



Israeli laws and policies denying Palestinians the right to freely enter and establish residence in occupied East Jerusalem:

Instruments of population transfer, apartheid and colonialism

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In April, the Israeli Knesset extended the ban on Palestinian family reunification requests for an additional year. Based on the Citizenship and Entry into Israel Law (Amendment 2007), the ban affects Palestinian citizens of Israel as well as the occupied Palestinian population of East Jerusalem. Under this law, these Palestinians cannot obtain Israeli citizenship or residency permits for spouses from the occupied West Bank and Gaza Strip and thus, are prevented from living with their families in Israel or occupied East Jerusalem. Adopted in 2003 on a temporary basis allegedly for security purposes, the law requires annual review by the Israeli parliament and government. Ten years later, Israel continues to ignore calls from human rights organizations, international law experts and the diplomatic community to revoke the discriminatory law and to facilitate family reunification irrespective of ethnicity or national origin.¹ Annual renewal of the ban has become a routine affair.

This brief deals with the discriminatory laws and administrative measures used by Israel to deny Palestinians the right to freely enter and establish residence in occupied East Jerusalem. These laws and measures are assessed in the context of the Israeli effort to take permanent control of “greater Jerusalem” through annexation, confiscation and exploitation of occupied Palestinian land and the establishment of Israeli settlements in occupied Palestinian territory. In 2004, the International Court of Justice found that Israel, with these practices, is responsible for violations of peremptory norms of international law, in particular the Palestinian right to self-determination and the prohibition on the acquisition of territory by force, as well as for serious violations of humanitarian law, including forced population transfer.² Since then, it has become increasingly recognized that Israel’s breaches of its international obligations are not limited to those under the Fourth Geneva Convention. Israel’s regime of prolonged occupation has been characterized as a regime of occupation, apartheid and colonialism,³ and independent international law experts have confirmed that

¹ See, for example, UN Committee on the Elimination of Racial Discrimination (CERD), Concluding Observations – Israel (2012), para.18: <http://www2.ohchr.org/english/bodies/cerd/docs/CERD.C.ISR.CO.14-16.pdf>

² ICJ Advisory Opinion on the Israeli Wall, 9 July 2004, para. 74, 87, 88, 117, 123 – 134, 136.

³ See, for example, Human Sciences Research Council of South Africa, “Occupation, Colonialism, Apartheid?” (2009). Executive summary at: <http://www.alhaq.org/attachments/article/232/occupation-colonialism-apartheid-executive.pdf>

Israel, by developing and maintaining settlements in occupied Palestinian territory “through a system of total segregation”, is committing the crimes of forced population transfer and apartheid.⁴

Population transfer, or ethnic cleansing, has been defined by the United Nations as “the systematic, coercive and deliberate ... movement of population into or out of an area ... with the effect or purpose of altering the demographic composition of a territory, particularly when that ideology or policy asserts the dominance of a certain group over another.”⁵ For Israel, which defines itself as the state of the Jewish people, population transfer is a necessary element of colonization, because only a substantial Jewish presence or majority in the colonized land can ensure permanent Israeli domination.

The Civic Coalition-Jerusalem seeks to raise awareness that Israel has changed the demographic composition in and around occupied East Jerusalem through a systematic and institutionalized effort to remove Palestinians from the area, in addition to the construction of settlements and the transfer of Jewish settlers. Discriminatory Israeli laws and policies which deny Palestinians the freedom of movement and the rights to freely enter/return and establish residence in occupied East Jerusalem have contributed substantially to the forced removal of Palestinians from Jerusalem and are highlighted in this brief for this reason.⁶

Israeli “Greater Jerusalem”: Revisiting the scope of colonization and population transfer

In 1967 there were no Israeli colonies and settlers in the West Bank. Based on the consensus among Israel’s political elites that “united” Jerusalem is to be the permanent capital of Israel, which was legislated into law in 1980,⁷ East Jerusalem and adjacent areas of the West Bank have been a priority area for Israeli colonization since the beginning of the occupation.

