housing plan for the area and ruled that it was unreasonable and inadequate for realizing the petitioners' housing rights. The court also obligated the state to provide temporary housing until a permanent solution could be found. *South Africa v. Grootboom* SA46 (CC) (2001). For an analysis of this ruling, see Guy Seidman, “Social Rights: A Comparative Look at India and South Africa”, in Yoram Rabin, Yuval Shany (eds.), *Economic, Social and Cultural Rights in Israel*, Ramot, 2004 (Hebrew).

activities of real estate sharks, landlords, or financial bodies. For this reason, too, there are those who seek to keep the issue of housing away from human rights discourse, and to prevent this right from having an impact on law and the rules of the game in the free market.

Protecting Housing Rights – Now More Necessary than Ever

The Association for Civil Rights in Israel (ACRI) is working to promote the right to housing because protection of the right to adequate and affordable housing is more important today than ever before. In recent years, housing policies of Israel have changed beyond recognition, with the dominant trend being to shirk responsibility and privatize: reduced assistance to apartment buyers, privatization of the mortgage market, cutbacks in rental assistance for disadvantaged populations, and the elimination of public housing. As a result, the right to housing has been violated for more and more people, who are left homeless. The center of gravity – an individual's ability to buy or rent an apartment – is being transferred to the private sector, but the state is not fulfilling its role as a regulator of this market, and not enacting laws or creating mechanisms to protect the rights of buyers and tenants so that everyone, even the indigent, can realize their basic right to a home.

Although the state of Israel encourages the private ownership of property as a housing solution even for low-income households, it increasingly dodges its responsibility for those households that cannot afford to purchase a home without assistance. The state stopped giving grants to help in the purchase of apartments, and significantly lowered its subsidies of mortgage loans. In the absence of a rental market as a realistic housing alternative, many families are forced to take a mortgage in order to purchase an apartment. The state, which completely privatized the mortgage market, has not yet managed to ensure that the mortgage institutions not set a honey trap for borrowers that will end in foreclosure of the mortgaged home. As a result, the number of families evicted from their homes has sharply increased, now reaching approximately one thousand families a year.

In this context, with more and more families having a hard time buying an apartment, the rental market has become the only option for an ever-growing group. However the private rental market is also undergoing significant change. The shortage of rental apartments has led to steep and frequent rises in the rental price. These increases take a heavy toll on low-income population groups, who now have to change apartments frequently or channel an ever-increasing portion of their income to paying the rent, rather than other critical needs. Israel is one of the only countries in the developed world in which the state does not intervene at all in the terms of the rental contract, the level of rent, or the frequency that it is raised. The absence of tenant protection laws and the lack of an efficient enforcement mechanism for rental contract breaches provide a fertile field for violations of the rights of people renting apartments.

Instead of increasing state aid to disadvantaged families in light of the rental market situation, government assistance today is significantly lower than it had been in the past. Public housing – apartments owned by the state that are leased at subsidized prices to populations who meet the terms of eligibility – once a model of housing assistance for low-income families and the absorption of new immigrants – is now in the process of disappearing. The state continues to sell public housing apartments to the tenants who lived in them, but has completely stopped building new public housing. As a result, the pool of public housing apartments has shrunk and become virtually “theoretical” for most families without a home.

To replace the assistance model provided by public housing, the state has now turned to the assistance model of paying some of the rent in the private rental market, without giving thought to the implications of this change. Not taken into consideration, for example, was the effect of higher rental prices on those who receive a set payment from the Housing Ministry that is adjusted only once every few years. The assistance is not anchored in law and often changes. In June 2002, for example, the amount paid to those newly eligible was halved, without examining the repercussions of this tough new ruling on many families who rely on this assistance in order to rent an apartment.

Neighborhoods where people from all socio-economic strata had once lived together are now becoming neighborhoods for the rich only. Entire areas are undergoing a dramatic face-lift as real estate investors enter the neighborhood: Residents are pushed out, separated from their communities and neighbors, all in the name of free market principles. Not only is the state not preventing this, it has taken an active role by issuing demolition and eviction orders. The state does not demand affordable housing in new projects currently being planned and built, thus squeezing low-income populations out of centrally located areas, where rental prices have soared.

City plans for Arab towns do not exist or do not meet the basic housing needs of the local population, and therefore construction permits cannot be issued in these towns. As a result, unlicensed housing emerges in these areas, destined for demolition in keeping with the laws of planning and construction. The state continues its refusal to recognize the existence of many Bedouin villages in the Negev, and ignores the harsh conditions in which the residents live. The state also continues to demolish the homes of Arab citizens and residents – in the unrecognized villages, Arab towns in the north, mixed cities, and the neighborhoods of east Jerusalem. As a result, thousands of families have no roof over their heads or live in the ongoing fear of their home being razed. And the state continues to discriminate against Arab citizens in the provision of economic benefits for housing.

The processes of change in the housing market are also manifested in the troubling growth in the number of homeless living in the street or in abandoned houses or crowded into shelters or the homes of acquaintances and relatives. With no state funding and poor enforcement of regulations, the network of shelters for the homeless in Israel is based entirely on non-governmental charitable agencies, and no systematic effort is made to prevent the number of homeless from increasing.

Thus, sixty years after the founding of Israel, the failure to enshrine and protect the right to housing allows the state to evade its obligation to ensure adequate housing to its residents. In the coming chapters, we examine the scope of the right to housing, the key housing issues currently facing decision makers in Israel, and how the state violates the housing rights of its citizens and residents.

Note that this report does not address the violations of housing rights of Palestinian residents of the Occupied Territories, but is limited to citizens and residents of Israel. The right to housing of residents of the Occupied Territories, like other basic rights, is violated in manifold ways – demolishing homes, allowing for unsuitable living conditions, denying the right to choose one's place of residence, etc. This subject is worthy of its own report, and has been raised in the publications of other organizations.²

² See for example, "'Lack of Permit' Demolitions and Resultant Displacement in Area C", OCHA: United Nations Office for the Coordination of Humanitarian Affairs, May 2008, http://www.ochaopt.org/documents/Demolitions_in_Area_C_May_2008_English.pdf ; Ronen

This report also does not deal with the housing rights of the refugees who arrived in Israel in recent years, most from Africa. The state of Israel failed in their absorption, and consequently many lack a roof over their heads or are living in subhuman conditions or shelters. The harm done to refugees and asylum seekers has been exposed in the media and by organizations that address this issue.³

Chapter 1

The Right to Housing in International and Israeli Law

What is the Right to Housing and is it Implemented in Israeli Law?

The right to adequate housing is one of the rights recognized in international human rights law. The state of Israel, like most countries in the world, undertook to uphold this right, which is enshrined in international covenants, particularly the Universal Covenant on Economic, Social and Cultural Rights, to which Israel is party.

