

The Civic Coalition for Defending the Palestinians' Rights in Jerusalem

The Israeli Occupation's campaign against Palestinian lands and
construction in Jerusalem

"Legalizing demolition... Illegalizing construction"

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The Israeli Occupation's law in Jerusalem:

Legalizing demolition... Illegalizing construction

Introduction

The Palestinian land has been at the center of the Arab-Zionist conflict from the very beginning of the Palestinian cause and throughout its stages: prior to the creation of Israel in 1948, after Israel's occupation of the remaining part of Palestine in 1967, and to date. The Judaization and annexation of Jerusalem has been a major goal 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 falsified 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 about 200,000 settlers, and the settler presence in occupied Jerusalem is steadily increasing.

The Israeli occupation's campaign against Palestinian construction activities in Jerusalem has been a means for implementing the Judaization plan, aimed at minimizing the non-Jewish population in the city. The policy of demolishing existing houses, removing those under construction and banning the building of new ones has been followed systematically by the Israeli authorities with periods of intensification and periods of easing as per the political context of the occupation and the region in general.

Demolition and destruction: a basic feature of the occupation

The destruction of Palestinian civilization is a basic feature of the occupation. Immediately after the war of June 1967, on 11 June, Israeli bulldozers razed the Moroccan Gate neighbourhood inside the Old City of Jerusalem, destroying 135 houses, a school, a mosque and other establishments. Later, the three Latrun villages northwest of Jerusalem were destroyed, including over 5,000 buildings. Additionally, about 200 buildings and houses in the “no man’s land” areas in Jerusalem were destroyed. The number of houses alone demolished in Jerusalem to date since June 1967 is estimated at around 9000¹. This is in addition to the use of military tanks, warplanes, warships and military and civil bulldozers to demolish over 40,000 buildings and displace hundreds of thousands of Palestinians in the occupied Palestinian territories: Jerusalem, the West Bank and the Gaza Strip².

The Israeli occupation’s violation of the Palestinians’ 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:

Approximately 25 km² of land have been confiscated since the beginning of the Israeli occupation to establish (to date) 17 settlements exclusively for urban development of lands Israel has illegally annexed, under a systematically planned policy. The Israeli occupation has confiscated 34% of Jerusalem lands for settlement activities and classified 54% of the lands as Green or Open Lands, leaving less than 12% or only 10,048 dunums of land for housing and other uses³. According to the Jewish professor Yohanan Peres, “Israel is banning construction in 70% of West Bank lands and 86% of Jerusalem lands

In addition, the Israeli occupation’s housing policy and practices completely ignore the needs of the local Arab population, particularly in regard to

1 Arab Studies Society.

2 The Palestinian Ministry of Local Governance.

3 Arab Studies Society.

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 balance⁴. . The current Palestinian population in Jerusalem is over 280,000, comprising about 35% of the population.

For 40 years since the inception of the Israeli occupation of East Jerusalem, the Jerusalem Municipality had not approved any 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. The Israeli occupation has consistently prevented the implementation of building activities by, for example, allocating a low proportion of lands for building, or classifying lands as Green or Open Areas. For instance, lands classified as Green comprise 60% of Sawahreh and 42% of Sur Baher. The rest of the lands of these two villages are classified as lands in need of reclassification and zoning. Added to these confiscations are the Israeli bypass roads that occupy 7% of Jerusalem lands. As a result, only very small areas are available for building purposes.

These appropriations and confiscations have forced the Palestinians in Jerusalem 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 and to avoid the heavy fees associated with the license. This license fees are particularly significant in view of the low income level and high taxes faced by Palestinian residents in Jerusalem, who also suffer from crippling conditions resulting from complicated administrative procedures and prohibitive requirements that bar construction in practice. These procedures include:

- Possession of a land ownership registration certificate, which is rarely available because two thirds of West Bank lands – including occupied Jerusalem – have not been registered in land registries. In addition,

⁴ According to the ex-member of the Jerusalem Municipality, Mr. Meir Margalit.

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 US \$25,000-30,000. The fees are impossible to meet under the severe economic hardship faced by Palestinians in Jerusalem. It should be noted that approximately 60% of Palestinian Jerusalemites are living under the poverty line and approximately 35% of skilled workers in East Jerusalem are unemployed. The following table illustrates the cost of obtaining a building license from the Israeli occupation’s municipality:

| 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 | | 109492 |

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

- Palestinian applicants for a building license have to wait for a period of 5-10 years and sometimes more to obtain the license. At best, the issued licenses account for only 5% of applications. A person obtaining a building license can only build two flats and a parking garage of a 180 cm height as a maximum. More than 75% of the population lives in small and inadequate houses. People resorting to unlicensed building are often those with low or limited income who cannot afford to pay the fees for a license, but who due to the inadequacy of their housing, cannot afford not to build.
- When a Palestinian obtains a license to build, the allowed area for building is restricted, as the Israeli occupation’s municipality appropriates 40% of the

land as the municipality's share. In Al-Mukabber for example, the allowed area for Palestinians to build is only 37% of the land's area, compared to 90% in the Jewish settlement Armon Hanatzif built on Al-Mukabber lands. In Beit Hanina, the allowed area for building is 50% of the land's area, compared to 90-120% in Pisgat Zeev settlement built on Beit Hanina lands. In Sur Baher, the allowed area is 35-50% of the land's area, compared to 90-120% in Har Homah settlement in the same area.

