

Discrimination in the Heart of the Holy City

Meir Margalit

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Language Editing : *Yudith Yalon, Yuval Warshai*

Preparation for Printing : *Mona Al Qutob*

Cover Photos by: *Shahd Wa'ary*

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The International Peace and Cooperation Center

21 Sheikh Jarrah, Ard Assamaar, 'Al 'Isawiya Road,
Jerusalem

P.O.Box: 24162

E-mail address: info@ipcc-jerusalem.org

Website: www.ipcc-jerusalem.org

Tel: + 972 (0) 2 5811992 or +972 (0) 2 5812032

Fax: + 972 (0) 2 5400522

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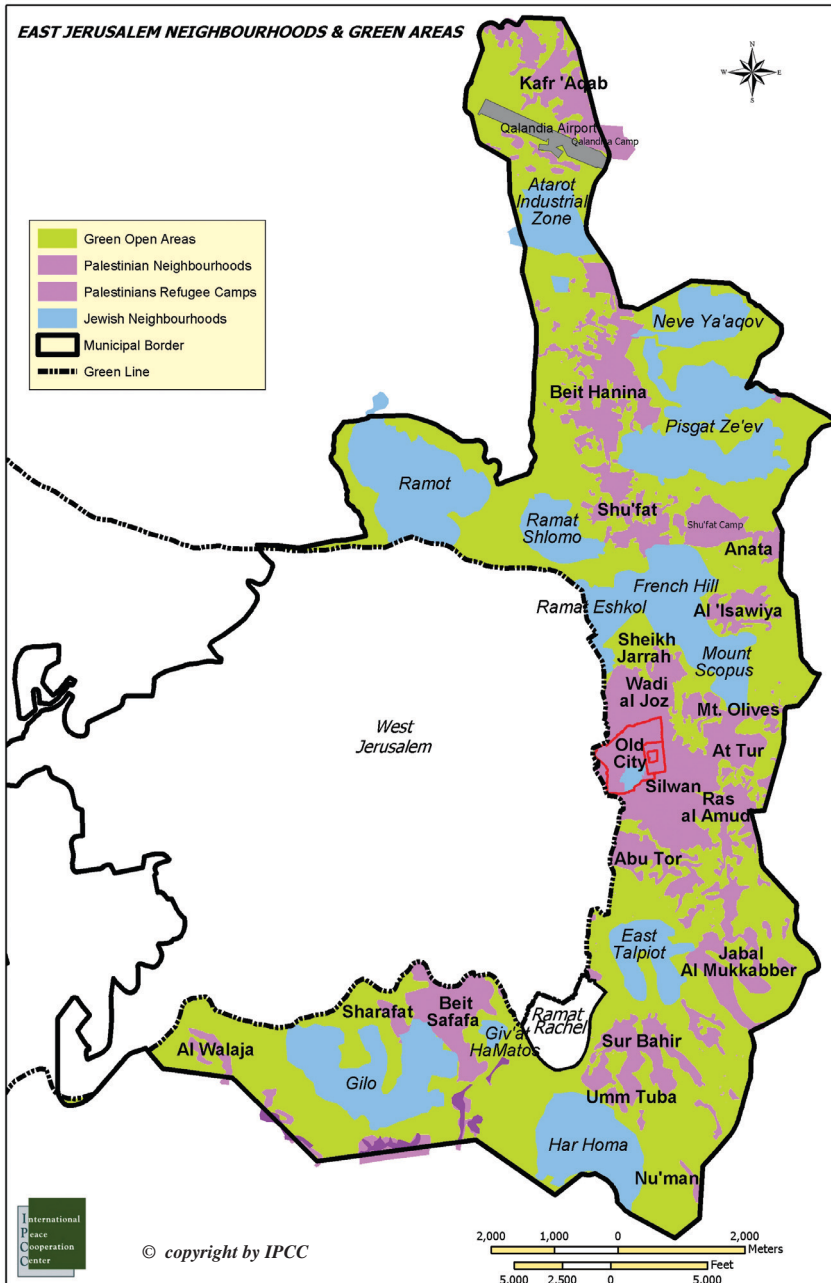
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Palestinian built-up and green areas in East Jerusalem



INTRODUCTION

ADVERSE DISCRIMINATION IN EAST JERUSALEM - BETWEEN IDEOLOGY AND ORGANIZATIONAL CULTURE

In-depth research is hardly needed to prove the adverse discrimination meted out to East Jerusalem. A walk through its streets suffices to demonstrate how badly deprived that part of the city is, especially compared to the western sector. Yet while every alleyway cries deliberate neglect, things should, indeed must, be placed in empirical proportion so as to arrive at an understanding of the dimensions of the phenomenon, the motives that produced it and its implications.

The discrimination suffered by the residents of East Jerusalem results from the concerted action of a number of State authorities, most outstanding of which are the Ministry of the Interior, the Israel Police, the National Insurance Institute, the Labor Exchange and, of course, the Municipality. Each of these systems does its bit to keep East Jerusalem down, and all are party to its systematic deprivation. This publication will focus on the role of the municipal apparatus, which is the repository of very extensive powers and can largely determine what standard of living a Jerusalem resident will be vouchsafed.

The adverse discrimination applied to East Jerusalem finds expression in the two systems wholly controlled by the Jerusalem Municipality. These are spatial distribution, namely the allocation of lands for residential purposes,

and the provision of a diverse range of municipal services channeled from the State via the local authority. By means of these two control mechanisms, the Municipality demarcates the resident's living space and determines the standard of living they may enjoy. The first allocates them a fixed amount of living space while the second shapes their quality of life. The first pins them down to a limited physical area, while the second asserts their inferior status. Because let there be no mistake – in the western city, the allocation of budgetary resources and lands is a service the Municipality is obligated to provide its residents. In East Jerusalem, on the other hand, far from being a service, it is a tool in the hands of the authorities to intensify Israeli control. The Municipality uses it to send its residents a message as to who is master and who subject, and to remind them of their place within the urban order of priorities. The neglect prevailing throughout the east of the city: the potholed roads, the piles of garbage, and the substandard classrooms; all are first and foremost, above all, symbols designed to etch residents consciousness. The fact that they are sub-tenants, possessing only minimal rights, residing in a city under the aegis of a Jewish power that gives or takes away at its pleasure. Their every trip to the west of the city designed to hammer home the fact of their inferiority status, and that as a very lowly resident, they owe a duty of obedience to the governing system. Hence, in East Jerusalem, the allocation of municipal resources, rather than being a service to residents, becomes a tool for oppressing their national spirit. Palestinian residents do not get to know the Municipality's "service" aspect but only its "enforcement" aspect. Their every contact with the municipal apparatus is one of "Know before whom you stand"¹. Unless we realize this, there can be no explanation for the fervor with which the Jerusalem Municipality demolishes 'illegal' houses in the east of the city. The urge to invest NIS 2.5 million of the municipality's depleted budget on house demolition, (not including either payment to inspectors, or the cost of the aerial photographs used to spot unlawful construction in places with difficult access to motor

1. Not to mention Palestinians contacts with the Ministry of the Interior, the National Insurance Institute and the Labor Exchange, which are shameful black blots on the escutcheon of the state authorities!

vehicles), on hillsides where no Jew ever set foot; stems from the imaginary danger posed by Palestinians rebelling against the urban sovereignty and going ahead with their own agenda without a municipal permit. A Palestinian building without permission is attacking the very foundations of Jewish rule in East Jerusalem. Two hundred and fifty houses were destroyed in 2004 and 2005 in the name of the power struggle. It is only in this context that we can understand what hides behind the remarks of the municipal construction supervision director, that the battle against illegal construction is “the real battle over Jerusalem”. Only then does the fervor of senior municipal officials militating for more and more house demolitions in order to restore Israeli control over East Jerusalem become meaningful².

Civilian status

Deprivation starts with the very fact of the East Jerusalem Palestinian’s inferior status. A Palestinian is not a citizen like the Jews in the west of the city, but merely a ‘resident’. Their status is defined by an entry into Israel Law³, an immigration clause designed to regulate the entry and sojourn of migrants. This law provides that the award of ‘permanent resident’ status is at the virtually absolute discretion of the Ministry of the Interior, since in the case of East Jerusalem, such status expires if the resident settles outside the city limits. In addition, the resident’s children, even if born in Israel, are not automatically entitled to residency⁴. In applying this law to the residents of East Jerusalem, the State established a civilian hierarchy assigning the Palestinian a status inferior to and more vulnerable than that of the Jew, and subject to the arbitrary whims of the Government apparatus.

2. *Kuty Fundaminky*, “This is the real battle of Jerusalem”, interview with Micha Ben-Nun, Director of the Municipal Supervision Division, *Jerusalem Newspaper* March 18, 2005. Nadav Shragai, Olmert: We will destroy houses in East Jerusalem every week, *Haaretz* February 6, 2002.

3. *Entry into Israel Law, 5712-1952, Principal Legislation 5712, page 354.*

4. *Entry into Israel Regulations, 5734 -1974, Sections 11 and 12*

Injuries to residency status finds expression in the effort being spearheaded by the Ministry of the Interior and the National Insurance Institute to annul the residency and entitlement to health insurance and pensions of anyone who, according to the authorities, lives outside the city limits. The Ministry of the Interior also makes it difficult for a resident to obtain a sojourn permit for a spouse from the territories, as well as hindering the registration of children in the parents' certificates, thus preventing them from receiving a child allowance. Annulment of residency forms is part of a concerted effort to thin the Palestinian population of Jerusalem, attesting just how vulnerable and wobbly the status of the Palestinians in the city is. They are confronted with the necessity of living in a place where severe restrictions apply to new construction, and where real estate prices are well beyond what they can afford.

But the risk of annulment of residency hangs not only over the heads of those Palestinians living outside of Jerusalem's municipal boundaries. The residency status of anyone who, in light of some exceedingly broad interpretation of the expression "center of life" gains their livelihood outside the city, can also be annulled. Palestinian families residing in neighborhoods on the outskirts of Jerusalem, where there are no clinics or city-funded schools, that are therefore forced to send their children to schools of the Palestinian Authority, and to obtain medical treatment at Palestinian Authority clinics, are liable to discover that their residency has been revoked on the grounds that their life is centered outside the city.

Wherever an official distinction is drawn within a city's boundaries between citizens and residents, and where that distinction is based on ethnic breakdown, treatment on the part of City Hall will most probably involve discrimination. Anyone officially deemed a second class resident will also be perceived as inferior by that branch of officialdom that is in charge of providing services. This is true of any regime, but especially one such as Israel's, where emotional attitudes towards Palestinians are so highly charged and prejudiced.

The deprivation index

The level of service properly due to East Jerusalem is determined by three parameters: A – demography, based on the total number of residents in the eastern part of the city; B – geography, based on the area of the eastern city; and C – socio-economic parameter, based on economic needs and on social distress on the field.

The demographic parameter shows East Jerusalem to have 230,000 residents, accounting for one third of the city's total population, who are entitled to receive one third of municipal resources⁵. Still, from the point of view of the demographic parameter, the basis for allocation should also be a differential one and should reflect the relative share of the Palestinians in each age bracket. Thus, for example, in the 0 – 10-year age bracket, Palestinian children account for 42% of Jerusalem's children. Under any non-discriminatory allocation method, therefore, the Municipality should apply 42% of budgets directed at the tender age and for elementary education to the eastern city.

According to the geographic parameter, the area of east Jerusalem (meaning, of the Palestinian neighborhoods excluding Jewish neighborhoods built in eastern city areas) comprises some 46,000 dunam (18.4 acres), which account for 37% of the total urban area. Therefore, in the physical geographical dimension, investment in the eastern part might be expected to stand at around 37% of the total Municipality budget.

However, East Jerusalem, given the fact that its infrastructure level is far inferior to that of the western city to begin with, ought properly to be allocated a far higher percentage of the budget, if the aim was that of equalizing the infrastructure level between the two parts of the city. If that was the aim, the urban investment in infrastructure should reflect the level of need, and not the number of residents or the size of the area.

5. This figure is based on data as of the end of 2003, published by the Central Bureau of Statistics. It will be noted that the Ministry of the Interior's Population Registry holds various figures, and at the end of 2004, their number was recorded as 264,000, representing some 35% of the total population of Jerusalem. Also, these figures do not include residents carrying 'orange identity cards' and not listed in the Population Register, whose number is estimated at about 20,000.

According to the socio-economic parameter, the level of distress prevailing in East Jerusalem calls for a far higher investment than is indicated by either the demographic or the geographic parameters. The poverty index in the eastern city for the year 2005 shows that 67% of total families in the eastern city live below the poverty line (compared to 29% among the Jewish population), while the incidence of poverty among children reaches as much as 76%. Accordingly, if the investment in welfare properly reflected the depth of distress, the lion's share of welfare budgets would go to East Jerusalem⁶.

As we shall show further in this study, neither land resources nor budgetary resources have in fact been allocated equitably between the two parts of the city. The Jerusalem Municipality discriminates against East Jerusalem on both counts, disregarding its needs, and budgeting for it well below the level that would be due based on any of the three professional parameters described above.

The following chapters will show various ways in which the Palestinians of East Jerusalem are discriminated against. These include building restrictions and house demolitions, which are employed as a means for keeping Palestinians away from the city; the method according to which the municipal budget is divided between east and west – shows to what extent discrimination is institutionalized and deliberate; and the new urban outline plan for East Jerusalem which seeks to strictly delimit the living space of its Palestinian population, and to perpetuate its inferior status. Also discussed in this book, the employment structure or pyramid that applies to the Palestinian population of East Jerusalem, which shows the type of jobs where they are employed and how the majority is concentrated on the lower layers of the employment pyramid. A concluding chapter analyzes the ideological motives and the organizational culture that stands behind the policies that discriminate against the Palestinian population of East Jerusalem.

6. *Municipality of Jerusalem, annual report of the Social Department for 2005.*



PART ONE

HOUSE DEMOLITION



The years 2003 – 2005 were among the worst known to East Jerusalem as far as house demolitions were concerned. Not only did the number of demolitions reach a peak of 350 buildings during those years, but there was an unprecedented harshening of punitive and enforcement measures. The residents of East Jerusalem found themselves, far more emphatically than in previous years, in a very tight situation. On the one hand, enforcement measures were stepped up, and on the other, more red tape was encountered. Those wishing to build legally found themselves stymied at almost every turn.

This monograph shows that in the 2003 to 2005 period, the authorities took steps to further tighten the noose around the necks of East Jerusalem's residents. Faced with the incessant proliferation of bureaucratic, planning, legal, and economic hurdles, making it a hopeless task to try and take out a building permit, they had, perforce, to resort to unlicensed construction. Thus, less than a 100 buildings were put up under license in East Jerusalem per year.

Yet, in the same period, demand for housing in East Jerusalem rose steeply, due to the erection of the separation fence. The resulting situation, thousands were constrained to move within Jerusalem's municipal boundaries, enormously boosting illegal construction, which peaked in 2004 at 1,189 houses.

Various red lines were crossed in that period. Officially eager as they were to demolish houses at all costs, municipal and Ministry of Interior inspectors resorted to shameful tactics of evasion and deception to be able to proceed, in disregard to the existence of any court-issued stay or proceedings order. Their

threshold of shame evidently descended several rungs lower. The inspectors were prepared to trample the rule of law underfoot, just as long as the bulldozer didn't, heaven forbid, return to base without having destroyed a house.

All this took place as Rabbi Uri Lupoliansky entered his first term of office as Mayor of Jerusalem, and Avraham Poraz (Shinui) and Ophir Paz-Pines (Labor)* as Ministers of the Interior. We had no great expectations for Jerusalem Mayor Lupoliansky; we entertained no illusions in this regard. We knew all about his attitude towards East Jerusalem from his term as Deputy Mayor and Chairman of the Local Planning and Building Committee. We did, however, expect much more from Shinui Party member Avraham Poraz and Ophir Paz-Pines from Labor. We hoped they would re-examine the ministry's demolition policy; but, sadly, nothing changed. The Ministry of the Interior still continues as if headed by Shas** ministers.

The following surveys commence with a chapter that presents 10-year data on demolitions, orders, fines and so forth, highlighting the escalation that has taken place within that period. The next chapter analyses the causes of illegal construction, ranging from planning difficulties such as an increasing paucity of areas available for construction, low new construction percentages, absence of infrastructures and so forth, through legal difficulties such as furnishing proof of ownership, obtaining the signatures of all owners and so forth, through economic difficulties such as the cost involved in fees and levies.

The third chapter presents the motives underlying the Government's demolition policy, emphasizing the intention of circumscribing the living space of the Palestinians of East Jerusalem in order to maintain the demographic balance between the two populations at a fixed ratio of 70-30 percent.

Focus will be on the functioning of the bodies responsible for that policy on the professional and political levels later in this publication. These are the

* *Shinui and Labor political parties, center and social democratic.*

** *Shas political party, Religious Orthodox.*

construction supervision units of the Jerusalem Municipality and of the Ministry of the Interior, the local planning and building committee and the district planning and building committee. These units, it is emphasized, are patently political bodies, representing the worldview of a rightwing government and of a “haredi” (ultra-orthodox) Municipality. The concluding chapter sets forth some musings as to the significance of house demolition for a family, and what an East Jerusalemite undergoes from the moment they are served the demolition order until the bulldozer arrives; the scars left on the souls of young children, and the effects of house demolitions on the fabric of life in Jerusalem.

Interspersed throughout these chapters are discussions of a number of test cases and the ruling of the international court on this highly charged issue.

We are well aware that this research remains far from exhausting the subject; but we have chosen to present it anyhow, even in an outline format, since it is one of East Jerusalem’s most painful issues, and one that needs to be exposed to the view of those members of the public who are still animated by humanistic principles, and who hold dear the future of Jerusalem.

D A T A

In 2004, 152 buildings had been destroyed in East Jerusalem, of which 128 were demolished by the Municipality and 24 by the Ministry of the Interior.⁷ By the end of 2005, 94 more buildings had been destroyed, a figure which is relatively low compared to previous years, however it disguises the fact that the collective area of demolished structures was hugely increased from 9,000 square meters in 2004 to 12,000 square meters in 2005. The demolitions concentrated on large buildings, including four, five and even seven-storey structures.

7. Under the division of labor, the Municipality is supposed to demolish in areas zoned for construction, while the Ministry of the Interior is supposed to demolish in green areas only.

The demolition table for recent years is as follows:

	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005
Municipality	7	15	6	9	12	17	11	32	36	66	128	76
Ministry of the Interior	22	10	11	7	18	14	7	9	7	33	24	18
Total	29	25	17	16	30	31	18	41	43	99 ⁸	152	94

The table does not include houses demolished by the owners themselves, after having been offered a plea bargain whereby they would destroy their own home in return for being slapped with only a small monetary fine. We do not have any figures for houses demolished in this category, but we estimate their number at not much less than those destroyed by the authorities.

As the figures attest, the years 2003 – 2005 were some of the worst since the occupation commenced, as far as demolitions are concerned. Uri Lupoliansky's term of office as Mayor of Jerusalem, coinciding with that of Avraham Poraz and Ophir Paz-Pines as Ministers of the Interior, is characterized by harsher enforcement measures, with a view to deterring the residents from building without a permit. These measures include, apart from the actual demolitions, also a significant increase in monetary fines, the confiscation of building equipment and the imposition of prison sentences actually to be served for building offences. However, the difference between the two is that whereas Lupoliansky's motives are ideological, the policy of Poraz and Paz-Pines is one they follow blindly, out of general inertia. Indeed, the greater stringency of municipal policy can be explained as a response to pressures exerted on the Mayor by the public that voted him into office, and the vision of the Judaization of the eastern part of the city, as entertained by the right-wing circles he represents.

8. Not including 4 houses destroyed for security reasons (Silwan, January 15, 2003).

Either way, the combination of a right wing government and an ultra-orthodox municipality further empowered the proponents of demolition, and the presence of the Shinui or Labor party in the Ministry of the Interior did nothing to help put the brakes on that policy. Likewise, the Iraq war may have encouraged the Government to pursue its destructive course with greater abandon on the assumption that the US administration would not take any interest in goings on in eastern Jerusalem, while the European media would be too preoccupied on the Iraqi front to pay any attention to demolition work in the city. This is evidenced by the fact that, as the war broke out, Israel destroyed 23 buildings within two days - 13 on April 3 and another 10 on April 6, an unprecedented statistic in the annals of Eastern Jerusalem.

We would draw attention to the discrepancy between the figures we cite here and the figures published in Palestinian sources, such as the report of the 'Al-Quds' Center, the Land Research Committee or the report published by the office of Palestinian Ministry of Jerusalem Affairs. This discrepancy derives from the different definition of the Jerusalem jurisdiction that Palestinians and Israelis have. Whereas we related to the Israeli municipal boundary, the Palestinian organizations relate to a far wider area designated the 'Jerusalem District', which includes, in addition to the city itself, a number of villages situated on the periphery (Anata, Hizma, Bir Nabala,..etc).

We do not have figures as to the precise number of administrative and judicial demolition orders issued in recent years. The Municipality and the Ministry of the Interior refuse to disclose exact data. But an indication may be obtained from the overall number of demolition orders issued to both Jews and Palestinians in recent years. The number, as stated, does not distinguish between the western and eastern parts of the city. We know from official sources in the Jerusalem Municipality that 40% of the orders were issued against the Palestinian population of East Jerusalem, while all the orders issued by the Ministry of the Interior were against that population. As already indicated, the actual numbers conceal the fact that demolitions in West Jerusalem, if they are actually carried out, are committed against minor structures – balconies, sheds,

staircases and so on – while in East Jerusalem most demolitions are against entire dwellings – houses and even multi-storey apartment buildings, or against significant portions of dwellings (whole stories, sections of houses, etc.).⁹

David Kroyanker, one of Jerusalem’s most prominent planners, said in a press interview, that the Municipality was neither exercising supervision nor demolishing houses in the western part of the city: *“One senses that municipal enforcement simply does not extend there. There is anarchy there, utter and ongoing chaos. Everyone knows that unauthorized buildings are not demolished in the Jewish sector, and thus, anyone committing a building offence gets a NIS 300 fine after three years, and goes on to his next unauthorized project. The message is that it’s worthwhile being a lawbreaker”*.¹⁰

We accordingly present figures that are assessed to be a close approximation of the actual data involved.¹¹

	Administrative & judicial orders of Jerusalem Municipality	40% of total	Administrative & judicial orders of Ministry of Interior	Total
2000	1168	467	46	513
2001	1567	627	134	761
2002	2214	886	110	996
2003	1986	794	64	858
2004	1897	759	73	832
2005	1843	737	62	799

9. The Municipality contends that it does not demolish entire buildings in West Jerusalem because Jews construct only “minor improvements or additions.” If construction in the Palestinian sector was rationalized so that its fundamental housing needs were addressed rather than ignored, it is likely that violations in East Jerusalem would only be minor as well.

10. Ilan Leor, ‘Upright Man of the Neighborhood’, *Kol ha Zman* newspaper, October 3, 2003.

11. Revital Marzin, the person responsible for the local court, *Activities Report for 2005*, and Ofir May, Head of the Construction Supervision Division, March 29, 2004. Data from the Ministry of the Interior: Naor Shomrai, Advisor to the Minister, to: Dalia Zomer, Jerusalem City Councilor, February 11, 2004.

Administrative demolition orders are issued against buildings at various construction stages and as yet unoccupied. They are valid for 30 days only. After that interval, a judicial demolition order must be issued, requiring a complex legal proceeding.

A home that is inhabited and that can be demolished by an administrative demolition order is not simply defined. To define a structure as being habitable and therefore may be liable to a judicial demolition order, the court has recently ruled that a home is a structure that must be “able to be lived in”. In the eyes of the Israeli courts, a building that has no installations (such as taps, water connection, doors, tiles, electrical wiring and electrical connection) is not considered a building that can be lived in. Nevertheless, in many instances where Palestinians move into half-finished homes because of financial considerations (they cannot afford to finish the home and cannot afford to pay rent for other apartments), the Municipality has indeed served administrative demolition orders and not judicial orders, in spite of the fact that people are living in the building. This means that the authorities can demolish structures with administrative orders far more easily than ones with judicial orders.

This attitude of the courts also reflects a patriarchal approach regarding Palestinian residents. The court takes it on itself to rule as to what conditions Palestinians should live in and what is “normal” for them, without taking into consideration the realities of Palestinian life in East Jerusalem, and reflecting a cultural divide between the Jewish authorities and Palestinians living under that authority.

In regards to fines imposed for unlicensed construction, between 2001 and 2005, the Local Court collected the gargantuan amount of NIS 133,292,491 (\$29,620,000). Here too, available figures make no distinction between the eastern and western parts of the city. But as stated, the great majority of that amount taken by the Municipality – fully 70% – was collected from Palestinians and the entire amount taken by the Ministry of the Interior was collected from Palestinians.¹²

12. Activities Report for 2005, © Yossi Havilio, legal advisor to the Municipality, to: the Mayor and the town councilors, April 4, 2004.

Fines imposed by the Local Court –(In NIS)

	From municipality	70% from the total	From Ministry of Interior	Total
In 2001	15,107,322	10,575,125	1,968,300	12,543,425
In 2002	26,984,052	18,888,836	1,731,300	20,620,136
In 2003	46,292,494	32,404,745	4,959,950	37,364,695
In 2004	43,284,033	30,298,823	3,786,000	34,084,823
In 2005	34,792,872	24,298,823	4,324,400	28,623,223
Total	166,460,773	116,522,541	16,769,950	133,292,491

The drastic increase in the amount of fines is explained by the fact that from 2002 onwards, the number of judges working at the local court was doubled, and also the prosecution began to demand a doubled rate of fines for building infractions in cases that previously had only incurred regular fines.

The house demolitions budget of the Jerusalem Municipality stood in 2005 at NIS 2.4 million. The Ministry of the Interior's budget was not disclosed, but is estimated at about NIS 1 million more. This amount does not include some NIS 200,000 spent on aerial photography, whose main purpose is to spot illegal construction. Nor does the budget include the pay of the inspectors and jurists engaged in tracing such construction and preparing indictments.¹³

13. The Municipality's budget for the year 2003, budget item 179080020 – demolition of buildings

SCOPE OF THE PROBLEM

The prevailing assessment at Town Hall, is that some 40 percent of total buildings in East Jerusalem were constructed without a permit. Which is to say, some 15,000 out of 40,600¹⁴. The Ministry of the Interior gave its opinion in 2000 that the number was as much as 20,000. In our opinion, the assessments of the Jerusalem Municipality are the more authoritative.¹⁵

According to municipal Rates Collection Department data, 5,300 residential units were constructed in East Jerusalem in the years 2000 – 2004. This figure closely approximates reality since the majority of East Jerusalem residents apply of their own accord to the Municipality seeking to pay rates. They do so because every application to the Ministry of the Interior requires them to prove residency by showing proof of payment of municipal taxes and also because they believe that if they pay their rates, their house gains a sort of immunity against demolition. In the period being covered here, building permits were issued for only 481 buildings (of which a certain number would, in normal circumstances, contain more than one residential apartment);¹⁶ which is to say that for every building erected under permit, ten were built without a permit. The year 2004 as stated already, was one of the worst in terms of demolitions. The Municipality and the Ministry of the Interior destroyed 152 out of 1,435 non-permit buildings, or 11% of total unlicensed construction started that year. Over the long term, it emerges that during the past decade, the authorities destroyed 400 buildings, or only about 4% of illegal construction in the whole of East Jerusalem. Thus, the authorities “manage” to destroy only a small percentage of the overall number of unlicensed buildings in the east of the city. As these numbers show, if house demolitions in East Jerusalem are undertaken by the authorities as a means of deterrence against illegal

14. Moshe Levy to: Pepe Alalu, July 29, 2004.

15. Ministry of the Interior: 20,000 houses in East Jerusalem were built without a permit; by Nadav Shragai, Haaretz, March 1, 2000.

16. The Jerusalem Municipality, Construction Licensing System – statistical report for the years 2000 – 2004, January 28, 2004.

construction, they are not proving to be very effective in achieving the desired effect, since unlicensed construction has grown over the span of the last decade.

