



**Jerusalem, January 1997**

**A POLICY OF DISCRIMINATION  
LAND EXPROPRIATION, PLANNING AND BUILDING  
IN EAST JERUSALEM**

**בצלם**

**B'TSELEM**

**The Israeli Information Center for Human Rights  
in the Occupied Territories**

This report was presented at a press conference held on 14 May 1995, and its findings are current to that date. Updated data regarding housing construction and housing density may be found in Appendix No. 4.

# בצלם

## B'TSELEM

**מרכז המידע הישראלי לזכויות האדם בשטחים (ע.ר.)**

רחוב עמק רפאים 43, ירושלים 93141  
טלפון 02/5617271, פקס 02/5610756

**B'TSELEM - The Israeli Information Center for  
Human Rights in the Occupied Territories**

43 Emek Refaim St., Jerusalem 93141  
Tel. 02/5617271, Fax. 02/5610756

**"بتسيلم" مركز المعلومات الاسرائيلي لحقوق الانسان في الاراضي المحتلة**

شارع عيمك رفايم ٤٣، القدس ٩٣١٤١.  
تلفون ٠٢-٥٦١٧٢٧١. فاكس ٠٢-٥٦١٠٧٥٦.

e-mail: [btselem@actcom.co.il](mailto:btselem@actcom.co.il)  
<http://www.btselem.org>

**B'Tselem Report No. 15**  
ISSN 0793-520X

Researched and written by  
**Eitan Felner**

Fieldwork: Fuad Abu-Hamed

Hebrew-version editors: Shelly Cohen, Yael Stein

Hebrew-version style editor: Rachel Peretz

Translation: Zvi Shulman

Graphic design: Dina Sher

Thanks to:

- special thanks to Chava Wiesel and Cheryl Fudger for their devoted efforts and contribution in researching this report
- the **B'Tselem** staff for its assistance in preparing the report
- **B'Tselem** board members Daphna Golan, Menachem Hofnung, Ilana Hammerman, and Gila Svirsky for their comments
- Usama Halabi, Sarah Kaminker, Miloon Kothari, Yeshai Menuhin, Micha Rahman, Ze'ev Rosenhek, Danny Seidemann, Khalil Toufakji, and Arnon Yekutieli for their help in preparing this report
- The Jerusalem Institute for Israel Studies, IrShalem, The Association for Civil Rights in Israel, HaMoked: Center for the Defense of the Individual, The Alternative Information Center, Palestine Human Rights Information Center, The Society of St. Yves

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"I don't want to give them a feeling of equality. I know that we cannot give them a feeling of equality. But I want, here and there, where it doesn't cost us too much, and where it is only an investment of money or something, to give them nevertheless a feeling that they can live here. If I do not give them this feeling, we will suffer."

*Teddy Kollek, Municipal Council Meeting  
27 December 1987*



## SUMMARY

1. Since the annexation of East Jerusalem in 1967, the Israeli government has adopted a policy of systematic and deliberate discrimination against the Palestinian population in Jerusalem in all matters relating to land expropriation, planning, and building.
2. Examination of municipal documents and statements made by city policymakers indicates that Jerusalem's urban development is based, first and foremost, on national-political considerations. One central goal has dictated municipal planning policy: to create a demographic and geographic reality that will preempt any future effort to challenge Israeli sovereignty in East Jerusalem.
3. The Israeli authorities promote extensive building for Jewish neighborhoods, at an enormous investment, in the annexed area. At the same time, by their acts and omissions, the Israeli authorities choke development and building for the Palestinian population, who are perceived as a "demographic threat" to Israeli control of the city.
4. The means to ensure demographic control include, *inter alia*:
  - a. Land Expropriation: most of the lands expropriated since 1967 were privately owned by Arabs. Some 38,500 housing units were built on this land for the Jewish population, but not one housing unit for Palestinians.
  - b. Town Planning Schemes: the planning authorities utilized the town planning schemes to restrict development of Palestinian neighborhoods, limit the area designated for Palestinian construction, and reinforce Jewish control throughout the city.
5. This policy severely affects the housing shortage facing the Palestinian population, which currently constitutes about 28 percent of the city's population.
  - a. Construction:
    - Some 64,870 dwellings, constituting some 88 percent of all housing units, built since 1967 were for the Jewish population (about one-half of them by public construction).
    - Some 8,890 dwellings, constituting some 12 percent of all the housing units, were built for the Palestinian population (the large majority by private construction).

Since 1990, the disparity in the scope of construction for the two populations continues to widen.

b. Housing Density:

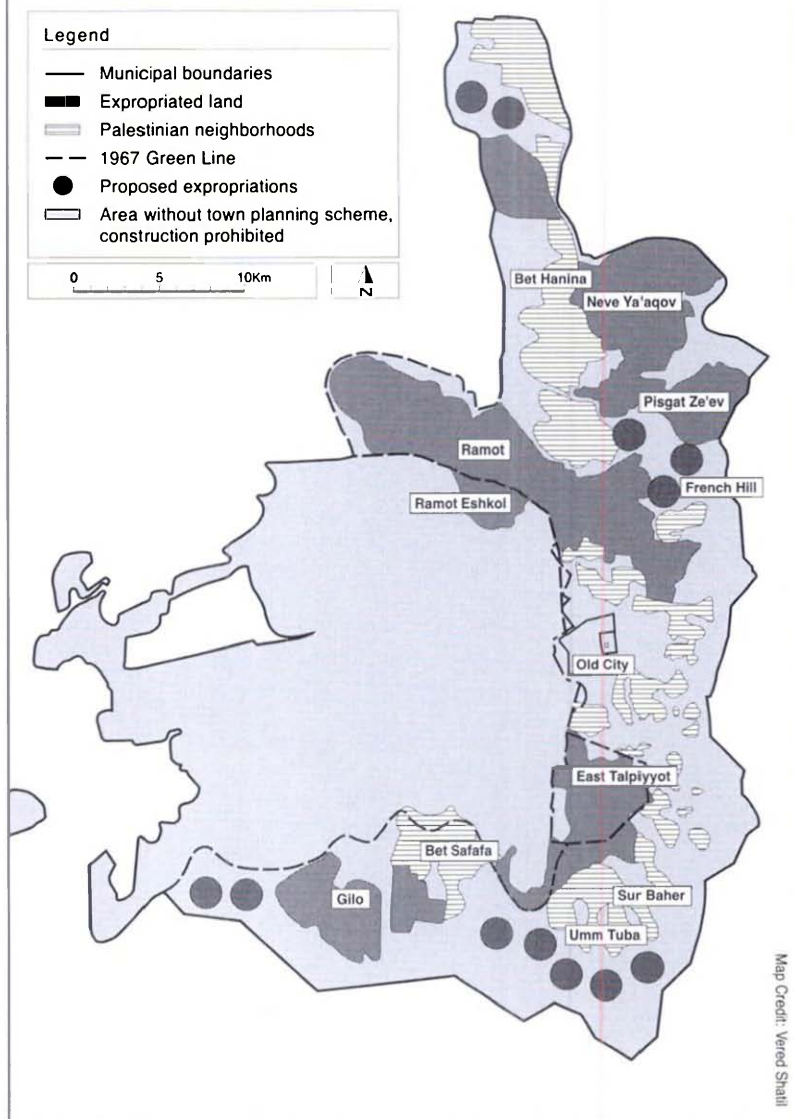
At the end of 1993, the average housing density of the Jewish population was 1.1 persons per room, whereas the average housing density for the Palestinian population was 2.2 persons per room. This gap is twice as large as the gap in housing density that existed in 1967.

c. Housing Needs:

Planners and architects expert in planning the city's Palestinian neighborhoods estimate that the housing shortage among the Palestinian population exceeds 20,000 housing units.



## LAND IN EAST JERUSALEM, 1994



# INTRODUCTION

This report addresses planning and building policies in East Jerusalem since it was annexed by Israel in 1967, and the effects of these policies on the human rights of the Palestinian residents of East Jerusalem.

The report is based on official documents of the municipality and government ministries, minutes of meetings of the Municipal Council, examination of town planning schemes, and field work. The report includes comparative data on the Jewish and Palestinian populations with respect to land expropriation, scope of construction, and housing density.

The right to adequate housing is a fundamental human right, secured in article 11(1) of the International Covenant on Economic, Social and Cultural Rights, which Israel has ratified, as follows:

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 cooperation based on free consent.

Israel is also obligated to respect the fundamental principle of equality. Under article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination, to which Israel is a signatory, "States Parties undertake to prohibit and to eliminate racial discrimination in all its forms." One of the forms mentioned, in article 5(e)(iii), is the prohibition of discrimination as regards "the right to housing."<sup>1</sup>

This report examines Israel's compliance with its international obligations to ensure adequate housing for the population of East Jerusalem and to refrain from discrimination between the Jewish and Palestinian populations. In this context, several questions will be examined:

- To what degree does the widespread expropriation of land for "public purposes" actually serve the entire public?

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1. The U.N. committee overseeing compliance with this convention has frequently held that the convention's provisions apply to the territories occupied in 1967. See, for example, *Concluding Observation of the U.N. Committee on the Elimination of Racial Discrimination Concerning Israel*, issued at the Committee's 45th session, August, 1994, U.N. Document no. CERD/C/45/misc., 14 Rcv.1.



- To what degree do town planning schemes in the Palestinian neighborhoods meet the needs of their residents?
- To what degree have the Israeli authorities acted to reduce the disparity between the Palestinian and Jewish populations in housing density, housing conditions, and infrastructure?

The report does not deal with several subjects that are indirectly related to planning and building in East Jerusalem:

- Custodian of Abandoned Properties: In September, 1992, an interministerial governmental committee, headed by the director general of the Ministry of Justice, attorney Haim Klugman, published a report which found that the institution of the Custodian of Abandoned Properties served as a means to dispossess Palestinians of their land and property.<sup>2</sup>
- Municipal Services: Over the years, the Jerusalem Municipality allocated only some 10 percent of its budget for services to its Palestinian residents, who comprise some 30 percent of the city's population, and failed to establish an infrastructure sufficient to meet their needs.<sup>3</sup>

Under international law, East Jerusalem is occupied territory, and its status is the same as that of the rest of the West Bank. Accordingly, this report will examine, within the context of international law, the legality of the acts and policies of the Israeli authorities in East Jerusalem in the area of planning and building. Since Israeli law is being applied *de facto* in East Jerusalem, this report will also examine these actions and policies in terms of Israeli law.

Note: The customary term "East Jerusalem" or "the eastern part of the city" for the area annexed in 1967 is misleading since more than 90 percent of the area annexed to the western part of the city was outside the municipal borders of Jordanian Jerusalem. The use of the term "East Jerusalem" for the Palestinian villages that lie outside the city's boundaries has clear political implications. Nevertheless, as the term "East Jerusalem" has become embedded in the consciousness of everyone involved as referring to all the annexed areas, that is the term used in this report.

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2. The organization *IrShalem* petitioned the High Court of Justice to direct the government to implement the recommendations of the Klugman Report, which the government had adopted but not implemented. See HCJ 2179/95, *IrShalem Jerusalem vs. Prime Minister et al.*

3. See Meron Benvenisti, "City with a Wall at its Center," *Ariel: A Journal on the Land of Israel* (in Hebrew), vol. 44-45 (March, 1986), p. 94; Moshe Amirav, *Israel's Policy in Jerusalem since 1967* (Palo Alto: Stanford University, Center on Conflict and Negotiation, 1992), pp. 15-16.

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## **PART ONE – BACKGROUND**

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- A. Historical Background
- B. Legal Status of East Jerusalem
- C. International Law

## A. HISTORICAL BACKGROUND

Between 1948 and June, 1967, Jerusalem was divided in two: West Jerusalem, which covered an area of about 38 km<sup>2</sup>, was under Israeli control, and East Jerusalem, an area of some 6 km<sup>2</sup> (including the Old City), was ruled by Jordan.

In June, 1967, following the Six-Day War, Israel annexed some 70 km<sup>2</sup> to the municipal boundaries of West Jerusalem.<sup>4</sup> In addition to East Jerusalem (the area that was under Jordanian rule), the annexed lands included an additional 64 km<sup>2</sup>, most of which were in twenty-eight villages in the West Bank, and the remaining annexed lands were within the municipal boundaries of Bethlehem and Bet Jalla. The area of West Jerusalem thus tripled, making Jerusalem Israel's largest city.

Prior to 1967, therefore, most of the area comprising what Israelis call today "unified Jerusalem" was not a part of Jerusalem at all, but rather a part of the West Bank (see Figure No. 1). The new borders, set by a committee headed by General Rehavam Ze'evi, at the time assistant to the head of the Operations Branch of the General Staff, were approved by Israel's government.

The guiding consideration when setting these borders was that they would ultimately become the state's borders. The determination was largely based on security (delineation of defensible borders) and demographic considerations; municipal planning was only of secondary importance.<sup>5</sup>

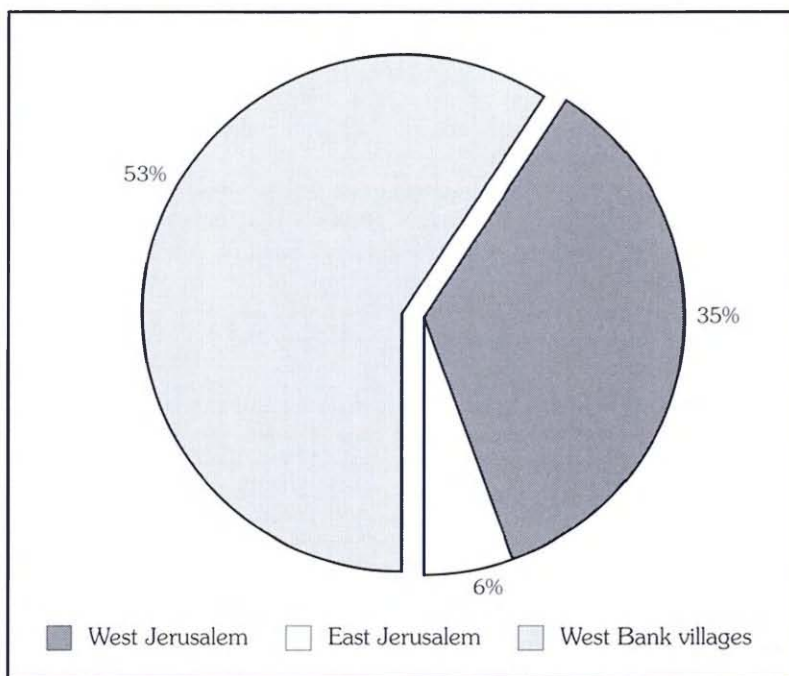
The committee's primary demographic goal was to ensure a Jewish majority in the city by excluding heavily populated Palestinian areas from Jerusalem. Although several Palestinian villages were placed outside the city limits, some of their lands were included within the city's new borders, such as the lands of Bet Ikksa and El Bireh, in the north, and sparsely populated areas in the municipalities of Bethlehem and Bet Sahur, in the south. As a result, villages and neighborhoods were divided; one portion of them remained in the West Bank, while the other was annexed by Israel.

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4. As regards the legal validity of the annexation, see pp. 20-24.

5. See Meron Benvenisti, *The Torn City* (Jerusalem: Weidenfeld and Nicolson, 1973), chap. 14; David Kroyanker, "City Faces", *Twenty-five Years of City Unification; Chapters in the Municipal Biography of Jerusalem* (in Hebrew) (Jerusalem: The Jerusalem Institute for Israel Studies, 1988), p. 34; Amir Cheshin, "East Jerusalem - Policy versus Reality" (in Hebrew), *The New East*, vol. 34 (1992), p. 179.

**Figure No. 1: Current Municipal Boundaries of Jerusalem according to pre-1967 Land Designation (Percentages)**



After the annexation, Israel conducted a census in the annexed areas, and granted permanent residency status to residents who were there at the time of the census.<sup>6</sup> Permanent residents were permitted, if they desired and met certain conditions, to receive Israeli citizenship. These conditions included swearing allegiance to the state, proving they are not citizens of any other country, and demonstrating some knowledge

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6. The Supreme Court ruled that the law regulating the residency of Palestinians in East Jerusalem is the Entry into Israel Law, 1952. See, HCJ 282/88, *Mubarak Awad v. Prime Minister of Israel*, Piskei Din 42(2) 424.

of Hebrew.<sup>7</sup> For political reasons, most residents did not request Israeli citizenship. Setting the municipal boundary in a certain neighborhood or village created, therefore, a distinction between Palestinians also as regards their rights, since those living in the unannexed areas were subject to military rule.

The *Jerusalem Master Plan* was prepared between 1967 and 1968 under the initiative of the municipality of Jerusalem, in cooperation with various government ministries, with the purpose of directing the city's development. It states that "it is not desirable that the area under municipal jurisdiction divide residential neighborhoods, areas, installations, or municipal roads,"<sup>8</sup> but the problem of division has not been resolved and remains to this day.

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7. The status of permanent residents differs from that of citizens of the state. A permanent resident votes in local elections, but is not entitled to vote in Knesset (Parliament) elections. Under the Passports Law, 1952, a permanent resident is entitled to a *laissez passer*, but not to an Israeli passport. A permanent resident who settles in another country loses permanent residency status in Israel; a citizen, on the other hand, retains citizenship (see paragraph 11(C) of the Entry into Israel Regulations, 1974). Paragraph 11(A) of these Regulations holds that a permanent resident will be considered to have settled abroad if he or she 1) lived for more than seven years in a foreign country; 2) received the status of permanent resident in a foreign country; or 3) became a citizen of a foreign country. The rights and obligations of National Insurance also apply to a permanent resident. See National Insurance Law [Consolidated Version], 1968. As opposed to residents of the Occupied Territories, a permanent resident is subject to the Israeli civil judicial system, and may enter and work without restriction in Israel (see paragraph 13 of the Entry into Israel Regulations, 1974, and the Foreign Workers (Illegal Employment) Law, 1991). For additional details about the status of permanent residents, see attorney Salah Sa'abna (Quakers Legal Assistance Center), "The Status of Permanent Residents in Israel", a lecture given during a seminar, held in Jerusalem on 28 July 1994, on the subject of "Palestinian Residency and East Jerusalem," sponsored by HaMoked: Center for the Defense of the Individual, October, 1994, pp. 8-13.

8. 1968 *Jerusalem Master Plan* (in Hebrew), Jerusalem Municipality, 1972, vol. 1, p. 119.

## B. LEGAL STATUS OF EAST JERUSALEM

After the Six-Day War, on 27 June 1967, the Knesset adopted the Law and Administration Ordinance (Amendment No. 11) Law, 1967, according to which "the law, jurisdiction, and administration of the state shall apply to all territory of the Land of Israel that the government proclaims by Order" (par. 1). The following day, the government of Israel issued an order stating that "the territory of the Land of Israel described in the appendix [to this Order] is hereby proclaimed territory in which the law, jurisdiction, and administration of the state apply."<sup>9</sup> The area included in the appendix consisted of 70 km<sup>2</sup> annexed to the municipal area of West Jerusalem. This legislation set the legal framework for the actions of the Israeli authorities in East Jerusalem.<sup>10</sup>

Israeli international law experts, when describing the legal status of East Jerusalem following enactment of these laws, opposed the use of the term "annexation"<sup>11</sup> since under international law, an occupying power

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9. Law and Administration Order (No. 1), 1967 (translated by **B'Tselem**). In order to unify the city in the municipal aspect, an amendment to the Municipalities Ordinance was also enacted. This amendment authorized the Minister of the Interior to "extend, by proclamation, the borders of city X by including the area set forth in an Order pursuant to paragraph 11B of the Law and Administration Ordinance" (translated by **B'Tselem**).

10. The Knesset enacted, on 30 July 1980, the Basic Law: Jerusalem, Capital of Israel, which holds that "A whole and unified Jerusalem is the capital of Israel." Its purpose was to secure, by law, "both the status of Jerusalem as the capital of Israel and the unification and integrity of Greater Jerusalem," in the words of then-Knesset member Geula Cohen, who submitted the proposed law, during the Knesset debate (*Knesset Records*, 14 May 1980, vol. 88, booklet 25, p. 2866 (translated by **B'Tselem**). This law had no practical significance. See Amnon Rubinstein, *The Constitutional Law of Israel*, 4th Ed. (in Hebrew) (Jerusalem: Schocken Publishing Co., 1991), vol. 1, p. 86.

11. Yoram Dinstein, "Zion in International Law Will be Redeemed," *Hapraklit* 27 (1971) and "And the Redeemed is not Redeemed or – Not Demonstrations, but Acts," *Hapraklit* 27 (1972) (both in Hebrew); and Professor Yehuda Blum, who agreed with Dinstein on this point, although for different reasons, in "Zion in International Law is Redeemed," *Hapraklit* 27 (1972), and "East Jerusalem is not Occupied Territory," *Hapraklit* 27 (1973) (both in Hebrew).

is not permitted to annex occupied territory, except pursuant to a peace treaty.<sup>12</sup>

Consequently, in international contexts, the Israeli authorities emphasized that no annexation had occurred, and presented the subject of Jerusalem as a matter not yet resolved.<sup>13</sup> Article 5 of the Israeli-Palestinian Declaration of Principles, signed in Oslo on 13 September 1993, provides that the permanent status of East Jerusalem has not yet been determined, and will be addressed in the final stage of negotiations between Israel and the Palestinians.

To the Israeli public, the Israeli government presented an entirely different position. In Knesset debates regarding the legal status of Jerusalem, ministers refrained from speaking about "annexation," but explicitly supported the position that East Jerusalem is an integral part of Israel.<sup>14</sup>

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12. In the commentary of the International Committee of the Red Cross (ICRC) on the Geneva Convention, Jean Pictet writes that "as long as hostilities continue, the Occupying Power cannot therefore annex the occupied territory, even if it occupies the whole of the territory concerned. A decision on that point can only be reached in the peace treaty. That is a universally recognized rule which is endorsed by jurists and confirmed by numerous rulings of international and national courts." J. Pictet (ed.), *Commentary: Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War* (Geneva: International Committee of the Red Cross, 1958), p. 275.

13. Following the 1967 legislation, Abba Eban, Israel's foreign minister at the time, wrote to the general secretary of the United Nations that this legislation did not annex East Jerusalem into Israel: "The term 'annexation' is out of place... The measures adopted relate to the integration of Jerusalem in the administrative and municipal spheres, and furnish legal basis for protection of the holy places." U.N. Doc S/8052, 10 July 1967, quoted by Eyal Zamir and Eyal Benvenisti in *The Legal Status of Lands Acquired by Israelis before 1948 in the West Bank, Gaza Strip and East Jerusalem* (in Hebrew) (Jerusalem: The Jerusalem Institute for Israel Studies, 1993), p. 65.

14. In 1969, in H CJ 283/69, *Ravidi and Maches v. Military Court, Hebron District*, Piskei Din 24(2) 419, the state was required to take a position regarding the question of whether movement of antiquities from the West Bank to East Jerusalem requires a license under Jordanian law as an "export" to another country. The Assistant State Attorney, Y. Barsella, claimed that the imposition of law, jurisdiction, and administration of the state on East Jerusalem is as if East Jerusalem had been annexed to Israel. As a result of this decision, MK S. Tamir asked the foreign minister, Abba Eban: "Is it a problem for the foreign minister to tell the Knesset that all of Jerusalem, including the eastern part, is part of Israel?" Eban answered: "I have no problem at all saying that." *Knesset Records*, vol. 59, booklet 6, session 125, 9 December 1970, p. 455 (translated by B'Tselem). See also the comments of the justice minister during the Knesset debate on the amendment to the Law and Administration Ordinance, *Knesset Records* (in Hebrew), vol. 49, booklet 33, session 188, p. 2420.



