

Dr. Meir Margalit

**DEMOLISHING PEACE**  
**HOUSES DEMOLITIONS**  
**IN EAST JERUSALEM**  
**2000 - 2010**

□.....

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# INTRODUCTION

## THE CONTEXT AND PRACTICE OF HOUSE DEMOLITIONS

House demolition is one of the most horrifying realities experienced by East Jerusalem Palestinians. Nothing can be more devastating for a family than losing its home, and with a third of the houses in East Jerusalem having been built without a permit, tens of thousands of residents live in fear of having their homes demolished.

House demolition entails much more than the destruction of a physical structure. Years of savings go down the drain, personal property is damaged, and dignity trampled. The family may become dependent on charity, and the traumatic experience will follow the children for the rest of their lives.

The Palestinians of East Jerusalem find themselves between a rock and a hard place. On the one hand, the bureaucratic procedure for acquiring a building permit is extremely complicated and often practically impossible. On the other, there is the sheer necessity of having a roof over one's head. Normally, when the need for housing and the law are at odds, the courts rule in accordance with the law. Difficulties and complications confronting those who wish to build a house lawfully are so great that many residents are left with no choice but to do so illegally. Faced with the state's insensitive approach, residents of East Jerusalem are forced to act as any reasonable person would in their place and build without a permit. They act just as the Jewish community did in Mandatory Palestine when the White Paper restricted Jewish immigration, the building of houses, and land acquisition. There is, however, one difference between the two ethnic situations. While the Jewish community in Mandatory Palestine was driven by nationalist ambitions, residents of East Jerusalem build primarily out of necessity and less as part of a national struggle.

This study focuses on the practice of house demolition in East Jerusalem, but it also deals with a much broader topic: control over space and its distribution

by the state of Israel. Israeli policies implemented in Jerusalem are only a part of a nationwide effort to consolidate the hegemony of the Jewish majority and reduce the Palestinian presence by preventing them from building on their own land. In the 1970s, a considerable part of Palestinian-owned land was expropriated for the construction of Jewish neighborhoods. Strict regulations were imposed on lands that could not be legally expropriated, in order to prevent Palestinians from developing them.

This study is part of an extensive body of literature that has evolved over the past decade, dealing with political geography, or more precisely, the land policy in Israel. We refer especially to: the studies of Sandy Kedar, Eyal Weizman, Rassem Khamasi; Oren Yiftachel's work, which focuses on the ethnocentric character of the state; the work of Steve Bollens dealing with the relationship between urban policy and ethnic conflicts; and the work of Yehuda Shenhav concerning Space, Land and Home, which is the title of his book, published in 2003. This study also touches on issues of public policy and in particular deals with the question of who is responsible for the demolitions, whether the political leadership or the professional staff.

This study fits well with Michel Foucault's theory on the mechanisms of discipline and punishment in Western society.<sup>1</sup> It could be put in the much broader context of processes in which colonial societies seize control over land in occupied territories, for the control mechanisms in East Jerusalem are similar to those implemented for the expropriation of land by white settlers, whether in Australia, the United States, European colonies in India, Algeria, Tunisia, and more recently in Greece, Northern Ireland, Sri Lanka, Malaysia, and Estonia.

In a certain sense, this book presents another chapter in the history of Jerusalem, for what is that city's history if not a long sequence of construction and demolition, from the destruction of the First Temple to the recent destruction of the Shawamreh family house, which we will discuss later. Jerusalem, more than any other city in the country, has been rebuilt time and again, since King David defeated the Jebusites, through the destruction of the first and second temples, to Teddy Kollek's demolition of the Mughrabi neighborhood in the Old City to make room for the Western Wall Plaza, each civilization has built on the previous one, and they still cry out to us. Jerusalem has been destroyed and rebuilt so many times that house demolition has long been a key theme in writing its history.

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1 Some interesting insights on this subject have been made by Irus Braverman, Powers of Illegality: House Demolitions and Resistance in East Jerusalem, Tami Shtienitz Center, 2006

Furthermore, to follow an observation made by Walter Benjamin, a demolished house may be viewed as the epitome of the nation's history, a road map on which the path and direction of Israeli society may be read. According to Benjamin, even a minor, seemingly insignificant detail can embody the world surrounding it, and from it the characteristics of an entire culture, the DNA of its era, may be recreated, if only it is observed with the appropriate awareness. For it should be understood that the demolition of a house is a symptom of a defective society. It is a window that allows us to peer into a mechanism of evil, the tip of the iceberg in a process of disintegration of values that undermines the very foundations of the state. It is dreadfully banal, carried out in accordance with the law, by a state that looks out for its own interests and those alone. If we are to understand the behavior of people dining at a table, Benjamin tells us, one should not watch them while eating but instead examine how the table is left after the meal is over. Similarly, in order to understand the character of Israeli society, we must examine what is left after a home has been demolished, and more importantly, what becomes of the family who used to live in that house. The image that it reveals is unbearable.

## **THE WIDER CONTEXT**

House demolition does not happen in isolation, but is part of a wide, systematic and comprehensive policy designed to consolidate Israeli control over East Jerusalem Palestinian and create a Jewish majority wherever possible. Here, the concept of domination goes beyond territory, and operates on many levels, some overt, some symbolic and hidden, in order to demoralize the Palestinian people, destroy their self-image, deprive them of their secret desires and their personal safety, so as to eradicate any thought they might have of independence. A wide range of governmental agencies work together to achieve this goal: the Municipality of Jerusalem, the Ministry of Interior, the police and the Israel Security Agency (the Shin Bet), each in its own area of authority, according to its abilities. An extensive network of so called "collaborators," whose number has greatly increased due to East Jerusalem's ongoing economic crisis, constantly reports to the authorities everything that takes place in East Jerusalem, or more specifically about anyone who dares protest this unbearable situation.