The right to adequate housing ensures affordable housing for every individual. Housing, like health or education, is not a commodity – acquired if you have money and lacking if you do not – but the fundamental right of everyone, rich and poor. Every individual has the right to equality in housing and accessible housing. Everyone has the right to conditions of privacy and habitable housing that would enable maintenance of a family life in privacy, protected from the cold, wet, heat, rain, wind, or any other threat to health, connected to the electric and water grids, ventilated and lit, and in conditions that allow for hygiene. Every individual has the right to the legal security of tenure, ensuring that the use of his home not be harmed, that he not be arbitrarily evicted from his home, and that eviction would take place only after appropriate legal procedures. Every individual has the right to the availability of services, materials and infrastructure, just as everyone has the right to earn a livelihood, access health care, and attend school. Every individual has the right to free choice regarding where his home will be located so that it meets his needs. Finally, everyone has the right to culturally adequate housing – housing in accordance with his or her culture.

In Israel, in the absence of a written constitution, and with no Basic Law to protect social rights, the right to housing is protected only partially by the Basic Law: Human Dignity and Liberty. This Basic Law asserts that every individual is entitled to

Shnayderman, "Through No Fault of their Own: Punitive House Demolitions during the al-Aqsa Intifada", B'Tselem, November 2004, http://www.btselem.org/download/200411_Punitive_House_Demolitions_Eng.doc; data from the website of Hamoked: Center for Defense of the Individual: "Freedom of Movement, the Right to Choose a Place of Residence", http://www.hamoked.org.il/items_en.asp?cat_id=21&sub_cat_id=62§ion01_id=3§ion02_id=10.

³ See, for example, *Social and Economic Rights of Asylum Seekers and Refugees*, Forum for Refugee Rights (forthcoming) (Hebrew); Yigal Hai, "Tel Aviv setting up tent city for African refugees", *Ha'aretz*, 19 March 2008, <http://news.haaretz.co.il/hasen/spages/966015.html>; Ronny Arison, "The refugees fell between the cracks so I set up a shelter", *Ha'aretz*, 19 February 2008, <http://www.ynet.co.il/articles/0,7340,L-3508359,00.html> (Hebrew); Vered Lee, "Influx of African refugees puts strain on Tel Aviv's shelters", *Ha'aretz*, 24 December 2007, <http://news.haaretz.co.il/hasen/spages/937494.html>.

protection of his dignity, which must not be harmed by virtue of his being a human being. Israel's Supreme Court ruled that an individual's right to dignity includes the right "to live his ordinary life as a human being, unvanquished by poverty that leaves him in unbearable destitution". Since the Knesset passed the Basic Right: Human Dignity and Liberty, the Supreme Court again ruled that the lack of a roof over one's head constitutes a violation of human dignity. The Court even ruled that every individual has the right to choose his place of residence and that the forcible eviction from one's home violates this fundamental dignity. Nevertheless, so long as the right to adequate housing is not enshrined in a Basic Law or constitution, the Basic Law: Human Dignity and Liberty as interpreted by the courts lacks the power to protect *the full scope* of this right – not just a roof, but an *adequate level* of housing.

Israel has no clear housing policy anchored in law and therefore someone without a home has no legal basis for demanding that right. The government maintains vagueness in its housing policy by the widespread use of internal procedures. The level of assistance to populations in need, for example, is entirely determined by the internal procedures of the Housing Ministry. These procedures set the criteria for who is eligible for public housing and who is eligible for rent subsidies, and at what terms. Although these procedures have a direct impact on the lives of hundreds of thousands of people, they are frequently changed by government decision with no prior discussion by the public, the legislature or the courts. And most of these changes are not effectively made public.

Chapter 2

Encouragement of Ownership – At What Cost? Violations of the Right to Housing of Apartment Buyers

The right to housing is not the same as the right to own a home. This is not in essence a property right, but a social right: the right to some form of adequate housing. Every country may choose how to implement this right in accordance with its own considerations. Some countries encourage home ownership while others encourage public or private rental housing. However, countries that choose to encourage ownership as the main avenue to realize the right to housing must do so in a suitable way. Those governments must ensure that even families of little means have access to housing, whether by subsidizing loans to acquire a home or by ensuring that housing is accessible for purchase.

Israel encourages private ownership as the primary avenue for housing. Seventy percent of the households in Israel live in a home they own, a high percentage in comparison with other developed countries. Private ownership is considered a preferred alternative for various reasons. For one, it deepens the connection of an individual with society, and confers some measure of security and economic independence. In addition, home ownership, if it is accessible to low-income populations, can provide family capital that is passed on to the next generation, serving to narrow socioeconomic gaps.⁴

⁴ For more about Israel's policy of encouraging ownership, see Gilat Ben-Chetrit and Naomi Carmon, *Mortgages in Israel: Failures in Paying them Off*, research commissioned by the Ministry of Housing, 2006, pp. 39-50 (Hebrew).

In recent years, the government instituted new policies that are expected to reduce the number of families who live in their own homes. These policies sharply lower assistance for home acquisition to low-income families: In April 2003, grants for home purchases were entirely eliminated; in January 2005, the eligibility criteria for subsidized loans were made more stringent; and in August 2007, a decision was made to cut an additional NIS 737 million from the funding of credit to those eligible. As a result, government assistance for mortgages that had reached NIS 5,582 million in 2006 fell to NIS 1,961 million in 2007. Thus, a clear trend is evident of fewer families eligible for assistance, and even those eligible do not always manage to convert their eligibility into the purchase of a home. Most of the decrease took place in 2004 after cancellation of the grants (a drop of 28%), and in 2005 after narrowing the criteria of those eligible (a drop of 30%).⁵ Following these cutbacks, the purchase of apartments became a mission impossible for an increasingly large portion of the population.

The option of assistance by offsetting the market price of an apartment means “affordable housing” for purchase, whose price can be met even by those with low income. The government, for example, helps tenants in public housing purchase their apartment at a significant reduction. This is a worthy initiative, and contributed to the fact that over 30,000 families acquired the apartments in which they lived. This option has been nearly exhausted, however, as the state is not constructing new apartments to replace those that were sold, and only a small number of public housing apartments have not yet been sold – some 71,000.⁶ In addition, despite the discounts, more than a few tenants still cannot meet the purchase price of the apartments in which they have lived most of their lives.

There is also no plan in Israel to ensure that affordable housing units be built as part of the many projects now underway throughout the country by public and private companies; this, too, would enable low-income families to purchase a home privately. National Urban Plan 35 from 2005 provides, for example, that any urban renewal scheme must show the housing units that will be “affordable” for low-income populations.⁷ With the exception of a handful of local initiatives, however, this regulation is not adhered to, and the planning authorities have not infused it with any concrete meaning.

A Borrower with a Debt can Find Himself Out on the Street

The number of borrowers evicted from their homes for defaulting on mortgage payments has increased dramatically. According to data provided to the Knesset by the Director General of the Association of Banks, the banks evict between 700 and 1,000 families a year.⁸ The nonprofit organization Yedid, which aids families who find themselves unable to make mortgage payments on time, claims that the number is actually much higher.⁹ In either case, it is clear that thousands of people, including many children, are evicted each year from their places of residence.

⁵ Ron Tikva, *Housing Distress in Israel*, Knesset Center for Research and Information, March 2008 (Hebrew).

⁶ These are the most recent figures according to the Ministry of Housing and Construction, “Housing Distress in Israel”, presented to the Knesset’s Economic Affairs Committee on 5 March 2008.

