

ADALAH'S NEWSLETTER

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Beer el-Sabe Municipality Refuses to Allow Muslim Residents and Visitors to Pray in the Big Mosque, Due to Concerns over "Public Safety and Security"

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On 10 January 2005, the Supreme Court of Israel held a hearing on a petition submitted by Adalah: The Legal Center for Arab Minority Rights in Israel in August 2002, which requested the re-opening of the Big Mosque in Beer el-Sabe (Beer Sheva) to allow Muslim residents of and visitors to Beer el-Sabe to pray in it. The Big Mosque is the city's only mosque; it has stood empty and neglected since 1991. The petition was filed on behalf of the Association for Support and Defense of Bedouin Rights in Israel, the Islamic Committee in the Naqab, 23 Palestinian citizens of Israel, and in Adalah's own name against the Municipality of Beer el-Sabe the Development Authority, the Ministry of Religious Affairs, and the Minister of Science. Adalah argued in the petition that free access to the mosque is protected by the rights to freedom of religion and dignity.

At the hearing, Justices Procaccia, Hayut and Jubran suggested that the petitioners and respondents reconsider their positions and reach an agreement involving the designation of the building as a cultural and social center for use by the Muslim community of Beer el-Sabe, *except for the purpose of praying*. The two parties were asked to respond to the Court's suggestion within 60 days with their reservations and proposals. The Court will then decide on how to continue with the case according to these responses.

The Big Mosque in Beer el-Sabe

The Big Mosque, the first mosque to be built in the Naqab (Negev), was established in 1906 in order to serve as a place of worship for the Muslim residents of and visitors to Beer el-Sabe and for the Arab Bedouin in the Naqab. Arab Bedouin sheikhs contributed half of the funding for the construction of the mosque. From 1906-1948, the building served as a mosque; after the establishment of the state of Israel in 1948, the mosque was used as a court and prison until 1953. Thereafter, it was used as a museum until 1991, after which it was closed and all of the museum's exhibits were removed. Today, as for the past 13 years, the mosque lies deserted, neglected and unprotected. The Muslim residents of the town and of the surrounding villages have been prevented from praying in the mosque, despite their many requests to be permitted to renovate it and pray in it. The mosque is located in the Old City, and is surrounded by restaurants and bars, a municipal building and a public garden.

The Muslim Residents of Beer el-Sabe: We Want to Pray in the Big Mosque

In Beer el-Sabe today there are around 259 synagogues for the 180,000 Jewish residents of the town; that is, one synagogue for every 700 Jewish residents. According to data from the Central Bureau of Statistics, approximately 5,000 Muslims live in Beer el-Sabe: by this ratio, the Municipality should offer its Muslim population of 5,000 at least eight mosques. Further, Beer el-Sabe is considered a metropolitan town, which provides services to approximately 150,000 Muslims in the Naqab, who visit the town continuously and work there.

In spite of the repeated demands by Muslims to allow them to pray in the Big Mosque, the municipality of Beer el-Sabe prevented them from doing so. Adalah discovered at the beginning of January 2004, that the Beer el-Sabe Municipality had published a bid for contractors to perform structural building work on the Big Mosque, which appeared to be designed to convert

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the building into a museum. The list of renovations which accompanied the bid included installing toilets in the entrance to the mosque, and converting the prayer area into a display hall. In addition, the Municipality published announcements about the re-opening of the "museum."

In January 2004, Adalah filed a motion for an injunction to the Supreme Court to issue an immediate order against the respondents, to prevent them from continuing with the bid to perform structural building work on the Big Mosque, pending a final decision on the petition. Adalah also requested that the Court issue an order preventing the respondents from altering the mosque into a museum.

In February 2004, the Court ordered the Municipality to maintain the *status quo*, to limit any work on the building to that which is necessary for its upkeep, and to refrain from making any further changes or additions. The Court's ruling stated that the Municipality is authorized to make renovations to the building of the mosque only for the purpose of protecting its structure, but not renovations which would alter it from being a mosque, pending a final ruling on the petition. The Municipality committed to abide by this ruling.

