

# From Supervision to Development: A New Concept in Planning Arab Localities

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The Or Commission (2003), which examined the disturbances of October 2000, found that planning, construction, and land policy was one of the main factors in the housing and development shortage in the Arab localities that lay in the background of the events. More recently, the demolition of fifteen homes in Umm al-Hiran on November 29, 2016 and the demolition of eleven homes in Qalansawe on January 10, 2017 coincided with the promotion of Knesset legislation aimed at tightening the supervision over construction. This amendment, based on a report written by Deputy Attorney General Erez Kaminitz,<sup>1</sup> provided administrative tools for handling construction without a permit<sup>2</sup> for the purpose of creating a suitable deterrent mechanism to reduce the phenomenon: it was argued that there is an urgent need to confer authority for supervising and demolishing buildings without any requirement for a hearing in the judicial system. This amendment was of great concern in Arab public opinion, and was among the main topics on the Arab public agenda. It is perceived as part of several bills that the Knesset has already passed designed to harm the Arab population and restrict its civil sphere as individuals and as a collective. At the same time, the government voted to adopt the recommendations of the 120-Days Team<sup>3</sup> concerning the promotion of residential planning and provision of land for the Arab population. These recommendations were also included in Cabinet Resolution No. 922 in December 2015 on the five-year plan for development and regulation of public space in the Arab localities, including the promotion of planning and construction issues.<sup>4</sup> Yet despite this decision and the measures already taken to implement it, skepticism

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continues as to whether governments in Israel are indeed committed to redress grievances of the Arab population, eliminate discrimination, and promote development of the Arab localities.

One of the critical tests for the Arab sector of the state's seriousness in implementing the development plans for Arab localities involves a change in concept, practice, and implementation for planning and building in response to the Arab population's growing and changing needs. This must be a material change, as opposed to action merely to prevent the demolition of buildings and the regulation of building without a permit. This article shows that the existing planning concept and its implementation do not provide a solution for the necessary planning and building for the Arab localities, and result in the phenomenon of building without a permit, ongoing anxiety about demolitions, and continued lack of trust on the part of the Arab population toward the government's policy. This article proposes ideas for a change in approach, dialogue, and administrative implementation tools aimed at easing tensions in the planning and building sphere on the national (state and citizens) and inter-communal (Jewish and Arab localities) levels and within the Arab and mixed localities themselves. The essence of the proposed approach involves the transition from a concept of supervision to a concept of development, meaning that spatial outline and detailed planning should not be mainly a tool for supervision and control, but a development tool that contributes to the quality of life and provides an extensive supply of solutions for diverse populations. The article also refers to the strategic significance of the issue for Israeli society as a whole.

### **The Problems with the Existing Planning Concept**

Spatial planning in Israel is challenged by policy developments shaped by the government's political orientation and by the socioeconomic changes in various localities in Israeli society.<sup>5</sup> As an element of public administration, spatial planning is reflected mainly in the distribution of spatial/land resources through the assignment or denial of planning rights.<sup>6</sup> Land resources are distributed by creating boundaries for development, while planning designs the space according to the goals of the public system.<sup>7</sup> The public system's priorities are reflected in government decisions, decisions by planning authorities, and the outline plan.<sup>8</sup> The outline plan, which determines land zoning, reflects the balance of power in society and the ethnic relations within it.<sup>9</sup>

Since the founding of the State of Israel, planning has aimed to disperse the Jewish population, establish new Jewish localities and villages in the Galilee and the Negev, and create state-supported development opportunities for the Jewish population and Jewish localities, including in areas with existing Arab localities. These Arab localities, however, received no attention in development policy; on the contrary:<sup>10</sup> they were perceived as hindering the development of Jewish localities in the outlying areas. This planning concept, driven primarily by territorial aims, was implemented through local outline plans designed to obstruct the expansion of Arab localities and their illegal construction. It intended to encourage further construction within the Blue Line established in the local outline plans, including for the purpose of urbanizing the Arab localities, adding to the area zoned for construction, and reducing the territorial contiguity between them.<sup>11</sup> Territorial contiguity was prevented by devising a jurisdictional measure that placed areas with Arab localities in the jurisdiction of Jewish regional councils. State-owned areas around the Arab localities were also included in the jurisdiction of Jewish local authorities. The jurisdictional boundaries map, which was drafted according to political and municipal considerations,<sup>12</sup> created an obstacle to outline planning for Arab localities.