⁷ National Urban Plan 35, <http://www.mmi.gov.il/iturTabot/tochMitarArzi.asp>.

⁸ Moshe Perl, Director General of the Association of Banks, at a meeting of the Knesset’s Constitution, Law and Justice Committee on 6 November 2007.

⁹ <http://www.yedid.org.il/news.he.asp?id=578> (Hebrew).

The foreclosure of one's home as a result of defaulting on mortgage payments can lead to people being thrown out of their homes.¹⁰ This is especially true in cases where sale of the apartment does not cover the entire amount of the debt, leaving the borrower without a home and unable to find alternative housing. A state that upholds the right to housing, and which views housing as a right, not as real estate, must regulate and supervise the mortgage market in order to prevent the devastation of the loss of one's home. The state must ensure a safety net for people unable to meet their mortgage payments.

Chapter 3

Renting without Going Under Violations of the Right to Housing in the Rental Market

The rental market for housing in Israel, which makes up some 26% of all housing units, is a market in which most of the consumers are low-income. The proportion of those living in rented homes in the lowest decile of the population is more than three times the proportion in the upper decile.¹¹

The fact that renting is the only option left to someone who has no means to purchase an apartment obligates the state to take measures to ensure that the right to adequate housing can be realized at market conditions. The state must ensure that every individual has access to housing, and that rental prices not be so overwhelming that they condemn the poor to life without a home. The state must also protect tenants from arbitrary eviction or harm to the use of their home, and safeguard them from discrimination or inequity. It must ensure that the rented apartment constitutes adequate housing and that the living conditions are reasonable.

Israel, however, is not living up to its obligation. The current rental market is far from providing a dignified alternative to life in an owned apartment. A tenant in Israel is in far worse straits than tenants in many other countries.

Steep and Rapid Price Rises: A Violation of Rights

Recent years have seen steep and rapid rises in rental prices, and not enough has been done to address this.¹² Frequent and large price hikes in the rent of private

¹⁰ See Ruth Sinai, "Out on the street", *Ha'aretz*, 10 June 2008, <http://www.haaretz.com/hasen/spages/991274.html>.

¹¹ *Housing Distress in Israel*, op. cit., footnote 47. The proportion of renters directly increases as income declines. In 2006, homes were rented by 53% of those in the lowest income decile, 30% of those in the third decile, but only 14-16% of those in the three highest deciles.

¹² Based on an inquiry by the newspaper *The Marker*, rental prices of residential apartments in the private market increased in all the cities of the central Dan region. Thus, in Bat Yam and Holon, the shekel price of rent rose 23% in 2007; in Petah Tikva, rents rose by 17.5%; and in Kiryat Ono, Givatayim, Ramat Gan, and Rishon L'Tziyon, rental prices rose some 10%. In the Sharon region, it is even harder to find low-priced apartments: rental prices rose an average of 27% in this region in 2007. According to *The Marker*, rent increases that began in Jerusalem in 2006 have continued, and this year rental prices rose in the capital by 16% on average. Holon and Bat Yam, according to this article, saw a rise of 23.2% in 2007. See Guy Lieberman, "A Leaser's Market: It's more expensive to rent an apartment in Israel this year,

apartments, especially at the time of contract renewal, are the main reason why more and more tenants are threatened with eviction.¹³ As a result of the sharp price hikes, many tenants – families and individuals – can find themselves crowded into homes with their relatives or acquaintances, or living in small, overcrowded apartments, or even in apartments with appalling living conditions. In extreme cases, families and individuals are at risk of losing a regular place to sleep, even temporarily.¹⁴ Instability in rental prices is internationally considered a factor in the increase of homeless people.¹⁵

In the face of a demand for a significant rent increase, some families will have no choice but to agree. This often derives from the costs entailed in searching for and moving to another apartment, and from the fear of harming one's source of income, considerations that weaken the bargaining power of the tenant. These families will not lose the roof over their heads, but will be forced to spend a much larger part of their income on renting their home at the expense of other critical needs like dental care or heating in the winter.¹⁶ This is a violation of the right to adequate and affordable housing.

A state that upholds the right to housing is obliged to stabilize rental prices when they rise sharply and quickly. Significantly, the need to prevent steep increases in rental prices was cited in the authoritative interpretation of the Covenant on Economic, Social and Cultural Rights, to which Israel is party.¹⁷ The state can discharge this responsibility in several ways.

as in 2006 – but not necessarily where you think”, *The Marker*, 12 October 2007 (Hebrew), http://www.themarker.com/tmc/article.jhtml?ElementId=skira20071012_12324&origin=ibo&strToSearch=.

¹³ In the most comprehensive survey done in recent years about the rental market, it was found that an increase of 15% in the rental price would double the number of tenants who left in search of a cheaper apartment, compared with an increase in the rental price of only 5%. An increase of 25% in the rent would lead to more than 2.5 the number leaving in search of less expensive accommodations. See “The private housing rental market in Israel”: Summary of a survey conducted by A.G.P. Applied Economics Ltd., commissioned by the Division of Information and Economic Analysis of the Ministry of Housing and Construction, September 2000.

¹⁴ Thus, for example, in research about the quality of life of families who received income support payments in early 2000, 20% of the families reported that for certain periods they had no regular place to sleep, and some were forced to sleep temporarily in the street or a public shelter. Judith King and Gideon Maor Shavit, *The Quality of Life of Recipients of Income Support Payments*, National Insurance Institute and the Myers-JDC-Brookdale Institute, February 2005 (Hebrew), http://www.btl.gov.il/NR/rdonlyres/2F7F6058-530D-4172-9671-ABF2747EF552/0/mechkar_85.pdf.

¹⁵ Eoin O'Sullivan, Pascal De Decker, “Regulating the Private Rental Housing Market in Europe”, *European Journal of Homelessness*, Vol. 1, Dec. 2007.

¹⁶ In the United States, for example, spending 30% of one's income on housing is regarded as the maximum reasonable outlay, beyond which housing costs would take a toll on other vital needs. Therefore federal assistance programs are based on the assumption that housing outlays above 30% of the family income will harm other critical family needs such as medicine, clothing, food or electricity, and therefore the state pays the apartment owner the difference between 30% of the family income and the price of the rent. On the principles of the American system, see the website of the U.S. Department of Housing and Urban Development, <http://www.hud.gov/offices/pih/programs/hcv/forms/guidebook.cfm>.

¹⁷ See General Comment 4 to the Covenant, which interprets the expression “adequate housing” in Article 11 of the International Covenant on Economic, Social and Cultural Rights, 1966, [http://www.unhchr.ch/tbs/doc.nsf/\(symbol\)/CESCR+General+comment+4.En?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(symbol)/CESCR+General+comment+4.En?OpenDocument)

Stabilizing Prices by Legislation – Rent Control

Laws such as the Tenancy Protection Law are no longer used in most developed countries, but regulation of the rental price is very much in current use to stabilize the prices. While tough intervention in the private rental market has been replaced by softer laws, it would be a mistake to conclude that mechanisms for stabilizing prices no longer exist or are no longer needed. On the contrary, the cumulative experience in the United States, Canada, and many European countries have helped these governments shape progressive legislation that balances the rights of tenants and the rights of the home owners.¹⁸ Modern mechanisms generally mandate gentle intervention, if at all, in setting the price of an apartment that becomes available, but they prevent steep and frequent rent hikes to the tenant who wishes to continue living in the same apartment.¹⁹

Examination of the existing regulatory mechanisms suggests that – although in Israel it is commonly believed that developed countries do not intervene in the rental market – in practice, Israel is one of the only countries in the developed world that does not intervene at all in rental conditions, the rental price, or the frequency of rental price increases.

