

## What's Going on in Silwan?

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Recently, the issue of Silwan filled the Israeli papers as the Sumarin family fought to stay in their home. Recently, Jill Jacobs of Rabbis for Human Rights North America, and Russell Robinson, CEO of the Jewish National Fund, exchanged editorials in the JTA over the role of the JNF in Silwan. The issues surrounding Silwan are complex and it is often hard for the casual reader to jump into the middle of the long ongoing saga. Therefore, we have written this background white paper on the issues surrounding Silwan.

### **Where is Silwan?**

Silwan is a neighborhood in the southern part of East Jerusalem, adjacent to the Old City. It is built on the slope descending from the Mount of Olives. The City of David (Ir David) archeological site is contained within Silwan.

In 1967, after the annexation of East Jerusalem, Silwan was included in the municipal boundaries of the City of Jerusalem.

### **Who lives and has lived in Silwan?**

Silwan was named after the Siloam Pool that was Jerusalem's water reservoir during biblical times.

King Hezekiah's aqueduct from the 8<sup>th</sup> century BCE was discovered in this area. The tunnel runs under the biblical City of David moving water from the Gihon spring to the Pool of Siloam. This aqueduct contained one of the oldest known Hebrew inscriptions. (The Turks removed this tablet to Istanbul as Ottoman cultural property.)

In 2005, archeologist uncovered a large building that is likely either part of King David's palace or part of a city wall from the Prophet Nehemiah's period.

The Silwan area has been continuous inhabited since at least the 9<sup>th</sup> century CE. In the 9<sup>th</sup> century CE, Karaite Jews established a community on the western side of the slope and resided there for several hundred years.

The village of Silwan, which is mostly located on the eastern side of the slope, dates back to the 16<sup>th</sup> century CE and its residents have been primarily Arabs.

In 1873 Sephardic Jews from the Old City purchased land and built houses in an area outside of the village. In 1881, a group of Yemenite Jews joined them. About 200 Yemenite families were living in the Silwan area by 1884.

According to the 1915 Ottoman census, a population of 500 people resided in the village.

It is not known how many Jews lived in the area before the riots of 1921 when the Arab community attacked the Jewish community around Silwan.

The British 1922 Palestine census noted a 300 percent increase in population in Silwan to about 1900 residents. This population was predominately Muslim (90%), with minorities of Jews (8%) and Christians (2%).

The Arab community again attacked the Jewish community around Silwan in the 1929 riots. Under pressure from the British Mandate Authority, many Jewish families were forced to leave the neighborhood. They returned in 1930 and rebuilt their homes, only to be evacuated by the British in 1938 at the height of the Arab Revolt.

There was no Jewish presence in Silwan between 1939 and 1967. From 1948 until 1967, Silwan was under Jordanian rule.

### **How do Jewish organizations, the Israeli government and quasi-governmental organizations gain access to land and buildings in Silwan?**

Under the 1970 amendment of Israel's 1950 Absentee Property Law, non-Jewish owners of land or property in East Jerusalem had to be physically present at the time of the annexation to maintain control of their properties. In their absence, their property could be transferred to the Custodian of Absentee Property. However, the Attorney General at the time issued an opinion that there was no justification to apply the Absentee Property Law to East Jerusalem, especially because many of the owners lived elsewhere in the West Bank.

So while it is true that the law did exist, the court ensured that the non-Jewish owners would be able to maintain control of their property.

The policy of not applying the Absentee Property Law lasted until late 1977, when two ministers in the newly-elected Likud government started applying the policy. Starting in 1977, West Bank residents owning properties in East Jerusalem were required to make a request of the Custodian of Absentee Property to be allowed to continue to use or manage their assets. Israel's Supreme Court upheld this policy, called the Sharon Regulation, in a 1986 ruling.

In 1992, then Prime Minister Yitzhak Rabin canceled the Sharon Regulation after a committee found that the policy was being abused.

Following Likud's return to power, the government once again began enforcing the Absentee Landlord policy in 2004. This decision facilitated the land appropriation necessary to build the separation barrier around Jerusalem because it allowed the

Custodian to transfer, lease or sell land in East Jerusalem to the Development Authority. The decision caused a public outcry in Israel. In 2005, the Attorney General sent a letter to Benjamin Netanyahu, then Finance Minister (the ministry supervising the Office of the Custodian), asking him to reverse the policy.