In the course of 46 years of occupation, Israel has developed a “greater Jerusalem” that forms the core of a large metropolitan area with West Jerusalem as its center, and with urban infrastructure extending a radius of approximately 25 km on both sides of the 1967 ceasefire line (“green line”). Israeli metropolitan Jerusalem stretches from the bottom of the Jerusalem hills in the West, to Ramallah in the north, the edge of the Dead Sea in the east, and to the Hebron district in the south. “Greater Jerusalem” has been developed based on the Metropolitan Jerusalem Plan, an unofficial master plan designed by the right-wing Jerusalem Institute for Israel Studies (1994-95) for the declared purpose of boosting Jewish settlement in and around occupied East Jerusalem. The plan was adopted informally by the Labor government of Yitzhak Rabin shortly after the signing of the Declaration of Principles (Oslo Agreement) with the PLO.⁸

⁴ Report of the UN Fact Finding Mission on the Israeli settlements, A/HRC/22/63, 7 February 2013, para. 103. See also, CERD (2012), para. 24.

⁵ A.S. al-Khasawneh and R. Hatano, *The Human Rights Dimensions of Population Transfer including the Implantation of Settlers*. Preliminary Report, Commission on Human Rights Sub-Commission on Prevention of Discrimination and Protection of Minorities, Forty-fifth Session, 2-27 August 1993, E/CN.4/Sub.2/1993/17 of 6 July 1993, para. 15 and 17.

⁶ For an overview of other discriminatory policies, including land confiscation, restrictions on use and access to Palestinian property and resources, and urban planning resulting in shortage of housing and home demolitions, see, Badil, *Israeli Land Grab and Forced Population Transfer of Palestinians*, June 2013.

⁷ Basic Law: Jerusalem, Capital of Israel (1980).

⁸ <http://www.fmep.org/reports/special-reports/greater-jerusalem/greater-jerusalem> . See also, B’tselem, *Land Grab*, 2002, p. 100 – 114.

“Greater Jerusalem” as existing today is predominantly located in occupied Palestinian territory. It incorporates the entirety of East Jerusalem, as well as large additional areas of the Palestinian districts of Jerusalem and Bethlehem. It consists of a system of massive urban infrastructure, including some 50 residential settlements, public institutions and service facilities, industrial zones, the Wall, security installations, and a network of highways and a light rail, which connects the colonial settlements with West Jerusalem and Israel. The entire “greater Jerusalem”, including West Jerusalem, has a Jewish Israeli population of approximately 660,000, over half of which (55%) are settlers in Israeli colonies.⁹ An almost equal number of indigenous Palestinians live in the same area, but segregated from Israel “greater Jerusalem”. The large majority - 590,000 - are Palestinians living in the occupied West Bank district of Jerusalem, including the city of East Jerusalem (397,000) and in the district of Bethlehem (197,000).

The inner core of “Greater Jerusalem” includes the official jurisdictional bounds of the Israeli Jerusalem Municipality. This area includes West Jerusalem and “Eastern Jerusalem”, i.e. an area of approximately 70,000 dunams (70 km²) located in the West Bank that was annexed by Israel immediately after the occupation in 1967. Approximately 9% (some 6,000 dunams) of the annexed area had previously been part of Palestinian Jerusalem under Jordanian rule, while the remaining 91% belonged to 28 Palestinian communities in the West Bank, including the towns of Beit Jala and Bethlehem. Currently, Israeli “municipal Jerusalem” has a population of approximately 804,000, including 499,400 Jewish Israelis (62%). Palestinians constitute 293,000 people, or 36%, most of whom live in the Israeli-defined boundaries of occupied East Jerusalem.

The number of Palestinians living in East Jerusalem today is estimated to be 246,000 (PCBS). Israel has established 16 large residential colonies in East Jerusalem, and has populated them with approximately 200,000 Jewish settlers.¹⁰ This has created a situation where more than half of “municipal Jerusalem” is concentrated in occupied East Jerusalem, with Israeli settlers composing approximately 45% of its population. Since 1967, the Israeli settler population in East Jerusalem has increased 200,000%, mainly as a result of the transfer policy, while the Palestinian population has increased less than 400% (up from 66,000 in 1967), largely due to natural growth. The occupied Palestinian city has become fragmented, under-serviced and under-developed.

