

## Appendix III

Letter from Judge Ahmad Natour, President of the Shari'a High Court of Appeals in Israel, to Gershon Baskin, Co-Chief Executive Officer of the Israel-Palestine Center for Research and Information.

STATE OF ISRAEL  
SHARIAA HIGH COURT OF APPEALS  
THE OFFICE OF THE PRESIDENT

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ  
מדינת ישראל  
محكمة الإستئناف الشرعية العليا  
القدس الشريف

The High Court of Appeals  
President's

בית הדין השרעי העליון לערעורים  
דיوان الرئيس

לשכת הנשיא  
Office

*(translated from Hebrew by Gershon Baskin)*

Dr. Gershon Baskin  
IPCRI  
Jerusalem

Shalom,

Re: Your request for information from 21 February regarding our opposition to damaging the Muslim Cemetery in Mamilla

You attached to your letter an opinion statement from the initiators of a project called - in full irony - "Human Dignity - Museum of Tolerance", on the Muslim Cemetery of Mamilla. Here is our response:

1. Our religious-Sharia' judgment according to the Sharia' regarding the sanctity of cemeteries is that this sanctity is eternal, and this is an inseparable part of Muslim faith and belief. Accordingly, its sanctity has not been suspended by the passing of time and its sanctity cannot be changed until Judgment Day. Therefore, it is stated that there is an absolute prohibition on digging up graves and this is according to the learned opinion of Sharia' scholars without exception. Accordingly, and for many years, Sharia judgments (fatwas) issued by the Islamic Courts in Israel emphasize this point. Additionally, a letter of judgment issued by all of the Qadis (Sharia' Judges) in Israel in 1994 states unequivocally that the sanctity of all cemeteries is eternal until the end of time.

2. Any attempt to present the issues as if the Sharia' determines differently is a false one that removes the issue from its proper context. An occasional sentence mentioned by one of the Hanafi school books, while ignoring the basic obligatory conditions of those sayings, which present reservations, is false and also completely ignores all other schools of thought and the many other

righteous scholars. Furthermore, the Muslim population of Israel adheres to the Shafia' school of thought and not the Hanafi.

3. Regarding the claim that the official land registry does not recognize the area as a cemetery, there is no one who disagrees that it is a cemetery and this fact is raised by the initiators themselves on many occasions, including in front of the Courts. The claim that the sanctity of the Cemetery has been removed contradicts their own claims as well. Also, as they began the excavations in the area, they found it full of graves and bones, also in contradiction to their claims, and every person with a sound mind would realize that it is an area filled with graves and that the excavations must cease immediately.

4. Burial in the Mamilla cemetery continued until 1948 (see letters from the Management of the Waqf from 4 November 1948 and 7 November 1948 which speak for themselves).

5. Without going into the level of control and involvement of the British Authorities during the Mandate period in the activities of the High Muslim Council which even led to the dispersion of the Council by Government Order in 1937 and its replacement with a British Council, and furthermore the wishes of the British to use the land of the cemetery for secular uses (see the letter of the representative of Waqf of Jerusalem from 16 September 1947 regarding the take over by British Army units of the area), it is very strange in our view, even amazing, the attempt to base their claims on these document on decisions of Hajj Amin al Hussein the Muft of Jerusalem who they themselves call pro-Nazi and rely on him and as a precedent for qualifying (making Kosher) an inhumane act such as damaging the honor of the dead”.

6. Even if we allow ourselves to assume that something happened which is immoral had in fact occurred, we must ask if from an injustice any good can come? As it is said: Two wrongs don't make a right.

7. Regarding the Judgment of the Qadi of Yaffo in 1964 which is intended to be the legal judgment of the Muslim Court, it seems that there is no choice but to clarify the matter as follows:

- a) The procedure was defective in that it stood completely against the Sharia' procedures and against the substantive law of the Waqf. The procedure was opened by someone who has no standing before the Court (the Mayor) and who was not a trustee of the Waqf.
- b) No one was present at the procedure as a “side” to the case, not even the one who petitioned or someone in his place. The side (Mayor) did not but send a letter, which is is completely against the procedures of the Sharia' Courts.
- c) The petition did not, nor did the decision show the benefits to the Waqf, which is essential and obligatory regarding any change in the status of any property of the waqf.

- d) Even the basic assumption on which the conclusion of the above Qadi's decision was made regarding that the bones that disintegrated and that the remains had begun ashes (dust) - only 16 years after the last burials in the place, it is clear even today, 42 years later, as completely false. Now it is clear to all that whole skeletons have been uncovered as was publicized and photographed in the Haaretz newspaper. It should also be indicated that the representative of the Antiquities Authority announced to the Interior Committee of the Knesset that more than 200 graves have been dug up and the bones placed in boxes!
- e) The decision of the above Qadi (of Yaffo from 1964) that the graves have been disintegrated by time was not based on anything real, and as appears in his decision, he didn't bother to check the area. Therefore, and for other reasons which are too detailed to explain, it is clear that the former procedure is completely null and void.
- f) It is especially sad to say that we have been informed that the former Qadi was convicted of felonious acts of fraud against the public. The Tel Aviv District Court's sentence was upheld by the High Court (see judgment 822/64 and 22/66 of the High Court). It should be indicated that the criminal process of these accusations were at the same time as his judgment regarding the cemetery.

8. The formal claim raised as if there were no objections to the licensing process ignores the fact that following the establishment of the state of Israel - and different from other religious communities in Israel, there was no more institutions which could follow up (supervise) developments concerning the Waqf. The High Muslim Council was dispersed by law in 1961 and the institution of the Mufti ceased to exist. This situation, which was not caused by the Muslims themselves, turns these claims into immoral ones.

9. Furthermore, it is shocking to our minds that Muslim dead which are buried in their graves are only buried temporarily and that they should know that after a number of years their graves will be boxed, why is this? Is it because they do not deserve the same honor and respect as the rest of humanity? Could this be?

We are also stunned by the cheap claim that the revulsion from damaging graves when dealing with Muslims is considered a political position and even an extreme one. For us, the honor of the dead, all of the dead, is a Jewish, Christian and Muslim value. Therefore, we should all cooperate, in the name of these preserving universal values. This is our belief regarding Muslim Cemeteries and non-Muslim cemeteries as well. Therefore, we are right to expect that others will relate to our dead as if their own, with one standard, just as the Jewish and Christian faiths demand as well.

In conclusion, we hope that the initiators of the Tolerance Museum project will understand that they cannot build the Museum for Tolerance while trampling

the emotions of millions of Muslims in Israel and around the world and we hope that they will decide by themselves on canceling the project in this location.

With respect,

Qadi Ahmad Natour  
President of the Sharia' Appeals Court