A dispute arose in the Supreme Court as regards the question of whether East Jerusalem had been annexed. Most of the justices involved in the case held that East Jerusalem had been annexed to Israel for all purposes.<sup>15</sup> Nevertheless, some justices disagreed, claiming that the application of Israeli law in East Jerusalem would not constitute annexation of the territory.<sup>16</sup>

Professor Amnon Rubinstein, an expert in constitutional law and currently Minister of Education, emphasized the political benefit of refraining from using the term "annexation" when referring to the application of Israeli law. However, Rubinstein notes, the question of terminology is insignificant as regards Israeli law:

It may be that use of the word "annexation" is inappropriate for Israel's political goals: to those persons abroad, the term is used pejoratively, bringing most of the world's nations to oppose it; internally, some see an improper use of it as regards parts of the Land of Israel, in general, and as regards Jerusalem, capital of Israel, in particular; but from the aspect of Israeli law, the exchange of words cannot alter the significance of the act: East Jerusalem became part of the territory of Israel for all purposes.

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15. In *Ravidi*, Justice Y. Kahan considered the two legislative enactments of 1967, and held, at page 423: "By these two enactments, not only the law of the state, but also its jurisdiction and administration apply to East Jerusalem, and, consequently, it is a part of the territory of Israel". In another case, Justice B. Halevi noted: "On 28 June 1967, then, the law, jurisdiction, and administration of Israel replaced the law, jurisdiction, and administration of Jordan, and from that date, a unified Jerusalem is an integral part of Israel" (translated by **B'Tselem**). HCJ 171/68, *Hanazalis v. Court of the Greek Orthodox Patriarchate et al*, Piskei Din 23(1) 260, 269. See also the comments of Justice S. Agranat in HCJ 223/67, *Ben-Dov v. Minister of Religions*, Piskei Din 22(1) 440, 442, and Justice M. Alon in HCJ 4185/90, *Temple Mount Faithful v. Attorney General*, Takdin Elyon 93(3), 1993, p. 2404.

16. In the minority opinion in *Ravidi*, at page 423, Justice Haim Cohen raised a doubt as to whether application of Israeli law in East Jerusalem constituted annexation, and he contended that nothing prevents application of Israeli law in the Occupied Territories, even if there is no intention of annexing them. In a case that dealt with the question of the legal status of the Golan Heights in light of the Golan Heights Law, Justice A. Barak noted, in line with the comments of Justice H. Cohen, that "the application of Israeli norm X in place Y outside the borders of the state does not necessarily make place Y part of Israel. Everything depends on the purpose, language, and implementation of the norm being interpreted" (translated by **B'Tselem**). HCJ 205/82, *Kanagh Abuzalah et al v. State of Israel*, Piskei Din 37(2) 718, 720. Justice Barak refrained, however, from commenting on whether according to that principle, East Jerusalem is a part of Israel.



The law of East Jerusalem today is the same as the law of West Jerusalem and other areas attached to the state as a result of the War of Independence.<sup>17</sup>

**B'Tselem** accepts this position, according to which Jerusalem was annexed *de facto*, if not *de jure*, to the territory of Israel. As we have seen, unilateral annexation is illegal under international law, since "the question of annexation of a specific place is not contingent, of course, on the arbitrary will of each state."<sup>18</sup>

Article 47 of the Fourth Geneva Convention explicitly states that in the event of unilateral annexation, the principles of international law which apply in the situation of belligerent occupation remain in effect.<sup>19</sup>

**B'Tselem** agrees with the international community that East Jerusalem is occupied territory, that its status is the same as that of the rest of the West Bank. This position is expressed, *inter alia*, in numerous United Nations' resolutions, and in the official positions taken by most of the world's nations, including the United States.<sup>20</sup>

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17. Rubinstein, *The Constitutional Law of Israel*, vol. 1, p. 85.

18. Dinstein, "Zion in International Law Will be Redeemed," p. 7.

19. "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 the result of the occupation of a territory, into the institutions or government of the said territory, nor by any agreement concluded between the authorities of the occupied territories and the Occupying Power, nor by any annexation by the latter of the whole or part of the occupied territory." In the commentary of the ICRC, Jean Pictet adds: "... 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." Pictet, *Commentary*, p. 276.

20. See resolutions of the United Nations Security Council 252 (1967), 267 (1969), 298 (1971), 446 (1979), 476 (1980), 672 and 681 (1990). The United States of America stated its position in Ambassador Goldberg's statement to the General Assembly in 1967 and in Ambassador Yost's statement before the Security Council in 1969. According to Ruth Lapidot, "the speeches of the two ambassadors differ. Although both noted that Israel's activities in the city were only temporary and that the city's future must be resolved through negotiations, Ambassador Yost added that East Jerusalem is occupied territory on which the Fourth Geneva Convention of 1949 Relative to the Protection of Civilian Persons in Time of War applies" (translated by **B'Tselem**). In President Jimmy Carter's letter to Israel and Egypt during preparation of the Camp David Accords in 1978, he wrote that the position of the United States remains the same as that expressed by the two ambassadors. See Ruth Lapidot, "Historical-Legal Survey," *Jerusalem-Political and Legal Aspects* (in Hebrew) (Jerusalem: The Jerusalem Institute for Israel Studies, 1994), p. 6.

The above comments relate to the current status of East Jerusalem under international law, and should not be construed as advocating any position by **B'Tselem** concerning the final status of East Jerusalem. As mentioned previously, the future status of Jerusalem must be determined in the framework of negotiations between Israel and the Palestinian Authority. **B'Tselem** maintains that this is an appropriate framework to resolve this matter, provided that the human rights of all persons concerned are protected.

## C. INTERNATIONAL LAW

According to international law, East Jerusalem is under belligerent occupation. Therefore, the fundamental principles of international law that govern the relationship of an occupying power to the residents of an occupied territory are applicable to East Jerusalem.<sup>21</sup> It is in the context of these principles that we examine the legality of the Israeli government's actions in East Jerusalem since 1967.

### 1. Application of Israeli law in East Jerusalem

According to the principles of international law, the occupying country must continue to apply the legal principles that were in force before the occupation. This principle appears in article 43 of the Hague Regulations of 1907, which stipulates that:

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.

The imposition of Israeli law, jurisdiction, and administration on Jerusalem by the legislation enacted in 1967 clearly contravenes this regulation of international customary law. The UN Security Council, in its resolution of 25 September 1971, held, *inter alia*, that "every legislative and administrative act enacted by Israel to change the status of Jerusalem" is "absolutely invalid."<sup>22</sup>

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21. On the fundamental principles applying in instances of belligerent occupation, see Adam Roberts, "Prolonged Military Occupation: The Israeli-Occupied Territories 1967-1988," in Emma Playfair (ed.), *International Law and the Administration of Occupied Territories* (Oxford: Oxford University Press, 1992), pp. 25-85; Antonio Cassese, "Powers and Duties of an Occupant in Relation to Land and Natural Resources," *ibid.*, pp. 421-422; and Christopher Greenwood, "The Administration of Occupied Territory in International Law," *ibid.*, pp. 242-250.

22. UN Security Council Resolution No. 298. This resolution was adopted without any opposition, and the United States and other nations friendly to Israel supported it. See Dinstein, "And the Redeemed is not Redeemed or - Not Demonstrations, but Acts," p. 522.

## 2. Occupation as a provisional situation

According to international law, every act of the occupying power must be temporary, and it is not permitted, therefore, to make any changes with long-term implications. In the ICRC's commentary to the Geneva Convention, Pictet writes that "the occupation of territory in wartime is essentially a temporary, *de facto*, situation..."<sup>23</sup>

Undoubtedly, the creation of new neighborhoods in East Jerusalem in order to populate the area with large numbers of Jewish residents changed the map of the city, and created a new demographic, physical, economic, and social situation totally inconsistent with temporary change.

## 3. Needs of the occupying power

Under international law, the occupying power may use resources in the occupied territory only for the needs of the population of the occupied area. Deviation from this principle is permitted only where a security interest is at stake. Interests, whether economic, national, or otherwise, do not justify divergence from this principle.<sup>24</sup>

In *Jam'et Askan*, Justice Barak referred to this matter:

The Hague Regulations revolve about two main pivots: one – ensuring the legitimate security interest of those holding the land by belligerent occupation; and the other – ensuring the needs of the civilian population in the territory subject to belligerent occupation... The military commander may not weigh national, economic, or social interests of his country insofar as they have no ramifications on his security interest in the area, or on the interest of the local population.<sup>25</sup>

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23. Pictet, *Commentary*, p. 275. On this subject, international law experts do not disagree. See, for example: L. Oppenheim, *International Law: A Treatise*, Vol. II: *Disputes, War and Neutrality*, 7th Ed., H. Lauterpacht (ed.) (London: Longmans, 1952), pp. 432-433.

24. See Cassese, "Powers and Duties," p. 422.

25. HCJ 393/82, *Jam'et Askan Almalmon and Lithonia Almahdora Lamsaulia, Cooperative Association Registered According to Law at the Judea and Samaria Regional Command v. Commander of IDF Forces in the Region of Judea and Samaria et al.* Piskei Din 37(4) 788, 794-795 (translated by B'Tselem).

As will be shown subsequently, land expropriation and building of Jewish neighborhoods in East Jerusalem since 1967 served neither the needs of the Palestinian population nor security considerations. As these acts were intended to serve Israel's national, economic, and social interests, they clearly violated the aforementioned principle.

#### **4. Specific prohibitions under international law**

Some of the actions of the Israeli government in East Jerusalem are prohibited not only under general principles of international law, but also under certain specific prohibitions.

##### **a. Expropriation of land**

International law prohibits expropriation of private land,<sup>26</sup> except for expropriations necessary for military purposes.<sup>27</sup> However, when the municipal law, with which the occupying power must comply, permits expropriation of private land for a public purpose, it may use this power so long as it is for the benefit of the local population, and not for its own benefit.<sup>28</sup> Benefit of the population does not refer to the population of the occupying country settling in the occupied territory.

Expropriation of lands in East Jerusalem to establish Jewish neighborhoods violates these rules of international law since the expropriation was not executed for military reasons or for the benefit of the occupied population.<sup>29</sup>

##### **b. Populating East Jerusalem with Jews**

The Fourth Geneva Convention prohibits the settlement of citizens from the occupying power in the occupied territory. Article 49 of the Convention stipulates, *inter alia*, that "The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies."

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26. See the Hague Regulations of 1907, article 46.

27. The Hague Regulations of 1907, article 52.

28. See Zamir and Benvenisti, *The Legal Status of Lands*, p. 119.

29. For details, see the chapter on land expropriation in East Jerusalem, p. 55.

Numerous jurists have emphasized that this prohibition not only forbids transfer of people from its territory, but also their voluntary settlement in the occupied territory.

Professor Yehuda Blum, who later served as Israel's ambassador to the United Nations, wrote, for example:

The distinction between (prohibited) "deportation or transfer" of a population of the occupying power to the occupied territory, and (permitted) "settlement" of its citizens "as such" into the occupied territory would be interesting were it not for the official commentary of the Fourth Geneva Convention that was published by the International Committee of the Red Cross, which states that the relevant provision is intended, *inter alia*, to prevent "colonization" of the occupied territory by the occupier.<sup>30</sup>

The establishment of new neighborhoods in East Jerusalem, and the granting of financial benefits to encourage Jews to live there, clearly contravene the ICRC's interpretation of the Fourth Geneva Convention.

In conclusion, the acts of the Israeli government described in this report – imposition of Israeli law on East Jerusalem, establishment of Israeli neighborhoods, changing the map of the city, and expropriation of lands – contradict the principles of international law that govern the relationship of the occupying power to the population of the territory occupied, and its obligations to that population.

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30. Blum, "East Jerusalem is not Occupied Territory," p. 189. (Although the ICRC continues to rely on the commentary of Pictet, it is no longer called "the official commentary" of the organization.) Similar opinions are those of Roberts, "Prolonged Military Occupation," p. 67; Dinstein, "Settlements, Deportations, and Occupied Territories" (in Hebrew), *Iyuneh Mishpat* 7 (1979), p. 189.

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## **PART TWO – FINDINGS**

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A. Data

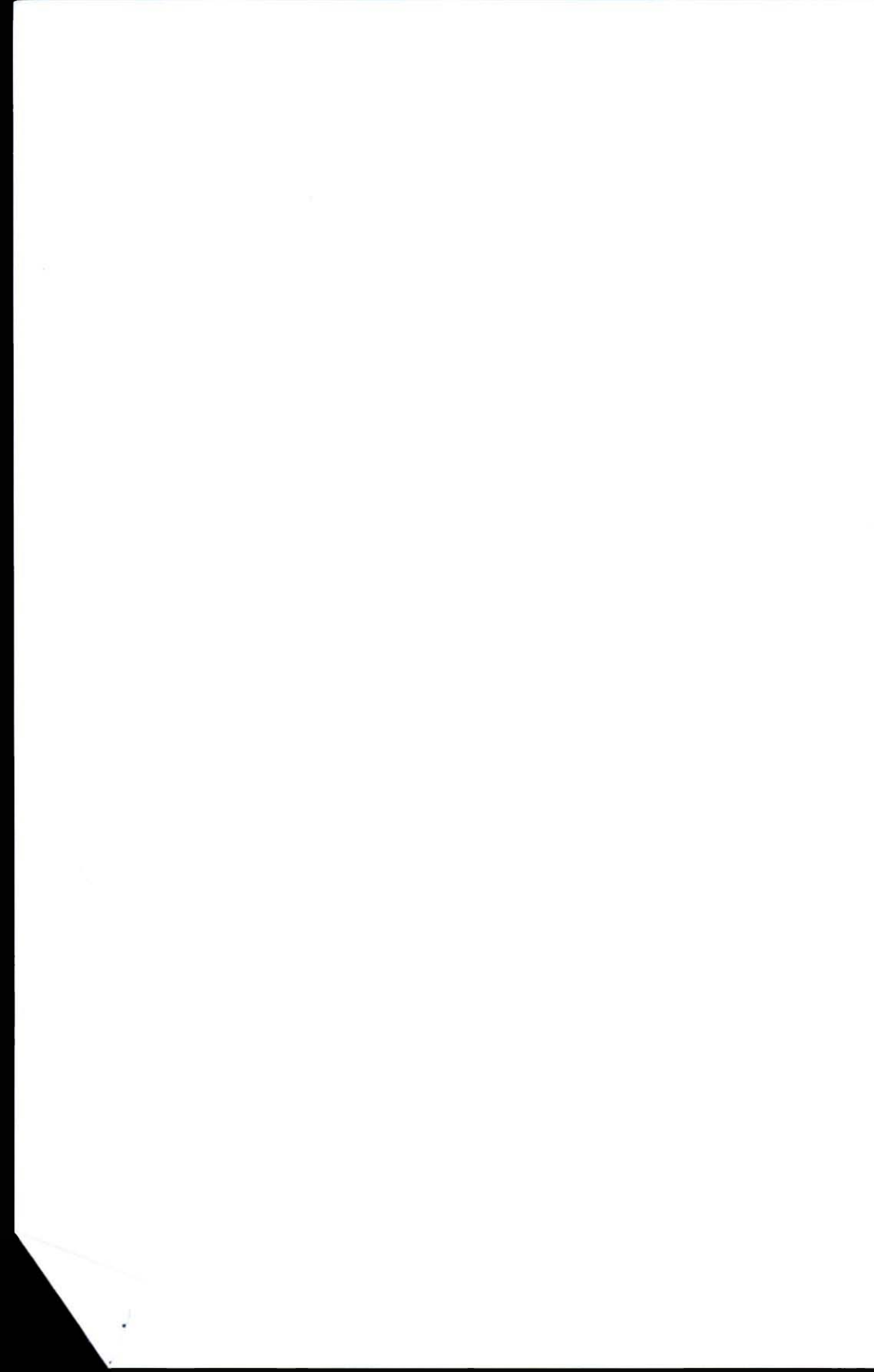
B. Policy

C. Land Expropriation

D. Town Planning Schemes

E. Town Planning Scheme for Bet Hanina and Shu'afat

F. Testimonies of East Jerusalem Residents





## A. DATA<sup>31</sup>

In 1967, after 70 km<sup>2</sup> had been annexed to West Jerusalem, approximately 267,000 persons resided in Jerusalem, including 69,000 Palestinians and 198,000 Jews.<sup>32</sup> At the end of 1993, some 567,000 persons resided in Jerusalem, among them 161,000 Palestinians and 406,000 Jews. Between 1967 and 1993, therefore, the Palestinian population in Jerusalem grew by 144%, while the Jewish population increased by 105%. Some officials maintain that the Palestinian population in Jerusalem is larger than the official count of the Central Bureau of Statistics, since the latter's figures do not include thousands of

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31. Numerous problems exist regarding data on building, dwellings, and housing density in Jerusalem. For certain years, only partial statistics exist. For example, in the past, a significant percentage of dwellings appeared in the "unknown" category. In Table X/21 of the *Jerusalem Statistical Yearbook 1992*, which sets forth the number of dwellings by neighborhood, 16,053 dwellings, more than 10% of the city's total, appear in this category. In the most recent Yearbook (*Jerusalem Statistical Yearbook 1993*, Table X/19), the number of dwellings in that category was substantially lower (2,394, which represented some 1.5% of the total units). Thus, current statistics are relatively precise. However, the incomplete data of the past make it difficult to assess changes over the years in the number of residential units available to the two populations. In addition, at times the statistics provided by one source differ greatly from those of another. For example, the statistics of the Jerusalem Municipality, based on municipal property tax payment records, indicated that the number of housing units in Jerusalem in November of 1992 was 136,490 (*Jerusalem Statistical Yearbook 1992*, Table X/21), and in August of 1993, the number was 144,770 (unpublished data). This change indicates the construction of more than 8,000 housing units during that eight-month period. But according to the figures appearing in Table X/18 of the *Jerusalem Statistical Yearbook 1993*, which details construction started and completed in Jerusalem in 1993 and is based on figures of the Ministry of Housing, only 2,720 housing units were constructed. Nevertheless, the gap in construction and housing density between the Jewish and Palestinian populations is so great that, notwithstanding the imprecision of the statistics, the trends are clear. Since officials estimate the number of Palestinians in the city to be much higher than the number fixed by the Central Bureau of Statistics, it is very likely that the gaps are even wider.

32. 1968 *Jerusalem Master Plan*, vol. 1, Table No. 1, p. 29.

Palestinian residents of the West Bank who live in Jerusalem but do not hold Israeli-resident identity cards.<sup>33</sup>

In 1993, there were 144,300 households in Jerusalem, 116,100 of them Jewish, and 28,200 Palestinian.<sup>34</sup> Palestinian households thus constituted 19.5% of Jerusalem households. That same year, the average number of persons in a Palestinian household was 5.41, as opposed to 3.53 among the Jewish population.<sup>35</sup>

Since 1967, the Palestinian population in the city has grown at a rapid pace. A primary consequence of this growth is the increased demand for housing. The size of the housing shortage among Jerusalem's Palestinian population and the gap between the standard of housing for Jews and Palestinians are evident from the following statistics.

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33. No precise data exist as regards the extent of this phenomenon. According to Dr. Sarah Hershkowitz, Director of the Unit for Strategic Analysis of the Jerusalem Municipality, this is the situation of 20,000 Palestinians or more. See Sarah Hershkowitz, *East Jerusalem: Background Statistics* for a seminar on "Conflicts and Dilemmas in Municipal Struggles in Eastern Jerusalem" (in Hebrew), Municipality of Jerusalem, Office of the Director General, The Unit for Strategic Analysis, April, 1994, p. 7. See also, Israel Kimhi, *Jerusalem, Broadening its Area of Jurisdiction* (in Hebrew), October, 1989, cited in the research of Shaul Amir, Rachel Alterman, and Amnon Frankel, *Evaluation of the Expected Effects of the Proposal to Expand the Borders of Jerusalem Westward*, Center for Urban and Regional Research, The Technion-Israel Institute of Technology, November, 1990, p. 25. The Police Minister, MK Moshe Shahal, on the other hand, stated, on the "Popolitica" television program on Israeli television, on 10 October 1994, that some 200,000 Palestinians live in East Jerusalem. If we take into consideration that the annual growth in recent years amounted to about 4,000 persons per year (*Jerusalem Statistical Yearbook 1992*, Table III/1), the number represents 36,000 persons more than the official estimate.

34. Central Bureau of Statistics, *Statistical Abstract of Israel - 1994*, No. 45, Jerusalem, 1994, Table 2.33. A "household" is defined by the Central Bureau of Statistics "as a group of people permanently living together in an apartment during most of the week, and who share a food budget." According to the Bureau, "since the end of 1987, the persons conducting the survey have been unable to conduct the survey in East Jerusalem as planned. It has only been executed as regards households in which it was possible to do the survey by phone; the statistics on the non-Jewish population in Jerusalem should be used with caution." *Ibid.*, p. 41.

35. Central Bureau of Statistics, *Statistical Abstract of Israel - 1994*, Table 2.33.

## 1. Housing construction

### a. Construction of housing units

Since 1967, Jerusalem has undergone unprecedented housing construction. Between 1967 and February, 1995, 76,151 housing units were built in the city, constituting a 108.6% increase in the number of housing units.

The rapid development and massive construction have been intended almost exclusively for the city's Jewish population (see Table No. 1).

**Table No. 1: Housing Units Built, by Nationality, 1967-1995<sup>36</sup>**

	<b>Jews</b>	<b>Palestinians</b>	<b>Unknown</b>	<b>Total</b>
<b>Number of units - 1967</b>	57,500	12,600	-	<b>70,100</b>
<b>Number of units - 1995</b>	122,367	21,490	2,394	<b>146,251</b>
<b>Units Built 1967-1995</b>	<b>64,867</b>	<b>8,890</b>	<b>2,394</b>	<b>76,151</b>

These figures indicate that between November of 1967 and February of 1995, 88% of all housing units were built in Jewish neighborhoods (about half through public construction), and 12% were built in Palestinian neighborhoods (the vast majority through private construction).

During those years, Palestinians constituted between 25.8 to 28.6 percent of the city's population (see Appendix No. 1).<sup>37</sup> Although the rate of growth among Palestinians was greater than that among the

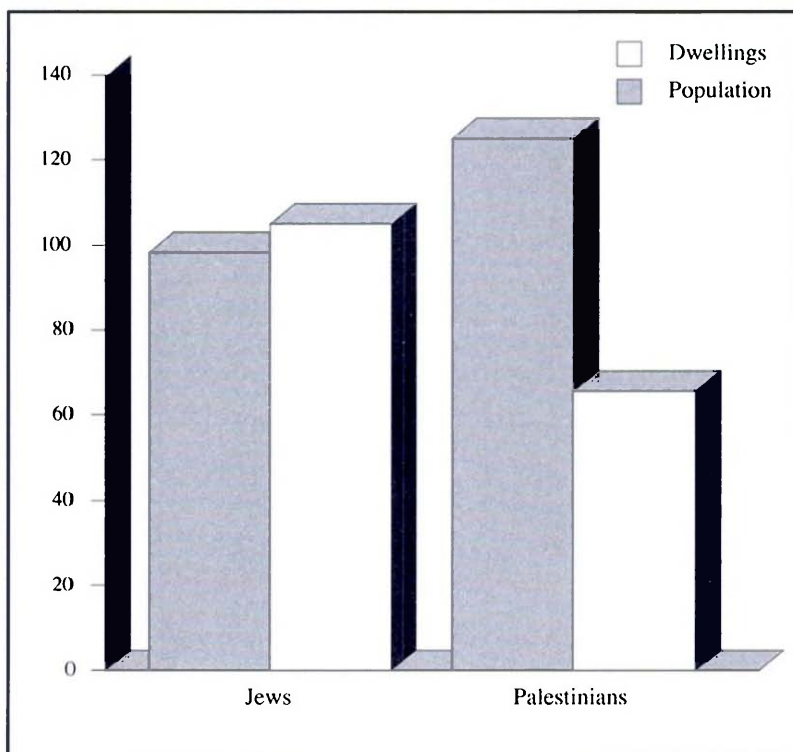
36. Sources:

- Israel Kimhi, Binyamin Hyman, Gabriel Claude, *Jerusalem 1967 1975: A Socio-economic Survey* (in Hebrew), Hebrew University, Jerusalem, The Institute for Urban and Regional Studies, 1976. Table 41, p. 58.
- Municipality of Jerusalem, The Jerusalem Institute for Israel Studies, *Jerusalem Statistical Yearbook 1993*, Table X/19 (this is the only table that provides statistics for February, 1995).