House demolition is one of the most dramatic expressions of this policy but is only part of a well-oiled machine of oppression that pervades every aspect of everyday life. Among the other elements that make up this "machine" we may list the following, which may be referred to as the ten plagues of East Jerusalem, not necessarily according to their degree of severity:

- Efforts are made to revoke the residency of East Jerusalem Palestinians. Once it has been revoked, they lose their right to reside or move freely in the city as well as their right to social security benefits and medical coverage.
- Kafkaesque restrictions stifle those who wish to obtain a building permit, so much so that construction in accordance with the law has become virtually impossible.
- Family reunification for East Jerusalem residents whose spouses come from the West Bank, Gaza or the Palestinian Diaspora is prohibited. These residents have no choice but to smuggle their spouses into city limits. An entire community of East Jerusalemites lives under the radar so that they do not get caught and deported by the authorities.
- An aggressive policy of taxes, fines, tolls and other forms of collecting payments is imposed, including the sudden confiscation of cars on the road at random checkpoints, even though the latter practice was recently found illegal by the Israeli Supreme Court.<sup>2</sup>
- Inadequate municipal services are provided, from a lack of basic infrastructure to an inferior education system designed to preserve and perpetuate a lower status within the urban fabric.
- A total dependence is enforced through the Ministry of Interior's bureaucratic system, which controls everyday life through child registration, the issuance of identity cards, permits to leave for Jordan and countless other certificates without which a Palestinian cannot move about freely in East Jerusalem.
- A high unemployment rate as a result of importing to Israel foreign workers, who have replaced the Palestinians in many industries since the beginning of the Second Intifada in late 2000. In addition, the construction of the separation wall has affected the livelihood of tens of thousands of Jerusalemites who used to work in West Bank territory.
- A deep recession has devastated the middle class as a result of the city being separated from its economic hinterland. This process began with limitations imposed on entrance to the city early in the Second Intifada and was made worse by the construction of the separation wall in 2004.
- Ever-increasing restrictions have been imposed on the visits of family relatives from Jordan seeking to attend family events or even for visiting

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2 H CJ 6824/07 filed by the Association for Civil Rights in Israel, Manna v. The Tax Authority.

first degree family members on their deathbed.

- Constant humiliations are suffered at the hands of security forces. These have greatly increased since the border police have been massively deployed throughout East Jerusalem.

All of these plagues have combined to create a suffocating atmosphere that well may be regarded as psychological terrorism. There is not even one family in East Jerusalem that does not suffer from at least one of the afflictions mentioned above; not one family in East Jerusalem who is not trapped in a complex and pervasive bureaucratic web created in order to deepen dependence on the authorities.

This state of affair is not new, but during Teddy Kollek's tenure, at least a Palestinian mukhtar (community leader) mediated between the family and the Israeli authorities. Today, every resident must personally deal with the all-powerful official. Even the illusion that all will end well is no longer possible. The Palestinians of East Jerusalem do not know what the future holds for them. They feel forsaken, like a tenant who does not know when the landlord will go crazy and evict him from his home. Time and efforts expended to overcome these difficulties deprive them of any possibility of getting ahead in life, as they are constantly forced to be on the defensive in a debilitating battle for survival leaving them without the strength to stand up for their basic rights.

House demolition is the most dramatic instrument used by the government not only in order to seize control of land but also in order to influence demographic trends and to break the spirit of East Jerusalem residents. A large number of families in East Jerusalem suffer from a syndrome which may be described as "bulldozer anxiety," since, as we shall see, the number of pending demolition orders is estimated at 11,000. This amounts to a quarter of all Palestinian families in East Jerusalem. A quarter of the population lives in constant fear, with this black cloud constantly hovering over their heads as they go to sleep not knowing what the future holds for them. Indeed, while most houses will not be demolished, as will later be discussed, no one knows in advance whose house will be spared, whose will be demolished and or when a demolition will take place. The State of Israel has been able to instill this fear deep in the psyche of the residents of East Jerusalem, and fear creates "discipline," Michel Foucault's term to describe a common pattern in totalitarian societies, in which the citizen acts as his own policeman by censoring his own thoughts, shapes himself according to a model imposed by the regime and is careful not to displease the regime lest something happens to him. In return, the disciplined person is rewarded by the regime. Social security benefits--

along with the Israeli health care and other entitlements that come with a blue identification card--are the carrot that goes with the stick of demolitions, expropriations, and a miscellany of restrictions. Combined, the two guarantee that "the citizen" does not deviate from the path laid out by the regime.

However, as noted above, in the case of Jerusalem, not only does the colonial mentality demand that East Jerusalem residents be disciplined, the demographic threat also requires a significant reduction in their number in order to preserve a Jewish majority. As the number of Jewish residents is decreasing while that of the Palestinian population is soaring, an increasing effort is made to "encourage" Palestinians to leave the city for West Bank territories. A systematic regime of legal restrictions has been introduced by the state to create a so-called "voluntary transfer," which is in reality a forced migration due to lack of any choice. The recent cases of Nu'man and Walajeh are only a small example of what the state wishes to accomplish. Actions in Silwan and Sheikh Jarrah signal the direction the state is heading. Thousands of houses destroyed in the bear silent testimony to what the state is capable of doing in order to achieve its objectives. To many, the specter of 11,000 demolitions may seem an exaggeration, especially in the age of CNN, in a place like Jerusalem. For the time being the state is careful not to upset its allies overseas too much. But the State of Israel is on a slippery slope, and there is no telling what the government might end up doing if it is not stopped soon.

In this respect, the ongoing destruction and the ever prevalent threat that follows thousands of families have created a situation referred to in professional literature as urbanicide, which encompasses not only the physical destruction of an urban environment but more importantly the psychological violence experienced by thousands of families who tremble with fear at the sound of a bulldozer or the sight of a police car driving by their homes. The term is difficult to internalize because of the horrible associations it brings to mind, but we must make an effort to see things for what they are and recognize that the destruction caused by the IDF is mentioned by scholars in the same breath with the devastation that befell Serbia, Bosnia and villages in Rwanda. The legitimacy of this term should not be judged only by the magnitude of the destruction, i.e. the number of demolitions the state is responsible for, but by the political and ideological forces behind these actions. In Israel and in most of the other countries mentioned earlier, the driving force is an ethnocentric nationalistic and religious ideology that strives to take control over land and get rid of its inhabitants in order to preserve a religious majority (in Israel's case), or to preserve the purity of the race (as was the case of the Balkans).

Urbanicide is therefore the correct term, and a day will come when those who commit it will answer for it in The Hague.

