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## Understanding the Current Sheikh Jarrah (Jerusalem) Property Dispute

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### I. A call for discrimination

The current dispute in Sheikh Jarrah involves several properties with tenants whose leases have expired, and in a few cases squatters with no tenancy rights at all, against owner-landlords who have successfully won court orders evicting the squatters and overstaying tenants. The litigation has taken several years, and the owners have won at every step. The squatters and overstaying tenants have appealed against the eviction orders to the Supreme Court. The only decision that stands before the Israeli government is whether to honor the courts' decisions and enforce the eviction orders if affirmed by the Supreme Court, or whether to defy court orders and deny the property owners their legal rights.

Critics claim that the Israeli government should (or even that international law requires the Israeli government to) deny the owners their property rights, but these claims are not based on any credible legal argument. Rather, the critics focus on the fact that the owners in the disputed cases are Jews while the squatters and overstaying tenants are Palestinian Arabs. The critics demand that Israel discriminate against and disregard the property owners' lawful property rights due to their Jewish ethnicity. It's obvious that critics of Israel would pay no notice to the dispute if the owners were Palestinian and the squatters and overstaying tenants were Palestinian. Likewise, it's clear that critics of Israel would *demand* rather than oppose Israeli enforcement of the courts' judgments if the owners were Palestinian and the squatters and overstaying tenants Jewish.

Critics of Israel in this case have adopted the bigoted position that property rights should depend on ethnicity and that Jewish ethnicity should be the grounds for denying legal property rights. In doing so they have distorted

פרופ' משה קופל  
ד"ר אביעד בקשי  
ד"ר יצחק קליין  
עו"ד אריאל ארליך  
ד"ר יהושע בלס  
ד"ר אשר מאיר  
ד"ר מיכאל שראל  
פרופ' יוג'ין קונטורוביץ'  
עו"ד רן בר-יושפט  
עדי ארבל  
מיכל זליקוביץ'  
עו"ד מורן נגיד  
פרופ' ישראל אומן  
פרופ' אבי בל  
פרופ' אבי דיסקין  
עו"ד בנצי ליברמן  
ד"ר עמואל נבון  
פרופ' ג'די ספיר  
עו"ד ג'רום מרכוס  
ד"ר יחיאל לייטר  
אייל צור  
ד"ר ראובן פרנקנבורג  
איתן הוניג  
ד"ר עוד בלומן  
מיכאל בוטשטיין  
ד"ר ענת רוט  
עו"ד עמית פילבר  
יאיר אושרוב  
עו"ד מאיר בוחניק  
דני לסמי  
אורי עקביה  
עו"ד אביטל בן-שלמה  
עו"ד אהרן גרבר  
אריאל קרלינסקי  
שלומית קפלן  
יונתן סורוצקי  
עו"ד שמעון נטף  
מורין אמיתי  
נדב בן-דהן  
ריקי ממן  
אסתר לם  
עילם כצנלסון  
זאב לב  
שרון חסון  
יצחק קציר  
דבורה בן-הרב  
טובה זהבי  
אלן בצופין  
עו"ד מאיר רובין (נריה)

the facts, perverted international law, and attempted to intimidate Israel's courts and law enforcement officials into adopting the critics' bigotry.

## **II. The legal basis of the parties' property rights**

The legal rights of the parties themselves were resolved decades ago, in favor of the property owners. The owners in these disputes acquired their rights through an uninterrupted chain of transactions from predecessors in title in the 19th century. These legal rights were acquired under Ottoman law, and remained good through all different government regimes since then (British Mandatory, Jordanian occupation and purported annexation, and Israeli). No one seriously disputes the validity of the transactions through which the current owners acquired rights from their predecessors in title.

