

The Struggle for Za'atar and Akkoub: Israeli Nature Protection Laws and the Criminalization of Palestinian Herb-Picking Culture

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ABSTRACT: Za'atar and akkoub are popular herbs in Palestinian culture and cuisine. In 1977, however, Ariel Sharon declared za'atar a 'protected plant', rendering its foraging, possession or trade a criminal offense. Akkoub suffered a similar fate when it was labelled protected in 2005. Those who pick za'atar and akkoub subsequently became lawbreakers and in many cases were indicted and convicted. The picking of za'atar and akkoub, nonetheless, continues while many regard it as an act of resistance.

This paper examines the clash between Israeli nature protection laws and Palestinian herb-picking culture in light of the political, economic, and scientific forces at play. It reviews the court decisions pertaining to protected plants and shows that the ban has been enforced harshly and exclusively against Palestinian herb-pickers. The paper argues that the law mobilized highly disputed scientific claims in favour of a civilizing narrative and a competing claim to the land. Courts engaged in affirming this narrative and dismissed a long-standing agro-culinary tradition under the auspices of law and nature.¹

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I confess that I made a mistake. I will not do this again. I am a father of seven children. I went to forage for the household. It is only two small bags. I guarantee not to do it again.

—Crim Case 19051-03-10 *State of Israel v. Nizar Khalil* (2010)

Q: Do you know that picking za'atar is prohibited?

A: Yes, I know that picking za'atar is prohibited.

Prohibited for Arabs, permitted for Jews.

—Crim Case 6652/02 *State of Israel v. Marie* (2003)

This is a story as green as *za'atar*, as thorny as *akkoub* – two popular herbs in Palestinian culture and cuisine that unexpectedly became markers of struggle. It is a struggle rooted in land, literally and conceptually, and located at the intersection of nationalism and colonialism, food and nature, expertise and resistance, markets and households, politics and ecology, and perhaps most strikingly: the law. It is a story that unfolds in between fields, plates and courtrooms: *za'atar* (*Majorana syriaca*) and *akkoub* (*Gundelia toumerfortii*) are

declared as protected plants according to Israeli law and their picking is, therefore, criminally prohibited.² Foraging these plants, however, continues, as each year dozens are caught, interrogated, charged, convicted, and fined, many of whom regard it as an act of resistance.

This paper examines the prohibition imposed on *za'atar* and *akkoub*. While literature has not paid serious attention to the clash between Israeli law and Palestinian herb-picking culture,³ this paper provides a comprehensive account of this phenomenon by examining the legal, scientific, cultural, political, and economic dimensions of it. The paper shows that no solid scientific basis exists for the ban and argues that the law has mobilized highly indeterminant scientific claims in order to dismiss a long-standing agro-culinary tradition in favour of a competing claim to indigeneity.

This paper, nonetheless, does not intend to argue that *any* restriction on herb-picking must have been inherently biased or repressive. Population growth, combined with an increasing consumption, may have led to unsustainable overharvesting of these herb-plants. There are compelling reasons, however, that cast doubt on the authenticity of the alleged nature protection rationale and the necessity of the harsh enforcement methods deployed. The paper argues, in this context, that courts have further maneuvered judicial review to achieve 'pragmatic closures around epistemic claims and controversies that science alone could not have settled.'⁴ The paper examines the legal judgements pertaining to picking, possessing or trading *za'atar* and *akkoub* and reveals the role of courts in reproducing a civilized/barbarian narrative under the auspices of law and nature.

A. Land, Nature, Food and Zionism

Land and nature are central to Zionism. Ever since Zionist national aspirations manifested in an institutionalized colonial project in Palestine, Zionist agencies undertook efforts to acquire control over land, settle it, and alter the natural landscape. Ideas of 'redeeming the land' and 'making the desert bloom' became entwined in the Jewish National Fund's (JNF) endeavours to purchase Palestinian land as early as the beginning of the twentieth century. This discourse envisioned Jewish-Zionists as 'modern' settlers who 'saved' the land and nature from the 'backward' Arabs who 'desertified' it. The Zionist ethos toward land aspired to know, to settle, to develop, to afforest, to redeem, to bloom, and ultimately to Judaize.⁵ These were all acts of possession that resembled a claim of ownership: we know, appreciate, and develop the land; therefore, we *deserve* it.⁶

The perception of land as desolate and underdeveloped, and the local people as primitive and uncivilized, was an omnipresent theme in European colonial thought. The Zionist movement, emerging in Europe against this background, harboured similar sentiments toward Palestine and Palestinians. The prosecution of Jewish people in Europe and the religious character of the Holy Land, however, complicated the traditional colonial account. Zionism did not merely aspire to colonize the land, but also to create a 'national

homeland for the Jewish people' in it. The making of Israel in Palestine took the form of consolidating Jewish national life at the expense of shattering a Palestinian one. Zionism conflated nationalism with colonialism: it aspired to construct a religiously-defined nation in the colony, rather than subordinate the colony to an existing nation.⁷

For Zionism, the geographical space of colonization was identical to the space of its national inception. This spatial site had to undergo a radical transformation to match the European-Zionist vision of the Holy Land. In 1948, following the withdrawal of the British Mandate from Palestine, Zionist armed groups occupied 78% of Mandate Palestine's land, and ousted most Palestinians living in it as refugees – an event termed the Nakba (catastrophe) by Palestinians and known as the War of Independence for Israelis. Palestinians who managed to remain in the land that had become Israel, became citizens of the state. During the 1950s and 1960s, largescale land expropriations from Palestinian citizens took place and created an exceptional legal land regime that concentrated 93% of land in state ownership (excluding the Palestinian territories occupied in the aftermath of 1967).⁸ This had increasingly pushed Palestinian peasants living in Israel from the field to the city, and restructured Palestinians as urban proletariat in the predominantly Jewish-Israeli economy; a political economy that continues to reproduce sharp inequalities organized around ethno-national lines today.

