



**The Civic Coalition for Palestinian Rights
in Jerusalem**

43
Years of Occupation
Jerusalem File

December 2009
Second Edition 2011

The Civic Coalition for Palestinian Rights in Jerusalem

The Civic Coalition for Defending the Palestinian Rights in Jerusalem (The Civic Coalition) is a non-governmental and non-profit coalition of institutions, societies, associations and individuals dedicated to the protection and promotion of Palestinian rights in Jerusalem.

Vision: To preserve the Palestinians presence in Jerusalem and ensure the Palestinian population is able to effectively realize and exercise their fundamental human rights.

Mission: Mobilize efforts, capacities and resources to protect and promote the political, civil, economic, social and cultural rights of the Palestinian people in Jerusalem on the basis of international human rights and humanitarian law.

Objectives:

1. Promote greater awareness amongst the Palestinian population of Jerusalem of their fundamental human rights as enshrined under international human rights and humanitarian law.
2. Coordinate and facilitate advocacy efforts on both individual and collective human rights issues of the Palestinian people in Jerusalem.
3. Provide legal services to the Palestinians in Jerusalem.
4. Strengthen the organizational capacity of the Civic Coalition and its members to enable the realization of the Civic Coalitions' vision and objectives.

Civic Coalition Programs:

- The monitoring and documentation of violations of international human rights and humanitarian law within Jerusalem.
- Awareness raising program.
- National and international legal advocacy.
- Legal Aid clinic and legal services for Palestinian Jerusalemites
- Capacity building workshops for human rights organizations in Jerusalem.
- Development and operation of a database on human rights violations and statistics in Jerusalem.

TABLE OF CONTENTS

- 07 Historical background
- 11 Legal status of the Population of East Jerusalem since 1967 and the Implications of Israeli Annexation on their Civil and Social Right
- 25 Land Confiscation and Settlement Construction In Occupied East Jerusalem
- 33 Forced Displacement and Ethnic Cleansing Israel's Violations of Palestinians' Rights to Residency in Jerusalem
- 41 Urban Planning in Jerusalem
- 47 House Demolitions and Forced Evictions in Jerusalem Israeli Occupation Authorities Campaign Against Palestinian Property in Jerusalem
- 51 Education in Jerusalem: Current Situation and Future Challenges in the Absence of a Unified Educational Authority
- 55 Effects of the Annexation Wall on the Economy in Occupied East Jerusalem
- 61 The Annexation Wall and International Law

43
Years of Occupation
Jerusalem File



The Israeli occupation of East Jerusalem is now in its forty-third year, and counting. Since 1967, Israel has imposed a military and administrative occupation on the Palestinian people and has sought to annex, by military force, the area in and around East Jerusalem. The international community regards this annexation as illegal under international law and continues to maintain this position.

Despite its illegality, since 1967, Israel has imposed its own laws and policies in East Jerusalem, forcefully integrating and controlling East Jerusalem and its Palestinian inhabitants against the general principles of international humanitarian law. In realising its political aims and objectives of annexation and control of East Jerusalem, Israel has adopted policies which grossly violate fundamental human rights of Palestinians as enshrined in the major international legal instruments of which Israeli is a party, including, amongst others, the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child.

The forty-three years of occupation has created great hardship and suffering by extending its reach into the minutest aspects of day-to-day living. The following provides a brief, updated summary of *42 Years of Occupation: Jerusalem File*, and a short synopsis of the various chapters within the *Jerusalem File*.

First published in 2009, during the forty-second year of the occupation, by the Civic Coalition for Palestinian Rights in Jerusalem, the *Jerusalem File* contains detailed information about the core issues affecting the Palestinian community in East Jerusalem and key Israeli occupation policies. It includes analysis by local experts on a variety of interrelated but distinct issues, including land confiscation, the effects of the Annexation Wall, the denial of residency rights to Palestinians, and forced displacement through home demolitions and evictions for settlement construction. In seeking to raise awareness of these issues, *the Jerusalem File* brings to bear the countless human rights violations committed by the Israeli government before that continue to go unpunished.

This updated summary of the *Jerusalem File* provides the reader with a brief background to the conflict followed by an introduction to the range and complexity of issues that make the question of Jerusalem one of the most difficult and perplexing issues in the Israeli-Palestinian conflict.

The Civic Coalition hopes that by making this information and the further information in the *Jerusalem File* available, governments, civil society organisations, academics, the international community, and concerned individuals will have the opportunity deepen their awareness of the many unlawful and discriminatory acts that occur daily under the Israeli occupation of East Jerusalem. It is hoped that readers will take steps to call for an end to the illegal and unjust occupation and demand Israeli compliance with international law and respect for the dignity and human rights of all people in occupied East Jerusalem.

In providing this information, every effort has been made to ensure the quality and accuracy of the information. However, small and infrequent discrepancy in the data may be found due to Israeli government restrictions on the access and collection of information regarding East Jerusalem.

For more information regarding residency, education or economic rights, or analysis of the international legal implications of the Annexation Wall, or for a case study on the Israeli governments dispossession and forcible eviction of residents in Sheikh Jarrah in Jerusalem, please refer to the list of publications on the Civic Coalition's website at www.civiccoalition-jerusalem.org.

The Civic Coalition warmly thanks all those who contributed and assisted with the publication of the *Jerusalem file*.

January 2011
Civic Coalition – Jerusalem



BRIEF HISTORICAL BACKGROUND

In 1863, the first municipality of Jerusalem was founded. During the mid-nineteenth century, Jewish neighbourhoods began to appear outside the walls of the Old City. Gradually the city's boundaries were extended to encompass many of the neighbouring Arab and Jewish villages. By 1948, the area in question had grown to over 7,230,000 m² from 4,130,000 m² in 1918.¹

In 1947, the United Nations General Assembly passed Resolution 181(II) regarding the Future Government of Palestine (UN Partition Plan). The resolution called for an end to the British Mandate and proposed the partitioning of historic Palestine into separate Jewish and Arab states. A separate status was designated for Jerusalem as an international city or a *corpus separatum* - a separate body from the Occupied Palestinian Territory (OPT) and Israel – to be administered by the UN under a special international regime.²

In 1948, during the Arab-Israeli War (1948 War), Zionist paramilitary forces forcefully took control of the western part of Jerusalem, expelling and displacing hundreds of thousands of Palestinians from their lands against the principles of international law. This led to the massacre of at least 600 civilians in the Palestinian village of Deir Yassin near Jerusalem and the depopulation of entire villages. The Israeli government then expanded its territorial control to include a significant portion of the territory allocated for the Arab state, part of which was intended for internationalisation.

Following the 1948 War, Jerusalem was effectively divided between eastern and western Jerusalem. Eastern Jerusalem came under Jordanian administrative control while Israel gained effective control of western Jerusalem. Under Jordanian control, the areas of Silwan, Ras Al-Amoud, Asswani, Ard Assamar and south of Shu'fat were integrated into eastern Jerusalem's municipal boundaries. This *de facto* division of Jerusalem was formalised through the 1949 Israel-Jordan Armistice Agreement.

In 1967, Israel occupied and illegally annexed eastern Jerusalem to the territory of what today is considered the "borders of Israel", and in 1980 declared Jerusalem, the 'eternal and undivided' capital of the state under the Jerusalem Basic Law.³ This was met with strong objection by the international community, culminating in the passing of UN Security Council resolution No 478 expressing strong condemnation of Israel.

Following Israel's annexation of eastern Jerusalem, Israeli authorities ordered the confiscation of approximately 71 km² of land from the jurisdictions of twenty-eight Arab villages, mainly within the municipal districts of Ramallah and Bethlehem, and 6.5 km² from the areas surrounding the Old City and announced the unilateral expansion of the boundaries of Jerusalem, in addition to, the 'reunification' of Jerusalem as part of the state of Israel. The Old City and the villages of Issawiya, Assawahreh, At Tur, Beit Hanina, Beit Safafa, Kalandiya, Sharafat, Shu'fat, Sur Baher and Um Toba were all annexed to the boundaries of eastern Jerusalem, which became part of the enlarged city. As a result of this extension, the new municipal boundaries were enlarged from 38 km² to 108.5 km² (eastern and western Jerusalem combined).⁴

Within days of Israel's annexation and occupation, Israeli bulldozers began demolishing Palestinian villages and public infrastructure in eastern Jerusalem, beginning three days later with the razing of the historic Moroccan neighbourhood in the Old City, which destroyed 135 houses, a school and a mosque. This cleared the way for the construction of a large open air plaza and resettlement by Jews.⁵

1 Khalil Tufajki, 'Land Confiscation and Settlement Construction in Occupied East Jerusalem' in Civic Coalition for Defending Palestinian Rights in Jerusalem (1st ed), *42 Years of Occupation: Jerusalem File* (2009) 43.

2 *Palestine Partition Plan*, UNGA Res 181(II), UN Doc A/159 (1947).

3 *Basic Law: Jerusalem, Capital of Israel, Laws of the State of Israel*, vol 34 (1980) 209.

4 Khalil Tufajki and Adnan Abdelrazek PH.D, *Israeli Colonial Policies and Practices: De-Arabization of East Jerusalem* (Arab Studies Society) 9.

5 Yaqoub Odeh, "Legalising Demolition...Illegalising Construction." Israeli Occupation Authorities Campaign against Palestinian Property in Jerusalem in Civic Coalition for Defending Palestinian Rights in Jerusalem, *42 Years of Occupation: Jerusalem File* (1st ed, 2009) 97.

After the annexation of eastern Jerusalem, the Israeli government began designing and implementing a series of policies leading to the widespread confiscation of Palestinian land and the settlement of Jews in a process of the Judaisation of the city. The foundations for the construction of Jewish settlements in eastern Jerusalem were established as a series of colonies, inhabited by settlers, surrounding Jerusalem from all sides to create a new geographic and demographic reality, effectively preventing the establishment of East Jerusalem as the future Palestinian capital. These and other policies led to a demographic disturbance in Arab East Jerusalem.⁶

While in 1967 the Palestinian residents constituted the majority of the population and controlled the land in its entirety, in 2008 only 35% of the population of Jerusalem is Palestinian with control of only 14% of the land on which development and use of the land continues to be heavily controlled by Israel.⁷ This is reflected in the construction of the Separation Wall based on the false pretext of security. In 2002, thousands of dunams of arable Palestinian land was further confiscated and destroyed by the Israeli authorities for the construction of the Wall, which resulted in the confiscation of approximately 12% of the land within the West Bank at the border with Israel.⁸

The United Nations Security Council and General Assembly have rejected Israel's unilateral annexation of East Jerusalem as a manifest violation of international law and continue to maintain that East Jerusalem is occupied territory. In 2004, the International Court of Justice affirmed this position in its Advisory Opinion concerning the legal consequences of the construction of the Annexation Wall in the OPT.

Yet, in spite of the multitude of United Nations resolutions confirming this position, the occupation of East Jerusalem is continuing into its forty-fourth year in 2011.

6 See Tufakji, 'Land Confiscation and Settlement Construction in Occupied East Jerusalem' 46.

7 Id.

8 Nasser Arayes, *The Separation Wall and International Law*, The Civic Coalition for Defending Palestinian Rights (2008) 5.

**Map 1 - Division of Jerusalem according to the
General Armistic Agreement 1949**



Legend

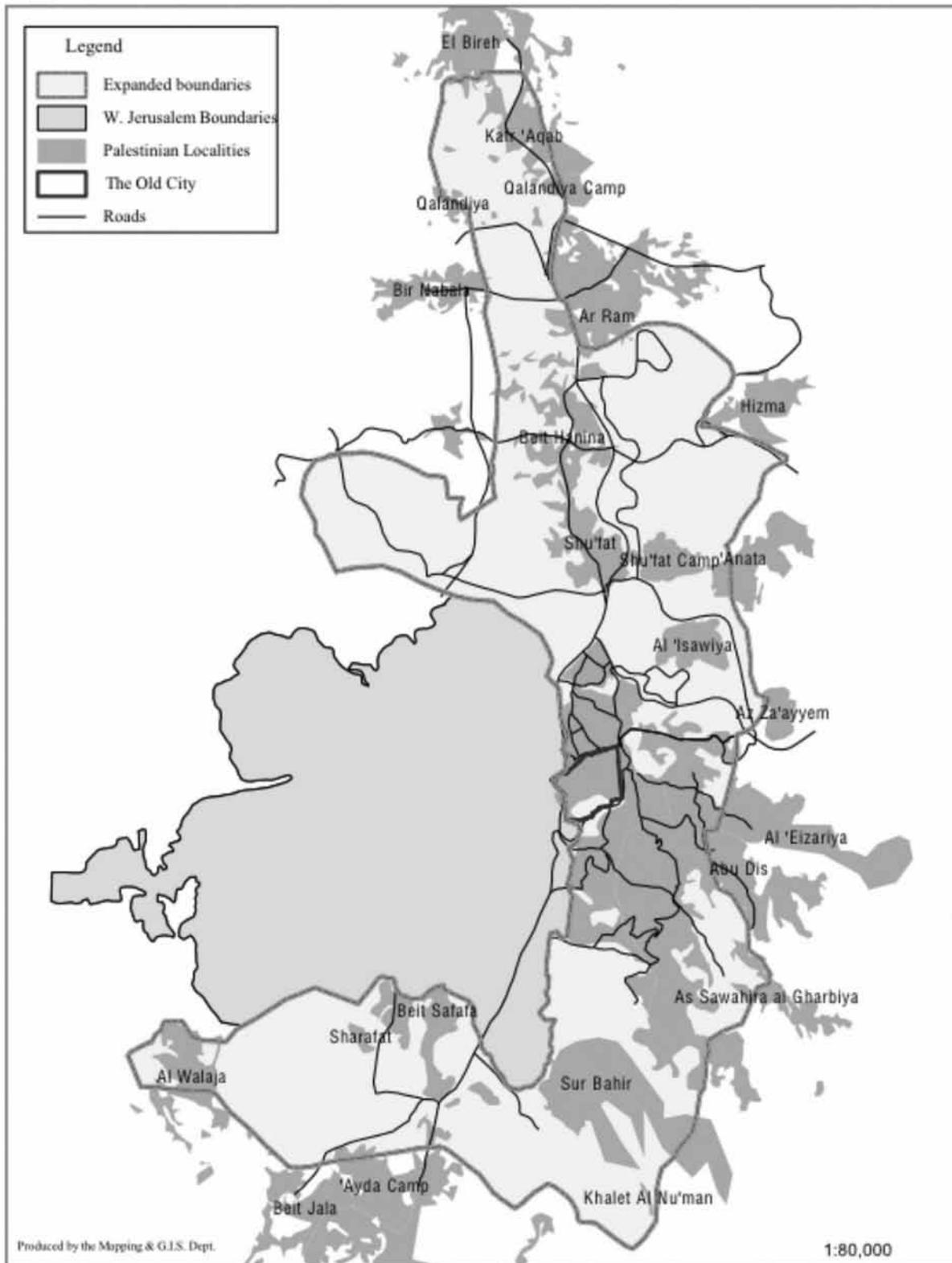
-  E.Boundaries in1946
-  W.Boundaries in1946
-  No- Mans Land
-  The Old City
-  Armistic Line



Produced by Mapping & G.I.S. Dept.

1:40,000

Map 2: 'The Expanded boundaries of Jerusalem after 1967 War including the annexed areas



Legal status of the Population of East Jerusalem since 1967 and the Implications of Israeli Annexation on their Civil and Social Rights⁹

Advocate Usama Halabi (LLM)¹

Israel occupied East Jerusalem by means of force in June 1967. Hence, the relation between Israel as the occupying Power and the residents of occupied Jerusalem is supposed to be governed by the rules and provisions of the international law relevant to military occupation, namely International Humanitarian Law (IHL) and its major component in this regard, the Fourth Geneva Convention of 1949, as well as the Hague Regulations attached to the Hague Convention of 1907. Under the relevant IHL, there is no difference between the status of East Jerusalem and that of the West Bank and Gaza Strip: all have become occupied territories following the war of June 1967. Having ratified the Fourth Geneva Convention, as the Occupying Power, Israel has the duty to respect and ensure the rights of Jerusalem's population as "protected civilians". International law allows for derogation from certain obligations only as far as is absolutely necessary to ensure the occupier's ability to carry out its obligations towards the occupied Palestinian population on one side, and to preserve the safety of its troops and satisfy its security needs on the other. Moreover, Israel as the Occupying Power is obligated to respect the laws in force in the occupied territory as long as there is no "absolute deterrence" inhibiting this.¹⁰

International humanitarian law unequivocally prohibits Israel's annexation of East Jerusalem and the application of Israeli laws, administration and jurisdiction to the occupied city¹¹. However, Israel has disregarded its obligations under IHL, since 1967 and has dealt with Jerusalem differently from the West Bank and Gaza Strip. From the outset of the occupation, Israel has attempted to annex East Jerusalem to create a "complete and united" Capital of Israel, thus imposing Israeli law in the occupied city and making it applicable to residents of occupied Jerusalem. This paper addresses the repercussions of this decision on the legal status of the residents of Jerusalem and on their civil, political and social rights, and explains the difference between "citizenship" and "permanent residency" according to the Israeli law currently in force in Jerusalem. Further, the paper discusses different continuous attempts by Israel to isolate the City of the West Bank and to weaken its Palestinian population on the one hand, and to strengthen the Jewish presence, on the other.

9 This paper is based mainly on Chapter Four of my book: *The Legal Status of Jerusalem City and Its Arab Population*, Institute for Palestine Studies, Beirut, 1997, (Arabic), and "Stage Five" of my study: *Israeli Laws and Judicial System as Tools for Accomplishing Political Objectives*, published by the Civic Coalition for Defending the Palestinians' Rights in Jerusalem, July 2007, as well as on a speech delivered in a press conference held by the Civic Coalition at the Ambassador Hotel in Jerusalem on 20 March 2008. Other published relevant information not contained in the above three sources were also added.

10 Article 43 of the Hague Regulations attached to the Hague Convention of 1907.

11 Usama Halabi, *The Legal Status of Jerusalem and Its Arab Population*, Institute for Palestine Studies, Beirut, 1997, pp. 47-60 and references cited in. See also: John Quigley, "Old Jerusalem Whose to Govern", *Denver J.Int'l L& Policy*, Vol. 20, No1, Fall 1990, p. 145, 160.

Diagram 1: The creation of the Israeli legal framework for annexation – June 1967



Permanent Residency v Citizenship

Despite the defacto annexation of East Jerusalem to Israel, the status of the population of East Jerusalem was not changed to allow them to become citizens of the State to which their city was annexed. The Israeli government allowed the population to keep holding their Jordanian passports and decided, following a census, to grant them Israeli ID cards to indicate their status as 'permanent residents' in Israel. In order to explain the legal and practical differences between citizenship and residency in Israel and their factual outcomes and repercussions on the lives and rights of Palestinian Jerusalemites, we will elaborate on the relevant Israeli laws and regulations, as well as decisions made by the Israeli High Court.

1. The 1952 Citizenship Law¹²

This law defines the conditions in order to obtain and forfeit Israeli citizenship. One can obtain Israeli citizenship by any of the following means: First, based on the "right to return" (article 2); second, based on residency in Israel (articles 3 and 3a); third, based on birth in Israel (article 4); fourth, birth and residency in Israel (article 4a); fifth, naturalization (articles 5-8); and sixth, based on the grant of citizenship by the interior minister in specific cases (article 9).

The "right to return" is limited to Jews or members of their families (spouses, children, or children-in-law) only. When the law was enacted on 1 April 1952 a combination of the following conditions was required in order for residency in Israel to lead to citizenship:

1. The concerned person have resided in Palestine prior to the establishment of the State of Israel and holding a Palestinian passport or a certificate of Palestinian nationality.
2. S/he should be registered as of 1 May 1952 as a resident in the Israeli Population's Registry.
3. S/he was living in Israel as of the date, when the law entered into force, i.e., on 14 July 1952.
4. S/he has been living in Israel, or in an area that has become part thereof after it was established, or has entered Israel legally in the period between the establishment of the State of Israel (15 May 1948) and the date when the law entered into force (14 July 1952).

Since the above mentioned conditions, particularly the fourth one, have prevented a significant portion of the Palestinian population in Israel from obtaining Israeli citizenship, the Law was amended in 1980 and Article 3(a) was added, stipulating that five conditions should be fulfilled in order for the concerned person to obtain Israeli citizenship based on hi/her residency in Israel:

1. S/he should not have obtained Israeli citizenship according to another article in the law.
2. S/he has been a national of Palestine – the Land of Israel prior to the establishment of the State of Israel.
3. S/he was living in Israel and registered in the Population's Registry on 14 July 1952 (date, when the Citizenship Law entered into force).
4. S/he was living in Israel and registered in the Population Registry on the date when the law was amended.
5. S/he is not a national of any of states identified in Article 2(a) of the Prevention of Infiltration Law (offences and jurisdiction) of 1954, which are: Lebanon, Egypt, Jordan, Iraq and Yemen, and of "any part of the Land of Israel outside the boundaries of the State of Israel", i.e. the West Bank and Gaza Strip.¹³

These five conditions need to be present together in any Palestinian born prior to the establishment of the State of Israel in order to be eligible for Israeli citizenship. For those Palestinians born after its establishment; they should be an offspring of a person that meets the first three conditions.¹⁴ These conditions, however, prevent Palestinian residents of Jerusalem from obtaining Israeli citizenship on the basis of their 'residency status', since their 'residency' in Israel started on June 1967 following the occupation of Jerusalem and Israel's decision to apply its laws, jurisdiction and administration to the City and to grant its residents, covered by the census, Israeli ID cards.¹⁵

Similar to 'residency', birth in Israel does not, per se, lead to obtaining Israeli citizenship, as an additional condition is required; at least one parent has to be an Israeli citizen. Birth and residency in Israel can be an adequate basis for obtaining Israeli citizenship for those born following the establishment of the State of Israel and who have never possessed another nationality and if such person applies to the Interior Ministry after reaching the age of 18 and before reaching the age of 21, provided that at the time of the application s/he has been living in Israel for five consecutive years.¹⁶ However, even if these conditions are met by the concerned individual, the interior minister has the power to reject the application if this person has been convicted in a security case or has been sentenced to five years or more of imprisonment.¹⁷

Apparently, 'naturalization' is theoretically the main and often the only, although not unconditional, possibility for Palestinian residents of East Jerusalem to obtain Israeli citizenship. Article 5 of the Citizenship Law which deals with obtaining citizenship through naturalization, requires the following six cumulative conditions in the concerned individual, unless exempted from some by the interior minister:

1. The applicant should be present in Israel.
2. The applicant should have been living in Israel for three years within the five years preceding the application.
3. The applicant has the right to permanent residency in Israel.