The tenants in these disputes acquired their leasehold rights through a chain from the Jordanian Custodian of Enemy Property in the 1950's. Their rights as leaseholders (not owners) were reaffirmed in several court rulings culminating in 1982, when Israel's civil courts issued rulings adopting settlement agreements between the leaseholders' predecessors in title and the owners. The rulings and settlement agreements established that the tenants had "protected leaseholds" under Israeli law (a status superior to ordinary leaseholds under Israeli, Jordanian and British law) but that the owners still had good title ownership. The tenants enjoyed and continue to enjoy the benefits of the protected tenancies until today; this is why their leaseholds continued uninterrupted for more than half a century, until the recent expiration of the leases (in some cases due to serious breaches of the terms of the lease, in others due to the natural expiration of the lease rights). The squatters, of course, possess no legal rights at all.

The only break in the owners' uninterrupted chain is the sequestration of the properties from 1948-1967 by the Jordanian Custodian of Enemy Property. Jordan, which had illegally occupied east Jerusalem and the West Bank during its illegal invasion of Israel in 1948, denied Jews the right to exercise any property rights over land in the Kingdom during the entirety of its 19-year occupation (Jordan has continued this discriminatory practice to date). Having expelled all Jews from the lands it occupied, Jordan transferred custody over all Jewish-owned property to the Jordanian Custodian of Enemy Property. In accordance with the British legislation on enemy property on which the Jordanian law was based, Jordan's sequestration of enemy property only extinguished owners' rights completely if the state seized title by eminent domain or if the Custodian transferred title to someone else. Importantly, in the case of the Sheikh Jarrah properties, the Jordanian Custodian did not purport to transfer ownership of the properties to anyone else. Instead, the Custodian leased some of the properties to Palestinian Arabs (the predecessors in title to the current overstaying tenants).

After the Six Day War of 1967 ended Jordan's occupation of east Jerusalem, Israel adopted legislation that vindicated the private property rights of persons of all ethnicities. The 1970 Law and Administrative Arrangements Law (Consolidated Version) preserved the rights of private parties who

received title from the Jordanian Custodian of Enemy Property, notwithstanding the illegality of Jordan's occupation. (Persons who received rights from the Jordanian Custodian were all Arabs, since Jordanian law denied property rights to Jews.) Where the Jordanian Custodian had held custody over the sequestered properties through 1967, the 1970 law assigned custody to the Israeli Administrator General and Official Receiver with instruction to release custody to the property owners. And where Jordan had seized the property by eminent domain for public use, the 1970 law assigned ownership of the property to the state of Israel for continuation of the public use.

Ironically, if the Jordanian Custodian of Enemy Property had assigned title to the predecessors of the current Palestinian Arab holdover tenants over the lands it seized from Jewish owners, Israeli law would have respected the resulting title. The reason the holdover tenants in Sheikh Jarrah lack ownership today is not because the state of Israel has denied the Palestinian Arabs any rights they acquired, but, rather, because the government of Jordan declined to give the Palestinian Arabs title to the land Jordan had seized.

### **III. Media distortions of the dispute**

Many of the media accounts of the recent court judgments regarding the properties in Sheikh Jarrah have distorted the facts. Contrary to claims in some media accounts, Israel did not grant anyone ownership to any of the affected properties on the basis of ethnicity. Israeli law respects and upholds the property rights of persons of all ethnicities. Israel has even respected the property rights created by prior regimes that explicitly discriminated against Jews in their property laws—the Ottoman Empire, the British Mandate of Palestine, and the Jordanian occupation regime.

Contrary to claims in some media accounts, Israel has not created different rules for “enemy property” based on ethnicity. The ethnic dimension to the current-day property disputes is historic discrimination against Jews by a country other than Israel: Jordan denied Jews all ability to exercise property rights during its illegal occupation of east Jerusalem 1948-1967. Israel has declined to continue Jordan's discriminatory practice, but it has respected the legal results of Jordan's actions. Ironically, Israel has been so respectful of the private property rights of Palestinian Arabs that it continues to uphold private Palestinian Arab property rights that are based on Jordanian discrimination against Jews.

Contrary to claims in some media accounts, the Israeli government has not decided to evict anyone in the current disputes. It is private parties, rather than the government of Israel, that have brought their claims to court. Landowners have done what they do throughout the civilized world—they have exercised their private rights to evict holdover tenants by going to court and winning an eviction order. The landowners rightly expect that Israeli police and enforcement authorities will respect the law and carry out eviction orders. Contrary to claims by pro-Palestinian advocates, the state of Israel has not issued any eviction orders against Palestinians in these disputes.