The Inter-Ministerial Committee: Go to Pray outside Beer el-Sabe

At a hearing in May 2003, the state committed to establishing an inter-ministerial committee to examine the issue and make recommendations concerning the possibility of re-opening the mosque for prayer.

In September 2003, the Prime Minister's Office submitted the names of eight proposed individuals for the inter-ministerial committee, none of whom was Arab or Muslim. In October 2003, Adalah challenged the composition of the committee. In response the Prime Minister's Office stated that it would include one Muslim representative. However, the Attorney General's Office then informed the Court that the Committee had been finalized without any Muslim or Arab representative.

The Committee released its report in September 2004, recommending that Muslims living in and around Beer el-Sabe should not be permitted to pray inside the Big Mosque. The report stated that, in spite of the Committee's recognition of "The historical value of the building, and the necessity not to damage the building or carry out changes to it," it does not see a justification for altering the *status quo*, particularly since the mosque has existed in its current state for the past fifty years.

The report stated that Beer el-Sabe is a Jewish town, and therefore the question of the Big Mosque differs from that of other mosques in mixed cities. The Committee added that it was "Unconvinced of the need of thousands and/or tens of thousands of Muslims to pray in this building specifically." The Committee claimed that there were three places for Muslims to pray in Beer el-Sabe (in Kay College, at Ben-Gurion University and in Soroka Hospital) and therefore concluded that, "The realization of Muslims in Beer el-Sabe and surrounding areas of the right to worship does not need to be restricted to this building, and it is possible for them to pray in the other places."

The report also stated that the lands on which the Big Mosque sits are not *Waqf* property, but are owned by the state. In the final item of its recommendations, the Committee suggested that the Muslim population should go to pray in one of the surrounding towns. The report was submitted to the Court in the same month. The Municipality joined the state in arguing that, in light of the committee's recommendations, the Court should dismiss the petition.

Beer el-Sabe Municipality: The Issue of Public Safety and Security Must be Taken into Consideration, as well as the Fact that the Petition is National-Political in Nature, and was Initiated by Muslims from Outside Beer el-Sabe

In its response to the Committee's recommendations, before the final hearing on the petition, the Municipality also emphasized that the issue of "public safety and security" must be taken into account, as well as the fact that the petition is national-political in nature, and initiated by Muslims outside the city of Beer el-Sabe. The Municipality argued that positions presented before it by Professors Rafael Israeli and Moshe Sharon (a former Prime Ministerial advisor on Arab issues), both of Hebrew University in Jerusalem, strengthened its argument that the main purpose of the petition was national-political in nature.

Professor Sharon argued before the Committee that "The petition is a political case of the first degree, with no relation to the issue of religion." Professor Sharon argued further that the purpose of the petition was to assist the Islamic Movement in gaining control over the lands of the state of Israel. Both Professor Sharon and Professor Israeli argued that, "according to the Islamic religion, any place over which Islam has passed is transformed into *Waqf* property and holy land, and must be returned to Muslims, be it a mosque, or any other building, and for that reason all 'mosques' in the state belong to Islam, and must be restored to Muslims, because the mosque was and remains *Waqf* property, just as the land in Israel is all considered to be *Waqf* property."

Professor Sharon added that "The building which is used as a mosque is only a mosque, and does not have any sacred character," stressing that it is possible to transform mosques into buildings for other purposes, as happens in Muslim countries such as Turkey, Jordan and even Egypt. Regarding the petition, Professor Sharon stated that "the goal behind it is not co-existence, but the control of the Islamic Movement over the lands of the State of Israel, and, if the petitioners' demands revolve around religious services, then they must be satisfied with places where there are large numbers of Muslims."