Volume of illegal construction in Eastern Jerusalem in recent years

Year	Total residential apartments	More than in preceding year	Permits issued for buildings	Illegal construction
2000	35,388	1008	129	879
2001	36,821	1433	110	1323
2002	37,993	1172	97	1075
2003	39,428	1435	59	1376
2004	40,661	1,233	49	1,184

GREATER STRINGENCY IN MUNICIPAL ENFORCEMENT AGAINST ILLEGAL CONSTRUCTION

Along with a drastic increase in the number of house demolitions in the years 2003 – 2005, we are also witnessing greater stringency in the enforcement measures pursued against residents constructing without a permit. According to the Jerusalem Municipality, the reason for the proliferation of illegal construction in the east of the city is that standard enforcement is non-deterrent and inefficacious. It therefore resolved to impose stiffer penalties, in the hope that harsh measures would prove deterrent and the phenomenon would wane. The new policy has the following four principal components:

- A- Reopening of legal proceedings
- B- Imposition of a redoubled fine
- C- Confiscation of building equipment
- D- Actual imprisonment

The policy gained support from an opinion published by lawyer Menachem (Meni) Mazuz, the current Sate Attorney General, when he served as Deputy Attorney General. He instructed the local planning committee to deal strictly with building offenders, on the grounds that *“the deterrent component in this type of offence is critical, in light of the proliferation of offences and the economic profits involved in committing them. Post-factum approval, amendment or modification of a plan, for the purpose of ‘legalizing’ flagrant construction offences, transmits a negative message to the public and undermines the deterrent factor of enforcement. Moreover, it frequently happens that, under pressure of this or that fait accomplis, planning commissions approve amendments and modifications that are incompatible with proper planning principles and which, a priori, would not have been approved, and thereby lend encouragement to delinquency, with sinners being rewarded”*.¹⁷

Reinstitution of legal proceedings

Sentences handed down for illegal construction consist of two parts: A – a monetary fine, in an amount proportionate to the severity of the offence (meaning the size of the building); and B - a requirement either to produce a building permit or restore the status quo ante, which means to demolish the building. The Planning and Building Law does not recognize a situation in which a structure can remain standing without a permit. Therefore, payment of a fine does not exempt the house owner from the duty of obtaining a permit for the structure. From 1967 until 2001, the municipal system would content itself with collecting a fine, and house owners who paid the fine would be left alone, even if they did not obtain a building permit. East Jerusalem residents knew that as long as they paid their fine, their home was protected and their troubles were over. From 2001 onwards, the Municipality started reopening cases of residents who had paid fines but had not obtained building permits,

17. Adu. Yossi Havilio, legal advisor to the Municipality to: Yehoshua Pollack, Deputy Mayor, November 11, 2003.

charging them not only with illegal construction, but also with failing to comply with a court order and occupying a building without a permit. The Jerusalem Municipality justified its decision to reopen such cases on the grounds that residents of the east of the city preferred to pay fines after the fact rather than obtain a building permit in the first place. According to the Municipality, the fines are so low that it is preferable to incur a fine than obtain a permit. Therefore, in order to deter this trend, and to show people it intended to curb the problem of illegal construction in its jurisdiction, it resolved also to start reopening old cases.

Many East Jerusalem residents were thunderstruck. At first, thinking there was some misunderstanding; they showed up at City Hall with payment receipts showing that they had duly paid their share. They then discovered that not only were their trials and tribulations not over, they were, on the contrary, starting all over again. One need hardly point out that the constraints that had led them to build without a permit in the first place were still in place. Even so, the legal system was recycling the same old proceedings, and sentencing the accused not only to a repeat fine but also, sometimes, to actual imprisonment for failing to comply with a judicial order.

Duplicate fine

As well as reopening old cases, the Municipality significantly increased the fine imposed on illegal construction and began making wholesale use of a tool that the law requires be used only sparingly. This was “double value” or, as it is better known, the “duplicate fine”. This form of sanction is one that may be applied in the case of an especially large or especially provocative building. The standard fine imposed by the court on building offences is calculated on the basis of the cost of construction plus an optional increment that may reach as much as 25% of the amount of the fine. Cost of construction was assessed by a municipal land evaluator, who determined that the average cost of construction

in the east of the city during 2005 stood at \$ 300 per square meter of construction. This means, for example, that a resident who built a 150 sq. m. house without a permit, will have to pay a \$ 45,000 fine – if his luck holds, and the prosecution does not demand the 25% addition. The prosecution, let it be said, has in recent years shown commendable consideration for social circumstances, and has been in the habit of reaching compromises as to the amount of the fine. Recently, however, the municipal prosecution started seeking to impose almost the maximum fine on every illegal structure over 150 sq.m., and started also pressing courts to impose ‘duplicate fines’ on owners of ‘illegal buidings’. Judges usually comply with such requests from the prosecution.

Confiscation of building equipment

Another move designed to deter residents from building without a permit is the confiscation of heavy equipment involved in illegal construction. This takes place under Section 32 of the Criminal Procedures Ordinance (Arrest & Search) [New Version] 1969, this treats the owner of the equipment as the one committing the offence. Municipal inspectors accompanied by policemen raid building sites and confiscate whatever they can lay their hands on: trucks, concrete mixers, sacks of cement, sand, timber, and iron. The purpose of the campaign was to intimidate contractors and cause them sufficient economic damage, to get them to refrain from providing services to anyone not holding a building permit. The Municipality has in fact, in the past year, confiscated a great deal of valuable equipment – some 68 machines, including 12 concrete mixers, 7 concrete pumps and 2 tractors.¹⁸ Recently, they have even confiscated smaller machinery and equipment, such as hand-drills and road-drills¹⁹. In order to obtain the release of their equipment, the owners must deposit guarantees in the range of NIS 10,000 to NIS 40,000. The new policy has notably not reduced the scope of unlicensed construction, but has merely caused

18. Micha Ben-Nun, *Head of Licensing and Supervision Division to: Office of the Municipal Spokesman, August 9, 2004.*

19. Micha Ben-Nun, *report of December 6, 2005.*

the cost of construction in East Jerusalem to rise significantly. Contractors today are demanding much higher prices, due to the equipment confiscation risk involved, with the cost, naturally, being rolled over onto the humble citizen (who, in the case of East Jerusalem, isn't even a citizen but merely a 'resident').²⁰

Imposition of prison terms

A drastic measure that has recently become increasingly prevalent is the actual imprisonment of East Jerusalem residents having failed to obtain a building permit or to demolish their own houses. The lawful cause for detention is 'breach of a court order,' and the penalty for such a transgression is generally a 3 – 6 month prison term. Here too, as with the fines, jail time does not exempt anyone from obtaining a building permit or from having the house demolished, and once released, he is liable to face the same situation over and over again.

20. *The authority of the Municipality to confiscate concrete mixers has been debated before Israel's Supreme Court lately – in Baga"tz-10987/03, Nabali Concrete Ltd. and others against Jerusalem City Hall and others. The attorney for the concrete suppliers argued that the status of cement carriers is similar to the status of a Pizza delivery person delivering Pizza to the house of a criminal. In the same manner that it would be unreasonable to confiscate the scooter or vehicle used for the delivery, it is unreasonable to confiscate concrete mixers. City Hall argued that the status of the carriers and suppliers is more similar to the status of a courier that delivers a gun to a criminal right before the crime. The judges ruled in favor of City Hall's argument.*

DISCRIMINATION IN THE APPLICATION OF ISRAELI LAW, IN THE CASE OF HOUSE DEMOLITIONS IN JERUSALEM

The Jerusalem Municipality usually charges that it demolishes more structures in East Jerusalem than in West Jerusalem, because in the east of the city more people build whole buildings illegally, whereas in West Jerusalem there are only minor building infractions.

Discrimination exists first and foremost within the Planning & Building Law itself (details of which will be set out later in this study). Apart from this, actual implementation of that law is also carried out in a discriminatory fashion.

The following table shows the municipality's attitude towards the east and west of the city, according to four parameters applicable during the past two years*:

	2004		2005	
	West J'm	East J'm	West J'm	East J'm
Infractions recorded	5583	1386	5653	1529
Charges brought	980	780	1272	857
Admin. demolition orders	50	216	Approx. 40	Approx. 80
Demolitions carried out	13	114	26	76

As to infractions recorded, one finds that both in 2004 and 2005, the number of infractions recorded in the west of the city are far higher than in the east of the city. (In fact, the number of infractions in West Jerusalem is far higher even than recorded, because - and there is proof - the building inspectors do not record all infractions in the west of the city).

* Miha Ben Nun, Head of Licensing and Supervision Division , to Pepe Alalu, January 16, 2006.

The number of charges brought to the courts in 2004 and 2005 shows that a far smaller proportion of building infractions in West Jerusalem comes to court than those in the east. This is a fact, even though by law all building infractions are supposed to be brought to court.

Of all the building infractions taken to court, the proportion of cases which result or end in a demolition order being awarded against structures is far higher in the case of East Jerusalem's illegal structures. Stating that in West Jerusalem, far fewer structures ever receive demolition orders; in fact, in West Jerusalem no residential buildings have ever received demolition orders or been demolished.

There is a smaller percentage in West Jerusalem, out of all administrative demolition orders on which the Mayor of Jerusalem signs his authorization. To see this statistically, one notes that in 2005 there was a 65% rate of demolition in West Jerusalem, whereas in East Jerusalem the rate was 95%. There is a certain screening process at work by which infractions in East Jerusalem are dealt with faster, while in West Jerusalem there is a system at work that is delays such legal procedures.

REASONS FOR UNLAWFUL CONSTRUCTION

Former Ministry of the Interior District Planner Bina Schwartz stated in November 2003, in a discussion concerning construction by Palestinians in East Jerusalem, that there was in fact, insufficient housing for the Palestinian residents, but that at the same time, there was – “*difficulty in duly obtaining building permits*”. This circumlocution referred to the series of planning difficulties that were making the process of obtaining a building permit manifestly impossible.²¹

More importantly, and more recently, Ruth Yosef, Jerusalem District Commissioner in the Ministry of the Interior, expanded on these reasons and difficulties. In a discussion on the question of house demolitions in East Jerusalem that took place in February 2005 in the office of the Minister of the Interior, Ophir Paz-Pines, she summarized the reasons why it is so difficult for the residents of East Jerusalem to get a construction permit. Among them she pointed to the low percentage of new construction in the Palestinian sector, which does not cover the needs of the population, problems of unification and division of different sectors, and problems with the proof of ownership for the land. She added that the existing Urban Development Outline Plans do not give satisfactory answers to these problems, and that the Ministry of the Interior had not yet come up with alternative active urban development plans because of budgetary constraints. The importance of the District Commissioner’s testimony, which comes from an eminently professional source, lays in the fact that she stressed overall planning problems for which the state is responsible, and that she also took professional responsibility for the longstanding ministerial planning failure. All this comes in opposition to the views common in circles with a vested interest in the question, that Palestinians build without permits for political and business reasons, or for their lawbreaking habits.

In this publication, we shall point out all the frequently encountered obstacles that prevent the residents of East Jerusalem from building lawfully.

21. Eldad Brin & Shuki Sadeh, ‘Laying the Groundwork’, “Kol Ha’Ir” newspaper, November 28, 2003.

Planning & Building Law:

We must hasten to say that the essential problem facing the residents of East Jerusalem is found in the 'Planning and Building' Law itself. It is a known rule that there are no neutral ideology-free laws. The Planning and Building Law– 1965, like the Government's other enactments, gives expression to the philosophy of the ruling group, constituting in effect, a tool for implementing policy. Moreover, the very act of planning is by nature an act of aggression, inasmuch as a ruling group purports to determine what constitutes urban order and disorder, and imposes its values on the other sectors. In this sense, planning is a tool in the hands of those who hold power, enabling them to regulate demographic and urban processes to suit their interests. In this context, there is nothing exceptional about Israel's planning and building policy. Designed to preserve the interest of the Jewish majority, it was engendered by a western, liberal, nationalistic, social and urban outlook.

In the realities of Israel, this state of affairs may be deemed legitimate, or at worst a necessary evil, where it concerns the application of planning principles in the Jewish sector; but it becomes problematic when the State endeavors to impose it on Palestinian society. The attempt to compel the Palestinian sector, which is by nature rural and clannish, to conduct itself in accordance with modern, western, liberal planning and construction principles, is tantamount to cultural coercion and an invasive penetration into the heart of hearts of Palestinian tradition. The coercive element of planning exists in every society, especially in a society under occupation, whose status is far inferior to that of the ruling majority. Hence, under such circumstances, the new method stands a very poor chance of being accepted and absorbed by that public.

The case of East Jerusalem is a classic case of the application of laws that take no account of either the urban structure of the villages, or their generations-old community traditions, or the elementary needs of the local population. Inbuilt into the Planning and Building Law, moreover, as we shall see below, is a conspicuous and very blatant element of discrimination and deprivation,

aimed at circumscribing the Palestinian population and preserving Jewish hegemony in the city.

Which is why the issue of unlawful construction in East Jerusalem, must be addressed within the context of the problematic method of applying a law in places where it is unsuitable and actually discriminates against the local populace. Thus, rather than “illegal construction” what we should be discussing is a “blatantly unsuitable law” which flouts basic human values and contravenes the Basic Law – Human Dignity and Freedom.

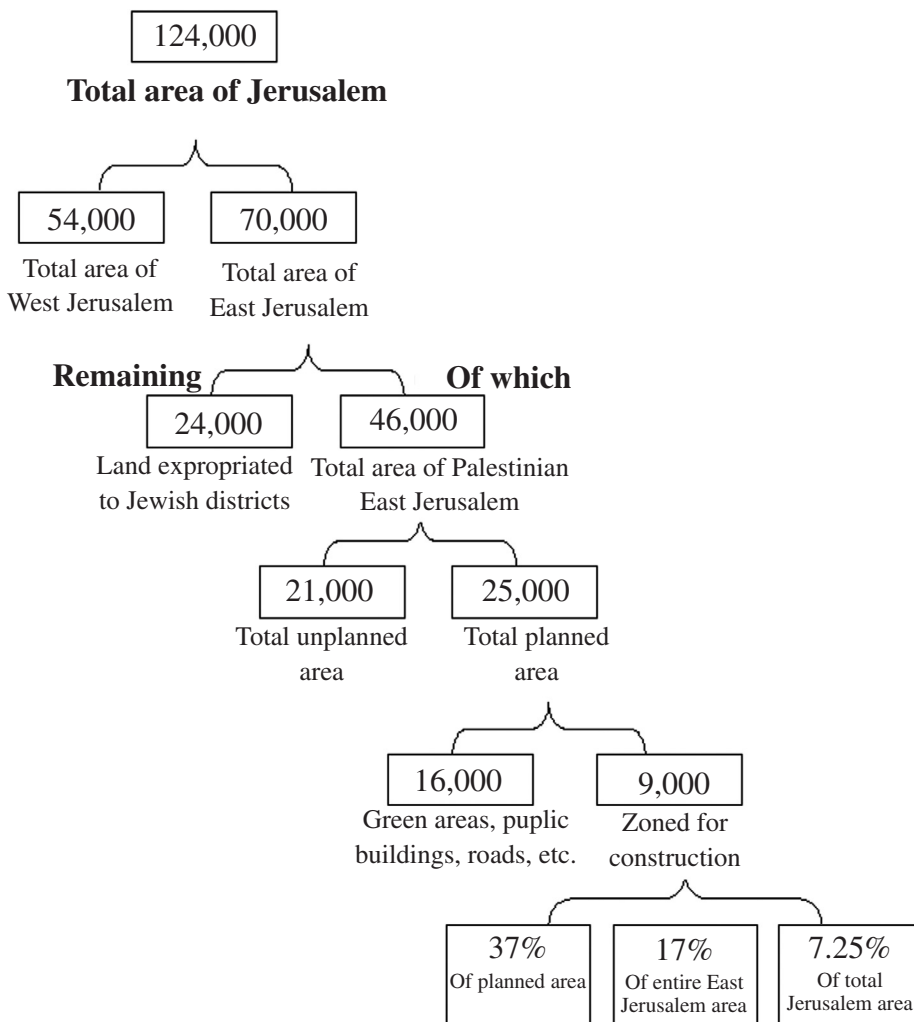
Having demonstrated the faulty nature of the law itself, we shall list the most frequently encountered obstacles that render the process of obtaining a permit virtually impossible.

The very limited area permitted for construction in East Jerusalem

The total area of East Jerusalem, meaning the Palestinian neighborhoods in the east of the city, exclusive of the Jewish neighborhoods built there, amounts to some 46,000 dunam (11,500 acres). About half the area, consisting of 24,655 dunam (6,163 acres) is covered by 25 approved Town Building Schemes and another 7 Town Building Schemes not yet approved. The size of the area zoned for construction appears, on the face of it, to be reasonable. Under the approved plans, however, only 37% of the land or 9,178 dunam (2,294 acres) is allocated for residential purposes. Construction is prohibited on the rest of the land, for a variety of reasons. Some 40% has been defined as open landscape or green area where a sweeping ban is imposed against construction, and 20% of the area is defined as being designated for public institutions and roads.

(see Map page 9: Palestinian built-up and green areas)

Area remaining for construction (Dunam)



Amir Cheshin, former Advisor on Palestinian Affairs to Mayor Teddy Kollek, writes pointedly about the considerations underlying planning in East Jerusalem: *“Planners at the office of the Town Engineer, when outlining the boundaries of the areas designated for Palestinian neighborhoods, restricted them to areas already built up. Adjacent open areas were zoned as “green areas”, which is to say, out of bounds for the purposes of development, or remained unplanned until needed for the construction of Jewish residential projects. Kollek’s 1970 plan includes the principles on which Israeli housing policy is still based – expropriation of Palestinian-owned lands, development of large Jewish neighborhoods in East Jerusalem and the restriction of development in Palestinian neighborhoods.”*²²

22. Amir Cheshin, Bill Hutman, Avi Melamed, *Separate and Unequal, the inside story of Israeli rule in East Jerusalem*, 1999, p.237.

Building percentages

Not only is the area zoned for construction restricted, but so are building percentages within that area. In most of the area permitted for construction in the east of the city, building percentage is in a range of 35% to 75%, whereas in Western Jerusalem it is in the range of 75% - 120%, on the pretext of preserving the “rural character” of the area, and because this is compatible with residential patterns generally accepted in Palestinian society. In the Western city, up to six housing units per dunam (quarter acre) may be constructed in three-to-four storey buildings, while in the Eastern city, only two land-attached housing units may be built per dunam.²³ The most blatant examples of building percentage discrimination are found in the Jewish precincts located in the heart of Palestinian villages. 115 building percentage was permitted in Ma’aleh Zeitim – the precinct built by Moskowitz in Ras El-Amud, whereas the Palestinian neighbors are allowed up to 50 percent only. The new Nof Harim precinct planned for Jabel Mukaber was given 115 building percentages, with the Palestinian neighbors being allowed only 25 percent. Due to the low percentages, private developers refrain from building in the East City. Were they to be allowed reasonable building percentages, the land would become available for public construction.

In recent years, the Municipality has notably been demonstrating a degree of flexibility on this issue, and is inclined to approve building percentage exceptions. It is, in fact, preparing a plan to raise percentages in the Eastern City - but all too little and too late.

23. Uri Ben Asher- the then Municipal Engineer, to the Director-General of the Municipality, January 23, 2000.

Comparison of building percentages in bordering Palestinian and Jewish neighborhoods

The table reflects average building percentages per the Town Building Scheme

Neveh Yaakov – 90% Pisgat Zeev – 90% - 120%	Beit Hanina – 50% - 75%
Gilo – 75%	Beit Safafa – 50%
Armon HaNatziv - 75% - 90%	Jabel Mukhabar – 50%
Har Homa- 90% - 120%	Zur Baher - 35% - 50%
French Hill – 120%	Al 'Isawiya – 70%
Ramat Shlomo – 90% - 120%	Shuafat – 75%

Reparcellation and dearth of infrastructures

Not only is the area zoned for construction limited, and the building percentages within it low, within any given construction-zoned area there exist endless obstacles still further whittling down any possibility of obtaining a building permit. In practice, construction cannot take place in the greater part of the area, either due to the need for detailed planning, which for many years has been stuck in the mud, by reason of a series of planning and legal difficulties, or due to a dearth of infrastructures.

In 20% of the residential-zoned area in East Jerusalem, no construction can actually take place prior to the completion of a process of re-parcellation (unification and division), which is necessary so that a fair allocation of lands for public use can be assured. This move, which involves unifying and subsequently re-dividing a number of private parcels of land, has been bogged down for close on twenty years. This is due to the large number of owners, and their inability to prove ownership of the land by means of a registration extract.

The problem is especially acute in the neighborhoods of Beit Hanina and Shuafat, where most of the area needs to be unified and re-divided; and until that takes place, the neighborhoods remain in a state of ‘total freeze’ where no construction can take place, nor can the land be sold.

In a large part of the area, no building permits are obtainable due to absence of infrastructures, namely water, sewage and roads. The Planning and Building Law prohibits construction in areas in which there are no infrastructures. The Municipality notes that it needs a sum of NIS 185 million in order to “promote conditions for construction in the Eastern City”, to build infrastructures that will enable building permits to be issued. Needless to say, absent any such budget and absent any motivation, there is not the slightest chance of either the Municipality or the Government investing such amounts in East Jerusalem.²⁴ In 1997, the Government of Israel resolved to commence detailed planning that would enable building permits to be issued for some 3,000 housing units. In fact, it set up an inter-ministerial commission, known as the Efrat Commission that was detailed to put the resolution into practice. Of the NIS 185 million needed for advancing building plans, the Municipality received a mere NIS 4 million, to which it proceeded to add NIS 5 million out of its own budget. The project ended there. What this means is that in most of the areas zoned for construction according to the Planning Scheme, building cannot be actualized due to lack of infrastructures. Uri Ben-Asher, who served as Municipal Engineer, writes explicitly: “This state of affairs caused difficulty in the issuance of building permits, since the problems involved in executing infrastructures, especially roads, prevented building permits from being issued”.²⁵ A professional team currently preparing a new Planning Scheme for Jerusalem expresses the matter in minor key but nonetheless clearly: “Some of the plans approved are inapplicable since they are incapable of implementation”.²⁶

24. Ebud Olmert, response to query by city councilor Meir Margalit, December 16, 1999.

25. Uri Ben Asher- Municipal Engineer, to the Director-General of the Municipality, January 23, 2000.

26. Local Planning Scheme Jerusalem 2000, Moshe Cohen et al, August 2004.

Thus, even though the approved planning schemes for East Jerusalem allow for a theoretical capacity for the addition of some 22,840 housing units²⁷ or of 26,000 according to another version,²⁸ the potential actually exists on paper only. In 2001, Mayor Ehud Olmert writes to the then Minister for Foreign Affairs Shimon Peres, that out of a potential of 26,000 approved housing units in East Jerusalem, only about 6,000 housing units were ‘immediately available’ while the other 20,000 housing units were in what Olmert refers to as “proximate availability” which is dependent on the development of infrastructures. Olmert probably did not define the time interval that would be required for the infrastructures to be developed, but any reasonable person knows that given the budgetary constraints of the Municipality and the Government, the work has no prospect of being carried out in the next few years. Accordingly, when the Municipality speaks of the existence of an area large enough to accommodate 26,000 housing units, we would point out that this potential exists on paper only, and none of it is actually realizable.²⁹

New procedures

Commencing 2002, a series of new procedures were put in place that make things difficult for building permit seekers. The procedures consist of a series of requirements designed to ensure that the applicant is the owner of the land and not a stranger - a reasonable enough requirement in Western Jerusalem, but highly problematic in the Eastern City, where most of the lands are not registered in the Registry of Lands. Sure enough, the requirement to furnish proof of ownership is a reasonable one; and until not long ago, the Municipality would content itself with a combination of traditional and administrative proofs adducing evidence of connection to the land such as a succession order, a confirmation from the village mukhtar, the signatures of the neighbors, a

27. *The Planning Department, Comparison of Residential Supply and Demand in Jerusalem in 2000 – 2020, September 10, 2000, edited by Charles Kohn.*

28. *Ehud Olmert to the then Minister of Foreign Affairs, Shimon Peres, April 23, 2001.*

29. *Ditto, ipid.*

notarized affidavit or the publication of a notice in the press or in public places, and the payment of property tax. In recent years, however, as fraudulent acts proliferated, the requirements became more stringent and a series of demands were advanced, which ensure that the residents of East Jerusalem do not meet the minimal threshold requirements for filing application for a building permit.

The following requirements are notable among these newly added difficulties:

- A. A requirement to prove ownership of the land by means of a registration of the applicant and the other joint owners of the parcel in the Registry of Lands.
- B. Personal particulars and signatures of all the landowners.
- C. Confirmation from the Arrangement Office that there are no additional claims to such lands appearing in the Jordanian table of claims.
- D. Confirmation from the Custodian of Absentee Property that the land is not under their management.
- E. Confirmation from the Israel Mapping Centre that the land is identified and that they have no additional identification.

Here, things are especially difficult for those who acquired land registered in the “Jordanian Table of Rights” in the name of a third person. In such case, the Municipality requires the new owner to alter the name of the previous owner at the office of the “Arrangement Officer” in Jerusalem. However, in order to modify ownership, the Arrangement Officer requires the previous owner to report to him personally, and this is usually not possible. As stated, the purpose of the more stringent requirements is to prevent a situation in which people build on land that is not their own.³⁰ This is a meritorious objective, but the method of achieving it is flawed. This is because, in order to solve a localized problem, officialdom has merely created another, far more

30. Efrat Don Yahya Stolman, legal advisor of the District Committee of the Ministry of the Interior to: Neta Amar, The Association for Civil Rights in Israel, November 27 2002.

serious problem. In a reality in which most of the land has been, since the Jordanian era, “under arrangement”, or else is “totally unregulated”, any permit-obtaining process becomes manifestly impossible. The situation is all the more complicated where the parcel of land has been subdivided between numerous heirs, some of whom do not reside in Israel and some of whom come under the definition of “absentees”. We would point out once more that about half the land in East Jerusalem is completely unregulated, which means that ownership cannot be proved. Moreover, even if the residents of East Jerusalem wished to register their land today at the Registry of Lands, they would be unable to do so, since the Government froze land registration as far back as 1967, on the flimsy pretext that any such moves could be prejudicial to the rights of owners defined as absentees, and who were unable to express opposition to the registration of a third party. The Government therefore instructed the “Arrangement Officer” in charge of the registration of lands at the Ministry of Justice, to complete registrations commenced under the Jordanian regime, but to freeze any new registration until further notice.

The ownership issue is a controversial one. A number of rulings recently handed down at the District Court by Judges Zur and Drori find that the Municipality is a “planning authority” and not a “proprietary authority”. Accordingly, it can content itself with proof of an interest in the land, and is not obliged to require registration at the Registry of Lands. Even so, the Municipality refrains from modifying the regulation. It is therefore difficult to shake off the feeling that the State is exploiting a legitimate legal tool in order to tighten the noose around the necks of the residents of East Jerusalem.

The law does permit residents to file an “application for initial registration” constituting *prima facie* proof of ownership over the land. However, the application for initial registration is booby-trapped, since it necessitates confirmation from the Custodian of Absentee Property, which always ‘discovers’ that one of the landowners lives in the territories, and is thus defined as an ‘absentee’ – which makes the Custodian a potential ‘partner’ in the land.

As if it were not enough that the requirements for obtaining building permits are exceedingly difficult for the Palestinian population, the Ministry of the Interior has only recently adopted a series of resolutions, placing an even greater burden on anyone seeking to obtain a building permit.

The following is part of the instrument outlining the more stringent approach of the Ministry of the Interior discussing the protocol needed to register a land.

State of Israel

The Ministry of the Interior — Jerusalem District Administration

Summary of Discussion

Having taken place at the office of the Chairman of the Jerusalem District Planning and Building Commission

On August 17, 2004 - in the requirement of proof from one submitting a plan, that they hold an interest in the land

Object of the discussion:

To determine the requirements to be advanced by the examiner of plans as the one submitting the plans for proving his right to submit the plan as the holder of an interest in the land.

Summary — Ruth Yosef

The requirements of proof [made] for a holder of interest in land, in unregistered land, will become more stringent. The requirements will include presentation of all of the following instruments:

A survey plan describing the land subject of the plan and the bordering lands, prepared and signed by a licensed surveyor and examined by the district surveyor as a survey plan prepared to the level of detail and accuracy of a survey plan for registration purposes.

Confirmation by the district surveyor that no involuntary acts have been performed in the land, such as expropriation, parcellation and so forth.

Confirmation by the Lands Arrangement Officer that no arrangement procedures are taking place in the land.

An affidavit by the party submitting the plan warranting that they hold an interest in the land subject of the plan, and giving details of how they hold such interest, together with the signature of the party submitting the plan on the survey plan.

An affidavit by the party submitting the plan listing all neighbors being holders of rights in lands bordering on the land subject of the plan.

An affidavit by each of the neighbors, in which they warrant that they are the holders of the bordering lands and that the survey plan correctly describes the borders between the land owned by them and the land owned by the party submitting the plan, together with the signature of each of the neighbors on the survey plan in the area in which the bordering lands owned by them are situated.

An affidavit by at least two of the mukhtars of the village that, to the best of their knowledge, the party submitting the plan is a holder of interest in the land subject of the plan, and the neighbors warranted by the party submitting the plan to be holders of areas bordering on his area are in fact the holders of the rights bordering on the area subject of the plan, together with the signature of the mukhtars in the margins of the said survey plan.

A confirmation from Lands Registration as to a property tax and severance pay fund record (Field Book abstract), which will include details of the registered owner, the date of registration and the area of the parcel.

The cost of obtaining a permit

Over and above the statutory difficulties, anyone seeking to build by permit discovers that the cost of obtaining a permit is well beyond what they can afford. This applies to most East Jerusalem residents. Expenses begin with the payment of a “file opening fee” the cost of which varies in accordance with the size of the building, and is in the range of NIS 2000 for a 200- sq.m building. But the reasonable amount collected for opening a file contains no hint as to what is in store for the applicant later on. The most significant expenses the resident must disburse in order to obtain a building permit are: ‘roads and sidewalks development fee’, ‘water and sewage fee’ and ‘betterment levy’. The price of all of these is especially high in the eastern part of the city, since the calculation is made on the basis of the area of the entire parcel, and not just the area of the building. Thus, we shall take by way of example a situation quite frequent in East Jerusalem, of an average family that owns half a dunam (2 acres) of land and seeks to build a 200- sq.m house. This family must pay the following amounts: ‘roads and sidewalks development fee’ at a minimal cost of NIS 74 per sq.m for the building area and NIS 37 per sq.m for the land area, meaning a payment of some NIS 14,800 for the building and another NIS 18,500 for the land. The ‘water and sewage fee’ is likewise calculated in accordance with the size of the building and the lot. For being connected to the waterworks the applicant will pay a ‘system development fee’ at a cost of NIS 8.4 per sq.m of the lot and another NIS 66.98 per sq.m of residential area, amounting to NIS 17,606, and in addition, he must pay a ‘waterworks connection fee’ at a cost of 15% of the development fee or NIS 45,025. As to the ‘sewage fee’, the same applicant will be required to pay NIS 31.05 for the area of the lot, amounting to NIS 15,525 and another NIS 41.18 for the area of the building, amounting to NIS 8,236. All this still does not include the cost of pipe-laying excavation and connection to the sewage system, which have to be done privately at the expense of the house owner, and which costs about NIS 200 per serial meter, while the overall costs depends on the distance from the house to the nearest pipeline. It should be noted, however, that in

most instances, East Jerusalem residents do not connect to the system but use septic tanks, and even though this is against the law, the Municipality turns a blind eye out of the realization that the cost is prohibitive.