¹³ Article 3A, Paragraph (a)(1)-(5) of the Citizenship Law.

¹⁴ Art. 3A(b) of the Citizenship Law.

¹⁵ See : Diagram 1. As shall be seen below, the Entry to Israel Law addresses the issue of entry to, and residency within Israel by non-citizens, which includes the issue of 'permanent residency'

¹⁶ Art. 4A(a) of the Citizenship Law.

¹⁷ Art. 4A(b) of the Citizenship Law

4. The applicant has settled in Israel or intends to do so.
5. S/he is moderately acquainted with Hebrew language.
6. The applicant should renounce his/her previous nationality or prove that s/he will not remain a foreign national upon becoming an Israeli citizen.

Nevertheless, meeting the above six conditions does not mean an individual will automatically obtain Israeli citizenship as the Interior Minister still has the discretion to grant it or to reject the application, and if granted, the applicant must state the following: "I affirm that I will be a loyal citizen of the State of Israel".

Based on the above, if a resident of East Jerusalem wishes to obtain Israeli citizenship by means of naturalization, s/he should have a permanent residency in Jerusalem, moderately know Hebrew and has to, unless exempted, renounce their Jordanian citizenship. Furthermore, it should also be noted, that in practice when some Jerusalem residents applied for Israeli citizenship, they were obliged to give up their Jordanian passports. There is no reliable, let alone official, figure for the number of Palestinian Jerusalemites who obtained Israeli nationality and consequently an Israeli passport.¹⁸ By the end of 2005, the Central Bureau of Statistics estimated that 93% of the Arab residents of Jerusalem have the status of "permanent residents" (including only 3% who obtained this status through "family unification"), 5% of the Arab residents have the status of "citizen" (including 12%, who obtained Israeli citizenship through naturalization) and 2% with an unidentified status.¹⁹

Once a person becomes an Israeli citizen, s/he will not forfeit the Israeli citizenship unless s/he renounces it in writing, with the approval of the Interior Minister, or it is cancelled as per few cases that are identified by the Citizenship Law as amended on 28 July 2008.²⁰ Such cases include; first, if the citizenship is obtained on the basis of falsified information, the Minister of Interior is authorized within three years to cancel it.²¹ Second, an administrative court may cancel the citizenship of an Israeli citizen if s/he betrays the State of Israel²² e.g. commits an "act of terror" as defined in the Prevention of Funding of Terror, 2005 or is active in a terrorist group as defined in the same Law,²³ or if s/he commits an act that implies treason against the State of Israel,²⁴ or if s/he obtains citizenship or permanent residency of any state or territory of those listed in the supplement to the Law which include: Iran, Afghanistan, Lebanon, Libya, Sudan, Syria, Iraq, Pakistan, Yemen and Gaza Strip.²⁵

2. The 1952 Entry to Israel Law²⁶

While the Citizenship Law covers the rules and provisions related to citizenship in Israel, the Entry to Israel Law addresses the issue of entry to, and residency within Israel by non-citizens, which includes the issue of 'permanent residency'. The entry of non-citizens to Israel and their stay in the country is possible by obtaining an "oleh (a Jewish immigrant)" visa or an entry visa under this Law. The Interior Minister has the power to issue entry visas and "stay permits" for periods ranging between five days and three years as follows:

1. A visa and a stay-transit permit up to five days
2. A visa and a stay-visit permit up to three months
3. A visa and a temporary residency permit up to three years
4. A visa and a permanent residency permit²⁷

18 Becoming an Israeli citizen and obtaining an Israeli passport, is conditioned upon declaring loyalty to the state of Israel, and this is conceived by the mass majority of Palestinian as betraying the Palestinian cause and deserting to the enemy side, and disclosing such a fact is very embarrassing for those who apply. Thus, neither the applicants nor Israel are willing to disclose the exact figure.

19 A summary of statistics related to Jerusalem residents was published under the title «Jerusalem Fortieth Anniversary: Overwhelmed by Dreams» on the site: <http://www.nfc.co.il/>.

20 The Citizenship Law (Amendment No.9), 2008, published in the Compilation of Laws of Israel, No.2176 (8/8/2008), p. 810.

21 Article 11 (a) of the Citizenship Law.

22 Article 11 (b) of the Citizenship Law

23 Article 11 (b) (2) (a) of the Citizenship Law

24 Article 11 (b) (2) (b) of the Citizenship Law

25 Article 11 (b) (2) (c) of the Citizenship Law

26 Published in the Israeli Compilation of Laws, 1952, No. 111, p. 354.

27 Article 2 of the Entry to Israel Law .

The law bestows upon the minister, the power to extend the visit permit from time to time, provided that the total extension periods do not exceed two years²⁸. The minister can also extend the temporary residency permit, provided that each extension does not exceed two years²⁹. In regards to the permanent residency permit, there are no provisions in the Entry to Israel Law as to the conditions leading to obtaining such a permit, or when it would cease to be in effect. The issue of granting a permit for permanent residency in Israel is actually left to the discretion of the Interior Minister, who does not grant such permits without obtaining a recommendation by the security apparatuses, usually the "Shabak". Often, such applications are made by a spouse holding an Israel ID card for "family unification" with the other spouse, who does not hold such ID. Until few years back, procedural guidelines adopted by the Interior Ministry in this regard have not been declared.³⁰ All that was declared to the public in this regard and stated by the Ministry is that the approval of 'family unification' applications would require the following conditions: First, the couple is bound by an official marriage contract. Second, the couple lives in Jerusalem and their address is in Jerusalem. Third, there is no security or criminal deterrence in the person to be granted the residency status.³¹ Yet, as we shall see below, the Entry to Israel Law, together with the Citizenship Law, have been amended several times since 2003, and more conditions and obstacles in the way of Palestinians seeking family unification, have been added including that an application is not processed if the "non Israeli" spouse is under the age of 25 if female and under 35 if male.³²

Applicants of family unification often complain about the long period starting from the date of application up until a decision is issued to reject or accept the application, which may last for several months. In the past, based on the experience of the present writer, this time period usually exceeded a year and has even reached two years. In addition to 'family unification', permanent residency in Jerusalem can also be obtained on the basis of birth in Israel/Jerusalem provided that the child is born to a parent residing in Jerusalem.³³ In the latter case, child registration is usually not problematic if both parents, or at least the father has residency status in Jerusalem and is holding an Israeli ID card. However, if the mother is the holder of the Israeli ID card and wishes to register her child in her ID card and the Israeli residents' registry, she has to prove that the child is living with her and that the center of her and her child's life is in Jerusalem, and not in the West Bank or Gaza Strip. This discrimination between men and women is attributed to the assumption adopted by the secondary legislator (i.e. the Interior Ministry) that fathers in Arab society are the heads of their households and that wives and children are dependent on the husband-father and live in the place he chooses to live in.³⁴

For not a clear reason, the Entry to Israel Law is silent as to the question when does permanent residency expire and the conditions defining when a permanent residency permit expires are set in a secondary legislation: the 1974 Entry to Israel Regulations. Article 11(c) of these regulations provides that a permanent residency permit expires if a condition made by the Minister for maintaining the permit's effect is not met, or if a change is made to the visa associated with the permit by an unauthorized person, or "if the permit holder leaves Israel and settles in another country." Article 11A of Regulations defines "settling in another country," as when a permanent resident either:

1. stays outside Israel's borders for at least 7 years,
2. receives a permanent residency permit in another state, or
3. becomes a national of another state by means of naturalization.

28 Article 3(2) of the Entry to Israel Law .

29 Article 3(3) of the Entry to Israel Law .

30 Presently, the procedural guidelines related to applications for "family unification" and child registration (detailing the different steps and numerous documents to be submitted to the interior minister) can be found on the Ministry's website at: <http://www.moin.gov.il>.

31 For years, these conditions were not officially published but known to the writer through his experience in representing clients applying for family unification. Nowadays, the conditions to be fulfilled and document to present in this regard are published on the Ministry website.

32 See: section 4 of this paper.

33 Article 12 of the Entry into Israel Regulation 1974.

34 This "assumption" was clearly stated in a letter of 1986 signed by Mr. Ya'ari, the then legal advisor to the Ministry of Interior, sent to the Association of Civil Rights in Israel (ACRI).

The Israeli government considers the residents of East Jerusalem as 'permanent residents' of the State of Israel and thus are subjected to the aforementioned provisions. The Israeli High Court has also endorsed this position in the High Court case 282/88 *Mubarak Awad v Prime Minister* and others,³⁵ the court decided the following:

"In summary: the States jurisdiction and administration apply to East Jerusalem. Based on this applicability, the entry to Israel law also applies to East Jerusalem. Therefore, the stay of East Jerusalem residents, who have not been naturalized, is possible by a residency permit. Every person covered by the census conducted in 1967 is regarded as holding a permanent residency permit".³⁶

The Court turned down the claim that the Entry to Israel Law does not apply to East Jerusalem residents because it addresses the issue of *consensual* entry to Israel, while the Jerusalemites occupied by Israel did not "enter" to Israel by their will, but rather Israel entered into their place and lives. As demonstrated above, the Court resorted to an assumption that Jerusalem residents covered by the census conducted in June 1967 are regarded as if they were granted permits of permanent residency in Israel. The Court also rejected the claim raised by the lawyers of the appellant (Mr Awad) that, by the application of the Israeli jurisdiction, authority and administration to East Jerusalem, its residents have gained an Israeli "quasi-citizenship" or "constitutional residency" in the city, and therefore, the Interior Ministry does not have the power to cancel such status and to deport the appellant from Israel on the pretext that he has settled in another state.³⁷ The Court also rejected the claim that Article 11A of the Entry to Israel Regulations is unlawful and beyond the powers of the Interior Ministry because it defines conditions and circumstances when a permanent residency in Israel expires, despite the fact that the law under which they were issued does not contain any instructions in this regard.³⁸ The Court decided that a permanent resident may forfeit his/her residency in any of the cases stated in aforementioned Article 11A and added that the permanent residency permit may expire, and cease to be in effect automatically and without the need for issuing an official decision of cancellation if the specific conditions of the case reveal that permanent residency in Israel, on which the effect of the permit depends, is not available any more.³⁹ In each of these cases, the Interior Minister may issue an order to deport the concerned person under Article 13 of the Entry into Israel Law on the pretext of illegal stay in the country. In its decision, the Court explained that no importance is given to the feelings of the concerned person towards Jerusalem or to the fact that s/he keeps longing to return to Jerusalem while settling abroad. According to the Court, what matters is the fact that s/he has moved to settle outside the borders of Israel.⁴⁰ Based on the above, the court reached a decision the appellant Awad has forfeited his right to residency in Israel as he left Jerusalem to the United States, where he settled, got married and obtained the U.S. nationality and a U.S. passport. Therefore, the court endorsed the Interior Minister's decision ordering to deport him from Israel.⁴¹

In the High Court case No. 7023/94 *Fathiya Shikaki v Interior Minister*,⁴² the Court reaffirmed the position taken in *Mubarak Awad* regarding the status of Jerusalem residents as 'permanent residents' in Israel and the loss of residency rights by the virtue of settling outside Jerusalem (i.e. outside Israel). In his review of the details of the case, Justice Goldberg said, "The appellant was covered by the census of 1967 as a resident of East Jerusalem and got an Israeli ID card, but she did not naturalize [request nationality]. Therefore, her situation is that of holding a permanent residency permit under the 1952 Entry to Israel Law".⁴³ When the court found that the appellant was married in 1985 to Fathi Shikaki, a resident of Gaza Strip and then leader of the Islamic Jihad, and that she moved to live with her husband upon his deportation in 1988, giving birth to their three children in Syria, and that she came back to Jerusalem only after six years as a visitor, the court decided that her permanent residency permit has expired automatically and that the appellant has forfeited her right to permanent residency in Israel.⁴⁴ Therefore,

35 Israeli High Court Decisions, Vol. 42 (2), p. 424.

36 Ibid, p. 431.

37 Ibid, p. 428.

38 Ibid, p. 432.

39 Ibid, p.433.

40 Ibid.

41 Ibid.

42 Not yet (officially) published. The decision can be found on the following website: www.pador.co.il.

43 Ibid.

44 Ibid.

Ms. Shikaki was forced to leave Jerusalem. In its decision, the court explained that the three categories stated in Article 11A of the Entry to Israel law in regard to “settling in another country” is not an exhaustive list and the fact that the concerned person is settled in another country, and thus has forfeited his/her permanent residency in Israel, can be judged from facts and circumstances other than those stated in Article 11A.⁴⁵

The above two decisions by the Israeli High Court have had serious implications for the residents of East Jerusalem, mainly enabling the Israeli Interior Ministry to revoke their residency in cases when their stay outside the borders of Israel has not exceeded seven years. Following the court decision in *Shikaki*, the Interior Ministry started to gradually confiscate the Israeli ID cards from Jerusalemite women married to Jordanians, then it started to revoke the ID cards of male and female residents of East Jerusalem claiming that “the center of their lives has moved to outside Israel,” although they have been leaving under the so-called policy of “open bridges” adopted by the Israeli government since 1967 and according to exit permits valid for three years and have been returning prior to the expiration of these permits.⁴⁶ In mid nineties, Interior ministry staff in East Jerusalem office confiscated a large number of ID cards from residents applying to renew their cards based on “instructions” from Israeli staff at Allenby Bridge.⁴⁷ This was part of a policy adopted by the Interior Ministry aiming at revoking the right of permanent residency of some thousands of Jerusalemites, using the pretext of their residence outside the city (“outside Israel”). Although complete data is not available, published figures indicate that the residency right was revoked for at least 689 Jerusalemites in 1996, for 606 in 1997, for 788 in 1998 and for 394 in 1999.⁴⁸ As these steps, in our opinion, indicated a change in the policy adopted by the ministry towards this particular population group, the ministry was supposed to announce this change in the policy in public and to allow those who may be affected by this change a chance to adapt and/or take appropriate decisions in light of this change. However, backed by the authority of the High Court, in the case 7952/96 *Fares Bustani vs. Interior Ministry*,⁴⁹ the Ministry continued to revoke ID cards. This was the first case where the court approved the revocation of the residency status of a Jerusalemite on the basis of his work and residency in Jordan (whereas the appellant is a holder of a Jordanian passport similar to thousands of Jerusalemites, a fact the Israeli Interior Ministry was fully aware of). The appellant did not benefit from the fact that his exit to Amman and entry to Jerusalem through Allenby Bridge were by a valid exit permit. The court decided that the appellant has moved the center of his life from Jerusalem to Amman and that his summer visits, even if on an annual basis, did not change this fact.⁵⁰

Israeli considers residency in the West Bank and Gaza Strip as “residency in another country” or “residency outside Israel’s borders” and therefore, Jerusalemites who move to live in these areas are vulnerable to losing their right to residency status in Jerusalem. In the past, living outside the expanded municipal boundaries of Jerusalem has led Jerusalemites to lose their social security benefits, such as allowances for children born to the family after they have moved out of Jerusalem, but not to lose the residency status and the Israeli ID card. However, in 1995 the Israeli Interior Ministry started to revoke the Israeli ID cards of Jerusalemite women married to West Banker men and living with their husbands outside the Israeli defined Jerusalem municipal boundaries on the pretext that they have forfeited their right to permanent residency in Jerusalem.⁵¹ As already mentioned, revocation of Jerusalemites’ ID cards continued at a higher pace in 1996 also on the basis of their residency in, and moving the center of their lives to “the territories” (i.e. the West Bank, including areas that have not been transferred to the control of the Palestinian Authority). This Israeli position, aimed at reducing the number of Palestinians in Jerusalem has continued through to the present time and has become increasingly aggressive since the start of the third millennium, as will be explained later in this document.⁵²

45 Ibid.

46 Halabi, Usama, *The Legal Status of Jerusalem City and Its Arab Population*, Institute for Palestine Studies, Beirut, 1997, p.96.

47 Ibid.

48 Halabi, Usama, *Israeli Laws and Judicial System as Tools for Accomplishing Political Objectives*, published by the Civic Coalition for Defending the Palestinians’ Rights in Jerusalem, Jerusalem, July 2007, p.15.

49 Not yet (officially) published. The decision can be found on the following website: www.pador.co.il. This case was handled by the present writer.

50 Ibid, paragraph 8 of the Court’s decision.

51 Halabi, Usama, *The Legal Status of Jerusalem City and Its Arab Population*, p.97.

52 See section 4 of this paper.

Finally, it should be noted that the Israeli High Court, in a decision made on 20 September 2007, reaffirmed its decision in *Shikaki* and reaffirmed once again the validity of its decision in Mubarak Awad's case⁵³. In its decision in Administrative Appeal No 5829/05 *Saleh Dary and others v the Interior Ministry*,⁵⁴ the Court referred to Justice Barack's opinion in Awad's case and added, "the decision that East Jerusalem population are treated as if they have obtained a permanent residency permit under the Entry to Israel Law shall naturally imply that the cancellation of this status is made under the arrangement stipulated in this law and the regulations issued hereunder".⁵⁵ The Court later quoted Justice Barack stating that "the permanent residency is in essence a reality of life. When the permit [of permanent residency] is granted, it shall give a legal quality to this reality. If the reality is gone, the permit shall have no meaning and shall be revoked automatically".⁵⁶

Rights and Duties Attached to Citizenship and Residency in Israel

After examining the difference between citizenship and residency in Israel in terms of the conditions for obtaining each and those leading to forfeiting each, we will elaborate on the rights and duties attached to both. Particular attention will be paid to implications of permanent residency in East Jerusalem on the rights and duties of the Arab population of the city in certain aspects.

a) Voting and Nomination Rights

The right to vote for and be nominated to the Israeli Parliament (Knesset) is limited to Israeli citizens,⁵⁷ whereas the law allows permanent residents to participate in the elections to the local authorities both as voters and candidates.⁵⁸ Therefore, the right of East Jerusalem's population as "permanent residents in Israel" is limited to the participation in the elections to Jerusalem municipality. The population of occupied Jerusalem has participated in these elections in the past to varying degrees. In the years 1969, 1978 and 1983, the proportion of those participating in the elections ranged between 15-20%, which declined in 1989 to less than 3% and then increased again in 1993 elections to 7% of those with the right to vote.⁵⁹ The low proportion of Jerusalemites participating in the municipal elections has not changed dramatically.

The low proportion of those participating is an indicator that the majority of the Palestinian population is against the Israeli presence in the city, considering the participation in the elections of Jerusalem municipality a behavior that can be interpreted as giving legitimacy to Israel's decision to absolve the Arab municipality of Jerusalem and annex East Jerusalem to Israel. The participation in the elections to the "unified" municipality has adverse implications for the Palestinian legal and political struggle over Jerusalem as it feeds into the official Israeli position claiming that Jerusalem– is one city with one municipality and the capital of one state, Israel.

b) The Right to Obtain an Israeli Passport

The 1952 Passports Law⁶⁰ states that the right to obtain a passport is limited to Israeli citizens⁶¹. A citizen shall use his/her Israeli passport in exiting and entering Israel even if s/he has more than one nationality. Non-citizens residing in Israel or those with an unidentified or questionable nationality shall obtain a travel document (Laissez Passer) that they can use in leaving and returning to Israel. While a passport is valid for ten years,⁶² a travel document is valid for only one year and renewable only for another year. Since the population of East Jerusalem is considered as 'permanent residents' in Israel, rather than citizen, they do not have the right to obtain an Israeli passport, although are eligible for a travel document. Applications to obtain or extend the

53 *Supra*, note 27.

54 Not yet (officially) published. The decision can be found on the following website : www.pador.co.il.

55 *Ibid*, paragraph 7 of the decision.

56 *Ibid*.