These crippling conditions leave the Palestinians with only one choice – to build without obtaining a license. Eventually, this leads to penal procedures by the municipality and interior and defence ministries. These include monetary fines, reaching, according to Meir Margalit, NIS 96 millions in 2006, confiscation of building equipment, tools and materials, imprisonment, and demolition of buildings. There has been a sharp decline in the number of buildings due to the Israeli occupation's discriminatory policies against Palestinian building in Jerusalem. The municipality declared to the media that the unlicensed building declined by 95% in 2005-2006, when in fact there has been 4.2% increase in the number of buildings in that period, reflecting a 2.1% increase per year. The rate of increase has dropped compared to previous years, when from 1996-2004, the number of buildings increased by 129%, i.e. by 16% per year.



An Israeli bulldozer demolishing the walls of the ground floor of a building owned by Majed Abu Eisheh in Beit Hanina



Abu Eishah building after being demolished by explosives, along with the furniture of the seven families living there

“Illegalizing construction and legalizing demolition”

The Land Research Center maintains that “illegalizing construction and legalizing demolition” is a daily systematic program of action, supported by Israeli legislations and measures and implemented by the Israeli interior ministry and municipality in Jerusalem. The Israeli occupation considers Palestinian Jerusalemites as unwelcome people and as a problem that should be eliminated. This mentality has been the basis for dozens of massacres carried out by military Zionist organizations against the Palestinian people prior to and after 1948, as well as mass destruction carried out by the Israeli occupation against cultural, historical and archaeological sites in more than 450 towns and villages during and after the Nakbeh. These include locations in Acre, Jaffa, Haifa, Nablus, Hebron, and Beit Lahia and Beit Hanoun during the second Intifada. Neighbourhoods and villages destroyed in Jerusalem include the Latrun villages Imwas, Yalo and Beit Naquba; the As-Sharaf neighbourhood, Beit Hanina, Shu’fat, Sur Baher, Al-Walajeh, Silwan; in the Moroccan Gate neighbourhood, whose destruction was supervised by the defense minister and resulted in the death of a Palestinian resident who

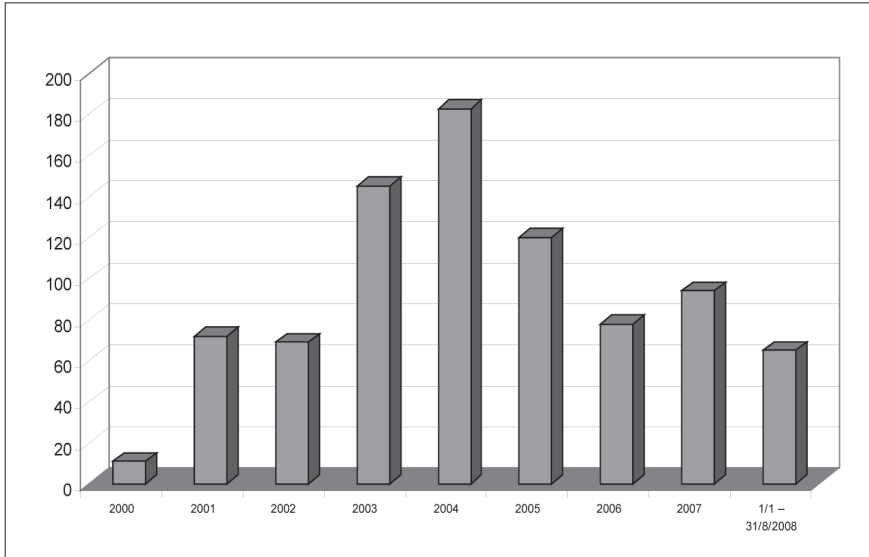
refused to leave her house at midnight on 11 June 1967; and all over the neighbourhoods, suburbs and villages of Jerusalem.