The outer sphere of “greater Jerusalem” consists of four interconnected urban colonial clusters (the so-called settlement blocs) extending from Jerusalem deep into the occupied West Bank. At least 160,500 Israeli Jewish citizens live in the approximately 35 settlements that form the backbone of these clusters, i.e., the north-western and north-eastern settlement blocs around Giv’at Ze’ev and Kokhav Ya’akov (55,000 settlers), the eastern bloc around Ma’aleh Adumim and the E-1 area (42,500), and the southern Gush Etzion bloc (63,000). These settlement blocs and the associated infrastructure consume large areas (the so-called Areas C) of the Palestinian districts of Jerusalem and Bethlehem. 348,000 Palestinians live in these districts, among them 151,000 in the Jerusalem district outside of East Jerusalem and 197,000 in the district of

⁹ Demographic data in this section are based on the following sources: Israeli Central Bureau of Statistics (ICBS): http://www.cbs.gov.il/reader/shnaton/templ_shnaton_e.html?num_tab=st02_12x&CYear=2012 http://en.wikipedia.org/wiki/Population_statistics_for_Israeli_West_Bank_settlements Jerusalem Institute for Israel Studies: http://www.israelnationalnews.com/News/News.aspx/155939#.UZ2_raLIs4I Palestinian Central Bureau of Statistics (PCBS), *Israeli Settlements in the Palestinian Territory*, Annual Statistical Report 2011, August 2012, Tables 3, 5 and 16: http://www.pcbs.gov.ps/Portals/_PCBS/Downloads/Book1913.pdf, and http://82.213.38.42/Portals/_pcbs/PressRelease/JYB2012e.pdf

¹⁰ Data on the number of Israeli settlers in East Jerusalem in 2011 vary between 192,000 and 199,647, not including the approximately 2,000 – 3,000 settlers in an around the Old City.

Bethlehem. In the outer sphere of “greater Jerusalem,” Israeli settlers constitute 32% of the entire population of the area. Facing forced displacement from areas consumed by “greater Jerusalem,” Palestinians are increasingly concentrated in the towns, villages and refugee camps located in the enclaves of Area A and B, which are administered by the Palestinian Authority and are undergoing rapid urbanization.

Discriminatory Israeli Laws and Policies on Entry and Residency in Occupied East Jerusalem: instruments of Population Transfer

Freedom of movement and the rights to leave and return, free choice of residence and legal status in occupied East Jerusalem are essential to the exercise a wide range of other civil, political, social and economic rights, including the right to self-determination, by the Palestinian people. In practice, Israel has systematically restricted these rights in order to curb the growth of East Jerusalem’s Palestinian population and secure a Jewish majority in “greater Jerusalem.” With this policy, Israel has prevented the participation of East Jerusalem Palestinians in the political, social, economic and cultural life of their country, and prevented Palestinian development.¹¹

The 1967 Israeli census: immediately after the war and Israeli occupation, Israel conducted a census of population and housing in East Jerusalem and registered some 66,000 Palestinians. Only persons physically present were registered. As many as 30,000 internally and externally displaced Palestinian Jerusalemites were excluded from the census; they were not allowed to return and not included in the Israeli population register.¹²

The principle of “demographic balance”: In 1973, the Inter-ministerial Committee to Examine the Rate of Development for Jerusalem (Gafni Committee) determined that the future ratio between “Jews and Arabs would be as it was at the end of 1972”, i.e., 73.5% Jews and 26.5% Palestinians.¹³ Since then, this principle – euphemistically termed “demographic balance” – has guided official Israeli policy vis-à-vis the occupied Palestinian population, including discriminatory urban planning and development policies, which have caused the lack of economic opportunities, housing shortage, home demolitions and forced evictions that compel an increasing number of Palestinians, especially the young, to move into East Jerusalem neighborhoods that have been cut off from the city center by the Wall, or into the adjacent West Bank. Current Israeli development policies are based on the Jerusalem Local Outline Plan 2000 (Jerusalem 2000 or 2020 plan) and aim to preserve a ratio of 60/40 in favor of the Jewish population by 2020, in light of the unlikelihood of meeting the 70/30 goal because of the higher birthrate among the Palestinian population.¹⁴