57 Article 6 of Basic Law: the Knesset.

58 Article 7 of Local Authorities (Elections), 1965.

59 Halabi, Usama, *Jerusalem Arab Municipality*, PASSIA, Jerusalem, 1994, p. 35.(Arabic)

60 Published in the Compilation of Israeli Laws, 1952, p. 260.

61 Article 2(a) of the Passports Law.

62 Article 4(a) of the Passport Law.

validity of a passport or travel documents can be made at the Interior Ministry offices inside Israel or in Israeli consulates and embassies abroad.

c) Exit From and Entry to Israel

Every Israeli citizen staying abroad has the right to enter Israel. This right however is NOT granted to non-citizens. For visitors and residents, including permanent residents, entry and stay in Israel requires obtaining an entry visa and a residency permit according to the Entry to Israel Law and regulations issued hereunder. Exit from Israel is the right of every one, but this right may be restricted in certain cases, such as when there is a basis to suspect that the exit of a certain person, whether a citizen or a resident, may interfere with the security of the state.⁶³

Entry to and exit from Israel takes place through border crossings identified by law, including, inter alia, Ben Gurion Airport, Dov Airport (Tel-Aviv), Haifa port, Eilat port, Damia Bridge and Allenby (King Hussein) Bridge and Sheikh Hussein (Ma'oz) Bridge known also as the Jordanian River Crossing.⁶⁴ Residents of East Jerusalem usually leave through Ben Gurion Airport by using the travel document (Laissez Passer) or through Allenby or Damia Bridge by using their Jordanian passports and an "exit permit" valid for three years. In many cases, during the eighties and nineties, the Interior Ministry, in cooperation with the Bridges Authority affiliated to the Civil Administration and the Military Administration, have banned Jerusalem residents from traveling abroad for "security reasons" or allow their travel on a condition that they are of certain age and stay abroad for at least nine months. The bridges remained under the Israeli control even in the period following the Declaration of Principles agreement. Although there is an agreed upon Palestinian presence in certain sites, the final decision of letting in and out remains an Israeli decision.⁶⁵

d) Employment in the State Service

Israeli citizenship is a prerequisite for employment in the state service in accordance with Article 16 of the State Service (appointments) Law of 1959⁶⁶ which states that only Israeli citizens shall be appointed in state service positions. Any individual renouncing his/her nationality shall be considered as resigning from his/her position. There are however, exceptions to this rule: Article 40 of the same law allows appointing a person in state service by a special contract if s/he meets other conditions defined by the law. Additionally, Article 23 of the Judicial and Administrative Settlements (combined text) Law of 1970 granted the Prime Minister the power to issue regulations to exempt a person living in a territory where Israeli law is applied from the condition of nationality in order to be appointed as a public servant. Apparently, these exceptions permit the Israeli government to appoint residents of East Jerusalem in governmental institutions and departments, such as the social security agency and population registration department of the Interior Ministry. Those residents of East Jerusalem who obtained the Israeli citizenship and became Israeli citizens do not require the exceptions. Other than working in State service, Israeli law does not require Israeli citizenship for employment.

e) Taxes

With regard to taxes, Israeli law does not differentiate between an Israeli citizen and a permanent resident. Income tax is due from any income generated in Israel whether by a citizen, permanent resident or even a foreigner. Israel has imposed income tax on the residents of East Jerusalem and opened a branch for the tax authority in the city. The Value Added Tax (VAT) is also due from dealers, craftsmen and service providers such as lawyers, engineers, physicians, etc. working in East Jerusalem.⁶⁷ In addition, and in view of the application of Israeli law to Jerusalem, taxes levied on properties have also been imposed on the population of the City, such as the "environmental

63 Article 6 of the Emergency Regulations (Exit to Abroad), 1948. See also: H.C. 488/85 Daher vs. Minister of Interior, Compilation of High Court Decisions, Vol.40(2),p. 701.

64 See: Entry to Israel (Border Terminals) Order, 1987.

65 Since November 1994, and according to the Oslo Agreement (and its annexes), persons holding Israeli and foreign passports enter into Israel from Jordan through Shekh Hussein Bridge where there is no Palestinian presence. On the other bridges, however, there is a Palestinian presence, but, the final decision to allow entrance into Israel or into the Palestinian Authority Area is Israel's.

66 Published in the Compilation of Israeli Laws,1959, p. 86

67 Imposed in accordance with Value Added Tax Law, 1976, Published in Compilation of Israeli Laws, 1976, p.52.

improvement tax⁶⁸ and the “property tax”.⁶⁹ Similar to other municipal councils, Jerusalem municipality imposes a property tax known as ‘Arnona’ on houses and businesses. This tax is levied from the population to enable the municipality to provide services to the city’s residents. However, as to Arnona on properties used for living, it is estimated at different rates according to the area and where the structure is located. The city is divided to residential areas A, residential areas B and then residential areas C. The tax rate in each one of these areas is different than the two others but the same rates are used for the population of East and West Jerusalem. This means that residents of area A or B in West Jerusalem pay per sq. meter the same amount paid by residents of area A or B in East Jerusalem, although the services offered by the municipality in East Jerusalem is not at the same level as those offered to West Jerusalem and the development, recreation and social services enjoyed by Jewish neighborhoods is totally absent in most Arab neighborhoods.⁷⁰ Similarly, shops and hotels are required to pay the same rates of the ‘Arnona’ tax (which is much higher than that imposed on houses) in East and West Jerusalem although the resources and revenues of such businesses in East Jerusalem are much less than those in the West Jerusalem.

f) Zoning and Building

The 1965 Zoning and Building Law⁷¹ does not differentiate between citizens and residents. Conditions required for any person wishing to construct a building, including the requirement to issue a building license, apply to all people in the city. However, the discriminatory policy adopted by the Israeli Government and the Jerusalem municipality, in terms of zoning and building in Jerusalem has caused a complicated housing crisis in Arab neighborhoods, forcing a large number of East Jerusalem residents to meet their need for housing space in villages and suburbs around Jerusalem. This policy has two main features. The first is the intensive confiscation of Arab lands that took place between the years 1968 -1970 and later in 1980, in 1982 and in 1992, for the establishment of Jewish settlements, leading to a shortage in lands available for Arab building and to the development of the Jewish community in East Jerusalem.⁷²

The second feature of the Israeli discriminatory policy is the neglect of the needs of the Arab population. Building and development plans have been focusing mainly on finding solutions and meeting the needs for the Jewish community. The proportion of the “open green” land in this plan was 25% while the allotted ratio of the construction area to the land area in Arab neighbourhoods ranges between 50% and 75%, compared to 125% in some Jewish neighbourhoods.

As a natural result of Israel’s zoning and building policy, the Arab population of Jerusalem has been forced to resort to unlicensed building in order to solve their housing problems. Jerusalem municipality has responded to this by issuing administrative orders of demolition whenever the building is detected before being erected and inhabited. The municipality has also filed lawsuits before the Municipal Affairs Court against those who have already built and inhabited an unlicensed house and obtained court orders of demolition. Finally, it is estimated that approximately 20,000 buildings in East Jerusalem have been built without permits, that is, 40% of the total number of buildings.⁷³

g) Social security benefits

The Social Security Agency pays different benefits to eligible persons under the Social Security (Combined Text) Law of 1995,⁷⁴ which replaced and introduced numerous amendments to the Social Security (combined text) Law of 1968. The 1995 law came to ensure a certain level of social welfare, particularly for vulnerable social groups.

68 Imposed in accordance with Land Improvement Tax Law, 1963, Published in Compilation of Israeli Laws, No. 405, 1963, p.156.

69 Imposed in accordance with Property Tax and Compensation Fund Law, 1961, Published in Compilation of Israeli Laws, No. 337, 1961, p.100.

70 For example, there are 67 parks in west Jerusalem and 3 in east Jerusalem, and in most places there are no pavements for pedestrians to use.

71 Published in the Compilation of Israeli Laws, No.467 (12-8-1965), 1965, p.307.

72 Between the years 1968 and 1970, not less than 16,991 dunams were confiscated for “public use” and used in fact to built the following Jewish settlements: French Hill, Ramat Eshkol, Ramot, Gilo, Talpiot Mizrah, Neve Yaakov, Maalot Dafna and Atarot. In 1980 another 4400 dunams were confiscated and used to build Pisgat Ze’ev settlement. See: Halabi Usama, *The Legal Status of Jerusalem and its Arab Population*, p. 21-22 and references cited in

73 Margalit, Meir, *No place like Home-House Demolition in East Jerusalem*, ICAHD. Jerusalem. 2007.

74 Published in the Compilation of Israeli Laws, No. 1522, 1995, p. 210.

Benefits payable under the 1995 Law include: benefits for elderly people,⁷⁵ for widows,⁷⁶ work-related injuries,⁷⁷ maternity benefits that include a hospital allowance, a birth allowance and a birth benefit,⁷⁸ child benefits,⁷⁹ unemployment benefits,⁸⁰ disability benefits,⁸¹ and benefits to ensure the rights of the workers in case the employer becomes bankrupt or the company is resolved.⁸²

Initially, the agency did not require recipients to live within the municipal boundaries of Jerusalem according to a decision made on 13 February 1973 by an inter-ministerial committee created by the Israeli Government. However, the official policy in this regard has changed rapidly and the Jerusalemites who moved to live outside the municipal boundaries stopped receiving social security benefits on the pretext they were living outside Israel.⁸³ The Social Security Agency interpreted the inter-ministerial decision made in 1973 as securing the rights of the population to benefits for children born in Jerusalem **before** the date their families moved to live in the aforementioned suburbs. Children born **after** that date were denied these benefits.

While a significant number of the East Jerusalem have lost their benefits due to living outside the municipal boundaries, Jewish settlers receive social security benefits in spite of their residency in the West Bank and Gaza Strip.

Following the signing of the Oslo accords and their endorsement by the Knesset, amendments were made to the Social Security Law affecting and even annulling rights that had been gained by Palestinian residents of East Jerusalem who had moved to the West Bank (“Judea and Samaria”) or Gaza Strip under the 1987 Regulations (Rights and Duties of Those Not Residing in Israel) or the 1993 Regulations (Payments to Jerusalem Residents Who Moved Their Place of Residence to Judea, Samaria and Gaza Strip).

h) Health insurance

The right to obtaining medical treatment under the Official Health Insurance Law of 1994⁸⁴ is also conditional on the concerned person being a “resident” of Israel. Thus, losing the right of residency in Jerusalem leads to losing the right to obtaining medical health. For the purposes of this law, a “resident” means the “resident” under the Social Security Law, which includes “Israeli residents in the territory” under article 378 of the Law, i.e. Jewish settlers living in the occupied West Bank.⁸⁵

The start of the third millennium witnessed more constraints on family unification and increased risks of losing residency and social benefits. The period since the start of the third millennium has been characterized by continued implementation and intensification of Israel’s discriminatory policy.

a) Citizenship and Entry to Israel Law (Temporary order)

This law was enacted on 6/8/2003 to limit the possibility of family unification for Palestinian Jerusalemites and their Palestinian spouses from the West Bank and Gaza Strip. This law applies to those who are registered in the population registry of the “territory” or living in the “territory”. In addition, this law prevents the promotion of the non-Jerusalemite spouse from his/her status to a higher status under the Entry to Israel Law.⁸⁶ Those whose applications for family unification were approved and who obtained a visa for a stay in Israel (B visa) will not obtain – after the required 27 months – a permit for temporary residency (A/5 visa), which in addition to the right to work

75 Article 244 of the Social Security Law.

76 Article 252 of the Social Security Law.

77 Articles 75-157 of the Social Security Law.

78 Articles 39-64 of the Social Security Law.

79 Articles 65-73 of the Social Security Law.

80 Articles 158-179 of the Social Security Law.

81 Articles 195-222B of the Social Security Law.

82 Articles 180-192 of the Social Security Law.

83 Usama Halabi, *The Legal Status of Jerusalem and its Arab Population*, p. 114.

84 Published in the Compilation of Israeli Laws, No.1469, 1994, p.156.

85 Article 2 of the Official Health Insurance Law.

86 Published in the Compilation of Israeli Laws, 1952, No. 111, p. 354.

in Israel, is accompanied by the right to receive benefits from the Social Security Agency or the right to receive health services. The provision halting the promotion from one visa to another has been applied retroactively. This has resulted in large numbers of spouses from the West Bank holding the same visa for many years and not knowing when they will finally achieve “family unification” by permanent residency.⁸⁷

This Temporary Order came to replace the governmental decision No. 1813 issued on 12 May 2002, which provided for suspending all decisions regarding family unification and closing all the doors for any new applications, including the registration of children born outside Jerusalem or in Jerusalem for a Jerusalemite mother and a West Bank or Gazan father. The pretext used to justify this decision is that perpetrators of some suicide bombings inside the Green Line had received assistance and guidance in reaching the place of the bombing from persons carrying an Israeli ID obtained through family unification.⁸⁸ Although this justification was security-related (and used for the subsequent temporary law), the primary goal was to prevent large numbers of Palestinians from outside Jerusalem from entering the city and other cities in Israel through marriage, followed by family unification.

The Citizenship and Entry to Israel Law (Temporary Order) was amended on 27 July 2005,⁸⁹ where slight positive changes were made, opening the door for applications for family unification of non-Jerusalemite husbands over the age of 35 years and of non-Jerusalemite wives over the age of 25.⁹⁰ Additionally, the interior minister was allowed to grant a permanent or temporary residency visa to children up to the age of 14. However, the effect of the Temporary Order has since been restored upon a Government decree under article 5 of the Temporary Order,⁹¹ indicating the Government’s strong will to continue with its discriminatory policy towards the Palestinian population.⁹²

It is worth noting here that the constitutionality of the Temporary Order was affirmed by a majority of the Israeli High Court of Justice in the case of 7052/03 *Adalah and others v the Interior Minister and others*, on 14 May 2006.⁹³

It should be noted that the Israeli justice minister has recently proposed a draft law to amend the Basic Law: Human Dignity and Freedom aiming at preventing the Israeli High Court from examining petitions on the constitutionality of decisions issued under the Return, Nationality and Entry to Israel laws. The main purpose is to prevent the possibility of invalidating the Nationality and Entry to Israel law (Temporary Order).

Conclusion

Israel has adopted a policy aimed at ensuring its control over East Jerusalem and other areas occupied in 1967, and at strengthening the Jewish presence in Jerusalem at the expense of Arab presence. To achieve these goals, Israel has applied its administrative tactics and its national laws as political tools.

However, East Jerusalem has been and remains an occupied area, governed by the laws of armed conflict relating to occupation. Under these laws, the occupying power is prohibited from altering the city’s features and geography and from imposing constraints on its population with the aim of forcing them out. International law does not acknowledge annexation, nor does the act of occupation, no matter how long it lasts, grant the occupier

87 The Author has handled a larger number of cases of people suffering from this problem.

88 In a brief submitted to the Israeli Supreme Court, setting as High Court of Justice (HCJ 7052/03, 7102/03, 7642/03, 7643/03, 8099/03 8263/03,1065/03 *Adalah and others vs Ministry of Interior and others*) the State Attorney, representing the Interior Ministry, claimed that the number of Palestinians holding Israeli IDs and involved in such incidents was 26. Whereas the total number of those obtained Israeli ID through family unification was several thousands.

89 The Amendment was published in the Compilation of Israeli Laws, 2005, No. 2018, p. 544.

90 The explanation given to this amendment was that those involved in attacks inside Israel were within an age group below this age. See Article 3 of the Law.

91 The decree was published in the Compilation of Israeli Regulations, 2006, p.657.

92 Veiler-Polak, Dana, “The Government Approves the Proposal by Minister of Interior to Extend the Effect of the Temporary Order Concerning the Citizenship and Entry to Israel Law”, Haaretz Newspaper, 20 July, 2009. www.haaretz.com/hasite/spages/1101200.html .

93 HCJ 7052/03, 7102/03, 7642/03, 7643/03, 8099/03 8263/03,1065/03 *Adalah and others vs Ministry of Interior and others* (not yet published). The decision can be found on the following website: www.pador.co.il.

sovereignty.⁹⁴ The occupier may have the authority and administration but sovereignty remains in the hands of the occupied people i.e. the Palestinian people.⁹⁵

The continued presence of the Palestinian population in Jerusalem is testament to their resilience and fortitude in the city, and constitutes a main factor in ensuring the success of any future solution seeking to make Jerusalem also “the Capital of the Palestinian State”.

International law

International law prohibits the imposition of domestic law on territory under occupation unless it is for the exclusive benefit of the occupied population or on narrowly defined grounds of military necessity or public order.

The implications of the revocation of residency leads to the direct violation of international law. After residency is revoked the Palestinian resident must leave the city. Article 49(1) of the Fourth Geneva Convention explicitly prohibits the transfer of Protected Persons from occupied territory.

Article 4 of the Fourth Geneva Convention defines Protected Persons as:

those who, at any given moment and in any manner whatsoever, find themselves, in the case of a conflict or occupation, in the hands of a Party to the Conflict or Occupying Power of which they are not nationals.

As an Occupying Power, Israel is required to do the following:

- guarantee that Protected Persons are treated humanely at all times, without any adverse distinction based on race, religion, or political opinion, and that they are protected from all forms of violence (Article 27, Fourth Geneva Convention);
- respect their rights to life, family honour, private property, and religious conviction (Article 46, the 1907 Hague Regulations);
- ensure access to adequate levels of food and medicine as well as the maintenance of medical establishments and public health services (Articles 55 and 56, Fourth Geneva Convention); and
- ensure Protected Persons are not deprived of their benefits by any change resulting from the occupation including the annexation of parts of the occupied territory (Article 47, Fourth Geneva Convention).

Palestinian residents of East Jerusalem remain Protected Persons under international law and Israel’s claims to Jerusalem as its ‘undivided capital’ do not discharge it of its obligations towards them.

94 See especially Part III, Section III of the Geneva Convention relative to the protection of Civilian Persons in Time of War. Geneva, 12 August 1949. Available at www.icrc.org/ihl.nsf/FULL/380?OpenDocument

95 The right to self-determination of peoples is recognized in the Charter of the United Nations as well as international human rights law. See especially Article 1 of the International Covenant on Civil and Political Rights (1967) and General Comment 12 of the Human Rights Committee, 13 March 1984. Both available at www.ohchr.org.

Land Confiscation and Settlement Construction in Occupied East Jerusalem

Khalil Tufakji

Director of the Maps Department of the Arab Studies Society

Legal, political, historic and geographic considerations played a significant role in the demarcation of the Jerusalem Municipal boundaries. In the mid-nineteenth century, Jewish neighborhoods began to appear and were included in the boundaries of Jerusalem for the political purpose of achieving a Jewish majority in the city.⁹⁶ The British Mandate Government and the Zionist leaders set the demarcation of the municipality boundaries in relation to the Jewish presence. At the time, the area of the Jewish quarter in the old city of Jerusalem did not exceed 5000 m² and its population did not exceed ninety families.

The boundaries were extended several kilometers to the West up to Giv'at Sha'ul, Shkhunat Mantifyori, Beit ha-Kerem, Shkhunat ha-Poalim and Beit Fajan, which was, located 7 kilometers away from the city walls, while the extension to the south and east was limited to a few hundred meters, and stopped at the entrances of the neighboring Arab villages of the city. Arab villages connected to the city were excluded from the Israeli-drawn boundaries including the sizeable villages of at-Tur, Shu'fat, Lifta, Deir Yassin, Silwan, al-Isawiya, Ein Karem, al-Malha and Beit Safafa.

In 1921, the demarcation of the boundaries of the municipality was established to include the Old City and a cross section of 400 meters along the eastern side of the wall of the Holy City in addition to the neighborhoods of Bab as-Sahira, Wadij-Joz, Sheikh Jarrah from the north. From the south, the line of the boundaries ended on the city wall, while from the west, with an area that exceeds the eastern part several times, the boundaries included the large concentrations of the Jewish communities in addition to some Arab ones (al-Qatamon, al-Bak'a al-Foqa and al-Bak'a al-Tahta, al-Talbeiyia, al-Wa'reya, Sheikh Bader and Ma'man Allah).

In 1946, the second scheme of the municipality boundaries was done to expand the services in the area. However, the expansion again focused on the western side in order to include and annex the new Jewish neighborhoods that remained outside the area of the general planning. In the eastern part of the city, the village of Silwan was added from the south in addition to both ath-Thawri and Wadij-Joz, with a total area of 20,199,000 m². The ownership of these lands was distributed as follows:

1	Muslim properties	40%
2	Jewish properties	26.12%
3	Christian properties	13.86%
4	Governmental and municipal properties	2.9%
5	Roads, Railways	17.12%
Total		100%

The UN partition plan of 1947 designated Jerusalem as a separate region (corpus separatum) located between the two states (the Arab and the Jewish) and subject to a special international regime administered by the United Nations by a Trusteeship Council which will be formed for this purpose.

The partition plan determined the boundaries of Jerusalem subject to the proposed internationalization to include, in addition to the same city (Abu Dis from the east, Bethlehem from the south, Ein Karem, Mutsa, Kalonia from the west, and Shu'fat from the north).

⁹⁶ The demarcation of the municipal boundaries was established in such a way to include the Jewish neighborhoods and exclude neighborhoods with an Arab majority for the political purpose of creating a Jewish majority in Jerusalem.

But the war in 1948 and the escalation of violence following the partition resolution led to the division of the city into two parts. On 30 November 1948, the Israeli and Jordanian authorities signed a ceasefire agreement, after dividing Jerusalem between the eastern and western parts of the city on 22 July 1948. Thus, by the end of 1948, Jerusalem was divided into two parts and its borders were set as a result of the cease-fire line as follows:

1	Palestinian areas under the Jordanian control	2,220,000 m ²	11.48%
2	Occupied Palestinian areas (Western part)	16,261,000 m ²	84.12%
3	No man zones and United Nations zones	850,000 m ²	4.39%
Total		19,331,000 m²	100%

The first scheme that shows the boundaries of Jerusalem Municipality (East Jerusalem) was ratified on 1 April 1952; the following areas were included within the areas under the municipality jurisdiction: the village of Silwan, Ras al-'Amud, al-Suwaneh, Ard as-Samar, and the southern part of the village of Shuḥfat. The area under the municipality authority became 6.5 km² while the constructed area was only 3 km².

In one of the sessions of the Jerusalem Municipality on 22 June 1958, the Council discussed the project of expanding the municipality boundaries northward to include an area 500 meters wide from both sides of the main road leading to Ramallah and extending to the Kalandia airport. Discussions over the expansion of the municipal boundaries for a major urban scheme for the city continued without conclusion until 1959.

In September of 1959, the transformation of Jerusalem Municipality into the Jerusalem Secretariat was announced. The change in the titles was not followed by a change in the size of budgets or aid.

In 1964, after the 1963 elections, there was a recommendation to expand the narrow boundaries of Jerusalem Municipality to become 135 km², but the outbreak of the war in 1967 stopped the project, and the boundaries remained as it was in the fifties.