As part of the restrictive planning concept, national and district outline plans were prepared<sup>13</sup> with rules that impeded, or at least did not grant, quality development opportunities to existing Arab localities. In other places, they ignored the existence of Arab buildings, and even Arab villages.<sup>14</sup> Some of this disregard was deliberate, with the aim of concentrating the Arab population, especially the Bedouin, in the Galilee and northern Negev. Some resulted from development that lacked coordination between planning and the existing situation. This lack of coordination was a major factor in what is referred to as “illegal construction;”<sup>15</sup> it consists mainly of incompatibility, or contradiction between planning that makes it impossible to obtain building permits and the needs of the population that continues to expand. This incompatibility still exists, especially in the northern Negev, as well as in some of the localities with plans, albeit approved, that do not take into account the existing situation and future needs, such as in the case of Qalansawe.

### **Lack of Local Planning Preparation**

The centralized planning policy did not meet the needs of the Arab population, which after the establishment of the state was transformed from

a majority to a minority subject to majority rule – a rural population living mainly in outlying areas and small localities with a traditional patriarchal society relying on agriculture for a livelihood. The Arab population began to grow, multiplying from 160,000 in 1950 to 1.8 million in 2016. The built-up area thereby spread beyond the borders delineated by the planning institutions, and expansion occurred without development planning. The bulk of construction in the Arab localities took place on privately owned land, while migration to cities was limited. This gave rise to a growing demand for space for residential development, infrastructure, and public buildings, with a prominent trend toward urbanization in the Arab community. Since the planning did not match the needs or the nature of the localities' development, there were many disparities between the actual and the approved, which in most cases lagged behind development.

The local Arab authorities that began to develop were weak and lacked administrative and budget capabilities to manage planned development or develop suitable and alternative community planning to the establishment planning. At the same time, the planning institutions did not put planning and building in the hands of the local authorities. In most cases, planning was still conducted by local and district committees appointed by the government ministries, which constituted the arm for implementing government policy. Only four of 84 Arab local authorities function as local planning committees; all the rest are subject to district committees.

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The lack of authority and responsibility of Arab local authorities limited their involvement in community planning. It also exacerbated their protest against the planning institutions, particularly when the Arab local authorities elected to represent their residents lacked the power to influence the planning and approval processes. In addition, the prolonged planning period prevented the local authority from identifying with district planning, alienated the local authority from the process, and made the authority reluctant to implement it. Instead, the local authority took the residents' side against the

planning establishment. This situation detracted from the legitimacy of spatial planning as a tool to ensure the quality of life and development of the public area. It created a climate of support for building without a permit.

The residents, especially private landowners, perceived planning as an establishment tool intended to restrict them; some perceived the planning, land regulations, and the issuing of building permits as a means of institutional control related to land expropriation. Needless to say, the issue of expropriation of land also had a negative impact on the preparation and approval of outline plans, and cultivated an anti-planning attitude among a considerable number of the Arab residents. Some of the landowners rejected the planning restrictions established in the outline plans, especially those with allocations for public needs, including road planning.<sup>16</sup> The distinction between institutional decisions to develop infrastructure for the needs of the Arab population and those having a negative impact on the community, which include planning restrictions, land expropriations for the construction of national infrastructure, and the establishment of Jewish localities, is therefore rather limited. These decisions sparked strong opposition among a majority of the Arab population. This oppositional discourse did not make enough of a distinction to facilitate a local planning concept that would constrain building without a permit. The anti-planning ethos was thereby strengthened, and in part had the effect of greatly restricting enforcement of building plans. This is not the place to debate the accuracy of this narrative, which imbued a sense of alienation among the Arab population, was reflected in the Arab community's behavior toward administrative decisions, was understood to be a transient situation, and was affected by the political climate. In any case, the situation was marked by a lack of initiatives for alternative planning and Arab participation in formulating suitable planning as an alternative to aggressive opposition and general rejection of institutional planning.