108 Nature, in this context, was anything but natural. Afforestation rapidly emerged as a popular tool to evoke a green European scenery in what was perceived as a desolate, oriental landscape.⁹ In a process that had started during the British Mandate, and expanded after the establishment of Israel in 1948, the JNF planted more than 240 million trees in Israel/Palestine, mostly pine trees. As Irus Braverman shows, the assembled pine-scape became the quintessential signifier of Zionism in the natural landscape, in sharp distinction from the Palestinian olive-scape.¹⁰ Nature was, therefore, both the site and the product of political and legal projects over land and landscape.¹¹ For Israel and the JNF, however, the pine trees were much more than simply a method to 'bloom the desert' and resurrect a Biblical narrative: afforestation subsumed the ruins of destroyed Palestinian villages in the green innocence of pine trees in favor of 'collective forgetting.'¹² The natural landscape of Israel/Palestine has therefore become a medium that symbolizes a nation-building project interwoven with colonial dispossession.¹³

Afforestation projects, however, were not the only case of national-colonial policies legitimized under the auspices of law and nature. The overlapping function of nature as a source of food and subsistence further complicated this account. The Kafkaesque story of livestock treatment in Israel/Palestine provides a striking example of similar tensions located at the intersection of law, colonialism, nature, food and expertise. In her work, Tamar Novick provides a detailed account of the goats' history in Palestine during the British Mandate period and the first decade of Israel.¹⁴ Elsewhere, I supplemented this

account by scrutinizing the phenomenon of Israeli officials 'chasing goats' and 'abducting camels' starting from the 1970s.¹⁵ For years, goats and camels were ubiquitous in the Holy Land. But since the British Mandate was established in Palestine, the situation for goats, camels and their Palestinian owners started to grow more precarious. Certain ideas about the goats and camels became particularly popular among the colonial British administration: the oriental camels and black-coloured goats were perceived as inferior, unproductive, and harmful animals in comparison to the European-origin cattle and white-coloured goats. The administration accused the former of causing soil erosion, flooding, and desertification and sought to disincentivize their ownership under the pretext of scientific expertise. Scientists and officials who disputed these claims from within the administration were ignored and dismissed.

By the time the British administration came to an end, however, the plans to reduce the number of goats and camels did not materialize and their populations remained stable. After the establishment of Israel in 1948, the state intensified afforestation projects and sought to realize the British plan to its fullest: it aspired to eradicate the goats which found the trees palatable. The Knesset enacted what had become known as the Black Goat Act, and put in place plans to exterminate the goat population.¹⁶ While goat herding was *de jure* criminalized according to the Black Goat Act, camel grazing became *de facto* illegal as the state was reluctant to allocate grazing lands for the latter. In the 1970s, a newly-established 'Green Patrol' implemented large-scale enforcement operations which reduced the number of goats and camels to an unprecedented low. Objections from scientists and the local Palestinian population were once again ignored.

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The criminalization of Palestinian herb-picking culture, discussed in this paper, is situated against this background that amplifies and reflects national-colonial narratives through the law pertaining to non-human subjects. The interplay between law and science as well as the ostensibly a-political nature of food and the greenwashing potential of nature, often contribute to cloak these narratives and legitimate them under alleged objectivity. The criminalization of herb-picking, as I show in the next chapters, reveals an illuminating dynamic that reproduces similar human hierarchies under the pretext of nature protection and scientific expertise.

B. Za'atar and Akkoub in Palestinian Culture

Za'atar and *akkoub* are quintessential herb-plants in Palestinian culture. 'Every Palestinian knows Za'tar,' write British scholars Grace Growfoot and Louise Baldensperger in their 1932 book *From Cedar to Hyssop: A Study in the Folklore of Plants in Palestine*. 'It is used from one end of the country to the other as a spice or condiment and has some repute too, as a medicine,' they note, and go on to mention that 'what is more interesting to us than this is that *Za'tar* is most probably the Hyssop of the Bible.'¹⁷ Despite its Biblical roots, *za'atar*

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or other edible plants did not occupy a special status among Zionists who settled in British Mandate Palestine.¹⁸ As years passed and Palestinian modern nationalism emerged, *za'atar* became a prominent symbol of resistance that signalled Palestinian connection to the land.

Za'atar is commonly featured in poetry, politics, public discourse, and folklore. In his famous poem *Ahmad Al-Za'atar*, Palestinian national poet Mahmoud Darwish used *za'atar* as a motif to describe Ahmad's character, a symbol of Palestinian refugees in exile ('For hands, of stone and of *za'atar* // I dedicate this song, for Ahmad, forgotten between two butterflies'). Palestinian public intellectual Edward Said referred to *za'atar* as a code of recognition. In a conversation with Salman Rushdi, Said asserted that despite *za'atar's* abundance 'all over the Arab world, and certainly in Palestine, Syria, and Lebanon' it has become a distinctive symbol of Palestinian households (as Said quotes his friend: 'It's a sign of a Palestinian home that has *za'tar* in it').¹⁹

The *za'atar's* prominence, however, did not degrade the *akkoub's* special status. *Akkoub* is a highly thorny, domestic, and seasonal plant. Unlike *za'atar*, the *akkoub* had to be cleansed and cooked shortly after being foraged. In her autobiography, poet Fadwa Tuqan describes the practice of *akkoub* cleansing as a signifier of temporal consciousness:

The date of my birth vanished from their [Tuqan's parents] memories in the mists of time. Whenever I asked Mother, 'But Mother, at least in what season was it? What year?', she would reply, laughing: 'the day I was cooking *akkub*. That's the only birth certificate I have for you. I have forgotten the month and year. All I remember is that I began to feel labour pains while cleaning the spines from the stalks of *akkub*.'²⁰

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Salman Natour, acclaimed Palestinian writer, presents *za'atar* and *akkoub* as markers of Palestinian-ness. In his well-known cynical style, Natour describes a conversation with his friend during a journey to Paris. Challenging the notion of Paris and the West as the land of plethora, Natour asks teasingly 'do they have *za'atar* and '*akoub* in Paris?' only to be answered with an expected negative nod. 'I felt as if I'd defeated him with a knockout. They don't, do they?' Natour summarizes and suggests: 'we've made *za'atar* into an effective weapon against imperialism. They drop bombs on us and we spray them with *za'atar*.'²¹

Za'atar and *akkoub*, in short, were not simply edible plants that contributed to the subsistence of Palestinian households; *za'atar* and *akkoub* were also what it takes to make a household Palestinian. They were central to Palestinian culture and the production of meaning. It is against this background and the continuous confiscation of Palestinian lands that the criminalization of herb-plant picking consisted an attack on Palestinian culture and further politicized their status as markers of land. The criminalization of *za'atar* and *akkoub* has therefore borne symbolic notions of colonial dispossession.

