

The Civic Coalition for Defending Palestinians' Rights in Jerusalem

AGGRESSIVE URBANISM

**Urban Planning and the Displacement
of Palestinians within and from
Occupied East Jerusalem**



December 2009

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

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The Civic Coalition for Defending Palestinian Rights in Jerusalem

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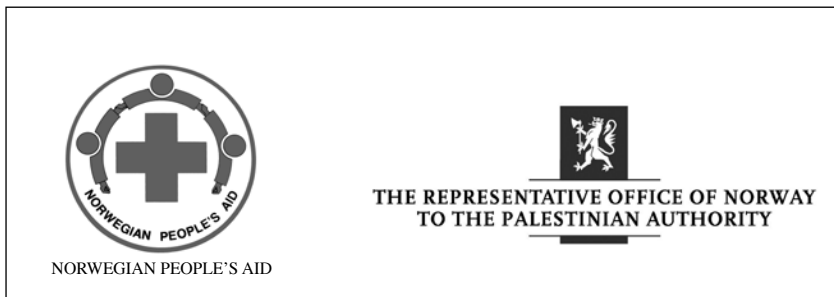
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*For the Palestinian residents of occupied East Jerusalem
who choose to remain, and those who are forced to leave*

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The Civic Coalition for Defending Palestinians 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:

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

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“Israel’s leaders adopted two basic principles in their rule of East Jerusalem. The first was to rapidly increase the Jewish population in East Jerusalem. The second was to hinder growth of the Arab population and to force Arab residents to make their homes elsewhere.”^[1]

**Amir Cheshin, Advisor on Arab Affairs to the former
Israeli Mayor of Jerusalem**

^[1] Cheshin, Amir, *Separate and Unequal: The Inside Story of Israeli Rule in East Jerusalem*, Cambridge University Press, 1999, 31.

Introduction

The iniquitous policy of house demolitions is a well-known and well-documented feature of the Israeli occupation of Palestinian territory, particularly in East Jerusalem. Since 1967, the Israeli occupation authorities have conducted over 9000 ‘administrative’ and ‘judicial’ demolitions of Palestinian homes throughout the occupied Palestinian territory; including 2,000 houses in occupied East Jerusalem alone.^[3] Between the years 2000 - 2008 more than 670 homes were demolished in occupied East Jerusalem, displacing thousands of Palestinian residents.^[4] In 2008, the Jerusalem Municipality issued 959 demolition orders and demolished 87 homes throughout occupied East Jerusalem, a 32 percent increase from 2007.^[5] Since January 2009 the Jerusalem Municipality has issued 1,052 demolition orders and demolished 60 Palestinian homes throughout occupied East Jerusalem.^[6] The overwhelming majority of house demolitions throughout occupied East Jerusalem occur under the legal pretext of “unlicensed construction.”

What is less well known, however, is that the phenomenon of ‘unlicensed construction’ and the consequent policy of house demolition are not only a direct consequence, but also a fundamental component of the broader Israeli urban planning policy in occupied East Jerusalem. Since the unilateral annexation of expanded East Jerusalem, the basis of all 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. As official policy, the ‘demographic balance’ serves as the

[3] This number excludes houses demolished during military operations, punitive house demolitions and so-called “voluntary demolitions”. In total, since 1967, 24,145 Palestinian homes have been demolished by the Israeli occupation authorities. See Israeli Committee Against House Demolitions, Statistics on House Demolitions 1967–2009. <http://www.icahd.org/eng/docs/ICAHD's%20updated%20House%20demolition%20statistics.pdf>

[4] See Israeli Committee Against House Demolitions, Statistics on House Demolitions, East Jerusalem. <http://www.icahd.org/eng/docs/ICAHD's%20updated%20House%20demolition%20statistics.pdf>

[5] See Israeli Committee Against House Demolitions, Statistics on House Demolitions, East Jerusalem. <http://www.icahd.org/eng/docs/ICAHD's%20updated%20House%20demolition%20statistics.pdf> See also, ir amin, State of Affairs – Jerusalem 2008, December 2008, 30

[6] Association of Civil Rights in Israel, The State of Human Rights in East Jerusalem, May 2009, 32.

impetus driving Israeli nationalist aspirations in Jerusalem; mainly to create a demographic and geographic reality that would preempt any future attempt at partition, prejudice any final status negotiations and, thus, further consolidate Israel's claim to sovereignty over occupied East Jerusalem.

In order to achieve this demographic and geographic reality, the Jerusalem Municipality, together with the Ministry of the Interior, have drafted, adopted and vigorously implemented a series of discriminatory laws, policies, and practices that collectively constitute the Israeli planning regime in occupied East Jerusalem.^[7] By design, this planning regime authorizes the confiscation of Palestinian lands; limits the amount of land available for Palestinian construction; reduces the building density within these areas; and severely encumbers the building permit application process, which, in consequence, results in the systematic denial of building permits for Palestinian residents. As a direct consequence of this planning regime, a severe housing deficiency exists for the Palestinian population of occupied East Jerusalem. In order to meet the housing needs of their growing households, Palestinian families are forced to either migrate outside the boundaries of the Jerusalem Municipality, which ultimately results in the loss of their residency permits. Alternatively, they construct additional homes on their property - or build extensions onto their existing homes - without first acquiring the compulsory Israeli building permits. In so doing, thousands of Palestinians live under the unrelenting threat of impending house demolition and ensuing displacement within, or from, occupied East Jerusalem.

Urban planning has a pervasive influence on the social, economic and political aspects of civilian life. In occupied 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, and one of the most serious threats to the continued Palestinian presence in occupied East Jerusalem, is the Israeli Planning and Building Law of 1965.^[8] This single piece of Israeli legislation attempts to provide a thin veil of legitimacy

^[7] This planning regime applies to both occupied East and Israeli controlled West Jerusalem. However, the legislation, policies and practices that constitute the Israeli planning regime of Jerusalem Municipality are applied and enforced in a discriminatory manner that adversely affects the Palestinian population of occupied East Jerusalem. This study will focus on the Israeli planning regime as it applies in occupied East Jerusalem.

^[8] The Laws of the State of Israel, Planning and Building Law of Israel, passed by the Knesset 14 July 1965. Hereinafter, the Planning and Building Law.

for the systematic denial of building permits, the widespread prohibition on construction, and the demolition of Palestinian homes. As occupied territory, both the process and consequences of urban planning in East Jerusalem have pervasive legal implications under international law.

This study seeks to shed light on the complex and multifaceted process that the Palestinian population of occupied East Jerusalem is subjected to in order to obtain a building permit from the Israeli Jerusalem Municipality. This research is by no means exhaustive, but rather its purpose is to elucidate both the process and consequences of the Israeli planning regime in occupied East Jerusalem. In doing so it will demonstrate the impetus driving the phenomenon of so-called “illegal construction”. Specifically, this study will analyze the elements of the building permit application process, Local Planning Schemes, and the Jerusalem Master Plan. Subsequently, it will analyze both the process and consequences of the Israeli planning regime in occupied East Jerusalem within the framework of international human rights and humanitarian law.

The “Demographic Balance”

Following the enactment of the Municipalities Ordinance in 1967 and the resultant legislated annexation of 71,000 dunums^[9] of occupied Palestinian territory from the surrounding 28 Palestinian villages, the territory of Jerusalem almost tripled in size from 38 km² to 108 km².^[10] This annexation was carefully calculated to achieve two strategic objectives. First, to maximize the amount of territory annexed and second, to minimize the number of Palestinians included within the annexed lands. The Palestinian villages of Abu Dis, El Aziriyah, Al Ram, Anata, Beit Ikksa, Hizma, and Rafat, are vivid examples of this objective, whereby the lands belonging to these villages were annexed, while the populated villages themselves remained outside the municipal boundaries of Jerusalem.^[11]

^[9] 1 Dunum of land is equivalent to 1000 square meters or ¼ of an acre.

^[10] Adan, Abdelrazek, Khali Tofakji, *The De-Arabization of East Jerusalem: Israeli Colonial Policies and Practices*, The Arab Studies Society, 2008, 9.

^[11] Adan, Abdelrazek, Khali Tofakji, *The De-Arabization of East Jerusalem: Israeli Colonial Policies and Practices*, The Arab Studies Society, 2008, 10

The territory within these new and unlawfully imposed boundaries, known today as 'Jerusalem Municipality', encompassed 266,300 residents, including 68,600 Palestinians and 197,700 Jews.^[12] The direct inclusion of occupied East Jerusalem and its accompanying 69,000 Palestinian residents into the boundaries of the Israeli defined and controlled Jerusalem Municipality reduced the Jewish demographic of the expanded city to approximately 74%. This instantaneous shift in the demographic composition of Jerusalem Municipality was perceived as a threat to the Israeli vision of a 'complete and united Jerusalem' as the 'eternal capital of Israel'.^[13] In response, the Israeli occupation authorities attempted to increase the Jewish population of the Jerusalem Municipality to between 80-90% by expropriating or confiscating large swaths of privately owned Palestinian land in order to construct Jewish settlements, and providing various incentives for Jewish migration to occupied East Jerusalem.^[14] However, despite the concerted efforts of the Israeli occupation authorities, over the following five years the Jewish population grew less than anticipated, while the Palestinian population grew more than predicted. The discrepancy between the Palestinian and Jewish growth rate within the recently expanded city was immediately perceived as a "demographic problem."^[15]

In order to address this 'demographic problem' the Jerusalem Municipality adopted the recommendations made by the Inter-ministerial Committee for examining the rate of development in East Jerusalem, also known as the "Gafni Commission", which determined that the "demographic balance of Jews and Arabs must be maintained at what it was at the end of 1972: 73.5% Jews and 26.5% Arabs."^[16] This demographic policy has continuously been a foundational feature

[12] Table III/4 - Population and Population Growth in Jerusalem, Statistical Yearbook 2008, The Jerusalem Institute, <http://www.jiis.org/>

[13] Amirav, Moshe; Israel's Policy in Jerusalem Since 1967, Stanford University Centre of Conflict and Negotiation, July 1992, pg.18

[14] Amirav, Moshe; Israel's Policy in Jerusalem Since 1967, Stanford University Centre of Conflict and Negotiation, July 1992, pg.12.

[15] B'Tselem, A Policy of Discrimination: Land Expropriation, Planning and Building in East Jerusalem, January 1997, 45.

[16] B'Tselem, A Policy of Discrimination: Land Expropriation, Planning and Building in East Jerusalem, January 1997, 45.

of Israeli government policy towards Jerusalem Municipality.^[17] Since 1973, successive Israeli governments have reaffirmed that maintaining the ‘demographic balance’ is the foundation and guiding principle of all urban planning policy in the Jerusalem Municipality. Former director of the Planning Policy Section of the Jerusalem Municipality, Israel Kimhi, publicly and explicitly stated this policy:

“A cornerstone in the planning of Jerusalem is the demographic question. The city’s growth and the preservation of the demographic balance among its ethnic groups was a matter decided by the government of Israel. That decision, concerning the city’s rate of growth, serves today as one of the criteria for the success of the process of Jerusalem’s consolidation as the capital of Israel.”^[18]

As official policy, the ‘demographic balance’ has been expressed and understood as the calculated increase in the Jewish population of Jerusalem, dictated by the growth rate of the non-Jewish population.^[19] Taking into consideration the explicit demographic proportions of the policy however, the term ‘demographic balance’ is disingenuous as it implies a policy that seeks to maintain equilibrium between two distinct populations within a single city. On the contrary, the foundation on which all subsequent Israeli policy has been drafted and implemented is to achieve and maintain the demographic superiority of the Jewish population over the Palestinian population in attempts to secure Jerusalem as the “eternal capital of Israel.” Furthermore, the basis of this policy is retroactive; it seeks to achieve an earlier demographic composition by reducing and subsequently restricting the Palestinian population at the 1972 levels. For this reason, the Israeli policy of “demographic balance” is more accurately expressed and understood as a policy of ‘demographic hegemony’ of the Jewish population within the Jerusalem Municipality.

[17] For more on the ‘demographic balance’ see, Margalit, Meir, *Discrimination in the Heart of the Holy City*, International Peace and Cooperation Centre, Jerusalem 2006, 60.

[18] Kimhi, Israel; *Population of Jerusalem and Region: Growth and Forecasts*, Introduction, as quoted in Felner, Eitan; *A Policy of Discrimination: Land Expropriation, Planning and Building in East Jerusalem*, January 1997, 46.

[19] B’Tselem, *A Policy of Discrimination: Land Expropriation, Planning and Building in East Jerusalem*, January 1997, 47

Building Permits

According to the Israeli Planning and Building Law of 1965, a building permit, issued by the Jerusalem Municipality, is a mandatory prerequisite for any construction within Jerusalem.^[20] In and of itself, a building permit is not an uncommon requisite for urban construction. For the Palestinian residents of occupied East Jerusalem however, 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 over the land in question is required. The vast majority of land in occupied East Jerusalem is privately owned and therefore not registered with the Israeli Land Registration Bureau, nor is it included in the incomplete Land Registry and Title Settlement inherited from Jordanian rule, a registry which successive Israeli governments have consistently avoided completing.^[21] Consequently, proving land ownership in occupied East Jerusalem is the first, and virtually insurmountable, obstacle of the building permit application process.