## THE CONTENT OF THE RESEARCH

The research is divided into three areas: the first part, Chapters 1 and 2, focuses on statistical data. Chapter 1 begins by presenting data concerning the practice of house demolition since the beginning of the century, including such measures as the number of demolitions, demolition orders, indictments, and fines. Completing the picture is data relating to the number of building permits that were issued throughout the decade. This will help us better understand that residents of East Jerusalem have experienced a housing crisis that forces them to build without a permit. Chapter 2 focuses on discriminatory enforcement practices in Jerusalem and presents a series of parameters that demonstrate that East Jerusalem and Israeli West Jerusalem do not receive equal treatment. The data presented in this chapter was obtained by cross-referencing reports produced by the Licensing and Supervision Department at the municipality, execution reports of the municipal treasury, reports from the municipal court and queries submitted to the Mayor and to the Ministry of Interior over the years. Most data provided by city hall has been reliable. This cannot be said of the Ministry of Interior, from which more than once we have received contradictory answers to similar questions, following a tradition of disinformation practiced by the worst of regimes.<sup>3</sup>

The second part, which includes Chapters 3 and 4, reviews the reasons for illegal construction from the viewpoint of East Jerusalem residents and the obstacles they face when they wish to build a house (Chapter 3). From another perspective, it discusses the Israeli rationale for house demolition, namely the primary ideological and political motivations that combine with the fear of losing control over land (Chapter 4). Among the factors that account for construction without a permit are difficulties that are present in urban planning, such as restrictions on areas in which construction is permitted, a low building ratio, the lack of proper infrastructure, legal difficulties (such as proving ownership or acquiring the signatures of all owners when the land is jointly owned), and financial difficulties, including various forms of taxation. We hold that illegal Palestinian construction has no political goals, that it is carried out by people who have no political motivation for building a house, and who seek only to build shelter for their families. Yet the state forces them into

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3 Methodological note: when receiving conflicting figures we chose to present the higher figures, assuming that the Ministry of Interior has an interest in giving us lower figures, which are therefore less reliable.



becoming criminals by not providing them with a legal way to build a house. In contrast, the state's policies are driven by ideology and their objective is to reduce the living space of East Jerusalem Palestinians in order to keep the demographic balance between the two populations at a ratio of 70:30 or of 60:40, as specified in the new city plan.

The third section of our work (Chapters 5-9) is a review of the formal and informal administrative and legal instruments used by the municipality and the Ministry of Interior for carrying out demolitions, the institutions directly and indirectly responsible for the demolitions, as well as the non-formal system that supports and lays the ground for the demolitions. Among the administrative tools examined in Chapter 5 are two types of orders found in the Planning and Building Law, the administrative demolition order and the judicial demolition order, and other more questionable tools such as a municipal bylaw for maintaining order and cleanliness that allows the "clearing" of movable property from public space. In addition, we also examine the various courses of action that the municipality can take to cancel a demolition order and consider the process by which criteria for executing demolitions are set. The governmental agencies that facilitate demolitions are reviewed in Chapter 6. These are the Licensing and Supervision Department at the Municipality of Jerusalem, the National Construction Supervision Unit at the Ministry of Interior, the District Planning and Building Committee and the Local Planning and Building Committee. These organizations clearly have a political agenda, as they represent the worldviews of the Israeli government and the Jerusalem city council. However, these organizations would not be able to implement their policies without the compliance of many lawyers, urban planners, social workers and others, who play a central part in implementing the policies of demolition, and are thus referred to in literature as "technocrats of the occupation." They are the subject of Chapter 7. There, we will also explain the values that are shared by these officials, who for the most part, paradoxically, have liberal values, and some may even be considered to be "leftists," but when at work they serve a right-wing agenda without feeling the slightest discomfort.

In Chapter 8 we look at the non-formal part of the system, its frequent flexibility and consideration, operating alongside the formal system. We discuss extensively something that is usually overlooked, but a substantial amount of evidence indicates that it is far from being insignificant, namely the role of the municipal inspector in charge of an area and his significant influence over the course leading to demolition.

Chapter 9 is devoted to the Israeli legal system, which plays a central part



in authorizing and facilitating the demolitions. Despite the clean image that has stuck to it, it still allows the political views of its judges to play a critical role. This chapter was written with great caution, for it is not our intention to bash the legal system, which forms the last line of defense for human rights in Israel. However, where house demolitions are concerned, it acts as nothing more than a rubber stamp for all the injustices committed by the municipality against its Palestinian residents.

Where in the last chapter “10”, the author presents some of his reflections concerning the municipal policy, he argues that the root of the problem lies in the fact that in all matters related to illegal constructions the municipality makes use of wrong parameters leading itself to a dead end.

## **METHODOLOGICAL NOTES**

Chapter 5, which reviews the planning situation in East Jerusalem, reflects the situation as of 2010. A new outline plan, “Jerusalem 2000,” is currently in the making though it is not clear when or even if the plan will be approved. At the time this study was completed, the only plan with statutory force was the old outline plan that has gradually come into being and is a patchwork formed by adding one neighborhood after the other, mostly during the 1980s. Indeed, the Department of Urban Planning has been implicitly instructed to approve new plans following the new outline plan, but this situation is problematic and perhaps even illegal, and there is no telling how long it can be sustained.<sup>4</sup> After postponing the publication of this study several times in the past year, believing that the new plan will soon be authorized, we reached the conclusion that there's no reason to put it off any longer, even though we risk that some of the data may become obsolete once the new plan is authorized. At any rate, even if that does happen, the overall picture will not change, as both plans follow similar guidelines.

## **THE MAYOR'S «CONTRIBUTION» TO THIS STUDY**

During the preparation of this study, a new development of the utmost importance has occurred: Mayor Nir Barkat joined the struggle led by right-wing politicians against the eviction and sealing of Beit Yehonatan, a high-rise edifice that Israeli settlers have built without a permit in the center of Silwan.

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4 According to the Ministry of Interior, planning in accordance to the new outline plan, even though not yet approved, «is the proper approach and serves the general interest.» Ruth Yosef, head of the District Planning and Building Committee, to Atty. KerenTzafir, the Association for Civil Rights, Sep. 19, 2010.

In an attempt to please the national religious sector, Barkat came up with the idea of creating a new Silwan master plan that would legalize part of that structure. This plan raised the ire of the municipality's legal adviser, Yossi Havilio, who in turn argued that the Mayor flouts the law, that the court's decision must be carried out and that the creation of a new master plan does not release the municipality from its obligation to seal the building.

Havilio's attack, with the backing of the State Attorney, has provoked an unusual psychological reaction from Mayor Barkat. To those who have accused him of ignoring the rule of law he has answered back using arguments that are distinctly left-wing ideas, such as blaming the municipal planning system for being incompetent when dealing with East Jerusalem. He has claimed that the reform in city planning that he seeks to advance is necessary not only for Silwan but for all neighborhoods in East Jerusalem, thus becoming the leading critic of the legal and planning systems, accusing them of creating an intolerable and chaotic situation.