The Need to Regulate the Private Rental Market

In addition to the sharp and frequent rent increases in Israel, rental conditions also seem to harm many more tenants than in the past. In more desirable locations, potential tenants outnumber the available apartments, hence the landlord can choose among those interested. With a shortage of apartments, owners feel they can offer tenants a rental contract written by a lawyer and representing their own interests, without having to give and take in negotiations, and then choosing tenants who agree to conditions that are optimal for the owner. When there is a shortage of apartments and no brakes on future rent hikes, landlords tend to prefer short-term leases, which give them greater flexibility.²⁰

Lack of Intervention in the Private Market

In most developed countries, laws regulate the rental market. In these laws, the rights and responsibilities of both parties are stated in a way that obligates both sides. In most of these countries, special administrative mechanisms exist for enforcing the provisions of the law and solving problems between tenants and owners relatively easily and quickly. These are not archaic laws, but modern laws in countries that also have a free market economy. In Ontario, Canada, for example, a progressive and detailed law took effect in January 2007 that regulates the rights and obligations of tenants, and both sides must abide by these.²¹ In Ireland the law is from 2004, and its regulations also obligate the tenant.²² In the United States, the rental market is more closely regulated and supervised than in Israel. Federal law, for example, forbids discrimination in the private housing market.²³ In most states

¹⁸ Orly Lotan, "Regulation of Rental Prices: A Comparative Survey", Knesset Center for Research and Information, April 2007 (Hebrew),

<http://www.knesset.gov.il/mmm/data/pdf/m01777.pdf>; Hans Lind, "Rent Regulation: A Conceptual and Comparative Analysis" (1999), <http://www.iut.nu/Rent%20reg.doc>.

¹⁹ Richard Arnott, "Tenancy Rent Control", *Swedish Economic Policy Review*, 10, 89 (2003).

²⁰ "The private housing rental market in Israel", op. cit., footnote 76.

²¹ Residential Tenancies Act, 2006 Ontario.

²² Residential Tenancies Act, 2004 Ireland.

²³ The Fair Housing Act, 42 U.S.C. 3601.

and cities in the United States, discrimination is prohibited against people receiving financial assistance from the government for purposes of renting an apartment.²⁴ In many cities, the owner is required to meet certain conditions and obtain a license before leasing his or her apartment.²⁵

In Israel, on the other hand, the private housing rental market is not regulated at all. The law concerning rental contracts is the Rental and Borrowing Law (1971). This law, however, does not obligate the parties and it applies only when provisions in the rental contract do not deal with the issue.²⁶ The law is also very general and applies to all types of rentals – it does not address the public importance or special aspects of renting a place to live. The Prohibition of Discrimination in Products, Services and Entry into Places of Entertainment and Public Places Law (2000) prohibits anyone who supplies goods or a public service or who operates a public place from discriminating against someone who seeks to enjoy that place, goods, or public service. The law also obligates private individuals. This law defines what constitutes public place and public services, but housing is not specifically cited. Therefore it is unclear if this law can prevent discrimination in housing, such as rejecting someone who wants to rent an apartment because he or she is an Arab or has a disability.

In contrast with many countries where simple mechanisms exist for enforcing the rental laws, there is no simple and quick recourse in Israel for tenants who encounter problems regarding their tenancy.

Chapter 4

By Right, Not Grace

Violations of the Right to Adequate Housing for Low-Income Populations

Public Housing or Rent Subsidies

The state is obligated to uphold the right to affordable housing of every individual. In every society there are some who do not have the financial means to acquire adequate housing, and it is the role of the state to assist these people. Two mechanisms of assistance that exist in Israel and internationally are public housing and rent subsidies.

Public housing is housing owned by the state or a government company that is leased at a subsidized price to individuals who meet certain eligibility criteria. Tenants sign a rental contract and can continue to live there so long as their economic situation justifies it. Rent subsidies are given to individuals who meet certain eligibility requirements and help pay their rent in the private rental market.

²⁴ Such regulations exist, for example, in New Jersey, Massachusetts, Connecticut, and the District of Columbia (Washington, the capital). See http://www.nhlp.org/html/sec8/source_of_income_3.htm.

²⁵ In Los Angeles, for example, through the Rent Stabilization Ordinance, http://www.lacity.org/LAHD/landlord_tenant_handbook.pdf.

²⁶ The Rental and Borrowing Law (1971) applies to the rental of land and goods. According to Parag. 2(c), its provisions apply “when no other intent is evident from the agreement between the parties”.

Eliminating Public Housing

For several years, Israel has been progressing toward the complete elimination of public housing apartments and transition to another model of assistance – financial aid to offset rent payments in the private market. Currently only 70,000 units remain of public housing, constituting only two percent of the total number of apartments, compared with 206,000 public housing units in the late 1960s, which then constituted 23 percent of the total number of apartments.²⁷ This is a dramatic shift with far-reaching consequences for the right to housing, and it was launched by the government with virtually no public discussion. Furthermore, the shift was made in a way that contradicted the intention of the legislators. In 1998, the Public Housing Law (Purchase Rights) (1998) was enacted. This law set a worthy and just principle: Public housing apartments would be sold at a discount to veteran tenants, and the income from the sales would be used to build new public housing that would be leased at a subsidy to low-income individuals. Defying the spirit of this law, the government froze its implementation by way of the Economic Arrangements Law, but continued to sell off the public housing units to the tenants – at smaller discounts than set in the law – and the income was absorbed into the general budget of the Ministry of Housing.²⁸

Public housing in Israel has thereby become largely theoretical. As of 2007, only 1,628 apartments remained available, most in peripheral areas, intended to meet the needs of 50,000 eligible applicants who are on the waiting list.²⁹ It is not surprising that the waiting period for a public housing apartment can take years. During the waiting period, the Ministry of Housing offers those eligible additional assistance to pay their rent.³⁰

The elimination of public housing has immediate consequences on the right to housing of low-income families. Reducing the number of apartments available has led to a stringent narrowing of the eligibility criteria for public housing.³¹ Thus, tens of thousands of families for whom public housing would have been the main form of assistance in the past no longer meet the more narrow criteria and are eligible today only for rent subsidies.³²

²⁷ Eliyah Werczberger, "Privatization of Public Housing: Change or Continuity in Housing Policy" in Uri Aviram, John Gal, Joseph Katan (eds.), *Shaping the Social Policy of Israel: Trends and Issues*, Taub Center for Social Policy Studies in Israel, 2007, pp. 149, 165 (Hebrew), http://www.taubcenter.org.il/files/H2007_Housing_Policy.pdf.