Previously, the Jerusalem Municipality accepted a combination of 'traditional' and 'administrative' proofs of ownership, including a succession order, deeds of inheritance, confirmation from the village Mukhtar, signatures of the neighbors, a notarized affidavit or consecutive receipts from the payment of property tax.^[22] More recently however, a new series of procedures were implemented which have imposed further obstacles on Palestinians seeking a building permit from the Jerusalem Municipality. Such procedures include, inter alia, the obligation to prove ownership of the land by means of registration; confirmation from the Ministry of Justice that there exists no additional claims to the lands appearing in the Jordanian Table of Claims; 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

^[20] Chapter 5, Paragraph 145, Planning and Building Law, 14 July 1965

^[21] Adan, Abdelrazek, Khali Tofakji, *The De-Arabization of East Jerusalem: Israeli Colonial Policies and Practices*, The Arab Studies Society, 2008, 11

^[22] See Margalit, Meir, *No place like home; House Demolitions in East Jerusalem*, Israeli Committee against House Demolitions, 2007, 20

claims.^[23] On 5 May 2009 Jerusalem's Israeli Mayor, Nir Barkat, submitted for review the Jerusalem Master Plan 2030, which will impose further restrictions by requiring landowners to prove that the area in question has no environmental protections in place or any archeological or Jewish religious significance.^[24]

A majority of Palestinian families in occupied East Jerusalem acquired their land through traditional family inheritance, and in so doing, have lived on the same lands and, in many cases, the same houses for multiple generations. As a result, many Palestinians do not possess what the Jerusalem Municipality accepts as 'official documents' to prove land ownership. Similarly, Palestinian families who acquired their land through the Jordanian Table of Rights in the name of a third party will also lack the '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 in Jerusalem, a criteria that for obvious reasons has consistently proved impossible to fulfill.^[25] Furthermore, all heirs to a specific piece of land must be listed on the application. If a joint heir lives outside of the municipal boundaries of Jerusalem, the Guardian for Absentee Landlords can declare the land in question as "absentee property" and expropriate it to the State of Israel.^[26] For this reason, many Palestinian families in occupied East Jerusalem are extremely hesitant to register their land with the Israeli Land Registration Bureau for the well-founded fear that they will be told they hold no legal entitlement to it.

Even if a Palestinian family were in possession of the "official documentation" required to prove land ownership and sought to register their land at the Israeli Land Registry, they would currently be unable to do so as the Israeli occupation authorities have frozen land registration claims as far back as 1967.^[27] The

^[23] See Margalit, Meir, *No place like home; House Demolitions in East Jerusalem*, Israeli Committee against House Demolitions, 2007, 20

^[24] Makhak, Suad, *The Israeli Master Plan for Jerusalem 2030*, The Civic Coalition for Defending Palestinian Rights in Jerusalem, September 2009, 45. (in Arabic)

^[25] Margalit, Meir, *Discrimination in the Heart of the Holy City*, International Peace and Cooperation Centre, Jerusalem 2006, 29.

^[26] Bimkom, *The Planning Deadlock*, Planning Policy, Land Regularization, Building Permits and House Demolitions in East Jerusalem, English Abstract, 2005, 5.

^[27] Adan, Abdelrazek, Khali Tofakji, *The De-Arabization of East Jerusalem: Israeli Colonial Policies and Practices*, The Arab Studies Society, 2008, 11

dubious legal pretext for this administrative deadlock on land registry in occupied East Jerusalem was allegedly enacted because contemporary registration could be prejudicial to the rights of owners defined as 'absentees', who are unable to express opposition to the registration of a third party.^[28] Thus, for Palestinian residents of occupied East Jerusalem, land registration within the Israeli Land Registration Bureau - the primary avenue to prove land ownership and secure a building permit - is currently not possible.

Exacerbating the difficulties in proving land ownership, the associated fees of the building permit application process are exceptionally high, and as a result are often prohibitive for Palestinian families. The costs associated with the building permit application process begin with a fee to open file payment, 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 connection fee, a betterment levy, and finally a fee associated with the survey and registration of land in the Plan for Registration Purposes (PRP).^[29] Depending on location, the total costs associated with a building permit to construct a small 100m² building on a 500m² plot of land will amount to approximately 75,000-100,000 NIS or 20,000 – 25,000 USD.^[30] More often than not, the fees associated with the building permit exceed the total costs of construction. Taking into consideration that over 66% of Palestinian families in occupied East Jerusalem live under the poverty line, these costs function as a second obstacle, an economic barrier for those families who were able to prove land ownership.^[31] Such barriers effectively preclude a majority of Palestinian families from undertaking licensed construction in occupied East Jerusalem.

^[28] Margalit, Meir, *Discrimination in the Heart of the Holy City*, International Peace and Cooperation Centre, Jerusalem 2006, 29, 45.

^[29] See Margalit, Meir, *No place like home; House Demolitions in East Jerusalem*, Israeli Committee against House Demolitions, 2007, 22

^[30] Compare and contrast the figures from Odeh, Yaqoub; *Legalizing Demolition ... Illegalizing Construction*, The Civic Coalition for Jerusalem, 8, 2008, and the *Planning Crisis in East Jerusalem*, OCHA Special Focus, April 2009, 8.

^[31] Odeh, Yaqoub; *Legalizing Demolition - Illegalizing Construction*, The Civic Coalition for Jerusalem, 2008, 8.

Despite the statutory, administrative and economic obstacles to obtaining a building permit in occupied East Jerusalem, the number of building permit applications from the period between 2003 and 2007 more than doubled from 138 to 283 per year, while the number of building permits issued by the Jerusalem Municipality, however, remained stagnant, ranging from 100 to 150.^[32] In 2008, the Palestinian residents of occupied East Jerusalem submitted 109 building permit applications to the Jerusalem Municipality and of these only 18 permits were issued.^[33] Although official statistics are seemingly non-existent, current estimates suggest that authorized building permits from the Jerusalem Municipality account for only 5% of the total number of applications.^[34] At the same time, and according to the Jerusalem Municipality's own estimates, the natural growth rate of occupied East Jerusalem's Palestinian population requires the construction of 1,500 new residential units annually.^[35] Taking 2008 as an example, with only 18 building permits issued, allowing for the construction of approximately 400 residential units,^[36] there exists a housing deficiency of 1,100 authorized residential units for the Palestinian residents of occupied East Jerusalem.

For the small minority of Palestinian residents in occupied East Jerusalem who possess both the compulsory documentation and associated fees, another hallmark of the building permit application process is excessive delays, extending to periods of 5 to 10 years with no guarantee of success.^[37] Finally, according to the Israeli Planning and Building Law, no building permits can be authorized in areas that lack sufficient public infrastructure to carry out further construction.^[38] No more than a cursory examination of the public infrastructure in occupied East Jerusalem is required to confirm its scarcity. A brief walk through the City's

^[32] The Planning Crisis in East Jerusalem, OCHA Special Focus, April 2009, 11.

^[33] As stated by deputy Mayor for Occupied East Jerusalem Affairs, Yakir Segev, in an Article that appeared in Haaretz newspaper on 29 June 2009, "After US pressure, Barkat to halt 70% of Occupied East Jerusalem house demolitions", available at, <http://www.haaretz.com/hasen/spages/1096333.html>.

^[34] Odeh, Yaqoub; Legalizing Demolition ... Illegalizing Construction, The Civic Coalition for Jerusalem, 2008, 8.

^[35] Ir Amin, A Layman's Guide to House Demolitions in East Jerusalem, March 2009, 4.

^[36] The Planning Crisis in East Jerusalem, OCHA Special Focus, April 2009, 12.

^[37] Odeh, Yaqoub; Legalizing Demolition ... Illegalizing Construction, The Civic Coalition for Jerusalem, 2008, 8.

^[38] See Chapter 5, Planning and Building Law, 14 July 1965.

potholed and litter-strewn streets will suffice to demonstrate the extent to which occupied East Jerusalem is afflicted by the discriminatory allocation of municipal infrastructure and services.

The 2003 budget of the Jerusalem Municipal Planning Administration was NIS 6,060,807, which enabled the Local Committee to review and implement 608 plans for public infrastructure throughout the Jerusalem Municipality. Of these plans, 479 (78.8%) were located in West Jerusalem, leaving only 129 (21.2%) to be implemented throughout occupied East Jerusalem.^[39] This discriminatory allocation of resources has resulted in substantial inequalities between occupied East and West Jerusalem, with almost 90% of the sewage pipes, roads, and sidewalks located in West Jerusalem, leaving multiple Palestinian neighborhoods in occupied East Jerusalem without sewage systems, electrical systems and paved roads; effectively preventing the authorization of building permits within these areas.^[40]

For the Palestinian residents of occupied East Jerusalem, obtaining a building permit is a rare exception rather than a basic right. Despite these hardships, many Palestinian families initiate the process, only to be confronted with yet another significant, and potentially prohibitive, obstacle to obtaining a building permit - the 1965 Building and Planning Law. This law prohibits the authorization of building permits for areas that are not zoned for residential construction, or that lack an approved Local Planning Scheme, or that possess an incomplete process of re-parcellation.

Local Planning Schemes

According to the Israeli Planning and Building Law, the objectives of Local Planning Schemes^[41] are to “control the development of the land in the local planning area” and to ensure “appropriate conditions from the point of view of

^[39] Margalit, Meir, *Discrimination in the Heart of the Holy City*, International Peace and Cooperation Centre, Jerusalem 2006, 29, 127.

^[40] See neglect of infrastructure and public services in East Jerusalem, B'Tselem, http://www.btselem.org/english/Jerusalem/Infrastructure_and_Services.asp

^[41] Local Planning Schemes are also referred to as “Town Planning Schemes”

health, sanitation, security, transport and convenience” in accordance with its zoning designation.^[42] Paragraph 63 of the Law outlines the areas that are to be included in Local Planning Schemes including the laying out of new roads, and the diversion, widening, alteration and, abolition of existing roads; the planning of networks and installations for the supply of water and electricity, and the delineation of land for railway stations, bus stations, markets, and other public services such as health care facilities and public education institutions.^[43]

Contrary to such stated purposes however, Local Planning Schemes have consistently been utilized in a discriminatory manner in occupied East Jerusalem in order to restrict the development of Palestinian neighborhoods, and thus, maintain the demographic hegemony of the Jewish population. By design, Local Planning Schemes authorize the expropriation and confiscation of Palestinian lands, reduce the amount of land available for Palestinian construction and limit the construction density within these areas. Although the Israeli occupation authorities claim that a majority of Palestinian neighborhoods possess a Local Planning Scheme, the fact remains that they are often incomplete or pending approval and, therefore, not ‘approved Local Planning Schemes,’ a prerequisite for the authorization of a building permit. Furthermore, similar to the building permit application process, the approval process for Local Planning Schemes in occupied East Jerusalem is an overwhelmingly complex and multifaceted process encompassing the following procedures:

1. The Local Planning and Building Committee decide that a Local Planning Scheme is required for a certain area and “entrusts its preparation to experts.”
2. The Local Planning and Building Committee discuss the plan and recommend its deposition for the submission of objections.
3. The District Planning and Building Committee decide on the deposition of the Plan.

^[42] Paragraph 61, Planning and Building Law, 14 July 1965

^[43] Paragraph 63, Planning and Building Law, 14 July 1965

4. Deposition of the plan – publication in the Official Gazette, in three daily newspapers and on public bulletin boards. During the following two months, anyone who believes s/he has been adversely affected by the plan may submit objections to the District Committee.
5. Hearing of objections by the Local Committee.
6. Discussions of objections by the District Committee.
7. Approval of the plan by the Local Committee and the District Committee.
8. Approval of the plan by the Minister of the Interior.
9. Publication of notice of approval of the plan. A Local Planning Scheme that has received final approval is published in the Official Gazette, in three daily newspapers and on public bulletin boards.^[44]

The first method by which Local Planning Schemes restrict the development of Palestinian neighborhoods in occupied East Jerusalem is by reducing the amount of land available for construction through calculated confiscation and discriminatory zoning. Of the 71km² (71,000 dunums) of occupied Palestinian territory that was annexed to the State of Israel in 1967, 24.5km² (35%) was confiscated for the construction of Israeli settlements. Of the remaining 46.5 km² (65%), 21.3 km² (30%) does not possess an approved Local Planning Scheme and therefore construction within these areas is prohibited. The remaining 24.7 km² (35%) of land has had Local Planning Schemes approved by the District Committee.^[45] Of this 35%, however, approximately 15.5 km² (63%) has been zoned as ‘green areas’ where no construction is permitted,^[46] leaving only 9.18 km² (just 13% of the total area of occupied East Jerusalem) of zoned land in occupied East Jerusalem available for Palestinian construction.^[47] A vast majority

^[44] B’Tselem, A Policy of Discrimination: Land Expropriation, Planning and Building in East Jerusalem, January 1997,73.

^[45] The Planning Crisis in East Jerusalem, OCHA Special Focus, April 2009,8.

^[46] For more information on zoning please see the “Jerusalem Master Plan” below at 12.

^[47] The Planning Crisis in East Jerusalem, OCHA Special Focus, April 2009,8

of this land is already densely populated, severely limiting any future construction. The Israeli occupation authorities have consistently invoked the complex, and conveniently unresolved, land ownership issues that exist in occupied East Jerusalem as the pretext for the absence of approved Local Planning Schemes in Palestinian neighborhoods.