Measures preventing the large majority of the occupied Palestinian population from entering and establishing residence in occupied East Jerusalem: Palestinians registered in the 1967 census were accorded legal status in Jerusalem and issued blue Israeli ID cards. From this point on, only Palestinians holding such

¹¹ Articles 2(c) and 2(d) of the International Convention for the Suppression and Punishment of the Crime of Apartheid (1973).

¹² Some 44,000 of the 66,000 Palestinians registered in the census were persons living within the area of the former Jordanian municipality, suggesting that approximately 26,000 Palestinians were displaced from the city as a result of the 1967 war. Additional 7,000 Palestinians are estimated to have been abroad during the war. See, Badil Resource Center for Palestinian Residency and Refugee Rights, *Eviction, Restitution and Protection of Palestinian Rights in Jerusalem*, 1999, p. 8. See also, Lea Tsemel and Ingrid Jaradat Gassner, *The Trap is Closing on Palestinian Jerusalemites*, Alternative Information Center, 1996, p. 7.

¹³ See, for example, B’Tselem, *A Policy of Discrimination: Land Expropriation, Planning and Building in East Jerusalem*, 1995, p. 30 – 38, 45 – 48.

¹⁴ OCHA-OPT, *The Planning Crisis in East Jerusalem*, 2009, p.14.

blue IDs were entitled to enter and live in “municipal Jerusalem”, effectively transforming these rights into a privilege reserved for a small portion of the occupied Palestinian population. In practice, Palestinians from the occupied West Bank and Gaza Strip were able to enter and stay in Jerusalem until the early 1990s, when Israel began enforcement of its law through checkpoints, magnetic cards and permits. Enforcement became systematic and institutionalized in the mid-1990s, when Israel’s Jerusalem closure policy was recognized *de facto* by the Oslo interim agreements between Israel and the PLO. Since then, Israel has unilaterally regulated Palestinian access to Jerusalem according to its own demographic, diplomatic and security considerations and needs for building “greater Jerusalem”.

“Permanent residency” for Palestinians in Jerusalem – a legal status of foreigners: Israel does not recognize the inherent right of Palestinian Jerusalemites, as members of the indigenous and occupied population, to live in their hometown.¹⁵ Based on the unlawful annexation of East Jerusalem, Israel accords the Palestinian population the legal status of “permanent residents” pursuant the Entry into Israel Law (1952) and the Entry into Israel Regulations (1974). This status is usually accorded to non-Jewish foreigners who are granted permission to stay in Israel for a specific long-term purpose. While it conveys some of the rights (e.g., entitlement to public education, health and welfare), and most of the duties (e.g., payment of national and municipal taxes) of Israeli citizens, it does not convey a constitutional right to residency, but a privilege granted solely at the discretion of the Israeli Interior Minister. This permanent resident status undermines the human rights of the Palestinian population in occupied East Jerusalem and causes forcible displacement from the city, in particular as a result of the policies described below.

Revocation of permanent residency in Jerusalem: the Israeli Interior Minister may determine that permanent residency in Jerusalem has expired if a Palestinian Jerusalemite “leaves Israel and settles in another country.”¹⁶ Between 1967 and 1995, some 5,000 Palestinian Jerusalemites who had travelled abroad with Israeli exit permits lost their residency status in Jerusalem on this basis.¹⁷ By 1996, the meaning of “another country” was re-interpreted to include the OPT outside Israeli- annexed “municipal Jerusalem.” Since Palestinian Jerusalemites do not require Israeli exit permits in order to move between Israel and the OPT, the new policy conditioned residency status in the city on physical presence (permanent domicile, “center of life”) which must be documented during any interaction with the Interior Ministry.¹⁸ This new policy, combined with active investigation of Palestinian Jerusalemites to determine whether they actually live within the boundaries of “municipal Jerusalem,” has led to 11,078 Palestinian Jerusalem residency permits being revoked since 1996.¹⁹