²⁸ To this day, the Public Housing Law is frozen – until 1 January 2009 in keeping with Parag. 23 of the Economic Arrangements Law for the state budget (Amendments to Attain Budget Goals and Economic Policy for Fiscal Year 2001) (2001); HCJ 403/99, M.K. Cohen v. the Prime Minister and Housing Minister (30 June 1999); Neta Ziv, "Between Renting and Owning: Public Housing Law and the Generational Transfer of Capital in a Historical Perspective", *Law and Government*, vol. 9, 2006.

²⁹ Data about the number of apartments available are from a presentation made by the Ministry of Housing and Construction to the Knesset's Economic Affairs Committee (5 March 2008). Data about the number of those awaiting apartments are from 2005; see Roi Feibish, "Sale of apartments in public housing", Knesset Center for Research and Information, September 2006 (Hebrew), <http://www.knesset.gov.il/mmm/data/pdf/m01577.pdf>.

³⁰ See Parag. 10.2 of the Procedures for Allocating Rental Apartments in Public Housing (Regulation 08/05).

³¹ "Sale of Apartments in Public Housing, op. cit., footnote 111.

³² The eligibility criteria for public housing are very limited: those eligible are mainly families with three or more children who have low income or are entitled to support payments from the National Insurance Institute, as well as families in which one of the children is wheelchair-

The transition from a model of assistance by public housing to a model of assistance via rent subsidies in the private market takes a toll, as some of those entitled to assistance cannot take advantage of it because their income cannot cover the balance of the rent payment. Others who are eligible have a hard time finding an apartment in the private market because of economic obstacles – security deposits and guarantees, for example, which are not required for public housing, but often a demand made by private leasers. Some of those eligible find it hard to locate adequate housing because of discrimination, which is common in the private market, but not in public housing under government control.

But even those who make it past the stage of renting an apartment and are receiving monthly payments to offset the rent encounter problems that had not existed in the past. While public housing tenants are protected by the Tenants Rights in Public Housing Law and the Public Housing Law (Purchase Rights), those who rent privately have no such legal protection.³³ While the “landlords” in public housing are government companies which shoulder the economic obligations of public authorities, such as the prohibition against discrimination,³⁴ owners in the free market are private people who are not legally bound by these obligations.

The Policy of Subsidizing Rent – Does it Exist?

Assistance by making payments to offset the rent, as noted, is currently the main model of providing state aid to help low-income populations realize their right to housing. In 2007, 140,000 families took advantage of this right to assistance in rent payments.³⁵ This model is not free of problems, however. Beyond those already cited, which are related to the private rental market, several fundamental flaws should be noted.

The main problem is that no clear and stable policy exists that is the product of systemic thinking to ensure the right to housing, but rather diffuse policies that change with the state budget. In 2002, assistance to new tenants was cut by half in comparison with assistance to ongoing tenants. In June 2002, assistance was cancelled to those aged 45-54, an across-the-board cut of 4% was made to others with the exception of the disabled and the elderly, and 5% a year was deducted from those receiving assistance for more than three years. In 2004, an additional 7% across-the-board cut was made and automatic eligibility (primarily to new immigrants) was cancelled. In the past two years, efforts were made to somewhat offset these cuts.

bound, subject to a means test. See Parag. 5 to the Procedures for Allocating Rental Apartments in Public Housing (Regulation 08/05).

³³ The Rights of Tenants in Public Housing Law (1998) allows a tenant to demand of the public housing company to examine the apartment, and if it is defective, the company must fix the defect within 60 days. The public housing company must give the tenant full information in writing about his or her rights and obligations, and respond to every query within 30 days. Any defects are the responsibility of the public housing company and must be repaired within 60 days. In certain cases, the law also gives family members of the tenant the right to remain in the apartment if the tenant dies. The Public Housing Law (Purchase Rights) (1998) gave public housing tenants the right to purchase the apartment at reduced prices. This law was frozen, but replaced by government-sponsored sales.

³⁴ According to court rulings, public housing companies are subject to obligations taken from public administration law. They must uphold the principle of equality and their decisions must be reasonable and proportionate. See, for example, Administrative Petition 1784/98 Amidar v. Manda, Ruling 53(4) 315 (1999).

³⁵ *Housing Distress in Israel*, op. cit., footnote 47.

This instability is the result of extreme shifts in the government budget to the Ministry of Housing and Construction, together with the absence of a legal mechanism to set the goal of the allowances, their scope, and a system for budgeting and adjustments that will ensure their success. In recent years, the budget was significantly reduced,³⁶ hence the criteria for receiving an allowance were artificially and arbitrarily narrowed while drastic cuts were made in the amount of assistance to those newly eligible – all this with no serious discussion about whether the budget meets the goals of the assistance and is sufficient to ensure that those of little means will be able to realize their right to a roof over their heads.

This situation reflects an improper approach in which rent subsidies are considered a benefit provided out of compassion, and not the obligation of a state toward its homeless inhabitants. This situation also creates a constitutional problem. Budget cutbacks arbitrarily tighten the criteria for eligibility, thereby severely harming the right to a roof over one's head, which is a constitutional right. This harm is not done legally or in keeping with the law as required by the Basic Law: Human Dignity and Liberty.

Discriminatory Criteria for Eligibility

The current mechanism of assistance differentiates between families with and without children, but does not distinguish between families with one child and families with five. Naturally the more children in a family, the greater the need for a bigger and more expensive apartment. As a result, large families are forced to live in crowded conditions or to greatly increase the amount they spend on housing at the expense of other vital needs.

Single men and women who are homeless but have not yet reached the age of 55 are not eligible for a subsidy according to the rules, even if their income resembles the income under which families would be eligible. Thus, absurd situations can arise in which an individual who had been eligible for a specific subsidy is no longer eligible following the death of or divorce from a spouse, or after adult children leave home.

The only needs that seem to have been weighed in these matters were budgetary needs, and the desire to give preference to families over single people. But financial considerations alone cannot justify such sweeping harm to an entire group based on family status or age – criteria that do not alone indicate anything about the housing distress of these individuals.

Recently ACRI was informed that the Ministry of Housing and Construction is considering reform in the policies of rent subsidies and the criteria for eligibility. ACRI submitted its comments to the Ministry,³⁷ and hopes that this reform will bring about the necessary change.

³⁶ According to research in 2004 by the National Insurance Institute, Israel allocates significantly less money for housing assistance than the group of OECD countries (0.3% of the GNP compared with 0.5%). See Lea Achdut, Dalia Gordon, "Government assistance with housing rent pay: Who benefits and how much?", National Insurance Institute, Authority for Research and Planning, January 2004 (Hebrew), http://www.btl.gov.il/NR/rdonlyres/40FF2C11-35C6-4492-978F-9B6A88E236BC/0/mechkar_81.pdf.

³⁷ <http://www.acri.org.il/Story.aspx?id=1846>.