As for West Jerusalem, it was expanded to the west and south-west to include new neighborhoods such as Kiryat Yovel, Kiryat Menachem, Eir Ganim, the villages of Ein Kareem, Beit Safafa, Deir Yassin, Lifta, al-Malha to become an area of 38 km². The West Jerusalem Municipality began to prepare an Urban Scheme for the city in 1964 which was re-sketches in 1968.

1967 War and the Expansion of the Boundaries

In June 1967, war broke out and subsequently, at the end of the war, Israel occupied East Jerusalem and began its procedures for the Judaization of the city. The successive Israeli governments, of both "ha-Ma'rakh" and "ha-Likud", agreed on this policy and developed strategic and tactical programs to achieve this goal. After announcing the expansion of the boundaries of Jerusalem Municipality and its reunification on 28 June 1967, and in accordance with Israeli policy to control as much land as possible with the least possible number of Arab population, Rehba'm Ze'evi⁹⁷ drew the municipality boundaries to include the territories of 28 Arab villages and cities excluding their population centers.

The boundaries thus took a convoluted path with expansion of the Jerusalem Municipality from 6.5 km² to 70.5 km². The total area of both East and West Jerusalem became 108.5 km². Later in 1990, the boundaries expanded to the west, and the area of Jerusalem became 126 km² (See boundaries expansion table).

Laws and regulations followed for the Judaization of Jerusalem

- 1. Land Confiscation:** the Israeli authorities used confiscation laws based on the 'public interest' in order to establish the colonies. According to the Land Act of 1943 and through the Ministry of Finance and under the

97 Rehba'm Ze'evi was the military leader of Jerusalem district during the 1967 war, before his assassination at the beginning of the second Intifada, he occupied the position of the president of the right wing Moledet Party.

coverage of expropriation for the public interest, 24 km² of land was confiscated, equivalent to 35% of the area of East Jerusalem. Fifteen Israeli colonies were established and 60 thousand housing units were built. The law of expropriation for the public interest is one of the most prominent laws used by Israel to seize the Palestinian lands that were considered the vital space for their construction development.

- 2. The Laws of Zoning and Construction:** the Israeli authorities used the laws of zoning and construction to limit the physical growth and control this growth through organizing and planning. Since the early days of occupation, Israel started closing areas around the Old City announcing them as green areas and prevented any building on them. 40% of the total area of East Jerusalem became green areas and were considered strategic reserve for the construction of the settlements, as the Abu-Ghneim Mountain, and the area of ar-Ras in the village of Shu'fat. Those areas were converted from green areas to settlement construction to later become Har Homa in the case of Abu Ghneim and Ramat Shlomo in Shu'fat.

Construction and growth has therefore been severely restricted, with 13% of the annexed area zoned by Israeli Authorities for Palestinian construction, within which Palestinians may apply to obtain a building permit.⁹⁸

- 3. Absentees' Law:** The Absentees' Property Law of 1950,⁹⁹ which was enacted for land confiscation, is also used as a tool to Judaize Jerusalem. This law states that property belonging to a person who was outside the borders of Israel during the census conducted by the Israeli authorities in 1967 will be transferred to the custodian of the absentees properties. The custodian is empowered to sell, lease or transfer the property to Jewish settlers.

Israeli Settlement Plans and Policies in Jerusalem

1. Greater Jerusalem in the Israeli Concept

The increase in numbers of the Arab population has formed an essential point of departure in drawing the lines of Greater Jerusalem.¹⁰⁰ In 1993, planning for "Greater Jerusalem" began under the leadership of "Binyamin Ben-Eliezer", the Minister of Housing at that time, and was supported by direct instructions from Yitzhak Rabin.

The objectives of this scheme was to create a clear contiguity for the Jewish population, reduce convergence and friction with the Arabs, strengthen the special status of Jerusalem as the 'capital of Israel', and link the settlements outside the municipality's boundaries with those inside it by passages to achieve a Jewish majority of 88 % and an Arab minority of 12%.

Thus, the final goal was to create a demographic majority to benefit Israel by implementing the vision of Ehud Olmert (the Mayor of Jerusalem at that time). Olmert's vision was to annex the settlement blocs outside the municipality boundaries, exclude the Arab communities from the city, separate the Palestinian areas from one another dividing the West Bank into cantons, controlling large parts of the West Bank and preventing any Palestinian geographic jurisdiction or sovereignty on the ground, and finally preventing the establishment of a Palestinian capital in Jerusalem.

2. Sharon's Project (The Gates)

Within the programmed policy of Judaization, and after surrounding the city with colonies, a new policy began in 1987 to establish settlement outposts in Arab neighborhoods. The Israeli authorities began establishing such outposts in the Old City, especially in the Muslim Quarter using various methods and laws to seize Arab properties. Settler societies with multiple names were established, supported directly or indirectly by the Israeli government, to control Arab property.

98 U.N. Office for the Coordination of Humanitarian Affairs Occupied Palestinian Territories, *The Planning Crisis in East Jerusalem: Understanding the Phenomenon of "Illegal Construction"* April 2009.

99 *Absentees Property Law 5710 (1950)* Israel Knesset.

100 Metropolitan of Jerusalem, *Foundation Plan and Development Plan/Interior Ministry and Housing Ministry, the administration of Israel's lands/ the municipality of Jerusalem 1994*, the official document.

Twenty-six settlement outposts were established outside the Old City within the Arab neighborhoods. The project began in Ras al-'Amood, and Mountain of Olives, Sheikh Jarrah, al-Mukaber Mountain, and then moved to the area of Wadij-Joz. These outposts were points of friction between Arabs and Jews as they expanded to surround the Arab neighborhoods and populated the area with Jews.

3. The Settlement Project E1

This project was announced in 1994 on an area of 12,443,000 m² of the lands of the villages of at-Tur, Anata, al-Eizariya and Abu Dis. The scheme that was designed and approved in 1997 by the Israeli Minister of Defense at that time, Yitzhak Mordechai, aimed at:

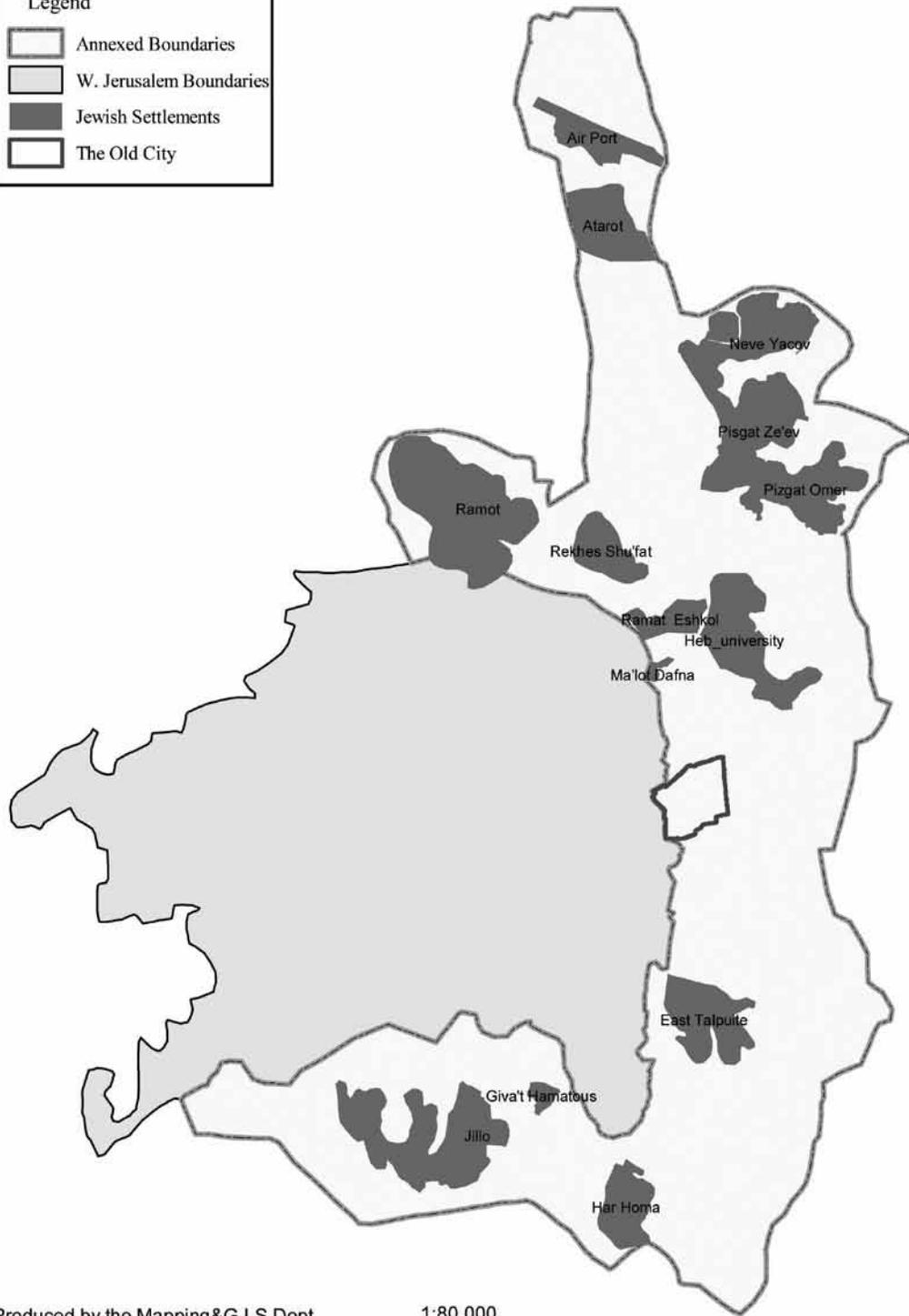
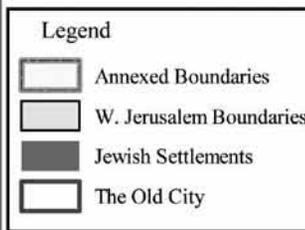
1. The establishment of an industrial zone on an area of 1 km².
2. The establishment of 4000 housing units.
3. The establishment of 5 hotels.

The E1 scheme is considered one of the most dangerous for the following reasons:

1. The complete closure of the eastern parts of Jerusalem district and the surrounding of these parts (Anata, at-Tur and Hizma), thus leaving no possibility of their future expansion to the East.
2. Links all the settlements situated in the eastern areas and outside the municipality boundaries of Jerusalem with the settlements within the municipality boundaries of Jerusalem. Thus, making the Arab villages segregated areas surrounded by colonies.
3. The establishment of Greater Jerusalem in the Israeli concept with an area of 600 km², or the equivalent of 10% of the West Bank.
4. The large increase in the Jewish population within Jerusalem Municipality boundaries to counter growth in the Arab population, which is 35% of the total population.



Map 3: Areas occupied by jewish settlements within the annexed Arab areas



Produced by the Mapping&G.I.S Dept

1:80,000

4. Paralyzing the Center of the Arab City

Following the encircling of Jerusalem from all sides with colonies, the establishment of thousands of Jewish housing units housed with Israeli settlers, and the confiscation of 34% of the area of Jerusalem,¹⁰¹ another phase of the process of Judaization had begun.

This phase concentrates on directing a blow to the nerve of the Palestinian economy by declaring the new scheme for the city center with the aim of restricting the commercial activity by challenging and thus destroying trade and industry in the Arab city.

Business has extended very little beyond the two rows of shops and offices that existed before 1967 in Salah-Din Street, which was considered a major commercial zone.

The municipality is now conducting radical changes in the historic commercial area. Trucks, public vehicles parking, and peddlers on the streets will be removed to clean up the streets surrounding the walls of the Old City, and the making Salah-Din Street into a pedestrian passage, thus adopting radical changes in traffic movement. Another targeted area is al-Musrarah. It has been destroyed by establishing separating streets and making the whole area a general parking lot.

Thus, the Israeli plan is to transfer economic activity from the center of the city of East Jerusalem to West Jerusalem. These changes will gradually weaken the economy of East Jerusalem and its traditional status as a commercial center.

5. Designating Jerusalem a National Priority under the Jerusalem Regional Plan

On 24 October 2010, the Israeli Knesset's Ministerial Committee on Legislative Affairs unanimously approved a draft law to officially judaize Jerusalem as a Jewish national priority area, including Palestinian neighbourhoods in occupied eastern Jerusalem based on amendments to the regional urban district plan MM1m under 'Plan Number 30'. According to Plan 30, Jerusalem will be promoted as the "united Jewish capital" for the Jewish majority as "the heart of the Jewish people" and the cultural and spiritual centre for Jews in Israel and the world-over.

The Plan will grant financial and national priority status to the development of Jerusalem in housing, employment, education, welfare, culture, industry, tourism, public infrastructure and immigration absorption to encourage young Jews to settle in Jerusalem as part of the implementation of the government's demographic policy to preserve a 70% Jewish majority by offering affordable housing and tax benefits.

A greater budget has been allocated for the construction of new Jewish settlements in Jerusalem to be supported by the construction of an advanced transportation network (railway, roads, bridges) linking Jewish settlements to the city, which will necessitate the confiscation of further land the forced displacement of more Palestinians through home demolitions and forced evictions.

6. Scheme 2020

Scheme 2020 emerged following alarm regarding the growth of the Arab population in Jerusalem by Israeli planners. The objective of Scheme 2020 is to reduce the Palestinian presence in the city, especially during this crucial stage of transition for Jerusalem. Budget surplus for housing units and the areas of development are exclusively allocated for Jews in order to attract new residents and prevent their migration from East Jerusalem.

The scheme caters to the increase in population by granting permits to add new floors to existing buildings but does not take into account the need for establishment of new infrastructure to absorb the growing number of Palestinians and new residents. Based on this scheme, rural areas, where construction is prohibited, are located in the Arab areas.

Noting that of the 9,500,000m², which is the space allocated for the establishment of 47,000 Israeli housing units, construction will be done with certainty because the Israeli government and its construction companies have their own system in construction and selling the apartments. This means that the absorptive capacity for designated

Jewish areas in the scheme will be executed according to the set plan, while the planned Arab construction will remain uncertain.

Continuation of the Settlements Policy post the Annapolis Agreement (Real Estate Registration Project)

The company for the development of the Jewish quarter is working on the registration of 1,300 properties in the Old City in the lands registry called Tabo, which includes 585 housing apartments, 146 shops and more than 60 public institutions. It should be noted that before 1948, the so-called Jewish quarter had an area of no more than 5,000m² of which the majority was located in Haret ash-Sharaf. There were some Jewish properties in the Muslim Quarter, which were managed by the “Jordanian custodian of the enemy’s properties”, in accordance with the decision taken by the Minister of the Interior at that time, Wasfi Mirza, on 16 September 1950, and published in the Official Gazette No. 3035.

In 1968, the confiscation of 116,000m² of the lands of the Old City was announced according to a confiscation order for the public interest, No. 5 b/a/108/322 and was published in the Official Gazette No.1443. In accordance with this order, 790 properties belonging to the following were confiscated:

Islamic Wakf	15 residential	1.9%
Inherent Wakf	382 residential	48.6%
Private properties	257 residential	32.5%
Christian consecration	9 residential	1.1%
Jewish properties	121 residential	15.3%
Public facilities	6 Municipality	0.8%
Total	790	100%

The statistics show that the properties belonging to the Arabs equal 84% of the total land confiscated in 1968. The claim that these properties did not have historic documentation in the Ottoman, English and Jordanian period is inaccurate because the British government records had divided the Old City into 59 blocks, numerating each block, each house, and even the number of rooms in each house.

Conclusion

It is evident that the occupation authorities have created a new political and demographic reality in the city of Jerusalem; a Jewish demography at the expense of the Palestinian geography through land confiscation, settlements construction, green areas, house demolition policy and the refusal to grant building permits. All the aforementioned Israeli violations against the Palestinian land and people have created a demographic imbalance.

The Number of Israelis in East Jerusalem During Selected Years*

The years	The number of settlers
1972	6,900
1977	33,000
1981	59,000
1986	103,900
1991	137,400
1995	157,300
1999	170,400
2002	175,617
2006	182,000
2008	193,000
2010	200,000

* The Central Bureau of Statistics

Israeli Settlements within Jerusalem Municipality Boundaries, the Area and Number of Inhabitants

Name of the colony	Area in 1000 m ²	Number of inhabitants
Eastern Talpeot	1,195,000	12,591
Gilo	2,859,000	27,569
Abu Ghneim Mountain, Giv'at ha-Matos	2,523,000 + 310,000	1125
Giv'at ha-Miftar	588,000	2,948
The French hill	2,018,000	6,631
Ma'lot Dafna	380,000	3,617
Neve Yacov	1,759,000	20,250
The Jewish Neighborhood	122,000	2,348
Pisgat Ze'ev	5,467,000	38,684
Ramat Eshkol	397,000	3,046
Ramot Sholomo	1,126,000	12,822
Ramot	4,979,000	38,992
Sanhadrea	378,000	4,994
Total Area	24,754,000 (Equal to 35%)	175,617 number of settlers on 2002
		193,000 number of settlers on 2008
		200,000 number of settlers in 2010

International law

Under international humanitarian law, Article 49(6) of the Fourth Geneva Convention states that: 'The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies.' UN Security Council Resolutions 446, 465, 485, all recognize that both the West Bank and East Jerusalem have been under Israeli occupation since 1967 and as such must be governed by the practices and norms of humanitarian law.

In a 2004 advisory opinion, the International Court of Justice held that settlements amount to a violation of international law. The Rome Statute of the International Criminal Court defines 'the transfer directly or indirectly by the Occupying Power of parts of its own civilian population into the territory it occupies' as a war crime.

Perhaps most pronounced remains Security Council Resolution 465 which states that, 'Israel's policy and practices of settling parts of its population and new immigrants in [the Palestinian and other Arab territories occupied since 1967, including Jerusalem] constitute a flagrant violation of the Fourth Geneva Convention... and a serious obstruction to achieving a comprehensive, just and lasting peace in the Middle East'.

Several important provisions of human rights law are also relevant to the question of settlements. The ideological motivation behind settlements is based on securing the biblical land of Israel, thus avoiding the division necessary to achieve a two-state solution. This continuous growth of settlement makes the realisation of a Palestinian state more difficult to achieve and thus represents a violation of the right to self-determination.

On the right to property, the right to an adequate standard of living and freedom of movement of the Palestinian people all are compromised by the existence of Israeli settlements

Forced Displacement and Ethnic Cleansing Israel's Violations of Palestinian Rights to Residency in Jerusalem

Dr Nizar Ayyoub
Legal Researcher – Al Haq

The goal of this study is to examine the extent to which Israeli policies and measures aimed at increasing the Jewish presence in Jerusalem and minimizing the Palestinian can be classified as forced displacement amounting to ethnic cleansing. To this end, the study will provide a background to the legal status of Jerusalem, and detail the policies and methods adopted in Jerusalem by Israeli authorities to expel Palestinians from the city, analyzing these within the context of relevant international law. The study will also provide definitions of forced displacement and ethnic cleansing, analyzing the application of these terms within the context of Jerusalem and its Palestinian residents.

Israeli Measures against Palestinian Citizens in Occupied Jerusalem

The application of Israeli law to East Jerusalem as a result of its annexation to Israel has led to the denial of Palestinian residency in Jerusalem and has caused the disintegration of Palestinian families, and severe restrictions related to the registration of newborns, access to education, delivery of health, social and other services, housing, and construction.¹⁰²

All Palestinians, and Jerusalemites, in particular, have become extremely vulnerable to Israeli policies and measures, including legislation adopted to undermine the social fabric and economic structure of the city, and deprive them from essential conditions to ensure an adequate standard of living. As a result, Palestinian families in Jerusalem have been face a daily struggle to defend their rights, primarily the right to live in Jerusalem in dignity, and rights to housing, education and health.

Means Used to Deprive Palestinians of the Right to Residency in Jerusalem

Following the illegal annexation of Jerusalem, the occupying authorities initiated a register for the Palestinian residents, who were dealt with as 'permanent residents' in Israel, provided they could prove they were actually living in the City and were present during the registration. Conditions imposed by the occupying authorities to allow Palestinians to live in Jerusalem represented the initial steps towards the goal of reducing the proportion of Palestinians in the City. The right to residency was restricted to those who were present in the City during the 1967 Israeli census, while those living outside the city at that time were automatically excluded, including those living outside the municipal borders as delineated by the Israeli interior ministry in June 1967. As a result, these families were denied the status of permanent residents and were not allowed to return to their homes.

The Israeli authorities granted the "right to permanent residency" according to the provisions of the Entry to Israel Law of 1952. Palestinian Jerusalemites were and still are considered "residents" in Israel and not "citizens", which means they are not entitled to the permanent rights ensured by the nationality laws, and thus they are forced to comply with conditions required for residency in Israel similar to foreign nationals coming from abroad under the aforementioned 1952 law.¹⁰³

Since then, whenever Palestinians leave Jerusalem to live abroad or in the West Bank or the Gaza Strip for a relatively long period of time, they risk losing their right to permanent residency in the City. Article 11(a) of the

¹⁰² Musa Al-Qudsi Al-Dweik, *Jerusalem and the International Law, A Study on the Legal Status of the City and the Israeli Violations of Human Rights*, 2002, p. 53.

¹⁰³ Ibid, pp. 60-61.