Contrary to the impression created by some media accounts, there has

been no recent adjustment of the parties' property rights in favor of Jews or to the disadvantage of Palestinian Arabs. The parties' rights were established by voluntary transactions over many years and reaffirmed in a legal compromise and court rulings many decades ago. The Palestinian Arab litigants in these cases are now attempting to overturn more than a century of property transactions and overturn long-settled law in order to prevent the Jewish owners exercising their lawful rights. The only involuntary transaction in the chain is the Jordanian 1948-1967 sequestration of Jewish property which is the source of the Palestinian Arab lease rights that have been upheld by the courts.

Contrary to the impression created by some media accounts, the property disputes do not involve any exotic or unusual Israeli laws. The leasehold and trespass legal issues at stake are similar to those found throughout the world, other than the unusually strong rent control and tenant protections given to the protected tenants (Palestinian Arabs in this dispute). The ownership laws at issue are likewise similar to those found throughout the world, and simply follow the chain of voluntary transactions. The only exotic element in the case is Jordan's 19-year sequestration of all Jewish-owned properties as "enemy property," which has been respected to the detriment of the Jewish property owners.

Contrary to the statements in some media accounts, none of the properties in the current dispute has been seized by the state of Israel. None of the property disputes turns on Israeli laws of land use or land planning or absentee property.

Contrary to the statements in some media accounts, the question in the land disputes is not whether "Jews owned the property prior to 1948." The ethnicity of the owners is not legally relevant to the dispute, and does not serve as the basis of any legal rights in this case. The historical ownership is relevant only because it is part of the chain of title leading to the current owners' title. What has been litigated is the *current* rights of *current* property owners.

#### **IV. Official distortions of international law**

Likewise, many critics of Israel have fabricated provisions of international law to insist that Israel is required to discriminate against Jews in east Jerusalem because, in the critics' view, east Jerusalem is territory belligerently occupied by Israel. These claims are not only without foundation in international law, they also undermine international legal authority by creating a fake international law intended to be used in bigoted fashion.

Contrary to the claims of the critics, nothing in the law of belligerent occupation, or any other provision of international law, requires Israel to adopt and enforce the racial and ethnic land discrimination that is part of Jordanian law. In fact, Israel would violate international law (such as provisions in the Covenant on Civil and Political Rights) were it to continue the Jordanian ethnic discrimination, or adopt the distorted views of international law proposed by critics of Israel.

Contrary to the claims of the critics, there is nothing in the Geneva

Conventions or any other part of the laws of belligerent occupation that forbids Israel to carry out court orders enforcing private property rights of landlords to evict their overstaying tenants. The claim that property rights of Jews must be disregarded while other property rights must be upheld or even enhanced has no basis in the law and is morally offensive.

Contrary to the claims of critics, international law does not require, or even permit ethnically-based denials of the legal rights of property owners due to alleged flaws in other Israeli laws. Some critics have claimed that Israel's land planning laws, land use regulations and 1950 Absentee Property Law are problematic or biased. Whatever the merits of such claims, the claims of the parties in the current Sheikh Jarrah disputes have nothing to do with Israel's land planning laws, land use regulations or the 1950 Absentee Property Law. Nothing in international law permits Israel to deny individual Jewish landowners their legal rights as punishment for the alleged guilt of their polity in adopting other, unrelated laws.

Contrary to the claims of the critics, permitting private Jewish landowners to exercise their rights in court does not constitute "illegal settlement activity." No reasonable interpretation of the various provision of the Geneva Conventions and other treaties cited with respect to the legal dispute on "settlements" could possibly lead to the conclusion that international law requires stripping Jews of all private property rights in land in areas that critics of Israel call "Occupied Palestinian Territories." While critics of Israel like to pretend that international law forbids Jews to reside in any lands claimed as part of the "Occupied Palestinian Territories," that claim has no foundation in international law.