Insights provided by the Mayor to this research are invaluable, not because he provides us with new perspectives, but because his words reaffirm our claim that the municipality forces the residents of East Jerusalem into criminal activity. Indeed, while his claims are not part of a wider liberal or humanist philosophy and are specifically designed only for the legalization of unlawful settler activity, it is as the Hebrew saying goes: "The work of the righteous is done by others." The Mayor has given us proof that the claims made in this study are entirely correct. We will make extensive use of statements he has made in a letter sent to State Prosecutor Moshe Lador in February 2010, even though it is clear that he would not be using the same arguments had the building not been inhabited by Jewish settlers.

## **THE TERM "ILLEGAL"**

It is important to emphasize that we use the term "illegal construction" the way it is commonly used in both Israeli and international discourse, although in our view it is not the Palestinian construction but the Israeli occupation of East Jerusalem that is illegal. Moreover, in order to fully appreciate the term "illegal," we must understand its significance in the field of law, or more to the point, the ethics of law. There we find that illegal construction occurs where two opposing forces are in conflict. On the one hand it is forbidden to build without a permit; on the other, there is a moral and social obligation to provide shelter for your family.

In Arab culture, building a house before getting married or as the family

expands is a binding norm, i.e. a law in itself. The house is key to the family as an institution to the point that no self-respecting family would marry their daughter to someone without a house. The house is the very foundation of the family and is therefore a necessity, an essential need, far more than in Western culture. For that reason, as we have already stated, even though the law of the land may conflict with basic necessities, such a necessity cannot be suppressed.

The principle of necessity is rooted deep in the history of Western law. The Italian political philosopher Giorgio Agamben points out that from the beginning of Western civilization to the present day, philosophers have justified violations of the law when necessity leaves no choice. A popular ancient Roman phrase that has influenced the Western legal system states, *Necessitas legem non habet* ("necessity has no law"). Medieval thinkers, such as Graciano and Thomas Aquinas, believed that necessity may make the illegal retroactively legal. The Roman Principle of necessity, *status necessitatis*, has evolved in modern law into the concept of state of exception.

Agamben, quoting the Italian jurist Santi Romano, who greatly influenced European legal thinking between the two world wars, claimed that not only should it be impossible for the necessary to be illegal, but in addition necessity must provide the basis for every law, and only from necessity may a law acquire its legitimacy. A law that does not reflect a social necessity or need is bound to become obsolete sooner or later. Any act originating in necessity retroactively provides the basis for a law, being rooted in the principle of positive law and hence should act as the foundation and the ultimate justification of any legal system.

According to Romano, it is true that the law has an essential role in the way modern society is organized, but not all situations can be addressed by it and perhaps not all situations should be. The term "necessity" for Agamben will always be a subjective and relative concept. This is only natural since what one considers a "necessity" is an expression of a world view, a reflection of a position in the social order. In the case of East Jerusalem, the necessity to build a home reflects local values and is rooted in Arab culture and in the social order the Palestinian residents wish to preserve and have a right to preserve. When it is possible to build with a building permit, they will. If the state refuses to grant a permit, then necessity demands that they build without a permit. While the Israeli government regards them as criminals, Palestinian society sees them as performing their traditional obligations.

## A JEWISH PERSPECTIVE ON NECESSITY

Classical Judaism was clear and uncompromising about the place of necessity in the halachic framework. It was difficult to decide whether a Jewish viewpoint on this issue should be presented in a book criticizing the Israeli government's policies, but we choose to do so if only to show that the government policy not only undermines universal moral principles but also goes against the fundamental principles of Judaism.

Judaism recognizes situations where people are forced to act in ways that go against the law and refers to them as *hechrachbalyegune* that is to say, they are necessary and therefore not to be condemned. Furthermore, not only does the Jewish tradition treat with suspicion any approach that demands a law should be obeyed at any cost, it even states that one must not issue a decree that the public is unable to follow. Maimonides writes, *"When a court sees it necessary to issue a decree, institute an edict, or establish a custom, the court must first contemplate the matter and see whether or not the majority of the community can uphold the practice. A decree is never issued to the community unless the majority of the community can uphold the practice."* Maimonides adds that if a court issues a decree, thinking that the majority of the community can uphold it, but after a while the majority of the community raises objections and the practice is not followed, the decree may be nullified. The court cannot compel the people to accept it: *"If a decree is issued by the court with the thought that it will spread among the entire Jewish community, but, many people question the practice and most do not observe it, it is nullified. Even after a great duration, if a different court checks throughout the Jewish community and sees that the observance of a decree has not spread throughout the Jewish community, it has the authority to cancel the decree, even if it is of lesser stature than the original court in wisdom and in number of adherents."* (Hilchot Mamrim, Chapter 2, 5-7)

The Gemara warns and condemns those who follow the law so closely that they see it as an end in itself. In a commentary attributed to Rabbi Yochanan, it is told that *"Jerusalem was destroyed only because they gave judgments in accordance with the law of the Torah"* (Baba Metzia, 30b) and continues *"... because they based their judgments (strictly) upon the law and did not go beyond the requirements of the law."* In other words, they followed a narrow path and as a result were not able to adapt to the ever-changing reality.

This principle can be found many times in the Talmud where it is also expressed by God Himself: *"The Holy One, blessed be He, said 'if I create the world... with only the attribute of judgment, how could the world exist?'"* (Genesis

Rabbah,12:15). That is to say that the world cannot be sustained with all of our judgments being made according to the letter of the law.

The same principle is referred to in most common law (Israeli law included) as “abuse of process,” but Israeli courts are permitted to take it into consideration only in rare and exceptional cases in which the authorities’ conduct is completely outrageous, and *“anyone with a conscience must be appalled; the sense of universal justice is impaired.”*<sup>5</sup> However, the argument that the authorities use the law deliberately to persecute, harass and oppress the Palestinian population is difficult to establish in court.

## FINAL REMARKS

We should note that while this research focuses on East Jerusalem, house demolition is not restricted to Jerusalem but exists in all territories under Israeli control on both sides of the Green Line. Quite a few reports have been written on this subject, the most important being the Markowitz Commission Report (1986), the Gazit Report (2000) and the Or Commission Report (published 2003 on events of October 2000), which devoted a special chapter to this subject.

The 2009 state comptroller’s report on real estate law indicated that in 2008 there were about 100,000 illegal structures in Israel.<sup>6</sup> It should also be noted that most demolitions are not carried out in Jerusalem. The number of houses destroyed is truly staggering. Each year, the Civil Administration demolishes around 200 buildings<sup>7</sup> and the Ministry of Interior around 700 buildings.<sup>8</sup> Even though the Ministry of Interior refuses to reveal how these numbers are distributed in different sectors of Israeli society, we have no doubt that most of the demolitions are carried out in Palestinian villages, mostly in the Galilee, in Ramle and Lod and in unrecognized Bedouin villages in the Negev. Together with the demolitions in Jerusalem, we can estimate the total number of demolitions carried out in Israel and in the occupied territories at about 1,000 to 1,200 buildings each year.