37. The statistics for 1994 and 1995 have not yet been published.

Jews, the percentage of housing units constructed for Palestinians decreased (see Figure No. 2).

**Figure No. 2: Increase in Population and Housing Units in Jerusalem, by Nationality, 1967-1993 (Percentages)**



**Sources:**

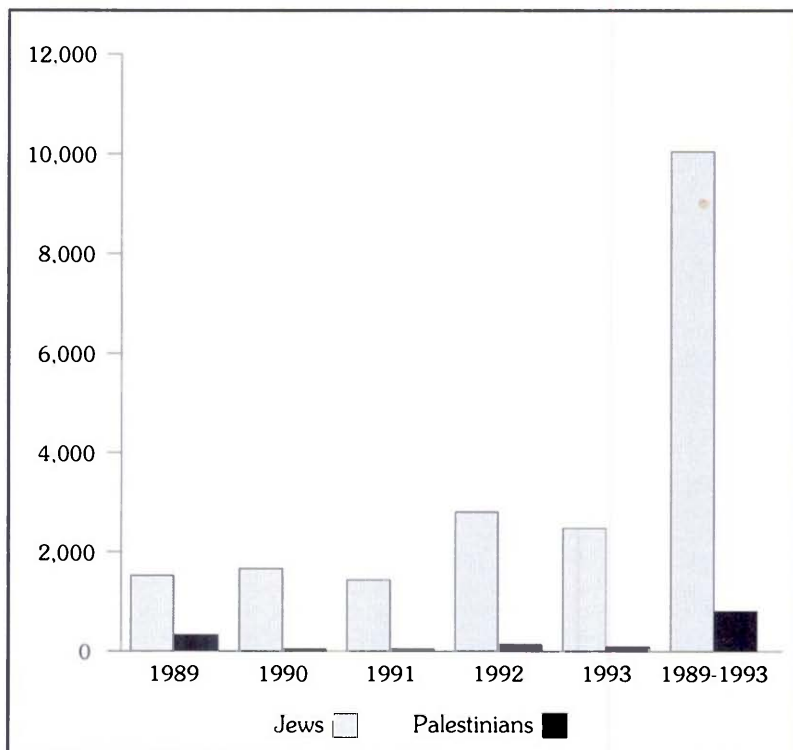
- *Jerusalem 1967-1975: A Socio-economic Survey*. The Hebrew University of Jerusalem, The Institute for Urban and Regional Studies, 1976. Table 41.
- *Jerusalem Statistical Yearbook 1993*. Tables III/1, X/19.

The disparity between the scope of construction of housing units for the two groups has increased since 1990:

- of the 9,366 housing units completed between 1990 and the end of 1993, only 467 (5% of the units constructed during this period) were built in Palestinian neighborhoods.

- the greatest disparity occurred in 1993, the latest year for which data are available; of the 2,720 housing units completed that year, only 103 (3.8% of housing units built that year) were built in Palestinian neighborhoods (see Figure No. 3).

**Figure No. 3: Residential Construction Completed in Jerusalem, by Nationality, 1989-1993 (Number of Housing Units)**



**Sources:**

- *Jerusalem Statistical Yearbook 1989*. Table X/17.
- *Jerusalem Statistical Yearbook 1990*. Table X/16.
- *Jerusalem Statistical Yearbook 1991*. Table X/16.
- *Jerusalem Statistical Yearbook 1992*. Table X/20.
- *Jerusalem Statistical Yearbook 1993*. Table X/18.

### ***b. Area of building***

The gap in the scope of construction for the two populations is expressed not only in the number of housing units built, but also in the number of square meters constructed. In 1991, the area built for Palestinians was 8.5% of the total construction. In 1992, that figure was 9.3%, and in 1993, 6.3%.<sup>38</sup>

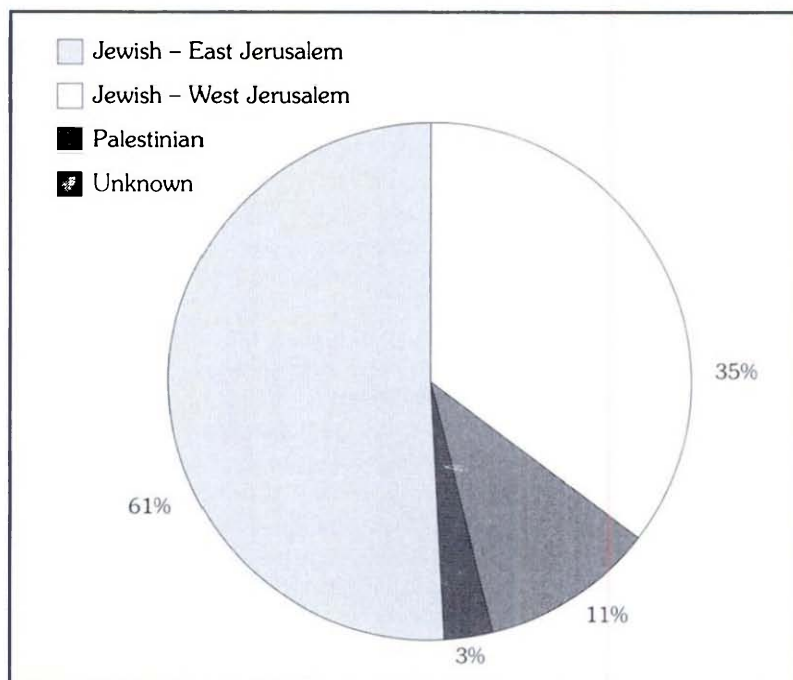
### ***c. Construction in East Jerusalem***

Most of the construction in Jerusalem since 1967 occurred in the Jewish neighborhoods in East Jerusalem (see Figure No. 4). In February of 1995, the number of housing units in the Jewish neighborhoods in East Jerusalem was about twice that of those in Palestinian neighborhoods. The Palestinian neighborhoods contained 20,900 housing units, and the Jewish neighborhoods in East Jerusalem contained some 38,500 units (see Appendix No. 2).

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38. Central Bureau of Statistics, *Construction in Israel – 1993*, series of special publications, publication No. 989, Jerusalem, November, 1994, Table No. 50.

**Figure No. 4: Residential Construction Completed in Jerusalem, by Nationality and Area, 1967-1995 (Percentages)**



**Sources:**

- *Jerusalem 1967-1975: A Socio-economic Survey*. The Hebrew University of Jerusalem, The Institute for Urban and Regional Studies, 1976. Table 41.
- *Jerusalem Statistical Yearbook 1993*. Tables III/1, X/19.

## 2. Housing density

Density, the fundamental measure in determining the standard of housing, refers to the number of persons living in a room (regardless of the room's size). In the western world, housing is considered overcrowded when more than two persons live in a room. The average housing density in the West is 0.7 persons per room.<sup>39</sup>

The statistics indicate that housing density in Jerusalem is higher among Palestinians than among Jews. As of 1993:

- Average housing density per room among Palestinians was twice as high as among Jews. The density among Jews was 1.1 persons per room, while among Jerusalem's Palestinians, average density was 2.2 persons per room.
- Almost one-third of Jerusalem's Palestinians (32.3%) were living in conditions of housing density of more than three persons per room, as opposed to only 2.4% among Jews.
- Thirty-four percent of Jews lived in housing units in which housing density is less than one person per room, as opposed to only 8.9% of Palestinians.<sup>40</sup>

The number of square meters per person is further evidence of the gap in housing density between the two populations. The average residential area per Jewish resident in Jerusalem is more than twice as high as that of a Palestinian resident. As of December of 1993, there were 18.4 square meters of built-up land for each Jew, and only 7.8 square meters per Palestinian.

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39. See Hubert Lu-Yon and Rachel Kalush, *Housing in Israel, Policy and Inequality* (in Hebrew) (Tel Aviv, Adva Institute, 1994), Table 17.

40. *Jerusalem Statistical Yearbook 1993*, Table VI/14. The Yearbook notes, in note 2: "Due to difficulties in assembling data on East Jerusalem from 1988 onwards, figures concerning non-Jews should be treated with reservation."



**Table No. 2: Population and Residential Building Area in Jerusalem, 1993**

	Population (in thousands) <sup>11</sup>	Residential Building Area (in thousands of m <sup>2</sup> ) <sup>42</sup>		Square Meters per Person <sup>43</sup>
<b>Total</b>	567.2	10,178		-
<b>Jews</b>	406.4	W. Jerusalem	5,277	18.4
		E. Jerusalem	2,210	
		Total	7,487	
<b>Palestinians</b>	160.8	1,255		7.8
<b>Unknown</b>	-	1,436		-

Between 1967 and the end of 1993, the gap in housing density between the two populations doubled, from 50% to 100% (see Table No. 3).

**Table No. 3: Gap in Average Housing Density per Room in Jerusalem, by Nationality, in Selected Years<sup>44</sup>**

Years	1967	1972	1983	1986	1989	1991	1993
<b>Jews</b>	1.6	1.4	1.06	1.1	1.1	1.1	1.1
<b>Palestinians</b>	2.4	2.7	2.04	2.2	2.5	2.0	2.2
<b>Gap</b>	50.0	92.8	92.4	109.0	127.2	81.8	100.0

41. *Jerusalem Statistical Yearbook 1993*, Table III/1.

42. *Ibid.*, Table X/19. The numbers are rounded off to the nearest hundred.

43. The calculation is made by dividing the residential built-up area for each of the populations by the number of persons in each population.

44. Sources:

- 1968 *Jerusalem Master Plan*, Table No. 1.
- Central Bureau of Statistics, 1972 *Census and Housing Publications: Housing and Home Equipment Conditions*, Table No. 1.
- Central Bureau of Statistics, 1983 *Census and Housing Publications: Housing and Home Equipment Conditions*, Jerusalem, 1986, Table No. 1.
- *Jerusalem Statistical Yearbook 1992*, Table VI/4.
- *Jerusalem Statistical Yearbook 1993*, Table VI/14.

The 1968 *Jerusalem Master Plan* forecasted a decrease for the Jewish population from 1.6 persons per room in 1967 to 1.2 in 1985, and for the Palestinian population, a decrease from 2.4 persons per room to 1.6 for the same period.<sup>45</sup>

While density of the Jewish population decreased even more than predicted (standing at 1.1 persons per room in 1986), housing density among Palestinians did not decrease as predicted, and remained about the same (2.2 persons per room in 1986).<sup>46</sup>

The increasing gap in housing density since 1967 is particularly evident when considering the number of residents living three and more persons per room. Between 1972 and 1993, the percentage of Palestinian families living three or more persons per room increased vis-a-vis the entire population of Jerusalem living in that housing density (see Table No. 4).

**Table No. 4: Number of Families living in Housing Density of Three or more Persons per Room, by Nationality, 1972, 1993**

	1972 <sup>47</sup>	1993 <sup>48</sup>
<b>Jews</b>	5,250 (42.7%)	2,702 (22.9%)
<b>Palestinians</b>	7,045 (57.3%)	9,098 (77.1%)
<b>Total</b>	12,295 (100%)	11,800 (100%)

The figures show that the proportion of Palestinian families compared with Jewish families living under these conditions of housing density increased during that period:

- in 1972, for each Jewish family living in housing density of three persons or more per room, 1.3 Palestinian families lived in those same conditions
- in 1993, for each Jewish family living in this overcrowded condition, there were 3.4 Palestinian families

45. 1968 *Jerusalem Master Plan*, Jerusalem, 1972, vol. 1, Table No. 1, p. 29.

46. No statistics for housing density in 1985 exist, and the statistic relates, therefore, to 1986. See *Jerusalem Statistical Yearbook 1992*, Table VI/4.

47. There are no statistics for housing density in 1967. The *Jerusalem Master Plan* details only average density. See, 1968 *Jerusalem Master Plan*, Table No. 1, p. 29. The figure on density for 1972 are adapted from statistics appearing in Table No. 1 of the Central Bureau of Statistics, 1972 *Census and Housing Publications: Housing and Home Furnishings Conditions*.

48. The statistics for 1993 are adapted from those appearing in the *Jerusalem Statistical Yearbook 1993*, Table VI/14.

Among the Jewish population, there was a significant decrease in the number of households living in such housing density, whereas among the Palestinian population, the number of such households increased. As the years passed, the disparity grew between the two populations as regards the percentage of families living in such density (see Table No. 5).

**Table No. 5: Gap in Housing Density in Jerusalem, by Nationality, in Selected Years (Percentage of Households living in Housing Density of Three or more Persons per Room)<sup>49</sup>**

Years	1972	1983	1987	1989	1991	1992	1993
Jews	8.4	1.2	1.5	2.1	2.2	3.1	2.4
Palestinians	49.0	26.5	33.5	47.9	27.2	30.9	32.3
Gap	483.3	2108.3	2133.3	2180.9	1136.3	896.7	1245.8

### 3. Housing needs

Since the city has not conducted any research to assess Palestinian needs, the precise dimensions of the housing shortage among the Palestinian population is unknown. Furthermore, as previously mentioned, officials estimate the current Palestinian population as much higher than the figures given by the Central Bureau of Statistics. City planners and architects who specialize in planning in Jerusalem's

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49. Sources:

- Central Bureau of Statistics, *1972 Census and Housing Publications: Housing and Home Equipment Conditions*, Table No. 1.
- Central Bureau of Statistics, *1983 Census and Housing Publications: Housing and Home Equipment Conditions*, Table No. 1.
- *Jerusalem Statistical Yearbook 1992*, Table VI/4.
- *Jerusalem Statistical Yearbook 1993*, Table VI/14.

Palestinian neighborhoods estimate that the housing shortage among Palestinians exceeds 20,000 units.<sup>50</sup>

As mentioned above, there are currently some 20,900 housing units in Jerusalem's Palestinian neighborhoods. Addressing the Palestinian housing shortage would require, therefore, a 100% increase in the number of housing units available to Palestinians.

## Conclusion

Municipal planning officials have often argued that the issue of overcrowding in Palestinian housing and the existing gap between Jewish and Palestinian neighborhoods in housing, infrastructure, and municipal services result from the Jordanian government's neglect of East Jerusalem between 1948 and 1967. For example, a brochure published by the Jerusalem Municipality in April of 1994 states:

The Arab sector in eastern Jerusalem currently suffers from a major deficiency of municipal services, both physical and social. Much of this results from the enormous gap between the two parts of the city, which already existed in 1967.<sup>51</sup>

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50. According to research conducted in June of 1994 by Sarah Kaminker (who was in charge of Palestinian neighborhood planning in the Jerusalem Municipality from 1976-1981, and later was a member of the Local Planning and Building Committee), the housing shortage among Jerusalem Palestinians is about 21,000 housing units. Sarah Kaminker and Associates, *Planning and Housing Issues in East Jerusalem*, a report prepared for the Society of St. Yves in response to High Court of Justice petition 1091/94, p. 26. According to Ze'ev Baran, architect and town planner, who prepared, for the municipality, a number of plans for the Palestinian neighborhoods, the shortage of residential units among Palestinians exceeds 25,000. See Ze'ev Baran, *The Palestinian Sector of Jerusalem: Needs, Policies and Expectations* (unpublished).

51. *East Jerusalem: Background Statistics* for a seminar on "Conflicts and Dilemmas in Municipal Struggles in Eastern Jerusalem" (in Hebrew), Municipality of Jerusalem, Office of the Director General, The Unit for Strategic Analysis, April, 1994, p. 3 (translated by B'Tselem).

The municipality contends that it made numerous efforts to close the gap. A brochure prepared in 1986 states that:

Since then [1967], efforts have been made to reduce the disparity in the provision of municipal services, to make progress in planning, and to act in the eastern sector as in the western part of the city.<sup>52</sup>

The statistics presented above show that these claims are unfounded. Since 1967, the housing gap between Jews and Palestinians has not decreased, and as will be shown, no efforts have been made to reduce it. In fact, the opposite is true, for the gap has grown wider and wider.

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52. *Development Plan for the Arab Sector* (in Hebrew), Municipality of Jerusalem, Municipal Planning Department, Planning Policy Section, Jerusalem, 1986, p. 2 (translated by **B'Tselem**).

## B. POLICY

"The fulfillment of rights, in practice, is expressed when they are respected through their *implementation in practice*, with equality and without invalid discrimination."

*Supreme Court President Meir Shamgar*<sup>53</sup>

"I am looking after the Jewish majority... the majority in Jerusalem. That is why we are here, to take care of that."

*Teddy Kollek, while mayor of Jerusalem*<sup>54</sup>

The housing shortage suffered by Palestinians in Jerusalem and the gap between the Jewish and Palestinian populations are the cumulative result of the systematic discrimination that has characterized Israel's planning, development and housing policies since 1967.

Official documents of the Jerusalem Municipality and statements made by Israeli policymakers demonstrate that the urban development of Jerusalem has been dictated chiefly by national-political considerations intended to achieve one central goal: to create a demographic and geographic reality that would preempt any future attempt to challenge Israeli sovereignty over East Jerusalem.<sup>55</sup>

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53. Elections Appeal 2,3/84, *Neiman v. Central Elections Committee for the Eleventh Knesset*, Piskei Din 39(2) 225, 261-262 (translated by **B'Tselem**, emphasis in the original).

54. Minutes of Jerusalem Municipal Council meeting, 24 January 1982, Report 42, pp. 11-12 (translated by **B'Tselem**).

55. Already in 1975, then-deputy mayor of Jerusalem Yehoshua Matza claimed that "the political-national consideration must be the cardinal one, and only afterward the urban consideration" (in a letter of 13 April 1975 to then-mayor of Jerusalem Teddy Kollek directing attention to planning and development needs along the city's northeastern boundary, City Archives, 1671/1) (translated by **B'Tselem**). In February of 1995, the city engineer, Uri Ben-Asher (formerly the Jerusalem District Planner in the Interior Ministry), said that planning decisions in Jerusalem have for years been based mainly on political, rather than urban, considerations. See the report and decisions of the Local Planning and Building Committee, 1 February 1995, p. 20.

## 1. "The Demographic Balance"

"Like all of us here, it seems to me, I am worried about the balance of power and about Arab growth within and around Jerusalem."

*Teddy Kollek, at the time Mayor of Jerusalem*<sup>56</sup>

Before Jerusalem's municipal boundaries were extended in 1967 following the Six-Day War, 97 percent of the population of West Jerusalem was Jewish. Israeli rule over East Jerusalem added 69,000 Palestinians to the city's population, causing the Jewish share of the population to fall to 74 percent.

In the first years after the annexation, the Israeli authorities decided to increase the proportion of Jews in Jerusalem to 80-90 percent by providing incentives to Jews to live in the city.<sup>57</sup> However, within a few years, as "the Jewish population in Jerusalem grew less than planned, and the city's non-Jewish population grew more than predicted,"<sup>58</sup> it became evident that such ratio was unattainable.

The natural growth rate of the Palestinian population was a "demographic problem" in the lexicon of those who determined planning policy for the city.<sup>59</sup>

In 1973, the Israeli government adopted the recommendation of the Interministerial Committee to Examine the Rate of Development for Jerusalem (hereinafter: the Gafni Committee), which determined that a "demographic balance of Jews and Arabs must be maintained as it was at the end of 1972,"<sup>60</sup> that is, 73.5 percent Jews, and 26.5 percent

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56. Minutes of Jerusalem Municipal Council meeting, 17 June 1984, Report 11, p. 8.

57. See, for example, *Plan for the Geographic Distribution of an Israeli Population of Five Million* (in Hebrew), Planning Division of the Interior Ministry and the Economic Planning Authority of the Finance Ministry, vol. 2, Jerusalem 1972, p. 30. See also Amirav, *Israel's Policy in Jerusalem since 1967*, p. 12.

58. *Population of Jerusalem and Region: Growth and Forecasts* (in Hebrew), Municipal Planning Department, Jerusalem Municipality, 1977, p. 4.

59. See Kimhi, Hyman and Claude, *Jerusalem 1967-1975: A Socio-economic Survey* (in Hebrew), The Hebrew University of Jerusalem, The Institute for Urban and Regional Studies, 1976, p. 6. Kimhi and Hyman served as senior officials in the Jerusalem Municipality's Planning Policy Section.

60. Interministerial Committee to Examine the Rate of Development for Jerusalem, *Recommendation for a Coordinated and Consolidated Rate of Development* (in Hebrew), Jerusalem, August, 1973, p. 3.

Palestinians.<sup>61</sup> Over the years, all Israeli governments, through the Ministerial Committee for Jerusalem, have affirmed that goal as a guiding principle of municipal planning policy,<sup>62</sup> and it has been the foundation of demographic and urban plans prepared by government ministries.<sup>63</sup>

A 1977 publication by the Jerusalem Municipality contained the following statement by then-director of the Planning Policy Section, Israel Kimhi:

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.<sup>64</sup>

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61. See Binyamin Hyman and Gadi Izreich, *Population of Jerusalem and Region: Growth and Forecasts* (in Hebrew), Jerusalem Municipality, Municipal Planning Department, Planning Policy Section, July, 1977, p. 5.

62. See remarks by Mr. Avraham Kahillah, then-deputy mayor of Jerusalem and chairperson of the Local Planning and Building Committee, minutes of Jerusalem Municipal Council meeting, 5 March 1993, Report 65, p. 18.

63. Preservation of the "demographic balance" between Jews and Palestinians is a guiding principle in planning and building policy not only in Jerusalem. An identical policy is found in publications of government ministries that deal with national planning. For example, the *Plan for the Geographic Distribution of an Israeli Population of Five Million* (in Hebrew), prepared by the Interior and Finance Ministries, states as one of its goals: "increasing the share of the population of the Northern District while increasing the Jewish population residing there, in order to maintain at least the present numerical ratio between the Jewish population and the population of the minorities in the Galilee region" (vol. 1, p. 3) (translated by **B'Tselem**). See also E. Haber, *Population and Construction in Israel 1948-1973* (in Hebrew), Building and Housing Ministry, Jerusalem, 1975, pp. 19-23; and E. Haber, *Expected Changes in the Population Distribution and in the Ratio Between Jews and Non-Jews until the 21st Century, in the Light of Trends in Population Growth and Existing Housing Data* (in Hebrew), Building and Housing Ministry, Jerusalem, 1986, pp. 5, 14-15.

64. *Population of Jerusalem and Region: Growth and Forecasts* (introduction by I. Kimhi). See also, *Forecast of Changes in the Population Distribution as Part of a National Planning Scheme* (in Hebrew), Ministry of the Interior, Jerusalem, 1975; and *Preliminary Examination of the Implications of Establishing Settlements in the Jerusalem Region* (in Hebrew), Building and Housing Ministry, Rural Building Administration, Jerusalem, 1975.