The Arab objection to outline planning was also accompanied by political views disputing the legitimacy of outline planning as an administrative tool for zoning. The contradiction between planning and implementation, combined with a lack of initiative and acute anxiety, translated into the exclusion of Arabs from planning at the national and district levels and minimal representation at the local levels. These phenomena led to the perception of planning as a restrictive tool and outline plans that do not adequately plan the community's space, therefore contributing to the growth of building without a permit. The result was planning from above designed to serve the institutional land policy and promote urbanization, while in effect reducing the area zoned for development. From below, a prevailing attitude in Arab society featured unawareness and unwillingness

to recognize the importance of planning as a tool for protecting its interests and facilitating conditions for a better quality of life and a proper public space. The interface between these two developments caught the mostly rural Arab population, which was undergoing a process of urbanization and had its own social and cultural regulations, in the midst of a socio-political rift, and turned the outline planning process into a formidable obstacle.

The conflicts and contradictions between policy planning from above and the grassroots needs of the population created faulty planning in the Arab community, and fostered the growth of building without a permit on a large scale. The result is estimated at some 10,000-50,000 buildings without permits,<sup>17</sup> followed by fines for unauthorized construction and building offenses and demolitions of residential buildings. The frequency of this occurrence among the Arab population has profound consequences for the sense of civil affiliation and the willingness to participate in the campaign for comprehensive equal citizenship that the state should be promoting. To be sure, building without a permit also exists in Jewish localities, but the establishment's attitude differs on the basis of national affiliation. Building without a permit among the Arabs is perceived by the governmental system as a national issue and a threat to the state's resources. Building without a permit among the Jewish population, on the other hand, is perceived as a civil offense that should be met with economic penalties.

### **Committees for Dealing with Construction**

Awareness by the state's institutions of the fundamental problems in planning and building among the Arab population led to the establishment of many public committees designed to clarify the reasons, consequences, and ways of eliminating or reducing building without a permit. Building without a permit and the demolition of such buildings are not new, and first occurred in an Arab community as early as 1955. Many public commissions have been established since then.<sup>18</sup> A review of the work of these commissions indicates that the primary motive for their establishment was building without a permit, regarded as a strategic problem of law and order, and a desire to preserve territory seen as essential to the state, including national infrastructure, and prevent damage to national and local development processes resulting from depletion of the state's land resources. Almost all of the commissions recommended promotion of outline plans for the Arab localities as a key to solving the problem of building without a permit, and enhanced supervision and penalties. The prevailing assumption was that

stronger supervision, monetary and criminal sanctions, and demolition were factors deterring people from building without a permit.

Of the many commissions, the public commission known as the 120-Days Team stands out. The recommendations of this commission were based on inter-ministerial work in cooperation with some Arab professionals in economic development of the public sphere in an effort to narrow gaps and create different solutions for the diverse Arab population. This team was more aware than previous public commissions of the distinction between applying an overall planning and spatial policy and forming an appropriate response to a unique population in order to promote practical solutions for it. The 120-Days Team's recommendations, which were endorsed by the government and provided the basis for Cabinet Resolution No. 922 (2015), are still undergoing the test of implementation. On the other hand, the recommendations of the Kaminitz Commission, some of which were based on 120-Days recommendations, focused on the specific problem of supervision and demolitions and put it at the forefront, culminating in an amendment to the main Planning and Building Law from 1965.<sup>19</sup> This amendment returns to the idea of supervision and penalties as a leading tool in dealing with building without a permit. This concept apparently assumes that implementation of the reform in the Planning and Building Law requires decentralization of the planning system, including the delegation of authority and responsibility to the Arab local authorities as well, so that they will be involved in the planning of the community and in supervision of building.<sup>20</sup> The amendment to the law was thereby designed to help both the state and the local authorities supervise building, together with developing planning solutions – a goal that has yet to be realized.