In 2006, the Jerusalem District Court ruled that the Absentee Law was not applicable to East Jerusalem property owned by residents of the West Bank and that its use contradicted the Basic Law Act of 1992. This decision, as well as others made by different district courts, has been appealed to the Supreme Court.

### **What has happening on the ground in Silwan?**

In 1987, the Permanent Representative of Jordan to the United Nations wrote to the Secretary-General to complain that Israeli companies evicted two families, claiming ownership of their homes. This is the first public record of evictions of Arabs by Jewish Israelis in Silwan.

In 1991, just prior to the arrival in Israel of US Secretary of State James Baker, several dozen Jewish Israeli young men (described as rabbinical students), with several right wing Knesset members present to support them, evicted several families and took over their former homes. This was done as a deliberate provocation in hopes to thwart peace talks.

One of the goals of a nonprofit association named ELAD (acronym for To the City of David) is to renew the Jewish community in the City of David. To achieve this, ELAD has been acquiring properties in Silwan since 1991 by purchasing assets that were declared absentee, by persuading Arabs (some of them absentee landlords) to sell them their property (sometimes without revealing the true identity of the purchasers), and by seeking legal actions to return land that once belonged to Jews to the heirs of those owners.

ELAD rents out its property to Jews willing to settle in the City Of David area. In addition, since 1997, the association has operated the Ir David National Park.

Through its founder and director, ELAD has a tight relationship with another nonprofit, Ateret Cohanim, whose goal is to enlarge the Jewish presence in the Old City. Together they have promoted the renewal of Jewish settlement in Silwan.

In 2004, Ateret Cohanim built a seven-story building in what they call “The Yemenite Village” in Silwan. The building is named Beit Yonatan, in honor of convicted spy Jonathan Pollard, currently serving a life sentence in US prison. The Ministry of Housing paid for the enclave’s very costly security expenses and continues to pay for armed riot police to guard the complex.

In 2007, the Israeli courts ordered the eviction of the residents of Beit Yonatan because the construction took place without permits and it violates zoning height regulations.

The local court ordered the boarding up of the building and the evacuation of all residents. This decision caused a major rift among members of the Municipal Council of Jerusalem. In 2009, the mayor tried to amend height requirements for this building, but the Attorney General interfered and harshly criticized the blatant disregard of the law.

Several eviction dates have so far been scheduled by the court, the residents have been fined for various violations (including municipal tax evasion), and the city’s legal counsel has revealed unlawful requests by the mayor to the police to avoid the eviction. As of now, the mayor of Jerusalem is still refusing to carry out the eviction. Riot Police provide by the Ministry of Housing guard the facility.

In 2008, the City of Jerusalem municipality began the process of approving a plan for a new Jewish housing complex in Silwan to be located 200 meters from the Old City walls. The plan includes a

synagogue, apartments, kindergarten classrooms, a library and underground parking for 100 cars.

### **What about the illegal building by Arabs in Silwan?**

In 2009, according to the Israel State Comptroller, there were 130 illegal structures in Silwan. This was a 430 percent increase from the number of illegal structures found in 1995. The group Ir Amim (City of the Nations), which specializes in zoning and construction issues in Jerusalem with potential impact on the peace process, argues that illegal construction occurs because the City of Jerusalem does not issue sufficient permits in the Silwan area.

In 2010, a highly controversial municipal plan was issued for the area. In theory, it would allow Arabs to obtain building permits, but it also includes a provision requiring that 15% of the permits to be given to Jewish settlers, despite Arabs constituting over 99.5% of the current population in Silwan.

### **Why do Jewish Settlers want to build in Silwan?**

There are three motivations:

First, some settlers are motivated to reclaim any land from which Jews were ever expelled or evacuated, as were the Yemenite Jews of Silwan in 1938.

Second, settlers are drawn to Silwan for its historical/religious significance as the City of David. While the archeological City of David dig may or may not be located at the actual site where King David built his capital, the site is linked to settlement in the biblical period.