Chapter 5

It's All About Real Estate Violations of the Right to Housing in Attractive Locations

When the Neighborhood gets a Face-Lift

The process whereby a neighborhood is transformed because of the entry of relatively wealthy residents is called “urban gentrification”, and this can happen with no initiative from the government. Sometimes young people from a more comfortable socioeconomic background find a neglected neighborhood where the housing prices are still low and there is potential for becoming an attractive area. Their entry to the neighborhood draws more young people, and over time it also becomes attractive to middle-class audiences, and in parallel to real estate developers. In other cases, change in a neighborhood can be planned or brought about by official incentives or real estate developers through initiatives such as Project Renewal or Urban Renewal.³⁸

This process of change has positive aspects such as improving the face of the neighborhood, maximizing the use of property for construction, and lowering the crime rate, but sometimes it also has negative repercussions on the local residents. Upgrading a neighborhood generally leads to sharp rises in the price of housing, which can chase away the locals, who are among the disadvantaged populations. The process can lead to the falling apart of communities and the severing of long relationships. It could negatively affect children who have to change schools, and the elderly, for whom separation from their familiar surroundings and support community is like cutting off their oxygen supply.³⁹ Some residents compare the process of gentrification to colonization, which is sometimes accompanied by arrogance and insularity of the newcomers, while veteran residents experience a sense of dispossession.⁴⁰

The potential violations of human rights of the veterans about to lose their homes obligates the state to take measures, particularly when the processes of neighborhood change are done with the backing and cooperation of the authorities. As trustees of the public, the state and authorities are obligated in their planning to take into consideration the harm they are causing to the local residents, and to weigh this against the other interests. When urban renewal demands the eviction of residents, it is incumbent on the state to find alternative housing and compensate

³⁸ See Daniel Monterescu, Roy Fabian, “The Golden Cage’: On Gentrification and Globalization in the Luxurious Andromeda Gated Community in Jaffa”, *Theory and Criticism*, 23, 141 (Fall 2003) (Hebrew).

³⁹ See and compare: Tel Aviv District Court (Tel Aviv) 1218/06 Arieli v. WIZO (from 24 May 2007).

⁴⁰ Tahel Frosh, “Their transit camp became real estate”, *Ha’aretz*, 11 February 2008, http://themarkercaptain.co.il/hasen/pages/ShArtStEngPE.jhtml?itemNo=953127&contrassID=2&subContrassID=11&title='Their%20transit%20camp%20became%20real%20estate'%20'&dyn_server=172.20.5.5.

them.⁴¹ The state is obliged also to the neighborhood residents who are not home owners, such as tenants harmed by the steep rise in prices.

When Wealth Meets Power

In recent years, we have seen government authorities take an active part in violating the housing rights of residents in neighborhoods undergoing development. This derives from a dangerous merging of interests of the powerful and the wealthy. The Israel Lands Authority, owner of the land, has an interest in selling the land at a high price in order to raise the value of the property; the state has an interest in saving itself the expense of rehabilitating poor neighborhoods, preferring to pass on the responsibility to a private developer; and the local authority has an interest in the big profits to be derived from building license fees and high property taxes that tenants in high rises will be paying.⁴²

This dangerous confluence of interests – power and wealth – leads to the government authorities not fulfilling their obligations of protecting the rights of the tenants, but rather standing on the sidelines – indifferent to the impact of the development, and even actively helping the developers with the process of eviction. From their perspective, private real estate development is an alternative strategy for the authority itself, a kind of outsourcing of their work. The problem is that what motivates the developers is not a social orientation of the world, but the desire to maximize profits. As noted by scholars Daniel Monterescu and Roy Fabian, these entrepreneurs learned to use terms like “development” or “renewal”, which ostensibly conform to the goals of the authorities, but at the end of the day, their motivation is economic profit.⁴³

The Joys of Jaffa...for Contractors

Jaffa is a communal and historical center for the Arab population of Israel. Over 16,000 Arab citizens currently reside here. Most were born in Jaffa and are the offspring of indigenous families. The Ajami and Jabaliya neighborhoods are the very heart of the Arab community in the city. Eighty percent of Jaffa’s Arabs live in these neighborhoods.⁴⁴

In recent years, the Arab neighborhoods of Jaffa have become a desirable location for developers, who identified the commercial potential of property in proximity to Tel Aviv, the sea, and the walls of the Old City of Jaffa. The target audience of these developers is not the impoverished Arab community, but the wealthy Jewish population who wants to live in prestigious, closed projects within the magical atmosphere of Jaffa. But these developers are not alone; it is the municipality that is initiating and pushing the process of taking over the neighborhoods. After years of neglect, the municipality launched an urban renewal plan for Jaffa, but one that does not necessarily seek to promote the welfare of its Arab residents.

⁴¹ See, for example, Parag. 39 of the Law for Construction and Evacuation of Areas Designated for Renewal (1965).

⁴² See Einat Fishbein, “Eviction-Construction: The story of the Argazim neighborhood”, Adva Center, April 2003 (Hebrew), <http://www.adva.org/UserFiles/File/pinui%20binui%20shhurat%20argazim.pdf>.

⁴³ “The Golden Cage”, op. cit., footnote 144, p. 161.

⁴⁴ See “Unprotected Citizens”, the Arab Association for Human Rights, March 2008, <http://www.arabhra.org/HRA/Pages/Index.aspx?Language=2>.

On the one hand, the municipality is using incentives to encourage contractors to invest in and develop Jaffa, but on the other hand, there is no plan for preserving the indigenous local community. In the late 1990s, following public pressure of the Arab community, the city launched a “Build your own Home” project in Jaffa, but it was met with great suspicion and perceived as an attempt to camouflage the ongoing efforts of the developers. In addition, the middle-class character of the project did not suit the character of the community, and ultimately the project failed completely. Since then, no other attempts were made to ensure the continued existence of the Arab community in the city. Development plans have led to a sharp rise in prices, which makes it very difficult for the Arab families to continue to live there. The authorities, however, have no plan to provide affordable housing to the low-income Arab residents who cannot meet the steep price hikes.⁴⁵

Even more grave, the city and developers joined forces with the Amidar public housing company and the Israel Lands Authority, which owns the land, to evict hundreds of residents from their homes. A significant number of neighborhood homes had been transferred to Amidar when the Jaffa properties were expropriated by Israel following the 1948 war. Amidar leased these homes to the local residents, once the home owners, who now became tenants. Most of the Arab residents rent the homes under protected tenant contracts, i.e., rent controlled by the Protected Tenant Law (1972), with Amidar holding the homes as “keeper” for the state. Most of the tenants acquired some rights in the home by paying key money, in exchange for which they pay a very low rent.

In protected tenancy, a tenant cannot be evicted except under specific conditions listed in the law or the contract, such as not paying the rent or building without agreement of the owner. As a result of state neglect and the failure to issue construction permits, over the years many tenants built unlicensed additions to their homes: Some added a room to meet the demands of a growing family, others refurbished to prevent dilapidated structures from collapsing. Some tenants did not pay the small amounts that were due for rent, as no one ever bothered to collect it. Throughout all these years, Amidar in effect did not enforce the contracts.