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5 2910/94. Yefet v. State of Israel 50(2) P.D. 221.

6 State comptroller of Israel, report 59b (2009), pp. 45-102.

7 Deputy Minister of Defense Matan Vilnai to MK Ilan Gilon, Sep. 12, 2010.

8 In 2007, 759 buildings; in 2008, 658 buildings; in 2009, 674 buildings. Minister of Interior Eli Yishai to MK Ilan Gilon, answering question no. 329, Sep. 1, 2010.



## Demolition Data: Orders And Executions

Between 1992, when the municipality of Jerusalem began using digital documentation, and the end of 2010, at least 1,250 structures were demolished in East Jerusalem by the municipality, the Ministry of Interior and “self-demolitions,” a term which will be clarified further on.

For the most part, the demolitions were of homes that were inhabited, including multilevel structures, which included several housing units. In addition, buildings still under construction as well as warehouses, commercial structures, fences and 66 pirate gas stations were also demolished.

Not included in the statistics are structures for holding animals, such as barns, pens and hen houses, which were removed with the use of a municipal bylaw allowing for the removal of junk and moveable property from public space. This matter will be addressed at length.

We noted that at least 1,250 structures have been demolished, understanding that there were almost certainly structures which were not included in the municipality’s statistics, and that it’s likely that not all self-demolitions were listed in the reports produced by the Ministry of Interior. This under-reporting issue will be addressed as well.

The data was provided by the head of the municipal Construction Supervision Unit, and the Ministry of Interior, in a series of letters. The numbers are inconsistent with those published by other NGO’s. Results from a different definition of Jerusalem’s jurisdiction: while we refer to the Israeli municipal border, the Palestinian organizations refer to the Jerusalem district, an area which includes, in addition to the city proper, several villages situated on its outskirts of Jerusalem.

TABLE 1.1 HOUSE DEMOLITIONS IN EAST JERUSALEM SINCE 1992

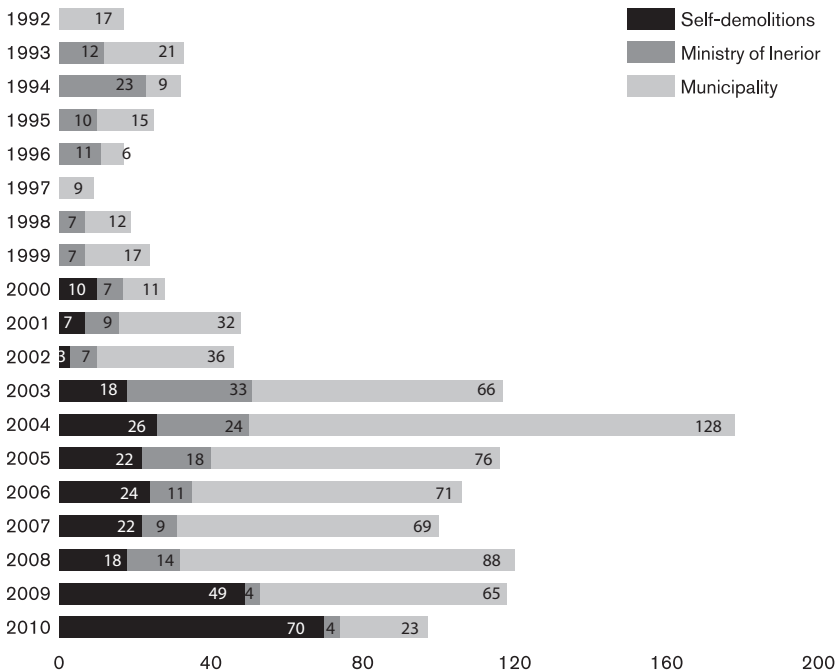
Year	Prime Minister	Minister of Interior	Mayor	Significant events	Demolitions by the municipality	Demolitions by the ministry of interior	Self-demolitions	Total	
1992	Yitzhak Rabin	Aryeh Derhi	Teddy Kollek		17	---		17	
1993		Yitzhak Rabin <sup>10</sup>	Ehud Olmert	Oslo Accords A'	21	12		33	
1994				Oslo Accords B' (Cairo)	9	23		32	
1995		Ehud Barak <sup>11</sup>				15	10		25
1996	Benjamin Netanyahu	Eliahu Swissa <sup>12</sup>			6	11		17	
1997			Wye Memorandum	9	---		9		
1998				12	7		19		
1999	Ehud Barak	Natan Sheranski	Ehud Olmert		17	7		24	
2000		Haim Ramon		Camp David	11	7	10	28	
2001	Ariel Sharon	Eli Yishai		Uri Lupolianski	The Second Intifada	32	9	7	48
2002						36	7	3	46
2003		Avraham Poraz	Construction of the separation wall in Jerusalem		66	33	18	117	
2004	128				24	26	178		
2005	Ofir Pines			76	18	22	116		
2006	Ehud Olmert	Roni Bar – On			71	11	24	106	
2007		Meir Shitrit		69	9	22	100		
2008				88	14	18	120		
2009	Benjamin Netanyahu	Eli Yishai	Nir Barkat	U.S. pressure reduces demolitions	65	4	49	118	
2010					23	4	70	97	
<b>Total</b>					<b>771</b>	<b>210</b>	<b>269</b>	<b>1,250</b>	

10 Ehud Barak served from July until November 1995, prior to his term David Libai served for a month and Uzi Baram served for four months.

11 Haim Ramon also served as the Minister of Interior between November and June.



FIG 1.1 HOUSE DEMOLITIONS IN JERUSALEM SINCE 1992



As the numbers indicate, beginning in 2001, with the start of the Second Intifada, there has been a significant increase in demolitions carried out in East Jerusalem, by both the Ministry of Interior and the Municipality of Jerusalem, reaching a peak in 2004, after which the numbers decline. During the first half of 2010, we see a significant decline in the number of demolitions due to American pressure during Barack Obama's first year in office.<sup>9</sup> At the close of the same year, with the congressional elections approaching and President Obama's weakening in the polls, this trend stopped. It is also interesting to note that since Obama's administration demanded a stop to house demolitions, the number of "self-demolitions," carried out by the owners, after being repeatedly intimidated and threatened by inspectors, has significantly increased. Since "self-demolitions" do not appear on the municipal statistical reports, the American government is led to believe erroneously that their

12 Mayor Barkat's himself confirms this: «The fact of the matter is that the municipality was prevented from carrying out demolition orders in East Jerusalem by orders from above.» Nir Barkat to police commissioner Dudi Cohen, July 18, 2010. The municipality's manager, Yair Mayan, stated it explicitly: «Three months ago a secret meeting was held between the attorney general, police representatives, the prime minister's military secretary, the secretary of state and others, in which it was decided to stop all demolitions in East Jerusalem for political reasons». The municipality's director to Yossi Havilio, the municipal legal, adviser, July 15, 2010.

demands have been met, and that the number of demolitions has decreased.