In 1990, the Israeli authorities entertained the hope that the anticipated massive Jewish influx from the former Soviet Union would boost the proportion of the Jewish population in the city, and thus tilt the "demographic balance" in the right direction. An internal working paper of the Jerusalem Municipality, entitled *Urban Policy and Working Plans for Work Year 1990*, stated:

The coming year, in the light of the waves of immigration, will see a shift of priorities. Increasing the housing supply in the neighborhoods has been set as our primary goal, as *for the first time since 1967, a possibility exists to alter the demographic balance in the city, and not only to preserve it.*<sup>65</sup>

When it turned out that the immigration forecasts had been overly optimistic, it was decided that the goal of preserving the "demographic balance" should remain a central principle in planning policy of Jerusalem.

The term "demographic balance," therefore, is misleading. It implies a policy that seeks to maintain a balance between two populations in the city, whereas in reality it means preserving the demographic advantage of the Jews in Jerusalem.<sup>66</sup>

According to a document of the Planning Policy Section in the Jerusalem Municipality, policy based on preserving the "demographic balance" means "that the planned increase in the Jewish population of Jerusalem is dictated by the rate of growth of the non-Jewish population."<sup>67</sup> These comments ostensibly indicate that efforts of the

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65. *Urban Policy and Working Plans for Work Year 1990* (in Hebrew), internal working paper, Jerusalem Municipality, July, 1990, p. 78 (translated by B'Tselem, emphasis added).

66. The initiative by the Jerusalem Municipality at that time to expand the western boundaries of the city and annex Mevasseret Zion and a number of settlements which were under the jurisdiction of Mateh Yehuda Regional Council was based on the assumption that if the "demographic balance" were to be preserved, additional land reserves would be necessary to meet the needs of the Jewish population that would immigrate to Israel and settle in Jerusalem. See Shaul Amir, Rachel Alterman and Amnon Frankel, *Evaluation of the Expected Effects of the Proposal to Extend the Boundaries of Jerusalem Westward* (in Hebrew), Center for Urban and Regional Studies, Technion-Israel Institute of Technology, November, 1990, Part 1.

67. *Population of Jerusalem and Region: Growth and Forecasts*, p. 33.

Israeli government to cope with the natural rate of growth among the Palestinians and to preserve the demographic balance in the city have centered around ways to funnel Jews to Jerusalem.<sup>68</sup> Accordingly, the government has built and developed neighborhoods for Jews and invested heavily in their infrastructure.

As we shall see below, however, the Israeli authorities were not satisfied with these activities, and through acts of commission and omission, they have also worked to choke development and building for the Palestinian population.

## **2. Building Jewish neighborhoods in East Jerusalem**

In order to ensure Israeli control in East Jerusalem, planning and development policy not only strives to maintain the demographic superiority of the Jewish population in the city. Every effort is also made to take control of as much land as possible in the eastern part of the city, and to settle Jews there.

Israel's planning and construction endeavors in Jerusalem since 1967 have in fact concentrated on building Jewish neighborhoods in East Jerusalem, and on creating Jewish settlement continuity. This is intended to blur the Green Line that divided East from West Jerusalem, and to obtain Jewish control in the eastern portion. As the former director of the Planning Policy Section, Israel Kimhi, recently noted:

Governmental policy regarding Jerusalem continued to be based, as in the past, on three principles: strengthening the Jewish hold in the city and its surroundings, entrenching its physical unification, and emphasizing its centrality as the capital of the Jewish people. The most concrete expression of this policy is the continuation of the building plans, and the populating of new

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68. It was with this policy in mind that Teddy Kollek explained his objections to establishing Jewish settlements in the Jerusalem region outside the city's municipal boundaries, in what is now called Greater Jerusalem: "All told, there has been no increase in the number of Jews in the metropolitan area as a result of people moving there [to the Jerusalem region, outside the city limits]... I wish Ma'aleh Adumim only well. I think it was a mistake to establish it before we filled Jerusalem. In another five years, we will fill Jerusalem and then we will go there. But in Jerusalem we took upon ourselves, as Jews, a very difficult urban task, in that we received distant neighborhoods, and we had to connect them: Ramot, Neve Ya'akov, Gilo. It will take us years before we can swallow all that." Municipal Council meeting, 17 June 1984 (translated by **B'Tselem**).

neighborhoods and the surrounding satellite settlements with Jews.<sup>69</sup>

Achieving control in both parts of the city appears both in statements by policymakers, and in publications of the municipality to be one of the major planning goals for the city. In 1975, the Local Planning Committee prepared a comprehensive town planning scheme. The plan, which covered the entire city, underwent many revisions. It was never given final approval,<sup>70</sup> but its principles have in large measure guided planning policy in the city.<sup>71</sup> Presenting the plan to the Municipal Council in 1977, then-mayor Kollek stated:

These are principles whose implementation will determine the shape of the city until the year 2000. The plan lays down the shape of the city's entire area of jurisdiction, the location of the residential neighborhoods, the commercial centers, the institutions of government, research and culture, and the industrial zone and open areas throughout the entire city. The plan's main purpose is to ensure the preservation of Jerusalem's distinctiveness as the capital of Israel, a holy city and place of pilgrimage as a spiritual center, a city with a special cultural and historical character – and all this can be preserved only if the city remains unified under Israeli rule.

There is something symbolic in the fact that we are presenting the plan for the Council's approval precisely on the tenth anniversary of the city's unification. *We believe that by approving the plan, we are expressing our control throughout the entire city and are affirming principles for the continued realization of the city's unification.*<sup>72</sup>

The ostensibly positive terms – "unification of the city" and "the unified city" – serve as a cloak for acts aimed at perpetuating Jewish rule in East Jerusalem.

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69. Israel Kimhi, "An Overview of the Development of Jerusalem 1988-1993," in *Twenty-five Years of the City's Unification: Chapters in Jerusalem's Urban Geography* (in Hebrew) (Jerusalem: The Jerusalem Institute for Israel Studies, 1993), p. 17.

70. The plan was approved by the Local Committee on 8 July 1977, but the approval process was halted by the District Committee.

71. See *Evaluation of the Expected Effects of the Proposal to Extend Jerusalem's Boundaries Westward*, p. 76ff.

72. Minutes of Jerusalem Municipal Council meeting, 6 July 1977, Report 65, p. 8 (translated by **B'Tselem**, our emphasis).

The explanatory remarks prepared for a session of the District Planning and Building Committee to discuss one version of the plan stated the following:

The first and cardinal principle in the planning of Jerusalem is to ensure its unification. To date, this principle has been translated into two modes of operation: one is to mend the gash that occurred in the urban fabric when the city was split in two in the War of Independence, and to fuse the detached systems; the second is to build the city in a manner that will prevent polarization into national communities and present possible repartition along the line that divides the two communities... The principle of building the city as a mosaic devoid of poles of national communities substantially influenced the location of the new Jewish neighborhoods.<sup>73</sup>

The document later elaborates on the considerations that guided the planning authorities in choosing the areas for new building in Jerusalem:

Every area of the city that is not settled by Jews is in danger of being detached from Israel and transferred to Arab control. Therefore, the administrative decision regarding the area of municipal jurisdiction must be translated into practice by building in all parts of that area, beginning with its remotest sections.<sup>74</sup>

The planning ramifications of this geopolitical consideration are expressed in the same document:

Jewish neighborhoods must not be left isolated in the urban region; rather, a continuity of building must be created between the central urban body and the peripheral neighborhoods. This factor dictates a far-reaching reduction of the open areas in the city, because only by cutting into the open areas is it possible to create the desired continuity.<sup>75</sup>

The drive to create a continuous area of Jewish neighborhoods linking West and East Jerusalem remains an explicit element of Israeli government policy. One illustration is the government's decision of

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73. *Local Town Planning Scheme for Jerusalem - 1978: Explanatory Remarks for the Discussion by the District Planning and Building Committee* (in Hebrew) (by Yosef Schweid, in charge of the Town Planning Scheme), Jerusalem Municipality, Municipal Planning Department, pp. 7-8.

74. *Ibid.*, p. 16.

75. *Ibid.* As will be seen, in order to rapidly populate East Jerusalem with Jews, the authorities did in fact reduce substantially the city's open areas, on which building for the Palestinian population had been forbidden for years, and made them available for building Jewish neighborhoods.

May, 1995 to establish the Jewish neighborhood of "Har Homah," in East Jerusalem.

Jerusalem's current mayor, Ehud Olmert, has also affirmed this policy. In an interview with *Ha'aretz*, he was asked how he was implementing his election-campaign promise to develop the city eastward and build along the east-west "seam." Olmert replied: "I am relieved that a process has begun that will bring about a continuity of Jewish settlement from Neve Ya'aqov southward, toward the city center, and I would rather not go into details."<sup>76</sup>

The building and development drive of Jewish neighborhoods in East Jerusalem and their rapid settlement did produce, for the first time since 1967, a Jewish majority there. In July of 1993 there were 160,000 Jews and 155,000 Palestinians living in East Jerusalem.<sup>77</sup>

### **3. Planning and building policy in Palestinian neighborhoods**

Israel's geopolitical interests in East Jerusalem also affected planning policy concerning the Palestinian population. Israel's policy described above led to a series of administrative and legal measures in housing, planning, and building intended to prevent development of Palestinian neighborhoods in East Jerusalem, thereby limiting the growth of the Palestinian population.

The massive building for the Jewish population in East Jerusalem is closely linked to the severe imposition of building restrictions on the Palestinians in the city. For example, land expropriations "for public purposes" in East Jerusalem made vast areas available for building Jewish neighborhoods, but at the same time substantially reduced the amount of land for development and housing for the Palestinian population.<sup>78</sup> Similarly, of the resources which had been earmarked for development and building in East Jerusalem, most were invested in the new Jewish neighborhoods.<sup>79</sup>

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76. Interview by Nadav Shragai, *Ha'aretz*, 6 May 1994.

77. Avraham Kahillah, then-deputy mayor and chairperson of the Local Planning and Building Committee, in his comments to the Planning Committee on 5 July 1993 (see *Ha'aretz*, 6 July 1993). When he released the data to the press, Kahillah explained the reason for their release: "I want to make the Palestinians open their eyes to reality and understand that the unification of Jerusalem under Israeli sovereignty is irreversible." *In Jerusalem*, 20 August 1993.

78. See chapter on town planning schemes below, p. 71.

79. See above, p. 14.

The planning authorities consistently ignore the severe housing shortage faced by Palestinians in Jerusalem. This attitude of neglect shared by the Local Planning and Building Committee, the District Planning and Building Committee, the Ministerial Committee for Jerusalem, and various government ministries takes different forms. For example, a 1975 document of the Planning Policy Section of the Jerusalem Municipality, entitled *Urban Renewal Neighborhoods in Jerusalem*, stated explicitly:

The memorandum relates to western Jerusalem only [the Jewish neighborhoods]. This, even though we know that if we use the same criteria that we have applied in the west [of the city], we will find that there are many neighborhoods that deserve to be included in the group of "urban renewal neighborhoods." However, it would be a mistake to use the same socio-economic criteria for East Jerusalem as are used in the west of the city. Owing to the absence of clear criteria for the eastern part of the city, it was decided not to include it in this memorandum.<sup>80</sup>

In other cases, the professional echelon did not propose ways to implement its own plans and goals to improve the housing situation of the Palestinians. In 1973, the Gafni Committee recommended to the government that

a considerable building effort be undertaken in the Arab sector as well. All told, in the coming decade, we will build about 10,000 apartments, of which 3,000 will be for rehabilitation and replacement of unfit housing, and 7,000 for the natural increase [of the population]. The committee did not deal with the organizational aspect of implementing this building plan.<sup>81</sup>

The recommendations for the development of the city for the following five years contain a recommendation for residential

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80. G. Goldschmidt, *Urban Renewal Neighborhoods in Jerusalem* (in Hebrew), Jerusalem Municipality, Municipal Planning Department, Planning Policy Section (draft for discussion), Jerusalem, 10 July 1975, p. 1.

81. Gafni Committee, p. 4. Another illustration is found in the recommendations for developing the original plan that dealt with northern Jerusalem, in the neighborhoods of Pisgat Ze'ev, Bet Hanina, and Shu'afat, which stated: "This section, on the progression of development, deals solely with the eastern (Jewish) part of the planning area, which we expect will be developed rapidly by public bodies. The central goal of this part of the area is to create gradually a building continuity beginning at Neve Ya'aqov in the north and extending southward." Jerusalem Municipality, Planning Policy Section, Transportation Master Plan Office, *North Jerusalem: Outline Plan 1:5000. Planning Guidelines* (draft), February, 1981, p. 14.



construction for the Jewish population only.<sup>82</sup> In 1975, when these recommendations were brought before the Local Planning and Building Committee of the Jerusalem Municipality, they were approved verbatim, and those charged with implementation were not requested to propose ways to apply the recommendations to building for the Palestinian population.<sup>83</sup>

Some twenty-two years have passed since the Gafni Committee recommended building 10,000 housing units for Palestinians within a decade. During that period, the Palestinian population has nearly doubled from 88,100 to more than 160,000. To date, no more than 6,300 apartments have been built.<sup>84</sup>

Even when the planning authorities seem to respond to the needs of the city's Palestinian population, they are not always guided by substantive considerations. In 1986, the Municipality's Planning Policy Section published a document entitled *Development Plan for the Arab Sector*. It defined projects for infrastructure (sewerage and drainage system, road network, etc.) and public institutions (educational, religious, sports, and leisure) for the Palestinian population. The order of priorities for implementing the projects was determined according to various criteria, such as cost and feasibility.<sup>85</sup> Another criterion listed was the project's "degree of visibility:"

The development of the Arab sector has a "picture window" effect, and it was decided, therefore, that what will be seen by a large number of people (residents, tourists, etc.) is important and prominent and receives a grade of 5, and projects that have no impact are graded 1.<sup>86</sup>

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82. See *Local Town Planning Scheme for Jerusalem - 1978: Explanatory Remarks for the Discussion by the District Planning and Building Committee*, p. 29.

83. *Ibid.* A detailed record of the Local Committee's discussions may be found in the committee's reports dated 30 November and 28 December 1975.

84. In 1973, there were 15,200 housing units available to the Palestinian population (see Kimhi et al, *Jerusalem 1967-1975: A Socio-economic Survey*, p. 57, Table 41). In February, 1995, 21,490 units were available in Palestinian neighborhoods.

85. See letter dated 7 July 1986 from then-deputy city engineer Avi Sperber to Emanuel Sivan, then a member of the Municipal Council, who headed the projects forum. The letter accompanied the report's submission.

86. *Development Plan for the Arab Sector*, Jerusalem, 1986, p. 12 (translated by B'Tselem). In fact, and notwithstanding Kollek's claim that a sewerage system was installed for the Palestinian population in the city, very little has been done in that sphere as well.

In an interview given by then-mayor Kollek to *Ma'ariv* immediately after the Temple Mount massacre in October of 1990, he stated explicitly that the welfare of the Palestinian population was not among the considerations that had guided the municipality in developing the Palestinian neighborhoods:

[Kollek:] We said things without meaning them, and we didn't carry them out. We said over and over that we would equalize the rights of the Arabs to the rights of the Jews in the city – empty talk... Both Levi Eshkol and Menachem Begin promised them equal rights – both violated their promise... Never have we given them a feeling of being equal before the law. They were and remain second- and third-class citizens.

[Question:] And this is said by a Mayor of Jerusalem who did so much for the city's Arabs, who built and paved roads and developed their quarters?

[Kollek:] Nonsense! Fairy tales! The Mayor nurtured nothing and built nothing. For Jewish Jerusalem I did something in the past twenty-five years. For East Jerusalem? Nothing! What did I do? Nothing. Sidewalks? Nothing. Cultural institutions? Not one. Yes, we installed a sewerage system for them and improved the water supply. Do you know why? Do you think it was for their good, for their welfare? Forget it! There were some cases of cholera there, and the Jews were afraid that they would catch it, so we installed sewerage and a water system against cholera...<sup>87</sup>

The means that were used to implement the policy described in this chapter include extensive land expropriations and the use of town planning schemes to limit building for the Palestinian population. Those means are discussed in the following chapters.

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87. *Ma'ariv*, 10 October 1990. Another example of irrelevant considerations concerning the welfare of the Palestinian population can be found in the comments of Uri Ben-Asher during discussions held by the District Planning and Building Committee in August, 1987 on approving TPS 3000a (one of the many versions of the Bet Hanina-Shu'afat plan). Ben-Asher objected that, under the proposed plan, the residents would have to bear the entire infrastructure cost: "... this would create an undesirable situation since the expensive development will prevent some of the Arabs from finding building solutions and cause them to seek alternatives in Neve Ya'aqov. We must consider cheaper construction or sharing execution of the infrastructure." Jerusalem Municipality, Local Planning and Building Committee, discussion on deposition of town planning scheme (TPS 3000a), 17 August 1987, p. 8 (translated by **B'Tselem**).



## C. LAND EXPROPRIATION

"Whoever thinks that the Arabs have it so good here is simply wrong... Take Bet Safafa as an example. Some of their land was taken for Katamon, some of their land was taken for 'Itri', some for Gilo, some for the road that traverses that neighborhood, and for Patt... I could tell you the same story about every village."

*Teddy Kollek, then-mayor of Jerusalem<sup>88</sup>*

The land expropriation policy in East Jerusalem has over the years been pursued exclusively for the benefit of the Jewish population; the housing shortage and the basic urban needs of the city's Palestinian population have been ignored. The expropriations have significantly reduced the amount of land held by Palestinians, and the housing shortage among Palestinians in the city has increased.

### Statistics

Of the 70 km<sup>2</sup> of land annexed to Jerusalem following the Six-Day War, 23.5 km<sup>2</sup>, or slightly more than a third, were expropriated under the Lands Ordinance (Acquisition for Public Purposes), 1943 (see Table No. 6).

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88. Minutes of Jerusalem Municipal Council meeting, 27 December 1987, Report 64, p. 18.

**Table No. 6: Summary of Land Expropriations for Public Purposes under the Lands Ordinance**

Date of Expropriation	Area/Neighborhood	Area in km <sup>2</sup>
<b>8 January 1968</b> <sup>89</sup>	■ French Hill	3.345
	■ Mount Scopus ■ Ramot Eshkol	
	■ Ma'alot Dafna	0.485
		<b>Total: 3.830</b>
<b>14 April 1968</b> <sup>90</sup>	■ Neve Ya'aqov	0.765
	■ The Old City (Jewish Quarter only)	0.116
		<b>Total: 0.881</b>
<b>30 August 1970</b> <sup>91</sup>	■ Neve Ya'aqov	0.470
	■ Ramot Allon ■ Shu'afat Ridge	4.840
	■ East Talpiyyot	2.240
	■ Gilo	2.700
	■ Atarot	1.200
	■ Gai Ben Hinom	0.130
	■ Jaffa Gate	0.100
	■ Ramat Rahel Area	0.600
		<b>Total: 12.280</b>
<b>20 March 1980</b> <sup>92</sup>	■ Pisgat Ze'ev	4.400
<b>1 July 1982</b> <sup>93</sup>	■ Atarot	0.137
<b>16 May 1991</b> <sup>94</sup>	■ Har Homah	1.850
<b>Total</b>		<b>23.378</b>

89. *Official Gazette* (in Hebrew) 1425 (1968), p. 688.

90. *Official Gazette* (in Hebrew) 1443 (1968), p. 1238.

91. *Official Gazette* (in Hebrew) 1656 (1970), p. 2808.

92. *Official Gazette* (in Hebrew) 2614 (1980), p. 1305.

93. *Official Gazette* (in Hebrew) 2831 (1982), p. 2390.

94. *Official Gazette* (in Hebrew) 3877 (1991), p. 2479.

Since no land-settlement arrangement was in effect for most of the expropriated property,<sup>95</sup> no exact records of the owners' personal or ethnic identities exist.<sup>96</sup> However, the data available to **B'Tselem** indicate that the majority of the expropriated land was privately owned by Arabs. This conclusion is based on studies and documents, some showing that the majority of the land in question was privately owned, and some indicating that the majority of the land for which ownership could be verified was Arab-owned: by private individuals, by the Waqf, Jordanian state lands, and so forth. For example:

- In the first expropriation (3.830 km<sup>2</sup>, January, 1968), most of the landowners were Arabs.<sup>97</sup>
- In the second expropriation (0.881 km<sup>2</sup>, April, 1968), approximately 25 percent of the land was privately owned by Arabs.<sup>98</sup>
- In the third expropriation (12.280 km<sup>2</sup>, August 1970), which accounted for about half of all the land expropriated after 1967, some 10 km<sup>2</sup> were Arab-owned, 1.405 km<sup>2</sup> were Jewish-owned, and 0.575 km<sup>2</sup> were Jordanian lands.<sup>99</sup>

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95. A land-settlement arrangement divides the land into blocks and lots and conclusively identifies its owners.

96. In March of 1968, following the first expropriation in East Jerusalem (of 3,345 dunams [1,000 dunams = 1 km<sup>2</sup>]), MK Emile Habibi submitted a parliamentary interpellation to the deputy finance minister asking whether the government had tried to purchase the land. In reply, Deputy Finance Minister Zvi Dinstein explained: "The government did not try to purchase the land from its owners because there is no up-to-date, organized record of the property rights in the expropriated area which would enable us to know who the legal owners of the land are. Even now, more than two-and-a-half months after the order was issued, we have been unable to ascertain the names of even a small fraction of the owners of most of the land." *Knesset Records*, vol. 51, booklet 21, 19 March 1968, p. 1499 (translated by **B'Tselem**).

97. Benvenisti, *The Torn City*, p. 290.

98. In August, 1968, Finance Minister Ze'ev Sharf, replying to a parliamentary interpellation by MK Emile Habibi, provided details about the expropriation which had been carried out that April in the Jewish Quarter and Neve Ya'aqov: "The area in the Jewish Quarter includes 116 dunams, of which: Jewish property - 30.5; family Waqf - 64; government land - 3.5; Arab private property - 18 dunams. The Neve Ya'aqov area includes about 765 dunams, of which: state lands - 37.5; Jewish National Fund land - 45.5; Jewish private property - 368; Arab property (absentees and present) - 207.5; roads (state and municipal) - 80; areas not identified - 26.5 dunams." *Knesset Records*, 14 August 1968, vol. 52, booklet 38, p. 3329 (translated by **B'Tselem**).

99. Benvenisti, *The Torn City*, p. 295.

- In the sixth expropriation (1.850 km<sup>2</sup>, April, 1991), 0.420 km<sup>2</sup> were Arab-owned.<sup>100</sup>

The 1968 *Jerusalem Master Plan* noted that most of the land in the areas that were annexed to West Jerusalem, on which new neighborhoods could be built, was privately owned.<sup>101</sup> Even if it was not stated explicitly that the owners were Arabs, that conclusion follows from the fact that in the great majority of the cases in which the owners identities were known, they were Arabs.

The following Jewish neighborhoods were built, at the Israeli government's initiative, on expropriated land: Giv'at Shappira (French Hill), Ramot Eshkol, Neve Ya'aqov, Ma'alot Dafna, Ramot (Ramot Allon), East Talpiyyot, Gilo, Giv'at ha-Mivtar, and Pisgat Ze'ev, as well as industrial zones (see Table No. 7). By February of 1995, about 38,500 housing units had been built (see Appendix No. 2). Not one housing unit was built on the expropriated land for the Palestinian population.

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100. HCJ 5601/94, *Ouda 'Aiyada Abu Tir et al v. Prime Minister et al*, Takdin Elyon 94(4) (1994), 246. **B'Tselem** has no information on the owners of the lands in the two intervening expropriations, the fourth (Pisgat Ze'ev) and the fifth (Atarot).