The 'betterment levy' too, is calculated in accordance with the size of the building by means of a formula, whereby the first 120 sq.m is exempt from payment and the balance cost about NIS 160 per sq.m. Therefore, a 200-sq.m house will pay a betterment levy of some NIS 12,800. Of course, the exemption for the first 120 sq.m applies only to one house on each lot. In the realities of East Jerusalem, in which families build more than one house on the lot they own, the levy will cost a great deal more since, on building the second house, the resident will pay for the entire area of the house.

Since 2000, new expenses have been added to match the more stringent requirements applied to applications for a building permit on unregistered or unregulated land, whereby the boundaries of the lot must be marked by means of a "PRP" - "Plan for Registration Purposes" – a plan based on an analytical survey using a national coordinates network, and signed by a surveyor listed in the Register of Surveyors. A PRP costs about \$ 3,000 whereas the previous graphic surveys were performed by a Palestinian surveyor at an average cost of only \$ 300. Then there are lawyer fees, since a lawyer is needed to personally undertake and register the PRP at the Israel Lands Administration, a requirement that adds considerably to the cost of obtaining the permit.

All these expenses must be borne by the resident even before he hires the services of an architect, a surveyor or a lawyer. Hence, total expenses involved in obtaining a license sometimes exceed the price of the house itself.

Table of fees and levies for obtaining building permit for a 200-sq.m house on a half-dunam lot

(Before excavation for sewage pipes, architect's fee and lawyer's fee)

Opening of file	About NIS 2,000
Road development fee – building	NIS 14,800
Development fee –lot	NIS 18,500
Sewage fee – lot	NIS 15,525
Water mains connection fee	NIS 5,025
Water mains development fee	NIS 17,606
PRP	About NIS 15,000
Betterment levy	About NIS 12,800
Total	About NIS 109,492

It is only fair to point out that Jews and Palestinians seeking to obtain a building permit pay in accordance with the same parameters. There are, however, two obvious differences between Palestinian residents wishing to buy a standalone house and their Jewish neighbors living in high-rise apartment buildings.

a. The expenses payable in Jewish neighborhoods are distributed among a large number of occupants whereas in the Palestinian sector, the cost falls on a single family. *b.* The socio-economic level in East Jerusalem is far lower than in the western city, and most East Jerusalem residents cannot meet expenses on such a scale. According to data from the Municipal Welfare Division, some 70% of the residents of East Jerusalem live below the poverty line. The burden of fees and levies is more than they can shoulder, faced with the choice of living in overcrowded conditions in the parental home or building without a permit, and in the absence of any tradition of using rented accommodations, most of the public prefer to take the risk and build without a permit. It should

also be noted that the residents of Western Jerusalem do not notice the cost of the fees since these are included in the apartment price, whereas in East Jerusalem, the cost is very heavily felt and can sometimes amount to more than the entire cost of construction.

Furthermore some residents get lucky. Their lot of land is in an area permitted for construction, they can prove ownership interest, the area has sufficient infrastructures, there is no need for unification and re-division, and they have enough money to pay the fees. But even then, they may well run into countless difficulties, making the process clearly impossible. Thus, for example, the Municipality refrains from issuing approvals in the area known as the “Holy Basin”, stretching from the area of Abu Tor to Mt. Scopus, on the grounds that the land is of archaeological and religious importance. Two new reasons were adduced recently:

- A- Because approval has not yet been given for the grandiose plan of the “eastern ring road” and until it is, no new construction is to be approved along its route since “the road route will affect the whole environment”. The ring road is to be a 20 kilometer road crossing the whole of East Jerusalem from north to south, and is to include a system of bridges, three tunnels and secondary roads that will link it with the various neighborhoods, and involves a great deal of land expropriation and demolitions of houses standing on the planned route, a process taking many years with, so far, no end in sight.
- B- Because final approval has yet to be given for the route of the Jerusalem cordon separation fence. References to the “separation fence” notably mean a huge complex that includes not only the fence itself but also a 500 – meter wide strip of land running along the entire route of the fence, providing a security range to protect against small arms fire, an earthen strip running alongside to reveal footprints, crossing terminals, and at least one new Border Police base, and all in the area of East Jerusalem, requiring land to be expropriated and houses demolished on a tremendous scale.

TEST CASE - the Halawani family, Ras Al `Amud

For many generations, the Halawani family has held an area of 1.4 dunam (0.35 acres) in Ras Al 'Amud, on which stand two small 2-room houses, each with outhouses. They have 27 occupants: the paterfamilias, aged 97, and the mother, together with the 3 married sons: the eldest- Muhammad (a family of 6) the second son – Mahmud – (a family of 10) together with his son Talal (a family of 4) and the third son Nagah (a family of 7).

At the beginning of 2001, Mr Talal Halawani, (aged 51) asked the “Archityp” architectural firm to prepare building plans with the objective of obtaining a lawful building permit. His intention was to build two large houses on his land. He insisted that everything be done in accordance with the law, even though he was aware of the difficulties facing him. In March 2001, Planning File No. 8229 was opened. After preparation of the plans, which were complicated because they necessitated a change of the Town Building Scheme from green area to residential area, the file was tabled for discussion by the Municipality’s local committee in December 2002. The committee recommended approving the plan. But the Ministry of the Interior’s district committee rejected the application, claiming that the route of the eastern ring road, at that time on deposit, had not yet been approved. In April 2003, the relevant segment of the ring road was approved, and Halawani’s plan was again submitted to the district committee for approval. The committee resolved to send it back to the Municipal local committee for reconsideration. The Municipality, for its part, refused to discuss the plan because of a new directive handed down by the Municipal Engineer who demanded that material be collected on all private plans submitted by residents along the ring road spur known as the “American Road” in order to finalize a planning concept for the area. Asked how long the process would take, the Municipality responded that at the moment there was no timetable. At the same time, the architectural firm tried to persuade the district committee to discuss the plan without sending it back to the local committee. The architects maintained that with the removal

of the obstacle that had prevented the plan from being approved originally, and since the house would not be prejudicial to the approved route of the ring road, there was no reason not to approve the plan. The head of the planning team at the Ministry of the Interior replied that it was true that the road problem had been removed, but the application could not be addressed at present because the Ministry of the Interior had not yet determined policy regarding proof of ownership of lands in East Jerusalem.

Needless to say, no timetable had been set for this either. To add insult to injury, not only are the authorities refusing to approve the plan, but at the same time, the State has expropriated a 250 sq.m lot from the Halawani family for the purpose of the “American road”, while an additional area of 150 sq.m remains unused on the other side of the road.

Talal Halawani experiences the pain of looking at the dwellings his neighbors built without permit for their family, and where they live under more or less normal conditions whereas he, who sought to build lawfully, and was prepared to comply with the authorities’ every requirement, has already been kept waiting for 5 years with no end in sight.

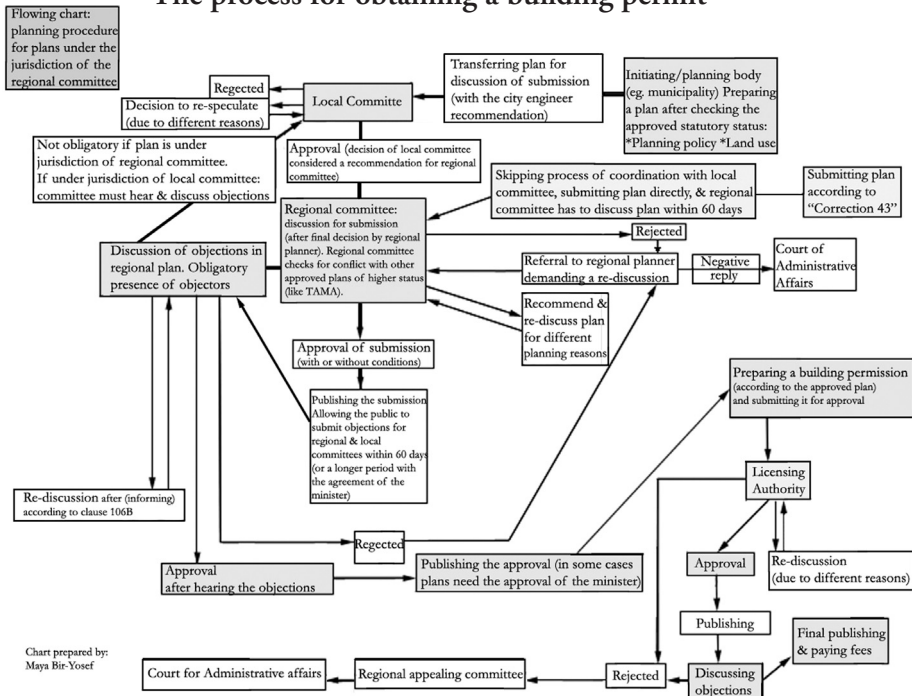
THE BUREAUCRATIC TANGLE – OBTAINING A BUILDING PERMIT

The process of obtaining a building permit is complex and complicated. A study by the Association of Building Contractors in Israel to reveal the process a contractor has to go through from the moment he decides to build a building and until the moment it is finished, found out that he has to run in between 41 different officers and bodies to finish it. Contractors and developers embarking frequently on the process learn how to cope and overcome the numerous obstacles involved. The effort will be worth their while, since the cost of time and fees are always included in the apartment price.³¹ Where a private individual is concerned, the move involves hiring the services of an architect and sometimes also a lawyer, considerably increasing the cost of construction. Hence, when all a man wants is to build a modest home for his family, his mission is almost impossible.

No great amount of verbiage need be employed to describe the complexity of the task. We must make do with a flow chart presenting the necessary stages in obtaining a building permit. The following diagram relates to the most complicated but also the most frequently encountered situation in East Jerusalem, in which a resident must get a Town Building Scheme (TBS) altered in order to obtain a permit. In other words, the resident needs to have the land rezoned from green, open, or unzoned land, to built-up area. Here it should be borne in mind that only 9,000 dunam (2,250 acres) out of 46,000 (11,500 acres) dunam in East Jerusalem are permitted by law for construction. Therefore, in 82% of the area, obtaining a building permit means getting the TBS altered. The last stage of the plan relates to a resident building in an area originally designated for construction. Although this appears simpler than the process of altering the TBS, it is still a highly complicated and wearing process.

31. Anat George, *The Marker*, February, 10, 2006.

The process for obtaining a building permit



As stated, no great amount of verbiage is needed. The graph speaks for itself. The first image it invokes is that of a Kafkaesque labyrinth. A glance at the tortuous windings of the process will reveal just why an East Jerusalem resident would prefer not to try to obtain a permit in the first place. We shall add a comment included in a ruling handed down by the Jerusalem District Court, written by Judges Moussia Arad, Awni Habash and Boaz Okon, which expresses the dissatisfaction of the judicial system with the red tape involved in obtaining a building permit:

“In this context, it should be pointed out that the time has come to reconsider enforcement policy in all matters pertaining to building offences. In many of the cases that have been addressed by us, we have gained the impression that a vicious circle has been created. The citizen or the resident does not get quick, businesslike service, and their applications for a permit undergo superfluous bureaucratic stages. A negative norm has therefore emerged whereby people take the law into their own hands. Construction is undertaken without any permit. Then a judicial proceeding

is launched... and the citizen or the resident once more encounter a dead end... as usual, the root of the evil lies at the point of departure. The authority must establish simple permit issuance procedures, suitable for everyone. It must adhere to the principle of service that calls for response within a reasonable space of time, whether affirmative or negative, to any application”³²

The “catch 22” lying in obtaining a building permit retroactively

Many residents of East Jerusalem are in the habit of opening a building permit issuance file after receiving a demolition order or being summoned for trial. They hope that the court will then freeze the demolition order or reduce the anticipated fine. In most cases, the motion is denied on the grounds that the house is located in a green area where building is prohibited. However, when there are no planning obstacles, the resident becomes involved in a Kafkaesque vicious circle. On the one hand, the ‘Local Planning and Building Committee’ which is supposed to approve the permit delays its decision until the court hands down its verdict. On the other, the resident needs the approval of the local committee in order to obtain a reduced penalty and have the demolition order rescinded. They are thus, entrapped with no way out. Once they have prepared a building plan, successfully broached all planning stages and reached the final approval stage, they discover that their application is being rejected out of hand by the Local Planning and Building Committee, on the grounds that they must wait until the court gives its ruling. When the court case reaches the sentencing stage, they find that absent a permit, the demolition order remains in force and the amount of the fine is correspondingly high.

Even worse is the situation of the resident whose application for a retroactive building permit involves a change of TBS whereby the area on which the

³². Jerusalem District Court, Hassan Sawarba v. the District Planning and Construction Committee, Criminal Appeal 7437/03, September 14, 2003.

house is built is rezoned from green – where construction is prohibited – to built-up area. Sometimes, when the illegal building is in a green area bordering on a built-up area, the Municipality shows consideration and agrees to rezone the land in order to enable the resident to obtain a lawful building permit. While this does involve a great deal of expense, residents are sometimes prepared to take this path, in order to eliminate the threat of demolition. But in 2003, the Local Planning and Building Committee decided to deal more strictly with such applications, placing additional obstacles in their way. The decision of the Local Planning and Building Committee as of October 2003 reads: *“The committee views with utmost gravity construction offences committed out of the intention and forethought of obtaining a permit from the committee. The committee will not consent to serve as cover for building offences committed... the committee will discuss each application brought before it and, in reaching its decision, will weigh not only planning considerations but also the fact that an offence was committed, and the severity of the offence”*.³³

Since that time, the committee has regularly rejected in limine applications for building permits on the strength of an opinion from the Municipality’s legal advisor, recommending the rejection of applications from anyone having built houses in a manner involving prime facie contempt for the rule of law.

Hence, even when seeking to obtain a retroactive building permit, an East Jerusalem resident cannot do so in a reasonable, orderly manner.

33. *Adv. Yossi Havilio, Legal Advisor of the Municipality to Yehoshua Pollak, Deputy Mayor November 11, 2003.*

CONTRIBUTION OF THE STATE OF ISRAEL TO THE ENCOURAGEMENT OF UNLAWFUL CONSTRUCTION IN EAST JERUSALEM

Any attempt to explain the reasons for unlawful construction in East Jerusalem must take into account the tremendous demand for housing that has arisen in recent years, as a result of two policy decisions taken by the Government of Israel: annulment of residency to those living outside the municipal boundaries, and the construction of the Round-Jerusalem separation fence. Since the Government instituted these two moves, the demand for residences in the eastern part of the city has increased, giving illegal construction a tremendous boost.

The policy of annulling residency to those residing outside the city's municipal boundaries has been in force for more than ten years. It was instituted by the then Minister of the Interior, Eli Suissa of the Shas party. Until that time, young couples had preferred to live in city outskirts, due to a shortage of rental apartments and the high rents collected within the city. Many communities of Jerusalemites arose in the periphery villages, from Beit Jalla in the south to A-Ram in the north, and in the easterly villages such as Hizma, Anata, Abu Dis, Azariah and so forth. Thousands of Jerusalemites took up residence in the periphery while their lives remained centered within the city itself. In 1993, the Ministry of the Interior published regulations annulling the residency of those living outside the city's boundaries, and also all their attendant social rights, ranging from health fund services to the various National Security Institute allowances. Confiscation of blue identity cards even deprived such individuals from the freedom of movement within the city and access to their places of work, and prevented them from visiting family. As a result, tens of thousands of Jerusalemites started migrating back inside the city, causing a tremendous demand for apartments and a steep increase in rent. Therefore, many families that had difficulty in paying free market rents preferred to buy a low-priced parcel of land- usually lying within a 'green area', which is the

cheapest in the market - and build themselves a modest home without a permit.

This phenomenon was stepped up again in 2002, when the construction of the separation fence started to be discussed, and yet again in 2003, when people realized the implications of living behind the fence. We have since witnessed an incessant wave of families relocating to the 'right side' of the fence, locking their houses, leaving everything behind and moving to any vacant spot within the city, anything rather than remain imprisoned behind the fence. The area north of the Kalandia barrier, where more than 20,000 Jerusalemite families live, is emptying of its inhabitants. Entire families are relocating, even if only by a few hundred meters, in order not to lose their place of work, not to be cut off from schools, hospitals or family members, and especially in order to save themselves the daily humiliations involved in crossing the barrier. Rent in Kufr Aqeb village, for example, plummeted by 50% that year, while at the same time, rent on the other side of the barrier rose by more than 100%.

This massive return to within the Municipal boundaries caused a demographic explosion followed, as an inevitable result, by a wave of illegal construction. From that time, the Municipality has lost control of the on goings in East Jerusalem, since the need for shelter is stronger than any 'deterrent measures' imposed by the Municipality upon its residents. In the face of urgent necessity, no penalty can deter. So indeed, as Jewish scholars taught, no edict should be imposed upon the public that is more than the public can endure.

He who thought to battle the 'demographic demon' through the use of administrative measures created a far worse 'urban demon'. The late Faisal Husseini, one of the most prominent Palestinian leaders, once said that the day the Palestinian state awarded "Freedom of Al-Quds" honors, he would recommend awarding them to Minister Eli Suissa for his contribution to reinforcing East Jerusalem. Sure enough, the State of Israel, with its own hands has sown the wind and is reaping the whirlwind. Today, it is hard to cope with the results. We again witness a pattern that recurs throughout the dispute in which the State, with its own hands, creates the problems, which it subsequently

finds difficult to resolve. If, as the saying goes, the wise man avoids getting into situations that the smart man knows how to extricate himself from, then the State has proved that it is neither smart nor wise – it becomes bogged down in problems of its own creating, and then cannot extricate itself. With one hand it impels people to build without a permit and with the other, it battles the political results that stem from its own initiatives.

THE UNDERLYING MOTIVE OF JERUSALEM'S MUNICIPAL PLANNING AND BUILDING POLICY

Matti Hutta, former Chairman of the District Commission of the Ministry of the Interior in the Jerusalem District said in a press interview that planning decisions always had a political background: *“Let’s not talk of political decisions but of decisions arising from policy. My decisions and those of the Commission in general are reached in consideration of a certain planning policy to which we are committed. Politics is always there, I am not saying it isn’t, but political considerations dictate policy, and that is how things work”*.³⁴ Sure enough, behind the difficulties that the Municipality piles up for East Jerusalem residents wishing to build a home, lies a combination of ideology, budgetary difficulties and a chronically cumbersome bureaucracy.

The ideological motive stands out in the policy decision establishing that a demographic balance must be maintained in the city of a ratio of 70% Jews to 30% Palestinians. This policy was expressly laid down in 1973, by the inter-ministerial committee for examining the rate of development in East Jerusalem and known as the “Gafni Commission”. Underlying that policy was concern at the rate of increase of the Palestinian population in Jerusalem and the fear that within a few years, they would succeed in changing the Jewish character of the city and would even choose the mayor. A municipal paper prepared by the Planning Policy Division in 1977 expressly states, *“one of the cornerstones of*

34. Eldad Brin, ‘District Governor’, Kol Ha’Ir, September 26, 2003.

Jerusalem's planning process is ... the preservation of the demographic balance between the ethnic groups (in accordance with) the resolution of the Government of Israel".³⁵ Another official instrument of the Jerusalem Municipality prepared by the Municipal Planning Division in 1996 expressly states that one of the underlying assumptions of the city's planners, in drawing up outline schemes in East Jerusalem, is that of preserving the 70-30 ratio between the two populations.³⁶ The new outline scheme currently being prepared reiterates the same trend of preserving "demographic balance in accordance with Government resolutions", even though the planners recognize the fact that according to the forecasts, the increase in the population toward 2020 will be in a ratio of 60–40.³⁷

Amir Chesin, who observed the planning process in East Jerusalem in the Teddy Kollek era, attests that, in Jerusalem *"Israel has transformed urban planning into a tool in the hands of the Government, whose object is to prevent the spread of the non-Jewish population of the city. This was a cruel policy, if only by reason of the fact that it disregarded the needs (not to mention the rights) of the Palestinian residents. Israel regarded the institution of a stringent urban planning policy as a way to restrict the number of new houses being constructed in Palestinian neighborhoods, and thus ensure that the percentage of Palestinian residents in the city's population – 28.8% in 1967 – would not increase. If we permit "too many" new homes to be built in Palestinian neighborhoods, that will mean "too many" Palestinian residents in the city. The idea is to move as many Jewish residents as possible to East Jerusalem and to move as many Palestinians as possible out of the city altogether. Housing policy in East Jerusalem has focused on this numbers game"*.³⁸

As stated, the Government assumed that circumscribing the building space permitted to Palestinians would put the brakes on the demographic increase, and that if forbidden to build they would have, perforce, to abandon the city.

35. Yisrael Kimche, Policy Planning Division Head, *Population of Jerusalem and Surroundings*, 1977.

36. Jerusalem Municipality, Town Planning Division, "Planning in the Arab Sector in Jerusalem, 1967 – 1996".

37. See Chapter 4 on the New Municipal Master Plan.

38. Chesin, 31-32.

The most outstanding example of that trend was Town Building Scheme (TBS) 2003 of the Shuafat – Beit Hanina area, which was supposed to permit the construction of 17,000 housing units, and which the Ministry of the Interior slashed to 7,500 housing units on the grounds that the original figure was not compatible with the policy of preserving the demographic balance.³⁹ The selfsame fear of demographic increase underlay three mutually complementary moves instituted by Ministry of the Interior with the aim of reducing the city's Palestinian population, and which are still in force today, the confiscation of identity cards from residents moving to outside the city's municipal boundary, obstacles placed before the registration of infants in the Population Register and difficulties created for those seeking to bring spouses from the territories or from Jordan to within the city limits.

APPARATUSES BEHIND HOUSE DEMOLITIONS

Work patterns at the Jerusalem Municipality Supervision Division

The municipal body in charge of the demolition of houses is the “Construction Licensing and Supervision Division”. Since 2003, it has been headed by Micha Ben- Nun. The Division's inspectors spot building offences and present their findings to the legal department, which files indictments or administrative demolition orders, according to the circumstances.

City comptroller Adv. Shlomit Rubin in 2001 and 2003 examined the work procedures of the Licensing and Supervision Division, in light of reports of grave irregularities and rumors of bribery, as well as other offences.

The findings of the comptroller were first published in a report for the year 2001. It determined that construction supervision was taking place in absence of any approved procedures. The comptroller writes, in dry, minimalist-style legal language that “the Municipality does not operate in accordance with an

39. Deputy Mayor Avraham Kahila, meeting No. 52 of the Town Council, June 29, 1992, p. 26.

updated and approved demolitions procedure. The existing procedure is unsuitable as being out of date and unrevised”⁴⁰. This means that, in absence of proper procedures, the entire process of issuing demolition orders takes place on the basis of the arbitrary decisions of those in charge. And moreover, despite the existence of an old procedure, that the Municipality disregards, they are in fact operating without any orderly working principles. “Procedure 41.5203 – Demolition of a Structure Pursuant to an Administrative Demolition Order- is a procedure dating from February 1, 1987. Professional scrutiny reveals it to be unsuited to the changes that have come about in the Department over the years. The Department does not operate in accordance with this procedure”⁴¹. According to the comptroller, great importance attaches to the existence of proper procedures in all matters pertaining to the issuance of demolition orders, since capital offence laws are involved. “The auditing entity is aware of the sensitivity of the subject of demolitions in Jerusalem. The auditing entity therefore ascribes the greatest importance to the existence of an up-to-date procedure, which is designed to prevent, insofar as possible, any mishaps in the course of executing the demolition. The auditing entity wishes to comment on the absence of an up-to-date work procedure in all matters pertaining to demolitions. One need hardly point out the importance of working in accordance with proper up-to-date procedures”.⁴²

The comptroller, it should be understood, uses language in the style generally accepted in audit reports of this type, which is restrained and minimal. Even so, what the report exposes is that where house demolitions are concerned, anything goes. Fateful decisions are reached without reference to proper rules and with no public transparency. The Municipality officials act in accordance with unclear criteria. Absent any clear rules, corruption is rife, as attested by indictments brought in 2002 against a large number of employees of the Licensing and Supervision Division and as also transpired from the investigation of the Versailles Wedding Hall disaster.

40. *Audit Report- 2001, p.279.*

41. *Ibid, p.283.*

42. *Ibid, p.283.*

In light of the findings exposed by the municipal comptroller, the city councilor (the author of this book) approached the director of Licensing Supervision on March 19, 2001, demanding that demolitions are suspended until proper procedures were approved. The Division Director replied that a draft had already been prepared for a new procedure and was about to be published and distributed, and he could therefore see no reason to delay house demolitions until the process was completed: “The fact that there was no up-to-date procedure is not such as to delay and to prevent demolitions of unlawful structures; especially since execution of the orders met the test of law. I do not deem it fit to suspend the execution of the demolition orders until the procedure is published, since this is a matter of enforcing the Planning and Construction Law”.

Two years later, in November 2003, the city comptroller published a follow-up report on the findings exposed in 2001, only to discover that, in fact, the situation has remained as was. “In the follow-up report, the audit found that the draft procedure has still not been approved by the Director-General of the Municipality, even though more than two years have elapsed since then”.⁴³ The Municipality Director-General replied to the comptroller at the beginning of February that the procedure would be approved by the end of that month, but on the date of publication of the comptroller’s report: “the draft procedure is still waiting [on the desk of] the Director-General”.⁴⁴ The comptroller again determines that this subject is one of incomparable sensitivity: “The audit ascribes great importance to the existence of a demolitions procedure regulating the technical and other aspects of the demolition of houses, the outcome of which relates to the field of the person’s property rights”.⁴⁵

43. *Audit Report- 2003*, p. 1242.

44. *Ibid.*

45. *Ibid.* p.1246.

Work patterns of the ministry of the interior's construction supervision unit

The Ministry of the Interior runs a national construction supervision unit, which is supposed to undertake demolitions only in open grounds located outside an approved Town Building Scheme. The unit, headed by Avi Dotan, is divided into districts, with Zvi Schneider heading the Jerusalem District. Very little is known of the supervision of construction unit in the Jerusalem district. As opposed to the corresponding municipal unit that operates with relative transparency, the Ministry of the Interior unit is run to all intents and purposes like a military unit, refusing to present data and actually concealing information. Not even the Ministry of the Interior comptroller has examined the functioning of the unit that is seen as somehow “off limits”. The few reports that have reached us indicate a grim picture of a unit that operates with the utmost callousness, and will, by fair means or foul, proceed to destroy no matter what! The picture that has been pieced together on our desk is one of an aggressive apparatus that tramples whatever stands in its way and whose members cover one another's backs. A former senior official in the Municipality said that “people from the Ministry of Interior suffer from ‘over’-motivation,” in a hint to the eagerness they displayed regarding demolition work. The secrecy under which this unit operates is also fertile ground for offenders. In the end of 2005 an official who used to receive bribes from Palestinians for making files disappear was arrested. He stands accused of having received hundreds of thousands of dollars for a period of a number of years.⁴⁶

In order to give a more concrete sense of the modus operandi of this unit, we have chosen to present a complaint filed by Attorney Shlomo Lecker, which contains all the components characterizing the functioning of the Construction Supervision Unit of the Ministry of the Interior and the backing it receives from the system. The complaint was lodged with the Attorney General in May 2003. “On March 10, 2003, the District Unit for the Supervision of

⁴⁶. *Ha'aretz newspaper, December 14, 2005.*

Construction, under order and control of its director Mr. Zvi Schneider, destroyed a residential home in the Beit Hanina neighborhood of Jerusalem... There was pending, during the demolition, an order directing postponement of execution of an administrative demolition order issued by the Jerusalem Municipality. The building was demolished even though the owner, Mr. Guwad Sawiti, waived the judicial order in the face of Mr. Schneider who, as stated, supervised construction from the start of this event to the finish... After the demolition, I wrote to Mr. Schneider and to Attorney M. Kedar, who represents the Ministry of the Interior, asking for a copy of the demolition order by virtue of which the building had been destroyed. Adv. Kedar responded that "My client is not familiar with the case", all in spite of the fact that the Ministry of the Interior issued a press bulletin in connection with the demolition. Only after applying to the courts did I obtain one single page of an administrative demolition order that had been issued by the Ministry of the Interior on February 14, 2003. Since Adv. Kedar firmly refused to forward me a full copy of the demolition order, I applied on that matter to Adv. Matti Hota – chair of the Ministry of the Interior District Committee. Adv. Hota completely disregarded my letter. Since my requests for a copy of the administrative demolition order had been rudely and arrogantly rejected, I applied in this matter to the Court for Local Matters, which handed down a decision directing Adv. Kedar to forward me, within 7 days, a complete copy of the demolition order issued by the Ministry of the Interior. Even this decision was not honored. Instead of compliance with the court order, I was presented with: "a notice to the court and request for further particulars by the respondent". This is a very odd document, devoid of any legal basis. I applied once more to the court, and Judge Ben Atar handed down a decision that same day, in which he writes: "I have read the notice/application filed by Adv. Kedar and since I could not believe my eyes- I read it again. I will start out by saying that this application should preferably never have been made, certainly where it is presented in the name of the State of Israel". On May 13, 2003, I filed application pursuant to Section 6 of the Contempt of Court Ordinance. The tenor of the complaint

and the annexed material clearly indicate that both Adv. Hota and Mr. Schneider conducted themselves in a manner unbecoming to their office. I am of the opinion that criminal offences were committed both in the course of preparation of the demolition order, and in the course of executing the order and in the measures adopted thereafter with the clear aim of concealing the information necessary for examining the moves that led to the unlawful demolition of my client's house. The conduct of the parties against whom the complaint was brought gives rise to a suspicion that they are trying to conceal incriminating information or information indicative of major negligence in the discharge of their office”.