At any rate, the number of self-demolitions listed seems low and might not include demolitions carried out before a demolition order has been served, i.e. prior to the opening of a file, as a result of the owner being pressured by the municipality to immediately demolish the structure, and thus save himself from receiving a large fine. These demolitions are not reported since the building violations are themselves never recorded.

## **DEMOLITION ORDERS**

After municipal inspectors detect unlicensed construction by patrolling, analyzing aerial photographs, or considering complaints from neighbors, the Construction Supervision Unit prepares a file, which enters one of two courses, namely the issuance of a judicial order or of an administrative order.

The administrative course is taken when the structure has not been populated yet, or has been populated for less than 30 days. In these cases the file must be signed by the municipal legal adviser, the municipal engineer, and the general manager of the municipality, before being authorized by the Mayor himself. If the structure is populated, the second course is taken, in which the file is forwarded to the municipality's legal department, which then files an indictment at the court for local affairs.

The indictments are divided into two groups: 1) An indictment against new construction, whether an entire building or merely an additional room or floor; and 2) An indictment for violation of a court order, i.e. previous court rulings with which the defendant did not comply. These indictments are issued against those who have been previously convicted of illegal construction, though the court has seen fit to allow them to acquire a permit within a specific period of time, or alternatively, to restore the building "to its original state," meaning demolishing the structure themselves. This kind of ruling is typical in cases where the building is located in an area which according to the master plan building permits can be obtained or when the owner of the house proves that he is in an advanced stage in the process of obtaining a building permit. However, if the time specified by the court has passed, and the owner of the house has been unable to acquire a building permit and has not demolished his house, then a double indictment is served, both for the violation of a court order and for the "use of a building without a permit."

## **ADMINISTRATIVE DEMOLITION ORDERS**

As mentioned earlier, administrative demolition orders are issued for buildings that were built without a permit, when 1) The new building has not been populated yet; 2) The building has been populated for less than 30 days; or 3) It has not been populated yet and has been completed for up to 60 days. As we shall see further on, the municipality and the Ministry of Interior prefer to use these orders, since they are easier to carry out; they do not require a time-consuming and complicated legal process, as judicial orders do.

Even though the rationale behind administrative orders is to take action against violations quickly, before facts on the ground have been established, not all buildings that are served administrative orders are uninhabited. More than once, after the building violation is first detected, and by the time the file has been signed by the Mayor or the municipal district planner, the house becomes populated, even though on file it is still registered as an uninhabited structure. In addition, an administrative order can be extended numerous times if the police declare that it could not be carried out for “operational reasons.” All the while a family could be living in the house.

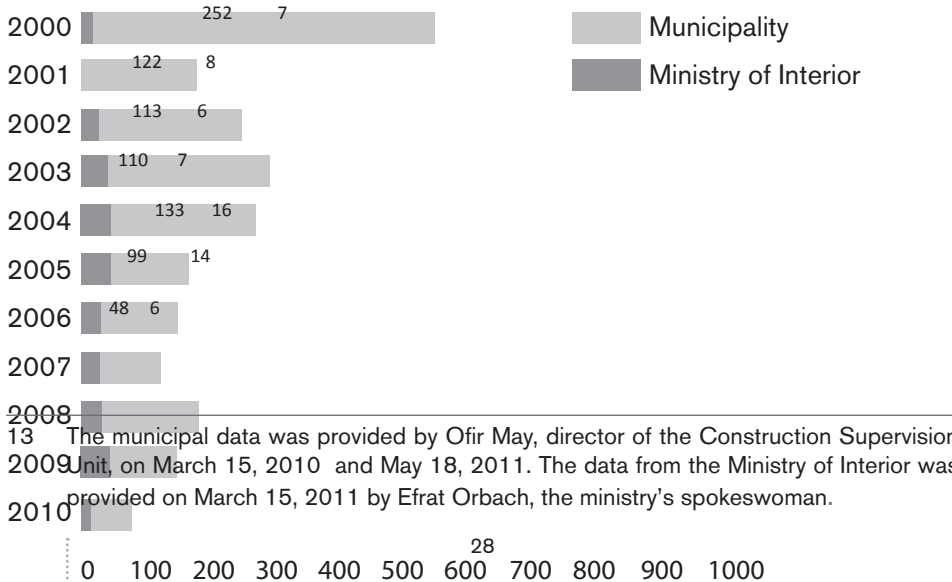
In addition, the court may consider a structure unfinished even if it is inhabited, in cases when the construction is carried out in several stages, which is very common among poor families. According to this criterion the actual habitation of a house is not enough for it to be considered suitable for habitation. We will elaborate on this matter in Chapter 9, page 185, which deals with the legal system’s approach toward illegal construction.

The demolition of a structure with the use of an administrative order is not defined by law as a form of punishment, but as an administrative procedure for “restoring the site to its previous state,” and as a result does not require any legal procedure, and does not involve the opening of a criminal record, fines or imprisonment.

TABLE 1.2 DATA FOR ADMINISTRATIVE DEMOLITION ORDERS ISSUED FOR EAST JERUSALEM IN 2000-2010<sup>10</sup>

Year	Ministry of interior	Municipality	Total
2000	2	531	533
2001	0	174	174
2002	4	201	205
2003	7	279	286
2004	7	252	259
2005	8	122	130
2006	6	113	119
2007	7	110	117
2008	16	133	149
2009	14	99	113
2010	6	48	54
Total	77	2,062	2,139