In West Jerusalem, the drafting, implementation and approval process for Local Planning Schemes is a responsibility undertaken by the government of Israel to ensure the basic needs and rights of the city's residents. Israeli government agencies are responsible for, and cover all costs associated with, the hiring of planners and architects to develop and oversee the approval process of Local Planning Schemes.^[48] In occupied East Jerusalem, however, the Israeli occupation authorities have proved unwilling to fulfill such obligations for the Palestinian residents, forcing them to initiate and negotiate the drafting and approval process on their own. The numerous statutory and administrative obstacles, coupled with excessive delays and extensive associated fees, not only effectively discourages, but in many cases entirely prohibits Palestinian residents from initiating this process. The glaring disparity of land use, building density and public infrastructure between Palestinian and Jewish neighborhoods illustrates the systematic and adverse discrimination in the drafting, approval and implementation of Local Planning Schemes in occupied East Jerusalem.

Since 1967, the Israeli occupation authorities have constructed approximately 60,000 residential units in Israeli settlements throughout occupied East Jerusalem.^[49] During the same period however, the Israeli occupation authorities constructed fewer than 600 residential units for Palestinian residents - the last of which were built over 30 years ago.^[50] Furthermore, tenders that were issued in 2008 for the construction of 1,761 residential units for Jewish settlers in occupied East Jerusalem represent 300% more residential units than the total number of units built for Palestinians residents in occupied East Jerusalem from 1967 until today.^[51] In 2008, Palestinian residents submitted 190 Local Planning Schemes to the

^[48] Hodgkins, Allison; *The Judaization of Jerusalem*, 6 Palestinian Academic Society for the Study of International Affairs, 1996, 6.

^[49] See Statistics from the Jerusalem Land Research Centre, <http://www.lrcj.org/Eng/site.php>

^[50] ir amin, *State of Affairs – Jerusalem 2008*, December 2008, 30

^[51] ir amin, *State of Affairs – Jerusalem 2008*, December 2008, 30

planning institutions for public review^[52] however, during that same year, only 18 building permits were issued.^[53] The exceptionally limited number of permit approvals allegedly resulted from either the absence of ‘approved Local Planning Schemes’ or areas being zoned as ‘green’ rather than ‘residential’.^[54] Even more alarming is the fact that numerous Palestinian neighborhoods have no Local Planning Scheme whatsoever, prohibiting all construction and rendering illegal all existing residential units. Such neighborhoods include Wallaje which houses 450 people in approximately 100 buildings; Nooeman-Mazmooria, housing 350 people in 50 buildings; Wadi Hillwe, housing 4,500 people in 250 buildings; and Al-Bustan – housing about 1000 people in 90 buildings.^[55]

In stark contrast, since the Annapolis summit in 2007, announcements released to the Israeli press from the Jerusalem Municipality and the Ministry of Housing reveal plans to construct an estimated 32,000 housing units in occupied East Jerusalem exclusively for Jewish settlers.^[56] Of these plans, 9,617 (approximately one third) are based upon existing Local Planning Schemes, and approximately half of these, amounting to 4,370 residential units, possess approved Local Planning Schemes, require no further approval and are slated for immediate construction.^[57] The remaining 5,247 residential units are under an accelerated processes of planning, 3,000 of which are projected for Givat Hamatos, and will therefore lay the foundation for an entirely new Jewish settlement in occupied East Jerusalem.^[58] In addition, building plans have also recently been approved to expand existing ‘urban settlements’ in the heart of Palestinian neighborhoods in East Jerusalem, including an additional 60 residential units in Ma’ale Zeitim,

^[52] Ir Amin, State of Affairs – Jerusalem 2008, December 2008, 31.

^[53] See, “After US pressure, Barkat to halt 70% of Occupied East Jerusalem house demolitions”, Haaretz Newspaper, 29 June 2009, available at, <http://www.haaretz.com/hasen/spages/1096333.html>.

^[54] See, “After US pressure, Barkat to halt 70% of Occupied East Jerusalem house demolitions”, Haaretz Newspaper, 29 June 2009, available at, <http://www.haaretz.com/hasen/spages/1096333.html>.

^[55] Information from a meeting with Bimkom on 1 July 2009

^[56] Ir Amin Monitoring Report, Negotiations Towards an Accord on Jerusalem: Declarations vs. Actions, April 2008, 4.

^[57] Tenders for construction of over 300 of these units have already been granted. See, Ir Amin Monitoring Report, Negotiations Towards an Accord on Jerusalem: Declarations vs. Actions, April 2008, 4.

^[58] Ir Amin Monitoring Report, Negotiations Towards an Accord on Jerusalem: Declarations vs. Actions, April 2008, 4.

in Ras al Amud,^[59] and 200 new residential units located in the Palestinian neighborhood of Sheikh Jarrah.^[60]

Excessive delays in the preparation and approval of Local Planning Schemes has left many Palestinian neighborhoods in a legal limbo, with residents unable to initiate licensed construction. According to paragraph 62(a) of the Planning and Building Law of 1965, in the case of neighborhoods in which a Local Planning Scheme does not exist the “local commission shall prepare such a scheme and shall submit it to the District Commission for deposit within three years from the date of the coming into force of this law or from the date of coming into force of the planning order declaring the area.”^[61] In most cases concerning Palestinian neighborhoods, however, excessive delays have far surpassed this legislated temporal scope. For example, the Local Planning Scheme for Bet Safafa was submitted in November of 1977 and approved in December of 1990, over 13 years later.^[62] The Town planning schemes and subsequent re-parcellation plans for Beit Hanina and Shuafat have been pending approval for almost 20 years and still, as a result of continuous so called amendments, no approved Local Planning Scheme exists.

Even when an approved Local Planning Scheme exists, a comparison between the building percentages allotted for Palestinian and Jewish neighborhoods reveals a discriminatory manipulation of building percentages within Palestinian neighborhoods that effectively reduces the amount of structures permitted on any single plot and the numbers of floors permitted within each structure. In the majority of Palestinian neighborhoods, the building percentages are set at 10 to 50% in one to two story construction only. In contrast, building percentages in Jewish neighborhoods of occupied East Jerusalem can reach as high as 200% and eight stories tall.^[63] Such overt discrimination is most visible within ‘urban settlements’ located in the heart of Palestinian neighborhoods.

^[59] For more information see, <http://www.haaretz.com/hasen/spages/944663.html>

^[60] See, <http://www.haaretz.co.il/hasite/pages/ShArtPE.jhtml?itemNo=949182> (Hebrew)

^[61] Paragraph 62(a), Planning and Building Law, passed by the Knesset 14 July 1965.

^[62] B”Tselem, A Policy of Discrimination: Land Expropriation, Planning and Building in East Jerusalem, January 1997, 76.

^[63] B”Tselem, A Policy of Discrimination: Land Expropriation, Planning and Building in East Jerusalem, January 1997, 82.

A building density of 115% was permitted in the Ma'aleh Zeitim settlement located in the Palestinian neighborhood of Ras El-Amud, whereas the building density of the adjacent Palestinian neighbors is capped at 50%.^[64] Similarly, the urban settlement of Nof Zion, planned for the Palestinian neighborhood of Jabel Mukaber, was given 115% building density, while the Palestinian neighbors were permitted only 25 %.^[65]

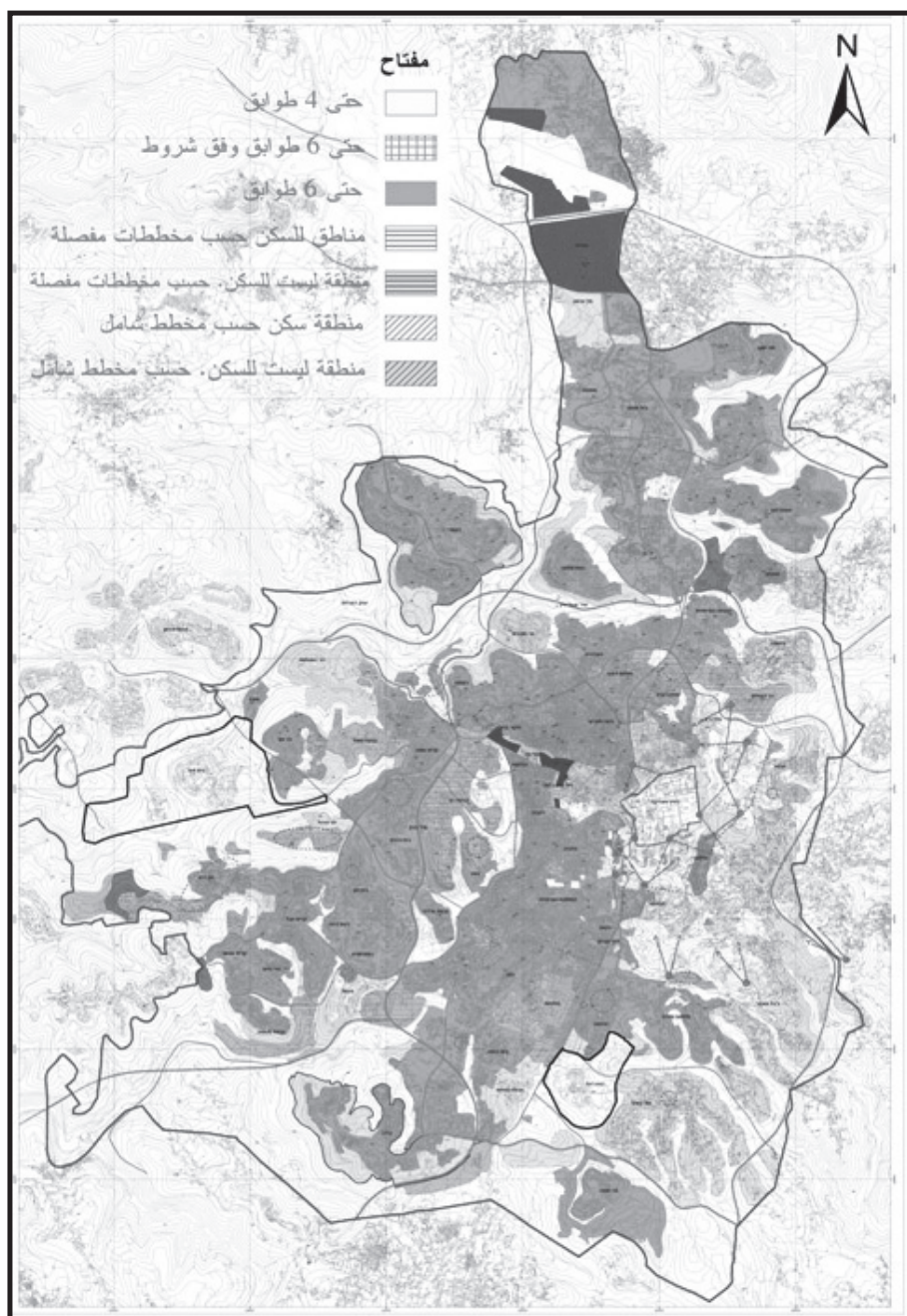
Local Planning Schemes cannot be approved and, as a result, building permits cannot be authorized in approximately 20% of the residentially-zoned areas of occupied East Jerusalem that require the completion of a process of re-parcellation.^[66] The re-parcellation of land in occupied East Jerusalem involves the unification and re-division of a number of parcels of privately owned land, with or without the consent of the legal owner, in order to maximize land usage. As a result of the current difficulties associated with proving land ownership, the process of re-parcellation in occupied East Jerusalem is also exceedingly difficult, if not virtually impossible to complete. The neighborhoods of Beit Hanina and Shuafat are particularly acute examples, as a vast majority of lands within these neighborhoods require re-parcellation before a Local Town Planning Scheme can be approved, and until this process is complete, no building permits can be authorized.

For Palestinian neighborhoods in occupied East Jerusalem that possess an approved Local Planning Scheme, the strategic reduction of land available for Palestinian construction, coupled with the calculated allotment of low building percentages for Palestinian neighborhoods, results in low-density construction that does not and is incapable of satisfying the housing needs of the growing population within these neighborhoods. Together with the building permit application process, the discriminatory use of Local Planning Schemes is another urban planning mechanism employed by the Israeli occupation authorities to restrict the development of Palestinian neighborhoods, thereby limiting the growth of the Palestinian population.

^[64] B'Tselem, *A Policy of Discrimination: Land Expropriation, Planning and Building in East Jerusalem*, January 1997, 83.

^[65] Margalit, Meir, *No place like home; House Demolitions in East Jerusalem*, Israeli Committee against House Demolitions, 2007, 22

^[66] Chapter 4, Paragraph 137, Planning and Building Law, passed by the Knesset 14 July 1965.



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 neighborhoods within the Municipality must conform to the zoning and planning provisions as detailed within the Master Plan. The current Jerusalem Master Plan is a composition of successive Israeli Master Plans, entailing both minor and major adjustments for urban planning in Jerusalem Municipality, including both the Jerusalem Master Plan 2020^[67] and the more recent, Jerusalem Master Plan 2030.^[68] Both the former and latter are updated versions of the statutory 'Plan Number 62' for Jerusalem that was authorized in 1959 and which, according to Israeli law, is still in force today.^[69]

The Jerusalem Master Plan 2030 was drafted by a 31-member steering committee of planners, geographers and architects who would define the scope of all development throughout Jerusalem Municipality until the year 2030; only one committee member was Palestinian. The stated objective of the Master Plan is “to offer a new and comprehensive thinking mode towards the creation of a statutory framework according to which the development of the city as the capital of Israel and a metropolitan center can take place while preserving its unique values and ensuring an urban quality of life to all the residents.”^[70]

The Jerusalem Master Plan 2030 consists of seven thematic plans for land use in the Jerusalem Municipality; the city center, open areas, building patterns, historical heritage and ancient areas, transportation and roads, infrastructure, and environmentally sensitive areas. The Plan includes a textual description of the seven thematic plans, seven topographical maps and a code of standards that specifies their allowances and restrictions. According to the code of standards, the textual and thematic plans included in the Master Plan are guidelines and will only

^[67] Submitted for review on 13 September 2004 by Israeli Mayor of Jerusalem, Uri Lublialsky.