Two children from Al-Razem family, whose house in Beit Hanina was demolished by the Israeli occupation

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. 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. The following table illustrates the number of demolished houses in Jerusalem by year:

| Year | Number of demolished houses |
|-----------------|-----------------------------|
| 2000 | 11 |
| 2001 | 72 |
| 2002 | 69 |
| 2003 | 145 |
| 2004 | 183 |
| 2005 | 120 |
| 2006 | 78 |
| 2007 | 94 |
| 1/1 – 31/8/2008 | 65 |
| Total | 837 |



House demolition in Jerusalem from 2001 and by end of August 2008 by locality:

| Locality | Number of demolished houses |
|-------------|-----------------------------|
| Kufr Aqab | 9 |
| Nabi Samuel | 6 |
| Al-Jib | 13 |
| Shu>fat | 79 |
| Old City | 15 |
| Z>ayem | 4 |
| Wad Al-Joz | 11 |
| Beit Hanina | 191 |
| Al-Thori | 6 |
| Eisawiyeh | 57 |
| Hizma | 6 |
| Bethany | 14 |
| Anata | 100 |
| Al-Tur | 79 |
| Al-Mukabber | 32 |

| | |
|--------------------|------------|
| Silwan | 44 |
| Um Tuba | 3 |
| Sur Baher | 51 |
| Al-Ram | 7 |
| Beit Iksa | 5 |
| Beit Safafa | 4 |
| Biddo | 1 |
| Al-Walajeh | 26 |
| Qatannah | 4 |
| Sheikh Jarrah | 3 |
| Sheikh Sa>ad | 1 |
| Beit Surik | 2 |
| Bir Nabala | 10 |
| Sawahreh Sharqieyh | 6 |
| Um Al-Lahem | 2 |
| Jaba> | 2 |
| Sharfat | 1 |
| Abu Dis | 12 |
| Mount of Olives | 5 |
| Qalandia | 15 |
| Total | 826 |

The average cost of construction of one square meter of a house made of brick, cement and stone in East Jerusalem is US \$300. This is a painful economic loss, particularly under the severe economic and living hardship experienced by the majority of Palestinians in Jerusalem. In addition to the financial loss, house demolitions have serious and long-lasting negative impacts on the physical and mental health and the social and cultural life of families and owners of demolished houses. In this regard, refer to a research by the Palestinian Human Rights Information Center on «Impacts of House Demolition on Children and Women in Jerusalem.»

Challenges facing the housing sector in Jerusalem:

According to Land Research Center's data, the demolitions orders and decisions served to Palestinians in the last four years totalled 88% of

the total orders and decisions issued for Jerusalem during that period. That is despite the fact the Palestinians only account for one third of the population of Jerusalem and their share of owned buildings in the City does not exceed 18.2%. The cumulative amount of unlicensed building fines in 2006 exceeded NIS 96 millions. The “unlicensed” buildings, estimated at 20,000 houses according to building control officer Zvi Schneider at the Israeli Interior Ministry are the only means for Palestinians’ fortitude in Jerusalem and for defending their lands and city, irrespective of the occupying authorities’ classifications. Continued building and restoration of Palestinian houses is a main factor in preventing the complete Judaization of Jerusalem and alteration of its holy and historical status. Victims of house demolitions are mostly people with low or average income. Their fortitude in their city protects the Arab and Islamic identity of Jerusalem in the face of Israeli plans aimed to remove them from their houses and lands and replace them with Jewish settlers.

Major challenges for housing in Jerusalem include:

1. Scarcity of lands, with only 12% or about 9500 dunums of Jerusalem lands left for building (half of the 12% is already occupied). 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 occupation 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.
3. The municipality’s classification of houses as “illegal” (20,000 houses and 28,000 buildings according to Interior Ministry and Mair Margalit, ex-member in the municipal council from Meretz respectively). In addition to these numbers, an unknown number of unlicensed building files are kept by the Defense Ministry, covering the remaining parts of the Jerusalem district.
4. High population density in the Old City, where the space is tight and services are scarce, while the population is growing in inappropriate housing conditions and the majority of houses are in need for urgent restoration and rehabilitation. According to Sarah Kaminker, member of the municipal council, “the share of a prisoner in a prison’s area is larger than the share of a Palestinian in East Jerusalem.” To solve the housing

problem, it is estimated that Palestinians in Jerusalem currently need more than 20,000 housing units with an average of over 2,000 additional units per year. However, 900 demolition orders are issued every year since 2000 as stated by Meir Margalit. This and other policies, such as rejection of family unification applications, withdrawal of ID cards and residency rights of Jerusalemites, all serve the ethnic cleansing plan that aims at forcing Palestinians out of the City as part of Israel's goal of Judaization Jerusalem.