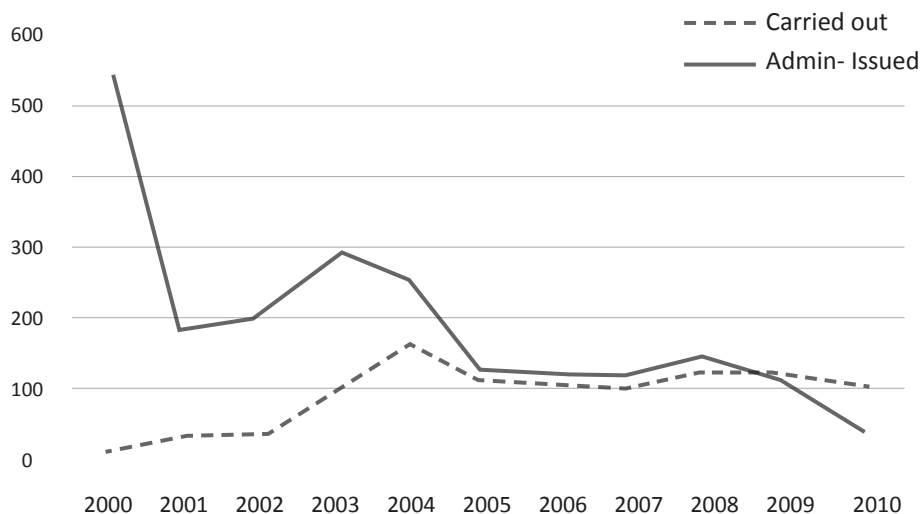
FIG 1.2 ADMINISTRATIVE DEMOLITION ORDERS (2001 - 2010)



<sup>13</sup> The municipal data was provided by Ofir May, director of the Construction Supervision Unit, on March 15, 2010 and May 18, 2011. The data from the Ministry of Interior was provided on March 15, 2011 by Efrat Orbach, the ministry's spokeswoman.

According to the Construction Supervision Unit, the decline in the number of administrative orders issued is due to increased efficiency in enforcement proceedings, according to which alternative measures are taken when minor violations are concerned.

FIG 1.3 DEMOLITIONS CARRIED OUT COMPARED WITH ADMINISTRATIVE DEMOLITION ORDERS ISSUED



The two lines in previous figure are practically parallel: “the Carried out” and the “administrative issues” lines. This relationship confirms our suspicion that most demolitions are carried out with administrative and not judicial orders. The latter, as we shall see, are far more difficult for the authorities to implement.

## JUDICIAL DEMOLITION ORDERS

Judicial demolition orders are served when the structure has been populated for more than 30 days, or when the construction of an unpopulated building has been completed for more than 60 days. Unlike administrative demolition orders, which require only the signatures of municipal officials followed by the Mayor’s signature, this is a judicial process that may take many years.

The data for indictments filed in the Court of Local Affairs in 2000-2010 for illegal construction in East Jerusalem are presented below.<sup>14</sup> The municipal prosecutor’s records show that the number of indictments ending with an acquittal is insignificant, so we may assume that almost all indictments for

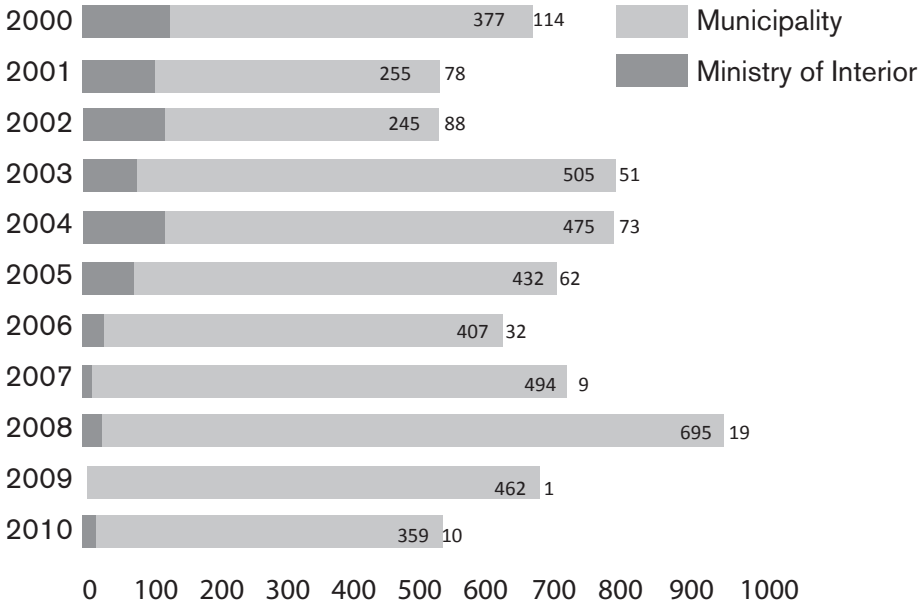
14 The municipal data was provided by Ofir May on March 10, 2010, and taken from the Ministry of Interior’s local affairs activity reports, which are presented to the municipality each year.

building without a permit result in judicial demolition orders.

TABLE 1.3 TOTAL OF JUDICIAL ORDERS (2000 - 2010)

Year	Orders served by the Ministry of Interior	Orders served by the municipality	Total of judicial orders
2000	114	377	491
2001	78	255	333
2002	88	245	333
2003	51	505	556
2004	73	475	548
2005	62	432	494
2006	32	407	439
2007	9	494	503
2008	19	695	714
2009	1	462	463
2010	10	359	369
Total	547	4,706	5,253

FIG 1.4 JUDICIAL DEMOLITION ORDERS ISSUED (2000 - 2010)



The increase in the number of indictments, between 2003- 2008, reflects an increase in illegal construction, resulting from the erection of the separation wall. Stressed by daily difficulties, such as getting to work or school or visiting relatives, and fearing that the State of Israel may revoke the residency of those left on the other side of the wall, many residents left their homes and moved to the “right side” of the wall. This migration, estimated at about 20,000 people, has created additional pressures on East Jerusalem’s real estate market, leading to a sharp increase in rent, forcing many to build without a permit.

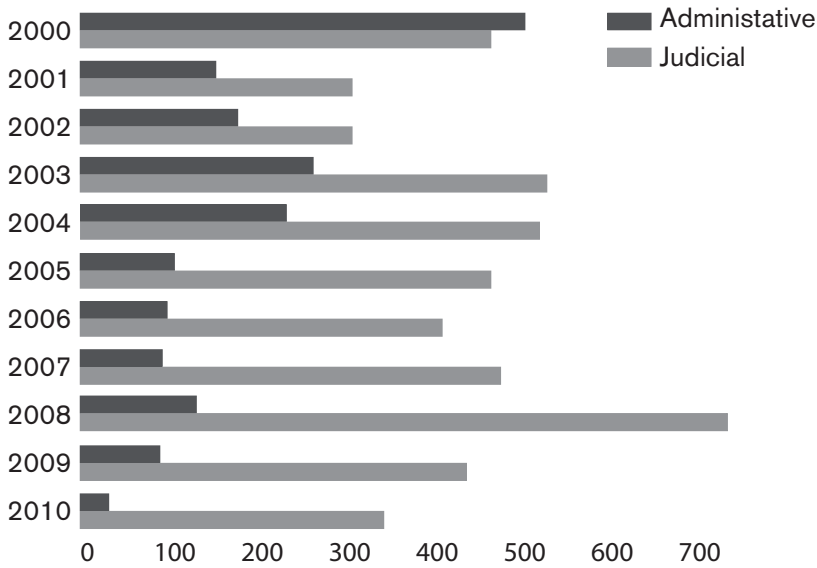
## THE TOTAL NUMBER OF DEMOLITION ORDERS