101. "The majority of the municipal land reserves that are amenable to development are in private hands. The effective development of the city will, apparently, require the expropriation of substantial areas, or the application of special laws which will require development in the formats and at the times that will be determined by the city's public planners" (1968 *Jerusalem Master Plan*, vol. 1, p. 34). Similarly, a survey of Greater Jerusalem conducted by the Israel Lands Administration found that of the areas designated for Jewish neighborhoods, only about 400 dunams were state-owned. Moreover, the state-owned land was not contiguous, and some was occupied by lessees. (See Benvenisti, *The Torn City*, p. 289.)

**Table No. 7: Population and Housing Units on Lands Expropriated for Public Purposes**

Neighborhood	Housing Units (February 1995) <sup>102</sup>	Number of inhabitants (approximate) <sup>103</sup>
French Hill & Mount Scopus	2,058	8,700
Ramot Eshkol & Giv'at ha-Mivtar	2,369	6,300
Ma'alot Dafna	1,184	4,600
Neve Ya'aqov	4,657	19,300
The Old City (Jewish Quarter only)	559	2,400
Ramot Allon	7,794	38,700
Shu'afat Ridge	*	Unpopulated
East Talpiyyot	4,223	15,000
Gilo	7,484	30,200
Atarot	Industrial Area	
Gai Ben Hinom	Public Area	
Jaffa Gate	Public Area	
Ramat Rahel Area	-	
Pisgat Ze'ev	7,438	35,200
Har Homah	**	Unpopulated
<b>Total</b>	<b>37,766</b>	<b>160,400</b>

\* 2,000 housing units planned for construction.

\*\* 6,500 housing units planned for construction.

102. *Jerusalem Statistical Yearbook 1993*, Table X/19 (as noted, this is the only table in the Yearbook that provides figures up to February, 1995).

103. *Jerusalem Statistical Yearbook 1993*, Table III/12.

## Legal framework for land expropriation

The Lands Ordinance (Acquisition for Public Purposes), 1943 authorizes the finance minister to issue expropriation orders for private land if a public purpose exists to justify the act of expropriation. Paragraph 2 of the ordinance defines a public purpose as "any purpose the finance minister approves as a public purpose." Owners of land designated for expropriation are entitled to compensation commensurate with the value of the land, but for political reasons, many Palestinian owners have preferred not to seek compensation.<sup>104</sup>

Property rights have always been fundamental rights under Israeli law and were recently incorporated in paragraph 3 of the Basic Law: Human Dignity and Freedom,<sup>105</sup> which states that "There shall be no violation of the property of a person." Paragraph 8 of the same law states: "There shall be no violation of rights under this Basic Law except by a law fitting the values of the State of Israel, designed for a proper purpose, and to an extent no greater than required." According to paragraph 11, the authorities are obligated to respect all the rights contained in the Basic Law.

## Land expropriation policy

The land expropriation policy in East Jerusalem since 1967 is a striking example of what Professor Amnon Rubinstein calls "discriminatory use of a neutral law."<sup>106</sup>

With the exception of the 1991 order, which relates to the lands intended for the Har Homah neighborhood, not one expropriation order stated the public purpose for which the land was required.<sup>107</sup> In

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104. The compensation is paid following negotiations between the land owners and the expropriating authority (par. 3(d) of the ordinance). Alternatively, a court determines the amount of compensation based on the value of the land if it were sold by the owner of his free will, and subject to various restrictions and factors mentioned in the ordinance (par. 12(b) of the ordinance).

105. *Sefer Ha-Chukkim* 1391, p. 150.

106. Rubinstein, *The Constitutional Law of Israel*, vol. 1, pp. 311-312.

107. The *Official Gazette* of 16 May 1991 stated that the expropriated land "is absolutely required for public purposes in order to build a residential neighborhood in Jerusalem" (*Official Gazette* (in Hebrew) 3877, 16 May 1991, p. 2479). The order does not specify the population for which the neighborhood is intended. For additional details on this expropriation, see below, p. 66.

the first years after the annexation, when most of the expropriations took place, government officials stated publicly that the areas in question were earmarked for projects that would serve the whole population of Jerusalem, including the Palestinians. In January of 1968, for example, in reply to a parliamentary interpellation by MK Emile Habibi regarding the first expropriation, Deputy Finance Minister Zvi Dinstein said that it had been executed

in order to enable the government to begin implementing a plan for developing East Jerusalem and for populating that area. The development plan includes, among other projects: building residential neighborhoods for Jewish and Arab residents in Jerusalem and outside the city, and erecting buildings for governmental, medical, cultural, and social services of Jerusalem.<sup>108</sup>

However, contrary to such pronouncements, not a single housing unit was built for the Palestinian population on any of the expropriated land. Moreover, senior municipality officials who had been involved in deciding the uses of the expropriated land told the Municipal Council that the underlying purpose of the expropriations was to build Jewish neighborhoods. At a Municipal Council meeting held in March, 1992, Avraham Kahillah, then deputy mayor and chairperson of the Local Planning and Building Committee, said: "... As we have done over the years... we are indeed encouraging the building of Jewish neighborhoods in the empty areas that had been expropriated by the Israeli government."<sup>109</sup>

On 11 March 1980, the Ministerial Committee for Jerusalem decided to expropriate 4.6 km<sup>2</sup> of land located between French Hill and Neve Ya'aqov.<sup>110</sup> The Pisgat Ze'ev neighborhood now stands on that land. Speaking at a colloquium held later that month, Kollek, who had originally opposed the expropriation, explained the principles of the policy: "Jerusalem has to be built in a way that will prevent its repartition. Without land expropriations, tens of thousands of Jews would not be living in the new neighborhoods today."<sup>111</sup>

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108. *Knesset Records*, 19 March 1968, booklet 21, p. 1498 (translated by **B'Tselem**). About two years later, following the publication of the expropriation order of 30 August 1970, covering 12.280 km<sup>2</sup> in East Jerusalem, the Israeli government declared that "[the expropriation] is intended to effect a solution for 5,000 Arab families and 4,000 Jewish families who live in substandard housing." Benvenisti, *The Torn City*, p. 296.

109. Minutes of Jerusalem Municipal Council meeting, 29 March 1992, Report 49, p. 6.

110. This is inherent in the remarks made by Mayor Teddy Kollek at the Municipal Council meeting of 24 January 1982, Report 42, p. 11.

111. Quoted in an article by Nadav Shragai, "Disputed Lands in North Jerusalem," *Ha'aretz*, 22 January 1993.



Two years later, Kollek told the Municipal Council that he had opposed the Pisgat Ze'ev expropriation for tactical reasons and not because he had objections, in principle, to the policy:

I have several times in previous years... objected to the expropriation of the land between Neve Ya'aqov and French Hill, because I was afraid that no building would be done there. But when we release it for building, we also release about 4,000 or 5,000 – I don't know how many – Arab housing units, because if you prevent one and give to the other, they will go to the High Court of Justice and then you will have to let them build, and then the Arab belt between Neve Ya'aqov and Atarot and the city will become stronger, and the second strong belt, the Jewish one, may not come into being at all. And then they made a commitment that that will be the first, and main, thing.<sup>112</sup>

Having promised to give Pisgat Ze'ev high priority, the government was as good as its word. To date, about 7,000 housing units have been built on the expropriated land for the Jewish population, with more than 4,000 additional units planned.<sup>113</sup> In contrast, the Jerusalem Municipality's plan for the Palestinian population (in the Shu'afat and Bet Hanina neighborhoods) languished for years before it was approved, and to this day no housing units have been built under the terms of the plan.<sup>114</sup>

The Israeli authorities still follow the same policy of discriminatory expropriations. In May, 1994, Mayor Ehud Olmert, replying to a question in an interview in *Ha'aretz*, said he was in favor of expropriating privately-owned land in southern Jerusalem to build the Jewish neighborhood "Har Homah 2." Olmert also expressed his support for an additional expropriation in order to build a new Jewish neighborhood that would create a continuity of Jewish settlement between French Hill and Pisgat Ze'ev.<sup>115</sup>

An example of the policy that guides practice today is the decision by the Local Planning and Building Committee in February, 1995 to

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112. Minutes of Jerusalem Municipal Council meeting, 24 January 1982, Report 42, p. 11. In January of 1981, after Council member Yehoshua Matza had criticized Kollek for his objections, Kollek replied: "[My] objection was based on a national consideration which in my opinion was probably more sophisticated than yours. To run and expropriate without knowing where you will also get the means to exploit it will only lead to stronger Arab building. Why do you force me to say this, it is not smart to say this, why should we get into this argument – but those were the considerations, and you force me to answer you on this subject." Minutes of Jerusalem Municipal Council, 4 January 1981, Report 28, p. 12 (translated by **B'Tselem**).

113. David Pik, Jerusalem Municipality, Municipal Planning Department, *Jerusalem's Residential Potential*, Planning Policy Section, April, 1994.

114. See below, page 84 ff.

115. Interview by Nadav Shragai, *Ha'aretz*, 6 May 1994.



approve the building of the "Har Homah" neighborhood south of the Palestinian neighborhoods of Sur Baher and Umm Tuba, on land that had been expropriated in 1991. The plan, which was prepared by the Building and Housing Ministry, calls for building some 6,500 housing units for 32,500 occupants.<sup>116</sup> The following statement appears under the rubric, "Notes on the Plan:"

Two phenomena are conspicuous in a survey of housing demands in Jerusalem. The first is the migration of well-established residents to the suburbs, and the second is the migration of young couples.<sup>117</sup>

That "survey" exclusively addresses housing demands of the Jewish population and completely ignores Palestinian needs. As shown above, the housing shortage among the city's Palestinians is far more acute than it is among its Jews.

An examination of the timing at which expropriated land was put to use reveals another aspect of this policy. Most of the expropriation orders issued since 1967 state that the land "is needed urgently for public purposes." In fact, many of the areas expropriated in the first years after the annexation were not put to use until many years later. It seems, then, that the expropriations were also intended to deprive the Palestinian population of the opportunity to build on those lands, and to hold them in reserve for future Jewish neighborhoods. This intention was recently confirmed in the state's summation to the High Court of Justice in the rehearing in *Nusseibeh*.<sup>118</sup>

The expropriation was one link in a series of additional expropriations which were carried out in that period, on a scale of thousands of dunams, in various parts of Jerusalem... The purpose of the expropriations was to create land reserves for replanning extensive sections of Jerusalem following its reunification.<sup>119</sup>

To sum up, an examination of the land expropriation policy in Jerusalem since 1967 clearly shows that the policy is not based on the planning needs of the entire population. Rather, it is dictated mainly by

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116. Report and decisions of the Local Planning and Building Committee of 1 February 1995, p. 15.

117. *Ibid.*, translated by B'Tselem.

118. HCJ 4469/94, respondents' summation, pp. 2-3. For details about the case, see below, page 64 ff.

119. The responsive affidavit submitted by the respondents in the first hearing stated: "In addition, granting the petitioners' request will also entail acceding to the requests of other owners of plots on which no building has as yet taken place and there are many such plots in the expropriated area, thus putting an end to the continuation of the development activities under the expropriation order." HCJ 5091/91, *Nusseibeh et al v. Finance Minister et al*, respondents' responsive affidavit, par. 17. See, also, HCJ 412/74, *Flesher v. Finance Minister* (unpublished).

political and national considerations that serve the Jewish population exclusively. The claim that the expropriations in East Jerusalem are intended to serve a salient public purpose is accurate only if the "public" for whom it is justifiable to harm Palestinian property rights consists entirely of Jews.

## The High Court of Justice on land expropriation

Until recently the High Court of Justice was not called on to address directly the Israeli government's discriminatory policies. Instead, petitions that were submitted against expropriations focused on the question of whether land was indeed expropriated for a public purpose. Over the years, the High Court has emphasized the importance of property rights and rejected any expropriation not intended for an essential public purpose. For example, in *Lubianker*, where the petitioners demanded the finance minister to annul the expropriation of land they owned in East Jerusalem, Justice Shamgar stated:

Acquisition of title through expropriation is an extreme and far-reaching means, and an individual may not be deprived of his rights in real property unless it is clear and manifest that this is the correct way to realize the public need.<sup>120</sup>

The court has often noted that if there were a delay in realizing the purpose for which the expropriation was carried out, or if the purpose itself were abandoned, the expropriation should be annulled. Justice Barak wrote: "... an unreasonable delay in taking action following an expropriation may lead to its annulment in certain conditions."<sup>121</sup> That assertion was implemented in 1994 in *Nusseibeh*, where the High Court of Justice ordered that land expropriated in January of 1968 be

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120. HCJ 307/82, *Lubianker v. Finance Minister*, Piskei Din 37(2) 141, 147 (translated by B'Tselem).

121. HCJ 67/79, *Shmuelson v. State of Israel*, Piskei Din 34(1) 281, 285 (translated by B'Tselem). Justice S.Z. Cheshin wrote: "To earmark private property for expropriation and not to implement the plan for many years is, in my opinion, a severe infringement on the rights of the citizen and indirectly on the public good as well" (translated by B'Tselem). HCJ 75/57, *Kalmas v. Local City Building and Planning Committee of Tel Aviv-Jaffa*, Piskei Din 11(2) 1601. See also CA 77/540, *Snitovsky v. Israel Electric Company*, Piskei Din 32(2), 561; HCJ 174/88, *Amitai v. Local Planning and Building Committee, Central Region*, Piskei Din 42(4) 89; and HCJ 465/93, 1135/93, *Tridet S.A., a foreign company v. Local Planning and Building Committee of Herzliya*, Takdin Elyon, 94(1), 1994, p. 1290.

returned to the Nusseibeh family because it had not yet been put to use.

In another judgment, Justice D. Levin commented on the substance of the public purpose that justifies expropriation:

The considerations that should guide the planning authorities and the finance minister who seeks to expropriate land for a public purpose are, above all, planning considerations. In other words: what is beneficial and what is desirable from the overall point of view of populating settlement sites while preserving nature and the quality of the environment.<sup>122</sup>

Building exclusively for the Jewish population on land that has been expropriated largely from Arabs is, in the court's view, a salient public purpose. In 1974, Justice Z. Berenson wrote in the Flesher case:

It is well known that this expropriation and others like it that were executed in 1968 were done for a salient public purpose, that is, the development, building and settlement of Jerusalem. We have seen that large sections of the expropriated areas are being built up, and already thousands and tens of thousands of residents have been housed there.<sup>123</sup>

Justice T. Orr wrote in *Nusseibeh*:

The expropriation of the overall area thus had the salient public purpose of developing Jerusalem the capital and creating in it a suitable infrastructure both for the purpose of massive residential building, including the accompanying infrastructure and structures, and for planning a road system that will be appropriate for the city and its new neighborhoods.<sup>124</sup>

Since the law gives the finance minister absolute discretion to determine what that purpose is, technically speaking, the expropriation of land in East Jerusalem may be deemed to have been made for a public purpose. But like any decision of a governmental authority, the finance minister's discretionary judgment must be reconcilable with the principles of administrative law. In certain cases, the court examined the finance minister's considerations. In *Lubianker*, Justice Shamgar stated:

However, it should not be construed from this that the court will not examine, as is its wont, whether the minister's considerations,

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122. HCJ 704/85, *Yosef Atoun v. Finance Minister et al*, Takdin Elyon 86(3), 1986, p. 15 (translated by **B'Tselem**).

123. *Flesher v. Finance Minister*, cited in Savir, *Condensed Judgments of the High Court of Justice* 9, p. 92 (translated by **B'Tselem**).

124. *Nusseibeh v. Finance Minister et al* (translated by **B'Tselem**).

including granting approval regarding the existence of a public purpose, are not tainted by a fundamental flaw, such as lack of good faith or arbitrariness.<sup>125</sup>

The statements quoted above from officials involved in the expropriation decisions and the urban planning of new neighborhoods in East Jerusalem clearly show that they did not act in good faith; they systematically sought to transfer land from Palestinian hands to Jewish hands.

In matters not involving land expropriation, the High Court has not hesitated to intervene to ensure that the principle of equality is upheld. As Justice Barak wrote:

A basic principle, which serves as a legislative goal for all actions taken by the legislature, is the principle that all are equal before the law... Therefore, acts of legislation should be considered and interpreted as seeking to realize that goal, not contradict it.<sup>126</sup>

In 1978, the Supreme Court held:

We consider it a sacrosanct rule never, heaven forbid, to lend a hand to anything that partakes of discrimination between people because of their religion or their nationality.<sup>127</sup>

The judgments by the Supreme Court which have reaffirmed the legality of the expropriations, and the remarks by justices to the effect that they consider massive building of Jewish neighborhoods on large parts of the expropriated area to be a salient public purpose, suggest that on this subject the High Court has disregarded its own dictum.

### ***The High Court and "Har Homah"***

Recently the High Court was called upon to address the discriminatory expropriation policy in East Jerusalem, in the form of a petition, filed

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125. *Lubianker v. Finance Minister*, p. 147 (translated by **B'Tselem**). See also *Nusseibeh v. Finance Minister*, p. 3; Rehearing 16/61, *Registrar of Companies v. Kardosh*, Piskei Din 16 1209; Haman Shelah, "Land Expropriations for Public Purposes Extending Judicial Review" (in Hebrew), *Iyuneh Mishpat* 7, p. 622.

126. HCJ 507/81, *MK Abuhazeira v. Attorney General et al*, Piskei Din 35(4) 561, 585 (translated by **B'Tselem**). See also Baruch Bracha, "Ensuring the Principle of Equality Through Judicial Interpretation," in *Human and Civil Rights in Israel* (ed: Tali Ben-Gal, Dana Alexander, Ariel Bendor, Sharon Rabin), Jerusalem, 1992, vol. 3, pp. 58-60.

127. HCJ 114/78, *Muhammad Sa'id Burkan v. Finance Minister et al*, Piskei Din 32(2) 800, 805 (translated by **B'Tselem**).

by attorney Daniel Seidemann on behalf of residents of two Arab neighborhoods, Umm Tuba and Bet Sahur, and of the organization IrShalem.<sup>128</sup> The petition concerns the land expropriated in April of 1991 to build a new Jewish neighborhood, to be known as "Har Homah."

The petition argues that the policy of expropriations in East Jerusalem is illegal, since it benefits only the Jewish population:

Although the Arab residents [of Jerusalem] are among the "public" whose property is vulnerable to expropriation (at a far higher risk than that faced by the Jewish population), they have never been included among the "public" that is entitled to benefit from the fruits of expropriation or its purposes. Maliciously or not, this concept of the term "the public" falls in the category of cognitive dissonance. In other words, the public on whom these "obligations" are imposed is made up (mainly) of Arab residents, whereas the public to which the "rights" accrue – those who will enjoy the fruits of the expropriation – is always composed exclusively of Jews. The expropriations are always in East Jerusalem, and in the majority of cases, the land was owned by Arabs, yet the expropriations are always intended to serve the Jewish population and have never had the purpose of meeting the housing needs of Jerusalem's Arab residents.<sup>129</sup>

The petition cites many statements by policymakers proving that the expropriation is intended for a Jewish neighborhood. For example, Shimon Peres, the finance minister at the time, said in December, 1989 that the expropriation had "a dual national mission of fortifying Jerusalem and absorbing mass immigration."<sup>130</sup> In March, 1994, during a discussion of the subject by the Knesset's Finance Committee, the director of the Housing Ministry's Jerusalem District, Rina Zamir, stated:

The hill is situated in the southeast of Jerusalem... which is a completely exposed corner in terms of Jewish settlement and Jewish neighborhoods... It became clear that it was necessary to establish another Jewish neighborhood at that specific location.<sup>131</sup>

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128. IrShalem is an association whose goal is to promote coexistence, understanding and peace between the two peoples living in Jerusalem.

129. Petition in HCJ 5601/94, *Ouda Aiyada Abu-Tir et al v. Prime Minister et al*, par. 18(h) (translated by **B'Tselem**).

130. Mr. Peres's letter of 11 December 1989 is quoted in par. 22(a) of the petition (translated by **B'Tselem**).

131. Minutes of the hearings of the Knesset's Finance Committee, 15 March 1994, quoted in par. 23 of the petition (translated by **B'Tselem**).

The petition also quotes from several documents dealing with the expropriation which reflect an approach that ignores the Palestinians' need for the expropriated land. For example, in the state's reply to a previous petition to the High Court on the same expropriation, Har Homah was described as "an independent unit, divorced from Jerusalem's other neighborhoods."<sup>132</sup> In his letter, Peres said Har Homah was necessary "to close a gap in the urban space in the city's southeast."<sup>133</sup> The petition argued, with reference to these and other documents, that

Har Homah can be seen as an area divorced from Jerusalem's neighborhoods *only* if the true meaning of the term "neighborhood" is "Jewish neighborhood." Har Homah is *adjacent* to an Arab neighborhood in Jerusalem, Umm Tuba, and in part constitutes the only land reserve available to the residents of that neighborhood.<sup>134</sup>

The court refused to deal with the contention that the expropriated land was earmarked for Jews exclusively, accepting the state's argument that the area's designation had not yet been decided. Since the expropriation was being done for a public purpose, the court rejected the petition.

The question of populating the area is not relevant at this stage. As the respondents' answer notes, no criteria or restrictions have as yet been determined regarding the area's population. The question at issue at this stage is whether the finance minister was justified in appropriating the expropriated area for the public purpose underlying the expropriation, that is, in order to ensure the building of a residential neighborhood there. After it became clear that the expropriation was required in order to realize that public purpose, this is sufficient for the petition to be rejected. The time and place for any argument against the criteria that will be determined for populating the residential neighborhood to be built on the expropriated area is not in the petition against the expropriation.<sup>135</sup>

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132. Reply of respondents 1-4 in HCJ 3846/92, quoted in par. 24(a) of the petition in *Ouda Aiyada Abu-Tir et al v. Prime Minister et al* (translated by **B'Tselem**).

133. Peres's letter of 11 December 1989 is quoted in par. 24(b) of the petition (translated by **B'Tselem**).

134. *Ibid.*, par. 25 (translated by **B'Tselem**, emphases in the original).

135. *Ouda Aiyada Abu-Tir et al v. Prime Minister et al* (translated by **B'Tselem**).



The court's reasoning is problematic: the state's argument that criteria for populating the neighborhood have yet to be determined and that "no restrictions have been set in this connection"<sup>136</sup> is without foundation. The intention to build a Jewish neighborhood on the expropriated land is evident from official documents of the Jerusalem Municipality and from statements by cabinet ministers included in the petition. In addition to these items, there are numerous proofs, not included in the petition, of the authorities' plans to build a Jewish neighborhood in this area. As early as July of 1991, two months after the formal announcement of the finance minister's decision to expropriate the area to build a residential neighborhood, the municipality published a document stating: "The forecasted growth of the Jewish population will occur primarily in four centers... Har Homah – 7,500 housing units with 27,000 inhabitants."<sup>137</sup>

Thus, at the time of IrShalem's petition, there was no doubt as to the identity of the future population of Har Homah. Perhaps at the time of the hearing the precise criteria for populating the neighborhood had not been set, but the only real question was which type of Jewish population would reside there. This is clear from remarks made by Teddy Kollek at a Municipal Council meeting in September, 1993 to Mr. Avraham Kahillah, at that time the chairperson of the Local Planning and Building Committee:

[I want to comment on] what the Housing Ministries did not do during the past twelve years. They did not build for young people, or for new immigrants, or for discharged soldiers, and the fact is that because of that we are losing 7,000 or 8,000

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136. *Ibid.*, statement by the respondents, par. 13(a) (translated by **B'Tselem**).