C. Edible Herb-Plants and Israeli Nature Protection Laws

The criminalization of Palestinian herb-picking culture is propagated through nature protection laws. The Israeli Law of National Parks, Natural Reserves, and National and Memorial Sites authorizes the Minister of Environmental Protection to declare certain plants as protected 'natural values' (hereinafter 'protected plants').²² Following a declaration, it becomes a criminal offense to pick, possess or trade any amount of a protected plant.²³ While the law leaves open the possibility of a maximum prison sentence of three years, the most common penalties are criminal fines, as elaborated in the next section. The authority to declare a plant as protected and criminalize its picking is, therefore, vested in a political authority, with no legal obligation to generate a baseline corpus of scientific evidence for such declarations.

In 1977, the authorized Minister Ariel Sharon modified the list of protected plants to include, among other plants, *za'atar*.²⁴ While dozens of plants were already listed at that time as protected, *za'atar* not only stood out for being an edible plant but also a prominent symbol in Palestinian culture and cuisine. Almost three decades later, in 2005, Ariel Sharon, then Prime Minister of Israel and the Minister of Environmental Protection simultaneously, modified the list of protected plants to include *akkoub*. The criminalization of *za'atar* and *akkoub* was not restricted to Israel, and was expanded to the Occupied Palestinian Territories (OPT) through military orders,²⁵ although the criminal procedures that follow differ and involve military rather than civil courts.²⁶ Those who pick *za'atar* or *akkoub*, whether in Israel or the OPT, thus became lawbreakers and were subjected to interrogations and penalties.

III

Contested Scientific Basis

The clash between the Israeli law and Palestinian culture is political in nature. It invokes national-colonial tensions and associations of dispossession. The role that scientific expertise plays in legitimating the ban on *za'atar* and *akkoub* remains a crucial and interesting point. For centuries, local people foraged herbs with no evidence that the practice decreased the abundance of the wild plants. The existing scientific evidence, however, further questions the authenticity of the alleged nature protection rationale underpinning the ban. In fact, the Nature and Parks Authority (NPA), the body in charge of enforcing the law and monitoring the natural habitat, acknowledged there was a lack of evidence behind the declaration of *za'atar* as protected plant. In response to a freedom of information request, the NPA wrote that 'we did not succeed to trace any material or protocols from that time [of declaration]'.²⁷ Elsewhere, official botanists from the NPA also acknowledged that they lack any scientifically meaningful plans to monitor the populations of these herbs.²⁸

Evidence from both independent scientists and those affiliated with the Nature and Parks Authority further shows that these herbs are not enlisted in any 'red list'. namely, lists of

endangered, near threatened or rare plants.²⁹ Israeli botanists have criticized in this context the gap between the legal protection of plants and their endangered status, emphasizing that 'the main danger since the 1980s for the extinction of biological species is the damage to their natural habitat due to urban development, paving roads or intensive agriculture' rather than the 'attractivity and picking concerns that instructed the protected plants' list in the past.³⁰ They further conclude that this 'gap necessitates rethinking the issue of legal protection' and 'changing the priorities of plant preservation and protection policies'.

As Professor Nativ Dudai, a botanist who has previously researched *za'atar*,³¹ put it in an interview: 'No one talks about the fact that we, the Jewish [Israelis], destroy much more *za'atar* than the Arabs pick. Do you know how many great *za'atar* populations were uprooted by bulldozers? In Har Adar or Elyaqim interchange – locations with beautiful amounts of *za'atar*, and all of it is now gone. But the Arab? He picks five kilograms and gets a fine.'³² Although Dudai suggests to 'mark locations where the herbs are not threatened and allow coordinated picking', his opinion was dismissed by the Nature and Parks Authority in favour of an absolute ban.³³ Similar themes are evident regarding *akkoub*. The state mobilized scientific knowledge to enlist *akkoub* as a protected plant, despite the fact that botanists clearly abstained from an absolute-ban recommendation.³⁴

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The disputed scientific basis that stands behind the ban on picking *za'atar* and *akkoub* exacerbates the political tensions associated with the prohibition. Despite these indeterminacies, historians and other researchers overlooked a critical examination of the scientific rhetoric that envelops the ban.³⁵ In this context, the law further played a role in concealing the scientific indeterminacies and sealing them under the force of legal assertiveness.

Cultural Appropriation, Commercial Exploitation?

In parallel to the criminalization of the wild species of *za'atar* and *akkoub*, some Jewish-Israeli farmers developed domesticated types and invested in commercializing these herb-plants. Up until then, nature was the only source of *za'atar* and *akkoub*. The domesticated and legally permitted species, nonetheless, remained inferior in quality and many Palestinians continue to occasionally engage in picking them from the wild. While some have speculated that the criminalization of these herb-plants had been motivated by commercial interests of Jewish farmers,³⁶ what becomes clear is that the ban had certainly been maneuvered to generate profit.

The story of the Israeli Ben Harut family demonstrates the exploitation of the ban on *za'atar* to make profit. Ze'ev and Yoram Ben Harut started planting domesticated *za'atar* for commercial use in 1977, the same year *za'atar* was declared protected. In a televised interview,³⁷ the Ben Haruts bluntly described the expansion of the *za'atar* commercialization project:

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Yoram Ben Harut: I gave it to my father [Ze'ev] to sell it in the West Bank and we saw that it has commercial potential.

Interviewer: Did you sell?