^[68] Submitted for review on 5 May 2009 by Israeli Jerusalem Mayor Nir Barkat.

^[69] Report No.4, Local Outline Plan Jerusalem 2000, Proposed Plan and the Main Planning Polices, Planning Administration, City Engineer, City Planning Department, Jerusalem Municipality, 2000. Hereinafter, The Jerusalem Master Plan.

^[70] Report No.4, The Jerusalem Master Plan, 4.

become mandatory once the Plan is approved. However, the seven topographical maps that delineate and designate land use are, without governmental approval, obligatory and operational at this time.^[71]

The Jerusalem Master Plan 2030 is based upon the current population of Jerusalem Municipality of 722,000 residents, 296,000 of which are Palestinian (36%) and 426,000 are Jewish (64%).^[72] Approximately 200,000 of the Jewish residents throughout Jerusalem Municipality, amounting to just under half of the total population, live in settlements throughout occupied East Jerusalem. Although the Master Plan does not specifically project future demographic trends within the various sectors of the Jerusalem Municipality, the Plan contains deviating policy objectives for the Jewish and Palestinian populations. Despite the fact that the current population of Jerusalem Municipality is 36% Palestinian, one of the primary objectives of the Jerusalem Master Plan, “in accordance to governmental decisions,” is to “maintain a ratio of 70% Jews and 30% Arabs” within Jerusalem Municipality.^[73] Therefore, achieving this policy objective entails the reduction, and subsequent restriction, of the Palestinian population.

The authors of the Master Plan 2030, however, concede that this goal is not attainable, and if the current demographic trends continue, the population of the Jerusalem Municipality by 2020 is projected to be “60% Jews and 40% Arabs, and this only under the condition that assumptions at the base of the outline plan are actualized.”^[74] In light of this demographic reality, the Plan identifies various “central challenges” that if addressed and effectively met, would also meet the demographic policy objectives of the Plan; that of ensuring the calculated “demographic balance.”^[75] These central challenges include “maintaining a solid Jewish majority in the City,” by reducing negative migration from the city, while encouraging residents from other areas of Israel to immigrate into the city by offering sufficient and affordable housing, increasing economic opportunity,

^[71] Jerusalem on the Map, The International Peace and Cooperation Center Jerusalem, 2007, 45.

^[72] Table III/4 - Population and Population Growth in Jerusalem, Statistical Yearbook 2008, The Jerusalem Institute, <http://www.jiis.org/>

^[73] Report No. 4, Population and Society, The Jerusalem Master Plan.

^[74] Report No.4, The Jerusalem Master Plan, 26.

^[75] Report No.4, The Jerusalem Master Plan, 26.

and expanding educational institutions within the city.^[76] In addition, the Plan identifies the need to “create a balance between Jewish cultural groups” and establish new orthodox neighborhoods near the existing ones and new non-orthodox neighborhoods to attract the younger generation from other areas of Israel.^[77] In order for the preceding challenges to be met, the Plan considers it necessary and appropriate to “direct a planning policy that encourages the continuation of spatial segregation with a substantial amount of tolerance and consideration” between the Jewish and Palestinian population of the Jerusalem Municipality.^[78]

The primary avenue in which the Jerusalem Master Plan seeks to achieve and maintain Jewish demographic superiority is through its legal authority to authorize 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 occupied East Jerusalem. Of this 44%, 44,069 (24%) are residential units for the Jewish population and 38,277 (21%) are for the Palestinian population. However, these figures do not take into consideration the approximate 20,000 ‘unlicensed’ residential units that currently exist in occupied East Jerusalem. In consequence, ‘unlicensed’ residential units do not figure into the Master Plan’s calculations for future housing needs of the Palestinian population of occupied East Jerusalem.

Taking into consideration both licensed and ‘unlicensed’ residential units, there currently exists an approximate total of 58,000 residential units for the Palestinian population of occupied East Jerusalem. A recent study reveals that 30,000 residential units are immediately required for the Palestinian residents of occupied East Jerusalem in order to relieve the current acute housing deficiency.^[79] Taking into consideration both the existing housing deficiency and current demographic trend, it is estimated that by the year 2030, approximately 200,000 new residential

^[76] Report No.4, The Jerusalem Master Plan, 27.

^[77] Report No.4, The Jerusalem Master Plan, 27.

^[78] Report No.4, The Jerusalem Master Plan, 27.

^[79] Jerusalem Master Plan Conference, Civic Coalition for Jerusalem, Ambassador Hotel, occupied East Jerusalem, 16 September 2009.

units will be required to satisfy the housing needs of the Palestinian population in occupied East Jerusalem.^[80] The Jerusalem Master Plan however only provides for 100,000 residential units in occupied East Jerusalem, thus creating a deficiency of 100,000 units between projected needs and authorized construction to the year 2030.^[81] At the same time however, the Master Plan provides for the construction of 40,000 residential units exclusively for the Jewish population of occupied East Jerusalem. It is worth noting that, despite the fact that 60% of the population in occupied East Jerusalem is Palestinian, more licensed residential units currently exist for the Jewish population of occupied East Jerusalem.

Israeli occupation authorities have applauded the ‘new developments’ within the Jerusalem Master Plan 2030 for the proposed “construction of 13,550 apartments for Arab residents of east Jerusalem”.^[82] Within the Master Plan 2030, however, these new ‘apartments’ can be primarily equated to a dramatic increase in the proposed building densities to as high as 240% within specific areas throughout occupied East Jerusalem. Such proposals, however, do not faithfully reflect on the ground realities and therefore are untenable. The existing Palestinian residential units cannot sustain an infrastructural development from 2-3 floors to 6-8 floors as provided for in such building percentages. 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 6-8 floors. Furthermore, the absence of sufficient infrastructure including roads, water mains and sewage facilities further prevents the realization of such building densities in occupied East Jerusalem. In fact, the potential for such building densities exists only on paper, rendering the ‘dramatic increase’ in construction of residential units for Palestinians nothing more than political rhetoric in the fulfillment of obligations, void of any possibility of implementation.

In summation, the Jerusalem Master Plan 2030 is beset with inaccuracies, contradictory objectives, defective proposals and overt discrimination. Rather

^[80] Makhak, Suad, *The Israeli Master Plan for Jerusalem 2030*, The Civic Coalition for Defending Palestinian Rights in Jerusalem, September 2009, 36. (in Arabic)

^[81] Makhak, Suad, *The Israeli Master Plan for Jerusalem 2030*, The Civic Coalition for Defending Palestinian Rights in Jerusalem, September 2009, 39. (in Arabic)

^[82] See Jerusalem Post, *Barkat presents first master plan for Jerusalem in 50 years*, 5 May 2009, <http://www.jpost.com/servlet/Satellite?cid=1239710873079&cpagename=JPArticle%2FShowFull>

than indentifying and effectively addressing the housing needs of the Palestinian residents of occupied East Jerusalem, the Master Plan 2030 contains a clear ideological agenda: to achieve and maintain demographic and geographic control and further consolidate Israel's claim to sovereignty over occupied East Jerusalem. This agenda is evident through the fact that the Master Plan 2030 is based on the fallacious pretext of Israeli sovereignty over occupied East Jerusalem. In order to secure this geographic control, the Master Plan openly and unashamedly discriminates against Palestinian residents through the perpetuation of a calculated demographic composition that seeks to reduce and subsequently restrict the number of Palestinian residents of Jerusalem Municipality. Although the Master Plan briefly mentions the 'difficulties' faced by Palestinian residents seeking building permits and the increasing phenomenon of so-called 'illegal construction', it fails to address underlying reasons and provide solutions for either the former or latter, both of which lie at the root of the housing crisis currently afflicting Palestinian residents of occupied East Jerusalem.

In effect, the Jerusalem Master Plan is the manifestation of the Israeli occupation authorities' political aspirations for Jerusalem through urban planning. It does not reflect, nor satisfy, the planning needs of the Palestinian population, but rather consolidates the Jewish populations' unlawful presence within occupied East Jerusalem to the detriment of all East Jerusalem Palestinians.

Summary

One of the most serious threats to the Palestinian presence in occupied East Jerusalem is the series of laws, policies and measures that constitute the Israeli planning regime - a regime replete with discrimination and deliberate neglect. In effect, the Israeli occupation authorities utilize urban planning as a tool for implementing political objectives in occupied East Jerusalem. These political objectives include securing and maintaining demographic and geographic control over occupied East Jerusalem in order to further consolidate Israel's claim to sovereignty over the occupied city. It is for this reason that the Israeli occupation authorities perceive construction without an Israeli permit by Palestinian residents as an attack on the very foundation of Israeli authority within, and over, occupied East Jerusalem. On the contrary, however, Palestinian residents who construct new homes or additions onto their existing homes without an Israeli building permit do so in absence of any political statement and out of pure necessity; the basic need to provide shelter for their growing families.

The Israeli planning regime has created and severely exacerbated an acute housing crisis for the Palestinian residents of occupied East Jerusalem. The complex and ultimately ineffectual process that Palestinians are subjected to in order to attain a building permit for authorized construction discourages, if not entirely prohibits, Palestinians from engaging in licensed construction. Furthermore, widespread confiscation and strategic reduction of land available for Palestinian construction, coupled with the calculated reduction of building densities, have rendered the creation of any new Palestinian neighborhoods, or the expansion of existing neighborhoods, manifestly impossible. In order to meet the needs of their growing families Palestinian residents have no choice but to depart from the Jerusalem Municipality in order to relocate to an area where more land is available for Palestinian construction and building restrictions less severe. Alternatively, they must construct without a building permit authorized from the Jerusalem municipality, and risk the threat of impending eviction, demolition and displacement within and from occupied East Jerusalem.

Perhaps the most informative description of this reality for the Palestinian residents of occupied East Jerusalem comes from Amir Cheshin, former advisor on Arab Affairs to the Israeli Mayor of Jerusalem, who has spoken publicly about her experience with the planning regime in Jerusalem, and provides disconcerting insight on the policy objectives of the Israeli occupation authorities:

“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 Occupied East Jerusalem and to move as many Palestinians as possible out of the city altogether. Housing policy in Occupied East Jerusalem has focused on this numbers game.”^[83]

[83] Cheshin, Amir, Bill Hutman & Avi Melamed; *Separate and Unequal, the inside story of Israeli rule in East Jerusalem*, Cambridge, 1999, 34.

Legal Analysis

Urban planning and its impact on human rights have rarely been accorded the attention it demands from the perspective of international law. Nonetheless, both the processes and consequences of urban planning have pervasive implications on the social, economic and political aspects of civilian life, particularly for civilians living under belligerent occupation. Consequently, the Israeli planning regime in occupied East Jerusalem has pervasive legal implications for both the civilian population who possess inviolable rights as Protected Persons, and Israel as the Occupying Power, who have explicit and non-derogable obligations with respect to the territory it occupies.

During periods of belligerent occupation, the relationship between international human rights and humanitarian law is of fundamental importance. With the onset of a situation of belligerent occupation, international human rights law does not cease to apply. Rather both international humanitarian and human rights law apply in tandem, resulting in heightened protections for the civilian population, particularly during situations of prolonged occupation. With respect to urban planning, a vivid example of such increased protection through parallel application is the right to adequate housing, which is firmly embedded in international human rights law, and explicitly protected under international humanitarian law through the prohibition on the unlawful confiscation and destruction of private property.

The following legal analysis will be undertaken on the basis of the parallel application of international human rights and humanitarian law and will consist of four sections. The first will outline the prohibition of annexation of territory under international law and confirm the legal status of East Jerusalem as occupied territory under international law. The second will evaluate the legislative competence of Israel as an Occupying Power, and its legal obligations vis-à-vis the Palestinian residents of occupied East Jerusalem. The third will analyze the right to adequate housing and the protection of this right during belligerent occupation under both international human rights and humanitarian law. The fourth will provide a legal analysis of the consequences of the Israeli planning regime in occupied East Jerusalem. Specifically it will address the perpetuation of an acute housing deficiency, coupled with the exceptionally restrictive and unjustified building restrictions that compel Palestinian residents to migrate from the City, and the forcible displacement of Palestinians within and from occupied East Jerusalem through the Israeli policy of 'administrative' and 'judicial' house demolitions.



The Legal Status of East Jerusalem

Under the partition plan attached to United Nations General Assembly resolution 181, Jerusalem was to be internationalized as a *corpus separatum* – a separated body – and placed under a special international regime to be administered by the United Nations Trusteeship Council.^[84] However, rather than through the political will of its residents, the dictates of the international community, or the principles of international law, the fate of Jerusalem was determined through military conquest.