Entry to Israel Law stipulates that permanent residency is forfeited when its holder lives in a foreign country for seven years, obtains permanent residency in a foreign country or becomes a national of a foreign country, which also includes Palestinians living outside the municipal borders of Jerusalem as delineated by the Israeli authorities following the occupation of the City.¹⁰⁴

In 1988, the Israeli Supreme Court issued its ruling in Mubarak Awad's case, employing a new criterion for proving residency – domicile – as a condition for Palestinians to maintain their permanent residency status in Jerusalem. Based on this principle, the Israeli interior ministry has the authority to withdraw the Jerusalem ID card of a resident whose "domicile" proves to be outside the municipal borders even if for less than seven years.¹⁰⁵

Starting from 1995, the Israeli authorities have employed these measures on a large scale, applying strict measures against Palestinians living outside the City and creating various obstacles to undermine their right to residency and prevent them from returning to Jerusalem. Such measures have affected tens of thousands of Palestinians who were forced by difficult housing conditions in the City to live in adjacent neighborhoods. The same problems were faced by Jerusalemites living outside Jerusalem with spouses who do not hold a Jerusalem ID and whose requests for family unification and child registration have become almost impossible to get approval for. As a result, thousands of families have been fragmented and an equal number of Palestinians have been subjected to forced migration from the City.¹⁰⁶

In addition, the National Insurance Agency has since 1984 begun to impose strict measures against Jerusalemites, withholding social security allowances for those Palestinians who live outside the "municipal borders". In 1993, the Israeli Supreme Court affirmed the position in favor of depriving Jerusalemites residing outside the "municipal borders" from benefits and services.¹⁰⁷

The Impact of the Nationality and Entry to Israel Law of 2003 on Palestinians

In May 2002, the Israeli Government adopted resolution 1813 in regard to "addressing the issues of illegal residence in Israel and the policy of unification of families with a member of Palestinian origin or from the West Bank or Gaza Strip".¹⁰⁸ This resolution provided for the inapplicability of nationality or permanent residency to spouses of persons with Israeli nationality or permanent residency, when the spouses have Palestinian origins or are Palestinian residents of the occupied territories.¹⁰⁹

In cases where such spouses have already obtained a permit for status, such status shall not be advanced to a higher level and shall be frozen, for example keeping "temporary resident" as temporary and not advancing the status to that of "permanent resident".¹¹⁰

104 <http://www.e-xam.at/pdf/art11aIsl.pdf>; <http://www.pij.org/details.php?id=505>

105 *Mubarak Awad v Prime Minister and Interior Minister in Israel*, Israeli Supreme Court No. 282/88. See, Halabi, *Israeli Laws and Judicial System as Tools for Accomplishing Political Objectives*, op. cit., pp. 10-11, and *Space and People*, op. cit. pp. 38-39.

106 According to the joint report published in October 2006 by B'Tselem and Center for the Defense of the Individual and HaMoked, the Israeli occupying authorities have been denying family unification of Palestinians in the oPt with their spouses from outside the territories for over six years. Since the beginning of the second Intifada, over 120,000 applications for family unifications have been submitted to the Israeli authorities, who have consistently failed to consider and process them, except for very few cases that have been processed as «special humanitarian cases.» In this regard, see the above-mentioned report titled, «Perpetual Limbo: Israel's Freeze on Unification of Palestinian Families in the Occupied Territories».

107 Osama Halabi, *Israeli Laws and Judicial System*, op. cit, p. 11, Musa Al-Qudsi Al-Dweik, op. cit, pp. 48-49. Hanadi Al-Zghayar. *Silent Displacement: Cancellation of Palestinian Residency in Jerusalem, Preliminary Report*, Arab Thought Forum, May 2007. pp. 22-23.

108 Adalah Legal Center for Arab Minority Rights in Israel. *Ban of Family Unification* <http://www.adalah.org/eng/famunif.php>, http://www.adalah.org/features/famuni/2002H_1813government_decision.pdf (2007).

109 Through the annexation of East Jerusalem, the Israeli occupying authorities deal with the occupied City and its Palestinian residents holding permanent residency status as «part of Israel». This move is unlawful and in breach of international law. The Israeli authorities consider this resolution as applicable to Jerusalem and its residents, thus freezing all family unification processes.

110 Upon the promulgation of this resolution, Adalah - The Legal Center for Arab Minority Rights in Israel appealed to the Supreme Court against the Israeli government's resolution in regard to the unification of 14 families. The appeal contested the legality of the resolution on the basis of its clear discrimination against Palestinian citizens in Israel on an ethnic basis and violates their constitutional and human rights to build a family life with their spouses based on their own choices and/or with their young children on equal footing with all human beings.

The resolution is indisputably targeted at Palestinians wherever they happen to be (in Israel, the oPt, or abroad) as it applies exclusively to Palestinians and those of Palestinian origins, and allows non-Palestinians and those of non-Palestinian origins to proceed with their applications for obtaining Israeli nationality and/or permanent residency when they are married to Israeli spouses.¹¹¹

The Israeli government transformed this resolution into law on 31 July 2003 by enacting the Nationality and Entry into Israel Law (temporary order) of 2003, which prevents Palestinians and persons of Palestinian origins married to Israeli citizens or holders of permanent residency in Israel from living with their spouses in Israel.¹¹² In view of the illegal annexation of Jerusalem and Israeli treatment of the City as “part of Israel”, this law severely affects Jerusalemites and their children born outside the City, denying them the right to register at the Israeli interior ministry. In practice, this law has meant a total freezing of family unification measures.

The Supreme Court Support for the Policies of Residency Cancellation and Freezing of Family Unification

Measures to isolate Jerusalem and reduce the proportion of Palestinians in the City have been continuously supported by the Israeli Supreme Court. For example, in *Mubarak Awad v the Prime Minister*,¹¹³ the judges endorsed the decision of the interior minister to withdraw the permanent residency of Mubarak Awad because he left Jerusalem to the United States to pursue his studies, married there and obtained American citizenship.¹¹⁴

Following the Knesset’s approval of the Nationality and Entry to Israel law, several Palestinian and Israeli human rights organizations appealed to the Israeli Supreme Court, contesting the legality of the law and calling for its revocation based on its violation of international human rights law, in particular, racial discrimination through its specific targeting of Palestinians. However, the Supreme Court rejected these appeals.¹¹⁵

Six out of the 11 judges agreed with the appellants’ claim that the provisions of the law violate the basic rights to family life and equality. However, they accepted the reasons submitted by the authorities, which claimed the law is invoked by security needs.¹¹⁶ A majority of six judges against five rejected the appeal submitted by the human rights organization, Adalah, as well as six other associated appeals, including that of the Association for Civil Rights in Israel, based on its violation of the right of Israeli citizens to family unification with their Palestinian spouses from the oPt.¹¹⁷

The President of the Supreme Court, Justice Aharon Barak, representing the minority position, considered that the issue at stake is related to the right of Israeli citizens to equality and practice of their family life under the provisions of the basic law on “human’s dignity and liberty”, which entitles Israeli citizens to practice their family life with their spouses in Israel. Justice Barak added, “here are their houses and their communities, here are their historic, cultural and social roots... this is targeted at Arab citizens in Israel”. Based on this, Justice Barak concluded that the law should be revoked based on its unconstitutionality.¹¹⁸

111 Supra, note 39.

112 Supra, note 39.

113 *Mubarak Awad v Prime Minister and Interior Minister*, Israeli Supreme Court No. 282/88.

114 http://www.factsandlogic.org/ad_17.html.

115 These appeals were submitted by Adalah - The Legal Center for Arab Minority Rights in Israel and HaMoked – The Center for the Defense of the Individual. The appeal submitted by HaMoked stressed on the damage inflicted to Palestinians in East Jerusalem who are married to spouses living elsewhere in the oPt (outside the borders of Jerusalem as delineated by Jerusalem municipality following the annexation of the city). It should be noted that in issuing their ruling, the judges neglected the issue of threat caused by the law to the fate of children.

116 *Mubarak Awad v Prime Minister and Interior Minister in Israel*. Israeli Supreme Court No. 282/88.

117 The Israeli politicians, officials and government members did not conceal the real aims of this law. They publicly stated that the purpose of this law is first and foremost demographic, i.e., to limit the proportion of Arab population in Israel and maintain the Jewish majority. This proves the Supreme Court’s lack of independence by their giving legitimacy to the official policies of consecutive Israeli governments, whether related to Palestinians in the oPt or inside the Green Line.

118 Adalah Legal Center for Arab Minority Rights in Israel considers this case an illustration of the Court supporting the most racist law in the state of Israel, which prevents family unification on an ethnic – Arab – Palestinian basis. By comparison, Adalah Center notes that «in 1980, in the peak of the Apartheid system, the Court in South Africa refused to endorse orders similar to the Israeli law because they violated family rights.» Advocate Hassan Jabarin, Chairman of Adalah Center stated, «In this way the Supreme Court has established three citizenship tracks on ethnic basis: a direct track for Jews under the right to return, an intermediate track for foreigners based on gradual procedures and the most difficult track for Arab citizens».

Cancellation of Residency Rights of Palestinian Jerusalemites and International Law

The cancellation of Palestinian rights to residency in Jerusalem has serious consequences not only for Jerusalemites, but also for all Palestinians who have an inherent right to live in the City and access it freely. Jerusalem is an integral part of the Palestinian territories occupied by Israel in 1967. All measures taken by the Israeli authorities to alter the legal status of the City and its Palestinian residents are invalid as they are in breach of international law, namely the Fourth Geneva Convention of 1949.

Tens of thousands of Palestinian families have been directly affected: couples cannot live under one roof, with one of them staying in occupied Jerusalem, in Israel or abroad and the other in Gaza or the West Bank. Children are being raised in the absence of one of their parents. Many people are afraid to travel abroad, including for medical treatment, fearing that they will not be allowed to return to their families.

These policies entail a grave violation of the International Covenant on Civil and Political Rights (ICCPR) that provides for the protection of the family as the natural and fundamental group unit of society, and recognizes the right of the family to enjoy protection by society and the state and the right of men and women of marriageable age to marry and raise a family.¹¹⁹

Everyone's right to their country is inherent and basic. It is recognized and documented in Article 13 of the Universal Declaration of Human Rights of 1948, which states that: "Everyone has the right to freedom of movement and residence within the borders of each State". The same applies to the 1966 International Covenant on Civil and Political Rights (ICCPR), which states that: "Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence".

The International Covenant on Economic, Social and Cultural Rights (ICESCR) also recognizes the importance of the family, to whom "the widest possible protection and assistance should be accorded", particularly "while it is responsible for the care and education of dependent children".¹²⁰

The Convention on the Rights of the Child (CRC) confirms "the right from birth to a name, the right to acquire a nationality, and, as far as possible, the right to know and be cared for by his or her parents".

Being a State Party to the CRC, Israel is legally obliged to respect the Convention's provisions and rules and to halt its ongoing violations of the Palestinian's rights to reside in Jerusalem. Israel must also cancel the freeze on the unification of separated Palestinian families and child registration, which constitutes a violation of its obligations under article 10 of the CRC, stating: "applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner".¹²¹

Ethnic Cleansing and Forced Displacement

"I support forced transfer and see nothing unethical in it".

David Ben-Gurion, addressing the Jewish Agency Executive Committee, June 1938.¹²²

Many decision-makers, politicians, lawyers and researchers refuse to use the term "ethnic cleansing" to describe the ongoing policies and practices of Zionist and Israeli political and military leaders against Palestinians since 1948. This position is held by those who are not willing to admit that Israel, as a "democratic state", is committing acts of cleansing against the Palestinians. Since 1948, recurrent statements by various Israeli leaders warn of the demographic threats facing Israel that would affect the Jewish majority of the state. The same leaders issue

119 United Nations Convention on the Rights of Child. GA Res 44/25. (1989). Art 10.

120 International Covenant on Economic, Social and Cultural Rights. GA Res 2200A (1966). Article 10.

121 Supra, note 62.

122 Central Zionist Archives, minutes of the meeting of Jewish Agency Executive, 12 June 1938. Quoted in The Ethnic Cleansing of Palestine, by the Israeli historian Ilan Pappé, p.1.

associated calls and approved actions to reduce the proportion of Arabs and increase that of Jews in Israel and occupied Jerusalem, including by means of transfer.¹²³

Definition of ethnic cleansing

The term “ethnic cleansing” first appeared at the end of World War II, when the Czechs and Polish started to publicly call for the need to cleanse their countries of Germans and Ukrainians. Prior to this, however, the Nazis used to call for making the German lands free of Jews in their health-related programs.¹²⁴ Following the outbreak of the Bosnia and Herzegovina war in the former Yugoslavia, efforts have been exerted to define “ethnic cleansing” within the many reports published on this war and its associated acts and practices.

Reports by the Special Rapporteur of the UN Committee on Human Rights on the former Yugoslavia between 1993 and 1994 included a number of acts and practices that were considered a form of ethnic cleansing. Such practices include restrictions on access to humanitarian aid, resettlement of refugees from a certain ethnicity in the region being cleansed, enactment of legislations entailing discrimination and oppression.¹²⁵ Other acts and measures potentially constituting ethnic cleansing entail intimidation of civilians by soldiers or armed civilians, arbitrary arrest, targeting of civilians by shooting at them or destroying their houses, and group transfer of specific populations.¹²⁶

Ethnic Cleansing in Jerusalem

Following the declaration of the establishment of the Jewish state on the eve of 14 May 1948, the forces in the field were repeatedly using the Hebrew term “Tihour”, which means “cleansing”.¹²⁷ The higher leadership of the Zionist movement selected this expression to charge and provoke the soldiers before they were sent to occupy the Palestinian urban and rural areas, cleanse them from Arabs, appropriate and loot their properties and/or destroy them altogether.

Jerusalem City and its surrounding villages and towns were in particular subjected to a large scale ethnic cleansing process. In this regard, the historian Salim Tamari stated that out of 40 villages in Jerusalem district that remained under Israeli control after the signing of the truce agreement in 1949, the population of 38 of the villages was displaced, which at the time amounted to approximately 73,258 people.¹²⁸ This number does not include the residents of Arab neighborhoods in the western part of the City, which was also occupied and cleansed completely of the Arab population, and whose houses were appropriated and properties looted. According to some historians, the Arab neighborhoods in the western part of Jerusalem used to be among the richest and most prosperous neighborhoods in the Middle East prior to 1948.¹²⁹

The policy of ethnic cleansing and forced displacement of Palestinians continued after Israel’s occupation of the Palestinian territories during the 1967 war. The resulting tragedy has mainly affected the population of the Old City of Jerusalem.¹³⁰

123 Israeli Committee Against Housing Demolitions (ICAHD). <http://www.icahd.org/eng/articles.asp?menu=6&submenu=2&article=311>. (2006).

124 Mark Kramer. ‘Introduction’, in Mark Kramer, ed., *Rewarding Nations: Ethnic Cleansing in East-Central Europe*, Boulder: Rowman & Littlefield, 2001, p. 1.

125 Supra, note 80; Jacques Semelin. “Analysis of Mass Crime: Ethnic Cleansing in the Former Yugoslavia”. Montreal Institute for Genocide and Human Rights Studies. <http://migs.concordia.ca/occpapers/semelin.html>.(2000)

126 Bob Myers. “Against Ethnic Cleansing in the Former Yugoslavia”. <http://flag.blackened.net/revolt/inter/seattle/yugoslavia.html> (2001) .

127 Ilan Pappé. *Ethnic Cleansing of Palestine*. One World Publications, 2006. p. 143.

128 Salim Tamari, “The City and its Rural Hinterland”, in *Jerusalem 1948: The Arab Neighbourhoods and their Fate in the War*. Institute for Palestine Studies (1999). p. 75-86. According to UNRWA statistics of 1997, the number of refugees from these villages reached 246,342.

129 Nathan Krystall, “The Fall of the New City 1947-1950”, in *Jerusalem 1948: The Arab Neighbourhoods and their Fate in the War*. Salim Tamari ed. Institute for Palestine Studies (1999). p. 93.

130 By an order from the Israeli government, the occupying forces evicted the residents of Magharbeh neighborhood and several adjacent neighborhoods in the Old City and forcibly moved them to Shuʿfat refugee camp. Then they demolished these neighborhoods and built new ones to accommodate Jewish settlers. Some of the settlers were accommodated in houses expropriated from Palestinians. Statistics indicate that the occupying authorities completely removed the Magharbeh neighborhood, demolishing 135 houses that hosted 650 Palestinians, in addition to demolishing two mosques. For more details, see: Musa Al-Qudsi Al-Dweik. *Jerusalem and the International Law: A Study on the Legal Status of the City and the Israeli Violations of Human Rights*.

The Israeli authorities are specifically targeting the Palestinian presence in occupied Jerusalem and consistently work towards altering the demographics prevailing in the City prior to its occupation through a policy of ethnic cleansing. This policy aims at forcing the largest possible number of Palestinian residents of Jerusalem to move out of the City by means of freezing family unification, appropriating land, building settlements, severely restricting Palestinian construction in Jerusalem, demolishing Palestinian houses, restricting the freedom of movement and choice of residence, and isolating the city from the rest of the oPt through the Annexation Wall which further annexes Palestinian land through its very construction.¹³¹ These policies and measures prevent any Palestinian from exercising their right to live in Jerusalem and force many Palestinian residents out of the City, often by officially revoking their right to reside in Jerusalem.¹³²

Definition of Forced Displacement

Internal displacement is a major issue affecting the Palestinians since the beginning of the conflict with the Zionist movement, dating back to periods prior to 1948 - the year when Israel was declared a state. However, the internal forced displacement of Palestinians within the territories where Israel was established (1948 areas) became evident following 1948, with tens of thousands of Palestinians being forcibly displaced inside their homeland. The forced displacement of Palestinians continued following Israel's occupation of the Palestinian territories, including Jerusalem in 1967, mainly targeting East Jerusalem and the surrounding areas. Local Palestinian residents were forced out and those wanting to move and live in Jerusalem were not permitted to do so.

There is no legal definition of internal displacement, other than the definition used in the UN Guiding Principles on Internal Displacement of 1998, which defines internally displaced persons as "those persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border".¹³³

For persons or groups of persons to be included in the above definition of internally displaced, the displacement has to be a result of forced causes, and the displaced persons have to remain living within the internationally recognized borders of their state and not cross a border and settle in another state.¹³⁴

Forced Displacement in the Occupied Palestinian Territories

Under the definition of internal displacement as outlined in the Guiding Principles, Israeli policies can be considered as leading to the forced displacement of the Palestinian population of the territories occupied in 1967, and in particular the Palestinian Jerusalemites, who have been, and continue to be forced to leave their places of habitual residence due to the violation of their rights by the occupying power and have not crossed internationally recognized borders.

In this case, we find that the internally displaced Palestinians are those persons, or groups of persons, who have been forced to flee as a result of the 1967 war and the continuous violation of their human rights by the Israeli authorities.¹³⁵

131 According to the Jerusalem Annual Statistical Book published by PCBS, 1635 families have been displaced from Jerusalem district in result of Wall construction.

132 According to data from the Israeli Interior Ministry, in 2006, the right to residency in Jerusalem was revoked for 1363 Palestinian residents of the City, which constitutes an about 500% increase compared to 2005..Data is based on an article published on the website of 1948 Arabs on 24 June 2007.

133 Walter Kalin, *Guiding Principles on Internal Displacement, Annotations. ASIL Studies in Transnational Legal Policy*, No: 32., American society of International Law and the Brookings Institution Project on Internal Displacement, 2000, p. 1.

134 The difference between the internally displaced and refugees should be emphasized as each category has a different legal status. A refugee is one who "owing to a well-founded fear of being persecuted for race, religion, nationality, members of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such a fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his nationality and being outside the country of his former habitual residence as a result of such events, is unable or owing to such fear, is unwilling to return to it" (Convention Relating to the Status of Refugees, 1951, Article 1A(2), amended through the 1967 Protocol Relating to the Status of Refugees). Refugees are not considered citizens of the host country but rather maintain a special legal status. On the other hand, the internally displaced, by the fact that they have remained within the borders of their country, should have all the rights and duties associated with their nationality.

135 This includes Palestinians forced to move from Gaza Strip to the West Bank, including Jerusalem, and vice versa, as they have not crossed the borders of the oPt, but were displaced within these borders, which means they meet the criteria for the internally displaced.

Practices leading to the internal displacement in Jerusalem include the adoption of Israel - as the occupying power - of the policy of isolation of Jerusalem and preventing the Palestinians from accessing the City for purposes of residence or otherwise, the adoption of a discriminatory policy towards family unification resulting in the recent freeze on this process, and the demolition of houses and deliberate damage to properties of Palestinians.

No accurate statistics are available on the number of the internally displaced in the oPt. However, according to the BADIL Resource Center for Palestinian Residency and Refugee Rights, approximately 10,000 Palestinians were displaced during the 1967 war, with the vast majority from the villages and towns of Imwas, Yalo, Beit Nouba, Beit Awwa, Jiftlek, Qalqilia and the Old City of Jerusalem (Magharbeh neighborhood).¹³⁶ According to UNRWA, the number of persons internally displaced due to house demolitions in the period 2000-2004 was about 22,000, including about 3,800 Palestinians who were displaced in the Gaza Strip as a result of military operations and the accompanied large scale house demolition during May 2004.¹³⁷

Regarding Jerusalem in particular, forced displacement has been consistently implemented in the city since 1967, when the occupying forces implemented the Israeli Government's decision to evict the Palestinians from the Old City (Magharbeh neighborhood and other adjacent neighborhoods) to Shu'fat camp and completely destroy Magharbeh neighborhood.¹³⁸ In the remaining neighborhoods, the houses of the newly displaced Palestinians were expanded and used to accommodate Jewish settlers.

Conclusion

The purpose of this study has been to highlight Israeli policies targeting the physical presence of Palestinians in their homeland and subjecting them to internal displacement in order to achieve Israeli aims of reducing the number of Palestinians and increasing the proportion of Jewish settlers in the country – a practice that fits within the scope and definition of ethnic cleansing.

International law

Article 13 of the Universal Declaration of Human Rights states that, 'everyone has the right to freedom of movement and residence within the borders of each State'. This position was codified by the International Covenant on Civil and Political Rights (ICCPR). Israel's adoption of the aforementioned residency policies represent a clear breach of its obligations under international human rights law and a clear infringement of the principle of non-discrimination.

These policies entail a grave violation of the ICCPR that provides for the rights of the family as a natural and fundamental unit within society. Additionally the Convention on the Rights of the Child (CRC) confirms that 'the right to acquire a nationality' is a fundamental human right.