137. David Pik, *Jerusalem's Residential Potential*, July, 1991, p. 4 (translated by **B'Tselem**). In 1992, then-mayor Teddy Kollek stated at a meeting of the Municipal Council: "There are regions in which we have to develop Jewish settlement on a large scale, irrespective of whether they are in the city's east or not. For example, Har Homah is a place with room for 4,000 families or more which is across the Green Line but not in an area with a dense Arab population. All the settlement attempts that were made in the Arab regions are certainly only a small percentage of the large-scale settlement which could be implemented at Har Homah. And after all, to this day we have settled, without any arguments, about 130-140,000 residents from Ramot to Gilo in areas that were empty and which were not being used for orchards or gardens. It wasn't a rocky area, and it was exploited well, and today that is our strength in Jerusalem, and not, in my opinion, a few families here and there in the Muslim Quarter" (translated by **B'Tselem**). Meeting of Jerusalem Municipal Council, 24 August 1992. Report 55, pp. 2-3. In a later document, of April, 1994, entitled "Potential for Residential Building in Jerusalem According to the Situation of the Plans – Update," Har Homah appears under the rubric of "Jewish neighborhoods."

more Jews who leave here every year, because around Jerusalem, or in its environs – now they are building on the road to Tel Aviv – the apartments are cheaper. We want Jerusalem to become stronger. And I am very much concerned that Har Homah will also be this kind of construction; and if it will be so expensive, then I am not sure I am enthusiastic about its being built. I want you to make sure that the conditions of the building there will be such that youngsters who have completed army service, young couples, new immigrants will be in a situation to purchase flats. That is the only thing that will bring more Jews to Jerusalem.<sup>138</sup>

The rejection of this petition is one more step in the discriminatory policy of land expropriation in East Jerusalem. The court, which was here asked for the first time to redress this discriminatory policy, refused to do so, thus placing a judicial seal of approval on such practices.

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138. Minutes of Jerusalem Municipal Council meeting, 13 September 1993, Report 74, p. 4 (translated by **B'Tselem**).



## D. TOWN PLANNING SCHEMES

"The planning and building laws in East Jerusalem rest on a policy that calls for placing obstacles in the way of planning in the Arab sector – this is done in order to preserve the demographic balance between Jews and Arabs in the city, which is presently in a ratio of 72 percent Jews versus 28 percent non-Jews."

*Amir Cheshin, former advisor on Arab affairs  
to the mayor of Jerusalem<sup>139</sup>*

The expropriations carried out since 1967 have left the Palestinian population in East Jerusalem with approximately 46.5 km<sup>2</sup> of land. Israel controls urban planning and development of this land through the granting of building permits.

The purpose of an urban plan is to enable orderly building, with a view to the future needs of the population and taking into account environmental, economic and social factors. To that end, building permits are to be granted on the basis of approved plans.

The Israeli authorities in charge of East Jerusalem have used their monopoly on urban planning to prevent the development of Palestinian neighborhoods. This is the case even in areas ostensibly earmarked for residential building for the Palestinians.

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139. "Jerusalem as an Economic Bridge to the Autonomous Areas and The Arab World," *60 Years of Industry in Israel*, Advertising Supplement, *Kol Ha'ir*, 9 December 1994 (translated by **B'Tselem**).

## Legal background<sup>140</sup>

The most important means for supervising municipal planning is the local town planning scheme (TPS). Its purpose is to define the development of the area, allocate territory in accordance with expected demand and population growth, and to determine infrastructure, the required traffic arteries, and the focal points of neighborhood activity.<sup>141</sup>

Paragraph 63 of the Planning and Building Law denotes the subjects that are supposed to be included in the local TPS. These include demarcation of areas and conditions of use of the land and the buildings in each area; determination of grids and installations for the supply of water, power, telephone service and other utilities; allocation of sites for health care, religious observance, education and culture, leisure and sports, and other public needs; allocation of land for open spaces; provisions for new roads; limitations on the size of the area on which a building may be erected; and allowable building density.

Everything is then included on a map showing roads, residential areas and public areas, and in the regulations of the TPS, which state permitted building percentages, types of construction, and other details pertinent to the execution of the plan.

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140. This section is based on *The Planning System in Jerusalem: Law, Programs and Planning* (in Hebrew), Jerusalem Municipality, Municipal Planning Department, March, 1989, and on a book by Ghassem Khamaiseh, *Planning and Housing among Arabs in Israel* (in Hebrew) (Tel-Aviv: International Center for Peace in the Middle East, 1990).

141. Planning and Building Law, 1965, par. 61.

### ***Steps in the approval of a town planning scheme***

1. The Local Planning and Building Committee decides that a TPS is required for a certain area and entrusts its preparation to experts.
2. The Local Planning and Building Committee discusses the plan and recommends its deposition for the submission of objections.
3. The District Planning and Building Committee decides on deposition of the plan.
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 he has been adversely affected by the plan may submit objections to the District Committee.
5. Hearing of objections by the Local Committee.
6. Discussion 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 TPS that has received final approval is published in the *Official Gazette*, in three daily newspapers and on the bulletin boards.

### **Data**

In June of 1994, Sarah Kaminker made a study of the planning and building policy in East Jerusalem. The study showed that the majority of the land remaining in Palestinian hands after the expropriations is not designated for the development of Palestinian neighborhoods. Only 10 km<sup>2</sup> have been allocated for that purpose. The rest of the unexpropriated land is marked for green areas and open spaces on which building is prohibited, or has been removed altogether from the TPS of the Palestinian neighborhoods. Consequently, only 14 percent of the entire area of East Jerusalem annexed to Israel in 1967 is earmarked for the development and building of Palestinian residential neighborhoods.<sup>142</sup>

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142. Kaminker, *Planning and Housing Issues in East Jerusalem*, p. 9.

## Policy

One way to preserve the "demographic balance" is to use planning measures to reduce the building possibilities in Palestinian neighborhoods. The planning authorities use three main mechanisms to achieve this goal: not preparing a TPS, delaying its preparation, and preparing plans that limit Palestinians' building possibilities.

### *a. Absence of town planning schemes*

Building has been barred on most of the area that remains in Palestinian hands in East Jerusalem on the grounds that a TPS has not yet been approved (the Jordanian development plans for the area were cancelled in 1967). In 1974, the Local Planning and Building Committee in Jerusalem issued a planning order that declared the region of Jerusalem, according to the post-1967 municipal boundaries, a regional planning area.<sup>143</sup> According to paragraph 62(b) of the Planning and Building Law, such an order obligates the Local Committee to submit to the District Committee a local TPS for the entire municipal area within three years of the order's publication.

Until 1983, the planning authorities followed the directives of the political echelon, and did not prepare town planning schemes for Palestinian neighborhoods. To this day, twenty-one years after the order was issued, no comprehensive TPS for all of East Jerusalem has been drawn up.<sup>144</sup> As of November of 1994, only thirteen plans had been approved, covering only some of the Palestinian neighborhoods.<sup>145</sup>

In the absence of an approved plan, it is impossible to obtain a building permit. As a result, tens of thousands of persons have no legal possibility to build, and many have built without a permit. A temporary solution to the housing shortage came through issuance of building

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143. "Announcement of decisions to prepare a local town planning scheme and to prepare a change in a local town planning scheme," *Official Gazette* (in Hebrew) 1980, 17 January 1974, p. 623.

144. As a Jerusalem Municipality document of 1986 stated: "For various reasons, the political echelon tended not to implement the planning procedures involved in preparing town planning schemes and specifications." *Development Plan for the Arab Sector*, p. 2 (translated by B'Tselem).

145. Ehud Olmert, background document for a discussion before the government's Ministerial Committee for Jerusalem (in Hebrew), 25 October 1994, Jerusalem Municipality, p. 4.

permits pursuant to paragraph 78 of the Planning and Building Law, which allows the granting of such permits to individuals in areas for which there is no TPS. In most cases, these permits stipulated extremely small building percentages.

An internal planning guide of the municipality from 1975, dealing with planning for the Sur Baher and Umm Tuba neighborhoods, states:

The plan is supposed to temporarily determine the boundaries of development for housing and the permitted building percentages until a local TPS is published. The purpose of the plan is to limit the spread of the built-up area; to maintain the existing level of building in areas which should remain open; and to serve as a basis for supervision of construction that has been undertaken to date – building without a permit on a substantial scale. In general, the plan demarcates the existing building areas, except for the new construction in the most westerly extension, along the road. The Ramat Rahel ridge and the center of the village have been defined as residential area 5 (two floors, 50 percent) and the extensions as residential area 6 (one floor, 25 percent).<sup>146</sup>

Since the plan was prepared, the population in these areas has doubled, but to this day there is still no approved TPS.<sup>147</sup>

A document published in 1975 by the Planning Policy Section of the Jerusalem Municipality, on the scope of building in the Palestinian neighborhoods from 1968 to 1974, shows the implications of the absence of a TPS. In that period, only fifty-eight building permits were issued for the city's Palestinians,<sup>148</sup> notwithstanding an increase of 24,000 in the Palestinian population during those years.<sup>149</sup>

Whereas building in Jewish neighborhoods is planned in advance and considers the urban needs of their residents, the spatial development in the Palestinian neighborhoods is uncontrolled. As a result of the absence

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146. Binyamin Hyman, *Balanced Planning 211 (Sur Baher): Abridged Planning Guide* (in Hebrew), draft for discussion, 3 June 1975, p. 8.

147. No exact figures exist for each subsection in 1975, but a reasonable estimate is a population of 10,000, since 8,300 Palestinians resided in that area (subsection no. 82) in 1972 and 11,058 in 1977. See *Jerusalem Statistical Data* (Jerusalem: The Jerusalem Institute for Israel Studies, 1983), Table X/3. At the end of 1993, the population of that area stood at 21,247 (*Jerusalem Statistical Yearbook 1993*, Table XIII/3).

148. Gadi Izreich, *The Scope of Building in East Jerusalem from 1968-1974* (in Hebrew), Jerusalem Municipality, Municipal Planning Department, May, 1975, p. 3.

149. Sixty-eight thousand Palestinians resided in the city at the end of 1967; at the end of 1974, their number had risen to 92,600. *Ibid.*, p. 4.

of town planning schemes and the subsequent unplanned construction, houses were erected without a neighborhood infrastructure, and without land being allocated for public areas (roads, schools, etc.). Moreover, future comprehensive planning will be difficult, since any future TPS must take into account facts on the ground.

### ***b. Delays in preparing town planning schemes***

As mentioned, the law obligates the Local Committee to prepare a TPS for the planning area and to submit it to the District Committee for deposition within three years of its publication. The District Committee then has one year to approve or reject the plan.<sup>150</sup> However, in many cases the preparation of town planning schemes for Palestinian neighborhoods has taken many more years than what the law stipulates, as the following examples show:<sup>151</sup>

- Plan No. 2683a, Arab es-Sawahra: Planning process began in 1979. No approved plan to date.
- Plan No. 2317, Bet Safafa: Approval procedure began in November, 1977. Plan approved in December, 1990.
- Plan No. 1864a, Abu Tor: Approval procedure began in December, 1977. Plan approved in June, 1989.
- Plan No. 2668, Ras el-Ammud: Plan approved by the Local Committee and conveyed to the District Committee in November, 1987. It has not yet been approved.
- Plan No. 3000b, Bet Hanina and Shu'afat: The planning for the largest area earmarked for the Palestinian population began in 1980. The TPS was approved, but the detailed specifications required for building permits have not yet been approved.<sup>152</sup>

Paragraph 84 of the Planning and Building Law requires that the projected date for implementing the TPS be set in the regulations, and if necessary, also a description of each stage of implementation and its projected date. In the new Jewish neighborhoods, dates were set for the execution of each stage of contracts between the Housing Ministry and the developers. On the other hand, local TPSs prepared for the Palestinian neighborhoods did not include a date of implementation, in breach of the law.

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150. Planning and Building Law, 1965, par. 62(c).

151. The information is from summations of the approval procedure for the various plans in Jerusalem's Municipal Planning Department.

152. For details on this plan, see pp. 84 ff.

A 1992 document of the Jerusalem Municipality's Unit for Strategic Analysis details the projected building dates for more than 18,000 housing units through the end of 1995: 10,000 by the end of 1992, 4,000 in 1993, 3,000 in 1994, and 1,300 in 1995. The document also specifies the projects in the sphere of residential building in whose framework the 18,000 units will be built, all in Jewish neighborhoods. No projects for Palestinian neighborhoods are mentioned in the document.<sup>153</sup>

Even when a plan for residential building in the Palestinian neighborhoods exists, it is not implemented. According to the *Development Plan for the Arab Sector*, of 1986, which details the distribution of the addition of housing units according to possible implementation, 13,523 housing units should have been built for the Palestinian population between 1986 and 1991.<sup>154</sup> In reality, fewer than 2,100 units have been built to date.<sup>155</sup>

### **c. Town planning schemes as a means to limit development**

A careful examination of the town planning schemes that have been prepared for the Palestinians reveal that they effectively ignore population growth, and that their main purpose is to prevent Palestinians from making use of the little land available to them.

#### **1. Housing capacity**

This term refers to the total number of existing and planned housing units in a particular area.<sup>156</sup> A comparison of the town planning schemes for the Palestinian neighborhoods and Jewish neighborhoods in East Jerusalem shows a significant disparity in housing capacity planned for the two populations. A greater potential capacity of

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153. Jerusalem Municipality, Office of the Director General, *Municipal Policy and Work Plans for 1992*, vol. 1: *Policy Lines, Goals, and Emphases* (in Hebrew), Jerusalem, 1992, p. 33.

154. *Development Plan for the Arab Sector*, p. 39.

155. No exact data exist regarding the number of housing units in 1986, but at the time of the 1983 census, there were 19,376 units (*Development Plan for the Arab Sector*, Table No. 1.4, p. 37); according to the *Jerusalem Statistical Yearbook 1993* (Table X/19), there were 21,490 housing units in February, 1995 (this table is the only one in the Yearbook that provides figures for this date). See Table No. 1.

156. In orderly urban planning, the capacity is calculated as a factor of the area's potential and its population's present and future needs.



housing units is assigned to the area earmarked for the Jewish population.

The disparity is especially glaring when Palestinian neighborhoods are compared to adjacent Jewish areas. For example, the area of Plan No. 2302a, for the neighborhoods of Sur Baher and Umm Tuba, which is still not approved, is 3.6 km<sup>2</sup>. The potential housing capacity there was fixed at 2,350 housing units, which means that the planned average density is six hundred housing units per km<sup>2</sup>. In contrast, the nearby Jewish neighborhood, Har Homah, is planned to cover an area of 1.85 km<sup>2</sup>, with a potential capacity of housing units fixed at 6,500 units. This means that the average density of housing units will be 3,500 units per km<sup>2</sup>. Thus the housing capacity in Har Homah will far outstrip that of its adjacent Palestinian neighborhood, even though the topography of Har Homah makes construction more difficult.

In the Jewish neighborhoods of East Jerusalem, the goal of planning strategy is to exhaust the capacity of the area. As Teddy Kollek told a meeting of the Municipal Council when it was discussing the building of the Pisgat Ze'ev neighborhood: "A maximum number of dwellings must be built. It is impossible to know exactly how many, but certainly between 9,000 and 12,000 apartments will go up there."<sup>157</sup> In some cases, the high density of building in the Jewish neighborhoods in East Jerusalem came at the expense of planning considerations relating to the quality of the environment and the surroundings.<sup>158</sup>

At a February, 1993 hearing of the Local Planning and Building Committee concerning the TPS for Sur Baher and Umm Tuba, committee member Israel Shulderman, referring to the low building percentages stipulated in the plan (between 15 and 50 percent), asked

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157. Minutes of Municipal Council meeting, 7 December 1980, Report 27, p. 9 (translated by **B'Tselem**).

158. For example, according to architect David Kroyanker, the 1968 *Jerusalem Master Plan*, which was adopted by the planning authorities as a guiding document for the city's development, determined that no more than 2,000 housing units should be built on the slopes of Nebi Samuel, and those in a rural style. Because of the site's strategic importance, the Housing Ministry wanted to put up a large urban neighborhood of 10,000 units. Fearing a negative reaction by the public, the ministry secretly drew up building plans and detailed architectural specifications for the area. The ministry's planning team objected to the scale of the building and to the principles that informed it. However, the plans were approved and the Ramot neighborhood was built. David Kroyanker, "City Faces," p. 45.



when it would become necessary to prepare an additional plan for the neighborhoods. In reply, Elinoar Barzaki, then the city engineer, stated:

There is a government decision to maintain the proportion between the Arab and Jewish populations in the city at 28 percent Arabs and 72 percent Jews. The only way to cope with that ratio is through the housing potential. The growth potential is defined on this basis, and the capacity is a function of that here as well.<sup>159</sup>

To which Avraham Kahillah, then-chairperson of the Local Planning and Building Committee and deputy mayor, added: "Without that limitation, there would be an addition of 2,000 units rather than 1,250."

It follows that housing capacity in Palestinian neighborhoods is not determined by the present and future needs of the population. Instead of basing the plans on the forecasted population growth, location, land costs, ownership and other criteria that apply in proper planning, planning is based solely on political considerations.

## **2. Reducing the boundaries of the plans**

As mentioned, only 14 percent of the total area of East Jerusalem is earmarked for the development of the Palestinian neighborhoods. Most of the planning schemes in those neighborhoods enable additional building only in already built-up areas, and not in the empty areas outside.

An examination of the purposes that were set in the TPS law shows that the plans for Palestinian neighborhoods are not really town planning schemes at all, but "demarcation plans." Their purpose is to grant legal validity to the prevention of building in most of the area of the Palestinian neighborhoods. In this aspect, the planning situation in Palestinian neighborhoods in Jerusalem is not much different from what architect Ze'ev Baran described of the town planning schemes in Palestinian villages in the West Bank. Those plans, he says,

are not town planning schemes, but demarcation schemes. They took aerial photographs, saw where there is a settled area and drew a line around it. In fact, they closed them in on paper. Beyond that line, building is forbidden. Naturally they left a few salients here and there, to meet specific needs, but no thorough

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159. Minutes of meeting of the Local Planning and Building Committee, 22 February 1993 (translated by B'Tselem).

survey or study was ever made of the kind that is done in a true and detailed plan. Villages which should have had a few thousand dunams in their TPS were allocated a few hundred.<sup>160</sup>

The majority of the land reserves on which Palestinians could build was removed from the plans, or, alternatively, shaded green on the accompanying map. A green area on a TPS is intended to preserve the quality of the environment. However, an analysis of both the use made over the years by the Israeli authorities of the green areas and of municipality documents show that the "greening" of areas on the town planning schemes for the Palestinian neighborhoods is no more than the cynical exploitation of a planning consideration. It is in fact intended to deprive the Palestinians of the right to build on their land, and to keep these areas in reserve for building earmarked for the Jewish population.<sup>161</sup>

This strategy was employed for considerable parts of the unbuilt areas in East Jerusalem. The 1975 Town Planning Scheme for Jerusalem, which, in Kollek's view, gives expression to Israel's control of every part of the city and determines principles for the city's continued

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160. Quoted in the study by Malki Drori on the residential building situation for the Arab population in Judea and Samaria, under the title "Catastrophe," published in *Miunim*, Building Sector Monthly (in Hebrew), 1993, p. 26.

161. According to Sarah Kaminker, the covert purpose of shading extensive areas in Palestinian neighborhoods in green was disclosed by Teddy Kollek in a meeting of the municipality's Finance Committee at which resources were diverted to build a new Jewish neighborhood called Shu'afat Ridge: "When we objected to the loss of 2,261 dunams of open area, Mr. Kollek noted that the primary purpose of defining Shu'afat Ridge as a green area was to prevent Arab building [there] until the time was ripe to build a new Jewish neighborhood." Kaminker, *Planning and Housing Issues in East Jerusalem*, p. 15.

Shading the areas in green as a means used by Israel to obtain spatial control is not unique to East Jerusalem. According to Meron Benvenisti, the identical tactic is employed in the West Bank: "The classification of land use in the West Bank according to its actual function (agriculture, built-up areas, nature reserves, roads, etc.) does not exhaust the issue, since land usages are perceived to follow from the fact of national control. In the dual system that prevails in the West Bank, the main test does not find expression in the use of the land, but in the identity of the user. Defining the use of the land is made part of the national struggle for control of the region. In the special context of the West Bank, the meaning of the classification 'rocky land unfit for cultivation' is 'land that can be declared state land and which therefore belongs to the Israeli nation.' Declaration of a 'nature reserve' means removing the area from Arab usage and transferring it to the responsibility of the Nature Reserves Authority 'to prevent uncontrolled Arab development.'" *The West Bank Handbook: Settlements, State and Society* (Jerusalem: Cana, 1987), p. 142.

unification<sup>162</sup> – states that the Jerusalem Municipality has decided that one of the principles of the city's development is to keep in reserve as large an area as possible from which it will someday be feasible to select areas for development:

That principle finds expression mainly in the following points:  
allocation of extensive building reserves south of Sur Baher, west of the Shu'afat-Bet Hanina built-up bloc, around Atarot airport and between French Hill and Neve Ya'aqov.<sup>163</sup>

In accordance with that decision, most of the areas in question were shaded in green. However, their planning status and relevant municipal documents indicate that these areas serve now, or will serve, the needs of the Jewish population. South of Sur Baher, "Har Homah" is planned.<sup>164</sup> Large tracts of the land between French Hill and Neve Ya'aqov were expropriated in 1980, and the Pisgat Ze'ev neighborhood was built on them.<sup>165</sup>

As noted, statements by Mayor Ehud Olmert indicate that plans exist to establish additional Jewish neighborhoods in this area in order to create Jewish continuity between Neve Ya'aqov and French Hill.<sup>166</sup> The area west of the built-up Bet Hanina-Shu'afat bloc – the largest land reserve of the Palestinian population in Jerusalem – also is planned as a reserve for the benefit of the city's Jewish residents.<sup>167</sup>

The practical implication of this policy relates to the type of building in the Palestinian neighborhoods. Most of the building there, particularly in rural areas, is done for the builder's own needs and for family members. The land market in these neighborhoods is based on a tradition of inheritance, where the land is divided among the sons. In contrast, in the Jewish neighborhoods there is a fluid housing market based on

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162. See above, page 49.

163. *Local Town Planning Scheme for Jerusalem – 1975: Explanatory Remarks for the Discussion by the District Planning and Building Committee* (by Yosef Schweid), p. 3 (translated by **B'Tselem**).

164. Recently, after the High Court of Justice rejected the petition against land expropriations at Har Homah, the Local Planning and Building Committee decided to build a Jewish neighborhood there. See the report and decisions of the subcommittee, 1 February 1995, p. 15.

165. Concerning the decision to designate that green area as a Jewish neighborhood, see Meron Benvenisti, *Jerusalem: A Study of a Polarized Society* (West Bank Data Base Project, 1983), pp. 77-78.

166. See above, page 51.

167. See below, page 86-87.

supply and demand.<sup>168</sup> The planning authorities ignore the difficulties raised by the land market in Palestinian neighborhoods. Shading extensive areas in green creates a situation in which numerous families are unable to meet their housing needs or to build on land which they lawfully own.

### 3. Building percentages

Besides substantially reducing the area available for building, town planning schemes in Palestinian neighborhoods fix building percentages at levels far lower than those set for the Jewish neighborhoods.<sup>169</sup> Areas of Palestinian building in East Jerusalem are allocated low percentages of 10-50 percent in one or two stories only. By contrast, building percentages in the Jewish areas can reach 200 percent and eight stories.