During the 1948 Arab-Israeli war, Israeli territorial control expanded to include a significant amount of the territory allotted to the Arab state under the Partition Plan, including the western sector of Jerusalem that was slated for internationalization. At the same time, East Jerusalem, including the holy places within the walls of the Old City, and the West Bank came under the control of Jordan. First acknowledged in the Israel-Jordan ceasefire agreement of 30 November 1948, this *de facto* division of Jerusalem between the two states was formalized in the Israel-Jordan Armistice Agreement on 3 April 1949.^[85] However, this armistice “was not to establish or recognize any territorial, custodial or other rights, claims or interests of any party” but, rather, was perceived as an “indispensable step towards the restoration of peace in Palestine.”^[86] The position of the international community regarding the legal status of Jerusalem is evident in the General Assembly and Security Council Resolutions that followed the signing of the Armistice Agreement, which repeatedly called for the immediate and unconditional “demilitarization” and “internationalization” of Jerusalem.^[87]

Over two decades later, the conclusion of the six-day war between Israel, and Egypt, Syria and Jordan, resulted in the entire territory of historic Palestine coming under the effective control of the Israeli armed forces, resulting in Israel’s

^[84] UN General Assembly, *Future government of Palestine*, 29 November 1947, A/RES/181.

^[85] ‘The Question of Palestine and the United Nations’ (Revised Edition), United Nations, Department of Public Information, 2008, p.10.

^[86] The Question of Palestine and the United Nations’ (Revised Edition), United Nations, Department of Public Information, 2008, p.10.

^[87] For example refer to: UN General Assembly, *Palestine-Progress Report of the United Nations Mediator*, 11 December 1948, A/RES/194. See also, UN General Assembly, *Palestine: question of an international regime for the Jerusalem area and the protection of the Holy Places*, 9 December 1949, A/RES/303.

belligerent occupation of the territory. Unlike the West Bank and Gaza Strip, on 7 June 1967, the first day of the occupation of Palestinian territory, Israeli Defense Minister Moshe Dayan proclaimed, “the Israeli Defense Forces have liberated Jerusalem. We have reunited the torn city, the capital of Israel. We have returned to this most sacred shrine, never to part from it again.”^[88]

The Israeli government moved quickly to consolidate its hold on East Jerusalem. On 27 June 1967, the Israeli government passed the Law and Administration Ordinance (Amendment No. 11) Law, which provided for the extension of its law, jurisdiction and administration to “any area of Eretz Israel designated by the Government by order” and thus included the recently conquered East Jerusalem.^[89] The following day, the Israeli government enacted the Municipalities Ordinance (Amendment No. 6) Law, which authorized the Interior Minister to unilaterally enlarge the municipal boundaries of East Jerusalem “at his discretion and without an inquiry”, without any considerations given to the principles of international law or to the impact that such an act would have on the existing Arab population.^[90] The Israeli Interior Minister then proceeded to enlarge East Jerusalem’s 6.5km² land area to encompass 71km² of occupied Palestinian land in the West Bank.^[91] Subsequently, the Israeli government amalgamated the newly expanded occupied East Jerusalem with Israeli controlled West Jerusalem, and on 29 June 1967, the assistant Israeli Commander of Jerusalem, Yaacov Salman, issued an order dissolving the twenty member elected Arab Municipal Council of occupied East Jerusalem.^[92]

Both the UN Security Council and the General Assembly have declared invalid all measures taken by Israel to change the status of Jerusalem. On 4 July 1967, the General Assembly declared all “measures taken by Israel to change the status

^[88] The Status of Jerusalem, United Nations Division for Palestinian Rights, New York, 31 August 1997, 14.

^[89] The Laws of the State of Israel: Authorized English Translation of Israeli Legislation (S.H.) Publications by the Ministry of Justice, 75 (9167). Hereinafter L.S.I

^[90] The Laws of the State of Israel: Authorized English Translation of Israeli Legislation (S.H.) Publications by the Ministry of Justice, 75 (9167).

^[91] B.Hodgkins, The Judaization of Jerusalem, 6 Palestinian Academic Society for the Study of International Affairs, 1996

^[92] See Documents on Jerusalem, Palestinian Academic society for the Study of International Affairs, 1996, at 100, hereinafter documents on Jerusalem.

of the city to be invalid.”^[93] Security Council resolution 252, adopted on the 21 May 1968 asserted that the “acquisition of territory by military conquest is inadmissible”^[94] and declared “all legislative and administrative measures and actions taken by Israel, including expropriation of land and properties thereon, which tend to change the Legal Status of Jerusalem are invalid and cannot change that status.” Israel was called upon to immediately and unconditionally “rescind all such measures already taken and to desist forthwith from taking any further actions which tends to change the status of Jerusalem.”^[95]

In June of 1980, Israel initiated legislative measures in an attempt to sanction “united Jerusalem” as the Israeli capital. In response, the Security Council adopted Resolution 476 where it expressed grave concern regarding “the legislative steps initiated in the Israeli Knesset with the aim of changing the character and status of the Holy City of Jerusalem,” and deplored “the persistence of Israel in changing the physical character, demographic composition, institutional structure and the status of the Holy City of Jerusalem.”^[96] The Security Council further declared “all legislative and administrative measures and actions taken by Israel, the occupying power, which purport to alter the character and status of the holy city of Jerusalem have no legal validity and constitute a flagrant violation of the Geneva Convention relative to the protection of Civilian Persons in Time of War” and urgently called upon “ Israel, the Occupying Power, to abide by the present and previous security council resolutions and to desist forthwith from persisting in the policy and measures affecting the character and Status of the Holy City of Jerusalem.”^[97] Israel, however, overtly flouted the demands of the Security Council and unabatedly continued pursuing its political aspirations in occupied East Jerusalem.

^[93] UN General Assembly, *Measures taken by Israel to change the status of the City of Jerusalem*, 4 July 1967, A/RES/2253.

^[94] UN Security Council, *Resolution 252 (1968) of 21 May 1968*, 21 May 1968, S/RES/252 (1968).

^[95] UN Security Council, *Resolution 252 (1968) of 21 May 1968*, 21 May 1968, S/RES/252 (1968).

^[96] UN Security Council, Resolution 478 (1980) Adopted by the Security Council at its 2245th meeting, on 20 August 1980, 20 August 1980, S/RES/478 (1980).

^[97] UN Security Council, Resolution 478 (1980) Adopted by the Security Council at its 2245th meeting, on 20 August 1980, 20 August 1980, S/RES/478 (1980).

The apex of Israeli legislative attempts to consolidate this “unification” came with the passing of the “Basic Law” on Jerusalem on 30 July 1980, wherein it declared “Jerusalem, complete and united, is the capital of Israel.”^[98] Following Israel’s continued non-compliance with Council and Assembly resolutions, in particular Security Council Resolution 476, the Council adopted Resolution 478 on the 20 August 1980, where it reiterated its position in resolution 476, and further “censures in the strongest terms the enactment of the ‘Basic Law’ on Jerusalem” and decided “not to recognize the ‘basic law’ and such other actions by Israel that, as a result of this law seek to alter the character or status of Jerusalem.” Furthermore, the Security Council also confirmed that the “enactment of the “basic law” by Israel constitutes a violation of international law and does not affect the continued application of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, in the Palestinian and other Arab territories occupied since June 1967, including Jerusalem.”^[99] Finally, the Security Council called upon all Member States “to accept this decision” and for those States who have established diplomatic missions in Jerusalem “to withdraw such missions from the Holy City.”^[100]

Both the United Nations Security Council and the General Assembly have reiterated their positions that East Jerusalem is occupied territory;^[101] that the acquisition of territory through military conquest is inadmissible;^[102] and that all legislative and administrative measures taken by Israel, which have altered or have purported to alter the character or status of the holy city of Jerusalem, in particular the “Basic Law”, are null and void and must be rescinded forthwith.^[103] Furthermore, the General Assembly has continuously condemned Israel’s annexation policies throughout occupied East Jerusalem as illegal, null and void,

^[98] See Basic Law: Jerusalem, Capital of Israel, 34 L.S.I. 209 (1980)

^[99] UN Security Council, *Resolution 478 (1980) Adopted by the Security Council at its 2245th meeting, on 20 August 1980*, 20 August 1980, S/RES/478 (1980).

^[100] UN Security Council, *Resolution 478 (1980) Adopted by the Security Council at its 2245th meeting, on 20 August 1980*, 20 August 1980, S/RES/478 (1980).

^[101] UN Security Council, *Resolution 672 (1990) Adopted by the Security Council at its 2948th meeting, on 12 October 1990*, 12 October 1990, S/RES/672 (1990).

^[102] UN Security Council, *Resolution 478 (1980) Adopted by the Security Council at its 2245th meeting, on 20 August 1980*, 20 August 1980, S/RES/478 (1980).

^[103] UN Security Council, *Resolution 478 (1980) Adopted by the Security Council at its 2245th meeting, on 20 August 1980*, 20 August 1980, S/RES/478 (1980).

and having no validity whatsoever.^[104] As reiterated on numerous occasions by both the General Assembly and the Security Council, and explicitly confirmed by the highest international judicial authority, the International Court of Justice,^[105] East Jerusalem, together with the West Bank and Gaza Strip, is occupied Palestinian territory, rendering Israel the Occupying Power.^[106]

The unilateral annexation of occupied East Jerusalem is a manifest violation of Article 2(4) of the United Nations Charter, which unequivocally prohibits the acquisition of territory through military conquest.^[107] This prohibition is considered a peremptory norm of general international law and as such, any violation of this provision qualifies as a ‘serious breach’ of international law and entails third State responsibility.^[108] Article 41 of the Draft articles on the Responsibility of States for Internationally Wrongful Acts, promulgates “no State shall recognize as lawful a situation created by a serious breach [of international law]” and all Member States “shall cooperate to bring to an end through lawful means any serious breach [of international law].”^[109] Therefore,

^[104] See for example the following, UN General Assembly resolution 49/87A, U.N. GAOR, 49th Sess., U.N. Doc. A/49/49 (1995); G.A. Res. 50/22A, U.N. GAOR, 50th Sess., U.N. Doc. A/50/L.37, addendum pt.1 (1995); G.A. Res. 51/27, U.N. GAOR, 51st Sess., U.N. Doc. A/51/49 (1996); G.A. Res. ES-10/2, U.N. GAOR, 10th Emer. Sess., U.N. Doc. A/RES/ES-10/2 (1997); G.A. Res. ES-10/3, U.N. GAOR, 10th Emergency Special Sess., U.N. Doc. A/RES/ES-10/3; G.A. Res. ES-10, U.N. GAOR, 10th Emer. Sess., U.N. Doc. A/RES/ES-10/4 (1997) (reiterating the demands made in resolutions ES-10/2 and ES-10/3); G.A. Res. 52/53, U.N. GAOR, 52d Sess., U.N. Doc. A/RES/52/53 (1997).

^[105] *Advisory Opinion Concerning Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, International Court of Justice (ICJ), 9 July 2004, Para. 77.

^[106] *Advisory Opinion Concerning Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, International Court of Justice (ICJ), 9 July 2004, Para. 77.

^[107] Article 2(4) of the United Nations Charter reads “all Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.”

^[108] Brownlie traces customary prohibition of the use of force with the motive of acquiring territory to the Covenant of the League of Nations and disapproving practice of states in the beginning of the 20th century, see I. Brownlie, *International Law and the Use of Force by States* (1963), 217. As to the fundamental character of Article 2(4) of the UN Charter, see *Case Concerning Military & Paramilitary Actions in and Against Nicaragua* (Nicaragua v. United States), Merits, Judgment of 27 June 1986, [1986] ICJ Rep. 14, para. 190. On jus cogens status of the prohibition of the use of force, see *Commentary to Draft Articles on the Law of Treaties*, YILC (1966), Vol. II, at 247.

^[109] Article 41, Draft articles on the Responsibility of States for Internationally Wrongful Acts, adopted by the International Law Commission at its fifty-third session, in 2001, and submitted to the General Assembly as a part of the Commission’s report covering the work of that session (A/56/10).

any Israeli claim to sovereignty over occupied East Jerusalem holds no validity under international law and, in consequence, the imposition of Israeli legal, judicial and territorial authority over occupied East Jerusalem also holds no validity under international law.

Legal Obligations of an Occupying Power

Together the Hague Regulations^[110] and the Geneva Conventions^[111] form the core body of occupation law under international humanitarian law. Humanitarian law regards belligerent occupation as a temporary and de facto situation - the period between the cessation of hostilities and the subsequent signing of a peace treaty.^[112] Thus, the law of belligerent occupation is founded upon the basis that the Occupying Power is vested solely with temporary powers of administration and never possesses political sovereignty over the territory it occupies. The overall responsibility of the Occupying Power within the territory it occupies is expressed within Hague Regulation 43, which states:

“The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country.”^[113]

Two fundamental precepts of the law of occupation can be drawn from Regulation 43. First, Regulation 43 imposes an obligation on the Occupying Power vis-à-vis the occupied civilian population to ensure “public order and safety.” Second, and at the same time, Regulation 43 is predicated on the fear that any legislative or institutional changes introduced by the Occupying Power risk becoming a *fait accompli*, an accomplished and presumably irreversible fact, thereby prejudicing

^[110] *Hague Convention (IV) Respecting the Laws and Customs of War on Land and Its Annex: Regulations Concerning the Laws and Customs of War on Land*, 18 October 1907. Hereinafter, Hague Regulation.

^[111] *Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention)*, 12 August 1949, 75 UNTS 287.

^[112] Eyal Benvenisti, *The Security Council and the Law on Occupation: Resolution 143 on Iraq in Historical Perspective*, 1 *Israeli Defense Forces Law Review*, 19, 20 (2003).