As stated, not much is known about the unit, but the little that has come to light reveals a grim picture of a unit that operates out of over-eagerness to destroy at all costs, in contempt of the law itself.

Work patterns of the local planning and building committee

The Jerusalem Municipal Planning and Building Committee, which is the statutory policy-making body, discusses the application and recommends approving building permits in the city. This committee is composed of 11 councilors, representing all factions being members of the town council. Membership is divided in accordance with a party key, and the committee is headed by a deputy mayor, on behalf of the coalition. The local committee is a political committee. Its consideration and decisions are based on party interests and its agenda expresses the ideology of the majority party. The Jerusalem Municipality is ruled by a right-wing “haredi” (ultra-orthodox) majority motivated by the vision of the Judaization of the eastern part of the city. In 2003, the committee was headed by Rabbi Yehoshua Pollack, head of the haredi “Torah Judaism” faction (a joint faction of Agudat Israel and Degel HaTorah). Committee members, in addition to Rabbi Pollack and another two members of Torah Judaism (Rabbi Feiner and Rabbi Schnor), are two members of the Shas faction (Rabbi Larry and Rabbi Breska), one member of the Likud (Yigal

Amedi), and one of the National Religious Party (Eliyahu Gabai). The opposition is represented by two members of the Nir Barkat faction (Rami Levy and Meir Turgeman), one member of Shinui (Boaz Atzmon) and one member of Meretz (Yosef 'Pepe' Alalu). In view of this composition, the coalition is assured of a fixed majority in voting. All the more so, two members of the Barkat faction hold right-wing views and the Shinui representative shows no sensitivity toward East Jerusalem. Hence the only member guarding the interests of the residents of the eastern part of the city is the Meretz representative; whom in face of so broad a front of right-wing haredi representatives, does not stand a chance of promoting building plans in favor of East Jerusalem, or even changing decisions prejudicial to the interests of its residents.

The city comptroller sharply criticized the functioning of the local committee in a report she composed for the year 2003 – 4. According to her, the work of the local committee is marked by: “Considerable deviation from building plans and from planning and construction regulations”. The comptroller also found “faults in the decision-making processes and in the observance of planning and construction laws and in its professional capability, alongside faults in enforcement, supervision and licensing procedures”. The comptroller found that the committee holds its discussions without the professional echelon duly presenting material. According to her, “files are presented without all the relevant material, and so, the committee’s decisions are adopted on the basis of partial data”. The comptroller maintains that these deficiencies are a directly result of unprofessional and unsystematic work by the inspectors, the examiners and the management in general.⁴⁷

From the foregoing it can be deduced that in a state of affairs in which the planning and building policy in the city is in the hands of politicians holding right wing views, who operate with such negligence, the prospects of the Municipality creating conditions that will enable fair, broad-gauge construction

⁴⁷. *Jerusalem Municipality, Audit Report for the year 2003 – 4, p. 255.*

in the east of the city – are very remote. It is true, of course, that the Planning and Building Law applies equally to Jews and to Palestinians; but there is always a grey area in which the outlook of the committee members can find expression and there are always a thousand ways to promoting the plan of a favorably regarded individual and of thwarting an undesirable plan. The Planning and Building Committee is one of the city's most sensitive committees because of the power vesting in it and the tremendous economic interests involved. Therefore, the problem of illegal construction in the East of the city is perceived from the outset as a political and delinquency problem and not as a systemic problem that calls for profound and creative thinking.

Work patterns of the district planning and construction committee

The District Planning and Construction Committee is the supreme body approving construction plans in Jerusalem. Among other things, it examines compatibility with nationwide plans such as the National Outline Scheme approves plans for deposit, discusses objections and so forth. The 18-member committee has ten Government representatives from ministries concerned with land affairs, five representatives of local authorities – of whom four are from Jerusalem and one is from the Judea District, and three representatives of organizations engaging in environmental affairs, such as the Society for the Protection of Nature in Israel and so forth. The Government's representatives, similar to the Municipality's representatives, naturally represent the policy of their ministers. These are political concerns with a patently ideological agenda, which seek to promote their outlook as far as the distribution of lands is concerned. This also applies to the representatives of the Jerusalem Municipality, all of whom represent the rightwing – ultra-orthodox coalition. Given such a composition, not only are the residents of East Jerusalem not represented, but committee members have a vested interest in stymieing their plans and making their lives difficult.

Thus, for example, the Ministry of Tourism when it was headed by former Minister Benny Elon of the National Union submitted to the committee a plan for setting up a “National Park” in the Kidron – Wadi- Joz area, at the expense of the residential building area designated for the Palestinians. The ministry’s representative, Moshe Rigel, defended the plan out of “environment (‘green’) concerns” while in other patently green areas of the city, such as the Pri-Har Valley (Deer Valley), or the Armon Ha-Natziv Ridge, he supported massive construction at the expense of natural values. If one combines the activity of Minister Benny Aylon in the Jewish precinct in Sheikh Jarach with the position taken by his representative on the District Committee, one reaches the inevitable conclusion that the motive behind the proposal was political, having nothing to do with planning considerations. This example is important since it illustrates the manipulative manner in which use is made of construction plans in order to steal lands from Palestinians. Nobody, Heaven forbid, suggested narrowing the Palestinians’ living space. They merely proposed setting up a ‘National Park’ for everyone’s benefit. Here the art of the “word laundry” is operating at its optimum level. Who can argue that this is a case of discrimination? A park, after all, will serve both Jews and Palestinians!

The representative of the Society for the Protection of Nature in Israel (SPNI) on the district committee, Avraham Shaked, assailed “the hypocrisy of the Ministry of Tourism which had suddenly become “greener than the Greens”.⁴⁸

48. Dana Tzoar, “Kol Koreh BaMidbar” (“A Voice Crying in the Wilderness”), *Kol Ha’Ir*, June 11, 2004.

HOUSE DEMOLITION IN VIOLATION OF THE LAW

One of the gravest phenomena prevailing since 2003 has been that of the demolition of houses in violation of an express stay of proceedings order by the court. While such things occurred in previous years, the trend took on very worrying dimensions since 2003. It was engendered by the profound sense of frustration overwhelming the inspectors when bulldozers reached the site only to encounter last-minute stay-of-proceedings orders.

In order to understand the background to this manifestation, we must review the Via Dolorosa trodden by a house owner from the moment of receiving the demolition order and until the bulldozer arrives.

An administrative demolition order is issued against an unlawful building and not against the house owner. Therefore, the authority is not obliged to deliver the order personally to a specific individual but rather, is obliged to post the order in a conspicuous place on the walls of the house. On finding that they have been served a demolition order, the house owners hire the services of a lawyer, who applies on their behalf, to the Court for Local Matters with a motion to suspend the order or to stay proceedings. The judiciary system customarily honors the right of a citizen to appeal a demolition order and usually responds affirmatively to a motion for a stay of proceedings until a court hearing can take place in the presence of both parties. At these hearings, the court examines the validity of the order in light of various parameters such as the administrative position, and whether the building was inhibited at the time the order was issued. Recently, another aspect has come under examination, in light of a rule by Judge Naor in the Qawasme case, to the effect that an illegal structure must not be demolished if there is a reasonable chance of a building permit being issued for it in the future. A stay of proceedings order is for a limited space of time, during which all actions by the authority must be suspended.

The court hearing on stay of proceedings takes place in the presence of both parties: the resident's legal counsel and the attorney of the Municipality

or the Ministry of the Interior, whichever body issued the demolition order. When the court upholds the resident's motion and rules in favor of a stay of proceedings, the authority's attorney being present at the hearing is obliged to notify the Supervision of Construction Unit. It transpires, however, that on more than one occasion, the notice fails to reach the appropriate official in a timely manner, and the bulldozers set out all unaware that a stay of proceedings order meanwhile has been issued forbidding any damage being done to the building. In these instances, if the house owners are present at the site and have the order on hand, they will give it to the inspector in charge and the demolition is called off.

A similar situation takes place when the motion to the court is done at the last minute, while police forces and bulldozers are actually approaching the house and starting to cordon off the area. There are a number of reasons why this happens. Usually, it is because the house owners were unaware about the existence of a demolition order since it was posted in some concealed spot, or the wind blew it away, or because the house owners have been careless, or because they did not have the money needed to hire the services of a lawyer. Whatever the reason, a lawyer if quick enough off the mark, sometimes manages to obtain a stay of proceedings order moments before demolition commences. This is the signal for a game of cat and mouse, in which Supervision of Construction tries to duck out of receiving the order, so as to go ahead and demolish at all costs. An experienced lawyer, knowing that the demolition is momentarily imminent, will not wait for the attorney of the demolishing authority to notify Supervision to call a halt, and will not make do with sending a fax, which will surely arrive after the house has been destroyed. Instead, he would telephone the house owner, who is present at the site, to say that he has secured a stay of proceedings order, and will hasten to the Municipality or the Ministry of the Interior to deliver the order personally to the right party. It is at this point, however, that abusive behavior on the part of the authority begins. When the house owner informs the inspector at the site that a stay of proceedings order has been issued, the inspector ignores him, and may even

refuse to accept a telephone call from the lawyer. He will dismiss the house owner's information, claiming that until he sees the stay of proceedings order with his own eyes, the demolition order remains effective. In such instances, neither explanations nor pleading will be of any avail. The inspector will destroy the house without examining the claim of the occupants. He will, indeed, urge the bulldozers to get to work with all haste and speed before the house owner arrives with the precious order. Worse still is the fact that the Israel Police, cordoning off the area so as to prevent disturbance, prevents the house owner or his lawyer from physically presenting the order to the inspector. Moreover, in one instance of the kind described above, a police officer who received the order before it reached the inspector at the site, refrained from stopping the demolition even though, as stated, he had the order to hand. He thereby became party to the breach of a court order. (See: Test Case – Dabash Family – Tzur Baher). All of the above gives rise to the impression of collaboration between the Police and Supervision of Construction, with the aim of preventing the annulment of planned demolitions.

As stated, those instances in which a stay of proceedings order arrives moments before the bulldozer goes to work on the house are the ones that drive the authorities crazy, both because of their frustration and because of the loss of payments made to the heavy mechanical equipment operators. It is in these instances that the authorities will resort to any ruse they can dream up so as to dodge the order, with Municipality/Ministry of the Interior officials shamelessly trampling the law underfoot.

House demolition in violation of a stay of proceedings order excites indignation, because the authorities engaging in the supervision of construction maintain that they demolish houses in the name of the law. Triumphantly waving their court rulings, spouting platitudes about the supremacy of the law, they set out to hunt down unlawful houses and issue demolition orders in the name of law and justice. On the face of it, never an extraneous consideration enters their heads – they are solely concerned with upholding the rule of law

and the dignity of the court. Resolutely determined to ensure compliance with the law, they storm the homes of residents guilty of nothing more than having constructed a shelter for their family when unable to procure a building permit, either for bureaucratic or for budgetary reasons. Either way, the inspectors of the Municipality and the Ministry of the Interior will declare themselves to be mere messengers of the court; indeed, the long arm of the rule of law in East Jerusalem. In face of criticism from human rights groups opposed to the demolitions, they raise a sanctimonious gaze heavenward, innocently wondering what all the fuss is about – after all, doesn't everyone want to live in a country under the rule of law, and aren't we all bound to uphold decisions of court?

Contrary to the impression the authorities have created, since 2003, we have found our desk piled with an excessive number of cases in which houses had been demolished in violation of court orders. Too many cases provide proof that the inspectors of the Municipality and the Ministry of the Interior will have no qualms about bypassing the law just as long as the bulldozer is fed its periodical pound of flesh. Had it happened only once, some 'error' might have been involved. If there were only two instances, there might have been a 'mishap'. (Inspectors usually will argue that there was no cellular reception in the area, or that they couldn't hear the phone ringing due to the noise of the bulldozers.) Where three cases are involved, it is simply a method. Our arguments are further reinforced by the report of the Jerusalem comptroller exposing severe 'irregularities' in all matters pertaining to municipal procedures for the issuance of demolition orders.

We deemed it proper to dwell on this issue because this involves more than the demolition of houses. What we are witnessing is the systematic destruction of democracy and a consistent erosion of the rule of law. The human face of society is being ruthlessly trampled, the very foundations of our existence are being undermined and Israel's moral image is being distorted.

It is important to dwell on this phenomenon in order to explode the myth that we are dealing with two camps: a 'law-abiding' camp, consisting of the State authorities, and a 'lawbreaking' camp always consisting of Palestinians.

We wish to shed light on a reality in which it is the State itself that is also, indeed before all else, trampling the law. Lawbreaking of this kind has long since become an administrative norm, which bothers the authorities not in the least. The last few years, however, exposed a further deterioration in administrative culture, where the authorities permit themselves contempt of court by violating express orders prohibiting the demolition of houses.

FIVE TEST CASES

Home of the Dabash family, Sur Bahir, August 2, 2003.

Imad Dabash built his home for the second time, the first having been demolished by the Jerusalem Municipality six months earlier. As construction commenced, the family opened a licensing file and hired the services of Adv. Nahum Solan.

On receiving an administrative demolition order, Adv. Solan applied to the local court for a stay of proceedings order. Judge Ben Zimra heard the motion on August 26, 2003, *ex parte*, and rejected the motion, but ordered the court secretariat to send the decision to the family's attorney by registered mail, to enable him to appeal to the district court. The judge likewise expressly ruled that: "the 30 day interval for the execution of the order will run from the day on which a copy of the decision reaches the hand of the Applicant's legal counsel". The decision, however, instead of being sent immediately, was mailed only on Sunday August 31, and was delivered on Tuesday September 2, by which time the bulldozers had already reached the site, without the Municipality bothering to ascertain that the ruling had in fact reached the family's legal counsel.

As police forces arrived at the house and began clearing out the family's belongings, Adv. Solan hastened to obtain a stay of proceedings order. The Judge issued one, at the same time severely criticizing the way the Municipality was behaving. Armed with his stay of proceedings order, Adv. Solan hastened to the Jerusalem prosecutor – Adv. Danny Libman - with a view to delivering the decision to him personally, and at the same time, he faxed the order to the police station that was securing the demolition at the site, all before the demolition commenced. The Jerusalem prosecutor, instead of ordering the inspector at the site to delay proceedings, chose to go to the court in an attempt to get the judge to change his decision, without announcing at the site that all action was to be suspended until further notice.

Meanwhile, preparations at the site were in full swing, and municipal inspector Yaron Eliav heard from the police officer that a stay of proceedings order had been issued. The inspector rang the director of Supervision of Construction, Micha Ben-Nun, for orders. Ben-Nun said the order had not yet reached him and therefore, as far as he was concerned, it did not exist. Not only that, but he ordered the inspector to commence demolition immediately, before the order reached him. Accordingly, the inspector told the police office that he wasn't taking orders from him but only from the Municipality, and instructed the bulldozer operator to smash into the building.

After the first blow, which resulted in a crack the length of the building, the precious order arrived. The demolition work was suspended, but the Municipality now claimed that the building had become a 'hazardous structure' and an engineer on behalf of the municipal hazardous structures department ordered the demolition to be completed, on the grounds, in this instance, that the structure was hazardous for purposes of habitation.

In a conversation between Jerusalem councilor Pepe Alalu and Supervision Division head Micha Ben-Nun, it transpired, notably, that Ben-Nun had been well aware that a stay of proceedings order was on its way. According to him "I heard a rumor that there was an order on the way" but he elected to ignore it on the grounds that he "was not nourished by rumors".

Home of Jawad Sawiti Family, Beit Hanina, March 10, 2003

Jawad Sawiti built a 280-sq.m home and on June 30, 2002, the Jerusalem Municipality posted an administrative demolition order on his house.

That same day, the family applied to Adv. Shlomo Lecker, who obtained a stay of proceedings order from the Court for Local Matters. Judge Ben-Atar, acceding to the motion, ordered the demolition stayed “pending the handing down of another decision”.

In the morning of March 3, 2003, police forces and bulldozers of the Ministry of the Interior arrived at the family’s home, under supervision of Zvi Schneider, officer in charge of demolitions at the Ministry of the Interior. He ordered the family to leave the house and to remove essential belongings. The family’s claims that they had a stay of proceedings order were to no avail. Zvi Schneider pushed Mr Sawiti, refused to take a call on his mobile phone from Adv. Shlomo Lecker, and ordered the bulldozers to destroy the building, complete with contents, without further delay.

Zvi Schneider maintained, in his defense, that his office had posted an administrative demolition order on February 24, 2003, without being aware of the existence of the stay of proceedings orders obtained against another order issued by the Jerusalem Municipality. This argument is blatantly unlawful, since the Planning and Building Law (Section 238 A (B1) (3)) provides that before issuing a demolition order, the Ministry of the Interior must approach the Municipality with a requirement that it undertake the demolition itself. Only if the Municipality refrains, for no good reason, from doing its duty, is the Ministry of the Interior permitted to issue an order of its own and execute the demolition.

Adv. Shlomo Lecker brought action against the Ministry of the Interior on behalf of the family and on behalf of the Committee Against House Demolitions.

Home of the Al-Sheikh family, Al Walaja, August 13, 2003.

Seventy-year-old Muhammad Ismayil Al-Sheikh lives in a two-storey, 250-sq.m house with his 5 offspring and their families, numbering altogether 23 souls. The Ministry of the Interior sued him for illegal construction of the second floor of the house. Adv. Eitan Peleg, who represented the family, obtained a stay of proceedings order from the court pending a hearing in the presence of both parties.

On the morning of August 13, Ministry of the Interior bulldozers arrived at the outskirts of the Walaje village, accompanied by large police forces that cordoned off the area. A Ministry of the Interior inspector ordered the family to vacate the house, taking only money and jewelry. Foreign workmen entered into the second floor, and started throwing clothes out of the window, and removing furniture. One family member who was in the house phoned his brother, Muhammad Mussa El Sheikh, who was at the time in western Jerusalem, and told him what was going on at home. Muhammad applied urgently to Adv. Peleg, and together they went to the local court, which heard their pleadings and issued a stay of proceedings order. Muhammad hastened to fax the order to his neighbor Abu Nidal and to the head of the village Mustafa Abu Tin. Both men rushed to the demolition site to show the order to the Ministry of the Interior inspector. Each of the men, arriving separately, was warded off by the police, who prevented them from reaching the inspector and showing him the stay of proceedings order. Throughout this time, the brother at the site maintained telephone contact with his brother Muhammad and also with the two neighbors who were standing at a distance of 100 meters, with the order in hand, but were not allowed to approach. He told the inspector that the neighbors had the order to hand, but that the police would not let them approach. The inspector, however, said it was none of his business, and as far as he was concerned, the demolition order was valid. He thereupon urged the workmen to complete the evacuation of the house as quickly as

possible. The inspector knew that the order would reach him any minute, and therefore egged on the bulldozer operator to commence the demolition as soon as possible. In the meantime, Adv. Peleg, realizing what was taking place at the site; himself rang the legal advisor of the Ministry of the Interior, to advise him of the gravity of the goings on. The legal advisor of the Ministry of the Interior addressed himself directly to the head of the Supervision Unit, and he gave the order over the walkie-talkie to the inspector at the site, to discontinue the demolition. Meantime, the bulldozer had already managed to demolish one wing of the house. Adv. Peleg sent a complaint to the Minister of the Interior.

The demolitions in the Walaje village arouse indignation even more than the other East Jerusalem demolitions, because they embody all the injustices that the State of Israel is inflicting on the Palestinians. The village, situated south of the Gilo neighborhood, on the outskirts of the township of Beit Jala, is completely isolated from the city, as there is no access road connecting it to the city. The Municipality does not supply the village with any municipal services, such as water or electricity, education, cleaning, health and other elementary services that a Municipality is obliged to provide its residents. Absent any outline plans for the village, the residents cannot build legally. International organizations formed an initiative for financing outline plans for the village, whereupon the Ministry of the Interior refused to address the issue due to geopolitical and legal difficulties. There is, on the other hand, a plan for a Jewish neighborhood consisting of 13,500 housing units on the lands of the village, acquired in some dubious manner, and this plan will undoubtedly be pushed through under pressure of right-wing political concerns. In addition, the residents of Walaje are not recognized as Jerusalem residents and they hold the type of identity card issued to residents of the territories, even though their houses lie within the jurisdiction of Jerusalem. The Municipality refrains from providing municipal services as required by law, and the only law it insists on upholding is the one relating to house demolitions.

Home of Adnan Kanaan Shahin Family, Silwan, December 10, 2003

Four years ago, Adnan Shahin, aged 42, built a 66-sq.m house for his family of eight.

He was tried for illegal construction, slapped with a monetary fine and obtained an eighteen-month extension in which either to submit building plans or demolish his home. Adnan Shahin understood there was no point in embarking on a process of obtaining a building permit since the Municipality would reject the application as it has rejected those of all his neighbors, in absence of a Town Building Scheme for the area.

On the morning of December 10, 2003, while the house owner was out working as a cleaner at the Municipality offices, Ministry of the Interior inspectors arrived at his home, accompanied by police forces and workers for removing household effects, and preparations for demolition commenced. At that moment, a family member who was present phoned Adv. Munam Thabat, who hastened to the Court for Local Matters, to obtain a stay of proceedings order. The hearing took place in the presence of the Ministry of the Interior attorney, Adv. Micki Kedar, who filed no objection to the application and Judge Ziv upheld the motion and issued a stay of proceedings order. Adv. Thabat phoned the family at the site and according to him, was glad to hear from the family that the demolition had not yet commenced and that the house was still standing. Mr Shawiki, a relative who was at the site, informed the inspector who was conducting proceedings at the site, Zvi Schneider, that a stay of proceedings order had been issued; but Schneider ignored him. He tried to put him in touch with Adv. Thabat, but Schneider refused to take the call. The family begged him not to start demolition since the order was due to arrive within minutes, but Schneider turned a deaf ear to their pleas and ordered the bulldozer operator to commence demolition even before the workmen had finished removing all the furniture.

At 10:00 a.m. the bulldozer began destroying the house. This was quick, easy work, since it was a small house made of breezeblocks with no stone cladding. Five minutes later, notice arrived over the walkie-talkie from the Ministry of the Interior ordering that the demolition be halted due to the stay of proceedings order. By that time, most of the house had been destroyed, with only the conveniences left standing.

It is important to note that while preparations for demolition were under way, the author of this book, also the field coordinator of the Israeli Committee against House Demolitions, was present at the site, and had contacted Mr. Naor Nekhushai, advisor to the Minister of the Interior, requesting that he examine the legality of the demolition. He observed the confrontation between the parties and realized that something untoward was afoot. At that moment, he was unaware of the existence of the demolition order. The Minister's aide contacted Avi Dotan, the officer in charge of demolitions at the Ministry of the Interior, who at first denied that the Ministry of the Interior was performing demolition at the site, claiming that it was the Municipality that was executing the demolition. Only at the insistence of the author did he admit that this was a Ministry of the Interior-ordered demolition, and instructed Zvi Schneider- at the express demand of the Minister's aide- to get down and show him the demolition order before commencing demolition. As stated, not only did Mr. Schneider not comply with the instructions of the ministerial aide, he actually urged the crew to commence demolition as quickly as possible.

Home of The Totah Family, Wadi Al Joz, December 11, 2005

Ibrahim Totah, his wife and their five children, lived for 15 years in the house they had built without a permit, on their own land in Wadi Joz, not far from the walls of Jerusalem's Old City. In fact, Mr. Totah did not stand a chance of getting a building permit, since the area is part of what is defined in Jerusalem's Master Plan as an area strictly forbidden for new building for its religious and cultural importance.

In the morning of the 11th of December 2005, security forces began to cordon off the area, and inspectors from the Ministry of the Interior came to the house and informed the family that their day had come and that they had to vacate the house immediately. The head of the household was at work and returned home urgently. In the meantime, hired workers started to take furniture apart and to take heavy objects out of the house. Mr. Totah called an attorney quickly, whom after running immediately to the court house, was able to get from the judge an agreement to issue a postponement order for the procedure, on condition that the family would deposit a 30,000 shekel pledge. The judge sent out an order to suspend the demolition until 11:30 am to give the family time to collect the necessary funds for the bail. At this point, a mad race against the clock started, where on the one hand, the family was trying to come up with the money, and on the other, the attorney was trying to stop the bulldozers on the field.

The attorney tried to contact the inspections department at the Ministry of the Interior and the inspectors on the field. When he realized he did not stand a chance of getting anyone on the phone, he drove to the area and managed to get to the house before the demolition started. The police officers in the area did not let him through and insisted that they needed to get an entry authorization from their superiors to allow him in. In the meantime, while they waited for the entry authorization, a bulldozer started demolishing the house. The passage authorization came too late, when the house was already in the process of demolition. When the attorney was finally able to deliver the

stop order from the judge, an engineer resolved the need for the continuation of demolition since the building was now in danger of collapsing.

When the bulldozers finished the job and permission to check the remains of the house was given, many household implements were found among the ruins, including children toys, kitchenware, clothing, and other items. This showed that they had tried to take the objects out of the house in the last moments, but when the attorney arrived with the stop order, they just ordered the bulldozer to finish the demolition, in spite of the fact that the removal of all belongings from the house had not been completed yet.

The whole process of the demolition was captured on a video camera by a Betselem organization researcher, including the attorney's arrival, and the fact that the demolition started only a few minutes after the police officer had asked his superior for an entry authorization for the attorney. The video was also shown on the evening news of channel 10. However, the reaction of the Ministry of the Interior to the affair was again limited to the usual common statement that it acts in strict accordance to the law.

THE DEMOLITION PROCESS

The Planning and Building Law – 1965, requires the authorities to prevent illegal construction. The law treats building offences very severely, defining them as criminal offences to all intents and purposes. Accordingly, the State charges the owner of the building on two counts: ‘Unlawful Use of Land’ (Section 145A) and “Using a building without a Permit” (Section 204A).

The legislator provided two ways of destroying houses: A – in accordance with ‘administrative demolition orders’ whereby the demolition may be executed without any legal proceeding within 30 days of date of issuance of the order, or B – in accordance with ‘judiciary orders’, which require an indictment to be brought and orderly and protracted legal proceedings to be conducted.

The nightmare begins when a municipal inspector accompanied by a policeman affixed a demolition order to the walls of the building. Since the demolition order is issued against the building and not against a particular person, there is no need to deliver the order to the house owner- affixing it to the walls of the building suffices. From that moment, and commencing 24 hours as of delivery, the bulldozer is liable to arrive at any day. The affixation of the order is a scurrilous enough deed in and of itself. Time and again we hear of residents who are prepared to swear that they never saw any demolition order. And sure enough, the testimony of a municipal inspector no longer in the employ of the Municipality, whom refuses to be identified - due to a legal battle in which he is still embroiled in against the Municipality- proves that there are, in fact, a thousand ways to make sure that the order will be kept from the house owner, thus preventing him from obtaining a stay of proceedings order. Thus, for example, the order may be affixed at some concealed spot in the building. And in winter, it is generally posted on an outside wall, so that the wind and rain will send it flying. It may also be placed on the floor, where it is hardly likely to stay put, and there is no end of similar devices to be dreamed up. We would note that the Municipality has recently taken to photographing the affixation of the order, so as to discredit complaints made in court. But nothing could be simpler than to tear down the order after taking the photograph.

Standard administrative demolition order signed by the mayor of Jerusalem

Administrative Demolition Order

Number 03/5120.0

Whereas on July 2, 2003, an affidavit was presented to me under hand of Engineer Zori Ochital Id. No. 317492577 (hereafter: "The affidavit");

And whereas, according to the affidavit and the diagram attached to the affidavit (hereafter: "the diagram") (copies of the affidavit and the diagram are annexed to this administrative demolition order) in a property situated in Jerusalem at 777 Sur Bahir Street in the Sur Bahir neighborhood Line 126285: 172660 x/y at the location marked in red on the environment diagram annexed hereto (hereafter: "the property");

A. In a new building -

Ground floor —

- 1. There has been a ground floor constructed in an area of some 160 sq.m by means of building walls and casting a ceiling as marked with a broken red line and numbers 1-17-16-15-14-13-12-11-10-9-8-7-6-1.*
- 2. Above the stairwell— concrete pillars have been cast in a height of about 2l.5 meters, and a 9 sq.m concrete ceiling has been cast above them in an area of some 9 sq.m as marked with a broken blue line and numbers 2-5-4-3-2.*
- 3. Inside plastering works have not yet been completed, there is no flooring, there are no windows or inside doors, there are no sanitary fittings, there is no kitchen, there are no electrical appliances or lighting elements.*

(Hereafter: "the building")

- B. *The building described in Clause aforesaid was constructed without due permit.*
- C. *Following consultation with the legal advisor to the Municipality, and by virtue of the powers vesting in me pursuant to Section 238A of the Planning and Building Law 5725 — 1965 (hereafter: "the Law") I hereby order the aforesaid building to be demolished, dismantled and removed.*
- D. *Pursuant to the provisions of Section 238A (D) (4) hereafter, the tenor of sub-paragraphs (C), (F), (G) and (H) of Section 238A of the Planning and Building Law, 5725 — 1965:*
- "E. *An administrative demolition order shall apply also to any additional construction without permit that is added to the building after issuance of the order, and no additional order need be issued in respect of such additional construction".*
- "F. *An administrative demolition order shall be executable —*
- (1) If a building has been erected without a permit — within 24 hours of being affixed*
 - (2) Otherwise — 72 hours as of being affixed"*
- "G. *Any person deeming himself injured by an administrative demolition order may motion the court for the annulment thereof, but filing of such motion shall not suspend the validity of the order; an appeal against the court's decision on such application is tantamount to an order pursuant to Section 250"*
- "H. *The court shall not rescind and shall not suspend an administrative demolition order, unless it is presented with proof that the construction by reason of which the order was given was carried out lawfully, or the execution of the order is not necessary for the prevention of accomplished facts".*

According to the Law — the court per Section 238A (1) previously mentioned

is the Court for Local Matters in Jerusalem (whose address in Jerusalem is 7 Shivtes Yisrael Street, Russian Compound, Jerusalem). As provided by Section 238A (L), execution of an administrative demolition order does not exempt from criminal liability for an offence under the Law.