Many Palestinian Jerusalemites are at risk of having their Jerusalem resident status revoked in the future, in particular the young, who cannot find adequate housing in East Jerusalem’s traditional residential areas. At

¹⁵ Until 1994, Israel conveyed a similar unprotected residency status upon the entire Palestinian population of the OPT under military orders and forcibly displaced tens of thousands. This changed in 1994, when Palestinians registered with the Israeli military authorities were granted a quasi-constitutional right to leave and return to their country and to convey resident-status to their children through the Oslo interim agreements. Israel, however, preserved the right to treat East Jerusalem Palestinians under its own domestic law, based on the rationale that the “question of Jerusalem” was a matter to be discussed in the negotiations over a permanent peace agreement.

¹⁶ Regulations 11(a) and (c) of the Entry into Israel Regulations (1974).

¹⁷ Estimate of local human rights organizations; partial Israeli Interior Ministry records list 3,185 cases for the same period. See, Badil, *Eviction, Restitution and Protection of Palestinian Rights in Jerusalem*, 1999, p. 20-21.

¹⁸ See, Hamoked and B’Tselem, *The Quiet Deportation. Revocation of Residency of East Jerusalem Palestinians*, 1997.

¹⁹ <http://www.hamoked.org/Document.aspx?dID=Updates1224>

immediate risk are an unknown number – probably close to 50,000²⁰ – Palestinians who hold permanent residency but have moved outside the Israeli municipal boundaries, mainly in the adjacent occupied West Bank. Also at risk of losing their legal status in Jerusalem are the approximately 55,000 Palestinian Jerusalemites who continue to live in occupied East Jerusalem but whose homes are located in residential communities that have been cut off from the city center by the Wall, including Kafr Aqab, the Shu’fat refugee camp and parts of Al Sawahira Al Sharqiya. As Israeli municipal services are mostly not available in their neighborhoods and services in the center of town are difficult to access, these people will find it increasingly difficult to document that their “center of life” is in Jerusalem. Moreover, according to Israeli press reports from 2012, Israel’s Jerusalem municipality is exploring the option of transferring these East Jerusalem communities to the responsibility of the Israeli military.²¹

Denial of Jerusalem residency to Palestinian children: East Jerusalem Palestinian parents do not automatically, as a matter of “legal right,” pass on their Jerusalem residency status to their children. Since the 1980s, the Interior Minister has used his vast powers of discretion under Article 12 of the Entry into Israel Regulations in order to deny registration of Palestinian children, if the child’s father was not a Jerusalem resident or if the child was not born in Israel, i.e. abroad or in the occupied West Bank; to condition child registration with proof of “center of life” in Jerusalem, or to require parents to submit a request for family reunification for their children instead of simple registration. Since the ban on family reunification in 2003 (see below), many children born outside “municipal Jerusalem” or having one parent who is not a Jerusalem resident have been issued only short-term permits to stay, rendering their future legal status in Jerusalem unclear.²² Confronted with a myriad of un-transparent and frequently changing procedures, many Palestinian parents are unable to secure permanent residency status, and the associated free public healthcare, education and welfare services for their children. It was estimated in 2003, that 10,000 Palestinian children in East Jerusalem were without legal status.²³

The ban on family reunification: due to the large-scale forcible displacement of Palestinians by Israel since 1948, extended Palestinian families are dispersed across Israel, the OPT, neighbouring Arab countries and further afar. Marriages among members of the dispersed extended families are common but, unlike Jewish citizens, Palestinian citizens of Israel and residents of occupied East Jerusalem cannot lawfully unite with relatives, including spouses and children, unless they are granted family reunification by the Interior Ministry. In the past, requests of East Jerusalem residents were handled by the Ministry based on unspecified humanitarian criteria. Decisions were guided by the position that marriage alone was not a sufficient humanitarian reason, and that the ‘sanctity of family life could be maintained by East Jerusalem Palestinians elsewhere in the region’. Until 1994, moreover, the Minister denied requests of Palestinian women on the grounds that women customarily go to live with their husbands.²⁴ Thousands of family reunification requests were submitted from 1994 – 2000, when legal petitions and increased international scrutiny, in the framework of the negotiations with the PLO, resulted in a new policy. Requests submitted by women would be approved if the couple could document “center of life” in Israel and no criminal or security