^[113] Regulation 43, *The Hague Regulations*.

the possible return to the status quo ante bellum, or the state of things before the war.^[114] Thus, Regulation 43 embodies both positive “to restore and ensure” and negative “while respecting, unless absolutely prevented” obligations for an Occupying Power within the territory it occupies. It should also be noted that Article 43 and the principle of the status quo ante bellum can in no way be exploited by the Occupying Power to justify its inaction and to ‘legitimately’ neglect the welfare of the occupied population.^[115]

The legislative competence of the Occupying Power to restore and ensure public order and safety is further clarified in the subsequent Fourth Geneva Convention. As the “more precise and detailed” expression of “unless absolutely prevented” contained in Hague Regulation 43,^[116] Article 64 of the Fourth Geneva Convention further delineates both the obligations and the rights conferred to the Occupying Power in the course of fulfilling its obligations under international humanitarian law, promulgating;

“The penal laws of the occupied territory shall remain in force, with the exception that they may be repealed or suspended by the Occupying Power in cases where they constitute a threat to its security or an obstacle to the application of the present Convention ... the Occupying Power may, however, subject the population of the occupied territory to provisions, which are essential to enable the Occupying Power to fulfill its obligations under the present Convention, to maintain the orderly government of the territory, and to ensure the security of the Occupying Power, of members and property of the occupying forces or administration ...”^[117]

The duality of obligations and rights contained within both provisions effectively prevents the Occupying Power from observing with indifference the political or

[114] Allan Gerson, *Trustee Occupant: The Legal Status of Israel’s Presence in the West Bank*, 14 *Harvard International Law Journal*, 1, 40 (1973).

[115] For more on this issue see, Adam Roberts, *Prolonged Military Occupation: The Israeli-Occupied Territories 1967-1988*, in *International Law and the Administration of Occupied Territories*, 33 (Playfair ed., 1992).

[116] See ICRC commentaries to Article 64(2) of the Fourth Geneva Convention, available at, <http://www.icrc.org/IHL.nsf/COM/380-600071?OpenDocument>

[117] Article 64(2), Fourth Geneva Convention.

economic deterioration and ensuing societal chaos within the territory it occupies.^[118] Accordingly, Article 64 provides three legitimate grounds for interfering with the status quo ante bellum and introducing, subject to strict limitations, legislative and institutional amendments in the territory that it occupies. The grounds for such legislative and institutional changes are limited to those necessary for the fulfillment of its obligations under international humanitarian law; the maintenance of orderly government, and the security interests of the Occupying Power.^[119] Any legislative or institutional changes that deviate from the three aforementioned must be for the exclusive benefit of the occupied population.^[120]

Taking into consideration that the occupation of East Jerusalem has persisted for over four decades, the introduction of new legislation is not only necessary, but also desirable in order to ensure the welfare of the civilian population. However, any legislative or institutional changes introduced by the Occupying Power must not deprive the civilian population of the rights and protections afforded to them under the Convention itself and may not prescribe any measures that are prohibited under international humanitarian law such as collective punishment, forcible transfers or the unlawful confiscation or destruction of private property not justified by absolute military necessity.^[121] Finally, any legislative and institutional changes introduced cannot seek to evade, or in any way relieve, the Occupying Power of its obligations vis-à-vis the civilian population.^[122]

In terms of urban planning throughout occupied East Jerusalem, with the commencement of the occupation of East Jerusalem on 7 June 1967, the law that regulated urban planning was the Jordanian Law of Cities, Villages and Buildings No. 79 of 1966, and the law of occupation dictates that the Israeli occupation authorities are legally obligated to function in accordance with this law.^[123] Indeed

^[118] See Dinstein, Yoram; *The International Law of Belligerent Occupation*, Cambridge University Press, 2009, 89.

^[119] Article 64(2), Fourth Geneva Convention.

^[120] See generally Sossoli, Marco; *Legislation and Maintenance of Public Order and Civil Life by the Occupying Power*, 16 *European Journal of International Law*, 2005.

^[121] Sossoli, Marco; *Legislation and Maintenance of Public Order and Civil Life by the Occupying Power*, 16 *European Journal of International Law*, 2005, 675.

^[122] See Dinstein, Yoram; *The International Law of Belligerent Occupation*, Cambridge University Press, 2009, 90.

^[123] For background and analysis on Jordanian Law no.79 see, Coon, Anthony, *Town Planning Under Military Occupation*, Dartmouth Publishing, 1992, 40.

Israel is permitted, and in some cases obligated, to introduce legislative and institutional changes to the existing urban planning law in order to ‘maintain orderly government’ and facilitate the growth and development of Palestinian society. However, as stated above, any such legislative or institutional changes must be for the exclusive benefit of the Palestinian residents of occupied East Jerusalem.^[124] The imposition of the Israeli Planning and Building Law of 1965 into occupied East Jerusalem cannot be vindicated under the pretext of Israel’s obligations under international humanitarian law or its security interests as an occupying power, and extends far beyond Israel’s legitimate legislative competence as an Occupying Power to ensure the maintenance of orderly government in occupied East Jerusalem.

First, the Israeli Planning and Building Law was implemented on the erroneous pretext of Israeli political sovereignty rather than temporary administration over occupied East Jerusalem. This pretext violates Regulation 55 of the Hague Regulations which unconditionally promulgates that the Occupying Power “shall be regarded only as an administrator of public buildings, real estate ... [and] ... must safeguard the capital of these properties, and must administrate them in accordance with the rules of usufruct.”^[125]

Second, the Israeli Planning and Building Law authorizes, prohibits and regulates both Palestinian and Jewish construction within occupied East Jerusalem, and thus stands in sharp contrast to Article 49(6) of the Fourth Geneva Convention which prohibits the Occupying Power from transferring parts of its own civilian population into the territory that it occupies.^[126] The commentaries to this provision reveal that it is intended to prevent the colonization of the occupied territory, commenting that such transfers invariably “worsened the economic situation of the native population and endangered their separate existence as a race.”^[127]

^[124] See generally Sossoli, Marco; *Legislation and Maintenance of Public Order and Civil Life by the Occupying Power*, 16 *European Journal of International Law*, 2005.

^[125] Article 55, The Hague Regulations.

^[126] Article 49(6), Fourth Geneva Convention.

^[127] See ICRC commentaries to Article 49(6) of the Fourth Geneva Convention, available at, <http://www.icrc.org/IHL.nsf/COM/380-600056?OpenDocument>

Third, the Israeli Planning and Building Law authorizes the destruction of Palestinian homes constructed in absence of an Israeli building permit. Such destruction is without grounds permitted under international humanitarian law, which is limited exclusively to situations of absolute military necessity.^[128]

Fourth, the Israeli Planning and Building Law contradicts the inviolable rights of Palestinian residents as Protected Persons, including, *inter alia*, the right to private property, family honor and protection against adverse discrimination and forcible transfer.^[129] Not only is the imposition of the Israeli Planning and Building Law beyond the legislative competence of Israel as an Occupying Power, but also, the very consequences of its implementation invariably results in numerous violations of international humanitarian law.

Inviolability of Rights and Obligations

As occupied territory, the Palestinian residents of East Jerusalem qualify as Protected Persons as defined under Article 4 of the Fourth Geneva Convention, which provides that Protected Persons are “those who, at a 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.”^[130]

The overall responsibility of an Occupying Power *vis-à-vis* Protected Persons is set forth under Article 29 of the Fourth Geneva Convention; “the party to the conflict in whose hands protected persons may be, is responsible for the treatment accorded to them by its agents, irrespective of any individual responsibility which may be incurred.”^[131] Accordingly, international humanitarian law places extensive, and in some cases extremely detailed,^[132] obligations upon Israel *vis-à-vis* Protected Persons including, *inter alia*, respect for the right to life, family honor, and private property, as well as religious convictions, practices and

^[128] See Confiscation and Destruction of Private Property below at 30.

^[129] See inviolability of rights and obligations and forcible transfer below at 24 and 32 respectively.

^[130] Article 4, Fourth Geneva Convention.

^[131] Article 29, Fourth Geneva Convention.

^[132] See section IV of the Fourth Geneva Convention, the regulations for the treatment of internees.

customs.^[133] The Occupying Power is further obligated to ensure access to, and adequate levels of, food and medicine,^[134] and to maintain the functioning of medical establishments, including hospitals and other public health and hygiene services within the territory it occupies.^[135]

Mirroring some of the most fundamental guarantees now enshrined under international human rights law, Article 27 of the Fourth Geneva Convention lays down a series of entitlements to which all Protected Persons are guaranteed, under all circumstances.^[136] Protected Persons must be treated “humanely” at all times, without any adverse distinction based on race, religion or political opinion, and while being protected against “all acts of violence or threats thereof and against insults and public curiosity.”^[137]

Although qualified provisions, the obligations of the Occupying Power vis-à-vis Protected Persons permit no derogation.^[138] Equally so, the rights of Protected Persons are inviolable. Protected Persons “may in no circumstances renounce in part or in entirety the rights secured to them by the present convention...” or be deprived of such rights, under any circumstances, by the Occupying Power or its agents.^[139] Article 47 of the Fourth Geneva Convention states explicitly:

“protected persons who are in occupied territory shall not be deprived, in any case or in any manner whatsoever, of the benefits of the present Convention by any change introduced, as a result of the occupation of a territory, nor by any agreement concluded between the authorities of the occupied territories and the Occupying Power, nor by annexation by the latter of the whole or part of the occupied territory.”^[140]

^[133] Article 46, The Hague Regulations.

^[134] Article 55, Fourth Geneva Convention.

^[135] Article 56, Fourth Geneva Convention.

^[136] The sole exception to this provision is when Protected Persons take a direct part in armed hostilities.

^[137] Article 27, Fourth Geneva Convention.

^[138] The sole provision of the Fourth Geneva Convention to explicitly delineate possible derogations, is Article 5.

^[139] Article 8, Fourth Geneva Convention.

^[140] Article 47, Fourth Geneva Convention.

The authoritative ICRC commentary on this provision explains that the reference to annexation in Article 47 does not imply recognition to annexation as a means of acquiring sovereignty over occupied territory. Occupation does not equate sovereignty and the Occupying Power does not possess any right whatsoever to dispose of territory.^[141] As elucidated by the Commentaries, the fundamental principle that emerges from Article 47 is that an “Occupying Power continues to be bound to apply the Convention as a whole even when, in disregard of the rules of international law, it claims during a conflict to have annexed all or part of an occupied territory.”^[142] Thus Israel’s unilateral annexation of occupied East Jerusalem, and its subsequent attempt to deny Palestinian residents that status of Protected Persons, holds no validity under international humanitarian law, and in no way relieves Israel, as the Occupying Power, of its obligations vis-à-vis the occupied civilian population.

In summation, the law of belligerent occupation authorizes the Occupying Power to introduce legislative changes strictly limited to the three aforementioned deviations, or for the exclusive benefit of the occupied population. Thus, the principle of the status quo ante bellum encompasses the Occupying Power’s obligations to restore an occupied territory to its pre-war state and, if the occupation persists over a prolonged period, allow it to develop in order to ensure that the occupied population is able to realize and effectively exercise their fundamental human rights. The Israeli Planning and Building Law not only breaches the boundaries of Israel’s legislative competence as an Occupying Power, but also directly results in a litany of violations of both international human rights and humanitarian law.

The Right to Adequate Housing

In addition to the freedom to choose one’s place of residence,^[143] the right to adequate housing is firmly embedded within numerous international human

^[141] See ICRC Commentary for Article 147, available at, <http://www.icrc.org/IHL.nsf/COM/380-600169?OpenDocument>

^[142] See ICRC Commentary for Article 147, available at, <http://www.icrc.org/IHL.nsf/COM/380-600169?OpenDocument>

^[143] Article 12, International Covenant on Civil and Political Rights; UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171.

rights instruments. The right to adequate housing is derived from the right to an adequate standard of living; it is based upon the principle of non-discrimination, and is indivisible from the realization and enjoyment of all economic, social and cultural rights. The right of all people to adequate housing was first proclaimed in 1948 in the Universal Declaration of Human Rights:

“Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.”^[144]

A number of binding international human rights instruments have built upon the foundation of this early incarnation of the right to adequate housing. Both the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW),^[145] and the 1951 Convention Relating to the Status of Refugees (1951 Convention)^[146] include direct reference to housing or property rights. Similarly, in what is widely recognized as containing the most significant provision pertaining to the right to adequate housing, the International Covenant on Economic, Social and Cultural Rights (ICESCR) enunciates:

“The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.”^[147]

^[144]Article 25(1), Universal Declaration of Human Rights.

^[145] UN General Assembly, *Convention on the Elimination of All Forms of Discrimination Against Women*, 18 December 1979, United Nations, Treaty Series, vol. 1249, p. 13, Articles 15(2) and 16(1)(h).

^[146] UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, Article 13.

^[147] Article 11(1) International Covenant on Economic, Social and Cultural Rights; UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3.

Additionally, one of the most widely ratified of all United Nations human rights instruments, the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), has made an invaluable contribution to furthering the right of adequate housing. Article 5(e) encompasses an obligation for State Parties to:

“prohibit and eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of economic, social and cultural rights in particular . . . the right to housing.”^[148]

The term “adequate” can be found throughout every incarnation of the right to housing and is of pivotal importance in the interpretation and application of the right. According to the United Nations Committee on Economic, Social and Cultural Rights, the UN body that monitors the implementation of the ICESCR, a number of factors must be taken into account when determining what constitutes adequate housing, including inter alia, legal security of tenure, affordability, accessibility, location, and the availability of services and infrastructure.