[Handwritten]

8/7/03

Signed: (-)

.....
Date

.....
Uri Lupoliansky

Once the order has been affixed, the families wishing to obtain a stay of proceedings order and the Municipality wishing to pre-empt the family and get its demolition work done first, get into a race against time. As stated, for the Municipality, administrative orders are first priority for execution, since if it misses the thirty days provided by law, the order will expire and a long, costly and laborious judicial proceeding must be launched. A house slapped with a judicial order enters on a track that is liable to last years, and which, commencing at the local court, passes via the Magistrates' Court, the District Court and may even reach the Supreme Court. However, the fate of most houses entering on a judicial process is predetermined, since the court cannot approve illegal construction, even where it is discomfited by the policy underlying the demolitions.

This was clearly expressed in a few touching words by Chief Justice Aaron Barak, - *"I frequently feel compelled to act in accordance with the law even though my subjective feelings would direct otherwise. An outstanding example is the demolition of houses. Rulings are made in accordance with the law, but I would be very glad if the legislator would provide otherwise and prohibit the demolition of*

*homes**". Moreover, most residents of East Jerusalem cannot apply to the HCJ because of the high cost involved in hiring a lawyer to prepare a petition.

Once the Court has approved the demolition order, the bulldozer can turn up next day or at any moment, if it is to turn up. The strain experienced in this waiting period is tremendous, causing health problems, family violence and anxiety traumas. Men fearing for the fate of their homes and families are afraid to leave the houses and frequently lose their jobs due to frequent absences. This is all part of a deliberate process the authorities call "deterrence". The Committee Against House Demolitions was expressly told by an official at the Civil Administration that fear and intimidation are important components in the enforcement policy since they "deter" Palestinians from building.

When the dreaded day arrives, it does so without warning. Demolitions take place, it would seem, in some happenstance manner, in no discernible pattern, and can happen anywhere and any time. (Demolitions are usually not executed on Fridays and Saturdays, because of the Jewish Sabbath, or on Jewish holidays. These are the only days on which Palestinians can really relax – an ironic distortion of the notion of a "day of rest"). This, too, is part of the general fear underlying the "deterrence" policy. The demolitions crews, accompanied by hundreds of soldiers, police officers and officials generally show up early in the morning, usually after the men leave for work. The family is sometimes given a mere few minutes in which to take out its belongings before the bulldozers get to work, and when family and neighbors evidence resistance – or at least a protest – they are generally removed by force from the house. The evacuation crews – frequently foreign workmen – then throw the furniture out of the house. In addition to the destruction of the house, the ruin of private property deals the family a severe economic blow – not to mention the emotional suffering undergone by people looking on as their most personal possessions are slung out into the rain, the sun, the dirt. Then the bulldozer proceeds to its methodical work of demolition, which takes several

* *Maariv*, June 20, 2003.

hours. Sometimes, resistance to demolition elicits a great deal of violence: people are beaten, arrested, killed – as happened in the case of Zaki Nur-Al-Din Obeid when he attempted to prevent the destruction of a house in Isawiya on January 18, 2001. And always, people are humiliated. Family and neighbors look on with restrained fury as the home becomes a pile of rubble, women wail and children weep. One can only imagine what they feel in their hearts.

Needless to say, families whose homes have been destroyed are abandoned to their fate. No use looking for social workers coming to the aid of families in distress, as one finds in Western Jerusalem for people in far less serious straits. The families must move in with relatives or put up tents (one family in the Jabel Mukhabbar quarter of Jerusalem is living in an omnibus) or else pay out more money on renting an apartment.

WHAT A DESTROYED HOME MEANS

The emotional suffering involved in the destruction of a family's home is unquantifiable. A man's home is far more than a mere physical structure. It is a symbolic center, the site at which his most intimate personal living takes place, and the expression of his status. It is a place of refuge, the family's physical representation, its "home". For Palestinians, a house has added significance. Sons getting married build their homes near the parental home, and thus preserve not only physical proximity but also continuity of the holding of ancestral lands. This latter aspect is of especial importance in an agrarian society, and even more important to refugees torn away from their homes in 1948 or 1967. The demolition of houses, similar to their expropriation, is one more aspect of the assault on a man's very being and identity.

Men, women and children experience demolition differently. The men are the ones most deeply humiliated, because demolition means you are unable to protect your family or provide it with basic shelter. It also signifies loss of the living bond with your family's land, your personal heritage and that of your

people. It frequently happens that men weep as their homes are being destroyed (and for a long time afterwards), but they also experience rage, swear vengeance and intend to rebuild – or else they retreat and are emasculated from active family life.

As for the women, their image and role in the family changes, to the point of being destroyed. Palestinian women usually do not pursue a career outside the home. Their entire status as wives, mothers and human beings in general, finds expression in home life. When their houses are destroyed, they lose their entire social orientation. Some sink into grief and their behavior – expressed in weeping, wailing and depression – strongly resembles that of people who have lost loved ones. A home destroyed is like a near and dear one who has died – his place cannot be filled even if the family manages to find alternative accommodations. The alternative accommodations themselves are ruinous. A woman is required to move into the home space of another woman – her mother, sister-in-law – and to a great extent, she forfeits supervision over her husband and children. Disputes within extended families forced to share crowded living quarters may become chronic and tensions frequently develop between spouses. Many women change after seeing their homes destroyed. They become sullen, or moody, are easily scared by slight noises or unexpected events and tend to burst out crying. If the demolition breaks the husband, it may well happen that the wife assumes predominance in the family. In such cases, rebuilding will usually not take place, since women generally do not have the freedom to get out and organize such matters. This state of affairs does however ensure that in the difficult physical and social circumstances in which the family finds itself, the family unit will remain united and as functional as possible.*

* See Samir Qouta, Raijaleena Punamaki and Iyad Al Sarraj - House Demolition & Mental Health: Victims and Witnesses. *Journal of Social Distress & the Homeless* Vol. 6.N.3.1997.

TEST CASE of G.B.- Ras al Amud

After a great deal of soul—searching, we have elected to narrate the case of GB because it embodies the profundity of the crisis undergone by a man whose home is destroyed. But we decided to conceal his identity since, as we shall show below, he had perforce to rebuild his house without a permit, and we are wary of placing him at risk of another demolition.

GB built a modest home for his family and that of his married son. Seventeen souls in all lived in that house. In 1997, the Municipality's bulldozers destroyed the house while the owner was at work. When urgently summoned home, he stood dumbfounded, and his world fell about him in ruins. That morning, he had left a fine home, and on returning found a heap of twisted concrete and iron. All his furniture, electrical appliances and personal belongings lay broken and full of dust outside. GB had no place to go. At first, he scattered his sons and daughters and grandchildren among various relatives since his relatives lived in houses too small to accommodate the whole family together. After a few months, however, he realized that this could not go on, and set up two tents on the demolition site so that they could at least be together. At the same time, a number of peace activists, headed by Sarah Kaminker, enlisted to help him obtain a building permit. Members of the Bimkom NGO (Planners for Planning Rights) volunteered to prepare construction plans and architect Ilana Rodshevsky drew up a building plan on a volunteer basis. It then transpired, however, that the area in question was unplanned and had not been registered in the neighborhood Town Building Scheme as "designated for future planning". Nevertheless, professionals decided to continue planning and, following some lobbying by numerous public figures, the Local Planning and Building Committee agreed to approve the construction plan based on a special section of the Planning and Construction Law that enables a building permit to be granted even in an unplanned area (Section 78 – 79). The recommendation was forwarded for approval to the District Planning and Construction Committee, which surprisingly rejected the application, on the grounds that a

decision had been taken not to continue to approve construction under that Section, and that the time had come for the Municipality to plan the area. It is interesting to note that even if the District Committee's intention was meritorious, namely to pressure the Municipality into doing its job, yet in the case of GB, this meant waiting for an untold period of years until the Municipality planned the area and the application was approved. At that moment, GB's hopes were dashed. He realized that there was no chance of being able to rebuild his home. Then commenced a family drama that changed his life. His wife started bitterly complaining against him for not building her a home like the other women in the village. The wife felt humiliated by the fact that she had no privacy, the conveniences were outside, and she could not comfortably take a shower. She took out all her frustration and anger on her husband, who in her view was to blame for the situation the family found itself in. Her bitter complaining made his life so intolerable that one day he was forced to abandon his family and divorce his wife.

Two years after leaving home, he one day decided to rebuild, and this time too, without a permit. When asked why, after so much suffering, he had decided to rebuild his house and assume so high a risk, he gave an answer that left the hearer open-mouthed. He explained that he had to rebuild his home since his two daughters were now of marriageable age, and no one would take as wife a girl living in a tent. GB had to rebuild, in order to enable his daughters to marry instead of being doomed to spinsterhood. Words fail.

Childhood traumas

For children, the act of demolition and the months preceding it are traumatic. They witness the fear and helplessness of their parents, live constantly in an atmosphere of fear and insecurity, see people dear to them beaten and losing their homes, experience humiliation at the hands of inspectors in the field. After all this, they must bear the noise and violence, the uprooting and the destruction of their home, their world, and their toys. The children will

bear the lifelong imprint of all these things. There is an abundance of evidence of traumas and distress among the children: bedwetting, nightmares, fear of leaving home lest the child “abandon” his parents or siblings to the mercies of the military, sharp decrease in school grades, school-leaving and also the effects wrought by exposure to violence at home, the type of violence that will sometimes erupt as a result of impoverishment, uprooting and humiliation.

A letter sent by peace activists Sylvia Piterman and distributed at a discussion of the Knesset Committee on children's rights, that dealt with the effect of the demolitions on children

TRAUMA AMONG CHILDREN

A letter to Yitzchak Kadman

Dr. Yitzchak Kadman,

Director-General of the National Council for the Child

I am a mother, a grandmother, a Jerusalem resident and a citizen of Israel. I wish to draw to your attention a phenomenon that frequently takes place just a few hundred meters from where I live. It is important that the National Council for the Child put its mind to this phenomenon.

In the past year I have witnessed a number of house demolitions in Jerusalem. These demolitions wreak tremendous havoc on the soul of a child. Even during the demolition "waiting period", which sometimes lasts years, and especially on the day of the demolition, when the bulldozers arrive unannounced at dawn, the little children are taken out of bed, belongings are forcibly removed from the house and their home is destroyed, in their presence. The act, while lawful, is violent and aggressive.

Small children do not understand the reason for the deed, but witness the fear and helplessness of their parents, live in a constant state of foreboding and insecurity, see their loved ones (family or neighbors) beaten and losing their homes, and must bear the noise and violence, the uprooting and the

destruction of their home, their world. And after the demolition, the children and their family remain without shelter. This scars them for life. Signs of emotional damage usually appear among children whose homes have been destroyed: stammering, bedwetting, nightmares, inability to concentrate and learning difficulties. I know a number of families whose children started manifesting these symptoms immediately after the demolition of their home. If you wish, you can meet these families and see for yourself the manifestations I am talking about.

Action by the authorities must not, therefore, injure the innocent. And especially, and undoubtedly, if that person be a child. In the present situation, with the demolition carried out by surprise early in the morning, and by force, damage to the children is intensified, and they are surely not to blame for the illegal construction. The system must find a way of enforcing the law without hurting children.

Yours truly,

Sylvia Piterman

There can be no doubt: the bulldozer can take its place alongside the tank as a symbol of the type of relations that Israel is conducting with the Palestinians. Both should be emblazoned upon the national flag. Both are an expression of the aggressiveness that has overtaken the Israeli national experience. The one complements the work of the other. Both symbolize the dark side of the ongoing Israeli project designed to uproot the Palestinians and oust them from the State altogether.

WHERE MYTH AND REALITY PART COMPANY

In the eyes of the City Fathers, illegal construction appears as a political manifestation of far-reaching implications such as to endanger the very underpinnings of Israeli rule in East Jerusalem. This concept dictates the welter of solutions they advance for coping with the problem, all of which fall within the definition of aggressive enforcement. The Municipality and the Ministry of the Interior view any house built without a permit as another ploy in the struggle for control of Jerusalem, financed by the Palestinian Authority; and at all times, a house owner is perceived as a saboteur and a rebel, waging a war of attrition against the Israeli administration.

But East Jerusalem residents build in disregard of any national or political struggle. They build out of necessity, out of a legitimate need to make a home for their family, with no political or ideological motivation. Illegal construction in the east of the city is devoid of political awareness and is engendered by nothing more than an essential human need. This assertion is no trifling matter. Given the conditions of pressure, humiliation and incessant discrimination under which Palestinians live in East Jerusalem, it would be only natural for them to engage, each in his own way, in the struggle for national liberation. But that is not happening.

The Israeli complaint of “political building” clearly proves that fear has overcome rationality. The Israeli regime lives haunted by the feeling that Jewish sovereignty over Jerusalem is in danger. In that state of paranoia, every house, every tree, and every potted plant perforce becomes part of a worldwide political conspiracy. Behind every wall stands money from the Palestinian Authority, from Saudi Arabia or from Hamas; every floor tile takes on the guise of a demolition charge. Out of fear, has grown a national conspiracy theory that sees danger lurking in every shadow, that treats every building as part of an all-out offence against the State. Under such circumstances, even a house innocent of any political intent becomes a threat when vested with the fertile imagination of the observer who sees political conspiracies where simple people merely

want to live their lives. The Israeli administration has created a reality entirely woven out of erroneous perceptions, a distorted world view that dictates disastrous decisions, necessarily causing genuine problems to be wrongly addressed, undermining the coexistence of the two peoples, and even further complicating the Jewish-Palestinian dispute. All because of some imagined specter and the misconceived interpretation of some non-existent menace.

CUMULATIVE DAMAGE

That same erroneous policy has done heavy damage to the city because, where a problem is dealt with using unsuitable tools, not only is it not resolved, but a new, even more difficult problem is created. There is a right solution for every problem provided that one can trace its roots and causes. History is rife with disputes that broke out due to some misconception and endless horrors have originated in erroneous assumptions. A trail of misunderstandings plots the course of the Jewish Palestinian dispute, with piles of incidents that began due to a wrong assessment or after one party ascribed some imaginary malicious intent to the other. National disputes, of course, do have a life of their own. They don't need facts because their motives are ideological, and they are not about to allow the facts to confuse them. But he who wishes to solve a problem properly must aspire to an objective view of events.

Which is why the arsenal of solutions the Municipality has assembled are all of the aggressive type. Its thinking is that a national threat calls for a national response, which must invariably be aggressive. Accordingly, a Jewish house without a permit is an urban problem; but a Palestinian house without a permit is a strategic threat. A Jew building without a permit is cocking a snook at the law; a Palestinian doing the same thing is defying Jewish sovereignty over Jerusalem. Thus the arsenal of solutions advanced by the authorities to cope with non-permit construction is restricted to a series of useless, violent acts of enforcement that include demolitions, heavy fines, confiscation of equipment, imprisonment of house owners and the like - solutions that fall far short of

resolving the problem, because life's needs are stronger than the whip wielded by the Municipality. The Palestinians in East Jerusalem are prepared to take risks because the need for shelter is stronger than bulldozers. People do not put all their worldly goods at risk because of some political prompting. On the other hand, a roof over the heads of a wife and children is so vital a need that they are prepared to run risks to achieve it. Which is why none of the solutions the Municipality dreams up are of any use, none of them are deterrent and none of them will establish urban order in the area.

No-one disputes that construction must be regulated. Rules are needed in an urban area to determine what is permitted and what is not where building is concerned. Every developing city needs a guiding hand to put construction on the right track, and to prevent the misuse of available land reserves and chaotic building in general. East Jerusalem, therefore, can correctly be argued to have an urban problem that needs addressing. A combination of wrongheaded interpretation and paranoia on the part of the authorities has led the city fathers to apply manifestly inappropriate tools in dealing with a genuine problem. Rather than arriving at the obvious conclusion – namely that what is needed is a constructive approach and some creative thinking, they further entrench themselves in the methods called for by a national struggle, notwithstanding that these have been proved ineffectual. Where a problem is perceived in terms of a national threat, there can be no compromise; the range of solutions is limited and thinking moves along a track of aggressiveness. There can be no thinking out of the box, no receptivity towards new ideas, because all understanding is confined to the Procrustean bed of nationalism. Solutions that are advanced must conform to erroneous parameters whereby the scope of action is determined. Where the parameters are political, solutions will invariably be aggressive.



PART TWO

MUNICIPAL BUDGETS



DISTRIBUTION OF MUNICIPAL BUDGET BETWEEN EAST & WEST JERUSALEM⁴⁹

The second tool whereby the Municipality keeps East Jerusalem on short commons is the municipal budget and the distribution of municipal services. The importance of the municipal budget lies in the fact that Town Hall, in effect controls most areas of life, since it serves as principal purveyor of state-run services, from education, health, and welfare to the supply of water and sewage.

Data presented by Town Hall should be viewed with caution. Meiron Benvenisti, who served as Deputy Mayor under Teddy Kolleck, writes that Municipality reports should be treated “as a political statement rather than a reliable measuring tool for analytical purposes”. He moreover alleges that the Municipality manipulates the data, which sometimes serve “to gloss over unpleasant facts”.⁵⁰ Therefore, tracking municipal investment in East Jerusalem is somewhat problematic for a number of professional and political reasons. These are:

- The Municipality’s budget is not divided by geographical area [between East & West Jerusalem], but according to departments. It is true that a good number of departments include units specifically for East Jerusalem, but not every department budget allocated to East Jerusalem appears within this framework. Some budgets exist under sections pertaining to both East & West Jerusalem;

49. Throughout the report, monetary amounts are in Israeli shekels (NIS). For purposes of comparison, the exchange rate in 2003 has averaged 4.5 shekels to one U.S. dollar.

50. Meiron Benvenisti: “Jerusalem, Ir Ubeliba Homa”, (“Jerusalem - City with a Wall at its Heart”), HaKibbutz HaMeuhad Publishers, 1981, pp 27.

- The budget book, which is a key source of information for this study, suffers from inaccuracy and does not faithfully reflect reality. Some listed budget items do not exist in reality, and parts of some budgets which are actually disbursed are not registered;
- The financial report prepared by the auditing accountant, which outlines the Municipality's annual activities and is the most updated document concerning the Municipality's expenditures, does not parallel the budget book. There are departments that appear in the budget book which do not appear in the financial report. For instance, the departments of 'Society & Youth', 'Sports', 'Arts', and 'Youth Development' appear as independent departments in the budget book, while they appear grouped under 'Youth, Sports & Society' in the financial report. Inconsistencies like these make it difficult to track the disbursement of municipal funds;
- There is a wide gap between the approved budget and the actual disbursed budget. This phenomenon is especially relevant to the development budget, known as the 'irregular budget'. Therefore, it can be difficult to track the actual money invested. It has happened more than once that a project was approved in a certain year but was carried out either in the next year or had its implementation extended across several years. To make matters worse, often dual reports have been submitted and budget items recorded twice: once in the year in which they were approved and a second time in the year in which they were carried out;
- Sometimes, projects are carried out in East Jerusalem by a certain department using funds originally approved for another department. For instance, the beautification department carries out projects using funds allocated to the engineering services department. Two reports are submitted for the same project; one report is submitted by the department that received the money, and a second report by the department that carried out the project;

- The Municipality's reports are misleading and do not always reflect reality. In many cases, amounts appear in the budget although the funds were only channeled through the municipality. This happens in regard to funds coming from external sources, various government sources, or private institutions, such as the educational welfare budget from the Ministry of Education, and the development of neighborhoods budget from the Housing Ministry. As mentioned earlier, most of the funds are recorded as investments made by the municipality although in fact the city only served as a financial channel through which the money was transferred, and nothing more.

For these reasons, anyone wishing to assess the flow of municipal funds to East Jerusalem faces a daunting task. Despite this, it is possible to obtain accurate data and we are able to determine reliable figures for every department.

Presented here are findings from the 2003 budget that have been researched thoroughly and in depth. The 2003 study is based on raw material collected throughout the research. This year presents circumstances resulting in a boost to the East Jerusalem budget. Thanks to a massive allocation of resources by the then Minister of Education Yossi Sarid, 2003 was a year of bountiful budgets for the set-up of educational institutions in the Palestinian sector. Therefore, this year cannot be representative, even though arguments have been advanced to the contrary. Yet it is our impression that every year has certain circumstances that tend to increase or decrease the budget, and accordingly, no year can be said to be representative.

DEFINITION OF TERMS

Municipal investment consists of three components: budgets, labor force, and time investment. The first two components can be measured by financial criteria, while 'time investment' is a simplified term and cannot be measured with accuracy.

The 'labor force' is the number of municipal employees in East Jerusalem. The Jerusalem Municipality employs two kinds of employees: official employees and non-official employees (NGO's employees). For this study, we focus only on the official employees; if non-official employees had been included, the gap in municipal investment between East and West Jerusalem would have been larger. As mentioned above, we can determine, the number of employees who work in East Jerusalem and their jobs. However, a distinction between 'employees' and 'jobs' is essential, because in many cases, official documents list a large number of employees without mentioning the fact that the number of actual full-time jobs is lower. This subject will be discussed in detail in Part 3: The Employment Pyramid at Jerusalem's City Hall.

The term 'budgets' means money that goes to East Jerusalem directly through the Municipality. The budget does not include funds that come from sources outside the Municipality and are not registered in the Municipality's registry. Donations from external sources, such as the Jerusalem Fund - and other similar sources have not been taken into account. If we were to include donations, and factor in their distribution in East and West Jerusalem, the fiscal gap would be even larger.

'Time investment' is the time spent by employees in dealing with, planning and following up on issues pertaining to East Jerusalem. As mentioned above, this term is not clear. The only way to evaluate it is through checking the diaries of high-ranking employees, which is impossible. Despite this, time is regarded as a resource that has a 'price' that should not be ignored. Later, we will present two alternative ways to calculate the value of 'time investment'.

‘Investment’ is a problematic term. There is a difference between funds invested to improve the living standard in East Jerusalem and funds used for something quite different. This study does not take into account municipal funds allocated to staff and other costs associated with restrictions on East Jerusalem – including censorship: restriction of home construction, land confiscation, licensing restrictions, Arnona tax collection, school textbook printing (given the censorship of textbooks printed in the Palestinian areas), and the Mayor’s consultants for Palestinian affairs.

It should be noted that this study does take into account budgets allocated to the welfare of East Jerusalem residents where the services in question are actually provided in West Jerusalem. Examples include the art course for Beit Safafa children held in Katamon, and that for pregnant women held at the Mahane Yehuda clinic. These services represent municipal investments in East Jerusalem that are implemented in West Jerusalem.

We have also included the pro rate share of projects promoted for the benefit of the western city, but which East Jerusalem residents may also enjoy such as the Light Railway Project, part of whose route lies through the eastern city. In addition, after considerable soul searching, we have included the budget for the improvement of infrastructures at the Qalandiya barrier, designed to somewhat alleviate the suffering of residents passing through, even though the barrier itself is obviously a tool of oppression.

The term ‘East Jerusalem’ includes only Palestinian neighborhoods in East Jerusalem, and does not include the Jewish neighborhood in the Old City or other Jewish neighborhoods and settlements in East Jerusalem.

MUNICIPAL BUDGET

The municipal budget is divided into two categories:

1. The regular budget, is allocated to the Municipality's running expenses;
2. The irregular budget, also called the non-ordinary budget, is allocated to development projects.

The regular budget is approved at the beginning of every fiscal year, while the irregular budget is approved in the middle of the fiscal year. Many changes are made to the two budgets during the year, and actual expenses in both realms are sometimes far above the original, and approved budgets.

In order to ensure that our depiction of the Municipality budget would be reliable, we worked based on the report of the auditing accountant, which is presented and approved a year after the conclusion of the budget year, rather than on the budget ledger, which is presented at the beginning of each budget year.

Year	Regular Budget (NIS)	Irregular Budget	Total
2003	2,778,698,000	768,563,000	3,547,261,000

The municipal budget covers three broad areas:

- a. Administrative Departments
- b. Settlement of Bank Debts
- c. Services Departments

When trying to determine a basis of comparison between total investments in East and West Jerusalem, we should take into account the fact that two of the three elements listed above cannot be considered as involving direct spending on services for residents:

- a. Administrative Departments, and
- b. Settlement of Bank Debts

a. Administrative Departments:

This part of the municipal budget is set aside for departments not directly concerned with providing services to citizens and residents. Also known as the 'Municipality Administration', these departments' main duty is to run the city, its budget and staff. As these administrative departments do not directly provide services to citizens and residents, we do not refer to their budgets for East versus West Jerusalem. The following units were considered administrative departments and therefore not included as well: Mayor's office, Deputy Mayor's offices, director general's office, deputy director general's offices, financial manager, emergency and security units, legal advisor, Jerusalem Municipal Council & Municipality's controller, administration of the Municipality's compound, foreign relations unit, entertainment unit, Municipality's spokesperson, media & public relations unit, procurement and supplies unit, information, property insurance, strategic planning unit, real estate unit, and others. The volume of the administrative departments reached 629,782,300 shekels.

b. Settlement of Bank Debts:

Thirteen percent of the municipal budget is allocated toward the settlement of bank debts. This percentage is 'not designed to invest in public services', although the main loan exists in order to finance services provided to residents. The volume of bank debt settlement and other financial expenses for the year 2003, reached NIS 255,947,000.⁵¹

51. *Financial report for 2003. p' 31.*

c. Primary Focus for Assessment of Municipal Spending: Services Departments

The third major area is the group of services departments, whose main duty is to provide residents with social and financial services including health insurance, sanitation, engineering, maintenance and many other direct services.

The combined budgets of the administrative departments and the settlement of bank debts for the year 2003, stood at NIS 885,729,300, while the operational budget of the service departments stood at NIS 2,661,531,700.

Year	Administration & Settlement of Bank Debts	Budget: Services Departments	Total
2003	885,729,300	2,661,531,700	3,547,261,000

The Municipality's final comprehensive budget figure (3.5 billions for 2003) is the figure we can rely on for the purpose of evaluating municipal spending. After deducting administrative costs and bank interest totaling approximately, the remaining services departments' budget will be the figure that provides the primary basis for comparing municipal spending in East and West Jerusalem, as it concerns direct services to residents.

Comparison of Budget Distribution by Departments

Department	General Budget	East J'm	%
Welfare	342,784,401	41,603,273	12,13
Education	637,550,984	94,042,000	14,75
Health	46,253,551	9,531,039	20,60
Society & Youth	64,395,662	1,111,798	1,72
Cultural	81,866,002	970,698	1,18
Sport	19,252,145	308,557	1,60
Art	13,275,982	158,800	1,19

Department	General Budget	East J'm	%
Youth Development	20,878,710	1,858,809	8,90
Religious Affairs	22,813,050	0	0
Cleanliness	206,341,684	35,038,562	16,98
Beautification	83,396,089	810,000	0,9
Fire Engine	38,270,150	7,654,030	20
Engineering services	81,936,798	6,535,000	7,97
City Planning	9,807,539	1,285,927	13,11
Municipal Supervision	24,187,966	2,273,914	9,40
Guardianship & Security	87,904,818	0	0
Parking department	46,333,640	0	0
Absorption	4,651,229	0	0
Buildings	6,773,150	1,990,360	29,38
Irregular Budget.	727,378,654	95,805,365	13,17
Total	2,566,052,204	300,978,132	11,72

Determining Overall Spending, East and West Jerusalem: Investment Calculation Forms

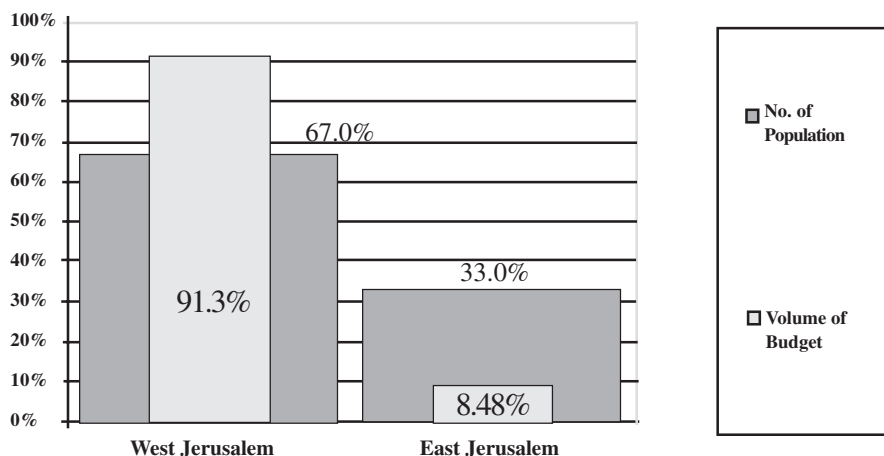
The overall differential between the Municipality's spending on the Palestinian East Side versus the Jewish West Side can be calculated in two different ways:

1. By comparing East Jerusalem's budget with the total municipal budget;
2. By comparing East Jerusalem's budget with the budget of the services departments only (without including the administrative departments' and settlement of bank debts budgets).