The residents claim that this policy suddenly changed when a decision was made to help the developers take control over the lands of Jaffa. Within a short period, Amidar began to issue hundreds of notices to families about breach of contract, sometimes over breaches that had taken place years ago. As a rule, Amidar is not willing to negotiate correction of the breach, but demands eviction with the intent of demolishing the home. According to data from the Popular Committee of Jaffa, 497 Arab families are awaiting eviction, and since 2002, 33 families were already evicted. The Popular Committee believes that if the eviction plan is carried out in its entirety, 3,000 Arab residents will find themselves out on the streets.⁴⁶

It is hard not to see a close link between the change in enforcement policies by Amidar and the Israel Lands Authority and the development plans of the municipality and developers. In Jaffa, there is a collusion of power and wealth, economic considerations and discriminatory nationalist motives, private entrepreneurship and

⁴⁵ See Daniel Monterescu, “The Palestinian community in Jaffa: Social-planning report”, SHATIL’s Project on Mixed Cities, March 2007 (Hebrew), http://web.ceu.hu/soc_ant/faculty/docs/Jaffa_Shatil_Report_2007_Hebrew_Size_Reduced.pdf

⁴⁶ “Unprotected Citizens”, op. cit., footnote 151.

governmental interests – and under these, the rights of the Arab residents of Jaffa are being trampled.⁴⁷

Chapter 6

Who Has No Home in the Homeland? Violations of Housing Rights of the Arab Population

The Arab population in Israel is a national, indigenous minority entitled to full equal rights. In reality, however, Israel has systematically discriminated against its Arab citizens, in housing as in other areas. Violations of the housing right of Arab citizens of Israel are manifest in several ways: the expropriation of land; the absence of a city plan according to which construction permits can be issued – which inevitably leads to construction without a permit and thence to the demolition of homes; non-recognition of villages where residents live in untenable conditions, without electricity or basic infrastructure; discrimination in the provision of infrastructure and services to Arab towns; and the failure to provide solutions to the housing distress in existing towns. Specific and common to all these violations is their root in the discriminatory land policies of Israel.

The Or Commission drew harsh conclusions against the state in its planning of Arab towns. One of the findings is that Arab citizens were not represented at all in the bodies planning their towns, and hence the plans were insensitive to the needs of the Arab population. About half the towns were not planned at all – no master plans were published for their expansion and no city plans for purposes of issuing construction permits. This discrimination in planning has a direct impact on the violations of housing rights, notes the report:

In large areas of jurisdiction, private land owners were not allowed to build homes legally. The phenomenon of illegal construction became widespread, some of it rooted in the fact that construction permits could not be obtained...Demolition orders were issued for Arab homes in the Galilee, Negev, Triangle, and the mixed cities. Although the unavailability of permits was not always the reason for building illegally, it was argued that underlying the legal situation were political-ideological motives, and that Arab citizens were treated in a discriminatory manner.⁴⁸

Living Conditions in Unrecognized Villages – 60 Years of Disgrace

The Bedouin are an indigenous minority, part of the Arab minority in Israel. For decades they have lived in rural agrarian communities and villages in the Negev, most from before the founding of Israel. Like all Arab citizens of Israel, the Bedouins have also fallen victim to a discriminatory land regime and planning policies, which severely undermine their rights. For example, the state's refusal to recognize the Bedouin ownership of land in the Negev: the authorities ignored the way ownership and property rights are handled in customary Bedouin law, and applied property laws from the state of Israel to the Negev lands, which led to their nationalization. The law

⁴⁷ See Erez Tzfadia, "Selective privatization in Jaffa" in *Promoting Spatial Rights: Civil Society versus the Establishment*, Bimkom: Planners for Planning Rights and the Arab Center for Alternative Planning, June 2008 (Hebrew).

⁴⁸ *Ibid.*, Parag. 37, Or Commission Report.

turned the Bedouin into intruders on their own property, refusing to allow them to remain on their historical lands. Some Bedouin were transferred to an area that the state allocated for them, and others were moved into several townships built by the state.⁴⁹

Despite efforts made by the state to uproot the Bedouin from their lands, 39 unrecognized Bedouin villages remain in the Negev region, in which tens of thousands of people reside. Some are living on their historical land, some on lands to which they were evicted. The state refuses to recognize these villages, and refers to them and their inhabitants as "scattered". From Israel's perspective, these are illegal settlements that must be evacuated and the inhabitants moved to existing towns. As a result, the residents of these villages live in ongoing uncertainty and fear of eviction.

Demolishing a Home – Destroying a Family

The demolition of a home constitutes a severe violation of the right to housing, as it generally leaves the family without a roof over its head. A home is not just a physical shelter, but an important component in family life and the identity of an individual. Upon demolition of a home, memories and hopes are shattered. Destroyed with them are the possibility of living a normal life, earning a livelihood with dignity, and attending to the welfare of the children; a family is ruined.

In a state that upholds the right to housing, the demolition of a home should be carried out only in exceptional circumstances, as the last resort, and when all other alternatives are exhausted. Clearly the demolition of a home must never be arbitrary, and carried out only following due legal process.

It is not surprising that home demolitions are more common in Arab towns, as the demolition of homes is directly related to the system of planning and construction. The planning and construction system of Israel, as noted in the Or Commission Report, acted for years in flagrant discrimination of Arab towns: city plans that do not meet the basic housing needs of the population or were never drawn up in the first place; failure to involve the Arab public in planning institutions, and then the failure to issue construction permits; the selective behavior of law enforcement authorities.

The demolition of a home is carried out generally according to the Planning and Construction Law (1965). According to this law, all construction, including the expansion of a home, requires a permit. Building without a permit constitutes a criminal offense, and a structure so erected is designated for demolition. In order to get a construction permit, however, the land must appear in an approved city plan. City plans define the use to be made of the land, and there are national, district, and local plans. To obtain a construction permit, a detailed local city plan must exist.⁵⁰

When the planning authorities for years have not engaged in planning and have not prepared a city plan, or when the city plan seeks to concentrate the Arab population in a narrow corridor and does not reflect reality – including natural population growth – construction permits cannot be issued. In this situation, unauthorized construction

⁴⁹ For more on this, see "Off the Map: Land and Housing Rights Violations in Israel's Unrecognized Bedouin Villages", Human Rights Watch, March 2008, <http://hrw.org/reports/2008/iopt0308/iopt0308web.pdf>.

⁵⁰ Information Sheet by the Association for Civil Rights in Israel and Bimkom: Planners for Planning Rights (Hebrew), <http://www.acri.org.il/pdf/destroy.pdf>.

inevitably takes place and the demolition of homes follows. This is the status in many Arab towns. This is the tragedy of many Arab families whose homes were destroyed.⁵¹

Recently, the courts began to relate to this reality in their rulings, and it is hoped that this marks a positive new trend. In February 2008, the Tel Aviv District Court ruled that a demolition order should not be carried out in the Pardes Daka neighborhood of Jaffa because for over ten years no valid city plan existed for this neighborhood and it was impossible to obtain a construction permit. Soon after, the Haifa Magistrates Court acquitted the defendants in a case of illegal construction and rescinded the demolition order because in Ir Carmel, the township where they live (which includes the Druze towns of Isfiya and Daliat al-Carmel), proper planning has not taken place for years and “planning chaos” prevails.⁵² In March 2008, the Beersheba Magistrates Court ruled that houses built in an unrecognized and unplanned Bedouin village in the Negev should not be demolished. The court ruled that even though the construction diverges from the national master plan, an additional factor was necessary for the demolition order to be approved, especially in light of the fact people have lived in these homes for many years and were never asked to leave.⁵³ In all three cases, the courts refrained from citing discrimination as a basis for demolishing the homes, but it is no coincidence that all three deal with neighborhoods in which an Arab population resides.