International humanitarian law prohibits the imposition of domestic law on territory under occupation unless it is for the exclusive benefit of the occupied population or on narrowly defined grounds including military necessity and public order.

The implications of revocation of residency lead to the direct violation of international law. After residency is revoked the East Jerusalemite must leave the city. Article 49(1) of the Fourth Geneva Convention explicitly prohibits the transfer of protected persons from occupied territory

¹³⁶ Norwegian Refugee Council. "Profile of internal displacement: Palestinian Territories", July 2004, p. 4.

¹³⁷ Internal Displacement Monitoring Centre. [http://www.internal-displacement.org/idmc/website/countries.nsf/\(httpEnvelopes\)/98F0726B7D6AA45C12574B30055BD32?OpenDocument](http://www.internal-displacement.org/idmc/website/countries.nsf/(httpEnvelopes)/98F0726B7D6AA45C12574B30055BD32?OpenDocument) (2009).

¹³⁸ Supra, note 82.

Urban Planning in Jerusalem

Nathan Derejko

LLM, Irish Centre for Human Rights NUI Galway

In order to address the demographic reality of Jerusalem, a city that Israeli leaders frequently refer to as the 'united Jewish capital', but which is characterised by a 35% Palestinian population, Israel has implemented policies that aim to minimise the Palestinian population of the city. Central to these objectives is the use of urban planning policy.

Perhaps the most informative description of the Israeli planning regime in East Jerusalem comes from Amir Cheshin, the former advisor on Arab Affairs to the Mayor of Jerusalem, who has spoken publicly about his experience with the planning regime as it affects Palestinian residents.

Israel has transformed urban planning into a tool in the hands of the Government whose object is to prevent the spread of the non-Jewish population of the city. This was a cruel policy, if only by reason of the fact that it disregarded the needs (not to mention the rights) of the Palestinian residents. Israel regarded the institution of a stringent urban planning policy as a way to restrict the number of new houses being constructed in Palestinian neighbourhoods, and thus ensure that the percentage of Palestinian residents in the city's population – 28.8% in 1967 – would not increase. If we permit 'too many' new homes to be built in Palestinian neighbourhoods, that will mean 'too many' Palestinian residents in the city. The idea is to move as many Jewish residents as possible to East Jerusalem and to move as many Palestinians as possible out of the city altogether. Housing policy in East Jerusalem has focused on this numbers game.

The majority of housing demolitions have occurred under the auspice of urban planning policy. Homes targeted for demolition are usually declared illegal for failure to meet the Israeli-defined building criteria. The presence of urban planning criteria is a common prerequisite for construction. In Jerusalem, it represents a means to achieving the Israeli authorities' demographic objectives.

Urban planning in East Jerusalem

Stated political objectives rather than genuine land-use planning has shaped urban planning policies for Jerusalem. While the eventual effects of such actions are well-known and extensively documented features of the Israeli occupation of East Jerusalem, including housing demolitions and forced evictions, the underlying causes and presented justifications of these acts are less known. Since the unilateral annexation of East Jerusalem in 1967, the basis of much urban planning policy within the Israeli defined Jerusalem municipality has been the achievement and maintenance of a calculated 'demographic balance' between the Jewish and Palestinian population of the city.

Planning has a pervasive influence on the social, economic and political aspects of civilian life. In East Jerusalem, the planning regime not only dictates where and when Palestinians can build, but if Palestinians can build at all. The most significant legislated component of the Israeli planning regime is the Israeli Planning and Building Law of 1965. This single piece of legislation has been employed to implement a widespread prohibition on construction in many areas of East Jerusalem and the destruction of Palestinian homes deemed to be in violation of this prohibition.

Demographic balance

In the five years following 1967 the Palestinian population grew faster than predicted. Labeling this reality a 'demographic problem', the Gafni Commission determined that the demographic balance should be maintained at the 1972 level of 73.5% Jews and 26.5% Arabs. In order to achieve this demographic objective, the Jerusalem municipality and the Interior Ministry have drafted, adopted, and implemented a series of laws, policies, and

practices that collectively constitute the Israeli planning regime in East Jerusalem. By design, this planning regime authorises the confiscation of Palestinian lands; limits the amount of land available for Palestinian construction; reduces building density within these areas; and severely impedes the building permit application process, which, consequently, results in the systematic denial of building permits for the Palestinian residents.

The Jerusalem Master Plan

The Jerusalem Master Plan is a comprehensive and authoritative Israeli planning scheme that serves as the mandatory legal guide for all zoning and planning within the Jerusalem municipality. All local planning schemes developed for specific neighbourhoods within the municipality must conform to the zoning and planning provisions as detailed within the Master Plan. The Plan consists of successive Israeli master plans including Master Plan 2020 and the update to the Plan called Jerusalem Master Plan 2030.

Master Plan 2030 is based upon the current population of Jerusalem municipality's 722,000 residents; 296,000 of which are Palestinian (36%) and 426 000 are Jewish (64%). The Plan contains different policy objectives for the Jewish and Palestinian populations. Despite the fact that the current population is 35% Palestinian, one of the primary objectives of the Plan, 'in accordance with governmental decisions' is to 'maintain a ratio of 70% Jewish and 30% Arab' within the municipality. To achieve this policy, Israeli authorities have set objectives to restrict the growth of the Palestinian population and reduce its overall size.

The primary avenue through which the Jerusalem Master Plan seeks to achieve and maintain Jewish demographic superiority is its legal authority to authorise or restrict the construction of new residential units throughout the Jerusalem municipality. According to the data supplied by the Master Plan, the number of existing licensed residential units in Jerusalem is 187,469 of which 105,123 (56%) are located in West Jerusalem and 82,346 (44%) are located in East Jerusalem.

Taking into consideration both licensed and 'unlicensed' residential units, there currently exists approximately 58,000 units for the Palestinian population of East Jerusalem. A recent study revealed that 42,000 residential units are immediately required for Palestinian residents in order to relieve the acute housing shortage. Taking into consideration both the existing housing shortage and the current demographic trend, it is estimated that by the year 2030, approximately 200,000 new residential units will be required to satisfy the housing needs of the Palestinian population in East Jerusalem.

The Master Plan only provides for 100,000 residential units in East Jerusalem, creating a discrepancy of 100,000 units between projected needs and authorised construction by the year 2030. However, the Master Plan provides for the construction of 40,000 residential units exclusively for the Jewish population of East Jerusalem. It is worth nothing that despite the fact that 60% of the population in East Jerusalem is Palestinian, more licensed residential units currently exist for the Jewish population of East Jerusalem.

Within the Master Plan, many of the 'new buildings' designated for Palestinians in East Jerusalem can be primarily attributed to a dramatic increase in the proposed building densities to as high as 240% within specific areas of East Jerusalem. Such proposals, however, do not faithfully reflect the reality on the ground and therefore are unattainable. The existing Palestinian residential units cannot sustain such increased infrastructure development. In order to achieve this building density, Palestinian residents would first be required to demolish their existing homes in order to construct a new foundation on which to build a home of six to eight floors. Coupled with the lack of supportive infrastructure in much of East Jerusalem, the proposed increase in construction of residential units for Palestinians remains largely rhetorical and void of any possibility of implementation.

Local planning schemes

Under the Building and Planning Law, the objectives of local planning schemes are to 'control the development of the land in the local planning area' and to ensure 'appropriate conditions from the point of view of health, sanitation, security, transport, and convenience' in accordance with its zoning designation. Contrary to such stated

purposes however, local planning schemes have been utilised in East Jerusalem to restrict the development of Palestinian neighbourhoods and thus maintain the demographic hegemony of the Jewish population. By design, local planning schemes authorise the expropriation and confiscation of Palestinian land, reduce the amount of land available for Palestinian construction and limit the construction density within these areas.

Through calculated confiscation and discriminatory zoning, local planning schemes restrict the development of Palestinian neighbourhoods by reducing available land for construction. Of the 71 km² of Palestinian territory that was annexed into the state of Israel in 1967, 24.5 km² (35%) was confiscated for the construction of Jewish settlements. Of the remaining 46.5 km² (65%), 21.3 km² (30%) does not possess an approved local planning scheme and therefore construction in these areas is prohibited. The remaining 24.7 km² (35%) of land has had local planning schemes approved by the District Committee. Of this 35% however, approximately 15.5 km² (63%) has been zoned as 'green areas' where no construction is permitted, leaving only 9.18 km² (13% of the total area of East Jerusalem) as zoned land in East Jerusalem available for Palestinian construction. A vast majority of this land is already densely populated, severely limiting any future construction or development.

Since 1967, Israeli authorities have constructed approximately 60,000 residential units in Israeli settlements throughout East Jerusalem. During the same period fewer than 600 residential units were constructed for Palestinians – the last of which was completed more than 30 years ago. Furthermore, tenders that were issued in 2008 for the construction of 1,761 residential units for Jewish settlers in East Jerusalem represent 300% more residential units than the total number of units built for Palestinian residents since 1967. In 2008, Palestinian residents submitted 190 local planning schemes to the planning institutions for public review but during that year only 18 building permits were issued. The exceptionally limited number of permit approvals allegedly resulted from either the absence of 'approved local planning schemes' or areas zoned as green rather than residential. Even more alarming is the fact that numerous Palestinian neighbourhoods have no local planning scheme, thus prohibiting all construction and rendering all existing residential units built after 1967 illegal.

As a direct consequence of the planning regime, a severe housing shortage has emerged in the Palestinian neighbourhoods in East Jerusalem. In order to meet the basic housing needs of growing families, Palestinians are often forced to migrate to an area outside the boundaries of the Jerusalem municipality, ultimately leading to the loss of their residency permits. Alternatively, they have been forced to build and expand their homes without a building permit in order to meet their basic housing needs, because of a multitude of obstacles in obtaining such permit.

Unlicensed construction

The phenomenon of unlicensed construction is a direct consequence of the Israeli planning regime in Jerusalem. Obtaining a building permit is one of the greatest obstacles faced by the Palestinian community in East Jerusalem. A building permit is not an uncommon requirement for urban construction; however for the Palestinian residents of East Jerusalem the complex and multifaceted application process, coupled with exceptionally high associated fees, makes obtaining a building permit effectively impossible.

Before the application process for a building permit can be initiated, proof of ownership is required. The vast majority of land in East Jerusalem is privately owned and therefore not registered with the Israeli Land Registration Bureau, nor included in the Land Registry and Title Settlement inherited from Jordan, the Ottoman-era and the British Mandate, a registry that successive Israeli governments have consistently avoided completing.

Previously the Jerusalem municipality accepted a combination of 'traditional' and 'administrative' forms of ownership, however more recently, a new series of procedures have been implemented that have imposed further obstacles on Palestinians seeking a building permit. Such procedures include the obligation to prove ownership by means of registration; confirmation from the Ministry of Justice that no additional claims over the land; confirmation from the Custodian of Absentee Property that the land is not under its 'management'; and finally, confirmation from the Israel Mapping Centre that the land is plotted and has no competing claims. Further requirements call for

landowners to prove that the area in question has no environmental protections in place or any archeological or Jewish religious significance and that an approved infrastructure plan exists for the area in question.

The majority of Palestinian families have acquired their land through traditional family inheritance and lived on the same land for several generations. As a result, many do not possess what the Jerusalem municipality considers official documentation necessary to prove land ownership. In such cases, the Jerusalem municipality requires the physical presence of both the new and previous owner to transfer entitlement at the Ministry of Justice, a criteria that for obvious reasons has consistently proved impossible to fulfill. Even if a Palestinian family were in possession of documentation in support of their land registration claim, they would be prevented from registering their land at the Israeli Land Registry since Palestinian land registration claims have been frozen since 1967. This provided the dubious legal pretext for the administrative deadlock on land registry. Thus for the Palestinian residents of East Jerusalem, land registration within the Israeli Land Registration Bureau – the primary avenue of proving land ownership and securing a building permit – is currently not possible.

Associated administrative building fees are exceptionally high and prove prohibitive for the majority of Palestinians. The costs associated with the building permit application process begin with a fee upon opening the file, then follows a development fee, a roads and sidewalks fee, a water and sewage infrastructure fee, a water mains development fee, together with a water mains construction fee, a betterment levy and a fee associated with the survey and registration of land in the Plan for Registration and Purpose. Depending on location, the total cost associated with a building permit to construct a small 100m² building on a 500m² plot of land will amount to between 75,000-100,000 NIS (approximately USD20,000 to 25,000). More often the fees associated with the building permit exceed the total cost of construction. With over 66% of Palestinian families in East Jerusalem living under the poverty line, these costs function as a severe economic barrier to those families able to prove landownership.

For the minority of Palestinian residents who possess both the compulsory documentation and funds to cover these, a hallmark of the building permit application procedure is the excessive delays, extending up to periods of between five to ten years with no guarantee of success.

Obtaining a building permit in East Jerusalem is a rare exception. A growing population, a severe housing shortage and a grim prospect of successfully navigating through the planning regime has forced many of East Jerusalem's Palestinian residents to build without license. In so doing, thousands of Palestinians live under the unrelenting threat of impending demolition or forced eviction and the ensuing inevitability of displacement from, or within, East Jerusalem.

House demolitions and forced evictions in Jerusalem

Following the 1967 War, Israeli bulldozers razed the As-Sharaf neighbourhood, (within the Moroccan Quarter of the Old City) destroying 135 houses, a school, and a mosque. Soon after, the three Latrun villages of Imwas, Yalo, and Beit Naquba located northwest of Jerusalem were destroyed, including over 5,000 homes. An additional 200 buildings in the 'no man's land' area in Jerusalem was also destroyed. As at September 2008, it is estimated that a total of 9,000 Palestinian homes will have been demolished in and around Jerusalem since 1967.

In 2008 the Jerusalem municipality issued 959 demolition orders and has demolished 87 homes within East Jerusalem, resulting in an increase of house demolitions by 32% since 2007. Since January 2009, the Municipality has issued an additional 1,052 demolition orders and demolished 60 Palestinian homes in East Jerusalem. The overwhelming majority of these actions have occurred under the pretext of unlicensed construction.

*The case of Silwan*¹³⁹

The neighbourhood of Silwan is located to the southeast of Jerusalem's Old City. Silwan has gradually become the focus of increased Israeli efforts to permeate an area that is home to approximately 31,000 predominantly Palestinian residents.

Residents in the Al-Bustan neighbourhood of Silwan have lived in a long-standing state of uncertainty. In 1977 the Jerusalem municipality approved a plan which designated much of the neighbourhood as 'green space' on which construction is prohibited. Since approving this classification, the municipality has consistently refused planning permission or construction within the neighbourhood.

Due to land scarcity and the housing shortage caused by Israeli land and planning policies, many Palestinians have been squeezed into a small area for their building and development needs.

This so-called 'illegal construction' reached its peak in the 1990s after Israeli authorities commenced legal proceedings against several Palestinian land owners for demolishing their homes. A directive issued by the Jerusalem municipality in 2004 called for the destruction of all homes in Al-Bustan to allow for the further development and expansion of a Jewish archeological park.

The following year the municipality began to implement the directive, serving residents with demolition orders and charging them with illegal construction. Later that year two homes were demolished. However, bowing to local and international pressure, then Mayor of Jerusalem, Uri Lupoliansky, withdrew the directive allowing both the municipality and the residents of Al-Bustan to submit alternative town planning schemes, which were eventually rejected.

The city's planning scheme calls for the confiscation of 70% of the land in Al-Bustan and the demolition of 88 homes in the neighbourhood, the majority of which will be used to facilitate the development of the 'City of David National Park' which is being financed and operated by the Elad settler organisation. The alternative plan presented by the residents of Al-Bustan was designed around their homes and ensured that they received necessary services. In 2008 the residents' plan was rejected by the municipality who indicated their intention to continue with the development of a national park.

Silwan's Palestinian residents remain in a constant state of uncertainty and the homes in Al-Bustan continue to be vulnerable to impending demolition.

The case of Sheikh Jarrah¹⁴⁰

Sheikh Jarrah, a Palestinian neighbourhood in East Jerusalem between the Old City and Mount Scopus, has become the site of a protracted legal battle whose implications range from the evictions of more than 28 single family groups to the viability of a future Israeli-Palestinian peace agreement and the long term status of Jerusalem. Four Palestinian families have already been evicted from homes in which their families have lived for more than 50 years and an additional 23 live under precarious circumstances, awaiting court decisions that will determine their fates.

Their story began in 1956 when the families were settled in Sheikh Jarrah by UNRWA and the Jordanian Government. The then 28 single families were promised property deeds to the homes, which they received as part of a humanitarian initiative; however this never materialised. After the 1967 War, two Jewish groups (the Committees) sought to assume a primary form of ownership on the basis of a historical and religious connection to the land based on a dubious Ottoman era document. In part because this primary form of ownership can have no impact on third parties occupying the land, a 1974 attempt to evict four of the neighbourhood's families was denied.

The following years were relatively calm, but in 1982 ownership of the properties were again challenged in a pivotal case that became the precedent for all subsequent actions. During the proceedings, Yitzhak Toussia-Cohen, an Israeli lawyer representing 17 of the Palestinian families (Palestinian lawyers were unavailable due to being on strike in protest of the Israeli occupation following 1967), reached an agreement under which he did not challenge the validity of the Committees' ownership claims and instead accepted the status of 'protected tenants' for his clients. This lapse created a situation where in future cases, the families could no longer contest the legality

140 For a comprehensive report concerning Sheikh Jarrah refer to: 'Dispossession and Eviction in Jerusalem: The cases and stories of Sheikh Jarrah', CCDPRJ, 2009. Available at: www.civiccoalition-jerusalem.org.

of the Committee's ownership and were required to pay rent to the Committees and seek their permission to carry out renovations, conditions of the agreement that the families learned only after it was approved by the court. Beginning in 1999, the Committees began eviction proceedings against three families based on rent arrears and illegal construction. Over the following ten years, numerous legal challenges were filed but because the majority of the families' lawyer unwittingly signed the 1982 agreement, they have been unable to formally challenge the Ottoman document that underlies the Committees' claim to the land despite the existence of numerous discrepancies casting doubt on its authenticity. The Sabbagh family, who is not a signatory to the 1982 agreement recognising the Committees' right to the property, is still following their case through the courts. Because this case is not bound by the 1982 agreement, the family is hopeful that the courts will allow a challenge to the validity of the Committees' suspect documents.

The humanitarian suffering caused by both the tenuous nature of life during extended court battles, by the evictions themselves and their aftermath has been substantial. 'It is impossible to plan for a future', says Mr Hanoun, one of the evicted residents. 'The eviction has destroyed our lives. To live on the street is so hard. It kills my family to watch strange faces living in the home in which we spent our lives'. Hanoun, like the other evicted families, is currently living on the street, spending his days sitting beneath a solitary olive tree across from his home, hopeful that it will one day soon be returned to him.

After examining the humanitarian implications of the Sheikh Jarrah narrative, it is important to consider the cases in a broader context. Through a series of local planning schemes in various stages of the approval process, private Jewish non-profits have seized on Sheikh Jarrah as one of East Jerusalem's religiously and geographically strategic areas, ripe for renewed Jewish presence. While forced evictions and population transfer to occupied areas is troubling anywhere it occurs, it is especially pernicious in East Jerusalem and Sheikh Jarrah in particular as, ultimately, its implications could prejudice a negotiated peaceful resolution to the Israeli-Palestinian conflict predicated upon a division of Jerusalem.

House Demolitions and Forced Evictions in Jerusalem

Israeli Occupation Authorities Campaign against Palestinian Property in Jerusalem

Yaqoub Odeh

Field Researcher – Land Research Centre, Jerusalem

Palestinian land has been at the center of the Arab-Israeli conflict since 1948. The Judaization and annexation of Jerusalem has been a primary aim of the Israeli occupation, which it seeks to achieve by imposing demographic changes on the ground. As a result, Palestinian land in Jerusalem is being appropriated and Jerusalemites are being prevented from using 88% of their land under various pretexts. In addition, 17 Jewish settlements and dozens of settler outposts have been established in and around the Old City of Jerusalem, accommodating over 9000 settlers. The number of housing units in the settlements is over 70,000 housing approximately 200,000 settlers; a settler presence in occupied Jerusalem that is steadily increasing.

Israeli Government Violation of Palestinian Rights to Land and Adequate Housing

Jerusalem suffers from a complicated housing problem, which is increasing year by year due in large part to the Israeli occupation's policies and practices.

The Israeli occupation has confiscated 34% of Jerusalem lands for settlement activities and classified 54% of the lands as green or open areas, leaving less than 12% or approximately 10,048 dunums of land for Palestinian housing and other uses.¹⁴¹ According to the Jewish Professor Yohanan Peres, "Israel is banning construction in 70% of West Bank lands and 86% of Jerusalem lands".

Israel's housing policy and practices towards Palestinians ignore their needs, particularly in regard to zoning and building. Similar to the situation in the apartheid regime in South Africa, the decision in this regard is political and not a structural or technical decision responding to the needs of urban development. The essence of the Israeli occupation's policy is to reduce the Palestinian presence in Jerusalem and its suburbs as much as possible so that it will account for less than 22% of the population of both parts of the City, as per the 1973 decision of the inter-ministerial committee (Gafni Committee) on ethnic balance.¹⁴² The Palestinian population in Jerusalem in the middle of 2007 was 258,000,¹⁴³ comprising about 35% of the total population of the city (for east and west combined).

For 40 years since the inception of the Israeli occupation of East Jerusalem, the Jerusalem Municipality has not approved a structural scheme in East Jerusalem for the benefit of its Palestinian population. Only in 2007 did the Mayor of Jerusalem declare that 50 schemes would be put in place to benefit the Palestinian population of East Jerusalem.¹⁴⁴ The Israeli occupation has consistently prevented the implementation of building activities. Lands classified as green comprise 60% of Sawahreh and 42% of Sur Baher. The lands of these two villages are classified as lands in need of reclassification and zoning. As a result, only a very limited area is available for building purposes.