First Model:

In this comparison, we can see the total amount invested in East Jerusalem, compared with the total municipal budget (using data taken from the municipal budget). This method of calculation includes the administrative and bank debt portions of the budget.

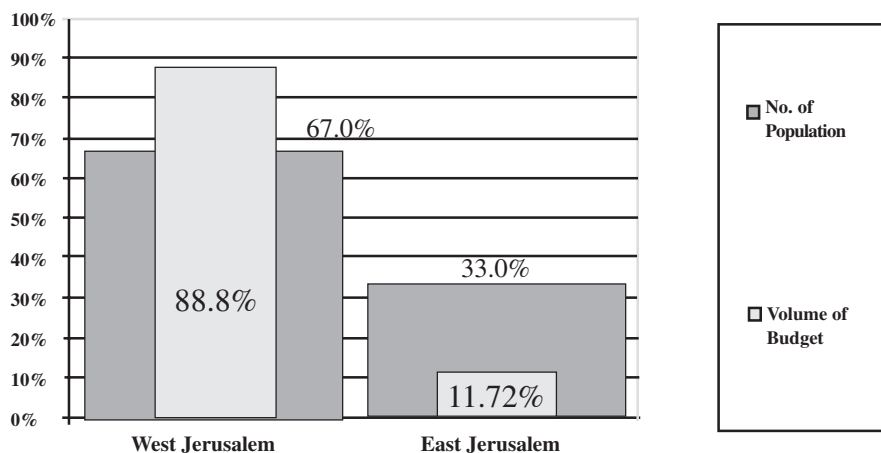
year	Municipal Budget	East Jerusalem's Share	Percentage
2003	3,547,261,000	300,978,132	8.48%



Second Model:

In this comparison, the administrative departments and debt settlement areas have been deducted. By this method, only direct services departments are compared.

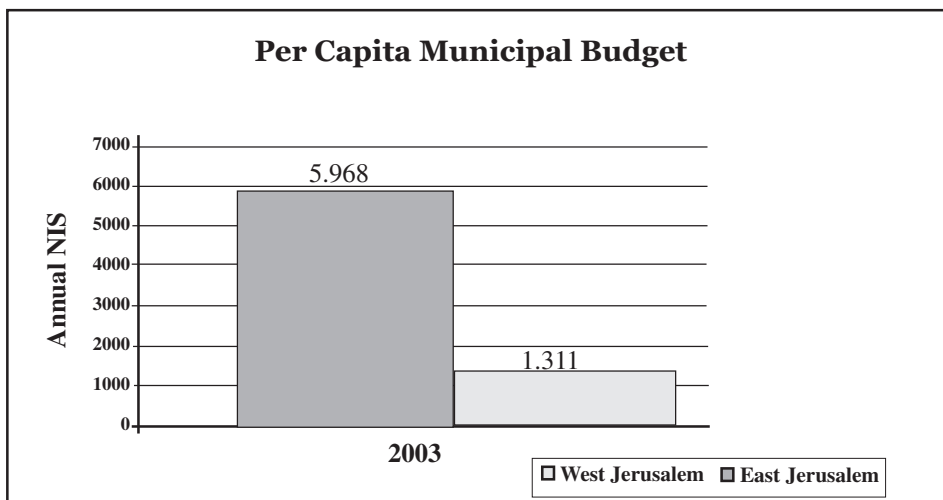
Year	Municipal Budget: Services Departments (Without administration & debt settlement)	East Jerusalem's Share	Percentage
2003	2,566,052,204	300,978,132	11.72%



Both graphs vividly illustrate the same fundamental fact: the proportion of municipal spending on the “Palestinian sector” of Jerusalem is not in line with the Palestinian proportion of the city’s population.

Although Palestinian Jerusalemites constitute 33% of the city's total population, the amount of the municipal budget invested in East Jerusalem ranges from 8.5% to 11.75 %.

This means that the Jerusalem Municipality invests in 2003 an annual average of 5,968 NIS on every Jewish citizen, and 1,311 NIS on every Palestinian resident — a rate of spending that is more than 4 to 1 in favor of Jewish Jerusalemites.



MUNICIPAL INVESTMENTS BY DEPARTMENTS

Irregular (Development) Budget: Funds Beautification, Engineering & City Planning Departments

The irregular (development) budget for the year 2003 stood at 768,563,000 NIS, 95,805,365 NIS of which were allocated to East Jerusalem. This amount represents 13% of the total development budget.

Infrastructure	609,295
Road from Malawas	649,545
Beit Safafa rehabilitation	157,360
Central Bus Station	3,045,385
Bussing stations	186,694
Security arrangements	479,811
Roads	11,698,533
Cleansing of the Stroution pool.	79,939
Renovation of Dimitrios building	121,629
Renovation of Culture, Youth & Sport Centres	361,338

A-Sheikh Special Education School	625,201
As Sawahira Girls' Elementary School	464,730
Sur Bahir Boys' Elementary School	1,741,768
Sur Bahir Girls' Elementary School	154,873
Al 'Isawiya Girls' Junior High School	5,565,678
Sur Bahir Boys' Junior High School	47
Wadi Al Joz Elementary School	5,614
As Sawahira Girls' Comprehensive	245
As Sawahira Boys' Comprehensive	245
Water and sewage infrastructure	1,400,000
Egoz Fire Station Security	24,720
Street lighting development	468,753
Old neighbourhoods – east	47,713
East 2002 Road	1,882
Road laying, east	5,717,062
Qalandiya barrier contracts ⁵²	233,597
Temporary road-laying	138,603
Rehabilitation of El-Khardub Street	125,928
Joint projects - east	753,008
Road rehabilitation – east	4,701,080
Parks development – east	1,688,250
Kidron and Gehenna (Hinnom) Valley stabilization	122,563
Kafr 'Aqab planning	69,712
Beit Safafa Town Building Scheme	19,307
Abu Tor Comprehensive School	237
Eastern Gate Planning Scheme	36,513

52. We hesitated about inserting this item since the Qalandiya barrier is one of the tools of oppression used against the Palestinian population. However, we opted to count it in, since we are persuaded that the contracts the Municipality budgeted there were designed to make life easier for the population even though the barrier forms part of the occupation apparatus.

Plan for Anata	65,822
North Jerusalem Town Planning Scheme	1,247,496
Wholesale market – east	17,827
Mamouniya Town Planning Scheme	144,617
Old City Plan	120,000
Abu Dis	152,495
Silwan bulwark	6,841
At-Tur Kindergarten	2,568
Sur Bahir Kindergarten	165,229
Bcharya Alvin School	439
Abu Tor Boys' Elementary School	6,010
Beit Safafa Elementary School	8,395
As Suwana High School	10,510
Abdullah Ibn -Hussein School	1,712
Al 'Isawiya Girls' Elementary School	1,695,675
Sur Bahir High School	137,886
Beit Hanina Comprehensive School	15,497,036
Al 'Isawiya Boys' Junior High School	3,565,615
Abu Tor Boys' Sport Hall	767
Silwan Boys' Junior High School	97,909
Silwan Girls' Elementary School	9,712
Classroom Caravans, East Jerusalem	889,039
Beit Hanina Culture, Youth & Sport Centre	2,794,561
At-Tur Culture, Youth & Sport Centre	31,072
Sport facilities renovation – east	682,251
School computerization (transfer from 'joint' budget) ⁵³	519,805
Public park facilities (transfer from 'joint' budget)	20,000
Total	69,388,147

53. This item and the following one were derived from another item defined by the Municipality as a 'joint budget'.

We deemed it proper to add to this amount the proportion reaching East Jerusalem out of the Light Railway budget – which we calculated in accordance with the number of stations passing through the eastern part of the city – and we arrived at a sum of NIS 26,417,218.

Hence, the aggregate amount of projects unique to East Jerusalem, plus the proportionate share of the light railways, comes to NIS 95,805,365.

Net East Jerusalem budget	Light Railway – 3 stations	Total East Jerusalem
69,388,147	26,417,218	95,805,365

It is worth noting that the percentage of the irregular (development) budget invested in East Jerusalem has remained unchanged throughout the years. From 1993 to 2003, East Jerusalem's share of the extraordinary budget stood at 9%.

Nevertheless, for the grandiose Light Railway project, the 2003 budget too, would have remained at around 9% of the irregular budget.

Ratio of investment per resident in East & West Jerusalem in various allocated areas

	West Jerusalem	East Jerusalem	Residents per unit of service in WJ	Residents per unit of service in EJ
Streets (km)	680	87	710	2,448
Sidewalks (km)	650	76	690	2,917
Public Parks	1,132	45	447	7,362
Sewage network (km)	650	76	743	2,809
Garden facilities	1,267	62	347	643
Seats in gardens	4,589	170	95	1,294
Park drinking fountains	302	6	1,450	36,600

Education Department

Attending the municipal education system 39,190 pupils attended the urban education system in East Jerusalem. Private institutions catered to 21,160 pupils. The percentage of Palestinian pupils in the urban system came to 30% of total school-goers.

Education budget: It consists of teachers' salaries determined by the Ministry of Education, with the Municipality acting strictly as a financial channel. Therefore, the amount listed does not actually represent a municipal investment. The figure artificially raises the Municipality's spending in East Jerusalem. If these teachers' salaries are deleted, the East Jerusalem budget is considerably lowered;

The budget applied to the eastern city was as follows: ⁵⁴

Field	Item	Expenditure In NIS
Kindergartens	Payroll	9,211,000
	Non-payroll expenses	632,000
Elementary schools	Payroll	9,335,000
	Rent	10,153,000
	Non-payroll expenses	2,403,000
	Bussing	8,483,000
	Cleaning contractor	-
	Catering	1,228,000
Special education	Payroll	-
	Non-payroll expenses	-
	Bussing	-
	Catering	-
Secondary schools	Payroll	28,111,000
	Non-payroll expenses	2,925,000
General	Upkeep and replenishment	3,744,000
	Holistic programme	7,307,000
Total		NIS 83,532,000

54. Shlomo Hominer to Pepe Alalu, September 27, 2004.

Social Welfare Department

The Social Welfare Department has three offices in East Jerusalem - in the Shu'fat, Silwan, and Sheikh Jarrah neighborhoods.

In 2003, the Welfare Division handled 40,770 households, of which 8,021 in East Jerusalem. The number of social workers employed in the entire Division stood at 44 positions being allocated to East Jerusalem. This means that every social worker in the eastern city had a caseload of 250, compared with an average caseload of 100 in the western city.

In the face of this workload, and the slim budget and services allocations to East Jerusalem, the social workers in East Jerusalem are able to do very little for their clients.

The departmental budget for 2003 was distributed as follows ⁵⁵

Item		Expenditure In NIS
Children's and youth living accommodations	Daily foster care	143,373
	Clubhouses	1,260,240
	Outline plan	65,525
	Parents to children at risk	108,557
	Child-parent center	565,000
	Children in boarding schools	10,721,425
	Day-care centre placement	4,333,089
	Family-care units	7,841,988
	Treatment plans	119,920
	Work-place based family care units	76,228
Elderly accommodations	Community care for the aged	304,729

55. Tzila Bijje, Head of financial Department to Pepe Alalu, December 16, 2004.

Item		Expenditure In NIS
	Home heating for the elderly	339,590
Rehabilitation Department	Community projects for the exceptional child	30,047
	Blind escort fees	1,810,697
	Transportation for the disabled	21,767
	Community rehabilitation of the disabled	35,919
	Protected employment for the disabled	178,454
	Disabled children day care centres	103,897
	Disabled rehab day care centre	185,086
	Rehab and diagnostics centre	48,173
	Boarding care for the disabled	204,597
	The disabled in the family and foster care	55,269
	Gilo disabled care center	284,293
Care of the retarded	Placement in institutions	7,568,418
	Placement in Governmental institutions	111,376
	Therapeutic day care center	1,286,712
	Occupational therapy in day care centres	1,563,463
	Holiday home for the retarded	66,306
	Supportive services	183,668
	Drugs – community care	163,393
	Treatment of alcoholics	236,736
Special-needs population care	Special needs and home help	456,517

Item		Expenditure In NIS
	Summer vacations for mothers	69,091
	Professional support	195,507
	Volunteer activities	76,664
	Community activities	224,753
	Payment of water bills for the needy	32,016
Donations	Projects with the aid of the Jerusalem Foundation	490,741
	Aid to the needy	40,047
Sum total		41,603,273

Sports Department

For 2003, the Sport Authority did not forward us details of its activities in East Jerusalem, or how they were budgeted, merely stating the aggregate amount it allegedly invested, a sum of NIS 308,557, representing 4.79% of the Division's overall operational budget, which stood at NIS 6,438,996.⁵⁶

Of the total number of sport facilities operating throughout the city, East Jerusalem takes about six percent.

Number of facilities throughout the city	Number of facilities in East Jerusalem	Percentage of facilities in East Jerusalem
675	41	6%

56. Head Division Vladimir Shklar to Pepe Alalu, September 27, 2004.

Investment in Sport Activities per Individual in East & West Jerusalem in NIS ⁵⁷

Unit	WJ	EJ	Expenditure per resident WJ	Expenditure per resident EJ
Neighborhood Sports Activities	1,039,009	38,464	2,361	174

Facility	WJ	EJ	Residents served per facility WJ	Residents served per facility EJ
Fitness halls	43	1	10,200	220,000
Swimming pools	36	0	12,000	0
Gymnastics halls	87	0	5,054	0
Basketball playgrounds	68	17	6,470	12,941
Football playgrounds	24	9	18,333	24,444

Society & Youth Department

The Society & Youth Department has a department for East Jerusalem. It is important to examine not only the number of social clubs, but the quality of services provided. Youth and elderly clubs in East Jerusalem were run under extremely poor conditions, which is not surprising given the low sums allocated to these clubs.

The Society & Youth Department's budget is divided into two parts: one is used directly by the department, while the second is transferred to community centers.

⁵⁷. Inquiry from Pepe Alalu, July 5, 1999.

The following table shows the distribution of the department's budget.⁵⁸

Unit	In NIS.
Electricity, water, cleanliness & central heating	36,924
Telephones	10,440
Reception	900
Youth activities	611,872
Elderly clubs	25,372
Educational welfare - Beit Safafa	280,000
Activities for handicapped children (Beli Center)	60,000
Purchased services	86,290
Total	1,111,798

Ratio of Jerusalem Residents to Clubs

	West Jerusalem	East Jerusalem	Residents Per club In WJ	Residents Per club In EJ
Youth clubs	27	9	16,296	24,400
Elderly clubs	90	7	4,888	31,428
Community workers	21	1	20,900	220,000

Ratio of Community Centers and Spending to Population

Item	West Jerusalem	East Jerusalem	Residents Per Item WJ	Residents Per Item EJ
Community Centers	30	5	14,666	44,000

Item	West Jerusalem	East Jerusalem	Spending Per resident WJ	Spending Per resident EJ
Community Centers budget (NIS)	10,830,387	1,347,058	24,614	6,123

58. Pini Gelinkewitz, to Pepe Alalu October 14, 2004.

Culture Department

The Culture Department has a special department for Palestinian culture that runs all activities in East Jerusalem, except the municipal libraries, which belong to the Libraries Department.

Item	In NIS ⁵⁹
Libraries Department	55,698
Adult education	300,000
Cultural activities	615,000
Total	970,698

There were 39 municipal libraries in the city: 36 in West Jerusalem, and 3 in East Jerusalem. The ratio of residents to libraries is as follows:

Item	West Jerusalem	East Jerusalem	Residents per library in s WJ	Residents per library in EJ
Libraries	36	3	12,200	73,333

Art Department

The Art Department is concerned with visual arts, theater, dancing, singing and music. There are six art centers in the city, and one mobile band and dance group. However, East Jerusalem did not benefit from any of these activities. The only arts events involving East Jerusalem's residents were two projects carried out in West Jerusalem with the participation of both Israelis and Palestinians.

⁵⁹ Data derive from two sources: A – Oded Feldman, to Division Head Pepe Alalu, April 21, 2004, and Yaakov Yaakov, Deputy Division Head, to Pepe Alalu, October 19, 2004.

1. Art workshops for the students of Beit Safafa, held in the 'Ginogli Center' in the Katamon Quarter,
2. Israeli – Palestinian concert at the Music Center in Gai Ben Hinnon,
3. In 2003 one third of the players were Palestinians, therefore, third of its budget was accounted in favor of East Jerusalem.

Item	In NIS ⁶⁰
Art workshops	119,500 ⁶¹
Israeli–Palestinian orchestra	30,000 ⁶²
Mobile Art Workshop	9,300 ⁶³
Total	158,800

Public Health Department

The main service provided by the Public Health Department is the mother and child health care centers located throughout Israel under the auspices of the 'official health law'. In Jerusalem, there are 37 mother and child health care centers. In East Jerusalem, there are five. There are three other centers located in Israeli neighborhoods on the 'demarcation line', which also serve some Palestinian residents. There are pregnancy follow-up centers in Mahane Yehuda, which provide services to residents of both sides of town.

The Public Health Department also provides dental services to schoolchildren, and checks the health of the elderly through day centers and

60. Shemi Amsalem- Department Head, to Pepe Alalu , 26/9/2004

61. This amount includes NIS 113,000 deriving from "own income".

62. This amount constitutes the third of the orchestra's budget that the municipality pays. The general budget stood at NIS 203,000 but of that amount, the municipality paid only NIS 90,000, the balance deriving from non-municipal funds.

63. The entire amount derived from "own income".

clubs. It also conducts research and is concerned with safety, the environment and veterinarian related-issues.

We were unable, this year, to obtain an itemization. The Division gave us only the aggregate amount, - NIS 7,348,914 adding the number of consumers who had benefited from the Division's services.⁶⁴

In 2003, the Veterinarian Service was also joined to the Public Health Division. Since the service is not amenable to being divided between east and west, and every transaction that takes place in the west also affects the east, one third of the Veterinarian Budget- NIS 2,425,141 is in favor of the East Jerusalem budget.

The treatment package in East and West Jerusalem is similar, and the quality of treatment received by children in East and West Jerusalem is the same. Patients are treated equally, without any discrimination. However, as mentioned above, of the 37 mother and child health care centers in Jerusalem, 32 are in West Jerusalem, and only five are in East Jerusalem. The ratio of children up to the age of six per center is 1,821 in West Jerusalem and 6,882 in East Jerusalem. Therefore, in West Jerusalem there is a center for every 1,821 children; in East Jerusalem there is one center for every 6,882 children.

West Jerusalem Children per health center (58,280 children)	East Jerusalem Children per health center (34,411 children)
1,821	6,882

It should be noted that there is a network of clinics in East Jerusalem, affiliated with charitable societies, UNRWA, and churches, all of which provide services similar to those provided by mother and child health care centers. Some of these clinics are not subject to the supervision of the Ministry of Health, and the quality of services provided is not the same as that in West

⁶⁴. Department Head Yaakov Sabbagh to Pepe Alalu, December 15, 2004.

Jerusalem. For example, some do not offer the Israeli child vaccination programme. Therefore, these institutions cannot be said to deliver all of the health services deemed necessary by the Israeli 'official health law'. Once again, the children of the East Side are at a considerable disadvantage, compared with children living on the West Side.

Public Cleanliness Department

The Public Cleanliness Department is divided into 12 districts, three of which are in East Jerusalem: one 'outside the wall', which is mainly concerned with the center of East Jerusalem, commercial zones, and garages; one 'inside the wall', which treats the residents of the Old City, including the Jewish quarter; and one in the 'east district', which treats the rest of East Jerusalem's neighborhoods.

District	In NIS ⁶⁵
Outside the walls	13,582,829
Inside the walls	9,201,594
East Jerusalem	4,084,713
Behind Qalandia Check Point	827,635
New storage tools	1,013,500
Public conveniences	3,874,466
Total	34,282,850

In the calculations described earlier, for the purposes of this study, we deducted one quarter of the 'inta-muros' district's budget since it is invested in cleaning the Jewish Quarter of the Old City.

65. Department Head Zion Shetrit to Pepe Alalu, November 17, 2004.

We also deducted 2/3 from the East Jerusalem District since it is responsible for cleanliness [primarily] in the northerly Jewish neighbourhoods of Neveh Yaakov, Pisgat Zeev and the French Hill.

Ratio of Garbage Containers per Residents in East & West Jerusalem

Type of Services	West Jerusalem	East Jerusalem	Number per resident of WJ	Number per resident of EJ
Garbage containers	11,040	655	39	5,641
Garbage transport vehicles	2,371	49	185	4,489
Garbage containers in public parks	1,998	149	185	1,476

Youth advancement

The Youth Advancement Division handles problematic youth that have dropped out of the educational system, paid employment, and engaged in various forms of delinquency. The Division operates mainly through street youth leaders, who work with the youngsters in the streets, and wherever they assemble. In 2003, the Division took care of some 7,540 youths throughout Jerusalem, of whom 279 in the eastern city, representing 3.6% of total clients, through 11 positions, constituting 9.9% of total jobs in the Division.⁶⁶

⁶⁶ *Ruben Bahar to Meir Margalit, December 13, 2005.*

Item	In NIS
Establishment personnel	1,148,944
Personnel by man-hours	418,258
Organizational expenses	361,865
Special purpose youth activity	160,000
General youth activity	20,000
Legal advice	3,000
Education and enrichment	40,000
Sport and youth advancement	30,000
Employment Service	15,000
Youth advancement programmes	10,000
Dropout prevention	30,000
Special projects	40,000
Total	2,277,067

Planning Administration

This Division's budget was calculated based on a number of plans it discussed. In 2003, the local committee discussed 608 plans, of which 479 (78.8%) were in the west of the city and 129 (21.2%) were in the East. In light of these data, we estimate that the Planning Administration invested NIS 1,285,927 in East Jerusalem, representing 21.2% of the Administration's operational budget, which stood at NIS 6,060,807.

Public Edifices Division

This is a new division that coordinates all construction activity in the city, from the planning stage to actual execution. Most of its budget comes via the extraordinary budget, and in practical terms, is the Division's investments calculated based on the ordinary construction budget. Pointing out that the 2003 budget had plenty of money for educational institutions, thanks to a massive injection of NIS 32.5 million channeled to East Jerusalem by the then Minister of Education Yossi Sarid. Given that that amount represented 56% of the total construction in Jerusalem that year, the deduction of 56% from the divisional budget and recorded it in favor of East Jerusalem was done, thus arriving at a sum of NIS 1,990,360, which as stated, amounts to 56% of the operational budget of the Public Edifices Division, whereby NIS 3,554,214 was invested in East Jerusalem.

Actual disbursements on edifices in the eastern city are presented in the following tables, but are included in the budgetary analysis of the ordinary construction budget.

Edifice	Construction costs in NIS
Special education As-Sheikh	626,201
Girls' elementary school, As Sawahira	464,730
Boys' elementary school, Sur Bahir	1,741,768
Girls' junior high school, Al 'Isawiya	5,565,678
Wadi Al Joz elementary school	5,614
Sur Bahir kindergartens	165,229
Special education Bcharya Alvin	439
Boys' elementary school Abu Tor	6,010
Elementary school Beit Safafa	8,395
As Suwana High School	10,510
Abdallah Ibn Hussein School	1,712

Edifice	Construction costs in NIS
Girls' elementary school Al 'Isawiya	1,695,675
Sur Bahir senior high	137,886
Beit Hanina comprehensive school	15,497,036
Al 'Isawiya junior high school	3,565,615
Sport hall Abu Tor	767
Silwan boys' junior high school	97,909
Sur Bahir girls' elementary school	154,873
Silwan girls' elementary school	9,712
Beit Hanina Culture, Youth & Sport Centre	2,794,561
At-Tur Culture, Youth & Sport Centre	31,072
Total	32,581,392

Licensing and Supervision Division

This Division is divided into several departments.⁶⁷

Calculations for each department were based on different parameters: in two departments – the number of employees, in the third – the number of licenses issued that year, and in two other departments - the number of cases handled.

Department	Budget	Personnel	Personnel in East Jerusalem	East Jerusalem budget
Information and mapping department	3,049,534	8	2	NIS 762,385
Hazardous buildings department	1,588,520	6	1	NIS 264,753

67. Division Head Mija Ben Nun, to Pepe Alalu , 3/4/2005.

Department	Budget	West Jerusalem licences	East Jerusalem licenses	East Jerusalem budget
Business licensing	4,053,186	730	181 (24.8%)	NIS 805,298

Department	Budget	Total cases handled	Total East Jerusalem cases	East Jerusalem budget
Betterment levy department	876,066	6,796	1,612 (22%)	NIS 192,734
Construction licensing department	3,361,418	1,848	137 (7.4%)	NIS 248,744

Total	Division Budget	East Jerusalem Budget
	21,420,399	2,273,914

Transportation and Engineering Services Division

Is in charge of “heavy” maintenance of roads, waking paths, electricity and lights on the roads, and payments for electricity.

The main budget of this department is derived from the “irregular budget”. Therefore, the below mentioned budget, does not reflect the entire activity of this department.

	In NIS ⁶⁸
Electricity for street lighting	3.5 million
Lighting maintenance	2.1 million
Traffic light maintenance	935,000
Total	6,535,000

68. Head Division, Kobi Bar Tov to Pepe Alalu , 5/9/05 .

The Department for Beautification.⁶⁹

Is in charge of maintenance of public green areas and “light” maintenance of roads. This is an estimated budget only, based on green areas, which the department is in charge of in east Jerusalem.

According to the department’s report, altogether there are 1435 public green areas, among them only 12 public parks in east Jerusalem. (0.9% out of the entire green areas in Jerusalem).

Based on this, 0.9% out of the general budget of this department (NIS 83,396,089) summed up to NIS 810,000.

Fire Department services

The Fire Department operates through five fire fighting and rescue stations. Only one such station operates in East Jerusalem – the Egoz fire station. The budget is accordingly divided into five equal parts. It must be clearly stated, however, that such subdivision does not do justice to the Department, since fire-fighting services operate in accordance with need and are not subject to territorial demarcation. Which means that a fire in East Jerusalem will also be handled by stations in the western city, and vice versa.

Water & Sewage Investments – Gihon Company⁷⁰

Water and sewage services are run by the private Gihon Company. The Municipality is the major shareholder of the Company. Therefore, its budget is not part of the municipal budget. As the provision of water and sewage services is the Municipality’s responsibility, the discussion of the investments of the Gihon Co. is separate from the municipal budget.

69. Abraham Levy to Pepe Alalu, October 10, 2004.

70. Gal Hershkovich to Pepe Alalu, 11/10/2004.

The following table describes three categories of water services: those in East Jerusalem, those in West Jerusalem, and those that are shared. In order to calculate the percentage between East and West Jerusalem, the 'shared' category is divided in two, with half attributed to East Jerusalem.

		East	Joint	West	Total
Water	Waterworks expansion	1,801	10,920	3,479	16,700
	Waterworks replacement	1,490	410	9,406	11,305
	Reservoir construction	246	1,563	11,032	12,841
	Equipment & maintenance	0	2,815	0	2,815
	Planning & research	0	1,275	0	1,275
	Renovation of facilities	0	42	80	123
	Effluent system	0	0	906	906
	Contract expenses	71	7,119	3,395	10,586
Sewage/ drainage canals	Expansion of sewage system	528	0	1,175	1,703
	Expansion of Drainage canals	10,140		1,709	11,850
	Replacement of sewage system	4,851	0	3,170	8,021
	Sewage/drainage canals	2,499	0	7,673	10,172
	Catchments areas reinforcement	5,404	0	6,259	11,663
Total		27,030	24,145		208,687

A comparison of waterways by kilometers length is as follows:

		East	West
Water	Laying of new waterways	1.1	6.0
	Replacement of old waterways	1.6	6.6
Sewage	Laying of new courses	0.9	3.1
	Replacement of old courses	8.4	9.9
Canalization	Laying of new canals	0.3	0.7
	Replacement of old canals	4.8	5.3

If half of each of the amounts for 'shared' items is allocated to East Jerusalem, it is found that East Jerusalem benefits from 23.1% of the Gihon Company's total budget, while West Jerusalem benefits from 76.9%.

In general, the investment of the Gihon Co., in East Jerusalem appears reasonable. The proportion of investment is below 33%, the percentage of the city's Palestinian population, but it is close. However, it should be taken into account that the rate of investment in East Jerusalem is linked to the severe shortage of infrastructure services [water and sanitation] compared to West Jerusalem. Essentially, the Company is now making up for a long-term lack of infrastructure.

It is also important to note the relative size of water bills in East and West Jerusalem, as an indication of relative water consumption.

General Investment Trends in East Jerusalem

It is no simple matter to embark on a comparative study that examines the distribution of the budget between the eastern city and the western in recent years. No comprehensive study was ever published that included all municipal divisions. Some researchers have presented partial data, giving an impression of the distribution status in Jerusalem.