Yoram Ben Harut: Yes! They did not have za'atar. I remember that I walked with my father in Nablus, and they [the Palestinians] ran after us yelling 'za'atar za'atar.' Soon after we saw that it is going well, we extended the lot, we planted five dunams and then again another five dunams.

Interviewer: So you grow and reach within less than five years, sorry three years, to how much?

Yoram Ben Harut: 550 dunams.

The expansion of *za'atar* fields came against the background of massive expropriations of Palestinian lands by the state, sparking the historical 'land day' events in 1976. The redistribution of land according to ethno-national logic has reproduced itself in the *za'atar* fields. The Ben Haruts, however, not only sought to grow the plant but also to sell the traditional Palestinian za'atar mixture in order to increase profits:

Yoram Ben Harut: [...] za'atar it is all good and beautiful, we are excited, but the business has to bring money ...

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Interviewer: you want to sell to the Arabs a mixture of za'atar? It is like selling ice to the Eskimos!

Yoram Ben Harut: Exactly! I want to sell ice to the Eskimos, that's how it sounds! But I had an idea how to do it.

This idea entailed appropriating indigenous knowledge to gain profit:

Interviewer: So how did you know what to put in the mixture?

Yoram Ben Harut: That was the whole problem! In the beginning we put some wrong ingredients and ratios and it tasted completely disgusting, it was totally black. So I gave it to my father, to bring it to the Arabs, people said you will not succeed!

Interviewer: So where did you get the right recipe and ingredients?

Ze'ev Ben. Harut: Each Arab family thinks that they are the best experts of za'atar making ... The Muslims do not accept for a stranger man to talk with their wives. But I had good friends, so I spoke with their wives. And I asked them everything, several houses.

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Interviewer: They gave you the secret of the za'atar?

Ze'ev Ben Harut: I am like a part of the family, they know me for many years. They told me exactly, you know...

Profit, however, was not the only motive. The Ben Haruts saw the appropriation of *za'atar* as a national project:

Interviewer: For your father, as I understand, za'atar is Zionism, za'atar is coexistence. What is it for you?

Yoram Ben Harut: For me it is only about national pride ...

Interviewer: So you want that as people say that America is Coca Cola, and Italy is Oregano, to say?

Yoram Ben Harut: Exactly! [I want people] to say that za'atar is Israel. And this is becoming truth.

The criminalization of *za'atar* and *akkoub* did not only take the form of nature protection but also enabled cultural appropriation in conjunction with economic gain. This, however, was not the end of the story. Palestinians who picked and possessed *za'atar* from the wild were often interrogated, indicted, convicted and punished in courts. The next chapter examines the legal process and decisions pertaining to *za'atar* and *akkoub*.

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D. The Za'atar Jurisprudence: Israeli Courts and Palestinian Foragers

Legal search engines yield sixty-nine Israeli court decisions involving *za'atar* and *akkoub*, delivered between 2003 and 2019.³⁸ While forty-one cases pertain to *za'atar*, twenty-eight cases revolve around *akkoub*. A mapping of the case law not only shows that all the defendants were Palestinian citizens of Israel, but also that indictments for picking protected plants involve herb-plants only. Although this may initially be explained in the relative demand for herb-plants compared to other protected plants, existing information nonetheless indicates that picking ornamental protected plants is still a wide-spread phenomenon.³⁹

These search results are ultimately incomplete: many court decisions are not published in legal databases and indictment is only one possible repercussion that herb-pickers may face. A more common alternative is the use of on-the-spot-fines. Between 2010 and 2016, for example, more than 750 on-the-spot-fines of about 700 NIS each were issued for either picking or possessing *za'atar*. According to the Nature and Parks Authority, only eleven cases involved a 'commercial quantity', which was informally defined as more than ten kilograms.⁴⁰ Moreover, in the occupied West Bank, for example, penalties are administrated by the military system and often do not involve court hearings.

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The cases that result in court proceedings reveal illuminating dynamics. While most defendants in these procedures are old, poor, unrepresented and end up pleading guilty, some cases nonetheless result in judicial convictions after several hearings. This chapter discusses major themes that arise from these cases. It shows that the court serves a crucial role in implementing and legitimizing the ban, while simultaneously reproducing an underpinning civilized/barbarian narrative under the guise of nature protection.

'Un-fooding' Herbs, Protecting Nature

Food is the immediate and defining function of *za'atar* and *akkoub*. Despite this fact, courts have persistently dismissed the characterization of these herb-plants as food while simultaneously draping their judgements in a highly professionalized language of nature protection. Courts routinely ignore defendants' invocation of household needs and of the plants' food function in favor of a civilizing, retributive narrative instead. The case of Nezar Khalil, where the court omits any referral to the herb's function despite the defendant's claim 'I am a father of seven children. I went to forage for the household', exemplifies this recurrent theme. In the case of Kana'an, involving three plastic bags of *za'atar*, the court similarly dismissed the food function of the plant while emphasizing that 'in these acts resides a harm to the core values of our society'.⁴¹ In a different case involving a 61-year-old man that picked *za'atar* with his sisters, the court stressed that 'the subject of this case is an offense that should be faced with a substantial response, in light of the depopulation of *ezov* [the biblical name of *za'atar*] in our land following its over-picking, resulting in a harm to the ecological balance of the Land of Israel'.⁴²

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The court has, therefore, uprooted *za'atar* and *akkoub* from the Palestinian cuisine and planted them as criminal substances in the legal field. According to the court's underlying vision, these herbs belong to some purified concept of nature, invoking the 'core values' of society and the national vision of the 'Land of Israel'. Nature, according to this vision, has to be protected from the 'harmful' effects of Palestinian culture. This vision, however, supplements the prosecution's argumentation and resorts to scientific language to render disputed claims determinist facts under the force of the law.⁴³ The prosecution's arguments in one case, for example, illustrate the underpinning civilizing discourse:

Although the amount [of *akkoub*] picked was not large ... I believe that the court should join the prosecution's efforts to uproot this phenomenon [of herb-picking] from its roots. Unfortunately, many defendants do not understand the severity of their actions, when they come and tell me, privately, that they had 'picked a small amount for the household and that is how we [the defendants] were raised for generations.'⁴⁴

Za'atar and *akkoub*, in short, have undergone an 'un-fooding' process under the law, in favour of a purified perception of nature that distances Palestinian culture from it. After the court dissects the herb-picking from the plate, the way is paved for depicting the picking as a criminal act and convicting the defendants under the pretext of nature protection.