The concept of secure tenure is at the foundation of the right to adequate housing. Without security of tenure, the full realization of the right to adequate housing is not possible. According to the UN Committee on Economic, Social and Cultural Rights, in order for housing to be considered ‘adequate’ all persons should possess a degree of security of tenure, which guarantees legal protection against forced eviction, harassment and other threats.^[149] Accordingly, States Parties should take “immediate measures aimed at conferring legal security of tenure upon those persons and households currently lacking such protection.”^[150]

^[148] Article 5(e), International Convention on the Elimination of All Forms of Racial Discrimination; UN General Assembly, International Convention on the Elimination of All Forms of Racial Discrimination, 21 December 1965, United Nations, Treaty Series, vol. 660, p. 195.

^[149] See Article 8(a), General Comment 4, The right to adequate housing, (Art. 11 (1) of the Covenant)(Sixth session, 1991).

^[150] See Article 8(a), General Comment 4, The right to adequate housing, (Art. 11 (1) of the Covenant)(Sixth session, 1991).

The prevailing situation for the Palestinian residents of occupied East Jerusalem is the very antitheses of secure tenure. As previously discussed, in order to provide shelter and a home for their families, hundreds of Palestinian families throughout occupied East Jerusalem have been forced to construct without a building permit. In consequence, over 1,500 outstanding demolition orders exist throughout occupied East Jerusalem, threatening thousands of Palestinian homes and the families that they house with impending eviction, demolition and displacement.^[151] In addition, and in stark contrast to their obligations under international humanitarian law, Israeli occupation authorities are continuously manipulating and exploiting various legal mechanisms in order to expropriate or confiscate Palestinian land to make way for the expansion of Jewish settlements, settlement infrastructure, or the Annexation Wall.^[152] For the vast majority of Palestinian residents of occupied East Jerusalem, legal security of tenure, to any degree, does not exist.

Affordability is also a fundamental tenet of the right to adequate housing. The UN Committee on Economic, Social and Cultural Rights, has stressed that the personal or household financial costs associated with housing should be at such a level that the attainment and satisfaction of other basic needs are not threatened, compromised or undermined.^[153] The Committee has suggested that specific “steps should be taken by States parties to ensure that the percentage of housing-related costs is, in general, commensurate with income levels. States parties should establish housing subsidies for those unable to obtain affordable housing, as well as forms and levels of housing finance, which adequately reflect housing needs.”^[154]

In stark contrast to measures aimed at facilitating the realization of adequate housing, the Israeli occupation authorities have drafted and vigorously implemented a planning regime in occupied East Jerusalem that places an

[151] See ‘statistics’ from the Jerusalem Land Research Centre, <http://www.lrcj.org/Eng/site.php>

[152] The recently revived 1950 Absentee Property Law is one such mechanism, see Ir Amin, *The Absentee Property Law in East Jerusalem: Recent Developments and their Significance* April 2005.

[153] See Article 8(c), General Comment 4, *The right to adequate housing*, (Art. 11 (1) of the Covenant)(Sixth session, 1991).

[154] See Article 8(c), General Comment 4, *The right to adequate housing*, (Art. 11 (1) of the Covenant)(Sixth session, 1991).

exceedingly high financial burden upon the already economically marginalized Palestinian population. As discussed above, over 66% of the Palestinian population of Occupied East Jerusalem lives under the poverty line and in consequence, the associated costs of the building permit application process are often prohibitive. The relationship between housing needs and associated costs of authorized construction has resulted in a severe housing deficiency, which in turn serves as the impetus behind ‘unlicensed construction’ throughout occupied East Jerusalem.

The designation of the term ‘adequate’ to the right of housing also serves to encompass the inclusion of certain facilities essential for health, security and comfort. The UN Committee on Economic, Social and Cultural Rights, has recommended that all beneficiaries of the right to adequate housing “should have sustainable access to natural and common resources, safe drinking water, energy for cooking, heating and lighting, sanitation and washing facilities, means of food storage, refuse disposal, site drainage and emergency services.”^[155] Such infrastructure, facilities and services have been deemed essential in order for individuals or households to realize and exercise their right to adequate housing.

The housing deficiency in occupied East Jerusalem is severely exacerbated by a blatantly discriminatory neglect in the provision of public infrastructure, facilities and services. Despite the fact that all residents of Jerusalem, both East and West, are required to pay municipal taxes, the services they receive in return differ significantly. Occupied East Jerusalem residents, who make up 36% of the population of Jerusalem, receive 7% of the budget, while the 64% of the population who reside in West Jerusalem receive 93% of the budget.^[156] This discriminatory allocation of budgetary resources has resulted in substantial inequalities between occupied East and Israeli controlled West Jerusalem.

Almost 90% of all sewage pipes, power lines, roads and sidewalks are located in West Jerusalem, leaving numerous Palestinian neighborhoods in occupied East Jerusalem without sewage systems, electricity and paved roads.^[157] Currently, occupied East Jerusalem is lacking over 70 km of sewage lines, forcing multiple

^[155] See Article 8(b), General Comment 4, The right to adequate housing, (Art. 11 (1) of the Covenant)(Sixth session, 1991).

^[156] Margalit, Meir; Allocation of Municipal Resources East and West Jerusalem, 2008.

^[157] B, Tselem, Neglect of Infrastructure and Services in Palestinian Neighborhoods in East Jerusalem, http://www.btselem.org/english/Jerusalem/Infrastructure_and_Services.asp

Palestinian neighborhoods to rely on open cesspits for sewage disposal.^[158] Similarly, over 160,000 Palestinian residents have no legal source of water, forcing them to ‘illegally’ construct makeshift connections to the Municipal water mains or cope with stored containers of fresh water purchased from private companies.^[159]

In addition to such infrastructural deficiencies, the provision of essential services is also severely neglected in occupied East Jerusalem. Despite the fact that Palestinians makes up 36% of the Jerusalem Municipality’s population, occupied East Jerusalem receives only 23% of the total allocated budget for medical services in Jerusalem;^[160] only 7 postal facilities exist to serve the approximate 250,000 residents of occupied East Jerusalem, while the 500,000 residents of West Jerusalem have 50 at their disposal;^[161] and finally, there exists a severe shortage of an estimated 1,500 classrooms, leaving 9000 children in occupied East Jerusalem without a desk at school.^[162]

The policies and practices of the Israeli planning regime in occupied East Jerusalem result in the systematic suppression of Palestinian residents’ right to adequate housing. At the same time, however, these same policies and practices greatly facilitate the realization of housing rights for the Jewish population in occupied East Jerusalem to the detriment of the Palestinian population. In addition to the explicit prohibition on the transfer of the Occupying Power’s civilian population into the territory it occupies, the UN Committee on Economic, Social and Cultural Rights, has stressed that “State parties must give due priority to those social groups living in unfavorable conditions by giving them particular consideration. Policies and legislation should correspondingly not be designed to benefit already advantaged social groups at the expense of others.”^[163] The Israeli planning regime contravenes entirely the spirit and letter of this requirement.

^[158] The Association of Civil Rights in Israel, *The State of Human Rights in East Jerusalem*, May 2009, 40

^[159] The Association of Civil Rights in Israel, *The State of Human Rights in East Jerusalem*, May 2009, 40.

^[160] Margalit, Meir; *Allocation of Municipal Resources East and West Jerusalem 2008*

^[161] The Association of Civil Rights in Israel, *The State of Human Rights in East Jerusalem*, May 2009, 40

^[162] Jibril, Samir; *Education Rights in Jerusalem*, Civic Coalition for Defending Palestinian Rights in Jerusalem, February 2008, 16.

^[163] See Article 11, General Comment 4, *The right to adequate housing*, (Art. 11 (1) of the Covenant)(Sixth session, 1991).

Confiscation and Destruction of Private Property

While the right to adequate housing is firmly embedded in international human rights law, it is also expressly protected under international humanitarian law.^[164] International humanitarian law provides explicit protection to property within occupied territory and further delineates a significant distinction between private property and State owned property.^[165] In accordance with the intent of limiting the effects of armed conflict and belligerent occupation on the civilian population, a certain degree of preferential treatment is given to private property within occupied territory. During situations of armed conflict and belligerent occupation, the confiscation or destruction of private property is limited exclusively to situations of military operations during which prevailing circumstances demand such confiscation or destruction on the basis of absolute military necessity.

The first sentence of Hague Regulation 46 proclaims that private property “must be respected”, which is extended in the second sentence to “private property can not be confiscated.”^[166] Article 47 extends this prohibition from the Occupying Power to its agents by formally forbidding the practice of pillaging during belligerent occupation.^[167] It should be noted that the scope of the wording “must be respected” extends far beyond the more explicit prohibition against confiscation as contained within the second paragraph of Hague Regulation 46. As delineated within the judgment of the Nuremberg Krupp trial, “respect for private property” under Hague Regulation 46 is not limited to protection from loss of ownership. For a breach to occur it is enough if the owner is actually prevented from exercising her rightful prerogatives.^[168] In support of this interpretation, the European Court of Human Rights held in the *Loizidou* case that the continuous denial of access to land means effective loss of ownership rights over it.^[169]

^[164] See Regulation 46 and 52 of the Hague Convention Respecting the laws and Customs of War on Land of 18 October 1907. See also, Article 53 of the Fourth Geneva Convention of 1949.

^[165] This distinction extends even further to include movable and immovable property. See, Dinstein, Yorman; *The International Law of Belligerent Occupation*, Cambridge University Press, 2009, 213.

^[166] Regulation 46, the Hague Regulations.

^[167] Regulation 47, the Hague Regulations.

^[168] Krupp Trial, (Karuch et al.) (US Military Tribunal, Nuremberg, 1948), 10 LRTWC, Paras. 137-8.

^[169] *Loizidou v. Turkey*, 40/1993/435/514, Council of Europe: European Court of Human Rights, 23 February 1995. Para 23.

The requisitioning of private homes and property for temporary possession by the Occupying Power for absolutely necessary military purposes is permitted under Regulation 52, provided that compensation is paid as soon as possible for the use of the property.^[170] Similarly, the Occupying Power is also permitted to expropriate private lands within the territory it occupies provided that it is done for reasons of public interest, thus for the exclusive benefit of the occupied population, and in accordance with the local law on expropriation for public needs in force at the outset of the occupation.^[171] However, it is important to consider, as elucidated in the Nuremberg judgment of I.G. Farben, that the payment of money in consideration for private property does not per se relieve an act of confiscation of its unlawfulness, if it is carried out against the will of the owner.^[172]

The destruction of private property not justified by military necessity is explicitly prohibited under international humanitarian law during the conduct of hostilities^[173] and the administration of territory during belligerent occupation.^[174] The destruction of any house within occupied East Jerusalem in absence of military necessity is a flagrant violation of Article 53 of the Fourth Geneva Convention states explicitly,

“Any destruction by the Occupying Power of real or personal property belonging individually or collectively to private persons, or to the State, or to public authorities, or to social or cooperative organizations, is prohibited, except where such destruction is rendered absolutely necessary by military operations.”^[175]

The prohibition on the destruction of private property is subject to a single reservation “where such destruction is rendered absolutely necessary by military operations.” According to the official commentary of the ICRC, “military operations” denotes “the movements, maneuvers, and actions of any sort, carried

^[170] L. Oppenheim, *International law*, Vol. II, 7th ed, H. Lauterpacht, 1952, 411.

^[171] E.H. Feilchenfeld, *The International Economic Law of Belligerent Occupation* 89, 1942, 50.

^[172] I.G. Farben Trial (Karuch et al.) (US Military Tribunal, Nuremberg, 1948), 10 LRTWC1, Para. 44.

^[173] Regulation 23(g), the Hague Regulations.

^[174] Rule 50, International Committee of the Red Cross, *Customary International Humanitarian Law, Volume I: Rules*, 2005. See, also Article 3(b), Statute of the International Criminal Tribunal for the former Yugoslavia.

^[175] Article 53, the Fourth Geneva Convention.

out by the armed forces with view to combat.”^[176] Furthermore, military necessity is a legitimate pretext only for measures that are permitted under international humanitarian law. It is thus restricted by the principles of distinction and proportionality and cannot serve as a justification for breaches of international humanitarian law. To quote the ICRC concerning Israeli actions within the occupied Palestinian territory, “the destruction of property as a general security measure is prohibited.”^[177] The extension of this logic leads to the conclusion that any confiscation or destruction of Palestinian property for any other reason than that of absolute military necessity is a manifest violation of international humanitarian law.

Since the outset of the occupation of East Jerusalem, the Israeli occupation authorities have confiscated approximately 35% (24.5km²)^[178] of occupied Palestinian land for the construction of 16 Jewish settlements, comprising of some 60,000 residential units, which now house approximately 200,000 Jewish settlers throughout occupied East Jerusalem.^[179] In addition, during the same period, the Israeli occupation authorities have carried out approximately 2000 ‘administrative’ and ‘judicial’ house demolitions, effectively displacing tens of thousands of Palestinians within and from occupied East Jerusalem. The severity of unlawful property destruction is highlighted by its inclusion as a grave breach of the Fourth Geneva Convention. Article 147 declares the “extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly” as a war crime amounting to a grave breach of the Fourth Geneva Convention.^[180] Grave breaches are the most serious violations of international humanitarian law that encompass individual criminal responsibility for those who planned, ordered and executed such acts.^[181] Taking into consideration the frequency of house demolitions in the absence of both

^[176] Yves Sandoz; Chritophe Swinarski, Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949 (ICRC/Martinus Nijhoff, Geneva/The Hague, 1987), Para. 219.

^[177] “ICRC Deeply Concerned Over House Demolitions in Rafah”, Press Release, 18 May 2004

^[178] The Planning Crisis in East Jerusalem, OCHA Special Focus, April 2009,8.