- A study published in 1992 by the Israel Research Institute of Jerusalem, edited by Reuven Merhav, notes that various municipal divisions invest in the eastern city between 2% and 12% of their budgets.
- Dr. Meiron Benvenisti, served as deputy Mayor under Teddy Kolleck in 1996 published a paper analyzing per capita municipal investments, noting that the Municipality would invest \$ 900 per capita in West Jerusalem compared to only \$ 150 per capita in East Jerusalem. Thus, each Jewish resident received six times more than each Palestinian resident.⁷¹
- Dr. Moshe Amirav, also served as a Jerusalem Councilor, estimates that the rate of municipal investment in East Jerusalem during Teddy Kolleck's term, stood at 4% of the development budget.⁷²
- The Al Quds Center for Social & Economic Rights published a comprehensive study of budgetary allocation in the year 2000, and found that it ranged from 9% to 11% (to East Jerusalem) of the total municipal budget.⁷³

Since the beginning of his term, former Mayor Ehud Olmert has been aware that tightening Israeli control over East Jerusalem requires investment. In relative terms, he has invested more in East Jerusalem than former Mayor Teddy Kollek, but still less than is needed to maintain and run municipal infrastructures.

The present mayor, Rabbi Uri Lupoliansky, continues the same line, maintaining his predecessor's level of budgeting, but does so out of inertia rather than conscious policy.

71. *Benvenisty Meron, Makom Shel Esh. Dvir, 1996 pp 101-102.*

72. *Amirav Moshe, An Evaluation of Policy-Making: The Case of Jerusalem, London School of Economics, 1994. p 91.*

73. *Jerusalem Center for Social & Economic Rights, Chronic Racial Discrimination, July 2003.*

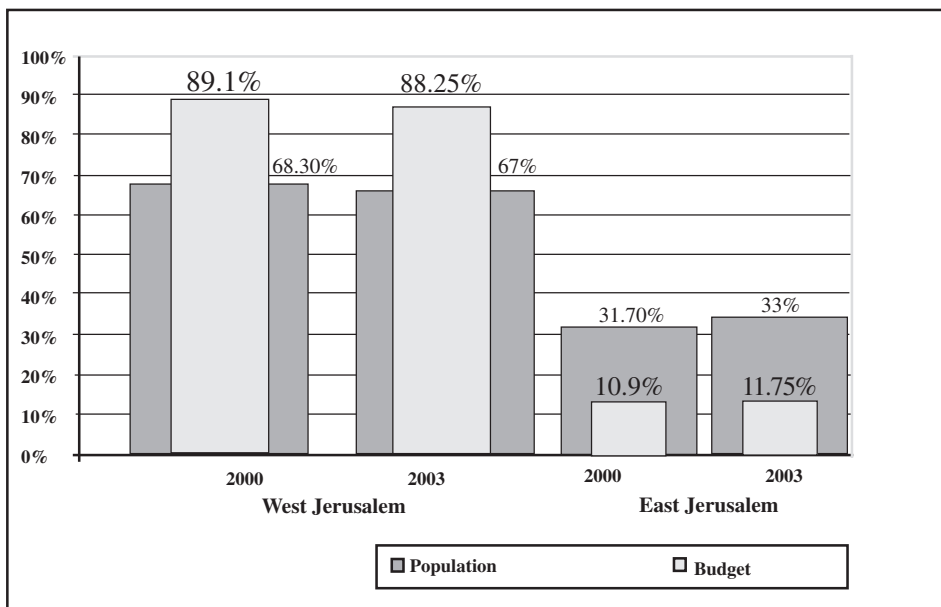
Due to the absence of equivalent data, it is difficult to accurately compare levels of municipal investment in East Jerusalem in the past. However, some partial data does exist, which provides information about the provision of municipal services in the last ten years

The most accurate comparison to make is between the budgets of fiscal years 2000 as presented by the AlQuds Center and 2003- as presented in this article. As both budgets are tabulated using similar budget items, this comparison is the most meaningful.

Comparison of Budget Distribution by Departments

Department	For 2000			For 2003		
	General Budget	East J'm	%	General Budget	East J'm	%
Welfare	292,020,000	37,500,000	12.5	342,784,401	41,603,273	12,13
Education	559,804,000	90,140,000	16.4	637,550,984	94,042,000	14,75
Health	39,821,000	4,951,000	12.4	46,253,551	9,531,039	20,60
Society & Youth	61,228,500	1,726,304	2.81	64,395,662	1,111,798	3,19
Cultural	85,708,000	1,540,599	1.79	81,866,002	970,698	1,18
Sport	26,566,765	711,064	2.67	19,252,145	308,557	1,60
Art	11,248,158	320,000	2.8	13,275,982	158,800	1,19
Youth Development	18,267,276	1,080,300	5.9	20,878,710	1,858,809	8,90
Religious Affairs	23,911,000	0	0	22,813,050	0	0
Cleanliness	193,680,636	25,074,629	12,9	206,341,684	35,038,562	16,98
Beautification	64,345,000	6,112,775	9.5	83,396,089	810,000	0,9
Fire Engine	33,335,258	6,667,051	20	38,270,150	7,654,030	20
Engineering services	85,584,277	8,130,506	9.5	81,936,798	6,535,000	7,97
City Planning	28,162,723	2,675,458	9.5	9,807,539	1,285,927	13,11
Municipal Supervision	37,845,000	—	—	24,187,966	2,273,914	9,40
Guardianship & Security	33,768,027	0	0	87,904,818	0	0

Department	For 2000			For 2003		
	General Budget	East J'm	%	General Budget	East J'm	%
Parking dep'	---	---	---	46,333,640	0	0
Absortion				4,651,229	0	0
Buildings	---	---	---	6,773,150	1,990,360	29.38
Irregular Budget.	515,668,000	49,360,247	9.5	727,378,654	95,805,365	13.17
Total	2,110,963,620	230,722,307	10.9	2,566,052,204	301,599,026	11.75



The small improvement demonstrated in 2003 is a result of the high appropriations by then Minister of Education Yossi Sarid for new school infrastructure and by investments made in the light railway project.

Another means of comparison is a set of documents that analyze the gap in infrastructure between East and West Jerusalem. These documents, published by the JM's finance department, show that the gap between East and West Jerusalem has increased over the years. According to the JM estimates, the amount needed to provide equal services in East and West Jerusalem was 520

million NIS in 1994⁷⁴; By 1999, this had increased to 776 million NIS⁷⁵; growing to over 980 million NIS in 2001⁷⁶. In 2005, the budget required for equalizing conditions between east and west stands at “at least one billion NIS”.⁷⁷

Finance Gap 1994	520 million NIS
Finance Gap 1999	776 million NIS
Finance Gap 2001	980 million NIS
Finance gap 2005	At least one billion NIS

By looking at these tables, a severe drop in infrastructure spending, during the period 1994 to 2005 is perceived.

In light of the facts on the ground no significant changes have been made in the last few years.

Arnona Tax Rates in East Jerusalem

We are presenting data about Arnona (municipal property) tax rates in East Jerusalem in order to shed light on the claim that the JM invests a vastly greater sum in East Jerusalem than the Arnona taxes paid into the Municipality's coffers by Palestinian residents.

The percentage of East Jerusalem's population that paid Arnona tax in 2003 is admittedly lower than the overall percentage in West Jerusalem. However, the percentage remains high, especially when one takes into consideration the financial difficulties Palestinian Jerusalemites currently experience. This

74. Jerusalem Municipality, *development of infrastructure in East Jerusalem*, October 1999

75. Jerusalem Municipality, *development of infrastructure in East Jerusalem*, March 1999.

76. Eitan Meir to Pepe Alalu , 'Development Budget in East Jerusalem', October 21 2001.

77. Zippi Malkov, Liam Epstein, *Jerusalem Newspaper*, September 23, 2005.

population is under considerable economic duress, yet it is contributing significant sums toward municipal expenses – in spite of the fact that it has virtually no say over how the money is spent, as a normal citizenry would. Arnona taxes are paid out of sheer necessity; without proof of payment, it is utterly impossible for Palestinian Jerusalemites to obtain vital documents from the Israeli authorities, including identification papers and travel permits, birth certificates for their children, etc. Meanwhile, another sizable Jerusalem population that experiences financial hardship, namely the Orthodox Jewish population, is provided with the full range of municipal services despite its poor record of tax payment. The difference is that the Orthodox sector can ‘get away with’ nonpayment; proof of payment of Arnona is not a prerequisite for such basic documents as birth certificates, or services such as health care, and of course travel permits and Jerusalem ID cards are not an issue for this sector since they are not required. Members of this sector of the Jewish population (which has a traditionally high birthrate) may take full advantage of the Israeli system, while paying less in taxes than many of their Palestinian counterparts.

It is important to note that although we have presented the relevant Arnona data, by law, even if residents of East Jerusalem paid no Arnona taxes, the Municipality would be required to provide services equally, without any relation to the volume of money collected. The Municipality claims sovereignty over East Jerusalem; it has a legal responsibility to its residents.

As to payment of rates in 2003 - a peak year as regards the economic crisis that overtook the eastern city, East Jerusalem residents paid an aggregate amount of NIS 88.89 million, of which NIS 59.45 million related to residential buildings, constituting 40% of total debits (out of total payments that were due to be made) and for businesses they paid NIS 29.44 million, representing 9% of total debits.

The Jewish sector in that year paid NIS 761 million, of which NIS 446.37 million related to residential buildings constituting 62% of total debits; and

	West	Total debit	East	Total debit
	NIS million	%	NIS million	%
Residential	446.37	(62%)	59.45	(40%)
Business	314.70	(36%)	29.44	(9%)

for businesses paid NIS 314.70 million, representing 36% of total debits.

Of that amount, East Jerusalem residents paid 10.5% of total rates (not including rate payments for institutions).

The low percentage payment in both parts of the city, but especially in East Jerusalem, and especially in businesses, attests to the magnitude of the economic crisis visited on the city in 2003, when terror attacks were rife, resulting in a severe economic slowdown. This is evidenced by the fact that in 2000, a year of relative prosperity, East Jerusalem paid rates aggregating NIS 99.8 million.

It is important to note that in all matters pertaining to the provision of municipal services, rate payment data are irrelevant, since the Municipality is obliged to provide service regardless of the level of rate payments.



PART THREE

THE EMPLOYMENT PYRAMID



THE EMPLOYMENT PYRAMID AT JERUSALEM'S CITY HALL

The employment structure at Jerusalem's City Hall is a true mirror of the Palestinian situation in the city. The Jerusalem City Hall Human Resources' payroll roster in the year 2005 comprised 7,097 workers, 5,401 of them being Jewish, and 1,694 being Palestinians. The percentage of Palestinian workers was 24% of the overall municipal work force.⁷⁸

It is interesting to note that in the Jerusalem Municipality Report on Division of Labor, the workers were split into two categories: Jews and Non-Jews. Without conscious intention, this definition already holds a specific discriminatory message. It is as if the Municipality were to suggest that they had men and non-men working there, since Palestinians are not even a category referred to but are defined by a negative, i.e. by what they are not. The semiotic attitude which hides behind these words is that the Jew is at the center of things, whilst the Palestinian is at a secondary level.

Two observations need to be made regarding the current analysis: 1) here, we are dealing with the number of workers, not the number of positions or jobs. The two concepts are not necessarily identical. Many workers work in 'part time' jobs, or many times a regular position is divided among different workers.⁷⁹ 2) Beyond the regular or standard positions, City Hall also employs hundreds of additional workers through different independent non-governmental organizations (Amutot). This is done in order to bypass the limitations on the number of workers imposed by the number of positions that are officially sanctioned or approved by the government's Public Services

78. The figures were provided by Jonathan Loirer, Director of the Human Resources Division at Jerusalem's City Hall, on February 7, 2006.

79. The total number of positions at City Hall is 6,538. We can see that the number of workers surpasses this number.

Commission. However, because these are not regular or standard City Hall positions, they are not being included in the present analysis.

An analysis of the work force distribution shows that Palestinian employees work in three main areas:

- Menial physical jobs, including cleaning of public places, gardening, and maintenance (643 employees);
- Education, social welfare and public health (748 employees);
- And, clerical workers, inspectors, and Firefighters (105 employees);

Number of Arabs & Jewish employees at Jerusalem's City Hall

Department	Palestinian Employees	Jewish Employees
Public Administration	4	221
Accounting, Finances	2	80
Shop Licensing – Municipal Supervision	11	166
City Planning & Supervision on Building	3	75
Engineering Services	8	104
Beautification	448	476
Gardening, and maintenance	195	224
Public Health	42	177
Social Welfare	71	504
Education	833	2037
Social Services	20	199
Culture	11	144
Sports	8	64
Arnona-City taxes	13	147
Firefighters	13	101
Security	1	41
Legal Department	1	56

Department	Palestinian Employees	Jewish Employees
Parking Department	10	107
City Comptroller	—	22
Human Resources	—	49
Art	—	55
Public Edifices Division	—	23
Orthodox Education	—	321
Orthodox Culture	—	6

There is a high concentration of Palestinian workers in Education (teaching) positions, in Social Services, and as nurses in the Tipat Chalav program (neonatal care program). However, it needs to be understood that these workers are employed because of a law that mandates the municipal government bodies to provide to their inhabitants education, social welfare, and health services. The salaries for these positions come from the state's government, but are paid through City Hall. For these positions, City Hall functions mostly as a budgetary pipeline. Therefore, their place in the municipal workforce structure does not reflect municipal employment policy, but rather the overall state's employment policy.

It is interesting to observe, regarding these same workers, that in their majority they are not Palestinians who live in East Jerusalem, but that they are Israeli Arabs who live in Jerusalem mostly for employment reasons. The access of Palestinians to these jobs is basically blocked because of the fact that they don't carry Israeli professional certificates. This barrier is difficult to overcome because the Palestinian education system in East Jerusalem does not give to its students an Israeli matriculation certificate for institutions of higher learning in Israel. What they get instead is a Jordanian or Palestinian matriculation certificate, called a "tawjihiya", which gives them only access to Palestinian or other Arab countries' institutions of higher learning. These certificates are

usually not recognized or accepted by Israeli institutions. In this manner the Israeli government has created a class of privileged Palestinians, known to the East Jerusalem Palestinians as the “Northerners,” that stand as middlemen between the Jews and the local Eastern residents. This privileged Palestinian class serves the needs of the local East Jerusalem Palestinian residents, but at the same time and maybe unconsciously, or at least involuntarily, it is also serving the needs of the Israeli power system.

Therefore, if we put aside the academic Palestinian workforce, which is paid by the state, the bare workforce structure of Jerusalem’s City Hall becomes more readily apparent. From 748 Palestinian workers that remain after we take out the teachers, social workers, and nurses, 643 work in menial physical jobs such as cleaning and gardening. These type of workers make up 85% of all municipal Palestinian workers. Another 105 Palestinian workers perform clerical, inspection, and firefighting functions.

At the four highest levels in the municipality, the distribution of manpower between Palestinians and Israeli Jews is as follows:

Organizational Framework of Municipal Personnel at Four Top Levels of Seniority

	Jews	Palestinians
Director General and his deputies	3	0
Department Heads	35 approx.	0
Supervisors	50 approx.	0
Subordinate officials	100 approx.	3

Palestinians who work for the Municipality are only ever employed at the lowest levels. The maximum level which has been attained is that of a subordinate official, and only to the extent of 3% in comparison to Jewish municipal employees at that same level.

The following features characterize the municipal workforce: 1) there is a concentration of Palestinian workers in the lowest rungs of the employment system structure, especially among the menial workers in the areas of cleaning (also street cleaning), maintenance, and gardening. 2) There is a thin layer of clerical workers, also called “white collar” workers in current social English jargon, serving the needs of the Palestinian population. There are practically no Palestinians serving the needs of the Jewish population. 3) All Palestinian workers are concentrated in medium and low ranking jobs; Palestinian workers don’t usually go beyond the rank of department head, and this, as already stated above, only in the case of positions that serve the Palestinian population. 4) The mobility of Palestinian workers is very limited; i.e., most regular positions at Jerusalem City Hall are blocked for them. What is called in sociological research these days a “glass ceiling,” which blocks the advancement of women to senior positions in the work force, has become in the case of Palestinian workers in Jerusalem’s municipality a “ceiling of reinforced concrete,” that makes their position fixed and does not allow for any horizontal or vertical mobility. This is because the number of positions that can be fulfilled by Palestinians is limited, and the chances of a Palestinian worker getting to a senior position are practically zero.

Following the perceptions developed by Max Weber in his research of organizations, we know that a workforce structure, such as the one just described for Jerusalem’s City Hall, teaches something about wide-ranging social and political processes. Such a structure reflects a given social situation, but at the same time it is also a tool for the perpetuation of that same situation. The fact that the Palestinian workers are mostly found at the bottom of the workforce pyramid, in the lower ranking positions of the structure, is on the one hand an expression of their inferior socio-economic status in the city. On the other, it conforms to the political trends that are floating in the air and that serve sectarian interests.

This is because the workforce structure in Jerusalem hides within itself a national message. “Know before whom do you stand.” The Jew is the manager, and the Palestinian is the worker. The Jews are in charge, and the Palestinians are the subordinated. The Jew is the one who decides, and the Palestinian the one who executes. However, even this only in the lower positions in the social scale. In this manner, the workforce structure becomes a mechanism of domination and oppression, just one among many other such mechanisms employed by the municipality to perpetuate the inequity in the city.

If the role of workers in every bureaucratic system is to maintain the organization, the role of the workforce structure is to maintain the system. Because a state’s public organization is created not only to serve the citizens, but also (and some say mainly) to determine the social order. The political message given by the municipal organization is clear: in this city there are the proprietors or the landlords, the Jews who live in the Western part, and the minor tenants, the Palestinians in the Eastern parts. And if modern research teaches that an organization is a stage for political struggle, in Jerusalem, where everything is doubly charged, the municipality is also a stage for national struggle.

This is why Palestinian residents do not expect too much from the municipality, and why they accept their inferior status. Because a clerk is a symbol, and when they see that the Palestinian clerks that serve with them do not have any real authority or status, they lower their expectations from the organization and they start to accept their status as a “Class B” citizen.

It needs to be stated that nowhere are there to be found any official arrangements or procedures that would prevent a Palestinian from competing in a public tender for a position. In addition, it is explicitly written on tenders that the positions are open to any person, without any regard to sex or nationality. Nevertheless, the Palestinian workers know their place in the system, and they are aware of the invisible restrictions that exist in the mechanism. They will not stand in generic tenders and will not compete for positions that are reserved for Jews, because they know that they do not stand a chance, and because they do not want to upset the system.

Someone who is not convinced, up to this point, that the Israeli power in East Jerusalem is an updated version of 19th century European colonialism, should look at the employment structure. They will find that the workforce structure resembles in an incredible way the power structure in the 19th century overseas European colonies. Here and there, the higher echelons are reserved for the European officialdom, and the native population fulfills the lower jobs. The Jewish manager is very similar to the colonial clerk who determines the level of services to which the native population is entitled. It is in his will to give, or in his will to take back. Here, as in the colonies, between the senior Europeans and the native workers there is a thin layer of privileged locals that function as middlemen or brokers between the government and the local population. These middlemen absorb the brunt of the frustration of the local residents, and they create an illusion of autonomy. But they are, in fact, just executing the orders of the European commanders.



PART FOUR

THE JERUSALEM MASTER PLAN 2020



THE NEW JERUSALEM MASTER PLAN

The recently published Jerusalem master plan is an instructive document of some historical importance, seemingly setting out to introduce a degree of order and justice in a city which up to now was managed on the basis of an outdated and irrelevant plan dating back to 1959. However, the chapter dealing with East Jerusalem unfortunately bears witness to the manner in which prejudice, stereotypes and erroneous assumptions can so easily take over and penetrate the thinking of the professional elites in their work.

While the document makes a sincere effort to grapple with the difficulties of planning and construction in East Jerusalem, it suffers from a 'closed circle' syndrome, within which it is subordinate to those very same basic concepts, which created the current planning chaos. No wonder then, that the document suggests a variety of cosmetic solutions and recycles worn out ideas. These are very impractical since they go back to those paradigms whereby we have reached the impasse, which the document would undo. It can be assumed that these ideas, which in the past led the Eastern city into its present dead end, will also be unable in the future to provide it with a way out.

“The Jews know better”

Where do the problems of treating the subject of East Jerusalem start? Firstly, in that the 39 professional workers who put the plan together and the 31 members of the steering committee, include only one Palestinian, and even this only following strong public pressure. Secondly, not only do the East Jerusalem Palestinians receive negligible representation in the body whose task

was to plan their lives: neither did the planners deem it necessary to hear the views of alternative bodies which held different opinions from the Jerusalem Municipality.

This paternalistic and arrogant approach is the core of the Municipality's policy in the Eastern part of the city. The Jews know what is good for the Palestinians and are more capable of running their lives. This is not a new approach in the wide world and is a characteristic of colonial regimes which believe that the 'natives' are worthy neither of suitable representation nor of being masters of their own fate. The planning team apparently sets out from the assumption that in any case, one is dealing with a Jewish city and therefore there is no reason to ask the opinion of anyone who does not belong to the Jewish people. This is the sort of logic, according to which a repair contractor confers on repairs with the owner of the house, and not with the tenant who is living there.

So it ensues that once again, the East Jerusalem Palestinians are not partners in decision making, neither at the political level (which is said to be largely their own fault because of their refusal to participate in municipal elections) nor at the professional level. This approach, which is manifestly contrary to every professional standard both in community work and in urban planning, would have never been accepted if it were to be applied to the Jewish public. While the life style of the Palestinian community is dictated regardless of their real needs, by the overwhelmingly Jewish planners, basic principles in work with communities, such as strengthening the status of the residents and encouraging their independence, are altogether missing in the Eastern city. Since this is the basic approach of the planners, the document itself as it unfolds is inevitably replete with unfounded and defective operational proposals.

What lies behind illegal construction?

The chapter called 'The existing situation' lays down that the present planning chaos in the Eastern city is the result of the growing illegal construction, which is directed by 'both political and economic factors'. In other words, it is the Palestinian Authority, Hamas, and criminals or businessmen without a conscience and out for easy profits, who stand behind the illegal construction and back it up. It is as if the Eastern city has no legitimate needs, as if there is no real distress, as if there are no ordinary families seeking to acquire a roof over their heads, who are compelled to build without permits because, having tried everything, they come against a wall of bureaucratic imperviousness. The politicians and business people in the Eastern city are the only ones interested in building, and their main purpose in doing so is that of undermining Israeli rule or of making easy money.

This is a theory of conspiracy like 'The protocols of the elders of East Jerusalem'. Every additional house built without a permit is conceived as another brick in the wall of struggle over the control of Jerusalem. Like it or not, every room, every balcony and every tree becomes part of a worldwide plot. Money from the Palestinian Authority, Saudi Arabia or Hamas supports the building of every house and every tile on the floor, and is comparable to a terrorist bomb. Every householder is viewed as a saboteur waging a war of attrition against Israeli rule. In the eyes of the planning team in East Jerusalem, there is not a building without political motivation in a reality of land grabbers and cunning politicians.

Such a superficial approach is surprising in light of the criticism expressed, not without hesitation, in the document itself on the prevalent statutory situation in the Eastern city. The document explicitly states that a resident there requesting a building permit faces many difficulties because of the lack of a suitable engineering infrastructure, problems of registering land, almost insoluble difficulties in joining and dividing lands, and both the lack of reasonable budgets and of any agreed planning policy between the planning

authorities. But none of these difficulties and obstacles appears, in the planners' eyes, to provide sufficient justification for illegal construction. In spite of the difficulties noted in the document, the planning team still thinks that the central problem is to be found in 'the disregard by the residents of the planning and construction law on the one hand, and in the major weakness of the enforcement mechanism on the other'.

The writers of the document seem convinced that the Palestinians are a mob which is not prepared to honor the law since they are known from birth to be lawbreakers. It is significant that those responsible for the document did not consider the possibility that the Palestinians are forced to build illegally for those very reasons enumerated by the writers in the same document, namely all those difficulties and obstacles which make it impossible to receive a permit. At the same time, the authorities are said to have 'failed in their task' because they did not enforce the law with a heavier hand, or in other words did not demolish more houses or impose more severe punishment on transgressors. This fits the prevalent assumption that the Palestinians understand only the language of force and that with them, what can't be achieved by force can only be achieved by more force.

A Jewish majority

The fundamental defect of the document stands out in the chapter dealing with the goals of the new master plan, which remain as before 'preserving a firm Jewish majority in the city', in terms of 70% Jews and 30% Palestinians. The team is indeed aware that the goal is unattainable and that present demographic trends will result within years in a 60%-40% ratio. Nevertheless the document makes a considerable effort to preserve the Jewish majority through a series of plans designed to attract Jews to the city and stem the negative emigration from it. A series of seemingly positive proposals raised in the document in regards to the Jews deal with the improvements necessary to

encourage them to remain in the city. Not a single sentence in the document suggests getting rid of the Palestinians in order to preserve the demographic balance.

However, anyone reading between the lines observes a concealed message. In what is called ‘the future picture desired by the City Fathers’ one cannot but receive an impression that behind the document lies an attempt to restrict the natural increase of the Palestinian population in the Eastern city. With their historical experience, the planning team understands that this cannot be achieved through doing away with all the firstborn sons, but the plan assumes that by restricting the Palestinians’ living space, they will be compelled to leave the city and move into places in the periphery where they will be able to build without restriction.

This, it will be recalled, was the premise behind the Interior Ministry’s previous attempts to deny residency rights and confiscate blue identity cards from Palestinians who could not prove that Jerusalem was ‘the center of their lives’. (The required amount of documentary proof was deliberately made unattainable). However, this policy of restricting the Palestinian presence in Jerusalem acted like a boomerang. If the policy makers had been familiar with Palestinian tradition, they would have known that the Palestinians would not leave their land so easily. When the state refuses a building permit, they simply build without a permit. In the end, those who wanted to solve the demographic problem were left with two problems: the demographic and the urban.

Freedom of movement, family reunion, demographic balance

There is another shocking clause that appears in the document in order to restrict Palestinian demographic growth: a proposal aiming to prevent Palestinians from the Occupied Palestinian Territories (OPT), from entering Jerusalem. An apparently naïve formulation which lacks any trace of racism,

in effect denies the Palestinians freedom of movement, one of the central values of a democratic regime. An even more elementary right – family reunion – is likewise denied. The state already refuses to grant residency rights in Jerusalem to a Palestinian Jerusalemite married to a man or woman from the OPT, compelling them to live without rights in the city, under the threat of arrest or deportation. There can be no doubt that the planning team, composed of intelligent people are aware that it is legitimizing a grave denial of elementary human rights.

Moreover, the team provides professional authorization for the following, one of the main injustices existing in the Eastern city. A man from there marrying a woman from the OPT is prevented from living with her in his own home. The state generously allows him to move to the OPT if he wishes to live with her, but this involves the loss of his Jerusalem residency status and the accompanying rights. The state is not concerned that in Palestinian tradition the woman lives in her husband's house, because he is considered to be a ticking demographic bomb. Her womb would appear to threaten the sacred demographic balance and to endanger Jewish sovereignty in the city.

However, once again, the policy makers did not correctly evaluate the strength of tradition and failed to appreciate that it is stronger than the Interior Ministry's regulations. These families live in the city regardless of the policy of the authorities. For its part, the state has found an original way of facing the demographic threat. Ostrich-like, it simply ignores the existence of such families and excludes them from the family registry. About 20,000 men and women live in East Jerusalem without their names appearing in the family registry. These are mainly women and their children. The latter do not even appear in the identity cards of their mothers; if they did, this would enable the mother to receive social security allowance for their children. Thus, the state actually deceives the statistics, for if these people are not registered they do not exist. What is amazing is that the planning team is aware of the real numbers, but they prefer to overlook them. When demographic considerations cause a major

and serious failure to recognize the true situation on the ground, all the accompanying statistics become erroneous and misleading.

The embarrassing chapter in the master plan dealing with the so-called demographic balance is an absolute disgrace. While one can understand why for their own reasons politicians fixed their signature to it, it is hard to grasp how cultured professional men from whom one might expect an objective approach, could sign such a racist and discriminatory document. Were such a document written in a European state on the need to preserve a demographic balance between Christians and Jews, the whole state of Israel would noisily accuse it of anti-Semitism. Here, the demographic bug overcomes any sense of reason, so that liberal and progressive academics end up lending their hand to a document that openly and unashamedly discriminates against a part of the population on grounds of their national affiliation. In any civilized country this would be called racism. In Israel, however, it is not nice to call a Jew a racist, for are we ourselves not the ultimate victims of racism? Yet the insufferable ease with which we harp on the demographic argument as a central goal in city planning proves that something has gone wrong in our own application of human values toward others.

Some correct recommendations

It should be noted that alongside the basic defects of the document, there is also a series of correct recommendations, though the degree of their actual implementation may be doubtful. For example, it is rightly recommended to preserve the set-up of regional separation, the purpose of which is to not mix populations. This would maintain the multi-cultural character of the city and in particular would serve to restrict potential foci of friction. Here the team correctly condemns Jewish settlement in East Jerusalem, for rather than the Palestinians penetrating into West Jerusalem, the opposite is true. Yet the planners lacked the courage to state who is at fault here. Day by day, this

recommendation is crudely countered by rightist bodies, both through the massive acquisition of private property over which the Municipality has apparently no control, and also through the establishment of completely new Jewish areas in the heart of Palestinian neighborhoods. Subsequently, these are almost automatically authorized by the local committee for planning and construction.