Chapter 7

Homeless but not Right-Less Violations of the Right to Housing for the Homeless

The changes in the housing market are also reflected in the disturbing increase in the number of homeless people who live on the streets or in abandoned houses or who have no choice but to crowd into shelters or the homes of acquaintances or relatives. The policy of the Ministry of Welfare currently only applies to those living on the street who suffer from personal problems such as drug addiction or disabilities in addition to having lived on the street for an extended period. There is no policy about people who have no home, but do not fit into the narrow definition of living on the street, since they have found somewhere to live. As opposed to many countries in the world, Israel has no policy whose goal is to prevent people from falling into a situation of homelessness.

Because no budget monies were allocated, and in the absence of proper enforcement, Israel has no network of shelters for homeless people in distress. Only twelve municipalities have overnight shelters out of twenty towns in which homeless people reside, according to a survey of the Ministry of Welfare. These shelters are

⁵¹ To illustrate this, see the story of Samih Salameh from Majd al-Krum in a video clip to mark Land Day produced by the Association for Civil Rights in Israel, 2008 (Hebrew), <http://www.acri.org.il/camp/clips/landday2008heb.wmv>.

⁵² Criminal Case (Magistrates Court, Haifa) 4420/04 State of Israel v. N. Hadid (Judge Daniel Fish, 20 February 2008).

⁵³ Beersheba (Magistrates Court, Beersheba) 9064/06 Abu Shehita v. the State of Israel (Judge Yisrael Axelrod, 5 March 2008).

entirely run by private agencies and offer no variety. Not one, for example, offers overnight stays to couples or families with children who are in immediate housing distress as a result of eviction or a family crisis.

Chapter 8

Recommendations

General

- Israel must take action to complete the legislation of Basic Law: Social Rights, and anchor the right to adequate housing in this Basic Law or a constitution.
- Israel must meet its international obligations to uphold the right to adequate housing, legislating appropriate laws and generating a housing policy that balances the right to adequate housing with other rights.
- The government must recognize its obligation to provide adequate housing for those who are unable to secure adequate housing for themselves in a free market, and take action to discharge this obligation in a manner of its own choosing.
- The government and Knesset, in cooperation with the public, must set a housing policy that is comprehensive, multiyear, transparent, and clear.

The right to housing for those purchasing an apartment

- The Ministry of Housing must ensure that those with relatively low income also have the option of purchasing an apartment, and create a realistic alternative of rental housing for those who cannot afford to buy.
- The government and Knesset, in cooperation with the planning bodies and local authorities, must develop models for affordable housing by allocating a certain percentage of the units in new projects for sale at reduced prices to eligible population groups.
- The government must ensure protection and provide supervision for those who purchase homes from contractors.
- The government and Knesset must carry out a comprehensive reform of the mortgage market to ensure that mortgages not become a honey trap for borrowers, and thereby reduce the number of evictions.
- The government and Knesset must provide safety networks to borrowers who are unable to meet mortgage payments so that they and their families will not be evicted and left with no alternative housing.

The right to housing of apartment renters

- The government and Knesset must establish a stable rental market that allows for living in dignity as a central goal in Israel's housing policies.
- The government and Knesset, in cooperation with the planning bodies and local authorities, must develop models for affordable housing by allocating a certain percentage of the units in new projects for rent-control leases specifically for eligible applicants based on a means test.

- The Ministry of Housing must more actively encourage the commercial construction of rental apartments in desirable locations in order to stabilize the rental prices.
- The government and Knesset, in cooperation with the local authorities, must regulate the residential rental market to ensure balance in the rights of homeowners and tenants. It must also, inter alia, ensure the prohibition of discrimination, fair arrangements for rental relations and fees, and establish an administrative mechanism for handling the complaints of tenants and owners.

Assistance for needy populations

- The government must significantly increase the budget allocation for assistance to populations in need.
- The government and Knesset must hold discussions about the desired model of assistance – public housing, rental subsidies, or a combination of the two – and set housing policies accordingly.
- The government must conduct itself according to the principles of the Public Housing Law (Purchase Rights): sale of the public housing to veteran tenants and expansion of the pool of public housing units.
- The government and Knesset must anchor the eligibility for rent subsidies in primary legislation, including a mechanism for allocations and adjustments.
- The Ministry of Housing must reform the eligibility criteria such that assistance will be given according to the economic status of the applicant at the time of the application, without reference to whether the applicant had an apartment or shared an apartment in the past.
- The Ministry of Housing must adjust assistance payments at least once a year, and in keeping with the rental prices in various locations so that the allowances will not be eroded by price hikes.
- The Ministry of Housing must establish the maximum percentage of income that a family eligible for assistance should spend on rent, such that the rent outlay not cut into other crucial family needs like food and medicine. Allowances should take this maximum into consideration.
- The Ministry of Housing must take the size of the family into consideration and halt discrimination based on age or family status, in which aid is denied to single people.

The right to housing of residents in attractive locations

- The state and local authorities must set a new policy for the development of desirable locations that takes into consideration the residents and their rights to housing and living within their community.
- The government, planning bodies, and local authorities must also consider the rights of the residents when they undertake the development of neighborhoods through private developers.
- The government and local authorities must negotiate with the residents as a condition for approving a plan for urban development, and include appropriate housing solutions for the residents.

- The government and government housing companies must halt the eviction of tenants from public housing without compensation or alternative housing.
- The government and Knesset must regulate the status of tenants and their heirs, who have lived for years “by permission”, and establish that they not be evicted without alternative housing or compensation if the land is required for purposes of development.
- The government and Knesset must take action to prevent the creation of gated communities in urban centers and prevent the use of “admissions committees” to approve the purchase or rental of an apartment in them.

The right to housing of the Arab population in Israel

- The government must prepare an overall plan to solve the housing distress of the Arab population of Israel, and engage in affirmative action to correct the discrimination of the past.
- The government must aspire to fair representation of Arab citizens in the planning bodies in keeping with their proportion in the population.
- The government and planning bodies must recognize the unrecognized Bedouin villages, incorporate them into future plans, and ensure they have the proper resources and services.
- The government must halt its demolition of homes based on discriminatory city plans or where the lack of a city plan prevents the issue of construction permits.

The right to housing of homeless people

- The government must set inter-ministerial policy regarding the growing number of homeless people in Israel.
- The government and Knesset must block proposed bills that seek to harm homeless people and their freedom. The battle must be waged against the increased number of homeless people, not the homeless people themselves.
- The government must adopt the internationally accepted definition of the homeless, which is broader than the existing definition of “street dweller”. The government must strive to gather relevant and comprehensive data to the extent possible as the basis of its policies.
- The Ministry of Welfare, in cooperation with the local authorities, must set clear policies regarding the establishment of emergency shelters and other treatment facilities for homeless people, and take action to implement these policies.
- The government must establish preventive policies that identify why an individual is at risk of losing his or her home, and take action to prevent this person from being thrown into the street.