1. The Separation 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. When completed according to plans, the Wall will prevent Jerusalemites from using 170 square meters of lands by keeping them outside, while annexing 12 settlements with a population of more than 176,000 Jewish settlers to Jerusalem, rendering the Palestinians a minority accounting for only 20% and making Jewish settlers a majority in East Jerusalem. More than a hundred of houses and other establishments have been or will be demolished for the sake of building the Wall. In this regard, Meir Margalit stated that "many houses were demolished due to the Wall, and in many instances licenses were cancelled due to the Wall. However, the municipality does not state this reason and claims that the demolition decisions are because the owners did not obtain a building license."
2. The Israeli plan for Jerusalem 2000, which has allocated an insufficient number of housing units for Arab neighbourhoods, aiming to allow the Israeli authorities to appropriate the remaining lands and force people out using the pretext of overcrowding in the Old City. This scenario seeks to transfer the Old City to a museum and the surrounding area to a regional park, thus translating on the ground the so-called "Holy Basin" plan.
3. The lack of due priority and effort given to Jerusalem by the Palestinian, Arab and Muslim communities, which would help develop and strengthen their presence in Jerusalem and support the City's status as a Palestinian Capital on the ground. In contrast, Jerusalem enjoys high importance and priority by the Israeli occupation, whether in decision-making processes, in the media, in planning, actions on the ground or with regards to budget.



Legal consequences of forced evacuation and house demolition:

The demolition of buildings and houses in Jerusalem by the Israeli occupation comes as an individual and collective punishment for the Palestinian people and, as such, constitutes a flagrant violation of customary and treaty based International Law. This stance was clearly stated in a 1999 report by Amnesty International on the demolition of Palestinian houses in Jerusalem. House demolition by the Israeli occupation is part of its plan to force the Palestinians out of their homeland and establish Jewish settlements, where settlers would replace the Palestinian owners and residents, demonstrating the occupation's political goals with regard to Jerusalem that go beyond the stated urban planning pretexts. Hence, it is necessary to mobilize efforts to disclose the Israeli policies and practices at the local and international levels.

International Human Rights Law:

The right to choose residency is enshrined under Article 12 of 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 right to freedom of residence is also 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." Israeli policies and practices of house demolitions constitute a violation of their obligations under the legally binding ICCPR, depriving hundreds of Palestinians of their right to choose their residence

and actually forcing them from their chosen residence on their own land.

The ICCPR also includes the right to respect of privacy, family, home and correspondence (Article 17). According to the Human Rights Committee, the monitoring body of the ICCPR, “this right is required to be guaranteed against all such interferences and attacks whether they emanate from State authorities or from natural or legal persons. The obligations imposed by this article require the State to adopt legislative and other measures to give effect to the prohibition against such interferences and attacks as well as to the protection of this right” (General Comment 16, 1988). By demolition houses and rendering families homeless, Israel is openly and deliberately interfering with the Palestinians’ homes, and is therefore in clear violation of its obligations under Article 17.

Under Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), everyone has the right to an adequate standard of living, which specifically includes “adequate food, clothing and housing, and to the continuous improvement of living conditions”. Further, Israel as a State Party to the ICESCR is under obligation “to take appropriate steps to ensure the realization of this right”. Israel’s demolition of houses is a flagrant violation of its obligations under Article 11- instead of taking steps to ensure that Palestinians enjoy their right to adequate housing and continuous improvement of living conditions; it is directly and knowingly destroying the already inadequate housing available to the Palestinian residents of Jerusalem.

A necessary step in carrying out house demolitions is the practice of forced evictions. In order to demolish the house, the resident family is first be evicted against their will. In addition to the provisions set out in the text of the ICCPR and ICESCR, various UN bodies monitoring international law have expressly addressed forced evictions, which accompany the house demolitions. After the its General Comment 16, the Human Rights Committee in March 1993 unequivocally classified the practice of forced eviction as “a gross violation of human rights, in particular the right to adequate housing”. The Committee on Economic, Social and Cultural Rights has twice released general comments relating to forced evictions. General Comment 4 of 1991 on the right to adequate housing highlighted State Parties’ obligation to “give due priority to those social groups living in unfavorable conditions by giving them particular consideration” and specifically stated that “policies and legislation should correspondingly not

be designed to benefit already advantaged social groups at the expense of others". Israel's policies regarding house demolition and accompanying forced eviction (and subsequent development of land for exclusive use by the Jewish Israeli population) does in fact favor one already advantaged social group at the expense of another- the Palestinians. The Committee in General Comment 4 concluded that the practice of forced evictions is "prima facie incompatible with the requirements of the Covenant and can only be justified in the most exceptional circumstances and in accordance with the relevant principles of international law".

To clarify the extent to which forced evictions may be permissible, the Committee subsequently released General Comment 7 in 1993, where it expressly states that "Forced eviction and house demolition as a punitive measure are also inconsistent with the norms of the Covenant. Likewise, the Committee takes note of the obligations enshrined in the Geneva Conventions of 1949 and Protocols thereto of 1977 concerning prohibitions on the displacement of the civilian population and the destruction of private property as these relate to the practice of forced eviction."