This blatant discrimination is particularly striking when comparing the plans for adjacent neighborhoods. A plan for building a Jewish neighborhood in the heart of the Palestinian Ras el-Ammud neighborhood, which was approved by the Local Committee (but not yet by the District Committee) allows for a building percentage of 112 percent and four stories. Yet the plan for the Palestinians in Ras el-Ammud permits 50 percent, in two stories.<sup>170</sup>

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168. A traditional land market based on inheritance is also found in many Palestinian villages inside Israel. See Khamaiseh, *Planning and Housing among Arabs in Israel*, p. 109. Teddy Kollek explained the distress in housing among Palestinians as basically resulting from the traditional land market attitude: "Here and there one finds severe housing distress [in the Arab sector]. I think that in the past year much has been done to overcome this... There is another problem that no one can solve. The cultural difference. When an Arab receives [land], he has a plot and he wants to build, he will build a house, and when his son marries he will add a floor or a wing and when his daughter marries he will add another one, so that many permits that were granted were only partially exploited. Naturally, we will not change this. So there is less building than there are permits. I propose that we leave it at that." Minutes of Municipal Council meeting, 5 March 1993, Report 65, p. 18 (translated by B'Tselem).

169. Residential zones in the city are divided into seven types according to the building percentages in TPS No. 62, approved in 1959, which covers the entire area of the western part of the city within the Green Line. The regulations of the town planning schemes for the Palestinian neighborhoods in East Jerusalem noted that the building percentages are based on the aforementioned classification.

170. Kaminker, *Planning and Housing Issues in East Jerusalem*, p. 14.

The planning authorities justify this policy by saying that small, low houses suit the rural character of the Palestinian neighborhoods and the private building that prevails in them.<sup>171</sup> However, an examination of municipal documents shows that this is only a cloak for political considerations irrelevant to planning or sociological logic. Their source, again, lies in the government's policy of preserving the "demographic balance."<sup>172</sup>

In addition, it is not accurate to say that Palestinian neighborhoods have a rural character. Over the past thirty years, the Palestinians have undergone urbanization; many Palestinians who were born in "rural" neighborhoods have moved to urban areas either within the city's municipal boundaries (such as Bet Hanina and Shu'afat) or outside Jerusalem (such as a-Ram, al-'Azariyya, and the like).

If the true motive for limiting building percentages is to preserve the neighborhoods' rural character, it is not clear how this is possible when distinctly urban Jewish neighborhoods are being built all around the Palestinians. Bet Safafa, for example, is surrounded by Jewish urban neighborhoods, such as Patt and Gilo. Moreover, if the idea is to ensure a rural atmosphere, why have the designated building areas for the Palestinians been reduced to a minimum? After all, rural building is usually dispersed over a wide area.

When the size of the area for building is determined, the Palestinian neighborhoods are considered urban areas and therefore the residential zone is reduced. But in setting building percentages, the Palestinian neighborhoods are considered rural areas, and the percentages are, therefore, kept low. This combination of two contradictory principles shows that rather than being guided by planning considerations, the planning policy in East Jerusalem is based on political considerations intended to ensure demographic superiority and spatial control.

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171. See, *Local Town Planning Scheme for Jerusalem - 1978*, p. 63.

172. For an example, see above, p. 79.

## **E. TPS PLAN FOR BET HANINA AND SHU'AFAT**

Whenever the housing shortage of Palestinians becomes a matter of public interest, the TPS for the neighborhoods Bet Hanina and Shu'afat is mentioned as a solution. These neighborhoods have large tracts of land suitable for urban development, and for many years, Palestinians have moved there because of more severe housing problems in other areas of the city.<sup>173</sup>

In the early 1980's, the planning authorities began to prepare a TPS for the two neighborhoods (TPS 3000). The original plan was cancelled. TPS 3000a, which followed in its stead, was also cancelled. Finally, in 1991, TPS 3000b was approved. This plan stipulates that building permits will be issued only after detailed plans are approved. Three detailed plans are currently being prepared for the area, and have yet to be approved.<sup>174</sup>

The changes that have occurred over the years in the TPS for North Jerusalem confirm that instead of solving the Palestinian housing shortage problem, the planning authorities use various planning means to restrict development in Palestinian neighborhoods.

### **1. Setting housing capacity according to the "demographic balance"**

The initial TPS planned for this area (TPS 3000) called for 18,000 new housing units. Amir Cheshin, who served until recently as advisor on Arab affairs to the mayor of Jerusalem, stated that "the city prepared the plan according to objective demographic findings and calculations."<sup>175</sup> The District Planning and Building Committee rejected

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173. Analysis of the data concerning intraurban migration shows that the greatest net migration among Palestinian neighborhoods is into Bet Hanina and Shu'afat. See, Sarah Hershkowitz, *Major Processes and Trends in the City's Development* (in Hebrew), Unit for Strategic Analysis, Office of the Director General, Jerusalem Municipality, 1992, p. 16.

174. TPS 3456a (Shu'afat), TPS 3457a (central Bet Hanina), and TPS 3458a (north Bet Hanina). As of May, 1995, the first plan was being delayed because of objections, while the two others await the signature of the Minister of the Interior in order to become valid.

175. Cheshin, "East Jerusalem - Policy vs. Reality," p. 182 (translated by B'Tselem).



the plan on the grounds that the proposed scope of residential building was too large.

The Jerusalem Municipality then prepared TPS 3000a, which called for only 10,000 housing units. The chairperson of the District Planning and Building Committee, Eli Suissa, rejected this plan on the same grounds, and did not bring it before the committee for discussion. Finally, in 1991, the third plan (TPS 3000b), which calls for 7,500 housing units, was approved.

Documents of the Ministry of Building and Housing and the Jerusalem Municipality show that the considerations that led to the reduction in the number of housing units were political and resulted from a fear that the "demographic balance" would be breached. Jerusalem councillor Israel Shulderman admitted this: "We must say that during the past decade, Israeli governments have, for political reasons, limited the plan to 7,500 housing units."<sup>176</sup>

The Ministry of Building and Housing, in a document of 4 June 1985 entitled *Demographic Balance in Jerusalem – Town Planning Scheme 3000, North Jerusalem*, states that the capacity of housing units set in this plan raises "the fear that it grossly violates the demographic balance."

The same concern was mentioned by Amnon Niev, then the city engineer, when he presented, in August of 1987, the second TPS (3000a) to the Local Planning and Building Committee:

This plan was passed by the committees following a dispute with the Housing Ministry about the capacities. It returned for a rehearing. There are currently 4,000 housing units, and the dispute is over an additional 22,000.<sup>177</sup> The housing and interior ministries objected because of the danger that the demographic balance in Jerusalem would be breached. In the meantime, it has not been possible to allow the Arabs to build.<sup>178</sup>

The restriction on capacity of housing units in this plan increases the housing shortage for all of Jerusalem's Palestinians, not only for residents of Bet Hanina and Shu'afat, because the planning authorities determined that these neighborhoods have, as previously mentioned, the primary land potential for building for the Palestinian population.

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176. Minutes of Jerusalem Municipal Council meeting, 29 June 1992, Report 52, p. 23 (translated by **B'Tselem**).

177. This figure is apparently wrong, the dispute being over 18,000 additional housing units, with the total being 22,000.

178. Jerusalem Municipality, *Local Committee for Planning and Building, Hearing Form on Deposition of City Planning Plan* (TPS 3000a), 17 August 1987, p. 8 (translated by **B'Tselem**).

## 2. Reduction in the plan's area

The area encompassed by the plan was substantially reduced over the years. The first plan allocated some 14.3 km<sup>2</sup> to the two neighborhoods.<sup>179</sup> The second plan reduced the area to some 8 km<sup>2</sup>,<sup>180</sup> which was approved in the final plan.<sup>181</sup>

Then-deputy mayor and chairperson of the Local Planning and Building Committee, Avraham Kahillah, suggested the motive for reducing the area:

We ultimately cut from 16,000 to 10,000 housing units, and after reaching agreement with the Interior Ministry, the Housing Ministry came and said no more than 7,500 housing units. But the Housing Ministry said something more. They said – you won't build the 7,500 units on all this area, from north to south in this direction, but you will retain, between Atarot and here, many hundreds of dunams for planning the wadi. Why? Those who understand will understand. We may want to enlarge Atarot for industry, maybe we'll build another Jewish neighborhood from the direction of the Ramallah Road.

In effect the plan was dictated, approved, and planned not only to reduce the housing units, but also to reduce the area by many hundreds of dunams... and then... we withdrew from the westerly direction of the neighborhood and held back hundreds of dunams, which are currently marked in white or green for future planning.<sup>182</sup>

Those who reduced the plan's area ignored the fact that the Bet Hanina and Shu'afat neighborhoods developed over the years in a westerly direction. For this reason, architect Ze'ev Baran, planner of one of the three detailed plans, wanted to build in part of the western area, and submitted a plan to the Residential and Industrial Building Committee (RIBC). The RIBC rejected the plan, demanding such residential construction to the west be curtailed to preserve it for future development for the Jewish population.<sup>183</sup> In the end, the area west of the plan was designated a green area:

The significant change requested by the RIBC is the portion of building to the west. The RIBC said, "put it in further towards

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179. See Articles of TPS 3000 for North Jerusalem, May, 1981.

180. See Articles of TPS 3000a for North Jerusalem, 1987.

181. See Articles of TPS 3000b for North Jerusalem, 1991.

182. Minutes of Jerusalem Municipal Council meeting, 29 June 1962, Report 56, p. 26 (translated by **B'Tselem**).

183. See the comments of Avraham Kahillah, Jerusalem Municipal Council meeting, 29 June 1992, p. 27.



the east... primarily in the northern and central part, where Ze'ev Baran built, spreading westward..." They said to him, "... You slipped into the green area about which I spoke at length..."<sup>184</sup>

Only a small section was finally allocated for Palestinian construction, on which 7,500 housing units could be built, while the Pisgat Ze'ev neighborhood and Road no. 1 were built alongside it, and the area on the other side was preserved for future development.

### **3. Delay in preparation of the TPS**

Preparation of the plan for Bet Hanina and Shu'afat began more than fifteen years ago, but detailed plans, which would allow the issuing of building permits, have not yet been approved. The official correspondence related to the plan shows that the delay was at least partly intentional.

In a letter approving changes in the development plan for the center of East Jerusalem, dated 22 September 1986, then-Interior Minister Yitzhak Peretz wrote to the chairperson of the District Committee for Planning and Building, Raphael Levy:

In addition, the approvals for the plan were granted in light of the announcement of Jerusalem's mayor and the city's director general concerning a general examination of the plans for the area of North Jerusalem [TPS 3000a], and in light of your announcement that further handling of the planning procedures for the plans related to North Jerusalem would be postponed until preparation and approval of a comprehensive TPS for that area, one that would implement the government's decisions concerning populating the city, would set the capacity and density of the various residential areas, and would be directed by the relevant ministries.

On 15 May 1996, three-and-a-half years later, Eli Suissa, chairperson of the Jerusalem District Planning and Building Committee, related to this letter when he wrote to the city engineer, Ehud Tayar:

The Minister of the Interior wrote this letter after the mayor and the chairperson of the District Committee undertook to deposit this plan and to delay handling of plans concerning North Jerusalem.

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184. *Ibid.* (translated by B'Tselem).

#### 4. Preparation of an unrealizable plan

Although senior officials of both the municipality and the government repeatedly declare that the TPS for North Jerusalem will solve the housing shortage of the Palestinian population, the planning authorities are aware that many years will pass before the existing plan can be implemented. At a hearing of the Local Planning and Building Committee, in August of 1987, for the approval of TPS 3000a, Avraham Kahillah stated:

Once again, what we have is a framework, rather than a detailed plan. As far as the original plan, involving 18,000 housing units, is concerned, some persons thought that the building would be done immediately, whereas the plans dealt with planning for the next 50-100 years.<sup>185</sup>

In effect, the planning authorities prepared the plan so that it would be almost impossible to implement. The minutes of the meeting concerning *North Jerusalem, TPS 3000a*, held on 21 March 1988, in which senior planning officials from various government ministries and the Jerusalem Municipality participated, confirm this contention. The subject of the hearing was the municipality's amended proposal to enable the construction of 10,000 housing units. The Interior Ministry wanted to lower that number by 2,500. The city engineer, architect Amnon Niev, objected and explained that the construction of 10,000 housing units would not breach the demographic balance.

... [I do not] believe that all of the plans for the Arab sector presently in the "pipeline" will be implemented. Even 10,000 units is doubtful and utopian because of reparcellation.

The minutes then state:

Architect Niev is willing to validate detailed plans in stages. He is not willing to validate Town Planning Scheme 3000a, which should only serve as a basis. The detailed plans will delineate the number of housing units.

At the end, the document states:

After those who were invited left, and in the presence of the representatives of the Interior Ministry:

Moshe Cohen (Jerusalem District Planner): The decision must be in stages: The city will delineate no more than X housing units, and in stages.

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185. *Form for Deliberations on Deposit of Town Planning Scheme (TPS 3000a)*, p. 8 (translated by B'Tselem).

Yehonatan Golani (Planning Administration, Interior Ministry):  
Favors only an addition of 6,000 housing units in North  
Jerusalem for the Arab sector.<sup>186</sup>

As mentioned, the Jerusalem District Planner's proposal was ultimately adopted. The proposal combined the Interior Ministry's proposal (to reduce planned construction from 10,000 housing units to 7,500) with the city engineer's proposal to validate the detailed plans in stages, thereby "helping" the plan to be utopian.<sup>187</sup>

The failure to prepare reparcellation plans is one of the principal means of delaying the plan's implementation. A local TPS determines, *inter alia*, the various land uses (residential, public, industrial and commercial areas, etc.). In order to establish public institutions (like schools, medical clinics, and religious institutions), some of the land must be expropriated and set aside for public purposes. Land may be expropriated without paying compensation if the authorities expropriate up to 40 percent of one individual's ownership, the reason being to prevent major harm to the landowners' property rights. The municipality determined that reparcellation must be made in the area which the TPS is intended to cover. Within the reparcellation, ownership of the land would be rearranged so that no more than 40 percent of the land would be expropriated from any one person. Since the city does not want to pay compensation, and generally refrains, therefore, from expropriating more than 40 percent, reparcellation is necessary, and so long as such a plan is not prepared, building permits are not issued in these areas.

The city delays preparation of reparcellation plans, and the result of this delay is nonimplementation of the TPS.<sup>188</sup>

Landowners may, by law, prepare a reparcellation by themselves; however, preparing a reparcellation plan is a lengthy, complex, and costly process. Ultimately, it is practically impossible because it requires the consent of all the landowners in the area and the sharing of the

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186. Ministry of the Interior, Planning Administration, summary of a meeting held on 21 March 1988 concerning *North Jerusalem, TPS 3000a*, 25 March 1988. Recorded by Shlomit Sha'ar (translated by **B'Tselem**).

187. The Articles of TPS 3458a provide: "Granting of building permits will be made in stages to ensure execution of the urban infrastructure simultaneously with development of the areas intended for construction" (par. 35a). An identical paragraph is found in the Articles of TPS 3457a, which is one of the three detailed plans of TPS 3000b.

188. The situation in the rest of the West Bank is identical. See Anthony Coon, *Town Planning under Military Occupation: An Examination of the Law and Practice of Town Planning in the Occupied West Bank* (a report prepared for 'Al-Haq, the West Bank affiliate of the International Commission of Jurists) (Aldershot, England: Dartmouth, 1992), p. 108.

costs of planning for the area, including infrastructure planning, which is generally covered by the public authority. Consequently, in certain areas, the process of reparcellation continues for ten years or more.

Additional reasons the plan cannot be implemented are that it does not take into consideration projected Palestinian population growth, ignores the pattern of existing building and landownership, and overlooks existing development trends in the area. Bet Hanina and Shu'afat are suburban in character; most of the buildings are single and double-family dwellings of up to two stories, with surrounding land. Examination of the building patterns in the area shows that in most cases in the past where the city allowed construction of four or six housing units per dunam, most residents only built two or three housing units per dunam.

Another relevant factor is that a substantial portion of the planned construction is not for building on empty lots, but for adding additional stories to existing structures. Since the existing structures were planned as one-story or two-story buildings, an addition requires expensive structural reinforcement, or demolition of the existing building and rebuilding from scratch.

The nature of land ownership, the land reserves, the restrictions on expanding municipal land areas on current capacity potential, and future growth of the community are acceptable considerations in preparing a TPS.<sup>189</sup>

Not only does such a plan not meet the population's needs, it further restricts the already limited minimal possibility of receiving residential building permits. The reason is that following approval of detailed plans, under paragraph 78 of the Planning and Building Law, additional building permits may not be granted to individuals.

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189. For example, the *Plan for the Geographic Distribution of an Israeli Population of Five Million* states the necessity of conducting an "analysis of the potential of the real and nominal capacity of the residential areas included in the approved or proposed city building plans, examination of the nature of land ownership, land reserves, and restrictions on expansion of municipal areas, and their effect on the growth of the community in the future." Vol. 2, p. 7 (translated by **B'Tselem**).

## Summary

Numerous planners estimate that as a result of these difficulties, the plan's real capacity is significantly less than its nominal capacity.<sup>190</sup> Consequently, not even the 7,500 housing units supposedly planned can be constructed. Ze'ev Baran, the architect who prepared one of the three detailed plans for the Bet Hanina and Shu'afat neighborhoods, believes that under the proposed plan, only some 20 percent to 40 percent of the building potential can be realized from the three plans, i.e., from all of the plans together, only some 2,000-3,000 housing units can be built, rather than the 7,500 housing units provided for in the plan.<sup>191</sup>

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190. Nominal capacity must be distinguished from real capacity. Nominal capacity is the number of housing units planned for construction under the plan. Real capacity is the number of housing units among those planned that can actually be built where the type of construction, pattern of ownership, etc. are taken into account.

191. Ze'ev Baran, *The Arab Sector - Planning and Building* (in Hebrew) (unpublished).

## F. TESTIMONIES OF EAST JERUSALEM RESIDENTS

This section presents the testimony of Palestinian residents of East Jerusalem who were harmed by the city's planning and building policy, which prevented them, through the means described in the previous chapters, from building homes on their land, and forced them to live in harsh and overcrowded housing conditions. Some of the residents sought to circumvent these restrictions by building without permits. In many instances, their attempts resulted in large fines and/or the destruction of their homes. These testimonies are not aberrations, but rather illustrations of a widespread phenomenon.

***Testimony of 'Ataf Muhammad Salah 'Abid, married with three children, resident of Isawiya (the testimony was given to B'Tselem fieldworker Fuad Abu-Hamed on 4 August 1994)***

I am unemployed. I lived with my family in the three-room house of my brother, Na'if Muhammad Salah 'Abid. My family and I, a total of six persons, lived in one room of 20 m<sup>2</sup>. In another room, 50 m<sup>2</sup>, my brother and his family, eleven persons, lived.

In 1987, I built two rooms on property that my father had left me. I did not have a building permit, and the city people came and tore it down. There was no town planning scheme at the time. Then, in July of 1993 (after approval of the TPS), we started to build again. I requested a building permit from the city, but they denied the application, claiming that the property is within the green areas, and designated, therefore, for parks and the like.

In August, 1993, Yossi Tsarfati, who is in charge of planning for East Jerusalem for the city, came and requested that I finish the cementing and then stop the construction. The house was then at the frame stage. The following month I received a Demolition Order from the city, and two days later, they came and demolished the house. There was only a frame for a three-room house with conveniences, a total of 80 m<sup>2</sup>. The cost of construction until then was NIS 60,000. The land was not expropriated.

Another brother, Hadar, was living in Jordan. He married there and recently returned to the village with his wife and child, and they are also living with us now. He works as a teacher in a private school in the village, and receives a salary of only NIS 1,200 per month. So he cannot rent an apartment for himself and his family.

In addition to the demolition, they also expropriated fifty dunams of our land alongside the Ma'ale Adumim road by Isawiya. The land was expropriated to pave the road.

Fuad Abu-Hamed adds: In the area surrounding the house that had been demolished are fourteen homes. The owners of those homes told me that they had been built prior to 1967. Since then, the city issued no more building permits for this area.

***Testimony of Daud Muhammad 'Ali Abu-Kaf, aged 42, married with six children, resident of Sur Baher (the testimony was given to Fuad Abu-Hamed on 27 July 1994)***

I have worked as a cook at the Rimon Cafe [in West Jerusalem] for twenty years. Before I began building my house, I lived with my father; we were ten people in two rooms. In 1982, I applied for a permit to build next to my parents, but I was refused. During the next five years, I submitted more applications, but all were denied.

In 1987, I started to build, without a permit, on property my father owns in Dir el-Ammud, east of Sur Baher. This area is part of Jerusalem.

I started to build two apartments, totalling 250 m<sup>2</sup>. About the time I was completing the first apartment, Ministry of Interior inspectors came to the site and gave me an order demanding that I demolish the house within twenty-four hours. I could go to a lawyer to appeal the order.

I took the whole file to attorney Andre Rosenthal, and he appealed the demolition order at the court handling municipal matters. The appeal was denied, but I continued to renovate the house, and then I moved in.

Then I appealed to the Magistrate's Court, but my appeal was denied and the demolition order approved. The head of the Planning and Building Committee at the time, Eliahu Suissa, reached an agreement with my lawyer that I would be fined NIS 13,000 and the house would not be demolished totally. That is, a part would be demolished, but I would be left with one apartment.

Then the committee members changed, and the new committee did not approve the agreement. They went to the High Court of Justice, and the court ruled, on 10 April 1992, to demolish the house immediately. Four months later, on 23 August 1992, the house was demolished. During that four-month period, they came to my house four times, demanding that I vacate. I paid fines of NIS 7,500 before it was demolished, and I had spent NIS 450,000 on building the house.

I am currently living with my brother in two rooms that he lets me use. He and his family live in the three rooms on the floor above me.



***Testimony of Yusef Hussein 'Ali Abu-Hamed, aged 37, resident of Sur Baher; the house that was demolished is located in the Razail neighborhood in the Jebel Mukabbar neighborhood (the testimony was given to Fuad Abu-Hamed on 4 October 1994)***

I am a newspaperman. I married in 1982 and had no place to live with my wife. In the beginning, I lived on the first floor of my brother's house, which contains a room and kitchen, totalling 60 m<sup>2</sup>. After we had two children, I couldn't stay because it did not meet our needs. After four very hard years, I rented, in 1986, a three-room apartment, containing 120 m<sup>2</sup>, for which I pay NIS 500 per month and city taxes of NIS 150.

I own five plots within the boundaries of Jerusalem. I cannot build on any of them, and they do not give me the permits because there is no town planning scheme for those areas.

Twice I applied for a building permit, in 1977 and 1980, and in neither instance did I even get a reply. I began to build on 20 July 1994.

A jeep of the city came to the site on 27 July 1994. A city employee got out and gave the workers an order demanding that I stop work on the site. I was not there at the time. The workers had been given a document, but they did not give it to me. The city vehicle was there for about five minutes, somebody took pictures of the building, and did not return again. The workers told me all this after they came to demolish it, and they said that the paper they had received was an order to stop construction. Other than this paper, I received no Demolition Order.

On 12 September 1994, at 10:10 a.m., seven Border Police and Police vehicles and a tractor arrived at the site. I did not see any city or Interior Ministry vehicles. One of the vehicles I recognized as belonging to the GSS [General Security Service]. One of the GSS people, whom I knew, told me they are demolishing the house. I asked him if there was a court order or Demolition Order, and he said it wasn't necessary.

They demolished the house the same day. The construction work had almost ended; it was 165 m<sup>2</sup>. I had spent approximately NIS 100,000 to build it.

***Testimony of Sahar Taha Muhammad 'Afana, resident of Sur Baher, married with ten children (the testimony was given to Fuad Abu-Hamed on 24 August 1994)***

I am a businessman in Sur Baher, Jerusalem. The house we live in is four rooms on one floor, a total of 150 m<sup>2</sup>. Two families live in the house; my family of twelve persons, and my brother and his family, another thirteen persons.



Three years ago, I applied for a permit to build on land we own, which lies in the area of al-Muntar, east of Sur Baher, within Jerusalem's boundaries, but the application was denied on the grounds that there is no town planning scheme covering this plot. The family owns other plots, but it is impossible to build on them because they are outside the town planning scheme of Sur Baher.