The State of Israel v. Palestinian Foragers: Prosecutorial Policies

The fact that Palestinian citizens of Israel are the only defendants put to trial in cases involving picking or possessing protected plants illustrates the politicized nature of criminalizing *za'atar* and *akkoub*. As the defendant in the case of Marie put it: 'I know that picking *za'atar* is prohibited. Prohibited for Arabs, permitted for Jews.' These sentiments are not unfounded. Researchers have already pointed out, for example, the lenient, non-criminal approach that the state had undertaken to mitigate damages from picking ornamental plants: a particularly common phenomenon during the 1950s and 1960s among Jewish-Israelis.⁴⁵ The harsh enforcement against picking or possessing small amounts of *za'atar* and *akkoub*, in comparison, exacerbates the national-colonial tensions associated with these plants.

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The prosecutorial policy for charging a defendant in criminal court does not correlate to the quantity of the plant or any other clear logic. The state has often prosecuted defendants that picked small amounts of *za'atar* or *akkoub* that were clearly intended for personal household usage.⁴⁶ This has further resulted in legal anomalies and extremely varying sentences according to the personal character of the judge: defendants who picked smaller amounts of the herb have been frequently given larger fines.⁴⁷ Additionally, the prosecution and the courts have not only charged and convicted defendants for *picking* the herbs, but also for *possessing* it.⁴⁸ Furthermore, in the case of *Abu Shamleh*,⁴⁹ a discriminatory prosecutorial policy of 'Druze exceptionalism', namely, refraining from prosecuting Druze women citing 'honour' reasons, was revealed. While the court declared the policy to be illegally discriminatory based on gender, the case may be read to not only invoke state-sponsored patriarchy but also deeply politicized practices of 'divide and conquer' between the Druze and other Palestinian communities.⁵⁰

The defendants' responses to their prosecution can be understood to reflect 'everyday forms of resistance'.⁵¹ 'It is not important for us if we get caught, if we don't get caught,' says Samir Naamnih, an experienced picker. 'Court, trial, fees, we don't think about it,' he adds and further stresses that 'it's part of the pressure that Israel puts on us to starve us out'.⁵² Other pickers harbour similar sentiments. Ibrahim Asleh, for example, said an interview: 'The *akkoub* is prohibited, and they [the NPA enforcement officials] chase people, but what about those whose [financial] situation is hard ... Even if they chased us with airplanes, they will not succeed to prohibit us [from picking], this is our life, what shall we do?'⁵³ Sa'ada Nassar also ridicules the state's obsession with *akkoub*: 'They chase us, why do they chase us? For some thorns of *akkoub*!' she says and adds 'prohibited or not, we are going to pick *akkoub*'.⁵⁴

Identity Judges

An interesting theme that arises from the case law is that Arab judges have a remarkably different approach in comparison to Jewish judges. Out of forty-one cases dealing with *za'atar*, for example, only three cases ended with acquittals; all three of them heard in front of the only Arab judge who adjudicated *za'atar* cases. Beyond this striking outcome, the legal interpretation and rhetoric that the Arab judge deployed reveals an interestingly different approach. In the case of Khetam Abu Mokh, the judge dismissed the enforcement officials' testimonies, preferred the defendant's testimony and ordered an acquittal. The judge further notes in the margins of his judgement that: 'since the amount of *za'atar* was not proven and charges referred to a box and a plastic bag, it is possible to conclude that the amount is negligible ... and might have justified invoking the legal principle of *de minis non curat lex* [the law does not concern itself with trifles]'. Similarly, the Arab judge reflected a more lenient approach in two other cases and acquitted defendants of possession charges.⁵⁵ This lenient approach contrasts with other judgements where judges saw similar amounts of herb possession to threaten the 'core values' of society and justify a 'substantial response'.

This observation, of course, does not suggest that Arab judges would necessarily acquit the defendants. It remains illuminating, however, to note the relationship between the legal approaches and the national identities of the judges. An additional case that reveals a unique approach by an Arab judge regarding *za'atar* and *akkoub* is reflected in a tort case, where the plaintiff claimed civil compensation following a car accident in which she was involved. The Arab plaintiff claimed that she lost her ability to pick and sell edible wild-plants, which amounted to her sole income. In his ruling, the judge notes that: 'I live within my people and know that many villagers are used to forage wild edible plants, such as *akkoub*, *khubbezeh* [mallow] and *za'atar*, mainly for personal consumption rather than commerce, although some sell these herbs, especially impoverished families.' Based on this assessment, the judge overlooked the criminal ban on picking, accepted the plaintiff's claims and compensated her for her loss of income from edible plants. The treatment of Arab judges of *za'atar* and *akkoub*, in sum, reveals a unique perception that stands out in the legal landscape. Lacking any other explanation, it seems that this perception is rooted in their identity, through which they perceive *za'atar* and *akkoub*, at the end of the day, as food.

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Conclusion

The criminalization of *za'atar* and *akkoub* had gone unnoticed for years. Recently, however, the story accumulated growing public and legal attention and undertook an interesting turn.⁵⁶ In January 2019, Adalah – The Legal Centre for Arab Minority Rights initiated a request on behalf of *za'atar* and *akkoub* pickers, demanding from the Environment Protection Minister, the Attorney General and the Nature Protection Authority to cancel the absolute ban on picking *za'atar* and *akkoub*.⁵⁷ After several months

of correspondence and against the background of growing public criticism, the Minister of Environment Protection and NPA agreed to reconsider their prosecutorial policies, without cancelling their legal status as protected.⁵⁸

In August 2019, the NPA declared that starting from 2020, it will permit picking *za'atar* and *akkoub* in certain amounts. Even after these declarations, the story evolved to reveal a struggle over narrative: the NPA persistently refused to acknowledge the past injustice and insisted that the change of policy was the result of independent assessment, unrelated to any legal demands or public criticism.⁵⁹ Several contradicting publications regarding the allowed amounts, however, followed and as of March 2020, enforcement incidents were still reported despite the announcements. Most recently, the NPA published a temporary policy that would allow picking small amounts of *za'atar* and *akkoub* in areas that are not considered natural reservations.⁶⁰ The outbreak of the coronavirus pandemic, however, resulted in the suspension of this policy. The future of *za'atar* and *akkoub*, much like the future of their pickers, remains pending.