²⁰ 293,000 Palestinians live in municipal Jerusalem according to official Israeli statistics (ICBS, 2012) vs. 246,000 according to official Palestinian sources (PCBS, 2012).

²¹ <http://www.civiccoalition-jerusalem.org/press-releases/more-90000-palestinian-jerusalemites-risk-forcible-displacement-israel-urgent-appeal->

²² B’Tselem: http://www.btselem.org/family_separation/child_registration_in_east_jerusalem . See also, OCHA-OPT, *East Jerusalem: Key Humanitarian Concerns*, 2011, p. 22 – 26.

²³ Jerusalem Center for Social and Economic Rights cited in OCHA-OPT, *supra*, p. 12 and footnote 7. No other estimates are available.

²⁴ Hamoked and B’Tselem, *The Quiet Deportation*, p. 9-10

grounds existed to deny the application. By 1998, the Ministry was still handling requests submitted in 1991 - 1995 and had presumably issued a permit in 4,622 cases.²⁵ A large, but unknown, number of Palestinians were forced to leave East Jerusalem between 1967 and 2000, because they could not obtain resident status for their non-Jerusalemite spouse or for their children. Many families also left because of the difficulties faced in the long waiting period, in which non-resident family members held only short-term permits to stay which were frequently cancelled for security reasons.

Family reunification for both East Jerusalemite Palestinians and Palestinian citizens of Israel ground to a halt during the second intifada, when Israeli officials and politicians launched an aggressive public campaign against Palestinians who allegedly used family reunification as a “back-door for the right of return” and for engaging in terrorism.²⁶ This campaign resulted in the adoption of the discriminatory Citizenship and Entry into Israel Law in 2003 and the ban on Palestinian family reunification described at the beginning of this brief. The law as amended in 2005 and 2007 prohibits the grant of family reunification not only for Palestinian spouses from the OPT, but also from designated “enemy countries” including Syria, Lebanon, Iran and Iraq. It was upheld by the Israeli high court in 2012, when the court ruled that even if the law harmed the constitutional rights of citizens of Israel, such as the right to equality, this infringement was proportional and did not violate Israel's Basic Laws.²⁷ The law permits exceptions to the ban in cases where the husband is over 35 years of age or the wife over 25, in special medical or work cases, and for children under the age of 14.²⁸ In all cases, however, only temporary permits are granted, and the future legal status of spouses and children remains unclear. The ban has resulted in a drastic reduction of family reunification requests and approvals in occupied East Jerusalem. In February 2011, for example, the Israeli Ministry of Interior rejected 364 of the 841 permit applications submitted. Less than 4 percent (31 applications) were accepted, while the remainder was still being processed. Those rejected were informed that they must leave Jerusalem and ‘return to their place of residence in the West Bank.’²⁹

East Jerusalemite Palestinian residents who have been forced to leave Israeli “municipal Jerusalem” due to the discriminatory Israeli policy of family reunification since 1967 or the recent ban in order to live with their families are among the tens of thousands affected or at risk of revocation of their Jerusalem resident status.

²⁵ Badil, *Eviction, Restitution and Protection*, p. 22.

²⁶ See, for example: <http://www.danielpipes.org/10524/palestinian-right-of-return>

²⁷ <http://www.adalah.org/eng/?mod=articles&ID=1185>

²⁸ http://www.adalah.org/eng/?mod=db&dld_page=law&slg=citizenship-and-entry-into-israel-law-temporary-order

²⁹ OCHA-OPT, *East Jerusalem: Key Humanitarian Concerns*, p.23, citing Hamoked