^[179] For more information see, Tufakji, Khalil; Land Confiscation and Settlement Construction in Occupied East Jerusalem, The Civic Coalition for Jerusalem, 2009.

^[180] Article 147, the Fourth Geneva Convention.

^[181] Article 146, the Fourth Geneva Convention

military operations and necessity, the Israeli occupation authorities' policy of 'administrative' or 'judicial' house demolitions within occupied East Jerusalem does not fall within the limited ambit of legitimate property destruction during belligerent occupation and is therefore irrefutably unlawful.

Forcible Transfer of the Occupied Population

The veracity of the Israeli planning regime and its consequent acute housing deficiency has created exceptionally difficult living conditions for the Palestinian residents of occupied East Jerusalem. In the face of this harsh reality, Palestinian residents are left with few options to meet the housing needs of their growing families. Taking into consideration the diversity of factors that will influence this decision, including associated costs and excessive delays, only two 'viable' options exist for Palestinian residents. First, to depart the Municipal boundaries of occupied East Jerusalem to areas where more land is available for Palestinian construction and less restrictive zoning and building polices exist. Second, to construct an additional home on their property or an extension onto their existing home without the compulsory Israeli building permit and live under the impending threat of eviction or demolition. Thus, the Israeli planning regime in occupied East Jerusalem either compels Palestinians to seek better and more affordable accommodation elsewhere or forcibly displaces Palestinian residents within or from occupied East Jerusalem by demolishing their homes.

Both conventional and customary international humanitarian law explicitly prohibits the deportation or forcible transfer of Protected Persons from or within occupied territory.^[182] Article 49(1) of the Fourth Geneva Convention proclaims that, "individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the occupying power or to that of any other country, occupied or not, are prohibited, regardless of their

^[182] Customary international humanitarian law prohibits the "parties to an international armed conflict may not deport or forcibly transfer the civilian population of an occupied territory, in whole or in part, unless the security of the civilians involved or imperative military reasons so demand." See rule 129, Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law – Volume 1: Rules*, Cambridge, Cambridge University Press, 2005, p.457.

motive.”^[183] The text of this provision makes clear that it applies to both mass and individual deportations and forcible transfers. Furthermore, the inclusion of “regardless of their motive” reveals, unequivocally, that even the most compelling security considerations of the Occupying Power cannot justify the deportation or forcible transfer of Protected Persons within and from occupied territory.^[184]

Existing jurisprudence has clarified both the meaning and scope of the crime of deportation and forcible transfer as set forth under international humanitarian law. The Trial Chamber of the International Criminal Tribunal for the Former Yugoslavia (ICTY) has explicitly held in several judgments that “both deportation and forcible transfer relate to the involuntary and unlawful evacuation of individuals from the territory in which they reside. Yet, the two are not synonymous in customary international law. Deportation presumes transfer beyond State borders, whereas forcible transfer relates to displacements within a State.”^[185] In *Krajišnik*, the Chamber further elucidated on the scope of deportation and forcible transfer, holding that “deportation and forcible transfer both entail the forcible displacement of persons from the area in which they are lawfully present, without grounds permitted under international law.”^[186]

The prohibition on deportation and forcible transfer encompasses two distinct circumstances. At its most basic, deportation is the unlawful forcible displacement of any number of individuals across an international border, whether *de facto* or *de jure*, as is the case with Israel and the occupied Palestinian territory. Forcible transfer entails the unlawful forcible displacement of any number of individuals within the borders of a single territory. Additionally, the crime of unlawful deportation and forcible transfer involves the simultaneous existence of two

^[183] Article 49(1), Fourth Geneva Convention.

^[184] Dinstein, Yoram; *The International Law of Belligerent Occupation*, Cambridge University Press, 2009, 161.

^[185] *Prosecutor v. Radislav Krstić*, ICTY Trial Chamber, IT-98-33-T, 02 August 2001, para 521. See also *Prosecutor v. Simić et al.* (ICTY Trial Chamber, 2003) para 122 where the Chamber held that “deportation is defined as the forced displacement of persons by expulsion or other coercive acts from the area in which they are lawfully present, across a national border, without lawful grounds.”²¹³ Forcible transfer has been defined as a forced removal or displacement of people from one area to another which may take place within the same national borders.”

^[186] *Prosecutor v. Momčilo Krajišnik* (Trial Judgment), IT-00-39-T, International Criminal Tribunal for the former Yugoslavia (ICTY), 27 September 2006, para. 723. Hereinafter, *Prosecutor v. Momčilo Krajišnik*.

basic elements. First, the deportation or transfer must be involuntary (forced) in nature; individuals must be "... moved against their will or without a genuine choice..."^[187] Second, involuntary deportation or transfer must also be unlawful, in that the movement, relocation or displacement occurred "...without grounds permitted under international law."^[188]

The principle factor underlying the distinction between voluntary and involuntary deportations and transfers is whether the concerned individuals exercised an individual or collective 'genuine choice' for their movement or relocation. The existence or absence of genuine choice is necessarily dependent upon a multitude of prevailing circumstances of any specific situation, including an individual's vulnerability.^[189] According to the Trial Chamber of the ICTY, within the context of unlawful transfers, the term 'forcible' is not limited to physical force; it may also include the "threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power against such person or persons or another person, or by taking advantage of a coercive environment"^[190] In Krajisnik, the Chamber found that through measures such as house searches, arrests, physical harassment, and the cutting off of water, electricity and telephone services, the Serb authorities "created severe living conditions for Muslims and Croats which aimed, and succeeded, in making it practically impossible for most of them to remain."^[191] The Chamber held this to constitute, with regard to those who departed to other areas within the same territory, forcible transfer.^[192]

^[187] Prosecutor v. Momcilo Krajisnik (Trial Judgment), IT-00-39-T, International Criminal Tribunal for the former Yugoslavia (ICTY), 27 September 2006, para. 724.

^[188] Prosecutor v. Momcilo Krajisnik (Trial Judgment), IT-00-39-T, International Criminal Tribunal for the former Yugoslavia (ICTY), 27 September 2006, para 723.

^[189] The Prosecutor vs. Vidoje Blagojevic and Dragan Jokic, Case No. IT-02-60-T, Trial Chamber I, Judgement, 15 March 2002, para. 475.

^[190] Krojelic Trial Judgment, para. 475, and Krstić Trial Judgment, para. 529 (both quoting the Report of the Preparatory Commission for the International Criminal Court, Finalised Draft Text of the Elements of the Crimes, UN Doc PCNICC/2000/INF/3/Add.2, 6 July 2000, p. 11)

^[191] *Prosecutor v. Momčilo Krajišnik*, Case No. IT-00-39-T, Trial Chamber I, Judgment, 27 September 2006, para. 729.

^[192] *Prosecutor v. Momčilo Krajišnik*, Case No. IT-00-39-T, Trial Chamber I, Judgment, 27 September 2006, para. 732.

The second element relates to the legality of the deportation or forcible transfer, which, according to the jurisprudence of the ICTY, must be ‘without grounds permitted under international law’. International humanitarian law provides two exceptions to the “otherwise absolute prohibition”^[193] on deportation and forcible transfer and permits an “evacuation” of a given area only “if the security of the population or imperative military reasons so demand.”^[194] The prevailing situation in occupied East Jerusalem can in no way vindicate the former or latter exception to the otherwise unequivocal prohibition on deportation and forcible transfer.

As noted by the Trial Chamber in *Krstic*, “any forced displacement is by definition a traumatic experience which involves abandoning one’s home, losing property and being displaced under duress to another location.”^[195] The severity of unlawful deportation or forcible transfer is highlighted by its inclusion as a grave breach of both the Fourth Geneva Convention^[196] and Additional Protocol I.^[197] Furthermore, the Rome Statute of the International Criminal Court qualifies unlawful deportations and transfers as a war crime twice,^[198] and when carried out as part of a widespread and systematic attack against a civilian population, as a crime against humanity.^[199]

Grave breaches represent the most serious of war crimes under international humanitarian law. A person commits the war crime of forcible transfer if he or she carries out an act that amounts to forcible transfer (material element or *actus reus*) and does so ‘willfully and knowingly’ (mental element or *mens rea*) within the context of an armed conflict or belligerent occupation. The repeated and explicit resolutions of the United Nations Security Council and General Assembly and the findings of the International Court of Justice make clear that East Jerusalem is occupied territory subject to the application of international humanitarian law. Furthermore,

[193] International Committee of the Red Cross, *Commentary: IV Geneva Convention Relative to the Protection of Civilian Persons in Time of War*, Geneva, ICRC, 1958, p.279.

[194] Fourth Geneva Convention, Article 49(2).

[195] *Prosecutor v. Radislav Krstic*, ICTY Trial Chamber, IT-98-33-T, 02 August 2001, para. 523

[196] Article 147, the Fourth Geneva Convention

[197] Article 85(4)(a), Additional Protocol I

[198] As war crimes see Article 8(2)(a)(vii) and Article 8(2)(b)(viii) respectively, and as a crime against humanity see Article 7(1)(d), Rome Statute.

[199] As a crime against humanity see Article 7(1)(d), Rome Statute.

the legislation, explicit policies and statements of the Israeli occupation authorities reveal that the aggressive planning regime imposed upon occupied East Jerusalem was, and continues to be, carefully calculated to first reduce and then restrict the Palestinian population and maintain Jewish demographic hegemony throughout the Jerusalem Municipality, including occupied East Jerusalem. In consequence, the forcible displacement of Palestinians within and from occupied East Jerusalem as a result of the aggressive planning regime encompasses the requisite elements of the grave breach of forcible transfer under international humanitarian law.

Conclusion

The phenomenon of so-called ‘illegal construction’ is not likely to be an act of political dissent on behalf of the Palestinian residents of occupied East Jerusalem, but rather an act of desperation based on human need. By reducing the amount of land available for Palestinian construction, restricting the density of construction within these areas, and confiscating large swaths of occupied Palestinian land for the construction of Jewish settlements, the Israeli planning regime in occupied East Jerusalem has created an acute housing deficiency for the Palestinian residents. In order for Palestinian families to meet the housing needs of their growing families no options exists but to depart the city or engage in ‘unlicensed’ construction and live under the impending threat of eviction, demolition and subsequent displacement.

This aggressive planning regime is predicated on the imposition of the 1965 Israeli Planning and Building Law, and was implemented following the unilateral annexation of occupied East Jerusalem to the State of Israel. As concluded above, it is incontestable that East Jerusalem remains occupied territory under international law, rendering Israel as the Occupying Power. Accordingly, Israel is unconditionally subjected to the provisions of international humanitarian law, which inter alia, regulate the legislative competence to introduce any legislative or institutional changes into the territory it occupies. As has been determined above, the imposition of the Israeli Planning and Building Law of 1965 is beyond the legislative competence of Israel in occupied East Jerusalem.

The parallel application of international human rights and humanitarian law places extensive and, in some cases, extremely detailed legal obligations upon Israel as the Occupying Power vis-à-vis Protected Persons. As Protected Persons, the rights of Palestinian residents are inviolable and equally so, the obligations of Israel as the Occupying Power are non-derogable. As elucidated throughout the course

of this study, both the process and consequences of the Israeli planning regime in occupied East Jerusalem amount to serious violations of both international human rights and humanitarian law.

By creating severely overcrowded living conditions and blatantly neglecting both public infrastructure and services, the Israeli occupation authorities have created such dire living conditions that Palestinian families are unable to realize or exercise fundamental guarantees enshrined under international human rights law. In consequence, thousands of Palestinian residents of occupied East Jerusalem have been forced to depart in search of a better life outside the boundaries of the Jerusalem Municipality. Those families, who choose to continue in the face of adversity by remaining in their homes, have no other option but to engage in 'unlicensed' construction and live under the impending threat of forced eviction and displacement within and from occupied East Jerusalem. Whether prevailing circumstances of severe deprivation compelled migration, or the aggressive demolition of their home forcibly displaces them, both consequences are derived from the same process and amount to the grave breach of unlawful forcible transfer under international humanitarian law.

Grave breaches represent the most serious war crimes under international humanitarian law and entail individual criminal liability for those who planned, ordered and executed such acts. Furthermore, grave breaches also engage the responsibility of the High Contracting Parties to the Four Geneva Conventions who, under Common Article 1, are obligated to not only respect, but also to ensure respect for the convention under all circumstances. This obligation entails the responsibility to search for persons alleged to have committed, or who have been ordered to commit, an act of forcible transfer, and bring such persons, regardless of their nationality, forward in order to try them before their own courts under the principle of universal jurisdiction.

For over four decades impunity has prevailed throughout occupied East Jerusalem and the remainder of the occupied Palestinian territory. The time for the international community to engage their own clearly defined legal obligations and hold Israel accountable to its obligations under international human rights and humanitarian law is long overdue. The aggressive planning regime in occupied East Jerusalem is systematically and forcibly transferring the Palestinian population from occupied East Jerusalem, and thus, fast foreclosing the possibility of a sovereign Palestinian State - with East Jerusalem as its viable and functioning capital; a necessary foundation for a just and lasting resolution of the conflict. Only with a concerted effort on behalf of the international community will the rule of law be maintained and justice be permitted to prevail.

“Israel’s leaders adopted two basic principles in their rule of East Jerusalem. The first was to rapidly increase the Jewish population in East Jerusalem. The second was to hinder growth of the Arab population and to force Arab residents to make their homes elsewhere.”

Amir Cheshin, Advisor on Arab Affairs to the former Israeli Mayor of Jerusalem