Third, Silwan is potentially crucial to dividing the greater Jerusalem area so that Jerusalem can serve as capitals of both Israel and a future Palestinian State. A Jewish presence in Silwan creates contiguous Jewish settlement from the Old City to the settlement town of Ma'ale Adumim. Settlers hope their presence will affect any future land division between Israel and Palestine.

Today, about 300 Jewish Israelis live in Silwan, which has a total population of over 50,000.

### **Why is the Arab population of Silwan increasing?**

First, there is natural increase in the population as births exceed deaths.

Second, in the years after 1967, many individuals and families with East Jerusalem resident status had moved to villages outside of Jerusalem where housing is more plentiful and more affordable. The Israeli government's erecting the separation barrier around Jerusalem and tightening control on the checkpoints to pass into Jerusalem have made the "commute" to Jerusalem for school and jobs quite onerous. As a result, demand for housing within the Separation Barrier has increased substantially. One area to experience this increase in demand is Silwan.

### **What is the role of KK'L-JNF? What is Himnuta?**

One of the quasi-governmental organizations owning land in Silwan is KK'L-JNF. KK'L-JNF was founded 110 years ago for the purpose of acquiring property in the Land of Israel for the Jewish People. This organization, which is identified with forestation and Israel's national parks, still oversees 13% of the State's lands. It is not subject to oversight by the State Comptroller or the Treasury.

Within the Green Line(pre-1967 borders), KK'L-JNF property is overseen by the Israeli Land Authority (ILA), which is part of the Israeli government and manages 93% of the land in Israel . Himnuta manages KK'L-JNF property outside the Green Line (in the West Bank and East Jerusalem) is managed by. KK'L-JNF established Himnuta in 1938 to help German Jews under the purchase property in Israel. Himnuta is a wholly owned KK'L-JNF subsidiary.

Under the KK'L-JNF charter, only Jews and Jewish institutions can occupy its property. But because ILA is its manager within the Green Line, this discriminatory situation can be alleviated by land

swaps, where KK'L-JNF and ILA trade parcels so that Arab families can live in apartments or Nazi regime build homes on land that had been owned by KK'L-JNF.

In Silwan, no such adjustment or accommodations take place. KK'L-JNF uses Himnuta as its property manager and rental agent and Himnuta leases its land in Silwan only to ELAD, which then leases and rents the properties only to Jewish settlers.

### **What about the Sumerin family?**

The latest controversy in Silwan centers on the Sumerin family. Mohammed Sumerin moved in a house owned by his uncle, Musa Abdullah Sumerin, since he was 5 years old. His uncle died in 1983 and the uncle's sons inherited the house. Musa Abdullah's wife, his nephew Mohammed and the nephew's family were given the right to continue living in the house. In 1989, Musa Abdullah's sons were officially declared absent and the house became the property of the Custodian of Absentee Property. In 1991, Himnuta filled an eviction suit against the family.

The court case lasted until 1999. At that point, it decided that the property was incorrectly misappropriated since the owner (the uncle) was present in 1967 and that the nephew bought the house before his uncle's death.

Himnuta appealed and legal proceedings begun again in 1999, lasting until 2004, when it was decided that the sale document the family presented was forged.

In addition, Himnuta asked the court to rule against the supposed permission the uncle gave his nephew to live in his house. The family did not respond to court proceedings and in 2006 the Jerusalem Magistrate's Court ruled in favor of eviction. This decision was apparently mainly due to negligence by the family's attorney who never filed a defense brief. The family claims it had no knowledge of the court's decision.



A third round of legal proceedings resulted in the court's staying the eviction of the Sumerin family in December 2011. This is only a stay and not a permanent resolution of the case.

The Sumerin house is adjacent to the City of David site.

The Sumerin family situation has been the focus of a major effort by Sheikh Jarrah Solidarity Movement and Rabbis for Human Rights to mobilize Jews outside of Israel to protest the role of KK'L-JNF in the family's eviction.

According to the Chairman of KK'L-JNF Efi Stensler, this eviction is now off the table.

According to Seth Morrison, former DC Board member of JNF (the American Affiliate of KK'L-JNF), who resigned over this issue and wrote an Op-Ed appearing in *The Forward*, "Senior people at JNF made clear to me that they still plan to get the Sumerin family out and transfer the property to ELAD."

<http://www.forward.com/articles/147766/>

*This report is true and accurate as of publication March 2012*