Due to the terrible housing congestion we found ourselves in, I decided to build without a permit. I built on our plot [the same plot for which applications had been submitted three years earlier]. The area of the house I built was 200 m<sup>2</sup>, and was intended for me and my family [twelve persons].

After I completed building the frame, I started on the roof, when a jeep with people from the Interior Ministry arrived. They gave me a Demolition Order, which ordered that the house be demolished within twenty-four hours. That was on 13 December 1993. I immediately contacted attorney Andre Rosenthal, and he obtained an order prohibiting the demolition. The order was apparently delayed in being issued, and the house was demolished on 14 December 1993. I had spent NIS 80,000 on building the house.

The authorities expropriated lots of land from my family, all of it in the area comprising the East Talpiyyot area today: in 1948, five dunams were expropriated, in 1970, some seven dunams were expropriated, and in 1978, some fifteen dunams were expropriated.

***Testimony of Hussein Muhammad Jamil Abu-Hamed,  
resident of the Razail neighborhood in Jebel Mukabbar,  
married with five children (the testimony was given to Fuad  
Abu-Hamed on 24 August 1994)***

I live in a one-floor house that I built with a permit in 1975. The house contains three rooms, totalling 120 m<sup>2</sup>. I am married and have five children: four sons and one daughter. The house is too small for my family since one of my son's (Nidal, aged 22) is getting married, and he has no place to live.

A year-and-a-half ago, I applied to the city for a permit to build another floor on my house. A month later, the city notified my engineer that the application had been denied because the town planning scheme had temporarily been frozen. For eighteen months I have been getting the same answer – I was told that the scheme is ready, and it only had to be signed by the relevant officials.

In 1987, three plots of land belonging to my family west of Sur Baher were expropriated, and they are now paving the railroad road. I have no alternative to solve my housing problem other than by building another floor on my old house.

In addition, the city built a sports facility five meters from the house, whose supporting wall is higher than the house, and we get no air. So I have to build another floor, so the house will be higher than the facility.

The distance between my house and East Talpiyyot is about 300 meters. There it is permitted to build up to eight floors. I am only allowed to build one.

***Testimony of Yusef Ahmad Abd Abu Ghanam, resident of Et-Tur, East Jerusalem (the testimony was given to Fuad Abu-Hamed on 31 January 1995)***

We were living in a three-room house, 116 m<sup>2</sup>, before I started to build the house. In those three rooms my father and mother, my three sisters, my wife and our six children lived, a total of thirteen persons.

We could not continue to live in such congested circumstances. I started to build a new house, of three floors, together with my two brothers. One of them has four children, and the other, two. We did not have a building permit. There are about twenty houses that were built in our area without permits. The house we built is located about twenty meters outside the village's town planning scheme. We own no other plot of land.

We started to build in August of 1992, and we finished building the frame on 25 October 1992. That same day, city representatives came to the site for the first time. They did not give an order to stop construction. Zion, who is the person in the Interior Ministry responsible for building, was in touch with me.

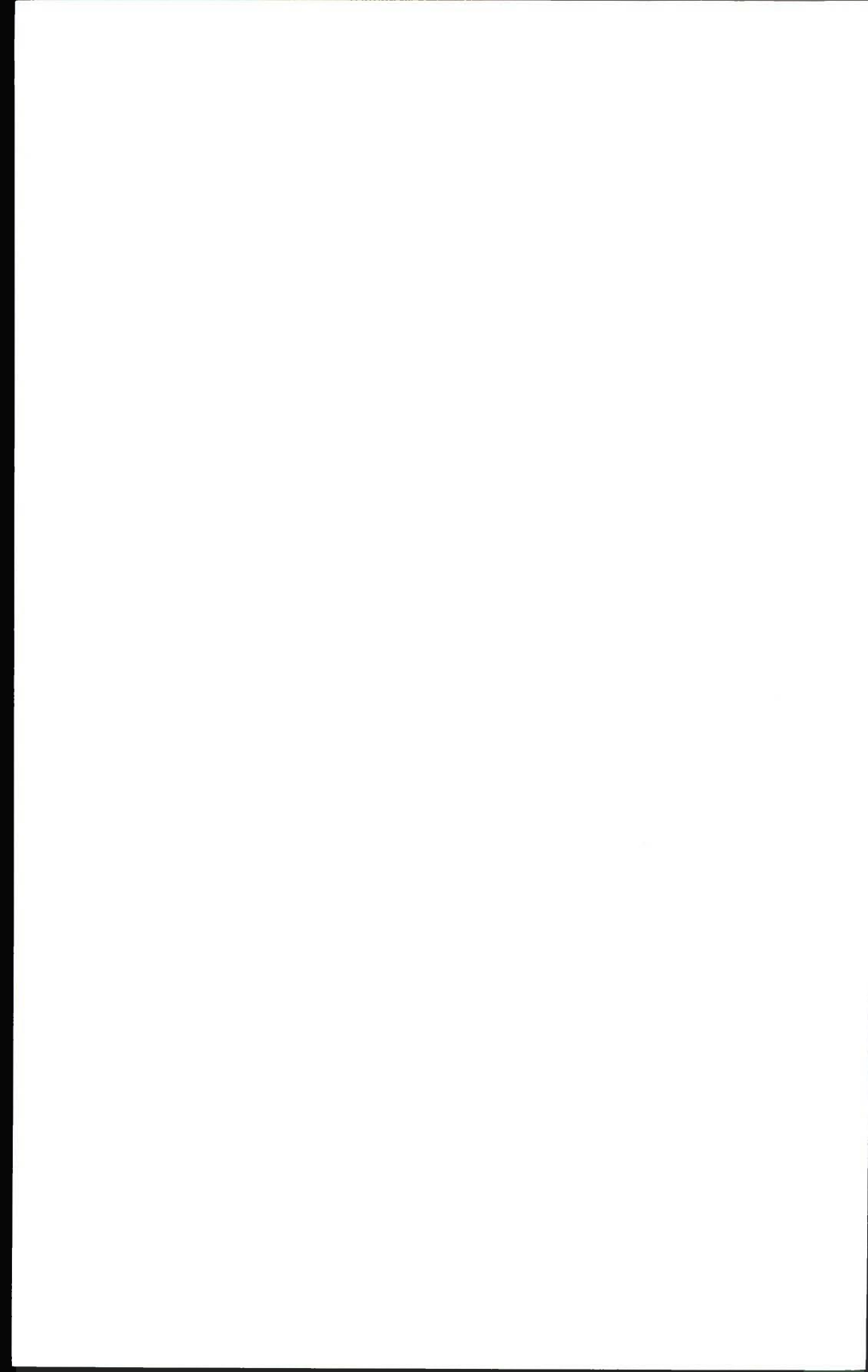
In January of 1993, they gave me a Demolition Order. My attorney, Yitzhak Cohen, appealed it, and I was given another month. My lawyer told me to live in the house. We started putting the finishing touches on the house, and each time we appealed the order and received another month. This continued for six months. During this period, I applied for a building permit, and we completed construction and moved in.

On 30 January 1995, they demolished the house. I did not receive any warning prior to the demolition. I was always in close contact with Zion, but he told me nothing. The city claims that they notified me about the demolition five days before it was torn down, but I did not receive any order.

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## **CONCLUSIONS AND RECOMMENDATIONS**

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## CONCLUSIONS

Since the annexation of East Jerusalem in 1967, the Israeli government has adopted a policy of systematic and deliberate discrimination against the Palestinian population in Jerusalem in all matters relating to land expropriation, planning, and building in East Jerusalem. Over the years, city planners and policymakers have had one central goal: to create a demographic and geographic reality that will frustrate any attempt to preempt Israeli sovereignty over East Jerusalem.

While promoting extensive building, investment, and settlement throughout the Jewish neighborhoods in East Jerusalem, the Israeli authorities, by their acts and omissions, have choked development and building for the Palestinian population, which is perceived as a "demographic threat" to Israeli control of the city.

A planning policy based on political-national considerations contravenes international law and fundamental principles of a democratic society, and leads to serious human rights violations. This policy is manifested by:

- a. blatant discrimination against Palestinian neighborhoods as regards planning, building, and development; and
- b. an extremely serious housing shortage among the Palestinian population in the city, which constitutes a clear violation of their right to housing.

The Israeli authorities illegitimately use all the legal and administrative means available to them to implement this policy. The means used include widespread land expropriation and use of town planning schemes to restrict building for the Palestinians.

The Israeli government's sweeping use of expropriation in East Jerusalem as a national-political tool, intended to serve only the Jewish population, totally disregards the housing shortage and basic urban needs of the city's Palestinians. The claim that the expropriations are intended to serve a salient public purpose is accurate only if the term "public" refers only to Jews, for whom it is justifiable to harm the property rights of Palestinians.

Planning policy for Palestinian neighborhoods in Jerusalem is an important element of the Israeli government's overall attempt to consolidate its territorial control over all parts of the city, and preserve the demographic primacy of the Jewish population. To achieve these goals, the government has employed two complementary planning

measures. On the one hand, for many years no town planning schemes were drafted for the Palestinian neighborhoods, or approval of existing plans was delayed. On the other hand, the authorities prepared town planning schemes which, instead of contributing to the development of these neighborhoods and easing the residents' housing shortage, served, in reality, as an additional means – legal and efficient – to limit development, reduce the areas designated for Palestinian building, and strengthen Jewish control in every part of the city.

The recent decisions of the Israeli government to establish the "Har Homah" Jewish neighborhood in East Jerusalem is a direct continuation of Israeli governmental policy in East Jerusalem since 1967.

## RECOMMENDATIONS<sup>92</sup>

As a first step to solving the housing shortage among Palestinians in Jerusalem, the Israeli authorities must begin to address systemically the needs of the Palestinian residents of the city in the manner they address the needs of the Jewish residents. The authorities must develop a comprehensive policy and the public must be informed about that policy. This policy must include preparing housing plans, evaluating the resources required to implement the plans, and setting areas of responsibility and a time framework to carry out the necessary actions. Establishing this policy requires consultation with all relevant parties, most importantly the Palestinian residents who currently lack suitable housing.

The government must adopt the same resoluteness for this population that it showed for twenty-eight years on behalf of the Jewish population in East Jerusalem. In the same manner that the authorities knew how to allocate land and resources, prepare town planning schemes, develop suitable infrastructure, carry out public construction, and grant permits for private construction in Jewish neighborhoods, they must now act vis-a-vis Palestinian neighborhoods in East Jerusalem.

The policymakers must take, *inter alia*, the following steps:

1. Establish a Palestinian Neighborhood Development Authority in East Jerusalem. This authority would be responsible for proposing plans and ensuring their implementation, and would maintain ongoing contact with the necessary persons involved in planning and building.
2. Revoke the decision that planning in Jerusalem protect the "demographic balance" between Palestinians and Jews.

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192. The recommendations presented below are directed to those currently setting policy in Jerusalem. They do not relate to the permanent status of Jerusalem. The future status will be determined in the framework of negotiations between Israel and the Palestinian Authority. **B'Tselem** maintains that this is the suitable framework to settle this matter, while ensuring the human rights of all persons involved. Until the final status of the city is determined, each action that may affect its future, including the recommendations of this report, must be taken in cooperation with the Palestinian Authority, and not as a unilateral act.

3. Review existing plans and adapt them to the population's needs. Those existing plans that have already been approved were based on political considerations and are intended to preserve the "demographic balance,"<sup>193</sup> and do not, therefore, meet the current and future needs of residents in Palestinian neighborhoods.
4. Increase the area designated for building for the Palestinian population. Most of the land reserves on which the Palestinians can build were removed from the plans, or, alternatively, were shaded green, where building is prohibited. Only a change of designation of the open areas and the construction of new neighborhoods on that land can provide solutions compatible with the scope of the Palestinian housing problem. For example:
  - The area west of Bet Hanina and Shu'afat (which constitutes the largest land reserve for the city's Palestinian population).
  - Broad expanses of land in the Arab-es-Sawahra neighborhood.
  - Land in the Ras el-Ammud neighborhood (bordering Abu-Dis).
  - Land between French Hill and Pisgat Ze'ev (which the authorities call Sha'ar Mizrah [East Gate]).
5. Designate state lands in East Jerusalem to meet the needs of the Palestinian population (housing, public institutions, etc.)
6. Stop building on expropriated lands. Annul the 1991 expropriation designated for building the Jewish neighborhood "Har Homah" or, alternatively, build a new Palestinian neighborhood on that land.
7. Raise building percentages. Increase the permitted percentage of built-up area in Palestinian neighborhoods.
8. Create a comprehensive plan. Prepare detailed town planning schemes for all the Palestinian neighborhoods, which, unlike those that have been prepared until now, will meet the needs of the Palestinian population.
9. Complete the land-settlement arrangement that the Jordanians had started in East Jerusalem.
10. Prepare reparcellation plans. Hasten preparation of the plans for reparcellation in Palestinian neighborhoods.
11. Allocate resources for infrastructure. Earmark resources for Palestinian neighborhoods to build infrastructure, such as roads, electricity, sewers, and public structures.

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193. See pp. 45-48 and pp. 77-83.



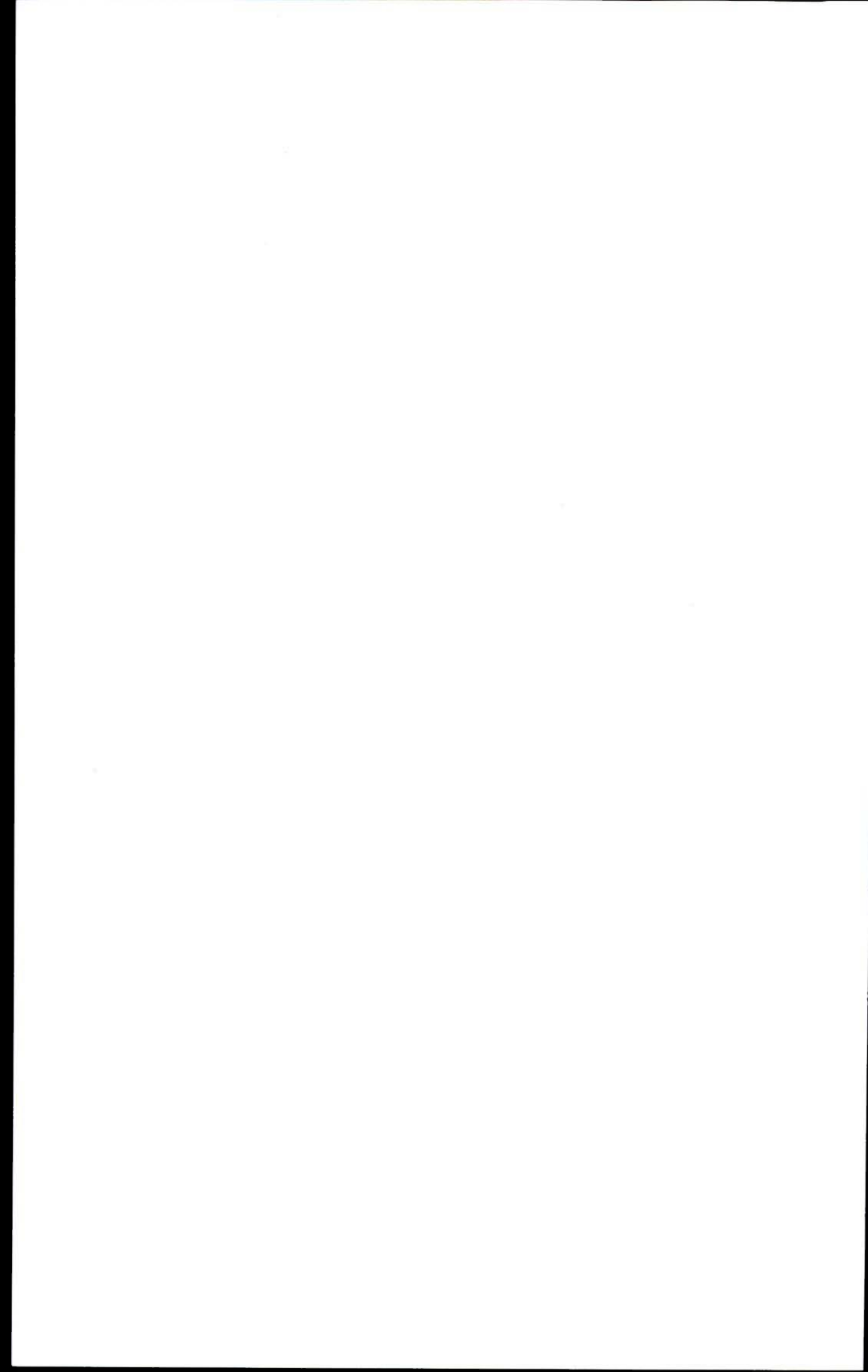
12. Grant building permits. In the context of the expansion of the town planning schemes, grant retroactive building permits for structures built without a permit.
13. Compensate Palestinians whose homes were demolished. The widespread phenomenon of Palestinians building without permits occurred because the authorities made every effort to prevent them from building legally. The authorities must, therefore, compensate Palestinians whose homes were demolished because they were built without a building permit, or, alternatively, provide them with favorable terms for purchasing dwellings to be built in the Palestinian neighborhoods.
14. Cease building for Jews in existing neighborhoods in East Jerusalem and refrain from building new Jewish neighborhoods, as such actions violate international law.



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## **APPENDIXES**

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# Appendix No. 1

## Population of Jerusalem, by Nationality, in Selected Years<sup>194</sup>

	In Thousands			By Percentage		
Year	Total	Jews	Non-Jews	Total	Jews	Non-Jews
1967	266.3	197.7	68.6	100.0	74.2	25.8
1970	291.7	215.5	76.2	100.0	73.9	26.1
1975	355.5	259.4	96.1	100.0	73.0	27.0
1980	407.1	292.3	114.8	100.0	71.8	28.2
1987	482.6	346.1	136.5	100.0	71.7	28.3
1988	493.5	353.9	139.6	100.0	71.7	28.3
1989	504.1	361.5	142.6	100.0	71.7	28.3
1990	524.5	378.2	146.3	100.0	72.1	27.9
1991	544.2	392.8	151.3	100.0	72.2	27.8
1992	556.5	401.0	155.5	100.0	72.1	27.9
1993	567.7	406.8	160.9	100.0	71.7	28.3

194. *Jerusalem Statistical Yearbook 1993*, Table II/3.

## Appendix No. 2

### Existing Housing Units in East Jerusalem by Nationality and Neighborhood, February, 1995<sup>195</sup>

Neighborhoods	Total Housing Units
<b>Jewish Neighborhoods</b>	<b>38,534</b>
Ramot Eshkol, Ma'alot Dafna, Sanhedriyya ha-Murhevet	4,321
Jewish Quarter	559
Ramot Allon	7,794
Neve Ya'aqov	4,657
Pisgat Ze'ev	7,438
Giv'at Shappira, Mount Scopus	2,058
East Talpiyyot	4,223
Gilo	7,484
<b>Palestinian Neighborhoods</b>	<b>21,490</b>
Christian Quarter	980
Armenian Quarter	567
Muslim Quarter	2,505
Kafr Aqb, Atarot	1,015
Bet Hanina	2,385
Shu'afat	2,227
Isawiya	625

195. *Jerusalem Statistical Yearbook 1993*, Table X/19.

<b>Neighborhoods</b>	<b>Total Housing Units</b>
Et-Tur (north), Mount of Olives	1,726
Wadi el-Joz	736
Sheikh Jarrakh	533
Nablus Road, Nahlat Shimon	186
Bab ez-Zahira, American Colony	407
Ophel Hill, Wadi Hilwe	82
Silwan	1,773
Ras el-Ammud	1,733
Abu Tor (east)	280
Arab es-Sawahra	11
Umm Leisun	1,487
Sur Baher, Umm Tuba	1,164
Bet Safafa (south), Sharafat	489
Bet Safafa (north)	579



## Appendix No. 3

### Response of the Jerusalem Municipality\*

Municipality of Jerusalem  
Spokesman's Office

13 June 1996

Mr. Eitan Felner  
B'Tselem – The Israeli Information Center  
for Human Rights in the Occupied Territories  
43 Emek Refaim Street  
Jerusalem 93141

Dear Sir:

Re: Your letter of 27 May 1996 Report of May, 1995 – "A Policy of Discrimination"

1. We received your aforementioned letter in early June, 1996, and I think that the short amount of time, until 15 June 1996, that you were "kind enough" to give us to respond is insufficient if you intended that we examine in detail the substance of each contention, particularly since we must contact officials who served under the previous mayor. For this reason, we are unable to respond to the report.
2. However, and notwithstanding what I mentioned above, all of Jerusalem lies within the territory of the State of Israel and is included within the local planning region of the Jerusalem Local Planning and Building Committee, and we reject your treatment of them in any other manner.
3. Contrary to your contentions, there is no policy of discrimination, and planning is based on planning considerations taken within the framework of the law, including the possibility of every person with an interest in land to appeal to the competent authorities, which action is indeed taken from time to time by parties who feel they have been harmed as aforementioned.

Sincerely,

Hagai Elias

Communications Advisor to the Mayor

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\* Translated by B'Tselem.

## Appendix No. 4

### Planning and Building in East Jerusalem – Updated Data

"Most of the planning and development of Jerusalem following the city's unification was intended to achieve political goals, primarily to ensure a Jewish majority in the city."

*Uri Ben Asher, city engineer, Jerusalem Municipality  
From the movie "Jerusalem: An Occupation Set in Stone?"*

A draft of this report was presented at a press conference in May, 1995. At that time, the Jerusalem Statistical Yearbook 1994/1995 had not yet been published, and consequently, some of the report's data were updated only to the end of 1993.

The following data are taken from the Jerusalem Statistical Yearbook 1994/1995. These data confirm and reinforce the report's findings concerning the policy of discrimination in East Jerusalem.

### Housing Construction

Since 1990, the gap in construction of housing units for Jews and Palestinians has widened:

- Of the 11,602 housing units whose construction was completed between 1990 and 1994, only 565 housing units, constituting 4.8 percent of the housing units built during that period, were built in Palestinian neighborhoods.
- Of the 2,233 housing units completed in 1994, only ninety-eight units, constituting 4.4 percent of all the housing units constructed that year, were built in Palestinian neighborhoods.

In November, 1995, the number of housing units in Jewish neighborhoods in East Jerusalem was almost twice as large as those in East Jerusalem's Palestinian neighborhoods: the number of Palestinian housing units totalled 22,746, while Jewish housing units numbered 39,174.

## **Housing Density**

As of 1994:

- Average housing density among Jews was 1.1 persons per room, while the average housing density among Palestinians was twice as high – 2.2 persons per room.
- Thirty percent of Palestinian households lived in housing density exceeding three persons per room, in contrast to only 1.7 percent for Jewish households.

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**B'Tselem's** work is made possible by the support of the following foundations:

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**B'TSELEM - The Israeli Information Center for Human Rights in the Occupied Territories** was established in 1989 by a diverse group of academics, attorneys, journalists, and public figures. It endeavors to educate the general public and policymakers about human rights violations in the Occupied Territories, and to press for policy changes in human rights issues.

B'TSELEM thoroughly scrutinizes all information it publishes. Fieldwork data and findings are cross-checked with relevant documents, official government sources, most notably the IDF Spokesperson, and information from other sources, among them Israeli and Palestinian human rights organizations.

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Despite the potential of ending military administration of the Occupied Territories offered by the signing of the Declaration of Principles in 1993, the necessity of safeguarding human rights remains. As the peace process progresses, B'TSELEM shall continue its efforts to ensure respect for human rights.