

A Policy of Discrimination

Land Expropriation, Planning, and Building in East Jerusalem

Extracts from a summary, May 1995

B'Tselem

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

Principal Findings of the Report

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 all matters relating to expropriation of land, planning, and building.
2. Examination of Jerusalem municipality documents and declarations of the city policy-makers indicate that the urban development of the city is based, first and foremost, on creating a demographic and geographic reality that will preempt every future effort to question Israeli sovereignty in East Jerusalem.
3. The Israeli authorities promote extensive building and enormous investment throughout the Jewish neighborhoods of East Jerusalem, as the Palestinian population is perceived a “demographic threat” to Israeli control of the city.

As regards construction:

- some 64,870 apartments, constituting some 88% of all the housing units were built for the Jewish population (about one-half of them by public construction);
- some 8,890 apartments, constituting some 12% of all the housing units, were built for the Palestinians, mainly privately.

Since 1990, the gap in the amount of building for the two populations has continued to widen.

As regards 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, which amounts to 100%, is twice as large as the gap in housing density that had existed in 1967.
- according to estimates, the housing shortage among the Palestinian population has reached more than 20,000 housing units.

International Law

According to Regulation 43 of the Hague Regulations of 1907, an occupying country must continue to apply the legal principles that were in force when the occupation began. Imposition of Israeli law, jurisdiction, and administration on East Jerusalem clearly contradicts this rule of customary international law.

According to international law, every act of the occupying country must be temporary. The Israeli government's building of thousands of housing units in East Jerusalem for the purpose of populating 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, or with security interests.

Legal Status of East Jerusalem

After the Six-Day War, 70,000 dunums of East Jerusalem and nearby villages were annexed to the municipal area of West Jerusalem, and on 27 June 1967, the Israeli authorities imposed the state's law, jurisdiction, and administration on this territory.

According to international law, an occupying country is not allowed to annex conquered territory, except as a result of a peace treaty.⁷

B'Tselem agrees with the international community's claim that East Jerusalem is occupied territory, that its status is the same as that of the rest of the West Bank.

The permanent status of Jerusalem must be determined in the framework of the negotiations between Israel and the Palestinian Authority, while ensuring protection of the human rights of all persons involved.

Building in East Jerusalem

- in 1993 alone, the last year of which statistics were published, among the 2,720 residential units completed that year, only 103, which constitutes 3.8% of all the housing units built that year, were built in Palestinian neighborhoods.

Housing Density and Needs

Housing density in Jerusalem is higher among Palestinians than among the Jewish population. 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 %) lived in conditions of housing density of more than three persons per room, as opposed to only 2.4 % among Jews. According to estimates of planners and architects, the shortage of housing units among Palestinians exceeds 20,000 residential units.

Since 1973, no more than 5,700 apartments have been built.'

Policy

In 1973, the Israeli government determined that a "demographic balance" must be maintained between the Jewish and Palestinian populations in Jerusalem. The goal is to overcome the natural rate of growth of the Palestinian population, which is a "demographic problem" in the lexicon of those involved with determining planning policy for 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 create Jewish settlement continuity throughout the entire city.

A document of the Jerusalem municipality from 1978 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 principle regarding the area of the city's municipal jurisdiction must be translated into practice by building in all parts of that area, and, to begin with, in its remotest sections.'

The recent decisions of the Israeli government to establish the Jewish neighborhood of Har Homa in East Jerusalem, and to expropriate 535 more dunums in East Jerusalem, are the most recent acts in implementing this policy.

Jerusalem's mayor, Mr. Ehud Olmert, also supports this policy. In an interview with *Ha'aretz* in May 1994 Olmert said: "I am relieved that a process has begun that will bring about a continuity of Jewish settlement from Neveh Ya'akov southward, toward the city center, and you will excuse me if I don't go into details."

In 1986, the municipality's Planning Policy Section published a document entitled *Development for the Arab Sector*, which defines projects for infrastructure and public institutions for the Palestinian population by a priority of "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 five, and projects that have no impact are grade one.'

In an interview given by then-mayor Kollek to *Ma'ariv* immediately after the Temple Mount massacre in October 1990, he stated:

[Kollek: J 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 also 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: J Nonsense! Fairy tales! The mayor nurtured nothing and built nothing. For Jewish Jerusalem I did something in the past 25 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 ...•

Expropriation of Lands

Of the 70,000 dunums (4 dunums equal one acre) of land annexed to Jerusalem following the Six-Day War, 23,500 dunums (slightly more than a third) were expropriated under the Land Ordinance (Acquisition for Public Purposes, 1943). Most of the expropriated lands were privately-owned by Arabs, and used exclusively for the welfare of the Jewish population.

By February 1995, about 38,500 residential units had been built for approximately 160,000 Jews on the expropriated land. Not one housing unit was built on those lands for the Palestinian population. At a municipal council meeting held in March 1992, Avraham Kehillah, the 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 the Israeli government expropriated.'

Many of the areas that were expropriated in the initial period 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 possibility of building on those lands, and to hold them in reserve for future Jewish neighborhoods. When the same population group always benefits from the land expropriations, the claim that they were done "for public purposes" becomes a cloak for a consistent pattern of discrimination.

Conclusions

"Nothing is more destructive to a society than the feeling of its people that they are not being treated like others."K Since the annexation of East Jerusalem in 1967, the Israeli government has adopted a policy of systematic and deliberate discriminations against the city's Palestinian population in all matters relating to expropriation of land, planning and building.