These appropriations and confiscations have forced the Palestinians in Jerusalem to resort to unlicensed building – a choice that they have not taken willingly – in order to respond to the increasing need for over 200 houses per year. The license fees are particularly significant in view of the low income level and high taxes faced by Palestinian

141 Ibid.

142 Discrimination in the heart of the city, Mr. Meir Margalit, 2006, and, Israel and the occupied territories, Amnesty International, p. 48, note 5.

143 Palestinian Central Bureau of Statistics (PCBS), Census final results in the West Bank - Summary (population & housing 2007), Ramallah - Palestine.

144 Coalition for Jerusalem. "40 Years under occupation - Jerusalem, Facts and Numbers". June 2007.

residents in Jerusalem, who also suffer from crippling conditions resulting from complicated administrative procedures and prohibitive requirements that bar construction in practice.

- Possession of land ownership registration certificate is rarely available because two thirds of West Bank lands – including occupied Jerusalem – have not been registered in land registries. In addition, the Israeli authorities have since the late 1970s persisted in declaring unregistered and unused lands as “State lands”, managed by the occupation’s Civil Administration.
- Heavy fees for obtaining a building license, ranging between USD25,000 to 30,000. The fees are impossible to meet under the severe economic hardship faced by Palestinians in Jerusalem. It should be noted that approximately 60% of Palestinians are living under the poverty line and approximately 35% of skilled workers in East Jerusalem are unemployed.¹⁴⁵ The following table illustrates the cost of obtaining a building license from the Israeli occupation’s municipality:

Table 1: Costs of Development Application

No	Procedure	Cost (in NIS)
1.	Initial application	2000
2.	Fees for building development (connection to water network)	14800
3.	Fees for land development	18500
4.	Taxes for sewage installation	15525
5.	Fees for water network development	17606
6.	Taxes for connecting to the sewage system	8236
7.	Taxes for connecting to the water network	5025
8.	Preparation of construction plan for registration purposes	15000
9.	Improvement tax	12800
Total		109,492

Source: A study on the Israeli structural plan for Jerusalem City 2000 – CCDPRJ

The Land Research Center of the Arab Studies Society has documented 837 cases of house demolition between the beginning of 2000 and the end of August 2008.¹⁴⁶ The demolitions were carried out under the pretext of “illegal” unlicensed building. According to the Israeli Committee against House Demolition (ICAH), 65-71 houses were demolished in the period 1 January – 31 August 2008. Most neighbourhoods, suburbs and villages in Jerusalem district have been affected to varying degrees.

Table 2: Demolished houses in Jerusalem by year

Year	Number of demolished houses
2000	37
2001	72
2002	69
2003	145
2004	183
2005	120
2006	78
2007	94
2008	95
2009	77
2010	39
Total	1009

145 Palestinian Central Bureau of Statistics (PCBS), Jerusalem Annual Statistical Report, No. 10 – June – 2008, Ramallah - Palestine

146 LRC annual house demolition reports in Arabic, http://www.lrcj.org/Arabic/ViolationsMonitoring/Reports/2001_2008.htm

Table 3: House demolition in Jerusalem from 2001 until the end of August 2010 by locality

Locality	Number of demolished houses
Kufr Aqab	9
Nabi Samuel	6
Al-Jib	14
Shu'fat	88
Old City	31
Z'ayem	4
Wad Al-Joz	12
Beit Hanina	210
Al-Thori	9
Eisawiyeh	96
Hizma	7
Mekhmas	7
Anata	98
Al-Tur	91
Al-Mukabber	51
Silwan	70
Um Tuba	3
Sur Baher	71
Al-Ram	9
Beit Ikka	5
Beit Safafa	5
Biddo	1
Al-Walajah	26
Qatannah	4
Sheikh Jarrah	5
Sheikh Sa'ad	1
Beit Surik	2
Bir Nabala	10
Sawahreh Sharqieyh	6
Um Al-Lahem	2
Jaba'	5
Sharfat	1
Abu Dis	12
Elezariyeh	22
Qalandia	15
Al-No'man	1
Total	1009

Challenges Facing the Housing Sector in Jerusalem

According to the Land Research Center's data, the demolition orders and decisions served on Palestinians since 2005 totalled 88%. There has been no demolition whatsoever of any housing units in the Jewish neighbourhoods, according to ex-municipality member, Sara Keminker, and, current member in the municipal council from Meretz party, Meir Margalit.

Major challenges for housing in Jerusalem include:

1. Scarcity of lands, with only 12% or about 10,048 dunums of Jerusalem lands left for building (half of the 12% is already occupied).¹⁴⁷ Sections within the other half lack a land registration certificate, other sections are owned by multiple owners, and still others are considered by the Israeli Authority as absentee land and thus eligible for appropriation.
2. The Israeli policies and laws illegalizing construction and legalizing demolition, which represent a major threat for Palestinian Jerusalemites.¹⁴⁸
3. The municipality's classification of houses as "illegal" includes 20,000 houses.¹⁴⁹
4. High population density in the Old City, where space is limited and services are scarce, the population is continuing to grow and the majority of houses are in dire need of urgent restoration and rehabilitation. To solve the housing problem, it is estimated that Palestinians in Jerusalem currently need more than 42,000 housing units.
5. The Annexation Wall that extends over more than 200 km to the east and west around Jerusalem and occupies more than 40,000 dunums of the City's lands.

International law

Confiscation and Destruction of Private Property

The destruction of private property not justified by military necessity is explicitly prohibited under international humanitarian law during the administration of territory when under belligerent occupation. It follows that the destruction of any house within East Jerusalem and in absence of military necessity, is a clear violation of Article 53 of the Fourth Geneva Convention.

Since the occupation of East Jerusalem began, Israeli authorities have confiscated approximately 35% (24.5%) of the occupied Palestinian land for the construction of Jewish settlements. These settlements comprise 60,000 residential units that house over 200,000 people. During this period, Israeli authorities have conducted approximately 2,000 'administrative' and 'judicial' home demolitions, effectively displacing tens of thousands of Palestinians within and from East Jerusalem.

The severity of such unlawful property destruction is a grave breach of the Fourth Geneva Convention. Taking into consideration the frequency of home demolitions in the absence of military necessity, the Israeli policy of 'administrative' or 'judicial' home demolition within East Jerusalem does not fall within the limited ambit of legitimate property destruction during belligerent occupation and is therefore unlawful.

Forcible Transfer of the Occupied Population

Both Sheikh Jarrah and Silwan provide examples of how Israeli authorities have employed the tool of urban planning to systematically evict and displace Palestinian residents from East Jerusalem. Conventional and customary international humanitarian law prohibits the deportation or forcible transfer of Protected Persons from or within an occupied territory. Article 49(1) of the Fourth Geneva Convention provides for this prohibition regardless of the motive supporting the transfer.

147 Dr. Rasim Khamaysa. *Planning and Organization in Jerusalem*. 2008, p.79, and Jeff Halper, "Jerusalem on the Map" 2005, p.400.

148 See the planning and construction laws for 1965 and its Israeli amendments and procedures.

149 Bimkom (Planners for Planning Rights), workshop on demolition in area 20, May, 2009

Education in Jerusalem: Current Situation and Future Challenges in the Absence of a Unified Educational Authority

Samir Jibril

Director of Education in Jerusalem

Four different authorities supervise education in Jerusalem: the Islamic Waqf affiliated with the Palestinian Authority, the Israeli Ministry of Education, the private sector, and UNRWA. This multitude of supervisory bodies has a negative impact on the status, quality, and development of education within the city.

Table 5: Distribution of students by supervising body (2009-2010)

Supervising body	2009-2010		% Students
	Students	Classes	
Israeli Ministry of Education/Municipality	42,271	1242	50.6
Islamic Waqf	12338	479	14.8
Private	22438	904	26.9
UNRWA	2697	97	3.2
Other bodies (*)	3764	138	4.5
Total	83508	2860	100

(*) Investors who open schools with financial support from the municipality. The schools are known as Sakhnin schools, and to date total eight in Jerusalem.

Sources:

1. *Planning and Statistics Department at the Jerusalem Directorate of Education*
2. *Jerusalem Municipality website: www.jerusalem.muni.il/jer_main/defaultnew.asp?lng=1*
3. *Sakhnin schools' administration*

The following will provide a brief summary and evaluation of the various educational authorities operating in East Jerusalem.

Islamic Waqf Schools (Palestinian Authority)

Waqf schools (previously known as Husni Al-Ashhab schools) are viewed as the heir of the former education department in Jerusalem under Jordanian rule. The new Waqf schools were established post-1967 in response to measures taken by the Israeli authorities to implement an Israeli curriculum in East Jerusalem schools.

The majority of the Waqf schools occupy residential buildings that have not been adequately adapted but have still managed to accommodate the large demand resulting from the Jerusalem community's opposition to the Israeli curriculum. These schools have been subjected to numerous forms of harassment by the Israeli authorities. Despite this the Waqf schools continue to provide free education and offer an alternative to the Israeli school curriculum, and thus remain very popular.

Infrastructure and facilities

The majority of schools are located in former residential buildings that are unable to accommodate the large number of students. As a result, classrooms are overcrowded and there is a noticeable shortage of school playgrounds. Most classrooms do not meet educational or health standards. The average classroom density of

0.9 m² is considerably smaller than the internationally recognised standard of at least 1.26 m². In some of the Waqf schools in East Jerusalem space per student is less than 0.5 m².

Approximately half of the school buildings are being rented for an annual amount of over USD750,000. This places a significant financial burden on schools and diverts important funding towards rental expenses at the expense of vital upkeep, textbooks and staff costs.

Any attempts to renovate existing schools or build new facilities face the same prohibitive obstacles as do all forms of attempted construction in East Jerusalem. Israel urban planning policy serves to severely limit construction and development of schools in East Jerusalem and educational facilities. One way it has sought to do this is by imposing imposed heavy fines on school buildings.

Teacher shortages

Teachers in the Waqf schools received very low salaries causing many to seek employment in the municipality-run Israeli schools. These economic realities result in low levels of applications for teaching vacancies in Waqf schools. Department heads, principles and supervisors do not receive administrative benefits or allowances matching their workload (average benefits are less than USD50 per month).

Due to these restrictive financial conditions, many individuals who hold Jerusalem IDs do not seek employment in the Waqf schools. As a result, the schools suffer from a severe shortage of qualified teachers in basic subjects including Arabic and English, math, physics and Islamic education.

Israeli Ministry of Education/Jerusalem municipality schools

Following the occupation of Jerusalem, Israeli authorities began controlling the city's schools and began to impose the Israeli curriculum throughout schools in East Jerusalem. Families, teachers and students presented strong objections to the imposition of the Israeli curriculum on the basis that the criteria would inculcate an Israeli perspective on history, culture, religion and ultimately disconnect Palestinian residents of East Jerusalem from West Bank Palestinians.

The Israeli supervising bodies demonstrate little concern for education in Arab schools in Jerusalem, as evident in the wide differences in budgets from those allocated to Jewish schools. There is no overarching supervisory body in place to monitor, evaluate, and improve the performance of these schools. Improvement is dependent on individual attempts by some principals to personally work towards the improvement of their schools, often without access to appropriate or vital resources.

In recent years the Israeli Ministry of Education and the Jerusalem municipality have established new schools in different East Jerusalem neighbourhoods. These efforts however fall far short of the demand despite the schools' infrastructure being comparatively better than the Waqf schools.

Additionally, teacher salaries are much better compared to those in other schools in East Jerusalem. But the fact these salaries remain inadequate for the high cost of living in Jerusalem serves to illustrate the unfavourable salary situation of the Waqf teachers.

The Israeli Ministry of Education has failed to address the issues of high school dropout rates (around 10%) amongst the Arab population. Procedures to follow-up with these students have not been implemented.

Private schools

Private schools in Jerusalem have carried a positive national role in rejecting the Israeli curriculum since 1967. They have continued to teach the amended Jordanian curriculum and have absorbed thousands of students coming from schools run by the Israeli Ministry of Education and Jerusalem municipality. In turn, this has created a growing demand on their capacity.

In 2009, 24% of the total number of Palestinian students in Jerusalem were being taught in private schools. Private schools are run by different supervising bodies including churches, monasteries, charitable societies and individual owners.

Like the Waqf schools, private schools face difficulty in attracting adequately qualified teachers due to the Separation Wall and associated movement restrictions in and around Jerusalem. Teachers who hold a Jerusalem ID demand high salaries and are often not available in adequate numbers to fill the needs of the private schools as many prefer employment in schools run by the Israeli Ministry and the Jerusalem municipality.

Several private schools face financial difficulties, as school fees do not meet the basic costs associated with salaries and upkeep. A large number of these schools have approached the Jerusalem municipality demanding financial assistance. In response, the municipality has distributed assistance at varying levels according to the types of services available in each school. Nevertheless, with the exception of a limited number of schools, the municipality has not been concerned, if at all, with supporting the private schools in financial terms.

UNRWA schools

There are seven UNRWA schools in Jerusalem, albeit their students account for only 5% of the total student population. In the early post-1967 years, UNRWA schools managed to accommodate more students and offered adequate educational services. More recently, however, there has been a shortage of funds due to UNRWA budget cuts.

UNRWA schools in Jerusalem also suffer from overcrowding and only teach up to the ninth grade, except in the Shu'fat refugee camp, where tenth grade is also available. This in turn increases the burden on secondary schools run by other authorities in Jerusalem.

Challenges stemming from the absence of a unified authority for education in Jerusalem

The lack of a unified educational authority presents several challenges and obstacles to the achievement of a strong, adequately funded and cohesive education system in East Jerusalem that promotes a unified Palestinian curriculum.

Schools run by the Israeli ministry and Jerusalem municipality do not fully adhere to the curriculum, either by omitting subject matters such as civic education or certain chapters of textbooks and undermine the promotion of a Palestinian identity. This impedes the achievement of the general goals of Palestinian education, most prominently, attachment to and pride in the Palestinian identity.

Short and long-term planning is difficult and there is an evident shortage of schools in some of the most populated East Jerusalem neighbourhoods. Uncoordinated planning between the different bodies may lead to contrary and sometimes conflicting situations. This can include such basic issues as variation among institutions regarding date of admission, school days, hours and holidays. This proves to be especially burdensome when a family has children attending different schools at different times, run by the different authorities.

Table 6: Date of admission per school

Supervising body	Date of admission
Schools run by Palestinian Ministry of Education	7 February of the admission year (2003)
Private schools	14 April of the admission year (2003)
Israeli ministry of Education/municipality	25 December of the year preceding the admission year
UNRWA schools	31 January of the admission year (2003)

Students lack the opportunity to participate in unified activities of a Palestinian nature including sports, cultural art and volunteer events. This is believed to weaken the national identity and attachment to Palestinian culture among Palestinians in Jerusalem.

International law

The most significant and comprehensive proclamation under international law addressing the right to education appears in Article 13 of the International Covenant of Economic, Social and Cultural Rights (ICESCR) which states that: 'Primary education shall be compulsory and available free for all.' It further requires that states:

'undertake to have respect for the liberty of parents...to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions...No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions'

The emerging theme of discriminatory practices in relation to the right to education is based on UNESCO's 1960 Convention against Discrimination in Education. Ratified by Israel and legally binding, the Convention seeks to provide measures aimed at the promotion of equality of opportunity and treatment in the field of education as well as the elimination of all forms of discrimination. Article 4(b) seeks to 'ensure that the standards of education are equivalent in all public educational institutions of the same level, and that the conditions relating to the quality of the education are also equivalent.' Article 5(c) provides a protective recognition of the 'right of members of national minorities to carry on their own educational activities, including the maintenance of schools and, depending on the educational policy of each state, the use of the teaching of their own language'.

While the right to education is firmly embedded in international human rights law, its importance and continuance during periods of armed conflict and belligerent occupation is explicitly protected under international humanitarian law. International humanitarian law directly addresses the issue of education under conditions of occupation thus providing for the application of the right to education. This is reflected in Article 50 of the Fourth Geneva Convention which states that, 'the Occupying Power shall, with the cooperation of the national and local authorities, facilitate the proper working of all institutions devoted to the care and education of children'.

Effects of the Israeli closure system, the Annexation Wall on the Economy in East Jerusalem

Na'ila Jweiles and Azzam Abul-Su'ood

Arab Chamber of Commerce and Industry – Jerusalem

The majority of economic sectors in Jerusalem have been adversely affected by the construction of the Wall, which has reduced Jerusalem's financial link to the Palestinian economy and increased its links to the economy of Israel. In this way, the Wall contributes to Israel's policy of weakening the Arab presence in Jerusalem, including the Arab economy.

The Annexation Wall comes as one of the most serious measures thus far, severely affecting occupied Jerusalem by isolating it from its Palestinian surroundings. This study examines the effects of the Wall on commerce, industry, tourism, services, employment, infrastructure and investment.

Commerce Sector

Since 1994, the numbers of consumers from villages around Jerusalem and from the West Bank and Gaza Strip began to gradually decrease, until the Intifada when the number of consumers in Jerusalem decreased significantly, reaching about 40% of the usual number of consumers in the City for the following reasons:

1. Military checkpoints hindering entry to Jerusalem for residents in villages around the City and other Palestinian cities.
2. Increased cost of goods transport due to checkpoints and increased closure due to the construction of the Wall.
3. Increased cost of goods clearance at ports due to security search.
4. Decreased in average income per capita in the City.
5. Tourists prevented from entering Al-Haram As-Shareef Compound and reduced visiting hours.
6. Employee layoffs in a number of commercial establishments in Jerusalem due to decreased sales.
7. Strict denial of entry into Jerusalem markets for Palestinian products, especially food items such as dairy products and eggs, which are cheaper than similar Israeli products.

Although statistics indicate that there are 5,921 economic establishments in Jerusalem, including commercial and other types, only about one third of these are members in the Chamber of Commerce in Jerusalem. Figure 1 presents the number of economic establishments in Jerusalem (PCBS). Figure 2 presents the number of establishments registered at the Chamber of Commerce by sector, demonstrating the importance of the commercial sector in the City.

Figure 1: Number of economic establishments in Jerusalem district 2002-2007 (PCBS)

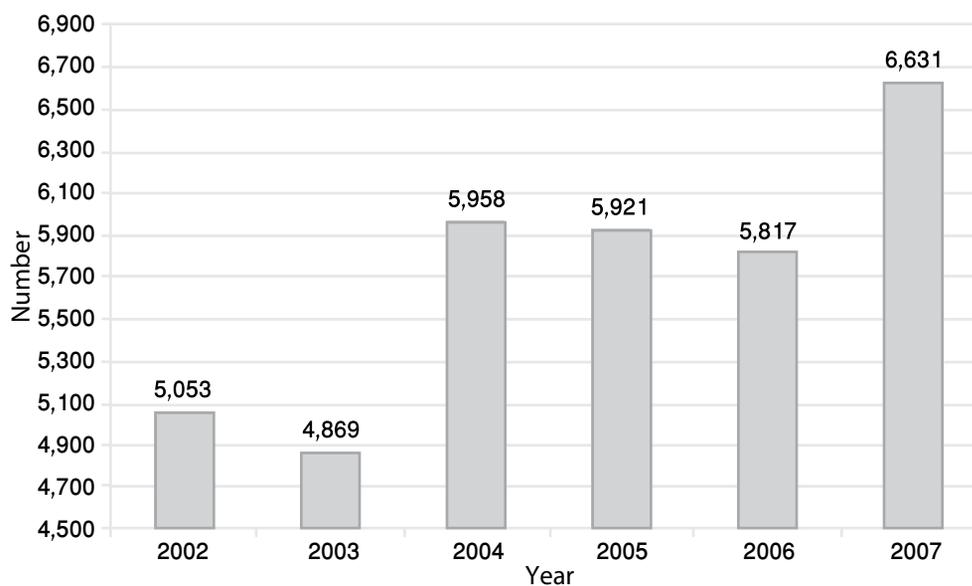


Figure 2: Distribution of members in the Chamber of Commerce by sector, 2007 (Chamber of Commerce) 2007

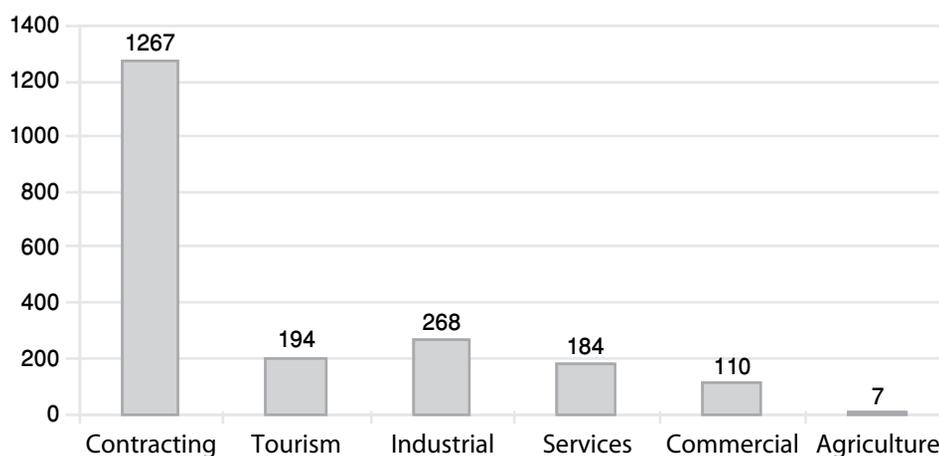


Table 1: Number of establishments, workers and production size in the commercial sector 2007 (PCBS 2007)

Economic activity	No. of establishments	No. of workers	Production size (\$1,000)
Automobile sale and maintenance, fuel sales	118	391	18,176.5
Wholesale trading	25	107	2,837.1
Retail trading and repair of personal goods	1367	2560	37,622.9
Total	1510	3058	58,638.5

Retail Trade Inside the City

The adverse Israeli measures have resulted in the following effects:

- Significant decline in the number of people from outside the City shopping in the Jerusalem commercial market.
- Approximately half of the local residents shop outside Jerusalem.
- Merchants holding West Bank IDs and owning shops in Jerusalem face difficulties in reaching their shops and need to obtain permits to do so.
- Retail dealers from Jerusalem district who hold West Bank IDs need to obtain permits to access the City, however these are not easily obtained.