### **The Development Concept and its Implementation**

Since the early 21<sup>st</sup> century, changes have taken place in the approach, substance, and activity in planning construction in Israel. These changes are part of the reform in planning policy and national planning tools, including for the Arab localities.<sup>21</sup> Over the past decade, a change occurred in the promotion of local outline plans in the Arab localities, which began with a plan in the framework of a project for preparing an outline plan for 34 localities. At the same time, preparation of outline plans began in the framework of clusters of localities, and a process of preparing overall outline plans for some of the Arab localities. These plans reflect a change in the Planning Authority's concept for the Arab localities, quite a few of which

have also begun to realize the importance of planning in the development of their localities, finding solutions for the problem of building without a permit, and limiting the cases of home demolitions. This change generates an infrastructure for reform in planning the Arab community, including the areas that are being added for development, while at the same time re-planning the built-up area, including development of the public space. The background to the change consists mostly of the transition from a rural pattern to an urban one. There is also a new generation of the heads of local authorities, which seeks to provide its citizens with an advanced basket of services similar to that enjoyed by Jewish localities. At the same time, a middle class is arising in the Arab localities, and is contributing to better awareness and greater willingness to promote development plans among the Arab population.<sup>22</sup>

Despite these important changes, the local Arab leadership remains aware of the internal obstacles relating to private landowners and their willingness to make land allocations for public purposes. At the same time, there are also the obstacles of the district and national outline plans that

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preserve areas in opposition to the Arab localities' development needs. Another problem is the long time required for drawing up plans, while in the meantime a new situation is created that includes building without permits, which was not taken into account in the new plan.<sup>23</sup>

The intense demand for housing is liable to explode at any moment. The shortage of residential planning is causing an increase in the number of people without homes, delays in marriage, increases in land and housing prices, growing emigration outside the localities, and a severe shortage of public space, including non-standard roads and public spaces. This situation perpetuates the lack of trust and anxiety among the younger generation, the immediate consumer of the existing planning that does not meet the test of the rapid developments in the field. The lack of compatibility between the planning and the

needs, and delays in issuing building permits continue to result in building without a permit that is threatened with demolition. This affects the social and political atmosphere, and creates underground currents that feed the



tension between Arab citizens and the state. Restrictive outline planning and supervision constitute a key factor in the growth and perpetuation of separation and spatial tension between Jews and Arabs. The same is true of the supervision and monitoring concept for development of the Arab localities, including restriction and limited opportunities for development.

The enforcement and punitive policy, including administrative demolition orders for buildings constructed without a permit, which is part of the reform embodied in Amendment 116 to the Planning and Building Law, is not an adequate way of dealing with planning and development in the Arab localities, including in the Negev and ethnically integrated cities, where most building is without a permit. Together with, and even prior to carrying out the enforcement policy, which aggravates the tension among the Arab population, it is necessary to alleviate the distress and remove the obstacles to the supply of housing, while making an effort to strengthen the local leadership, so that it will take responsibility for planning and development.

In order to deal with the change in concept, especially the emphasis on supervision and territorial considerations, development planning is necessary that focuses on functional considerations, reflecting the fulfillment of human needs, spatial fairness, and overall equality. There is an immediate need to promote planning that allows development, will shorten approval processes for plans, and promote detailed planning simultaneously with outline planning processes. Such a process requires flexibility in national and district outline plans, the inclusion of existing construction in the new plan, and a suspension of demolition orders for buildings. This also requires agreement between representatives of the Arab population, including Knesset members, local authority heads, and representatives of political groups on the one hand, and representatives of the state on the other. This will facilitate the suspension of demolition orders for buildings erected without a permit for an agreed period for the purpose of drawing up a roadmap as part of implementing the new five-year plan for planning and development in the Arab localities.