Notes

1. This paper is a continuation of a previous research project that was written in Hebrew and published in *Studies in Food Law* (Yofi Tirosh and Aeyal Gross eds., 2017).
2. For a more detailed account on the legal framework, see section C. *Maramiya* (Sage), an additional popular herb, is also declared as protected. This paper focuses on *za'atar* and *akkoub* due to space limitations and given that the vast majority of court judgements deal with these two plants. For a review of the court decisions see section D.
3. A remarkable exception is Brian Boyd, *A Political Ecology of Za'atar*, EnviroSociety Blog (Jun. 15, 2016) <https://www.envirosociety.org/2016/06/a-political-ecology-of-zaatar/>. Other scholars mentioned the ban on *za'atar* briefly as an example of politicized nature. See, e.g., Meron Benvenisti, *Conflicts and Contradictions*, 24 (1986) ('the military order banning the picking of *za'atar* is also a strong political and ideological statement'); Ted Swedenburg, *Memories of Revolt: The 1936 – 1939 Rebellion and the Palestinian National Past*, 59 (2003). Other scholars did mention this ban without examining it critically. See, e.g., Uri Mayer-Chissick and Efraim Lev, 'Wild Edible Plants in Israel Tradition Versus Cultivation', in *Medicinal and Aromatic Plants of the Middle-East* 9 (Zohara Yaniv and Nativ Dudai eds., 2014).
4. Sheila Jasanoff, 'The Practices of Objectivity in Regulatory Science', in *Social Knowledge in the Making* 307, 309 (Camic, Gross, and Lamont, eds., 2011).
5. Political scientist and previously deputy-Mayor of Jerusalem, Meron Benvenisti, described the central ethos of *yedi'at haaretz* (knowledge of the land). Benvenisti writes that 'those who coined the phrase were undoubtedly aware of the biblical meaning of *yedi'a*, an act of sexual possession: "And Adam knew Eve, his wife." *Yedi'at haaretz* features in the school curriculum and in army instruction courses as a subject in its own right, incorporating geography, geology, history, ethnology, botany – and all this is directed not simply to increasing knowledge but to nurturing a deep attachment to the country: 'instilling youth with love of country' is the closest you can get to the Hebrew term describing the objective of the subject'. See Meron Benvenisti, *Conflicts and Contradictions*, 19-20 (1986).
6. *Id.* at 24.
7. See also Nadia Abu El-Haj, *Facts on the Ground: Archaeological Practice and Territorial Self-Fashioning in Israeli Society*, 2 (2002); Raef Zreik, 'When Does a Settler Become a Native (With Apologies to Mamdani)?', 23 *Constellations* 351, 359 (2016).
8. Sabri Jiryis, *The Arabs in Israel* (Inea Bushnaq Trans., 1976); Alexander Kedar, 'The Legal Transformation of Ethnic Geography: Israeli Law and the Palestinian Landholder 1948 – 1967', 33 *N.Y.U.J. Int'l L. & Pol.* 923 (2001).

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9. Afforestation played a remarkable role also under British and French colonial regimes. Mahadav Gadgil and Ramachandra Guha, *This Fissured Land: An Ecological History of India* (Berkeley: University of California Press, 1993); Diana K. Davis, *Resurrecting the Granary of Rome: Environmental History and French Colonialism Expansion in North Africa* (Athens: Ohio University Press, 2007). See also Richard H. Grove, *Green Imperialism: Colonial Expansion, Tropical Island Edens and the Origins of Environmentalism, 1600-1860* (Cambridge: Cambridge University Press, 1995); Gregory Allen Barton, *Empire Forestry and the Origins of Environmentalism* (Cambridge: Cambridge University Press, 2002).
10. Irus Braverman, *Planted Flags: Trees, Land, and Law in Israel/Palestine* (2009).
11. As the Supreme Court of Israel stated in a decision dismissing a challenge to afforestation in confiscated Palestinian lands: 'Afforestation in desolate land has proclaimed a central position in the [Zionist] ethos that led to the establishment of Israel, such as the development of the land and blooming the desert ... The love of *ha'aretz* [the Land of Israel] is related to trees since the times of the Bible ... The planting and afforestation are thus part of our vision.' See CA 4067/07 *Jabareen v. State of Israel* (Jan. 3, 2010).
12. Palestinian intellectual Edward Said recalls: 'I had the opportunity to visit a number of sites of former Palestinian villages that have been variously reshaped through tree-planting and related JNF projects, in ways that would appear to promote "collective", if selective, forgetting.' See Edward Said, 'Memory, Invention and Space', in *The Landscape of Palestine: Equivocal Poetry* (Ibrahim Abu-Lughod et al. eds., 1999). These projects involve 46 out of the 68 JNF forests in Israel and cover more than 89 demolished Palestinian villages. See Eitan Bronstein Aparicio, 'Most JNF – KKL forests and sites are located on the ruins of Palestinian villages', *Zochrot* (April, 2004) <https://zochrot.org/en/article/55963> [<https://perma.cc/5LGZ-KWA7>].
13. As Meron Benvenisti reflects, making the desert bloom often materialized through the removal of the Palestinian treescapes: 'I myself "made the desert bloom" by uprooting the ancient olive trees of al-Bassa [a displaced Palestinian village] to clear the ground for a banana grove, as required by the "planned farming" principles of my kibbutz, Rosh Haniqra'. See Meron Benvenisti, *Sacred Landscape. The Buried History of the Holy Land since 1948*, 2 (2000).
14. Tamar Novick, *Milk & Honey: Technologies of Plenty in the Making of a Holy Land, 1880 – 1960* (Ph.D. dissertation, University of Pennsylvania, 2014).
15. Rabea Eghbariah, *Chasing Goats, Abducting Camels: Land, Landscape, Livestock, and the Law in Israel/Palestine* (unpublished LL.M. thesis, 2020).
16. See the Plant Protection (Damages of Goats) Law, 1950.
17. Grace Growfoot and Louise Baldensperger, *From Cedar to Hyssop: A Study in the Folklore of Plants in Palestine* (1932).
18. Benny Furst, 'A Morphology of Cultural Change: The Campaign to Rescue Wild Flowers as an Influential Factor on Spatial Design', 78 *Ofakim Be-Geographia* 26 (2012) [Hebrew].
19. Edward Said, *Politics of Dispossession: The Struggle for Palestinian Self-Determination*, 1969 – 1994, 115-6 (1995).
20. Fadwa Tuqan, *A Mountain Journey: An Autobiography*, 13-14 (Olive Kenny Trans., 1991) ('akkub is a spiny herb of the Compositae family growing in the Nablus mountains. Its season spans three months: February, March, and April. Like all our people Mother dated events by relating them to outstanding occurrences').
21. Salman Natour, *The Journey Without* (Shoshana London Sappir trans., 2018) <https://levantine-journal.org/the-journey-without/>.
22. The National Parks, Natural Reserves, and National and Memorial Sites Law of 1998 replaced the 1963 Law of National Parks and Nature Reserves. Article 33(a) of the 1998 law authorizes the Minister of Environment to declare 'natural values', including plants, as 'protected'.
23. Article 33(d) of the law sets the prohibition on picking, possessing or trading any 'protected natural values', and article 57(a) sets a respective sanction up to three-years-imprisonment.
24. National Parks and Nature Reserves Declaration (Protected Natural Values), 1977. This declaration was later replaced by the National Parks, Natural Reserves, and National and Memorial Sites Declaration (Protected Natural Values), 2005, which was replaced by the National Parks, Natural Reserves, and National and Memorial Sites Declaration (Protected Natural Values), 2019.
25. The Nature Protection Order (Judea and Samaria) (No. 363), 1969 vests similar authorities in the military's hand. According to this order, *za'atar* was declared as protected plant in 1978. See Protected