Wholesale Trade (distribution and agencies)

Arab wholesale dealers, agents and suppliers face unfair competition with Israeli dealers, including expensive security checks at Israeli ports and high costs at military checkpoints. This discrimination may cause the Arab dealers, agents and suppliers to lose their agencies or at least face some decline in the size of their sales.

Reciprocal Trade

Reciprocal trade refers to transport and exchange of goods, in this instance between different Palestinian cities and districts. The Chamber of Commerce issued a questionnaire on reciprocal trade in Jerusalem and the suburbs in order to assess its status in view of the constant closure and the construction of the Wall. Findings were as follows:

- Dealers of food items in Jerusalem have almost stopped trading with the Gaza Strip. About 20% of wholesales used to be directed at Gaza Strip in the past.
- The cost of transport associated with reciprocal trade has increased by 30-40%

- a. The majority of Jerusalem wholesalers' warehouses are located in West Bank areas. The cost of transporting goods from these warehouses to shops in Jerusalem (Bethany to Jerusalem or Al-Ram to Jerusalem, for example) has increased by 30%.
- b. The Bir Nabala area has become a new problem in respect to transporting goods to Jerusalem, since dealers are forced to use lengthy routes and transport cost has increased by over 40%.
3. Fewer numbers of Jerusalemites living behind the Wall are shopping in the City due to difficulties in crossing the Wall and checkpoints. These include psychological, physical and financial difficulties.

Industry Sector

Industry comprises about 14% of Jerusalem economy. The largest single industry in Jerusalem is considered to be the Jerusalem Tobacco Company, with sales tax on cigarettes constituting a major source of local tax income for the Palestinian Authority (PA).

A number of factories in Jerusalem and its suburbs, including shoes, textile, leather garments and babies' diaper industry, have been forced to reduce their production or totally shut down their business due to:

1. Decreased demand of local products (especially non-food products) to one third only.
2. Weak competitive abilities of local products in view of the increased cost of delivery caused by the closure.
3. Problems facing workers' access to their work sites and decreased number of production hours to around one third only.
4. Increased cost of raw materials due to the increased cost of transport from ports and security searches.
5. Decreased potentials for export due to difficulties at Israeli ports and through border crossings with Jordan and Egypt.

Tourism Sector

The tourism sector comprises about 40% of economy in East Jerusalem. This sector has been among the most affected since the outbreak of the Intifada due to the following:

1. Tourist flow to Jerusalem severely dropped and all reservations were cancelled from October 2000 to the end of 2005.
2. Arab hotels in Jerusalem (43 hotels) started to shutdown and gradually lay off their workers and employees. In 2003, the occupancy rate was less than 8% across 37 hotels. In the 6 remaining hotels, occupancy rates ranged between 10-23% in the same year. The following table illustrates the development of Arab hotels working in Jerusalem in the period 2000-2007:

Table 2: Number of hotels and rooms in Jerusalem district by year

Year	# hotels	# rooms
2000	43	1997
2001	29	836
2002	21	915
2003	20	907
2004	23	985
2005	18	869
2006	22	1209
2007	25	1249
2008	29	1317

3. Banks began requiring tourist transport companies (17 companies owning 220 tourist buses in mid 2002) to pay the renewal fees for 90% of their buses in 2000. In view of companies' inability to pay their dues, over 70% of the buses were sold and no longer operate.

4. A number of souvenir shops were forced to shut down in view of their inability to pay recurrent expenses and taxes (up to 350 shops in late 2002 alone).
5. Travel agencies were disrupted and some limited their activities to ticket sales only.
6. Although tourism in occupied Jerusalem has improved since the beginning of 2005 and some hotels managed to resume functioning, competition has increased due to 3 new Israeli hotels adjacent to local tourist sites.

Public service sector

With regard to the public service sector, this study can draw only a limited picture due to lack of information. The information that is available suggests that this sector could be the most affected by the construction of the Wall.

Transport

Prior to 1987, 47 passenger transport companies used to work on fixed routes between Jerusalem and other Palestinian cities and villages. After 1987, licenses held by these companies were cancelled one after another until their number was reduced to 17 companies currently operating. Nevertheless, it is safe to say that the transport sector in Jerusalem is the only sector that has managed to flourish in the past five years due to Jerusalem-registered vehicles having access to Israeli ports.

The table below illustrates the number of establishments and workers in the transport sector, as well as their total production in USD1000:

Table 3: Number of establishments and workers and production size in the land transport sector in 2004

Economic activity	# establishments	# workers	Production size in US \$1000
Land transport	58	521	14,650.8
Helping activities, and activities for the travel agencies	43	269	15,498.3
Total	101	790	30,149.1

Contracting Services

The construction of the Wall has been accompanied by a number of measures taken by the municipality in relation to unlicensed building. These include:

1. An evident increase in the demolition of unlicensed buildings.
2. Confiscation of machinery used by contractors working on an unlicensed building, in addition to heavy fines.
3. Exerting pressures on suppliers of building materials.
4. Denial of work permits to West Bank workers wishing to work in the construction sector in Jerusalem.

With the increased migration of people from areas beyond the Wall to areas inside the Wall, construction works have decreased in areas outside the Wall, such as Al-Ram, Bethany, Bir Nabala and others. However, this has not been matched with increased construction works inside the Wall, leading to a decline in the prices and rent fees of houses and lands outside the Wall and a very sharp increase in the prices and rent fees inside the Wall (40%). The decline in the contracting sector is estimated to be more than 50% since the year 2000.

Financial Sector

1. Banks. The Jerusalem economy is almost wholly dependent on Israeli banks as Arab banks are banned from practicing within the City. Nevertheless, Arab banks offer some services to Jerusalem traders through some branches located in the district outside the City.

- Arbitrary measures against money changers in the City. Money changing is one of the services that has a sizable impact on the Jerusalem economy. A major Israeli measure against this sector was a simultaneous raid by military forces on a number of money changing offices, where over USD1,000,000 was confiscated from money changers who were notified that they were practicing illegally and that they should register at the Israeli official authorities and abide by the relevant Israeli systems and instructions. When the money changers sought to recover the confiscated money, the Israeli authorities refused to return it and considered these amounts as part of tax settlements.

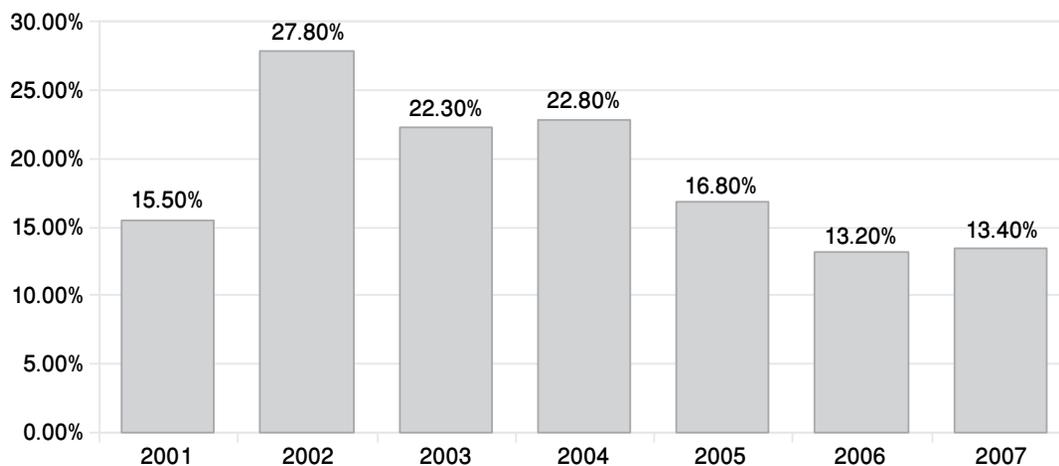
Employment in Jerusalem

In Jerusalem City, about 9,000 new workers enter the labor market on an annual basis, with university students comprising about 15% of the new work force. The rest are early school leavers or students completing their secondary education. Usually, the Israeli labor market absorbs 35-40% of the total, while the rest turn to the Palestinian market in Jerusalem and PA areas for employment in the private and public sectors. At best, the public sector can absorb 10% only, leaving a large proportion of the responsibility to the private sector.

There is also a problem related to ex-prisoners, who have been detained by the Israeli authorities for security charges. After their release, ex-prisoners face problems in finding employment at any Jerusalem-based establishment. Unemployment rates in Jerusalem, peaked in 2002 at 23% for those holding blue (Israeli) IDs and 30% for those holding West Bank IDs (the district average was 27%). It is estimated that there are more than 20,000 unemployed workers in Jerusalem City and district.

The unemployment rate remains high compared to international standards and even to the rate of 1999, which was 10% lower.

Figure 3: Unemployment rate in Jerusalem district, 2001-2007.



The figure above shows a gradual decline in unemployment since 2002, especially in 2005, when tourism in the City started to improve.

In view of the Israeli plan to reduce reliance on the Arab work force and increase reliance on foreign workers, especially those coming from Southeast Asia, Arab Jerusalemites have been directly affected by this situation.

Infrastructure and Facilities

Despite the responsibility of Jerusalem Municipality to provide facilities and maintain infrastructure throughout the City, there is an obvious lack of attention and severe neglect of the Arab parts of Jerusalem on the part of the municipality. The most important indicators in this regard are Israeli statistics, which show that the expenditure of

Jerusalem municipality on services in Jerusalem's Arab neighborhoods does not exceed 5% of its total expenditure in all areas of the City, although the Arab population comprise 35% of the total population and pay 33% of the total municipal tax revenues.

No industrial zone is established in East Jerusalem to serve Arab industrialists. As a result, many have been forced to rent or purchase lands or buildings for their establishments in the industrial zone of Kalandia (Atarot).

The housing shortage resulting from the reverse migration from outside the City to inside is a major problem for Jerusalemites. The City has gone through a significant decrease in income levels against a huge increase in expenditure levels, particularly in regard to the increased housing costs.

Conclusion

Much can be done to preserve Jerusalem City from being fully annexed to the Israeli economic system and to keep it economically self-sufficient.

In order to encourage local, Arab, Islamic and international investment in East Jerusalem and relieve investors' fears of risks associated with investment in the City, the creation of a USD50,000,000 fund to provide guarantees against investment risks is essential to attract capital.

In order to encourage external investors, we should first encourage local investment and demonstrate the ability to convince investors, starting from networking and integration of tourist, commercial, cultural, educational and service sectors to provide a solid platform against Israeli competition.

The Annexation Wall and International Law

Nasser Al-Rayes

Legal Researcher – Al Haq

This study holds that the Annexation Wall that Israel has been constructing inside the West Bank since mid 2002 is one of the most serious violations of international law perpetrated by Israel as an Occupying Power. The Wall has negatively impacted various aspects of Palestinian life including education, employment, health and residency among others, and is a violation of Palestinian rights to self-determination. The Wall is being used by the Israeli authorities as a tool to annex Palestinian land and change the geographic and demographic realities in the Occupied Territories as well as in Israel. In so doing, the Wall is damaging the natural environment and denying Palestinians the protection afforded them under international humanitarian law as protected persons under military occupation.

The Annexation Wall has led to or directly caused the following damage in the Occupied Territories:

1. The destruction of the Palestinian agricultural sector through the destruction of thousands of dunums of arable land by Israeli authorities for the construction of the Wall. To date, the construction has led to the uprooting of 100,000 olive trees, the confiscation of 165,000 dunums of land, the razing of 230,000 dunums of land, and the isolation of 238,350 dunums of land. The Wall has also separated farmers from their land in 71 different villages.
2. Israel has appropriated vital sources of Palestinian water located in the occupied territories through land confiscation or declaration of certain land as military zones.
3. Hundreds of Palestinian families have been transferred and displaced from their homes to other locations in the occupied Palestinian territories (oPt) as a result of the Wall.
4. The Wall and its accompanying checkpoints have severely restricted the freedom of movement of Palestinians. Over 100,000 Palestinian Jerusalemites live behind the Wall. Those with Israeli IDs cannot cross into many areas 'outside' the Wall, and the vast majority of Palestinians with West Bank ID cannot cross into occupied Jerusalem.
5. The Wall affects 170,000 students in 320 schools and has denied an estimated 220,000 residents in 30 locations their access to health centers and capacity. Teachers in schools also have difficulty in getting to and from their schools.
6. The Wall has caused the dispersal and separation of many family members. The Wall and Israeli policies on residency in Jerusalem and on family reunification have together led to the disintegration of many families, where children are denied their right to know and be cared for by their parents.

The Legal Framework Applicable to Israeli Construction of the Annexation Wall

The rules and regulations related to military occupation¹⁵⁰ obligate the occupying power to avoid actions related to the unjustified confiscation, destruction and damage of private property, to avoid the transfer and displacement of the residents of the occupied territory outside the location of their residences, and prohibit the transfer of populations of the occupying power to occupied lands. Within the Fourth Geneva Convention of 1949, Article 47 prohibits changes into the institutions or government of occupied territories or the annexation of land. Article 47 is not qualified and cannot be derogated from under any circumstances.

Other provisions, such as the destruction of property, do provide for some derogation depending on the circumstance. Article 53 prohibits "any destruction by the Occupying Power of real or personal property", "except where such destruction is rendered absolutely necessary by military operations". In its Advisory Opinion on the Wall, the ICJ was "not convinced that the destructions carried out contrary to the prohibition in Article 53 of the Fourth Geneva Convention were rendered absolutely necessary by military operations".¹⁵¹

¹⁵⁰ The principal norms of international humanitarian law dealing with occupation stem from Section III of Part III of the 4th Geneva Convention of 1949, and customary international law. The latter has been compiled and documented in a study by the International Committee of the Red Cross, entitled *Customary International Humanitarian Law*, and edited by Jean-Marie Henckaerts and Louise Doswald-Beck. A summary can be found online at <http://www.icrc.org/web/eng/siteeng0.nsf/html/p0860?opendocument>.

¹⁵¹ For more details, please refer to the ICJ Advisory Opinion of July 2004, in particular to paragraph 122. For the security alibis, please refer to paragraphs 137 and 138. Available at <http://www.icj-cij.org/docket/index.php?p1=3&p2=4&k=5a&case=131&code=mwp&p3=4>

Further, under Article 147 of the Fourth Geneva Convention, a grave breach is defined as *extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly* (emphasis added). The destruction of public and private Palestinian property by Israel for the construction of the Wall thus constitutes a grave breach of the Fourth Geneva Convention. Moreover, under the Rome Statute Israeli measures associated with the Wall construction, which are not justified by military necessity fall within the category of war crimes.

Legal Mechanisms for Confronting the Wall

The ICJ advisory opinion issued on 9 July 2004 on the legal implications of the construction of the Wall by Israel¹⁵² sets a precedent for the international judiciary with regards to the rights of the Palestinian people living under occupation.

The most important issues indicated in the Advisory Opinion can be summed up in the following legal principles:

1. Affirmation of the applicability of the term “occupation” to the Palestinian territories and therefore the applicability and validity of international humanitarian law to the rights of Palestinians as protected persons living under occupation.
2. Affirmation of the legitimate right of Palestinians to self determination.
3. Affirmation of the obligations of Israel related to the respect and application of the international law of human rights (namely the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child).
4. Affirmation of the prohibition on acquisition and annexation of land of others by force and the necessity of the Occupying Power to respect this. Recognition of the risk of annexation posed by the Wall in its current and planned route within the occupied West Bank.
5. Affirmation of the illegitimacy of the Wall for its contravention of the principles and rules of international law.
6. Affirmation of the obligation of Israel as the occupying power “to return the land, orchards, olive groves and other immovable property seized” or “compensate the persons in question for the damage suffered” as a result of the Wall’s construction”.¹⁵³

The Occupying Power’s Liability as a Result of the Construction of the Wall

A. Civil liability of the occupying power

According to the provisions of international humanitarian and human rights law, Israel is under obligation to return the property and land it has confiscated and/or to provide compensation to all individuals it has affected.¹⁵⁴

B. Criminal liabilities

Although the State itself cannot be held criminally liable, there are certain groups or individuals who can, under international humanitarian law, for the grave breaches of international law associated with the construction of the Wall. This is specifically articulated in article 146 of the Fourth Geneva Convention.¹⁵⁵ These grave breaches set out in the Geneva Convention are considered war crimes, which incur individual criminal liability. Under Article 146

152 the ruling was issued in accordance with UN General Assembly Resolution ES-10 / 14 issued during the exception and urgent period and held on 8 Dec 2003

153 Supra note 14, para 153.

154 On types of compensation, please refer to the following: Dr. Salah Abed Al Badee’ Shalabi, *The right to Rebate*, 1st ed. Cairo (1983), p 209.

155 The High Contracting Parties undertake to enact any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, any of the grave breaches of the present Convention defined in the following Article. Each High Contracting Party shall be under the obligation to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own courts. It may also, if it prefers, and in accordance with the provisions of its own legislation, hand such persons over for trial to another High Contracting Party concerned, provided such High Contracting Party has made out a prima facie case. Each High Contracting Party shall take measures necessary for the suppression of all acts contrary to the provisions of the present Convention other than the grave breaches defined in the following Article. In all circumstances, the accused persons shall benefit by safeguards of proper trial and defense, which shall not be less favourable than those provided by Article 105 and those following of the Geneva Convention relative to the Treatment of Prisoners of War of 12 August 1949.

of the Fourth Convention, the state is obligated to “search for the persons alleged to have committed or ordered to have committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own courts”.

The Legal Effects Emanating from Israel’s International Liability

Responsibility of Member States in Confronting Israel’s Violations of the Provisions of International Law

Member States have taken upon themselves the burden of strengthening the law and protecting its sovereignty as an international interest. They have a duty to intervene in the event of undermining this law but, naturally, the commitment of these countries differs in degree and nature depending on the legal principle for which these commitments were placed for respect and commitment by the member states.

These commitments can be divided into two patterns: negative and positive. Negative commitment refers to states lack of recognition of the actualities established by the construction of the wall. It extends to refraining from providing any assistance or support that will help the occupying power to sustain the violation of the principles and rules of the law. The second pattern is the positive commitment which refers to serious intervention to end the violations of the rules and principles of international law.

Responsibilities of UN Member States in Confronting Israel’s Violations of International Law with Regards to the Wall

Part of the UN framework urges member States to create and implement tools and instruments that guarantee protections, encourage respect and safeguard sovereignty. As part of this framework member States have a duty to intervene in the event of serious or repeated violations of international law that impact on the international community as a whole.

A. Inadequate Commitment of Countries in Regards to Israel’s Violations of the Rules and Principles of International Humanitarian and Human Rights Law

The inadequate commitment of member states to Israel’s violation of International Humanitarian Law is embodied in the negative commitment of Member states and failure to take positive steps to bring an end to violations of international law.

B. Positive Commitments of Countries in Regards to Israel’s Violations of International Humanitarian and Human Rights Law

The rules and principles of International Humanitarian Law and Human Rights Law oblige State Members’ positive intervention in confronting Israel’s violations of these rules. These obligations include:

1. Appeals to support and assist the Palestinian people to confront these violations.
2. Obligations of the UN in confronting Israeli violations
3. Intervention by the Security Council in order to achieve peace and security.
4. Obligations of the General Assembly to prevent further violations.

Conclusion

Israel’s construction of the Wall has been shown to contravene international human rights and humanitarian law. It has caused large scale damage to Palestinian lands and livelihoods and contributed to the denial of the right to self-determination. This study has aimed to outline the main legal implications of Israel’s construction of the Wall, including the specific violations of international human rights and humanitarian law, as well as the legal obligations of all parties resulting from the construction of the Wall and Israel’s breaches of international law.

GENERAL RECOMMENDATIONS

Israeli authorities

- Stop the policies of ethnic cleansing and forced displacement of Palestinians, including the immediate cancellation of the Nationality and Entry to Israel law, which entails racial discrimination specifically against Palestinians, and ensure Palestinians have free access to and from Jerusalem and freedom to stay and live in the City.
- Respect and implement the standards of the international human rights instruments to which Israel is a party, specifically, with regard to the right to identity and nationality, the right to a family life and children's right to know and be cared for by their parents.
- Apply the rules and provisions of international humanitarian law and international human rights law to the Palestinian population of the oPt.

Palestinian Authority

- Monitor and document the consequences of the ethnic cleansing and forced displacement of Palestinians, the freeze on the unification of disintegrated families, including Jerusalemite families, and evaluate the ensuing material and psychological damages.
- Ensure the provision of the necessary support and aid to victims of these policies, including their rehabilitation and social integration.
- Demand the High Contracting Parties of the Fourth Geneva Convention to assume their responsibilities related to the pursuit and accountability of all people involved in the commission of grave breaches of the Convention.
- Demand the UN Security Council intervene in accordance with its primary responsibility of ensuring international peace and security.

International community

Pressure Israel, the occupying power, to ensure protection for Palestinians in the oPt, including East Jerusalem against the Israeli policies of ethnic cleansing and forced displacement and compel Israel to respect and implement their obligations under international human rights and humanitarian law.

International and local NGOs

- Demand an end to occupation of the Palestinian territories and the application of the Fourth Geneva Convention to the oPt.
- Pressure the international community, the UN and States Parties to the Fourth Geneva Convention to fulfill their legal responsibilities.