As the Israeli authorities promoted extensive building and enormous investment throughout the Jewish neighborhoods of East Jerusalem, and encouraged Jews to settle there, the authorities, by their acts and omissions, choke development and building for the Palestinian population, which is perceived as a "demographic threat" to Israeli control of the city.

The Israeli authorities make illegitimate use of all the legal and administrative means available to them, with the goal of realizing their planning policy based on political-national considerations.

This policy is a clear violation of international law and the fundamental principles of democracy, with grave consequences for human rights:

A. Flagrant discrimination between the Jewish neighborhoods and Palestinian neighborhoods as regards planning, building, and development.

B. An extremely serious housing shortage among the Palestinian population in the city, and a fundamental violation of their right to housing. The gap in housing density between the Palestinian population and the Jewish population doubled since 1967.

The means used to implement this policy are varied, and include widespread expropriation of lands and use of town planning schemes

to restrict building for the Palestinians.

The blatant use of expropriation in East Jerusalem totally ignores the basic urban needs of the city's Palestinians. The claim that the expropriations are intended to serve a salient public purpose can be accurate only if the "public" does not consist exclusively of Jews.

Planning policy for the Palestinian neighborhoods in Jerusalem is an important element in the overall policy of the Israeli government. To preserve the demographic primacy of the Jewish population, the Israeli government has for years employed two complementary planning measures. On the one hand, for many years no town planning schemes were drawn up for the Palestinian neighborhoods, and approval for existing plans was delayed almost indefinitely. 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, serve to limit development, reduce the areas designated for building and strengthen Jewish control in every part of the city.

The recent decisions of the Israeli government to establish the Har Homa Jewish neighborhood in East Jerusalem, and to expropriate 535 more dunums in East Jerusalem, are the latest acts implementing this policy.

Recommendations"

The housing shortage among the Palestinian population can be solved if the Israeli government and the Jerusalem municipality adopt the same policy for this population that it carried out for 28 years as regards the new Jewish neighborhoods in East Jerusalem. The policy-makers must take, *inter alia*, the following steps:

As regards the Palestinian population:

1. Land Allocations: Increase the land allocations intended for construction for the Palestinian population by:

- designating areas, currently unplanned ("white areas"), for construction of new Palestinian neighborhoods, such as the area west of Beit Hanina and Shu'fat, Sha'ar Mizrah, the area northwest of Kfar Aqeb, and others.
- releasing "green areas" for development, such as the broad expanses in the neighborhood of Arab a-Sawahrah, the areas in Ras al-'Amud (bordering on Abu Dis), etc.

These actions would solve the housing problem of most of the land-owners whose property was proclaimed "green" or "white".

2. Public Construction: Build new Palestinian neighborhoods as public construction in a manner comparable to the new Jewish neighborhoods in East Jerusalem. This would solve housing problems also for those who do not own land.

3. Building on Expropriated Lands: Build, on lands designated for Har Homa which were expropriated in 1991, a new Palestinian neighborhood instead of the planned Jewish neighborhood.

4. Building Percentages: Increase the permitted percentage of built-up area in Palestinian neighborhoods to the level in the Jewish neighborhoods.

5. Planning: Prepare a detailed planning scheme that, contrary to those that have been prepared until now, will meet the needs of the Palestinian population.

6. Infrastructure: Allocate, for Palestinian neighborhoods, infrastructure resources equal to those provided the Jewish neighborhoods for roads, electricity, sewers, and public structures.

7. Building Permits: Grant, in the context of the expansion of the town planning schemes, retroactive building permits for structures built without permit, insofar as demolition is not vital for planning needs.

8. Palestinians Whose Homes Were Demolished: The widespread phenomenon of building by Palestinians without permits in Jerusalem occurred because the authorities made every effort to prevent Palestinians from building legally. Compensate these Palestinians, or, alternatively, provide them with favorable terms to purchase apartments that will be built in the new Palestinian neighborhoods.

9. Reparcellation: Hasten preparation of the plans for reparcellation in Palestinian neighborhoods.

10. Land-Settlement Arrangement: Complete the land-settlement arrangement that the Jordanians had started in East Jerusalem.

As regards the Jewish population:

Stop building housing units in existing Jewish neighborhoods of East Jerusalem, and refrain from establishing new Jewish neighborhoods, since these actions are contrary to international law.

Endnotes

1. Jerusalem Municipality. *Urban Policy and Working Plans for the Work Year 1990*, internal working paper, July 1990.

2. City Planning Department, Jerusalem Municipality. *Local Town Planning Schemes for Jerusalem - 1978; Explanatory Remarks for the Discussion by the District Planning and Building Committee* (Author: Yosef Schweid, in charge of Town Planning Scheme), p. 16.

3. Interview with Ehud Olmert by Nadav Shragai, *Ha'aretz*, May 1994.

4. In 1973, there were 15,000 housing units available to the Palestinian population. In February 1995, 20,900 units were available.

5. Jerusalem Municipality, City Planning Department, Planning Policy Section, Transportation Master Plan, Greater Jerusalem, *Development Plan for the Arab Sector*, Jerusalem, 1986, p.12.

6. *Ma'ariv*, 10 October 1990. In fact, 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.

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

8. Justice A. Barak, ruling on HCJ 953/87, *Forg'v vs. The Mayor of Tel Aviv- Yaffo*.

9. The recommendations presented below are directed to those currently in control of setting policy in Jerusalem. The future status will be determined in the framework of negotiations between Israel and the Palestinian Authority.

These excerpts were chosen and abridged by the editors of the Journal.