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- Natural Values Declaration (Amendment No. 2) (Judea and Samaria), 1978. *Akkoub* was added to the list in 2004. See Protected Natural Values Declaration (Amendment No. 2) (Judea and Samaria), 2004.
26. See, e.g., Akiva Eldar, 'The State of Israel Versus the Hyssop Pickers', *Haaretz* (Sept. 26, 2005) <https://www.haaretz.com/1.4875929>.
 27. The Nature and Parks Authority response to a FOIA request by Adalah – The Legal Center for Arab Minority Rights in Israel (May 7, 2019) https://www.adalah.org/uploads/uploads/Nature_Authority_FOIAreply1_070519.pdf
 28. Zafirir Rinat, 'The Ezov Stands in the Midst of a Clash Between Tradition and Law', *Haaretz* (Apr. 25, 2017), <https://www.haaretz.co.il/food/foodmagazine2/premium-1.4039616>
 29. See lists of endangered, near-threatened and rare plants, published in the Nature and Parks Authority's website: https://redlist.parks.org.il/affix/redbook_intro/#page-48
 30. *Id.*
 31. Nativ Dudai et. al, 'Environmental Factors Affecting Flower Initiation and Development in Majorana Syriaca L. (= Origanum Syriacum Var. Syriacum)', 38 *Israel Journal of Botany* 229 (1989); Nativ Dudai, 'Domestication and Breeding of Wild Medicinal and Aromatic Plants – Thirty Years of Experience in Israel', in *The Proceedings of the 1st International Symposium on Medicinal, Aromatic and Nutraceutical Plants from Mountainous Areas* (Carlen, Baroffio and Vouillamoz eds., 2011).
 32. Dror Feuer, 'Divisive Discourse: How Even the Cancellation of the Ban on Picking Za'atar Became a Narrative Battle between Jews and Arabs', *Globes* (Oct. 20, 2019) <https://www.globes.co.il/news/article.aspx?did=1001303934>
 33. *Id.*
 34. Didi Kaplan, Dror Pevzner, Moshe Galilee, and Mario Gutman, 'Traditional Selective Harvesting Effects on Occurrence and Reproductive Growth of Gundelia Tournfortii in Israel Grasslands', 43 *Israel Journal of Plant Sciences*, 163 (1995).
 35. See, e.g., Mayer-Chissick and Lev, *supra* note, at 11 ('The tradition of gathering wild edible plant is disturbed by the modernization of the Arab village, the invention of the fridge for example, enable the family to pick more than the amount needed for the season and freeze it for the summer. This excessive gathering combined with the growth of the community brought almost to a disappearance of some of the plants, and some of them like the wild (Syrian) mar-joram (*Origanum syriacum*) and the tumble thistle (*Gundelia tournefortii*) had to be declared protected by law and their gathering is forbidden').
 36. Swedenburg, *supra* note 1.
 37. <https://www.youtube.com/watch?v=LS8hCbxCaMs>
 38. Two additional cases, excluded from this paper due to space limitations, deal with *maramiya* (sage).
 39. Furst, *supra* note, at 43.
 40. Additional 151 on-the-spot-fines were issued in between 2016 and 2018 for both *za'atar* and *a'akoub*. See Feuer, *supra* note.
 41. Crim Case 2033/05 *State of Israel v. Kanaan* (May 7, 2006)
 42. Crim Case 28894-03-10 *State of Israel v. Daief* (Jan. 20, 2011)
 43. Since the plants are declared as protected, no evidence is needed to prove the damage of the act. One-page opinion written by a Nature and Parks Authority scientists, however, is occasionally submitted to the courts by the prosecution to stress the ecological damage of picking the plants. Based on this opinion, the prosecution asks the courts to impose harsher penalties on the defendants.
 44. Crim Case 1688-04-09 *State of Israel v. Bushnak* (May 25, 2010)
 45. Furst, *supra* note.
 46. See, e.g., Crim Case 1822-02 *State of Israel v. Abbas* (Feb. 12, 2004) (involving 'few leaves of *za'atar*'); Crim Case 1623/04 *State of Israel v. Abd AlHameed* (Jun. 30, 2004) (involving 0.5 kilograms of *za'atar*); Crim Case 2106/05 *State of Israel v. Shibli* (Nov. 3, 2005) (involving a 'small bag of *za'atar*'); Crim Case 1233/07 *State of Israel v. Egbbariah* (May 29, 2008) (involving 8 kilograms of *za'atar*); Crim Case 1152-06-08 *State of Israel v. Jabareen* (Jan. 21, 2010) (involving 2 kilograms of *za'atar*).
 47. Compare, e.g., Crim Case 18766-03-09 *Nature and Parks Authority v. Ali* (Jun. 22, 2009) (involving 1.5 kilogram of *za'atar* and a 1,500 NIS fine) with Crim Case 42277-10-10 *State of Israel v. Marzouk* (Jan. 20, 2011) (involving 15 kilograms of *za'atar* and a 1,500 NIS fine). Compare Crim Case 1152-06-08 *State of Israel v. Jabareen* (Jan. 21, 2010) (involving 2 kilograms of *za'atar* and a 1,000 NIS fine) with Crim