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control, restriction, and empowerment of the supervisory authorities. The new discourse should regard the outline plan as a community development tool that regulates and facilitates development. The local leadership in the Arab localities should be awarded more authority and responsibility for planning and development in their localities. Exercising this authority begins with the reform of Amendment 101 and Amendment 104 of the Planning and Building Law, whose substance will be decentralization of planning decisions from the national and district level to the local level.<sup>24</sup> Implementation of the reform is delayed, however, as a result of inadequate preparation and willingness to carry out the reform and grant more responsibility to the local authorities. Strengthening the local authorities and enhancing their management and planning capabilities constitute essential infrastructure for the new planning concept. For the sake of achieving this reinforcement, professional and budget resources should be made available to the local authorities in order to carry out the decentralization policy contained in the reform.

## Conclusion

The question of land and construction in the Arab sector in Israel is at the heart of the tangled and sensitive web of relations between the state and the Arab public. In many ways this issue is the most challenging and critical of the many issues for this complex relationship, and is threatening to destabilize Israel and the fabric of relations between the Arab minority and the Jewish majority. A possible collision between two dangerous trends is emerging. One is the need to introduce order into building in the Arab localities as a result of population growth and development, the expansion of initial needs, and placing construction at the head of the demands of the state made by the Arab public and leadership. The other is the growing tendency of the government, together with the initiation of important positive measures, such as the five-year plan for development of Arab society, to impose tougher penalties for building offenses, aggravated by the extremely slow pace of the necessary regulatory processes on all aspects of construction. This issue must be resolved soon, not only for reasons of civil considerations for minority needs, but also in order to prevent escalation and disaster.

The outline planning among the Arab population is a professional tool of public policy designed to regulate land use and the distribution of physical resources. As a strategic resource, traditional statutory spatial

planning divides resources, and thereby creates discrimination between Arab and Jewish localities. It also constitutes an important factor in the emergence of building without a permit, and a means whereby the state deals with this phenomenon through penalties and demolition, which aggravates the tension between the state and its citizens. On the other hand, promotion of a development plan that facilitates social and economic progress is likely to reduce the existing tensions. To the Arab population, planning and building are not isolated from the existing tension between the Arab sector and the state. The increased demand for housing and the development needs aggravate the tension between the Jewish and Arab local authorities. The state's task is to ease this tension by reorganizing the map of local authorities and the distribution of land resources for planning and building.

According to current projections, it will be necessary to provide housing solutions for approximately 300,000 Arab households by 2040.<sup>25</sup> Unless a concept of positive development planning emerges and materializes, many of these households will search for housing opportunities in nearby Jewish localities. Others will have to build without a permit, which is liable to generate social tensions that could assume a nationalistic and even violent nature. New systemic strategic thinking for devising a spatial policy is therefore required in order to prevent tensions and provide a solution for the diverse legitimate needs of the various localities in Israeli society. There is reason to assume that a systemic solution is possible, but it can be achieved only through a measured dialogue between the state and its Arab minority, which must recruit its leadership and encourage it to think objectively for the sake of promoting the interests of Arab society. This is a common interest of the state and all its citizens. Balanced formulas should be found, and the sooner the better. On a positive note, there are important and influential parties both in the government and among the Arab leadership who recognize the common interest and need, and who are acting jointly to promote it, including in regulation and building. This is an important indication of the chances of real progress toward a necessary, appropriate solution.

## Notes

- 1 Summary report of the team for handling illegal construction, January 2016, named for Deputy Attorney General Erez Kaminitz, <http://www.justice.gov.il/Publications/News/Documents/FullIllegalBuildingReport.pdf>.