Beer el-Sabe Municipality also adopted the position of the Israeli police force, which was heard by the Committee as a "civilian body" responsible for public safety and security. The Municipality claimed that the Israeli police had verified that if permission was granted to restore the building to its function as a mosque, a conflict would inevitably ensue between the Muslim community and Jewish community that would disrupt daily life in the Old City of Beer el-Sabe. By allowing the Big Mosque to function as a place of Muslim worship again, the Court would be opening up a Pandora's Box that would allow the ownership of all Muslim religious sites in Israel to be brought into dispute - including the Temple Mount and Jerusalem - the Municipality claimed.

Adalah: Following the Committee's Recommendations will Lead to a Violation of the Constitutional Rights of Muslims in Beer el-Sabe and the Surrounding Area

In its response before the Supreme Court, Adalah countered that, in producing its recommendations, the Committee had relied on false information and on facts irrelevant to the petition. Adalah further argued that, in preferring to maintain a *status quo* which treats the petitioners unjustly, the Committee was advocating for the perpetuation of discrimination against Muslims and the violation of the rights to freedom of religion, freedom of worship and dignity for Arab Muslim citizens. Adalah stressed that there was no presence or representation of any Muslims from Beer el-Sabe or elsewhere on the Committee, and that, as it was formed by and constituted of members of various governmental offices, who are essentially a party to the dispute with an interest in maintaining the *status quo*, the Committee's recommendations were neither just nor objective.

Adalah's response also contended that the Committee did not examine the issue of allowing Muslims to pray in the mosque according to the basic principles as set out in the petition, and that its recommendations were known beforehand. In light of the above, Adalah argued that the Committee's recommendations should be rejected.

"In any case," argued Adalah Attorney Morad El-Sana, "even if what the Committee stated were true, this would not mean that the petition is not necessary, because its aim is to stop damage being done to the mosque, and to its important religious status, and to stop the discriminatory policy of the authorities towards Muslims."

In addition, Adalah noted that the Committee's claim about the existence of three venues for Muslim worship in Beer el-Sabe is false. An investigation by Attorney El-Sana revealed that there is no place for prayer in Kay College, nor in Soroka Hospital (in spite of the existence of a large synagogue there for Jews to pray in). As for Ben-Gurion University, Adalah confirmed that a room was recently designated as a venue for Muslim prayer, following an eight-year dispute lasting eight years. However, Adalah argued that the room had not been specified for the use of residents of Beer el-Sabe. Adalah added that the size of the room, together with the fact that the University is closed during many prayer times clearly prevents it from being able to function as the sole religious venue for Muslim worshippers in the city.

Responding to the allegations of Professor Sharon, Attorney El-Sana stressed that the petition does not rest on religious laws, and that the petitioners never claimed that the Big Mosque or the land on which it sits are *Waqf* property. He emphasized that the issue of ownership is not in dispute in the petition. However according to the principles of equality advocated by the state Adalah argued that the state had a responsibility to allow the building to be used for worship once again. Adalah cited examples of old mosques that were now functioning again in Yaffa, Led (Lod), Herzliya and Haifa, as well in countries throughout the world containing Muslim minorities, including a mosque which was opened in Spain after being closed for 500 years, in spite of the opposition of a section of the population.

During the January 2005 hearing on the petition, the Supreme Court criticized the fact that none of the petitioners was appointed to the Committee, adding that an Arab Muslim representative from Beer el-Sabe would have helped in the Committee's work and lead to a just solution. The Court added that what the state had done was unjust, as the issue relates to the rights of the Arab minority in the town of Beer el-Sabe. Justice Procaccia rejected the state's request to dismiss the petition, and the solution proposed by the Attorney General to maintain the *status quo*.

Adalah will examine the proposed settlement suggested by the Supreme Court to the parties with the other petitioners, and will then submit a response to the Court.

H.C. 7311/02, *Association for Support and Defense of Bedouin Rights in Israel, et. al. v. The Municipality of Beer Sheva, et. al.* (case pending).