There is also a series of further positive recommendations rooted in the reality of the city, such as the welcome proposal to permit a percentage of additional construction that would allow Palestinian residents to add further building units on their land. This sort of denser building pattern should lower infrastructure costs and facilitate a more correct exploitation of land resources. There is also a positive recommendation to simplify the process of proving ownership so as to make it easier to receive building permits. Actually, so as to overcome problems of land registration in the city, the committee recommends returning to the system adopted until recently by the municipality; this is founded on combining traditional forms of proof – the signature of the village Muchtar and of neighbors – with juridical proofs – a lawyer’s declaration and payment of property tax.

There is, however, a general feeling that the chapter on East Jerusalem in the document is intended to meet formal obligations more than to deal with actual implementation. When the planners write that any change depends on the direction of adequate resources to East Jerusalem, they know that the state is incapable of doing so, and has no real interest in assuring the necessary budgets for carrying out their plans.

In the light of budgetary cuts for health, education and welfare, there is no prospect of finding the hundreds of millions needed to establish the engineering infrastructure imperative for planned construction. The recommendation to rehabilitate the Shuafat refugee camp is good for the professional conscience, but nobody believes that it can be implemented. This is a problem not only of

budget but also of land. Rehabilitating the camp with its 15,000 residents requires finding alternative land in order to destroy the existing set-up and build anew. Funds can be forthcoming from international foundations but there is simply no alternative land on which to rebuild.

The prestige factor

The East Jerusalem master plan arouses trenchant questions regarding the psychological mechanism which enables the authorities to publish such a document, with its discriminatory characteristics, without compunction. One is curious to understand what motivated educated and cultured people to back the document, how could the link between professional people and the municipal establishment have produced such a disgraceful result. In short, what engendered the state of mind which transforms progressive people into partners taking responsibility for such a highly problematical document?

A hint may be found in a sentence which got inserted almost imperceptibly into the document. In the chapter on the principles of development policy, among the recommendations there is one, mentioned above, on increasing the extent of building ('building percentages') so as to better exploit land resources in East Jerusalem. With this recommendation comes a caveat, stating that it *'touches on a range of reservations in regards to other goals defined by those who requested the document'*. I.e., the planning team specifically states that the proposal adding 'building percentages' clashes with other goals as defined by the 'customer', namely the Jerusalem municipality. There would not appear to be anything new in this, as all planning work is pursued within the context of the municipality. The 'customer' defines what he wants and the professional body implements it. In this case, the planning team received the 'customer' requests and assumptions and set about planning the city in accordance with these basic concepts.

The ensuing dilemma touches upon professional ethics – namely, how far is the planner prepared to go in order to get the assignment? The dilemma gets sharper when the ‘customer’ is a political body with a crystal-clear ideological agenda. In the present case, the answer must take into account how unusually tempting it is for the planners to be involved in such a highly important historical project. Preparing the zoning plan is the sort of prestigious project which comes around once in a lifetime. Such a concentration of highly qualified professional people dealing with the preparation of a grandiose zoning plan for Israel’s most important city, also presents an unusual intellectual challenge, not to mention the impressive addition it is to the *Curricula Vitae* of every participant. Those from the academic world in the team have a further motivation. They are looking for practical work, close to the ground, which frees them from the fickle image of ivory tower intellectuals. The opportunity of participating in a project of such dimensions is proof that they are not cut off from reality, and that their professional education is not only theoretical but has concrete applications too.

It comes about unwittingly, but the end result is that outstanding professionals find themselves participating passively as accessories in a political agenda. Firstly, because they accepted the political assumptions of the ‘City Fathers’ (the senior political leaders); and secondly, because as planners they permitted the implementation of a case of virtual dispossession, aware that they would be determining the fate of East Jerusalem without consulting its residents. Neither would they be listening to arguments coming from alternative sources, which disagree with the ‘customer’, i.e. the municipality. Accordingly, these high caliber professionals accepted the municipality’s guidelines, adopted their discriminative precepts and, last but not least, placed all this under academic auspices. Unwittingly they made a major contribution to the intolerant regime that exists in East Jerusalem. These people, in and of themselves, are anything but racists: on the contrary, they have good records as democrats. Nevertheless, in providing an academic and professional certificate to such a problematic document, they failed to notice that the product was insufficient.

Gray racism

This, in fact, is the strength of municipal racism. It is neither brutal nor openly visible, preferring to take cover behind apparently neutral formulations. Thus it is always carefully concealed behind consensus-oriented wording, hidden beneath a thick layer of cosmetic liberal language. Rather than verbal militancy, it disguises itself in soft-sounding phraseology, which does not reveal the real intention. This is how a unique term which does not exist in the professional literature was born in our country: ‘gray racism’; this is not a racism stemming from hatred of the ‘other’ but a ‘lite racism’ rooted in a Zionist ideology which strove to be democratic, but which, in giving priority to Jewish interests, inevitably deprived others of their rights. When there is no equality, there is bound to be discrimination, and when all those discriminated against are of the same nationality, there is no alternative but to call it what it is – ‘national discrimination’, which belongs to the same family as the infamous racial discrimination.

Moreover, the gray racism of the Jerusalem municipality’s school of thought is sustained by a lack of interest all around, by bureaucracy, and by the force of habit. A full complement of municipal officials strengthens this approach without grasping its severity. This involves their promoting of a whole set of reasons and excuses enabling them to sleep with clear consciences. They know how to argue, for example, that the gaps in the Jerusalem society are the result of discrimination over a long period of time, starting not in 1967 but even before, under Jordanian rule. Hence the difficulty in reducing them to simple racists. They hasten to explain that all government budgets for Jerusalem are earmarked, that is, they are intended a priori for specific projects which cannot be changed. The blame is therefore always placed not on them but on someone else, be it the Jordanians, the Ottomans, or Herod the Great.

Nobody is openly discriminated against by this ‘gray’ oblique racism we referred to before, but in practice the other party is trampled underfoot in order to assure our party’s superiority and control. This sort of racism was

born in the minds of rightist circles, but it is currently maintained by liberals who offer it backing not so much directly, as through their own inertia. The direction is provided by the right, which sets the tone, but the tools of implementation, or content, is provided by the liberals. If it is true, as the saying goes, that in every person there is a racist devil breathing down their neck, then this can be easily verified with regard to the clever and intelligent people involved with the development of the Jerusalem master plan.



PART FIVE

SUMMARY



The position of the Jerusalem Municipality toward East Jerusalem is both complex and contradictory. The figures in this report show that there is clear injustice and discrimination against the residents of East Jerusalem. The Municipality's policies are based primarily on ethnic grounds – they can easily be seen through a racist lens. It should be noted that the people who run the Municipality are not entirely racially motivated. On the contrary, it is suggested (even with an inherent contradiction in the articulating of the proposition) that, while those who implement the Municipality's policy are free from racist motives, the policy they implement is indeed racist.

The situation regarding East Jerusalem merits a new definition of 'racism': we see here a kind of 'oblique, gray racism', based not on massive and open hatred of the other, but on collective inaction, indifference, and even insensitivity to their plight.

A combination of bureaucracy and financial constraints has created a situation in which a network of employees implements a discriminatory policy, detached from any emotional engagement. This is unlike the emotional condition that has been a primary characteristic of racist regimes throughout history. Jerusalem's municipal policy can be classified as racial discrimination free from any hard ideology. It is a racial discrimination carried out in the relative absence of national or religious hatred. The injustice is codified not in law but in an organizational concept. When the budget is too limited to cover all necessities, there is a table of priorities to determine which party will receive resources. According to this theory, there is no point in distributing financial resources equally, because then no one will benefit adequately or enjoy effective services.

The syndrome is one that harks back to the European colonialist rule in Asia and Africa, in which officials whose job it was to protect colonial interests practiced businesslike discrimination with complete emotional detachment, wholly free of racist hatred. They simply did their job, acting as was universally expected of the representatives of a colonial power. Needless to say, the fact that the discrimination it practiced was dictated by civil service considerations did not make colonialism a more enlightened regime. A similar situation exists in East Jerusalem, where liberal people execute a policy of racial discrimination in the best interest of the “mandatory power of the moment,” which is to say, the ruling Jewish majority. This gives rise to a sort of non-ideological “gray racism”, innocent of any national or religious hatred, a racism born of inertia, lack of interest, and insensitivity.

When the mayor is asked to decide which sector will be given priority, he naturally favors those to whom three main criteria are applied: those who ask for their rights, those who form a majority of voters, and those who are close to the heart of the government. Under these criteria, Palestinians are outside the circle of beneficiaries, as they cannot demand that their rights be fulfilled, they do not vote for mayor, and they are certainly not close to his heart. This unjust, discriminatory modus operandi makes all municipal employees implicitly guilty of discrimination. Every manager sees the injustice and accepts it.

The most successful way to avoid responsibility for discrimination is by keeping away from East Jerusalem, and transferring responsibility for it to others. The West Jerusalem municipality operates the Palestinian sectors through a structure that officially exempts most directors from direct responsibility for what is happening (or not happening) in East Jerusalem. A middle manager, for example, is not authorized to take up his neighbor’s problems; his workload does not enable him to deal with issues related to a just and equitable distribution of resources. More importantly, the prevailing executive inclination in the Municipality creates a contradiction between a supposed willingness to expand necessary services and carry out an equitable distribution of resources, and actual implementation of this sound public policy. This is especially the

case when every shekel spent in East Jerusalem is seen to come at the expense of other budgets within a particular section and to have a detrimental effect on other potential spending and achievements. In this context, every municipal manager is ready to sacrifice equality and justice for the sake of success. Senior managers, who cannot claim, as middle managers do, that East Jerusalem is outside the framework of their responsibility, stick to the 'historical pretext' to justify the continuing injustice, claiming it is the result of previous policy and the lack of infrastructure investment going back to the time of Jordanian rule. Accordingly, they can claim that they are not responsible for the situation because they inherited it, and on top of that they are also making efforts to eliminate injustice.

Another situation that supports a general climate of discrimination has developed in the halls of the Municipality. There is a growing sense that there is an unjust organizational culture among decision-makers in the Municipality. This is a real test of the moral immunity of those in authority. In such situations, moral commitment is expressed toward the principles of justice and equality from which every democratic regime draws its breath. The Mayor is no exception; he is seen to have paid lip service to a policy of equality while running a discriminatory regime. High-ranking officials have found themselves unable to distinguish between good and bad, and have unintentionally become 'executers' of a prejudiced policy. But because most of them espouse liberal and democratic values, they are not ready to see reality as it is, and so they evade responsibility, shifting it onto other parties: the state government, the Jordanians, or the Palestinian Authority.

The deep-seated feeling that the city is still locked in a war for survival serves to intensify all these images and notions. Formidable forces threaten its Jewish character, and therefore, anything that can be done to strengthen and reinforce the city's Jewish majority is well warranted, is in fact, dictated by circumstances. Viewed from this angle, urban discrimination is the result of pathological fear, or some national psychosis. Underlying every racist outlook is pathological fear of the stranger, and accordingly this aspect too reinforces

the assumption that municipal policy is tainted with racism. Moreover, if proceeding from the premise that Israel is fighting a war for its survival, it must be admitted that every war involves some degree of injustice. It happened during Israel's War of Independence and it is happening today. Discrimination is thus accorded a seal of legitimacy as forming part of the injustice that inevitably accompanies any war, wherever it takes place.

The organizational culture that holds sway in the Municipality did not originate in the Municipality itself. It is a rehash of a pattern that made its way from the IDF to the City Hall. The fact that over half the staff of Jerusalem's City Hall came from the military has direct implications for the form of discrimination we refer to. The military heritage they bring with them to the Municipality leads directly to racist discrimination. In the IDF's organizational culture, the Palestinian will ever be assigned the role of enemy, even if he is a resident of the State of Israel. The Palestinian will ever be viewed through the prism of each official's subconscious. It is thus only natural that East Jerusalem receives no more than a scant ration of crumbs from the Municipality's budgetary table, and that no one is perturbed by the fact.

The conduct of senior officialdom, moreover, must be seen in a broader context, since their attitude toward the non-Jew in their city is a localized expression of the general attitude prevailing in Israel towards Palestinians as such. Jerusalem's City Hall is hardly an exception in the country's administrative landscape. It reflects the attitude prevailing in all Government ministries towards Palestinians. Planning policy in East Jerusalem is a reflection of the policy of nationalizing Palestinian lands in Israel, just as budgetary discrimination in the eastern city is the local version of the discrimination practiced against the Israeli Palestinian sector in general. Thus every City Hall clerk entering the system undergoes a socialization process nourished by the general atmosphere that prevails throughout the civil service. That same organizational culture is imprinted upon the genetic code of the organization and of the employees that grow to maturity within it, and it affects decision making at all echelons.

Repression and denial at the bureaucratic level

The municipal executive echelon, which in practical terms is responsible for the discriminatory policy, neither admits nor accepts the profound significance of what it is doing.

It absolves itself of responsibility by embracing the assumption prevailing in civil service circles to the effect that a built-in discrepancy exists between the ideal aspired to and what can be achieved in practice, and that the situation in East Jerusalem is just one more expression of that unavoidable gap between the desirable and the attainable. It is Prof. Dan Horowitz, in his explanation of what he calls the “operative code” of the 1948 Generation, who provides the most profound and sensitive explanation of the psychology underlying this approach⁸⁰. The gap between the aspiration to equality and a reality of discrimination results from failure to thoroughly internalize humanistic values, due to absorbing the dual and ambiguous messages that have permeated Israel society since, and indeed, from before the founding of the State. The voice of the justice and equality message has always been drowned out by ‘security circumstances’, leaving broad scope for executive flexibility. Implementation falls short of vision not only where Palestinians are concerned, but in all ethical issues. The vision is a kind of fuzzy notion hovering somewhere in the cerulean blue, that can be interpreted as circumstances require. The executive echelon’s values are fine, but they are offset by a kind of “license to deal” whereby they feel free, when faced by certain constraints, to deviate from those values. Vision is important on the theoretical level, but in practice is relegated to the status of a law that can be tacitly ignored. Ranking above it are instrumental and even opportunist considerations, which are necessarily more important than the vision itself. This approach of moral permissiveness, which Dan Horowitz dubs “constructive hypocrisy”, enables one to overcome the cognitive dissonance involved, legitimizing any deviation. The executive echelon is aware of the

80. This refers to the generation that fought the state’s foundation or independence war of 1948 as adults, according, for example, to Dan Horowitz, *Sky Blue and Dust – The 1948 Generation, A Self-Portrait*, 1993.

shortfall, but regards it as being engendered by contemporary circumstances rather than arising from moral choices. The officials continue to believe in equality as a universal value, but one that they are unable, 'for the time being', to put into practice. In this way they can live in peace with the discrimination, since the vision shimmering in the background keeps them enlightened and humane. The reality in which they find themselves forces them to "shoot and weep".

Official's eye-view of the resident: from 'person' to 'thing'

The Town Hall official, moreover, cannot permit himself the indulgence of treating the Palestinian equally. Arrogance, as meeting a deep-seated need on the part of the ruler, is organic to the system. An individual with humanistic pretensions cannot oppress another fellow human who is his equal, cannot discriminate against one who resembles him. If he is to practice discrimination without suffering pangs of conscience, he must endow the Palestinian with otherness. Since one does not discriminate against one's equal, he must dehumanize the other. In his view, therefore, the Palestinian is not graced with human qualities. Somewhere deep within his subconscious he creates a distinction between himself and the Palestinian that will enable him to go on practicing discrimination without qualms. In order to provide moral justification for doing so, he must harbor a warped image of the Palestinian, and strip him of his humanity. Thus, he cannot but treat the Palestinian as the 'other,' cannot but emphasize the difference and especially the defects and the faults. He cannot view the Palestinian as an equal among equals for, if he did, that would mean admitting that he is also entitled to basic human rights, for example, national rights and most importantly, the right of 'self-determination'. "How can I negate the right to self-determination of one who is equal to me?" Everyone merits that which we demanded for ourselves, and fought for, for so many years. However, national rights clash with the trend of Judaizing East Jerusalem. Accordingly, in order to deny the Palestinian resident his national

rights, he must demote him from 'person' to 'thing.' The Palestinian must become a menacing figure, not entitled to national rights because he poses a danger to the Jewish entity. Thus a vicious cycle is created, in which the ruler, out of his own dark imaginings, conjures up a figure against which he 'is forced' to defend himself and whom he cannot, to his 'regret,' treat as having equal rights.

In the Spanish Crown colonies in the 16th and 17th centuries, strained relations prevailed between the occupying forces and the Church, which wanted to convert the natives to Christianity. The ruling power could not afford such luxury, since once they were Christianized, the natives' status would change, and they would become equals, which would preclude their being economically exploited. The invaders therefore strong-armed the Church into submission. (The Church itself, incidentally, soon fitted into the system). A similar process is under way in present day Jerusalem. Egalitarian treatment of the 'natives' would undermine the foundation upon which every occupation is built, including the Judaization of the eastern city. Therefore, the occupying power cannot permit itself to treat the Palestinian as an equal. This explains, for one thing, why it recoils from human rights organizations that threaten to lop off the branch on which the entire system is perched.

The well-worn excuse

A number of technical and functional explanations are advanced to excuse the systemic discrimination practiced against East Jerusalem, and these enable the professional echelon to disown any responsibility for its actions, and dodge embarrassing ethical questions. Psychologists would call it a 'repression and denial mechanism'. Laymen may dismiss it as a 'medley of miserable excuses'.

- A- The budgetary constraint principle, which dictates that if a budget is limited and cannot supply all needs, an order of priorities must be established, deciding to whom to allocate paltry existing resources.

According to this organizational concept, limited resources cannot reasonably be allocated on an egalitarian basis, because if they are, no one will enjoy the resulting penurious crumbs, and the service will be ineffective. And where budgets are limited, the rule is that “charity begins at home”, meaning that it is the Jewish rather than the Palestinian poor who are to benefit. This approach is a localization of what in games theory is known as a “zero sum game” in which any service allocated to the eastern city will necessarily be at the expense of the western city.

- B- The “I put in a request” principle. This is a simple but effective conscience- salve, and it is complementary to the ‘budgetary constraint’ principle. It is based on the assumption that the provision of services to the eastern city is a Government function; and it suffices for the Municipality to have requested a budget in order for officialdom to feel it has done its duty. The Jerusalem Municipality periodically applies to the Ministry of Finance presenting its requirements as regards to the eastern sector of the city. Position papers, presentations, and graphs to gladden the eye of the beholder are pressed into service in order to make a good showing for the Ministry of Finance. As far as the Municipality is concerned, its role ends there. It filed a request - the fact is that the Government did not accede. So whose fault is that? The Municipality, after all, can hardly be expected to rob the western city so as to give to the eastern. As for the notion of distributing existing resources equitably, this as already noted is unthinkable. East Jerusalem needs separate budgets, earmarked for it alone, and the Municipality, for its part, filed a request.
- C- The security principle – another arrow recently added to the Municipality’s quiver of excuses is the security excuse, whereby the Municipality cannot access the eastern city by reason of the security situation. No one will repair roads, replace burnt out street lamps, collect garbage, fix sundry malfunctions and so forth, due to absence of ‘police escort’. To the delight of City Hall, a series of ‘barriers’ have recently

arisen, located within the Jerusalem jurisdiction, along with the ‘fence’ that has become the ultimate reason why it has ceased providing services to neighborhoods outside that fence. The eastern city is a hostile and dangerous territory; therefore, it calls for pre-emptive security preparations and prior coordination with the security forces. It’s not that they don’t want to provide service – heaven forbid – but they simply can’t!

- D- The historic principle - A favorite excuse for the proponents of the Annals of the Jewish People. Discrimination, according to this principle, results from the legacy they inherited from their predecessors in office, and from the absence of infrastructure dating back to the time of the Jordanian administration; or indeed, say the sticklers for tradition, from the British Mandatory era, or even the time of the Ottoman Empire or the Jebusite Kingdom, that predated it. It is not they who are responsible for the gaps between east and west. They inherited a given state of affairs, and under existing circumstances are doing their very best to put things right.
- E- The principle of “They don’t recognize Israel anyway” - It happens every so often that the city ‘fathers’ (the high echelons of executive political power), in order to evade their duty of serving all of the city’s residents, seize upon the remarks of some Palestinian spokesman declaring – usually prior to municipal elections – that the Palestinians do not want ‘any favors’ from the Municipality, and do not recognize Israeli sovereignty over East Jerusalem. Meiron Benvenisti, who served as Deputy Mayor under Teddy Kollek, notes that City Hall developed an outlook whereby the Palestinians did not, in any event, wish to receive municipal services, since they did not recognize the legitimacy of Israeli rule over the eastern city. It is doubtful whether anyone thought to withhold municipal services from the ultra-orthodox population, a large part of which likewise refuses to recognize the State of Israel and its institutions.

How the Municipal service boundary is perceived

The city powers (or ‘fathers’) consider Jerusalem’s boundaries to be determined in accordance with the ethnic affiliation of the residents. Wherever a Jew resides is “the city,” and wherever a Palestinian resides is “outside the city.” The ‘Jerusalem jurisdiction’ is a conceptual rather than a geographical notion. The city has two municipal boundaries: one is statutory, and the other conceptual. The statutory boundary derives its authority from the erroneous notion that it coincides with Biblical Jerusalem, capital of Israel since the time of King David. In the national mythology, the verse “For From Zion Shall Go Forth the Law and the Word of the Lord from Jerusalem” relates to the city’s current boundaries. The public is unaware that east Jerusalem consists of an arbitrary assemblage of villages annexed in 1967, and unrelated to historical Jerusalem. Thus the statutory boundary came to be identified with the mythological boundary. The conceptual boundary, on the other hand, is flexible, reaching to the residential threshold of Jews only. The Palestinian neighborhoods of Jerusalem are out of bounds, hidden to the Municipality’s view. Ehud Olmert, when serving as Mayor of Jerusalem, stated, in response to a query regarding the dearth of well-baby clinics in the eastern city, that due to various difficulties, no well-baby clinic could be opened ‘in all the villages surrounding Jerusalem’. This reference to the neighborhoods of the eastern city as ‘villages surrounding Jerusalem’ was no slip of the tongue. Rather, it was symptomatic of a state of awareness that somehow effaces the eastern city from the Municipality’s sphere of responsibility, showing how deep-seated is City Hall’s subconscious attitude toward it. The Municipality, moreover, is unfamiliar with the terrain and unaware of what takes place there. Ehud Olmert was once asked about services the Municipality renders to ‘Ein Fuad’. He proceeded to cite a whole series of services provided for that village, without realizing that there is no such place in Jerusalem as ‘Ein Fuad’ or even anything with a vaguely alliterative name. The Municipality and its high officials can barely distinguish between an East Jerusalem neighborhood on the one hand, and the Qasbah of Nablus or a Bedouin village in the Negev on the other.

By force of inertia, and out of obligation, East Jerusalem neighborhoods receive minimal and essential municipal services. No motivation exists for serving the Palestinian residents of Jerusalem as equals among equals. On the contrary, they are viewed as a burden, a nuisance that the Municipality must put up with, without feeling called upon to exert itself beyond the bare minimum.

Discrimination in the enforcement of planning and construction laws – The Silwan Example

Operating in the village of Silwan on the outskirts of the Old City are a number of Jewish settler NGO's that have set themselves the task of redeeming the village lands due to their historical and spiritual significance in Jewish tradition. Archaeological digs there turned up relics from biblical times, and researchers regard the site as the seat of King David and the capital of his kingdom, making it, in Jewish eyes, a religious asset referred to as 'Kfar HaShiloach' or 'the City of David'. Due to the archaeological sensitivity of the site, there is a ban on construction there, either on the ground or over existing structures. Palestinian residents wishing to expand their living quarters by building various additions to their homes, both on land owned by them or on rooftops, were summarily dealt with and slapped with fines; and the building additions were completely demolished. During recent years, on the other hand, a number of non-permit Jewish precincts have grown there. The Municipality, surprisingly, has refrained from coming down with the full force of its authority to halt construction or to restore the status quo ante. Three recent cases cast light on the institutionalized, systematic discrimination that distinguishes between Jews and Palestinians in that village, and that merely serves to exemplify the prejudicial treatment that is rampant throughout the whole of Jerusalem.

The case of a seven-storey building that went up in Silwan illustrates this selective and manifestly discriminatory enforcement. Construction began early

in 2000, but was ‘discovered’ only in June 2003, once the “Ateret Cohanim” NGO took up occupancy. The delay, it is greatly to be feared, was not due to technicalities. Municipal inspectors regularly roam the area, catching out each and every instance of unauthorized construction. Somehow though, a seven-storey monstrosity in a total area of 800 sq. m. escaped their attention. The miracle can be explained by the fact that municipal supervision was perfectly well aware of who owned the building that was rising before their eyes in the heart of Silwan. The lot, originally registered in the name of a local resident, had been sold at an early stage of the affair, to Ateret Cohanim settlers who were financing the construction. Meron Rapaport covered the affair extensively in “Haaretz”, quoting inter alia, a conversation between the Palestinian vendor and the municipal supervisor of construction in East Jerusalem. The latter expressly stated that he had refrained, for eighteen months, from dealing with the building, “...since I am aware of your connection”. This was a transparent allusion to the Palestinian vendor’s connection with the Ateret Cohanim settlers. In the same breath, he hinted at collusion between the Municipality and the settlers and the possibility that other entities too, were lending the settlers a hand. “...How did I know that you belonged to all this? I have friends in all sorts of bodies and authorities”. This was not all. When the offence was spotted, the Municipality, which could have invoked various judicial sanctions such as issuing an eviction order or sealing the building, preferred to let things stand, on the specious grounds that it did not know exactly who the owners of the building were. This explanation was of course unfounded, the Municipality being fully well aware that the building belonged to settlers. From 2003 to March 2004 the Town Hall busied itself examining the issue, during which time it brought no indictments against any of the building’s occupants. However, it did at the same interval, issue dozens of demolition orders against Palestinian residents, whom it also brought to trial. Nor did the Municipality require the building’s occupants to pay rates, and the head of the Construction Division wrote in March 2005, that the building was not even recorded in the Municipality’s papers, in violation of an internal procedure requiring municipal

inspectors to report every new building to the collection division so that, even if illegal, it could be debited for rates.

The second case is distinctive in that criticism regarding it actually emanated from the judicial system. Judge H. Lahovitzky, serving at the Jerusalem Court for Local Affairs, found fit to quash an administrative demolition order against a Palestinian-owned building due to the Municipality's uneven-handed conduct in refraining from indicting the Palestinian's Jewish neighbors for an identical offence.⁸¹ The affair exposes the face of discrimination in all its ugliness. The indictment indicates that an administrative demolition order was issued against the Palestinian-owned structure as soon as it was spotted. However, the other building, which was to serve as a yeshiva of the Elad organization, and which occupied three levels in an extensive area of some 345 sq. m, only got a work stoppage order. The judge rejected, one after another, the pleas advanced by City Hall, commenting that the Municipality was reacting differently in face of two identical offences; against the Palestinian-owned building it had launched extremely harsh proceedings facilitating the issuance of an administrative demolition order, but against the Jewish-owned building, "it chose to act by a more lenient judicial method", namely by issuing a work stoppage order. The judge accordingly elected to annul the demolition order against the Palestinian building, concluding his decision with the poignant remarks: "Be the ownership of the two buildings what it may, and the purposes for which each building was intended what they may, there is a jarring difference in the proceedings launched against the two by the Respondent (i.e. the Municipality), which so cries out that the court can no longer ignore it. Since I am satisfied that there were no grounds for differentiating judicially between the two buildings, and since there is no explanation for the fact that the Respondent did not treat them equally, I find a material defect in the administrative act such as to warrant the annulment of the order. Let the Respondent do himself the honor of launching the same proceedings against the one building as against the other... Accordingly I am directing the order to be annulled".

81. *Miha Ben Nun, Head of Licensing and Supervision Division, to Pepe Alalu, January 16, 2006.*

The third case relates to an un-demarcated precinct on the high road to Niqbat HaShiloach (Siloam Pool), where a mini-settlement arose in about 1998, consisting of containers and caravans. This type of construction, even if of a temporary nature, is also prohibited under the Planning and Building Law. Palestinians stationing caravans get eviction or demolition orders there and then. Yet the Municipality refrained from issuing any order at all against the Jewish precinct. In 2001, when asked what the Municipality was doing about the precinct, the supervisor of construction replied that no steps had so far been taken but that the matter was being addressed. Faced with a similar question in February 2005, the same official replied that the Municipality had issued an eviction order against 'one of the buildings', whereas the precinct had ten buildings against which no proceedings were launched.

The three cases are an example of discrimination in municipal enforcement. They are not exceptional, but reveal a recurrent pattern. They dovetail with planning and construction policies, in fact constituting the obverse side of the same coin: increasing stringency in dealing with Palestinian offences on the one hand, while turning a blind eye to Jewish offences on the other.

In conclusion:

Injustice and discrimination are concomitant to Occupation. Where there is Occupation, racism can grow. No nation enjoys immunity in an immoral situation, including the Israeli state whose people, it has been said, should be particularly sensitive to injustice and discrimination. It is possible to work on minimizing racism; it is not possible to pretend it does not exist at all. When the time comes to discuss the fate of East Jerusalem, Israelis will have to ponder the moral price they are willing to pay for the unity of the city. We will need to choose one of two options: to carry on in the manner we have described in this study, with the accompanying danger of becoming the modern version of Apartheid South Africa or to declare that we are not willing to implement racist policies, and prefer to separate in peace.

‘We have to understand that we are applying a racist, colonialist and contemptible policy that we did not want. Merely saying these things aloud gives us the chills because after all, we thought that we, the Jews, have humanitarian values and that we remember that every person was created in the image of God. If we really do remember this, but continue with our actions against the Palestinians, then all of us are afflicted with split personalities.’

*Shulamit Aloni,
Feb 28th 2006, Haaretz*

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