- 2 I have chosen the concept of “building without a permit” instead of “illegal construction,” because the latter also includes construction that does not comply with engineering standards.
- 3 Cabinet Resolution No. 208, DR/18, dated July 9, 2015, “120-Days Team Report for Handling the Housing Shortage in the Minority Localities,” June 2015, <http://mof.gov.il/Releases/Documents/120%20Days%20Report.pdf>.
- 4 Cabinet Resolution 922, “Government Actions for Economic Development in the Minority Population in 2016-2020,” December 30, 2015, <http://www.pmo.gov.il/Secretary/GovDecisions/2015/Pages/des922.aspx>.
- 5 Arie Hershkowitz, *Spatial Planning in Israel: Politics Anchored on the Ground* (Haifa: Center for Urban and Regional Studies, Technion, 2009); Rachelle Alterman, *Planning in the Face of Crisis* (London: Routledge, 2002).
- 6 John F. Forester, *Planning in the Face of Conflict: The Surprising Possibilities of Facilitative Leadership* (Chicago: Planners Press, 2013).
- 7 S. Hasson, ed., *Spatial Design in Israel: The Communal and Land Map* (Jerusalem: Keter Publishing and the Jewish National Fund, 2012); Susannah Gunn and Jean Hillier, “When Uncertainty is Interpreted as Risk: An Analysis of Tensions Relating to Spatial Planning Reform in England,” *Planning Practice & Research* 29, no. 1 (2013): 56-74.
- 8 P. Healey, “The Communicative Turn in Planning Theory and its Implications for Spatial Strategy Formation,” *Environment and Planning B: Planning and Design* 23 (1996): 217-34.
- 9 Deborah F. Shmueli, “Community Plan Making in the Face of Ethnic Conflict in Israel: Lessons for Collaborative Planning Processes,” *Journal of the American Planning Association* 83, no. 2 (2017): 131-44.
- 10 Hasson, ed., *Spatial Design in Israel: The Communal and Land Map*.
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- 14 Rassem Khamaisi, *From Restricting Planning to Development Planning in Arab Localities in Israel* (Jerusalem: Floersheimer Institute for Policy Studies, Jerusalem, 1993).
- 15 K. Nasser, *Severe Housing Distress and Destruction of Arab Homes: Obstacles and Recommendations for Change* (Nazareth: Dirasat Arab Center for Law and Policy, 2012).
- 16 Rassem Khamaisi, *Public Space and the Frontal Part of Arab Localities in Israel: Removing Obstacles and Meeting Development Challenges* (Haifa: Jewish-Arab Center at the University of Haifa, and the Friedrich Ebert Foundation in Israel, 2016).

- 17 Rinat Benita, "Illegal Construction and Demolishing of Buildings in Israel," Knesset Research and Information Center, Jerusalem, 2015, <https://www.knesset.gov.il/mmm/data/pdf/m03658.pdf>.
- 18 Koberski Commission, 1972; Markovitch Commission, 1986; Gazit Commission, 2000; Goldberg Commission, 2008 (focused on the Bedouin population in the Negev); 120-Days Team, 2015; Kaminetz Commission, 2016.
- 19 Amendment 109, which was approved under the definition of Amendment 116.
- 20 Planning Administration, "Principal Emphases for the Reform in Planning and Building – Amendment 101 to the Planning and Building Law," Jerusalem: Ministry of Internal Affairs, Planning Administration, 2014.
- 21 N. Alfasi and J. Portugali, *A New Structure for the Israeli Planning System: A Proposal* (Tel Aviv: Tel Aviv University, Daniel Abraham Center for International and Regional Studies, 2009).
- 22 Khamaisi, *From Restricting Planning to Development Planning in Arab Localities in Israel*.
- 23 Some of the approved plans were prepared in the 1990s or the first decade of the 21<sup>st</sup> century, or alternatively, were prepared recently. For example, the Qalansawe outline plan, whose preparation began in the framework of the Cluster 5 Project in 2003, was approved for validity in late 2016.
- 24 Assaf Meydani, "Towards Public Administration Reform – More Public Responsibility and Social Cohesion," article presented at the 15<sup>th</sup> Herzliya Conference (2015).
- 25 Rassem Khamaisi, *Between Social and Real Estate Values: The Housing Market among Arab Citizens in Israel* (Haifa: Jewish-Arab Center at the University of Haifa, and the Friedrich Ebert Foundation in Israel, 2015).