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- Appeal 267/08 *Omar v. Nature and Parks Authority* (Jan. 7, 2009) (involving 2 kilograms of za'atar and a 5,000 NIS fine).
48. Unlike prohibited drugs in criminal procedures, za'atar and akkoub are not subjected to laboratory examination, but rather destroyed or burnt on the spot. This situation has resulted in an interesting legal question in the case of Basem Jat, where the defense argued that the prosecution failed to prove that the herb was the prohibited wild type of za'atar (*Majorana Syriaca*), in contrast to the commercially domesticated and legally permitted type. Despite the fact that the Nature and Protection Authority's enforcement officials confessed that they are incapable of differentiating between the wild and domesticated types of the herb, the court concluded that the enforcement officials possessed sufficient experience that qualifies them to be regarded as expert witnesses in legal procedures. The court has, therefore, overlooked the evidential damage of destroying the herbs in favor of an interpretation that widens the net of criminality.
 49. Crim Case 7577-05-12 *State of Israel v. Abu Shamleh* (May 28, 2014).
 50. See Kais Firro, 'Reshaping Druze Particularism in Israel', 30 *Journal of Palestinian Studies* 40 (2001); Lisa Hajjar, 'Israel's Intervention among the Druze', in *Power and Politics of Difference: Minorities in the Middle East* (1996).
 51. James Scott, *Weapons of the Weak: Everyday Forms of Peasant Resistance* (1985).
 52. Shira Rubin, 'For Israelis and Palestinians, a Battle over a Humble Plant', *Salon* (Feb. 18, 2020) https://www.salon.com/2020/02/17/for-israelis-and-palestinians-a-battle-over-a-humble-plant_partner/
 53. Rami Nassar, 'Interviews with Akkoub Pickers', *Bokra* (Apr. 7, 2015) <https://bokra.net/Article-1293516>
 54. *Id.*
 55. Crim Case 1146/05 *State of Israel v. Abadi* (Dec. 14, 2005); Crim Case 2025/05 *State of Israel v. Leibovitz* (Feb. 12, 2007). Interestingly, the Hebrew name appearing in the latter case is explained in the first line of the judgement: 'Sari Hani Azzam, who 'Hebrewcized' his name – probably due to his security job – into Alon Ben Hani Leibovitz, is the defendant in this case'.
 56. For publications in English and French, see, e.g., Ronit Vered, 'How Za'atar Became a Victim of the Israeli-Palestinian Conflict', *Haaretz* (May 7, 2017), <https://www.haaretz.com/israel-news/premium-1.5466747> [<https://perma.cc/R7LF-Y37W>]; Eeta Prince-Gibson, 'Wild plant feeds another thorny conflict between Israel, Palestinians', *Al-Monitor* (Apr. 24, 2019), <https://www.al-monitor.com/pulse/originals/2019/04/a-thorny-conflict-over-aqub-between-palestine-israel.html> [<https://perma.cc/ZJE2-2UVU>]; Zafrir Rinat, 'Reversing Decades-old Policy Israel to Allow Some Harvesting of Wild Plants', *Haaretz* (Aug. 6, 2019), <https://www.haaretz.com/israel-news/premium-1.7620743> [<https://perma.cc/WMC4-MJG5>]; Claire Bastier, 'En Israël, les cueilleurs de plantes aromatiques ne veulent plus être criminalisés', *Le Monde* (Sept. 6, 2019), https://www.lemonde.fr/m-le-mag/article/2019/09/06/en-israel-les-cueilleurs-de-plantes-aromatiques-ne-veulent-plus-etre-criminalises_5507058_4500055.html [<https://perma.cc/27ZN-TQYD>]; Shira Rubin, 'For Israelis and Palestinians, a Battle over a Humble Plant', *Salon* (Feb. 18, 2020), https://www.salon.com/2020/02/17/for-israelis-and-palestinians-a-battle-over-a-humble-plant_partner/ [<https://perma.cc/5NY9-JQB4>].
 57. The author of this paper is involved in these requests.
 58. In December 2019, the Minister of Environment Protection published an updated list of 'protected natural values' that includes za'atar, akkoub and maramiya.
 59. Dror Feuer, 'Divisive Discourse: How Even the Cancellation of the Ban on Picking Za'atar Became a Narrative Battle between Jews and Arabs', *Globes* (Oct. 20, 2019) <https://www.globes.co.il/news/article.aspx?did=1001303934>; See also Itay Ilani, 'The Battle over Za'atar', *Yedioth Ahronoth*, (Aug. 20, 2019) <https://www.yediot.co.il/articles/0,7340,L-5572535,00.html>.
 60. <https://www.parks.org.il/new/tavlin/>