It is possible to estimate the total number of demolition orders in East Jerusalem by adding the total amount of administrative orders and the judicial orders issued by the municipality and the Ministry of Interior for structures built without a permit. This number is only an estimate. While the number of administrative orders issued is precise, the number of judicial demolition orders is not, and is based on the number of indictments submitted. However, as we have noted, almost every indictment results in a judicial demolition order. Based on these realities, the following data are offered:

TABLE 1.4 DEMOLITION ORDERS ISSUED SINCE THE TURN OF THE CENTURY

Year	Judicial order	Administrative order	Total
2000	491	533	1,024
2001	333	174	507
2002	333	205	538
2003	556	286	842
2004	548	259	807
2005	494	130	624
2006	439	119	558
2007	503	117	620
2008	714	149	863
2009	463	113	576
2010	369	54	423
Total	5,253	2,139	7,392

FIG 1.5 DEMOLITION ORDERS(ADMINISTRATIVE, JUDICIAL)



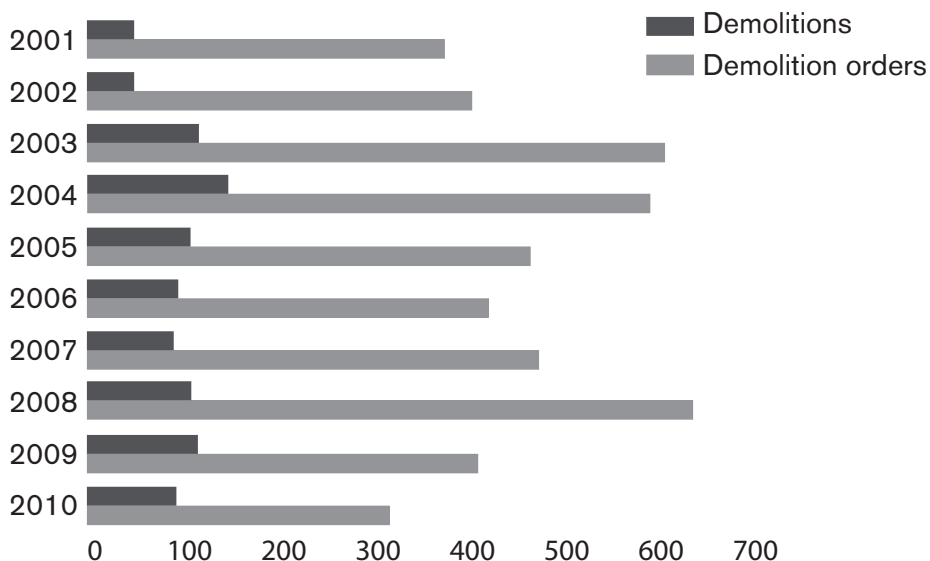
In light of these numbers, it is possible to calculate the percentage of demolitions resulting from demolition orders. The percentage of actual demolitions (including self-demolitions), compared with demolition orders (administrative and judicial), is about 15 percent, as presented in the following table.

TABLE 1.5 DEMOLITION ORDERS COMPARED WITH ACTUAL DEMOLITIONS

Year	Demolition orders	Actual demolitions	Demolition % from all orders
2000	1,024	28	2.7
2001	507	48	9.4
2002	538	46	8.5
2003	842	117	13.8
2004	807	178	22
2005	624	116	18.5
2006	558	106	18.9
2007	620	100	16.1
2008	863	120	13.9
2009	576	118	20.4
2010	423	97	22.9
<b>Total</b>	<b>7,392</b>	<b>1,074</b>	<b>14.5</b>



FIGURE 1.6 DEMOLITION ORDERS, BOTH ADMINISTRATIVE AND JUDICIAL, COMPARED WITH ACTUAL DEMOLITIONS



After presenting the number of demolition orders issued in the past decade, we can reconstruct the total number of demolition orders still in effect today in East Jerusalem by adding the following figures:

- During Teddy Kollek's term as Mayor, from 1967 till 1992, very few demolition orders were issued, and most of them were shelved in 2004, with the authorization of the municipal legal adviser.
- During Ehud Olmert's first term as Mayor, in 1992-2000, the number of demolition orders was relatively low, with municipal veterans estimating it at approximately 300-400 orders per year, meaning a total of about 3,000-4,000 orders.
- In the years 2000-2010, which include Ehud Olmert's second term in office, Uri Lupolianski's term, and two years into Nir Barkat's term as Mayor, the number, as we have shown, is estimated at approximately 7,400 orders.

TABLE 1.6 THE TOTAL NUMBER OF DEMOLITION ORDERS IN FORCE FROM 1967 TO THE PRESENT DAY

Period	Number of demolition orders
Teddi Kolek's term (1967-1992)	-----
Ehud Olmert's term (1992-2000)	3,000 - 4,000
Current Decade (2000-2010)	7,400
Total	Between 10,500 and 11,500 Demolition orders

These numbers are not only plausible but also correlate with estimates widely accepted in city hall, according to which out of the total number of 15,000 to 20,000 constructions that were built without a permit in East Jerusalem, half of them have pending demolition orders.

This number has been unavailable until now. The municipality of Jerusalem does not keep a record. A letter sent on March 2008 by the municipality's commissioner for freedom of information states that in an inspection carried out by the Municipal Legal Department and the Construction Supervision Unit it had been discovered that the municipality has no data concerning the number of structures that currently have pending demolition orders and that there is no practical possibility of obtaining the data, since the only possible way of doing so would be to first, manually go over thousands of files in order to locate those cases which the court has ruled on, and second, to read the verdicts in order to locate the cases in which demolition orders have been issued.

## **INDICTMENTS FOR VIOLATION OF A COURT ORDER**

As mentioned earlier, indictments for the violation of a court order are filed against people who have been previously convicted of building without a permit and were ordered by the court to obtain a permit in a given period of time, or alternatively "restore it to its original state," i.e. demolish the structure built without a permit themselves.

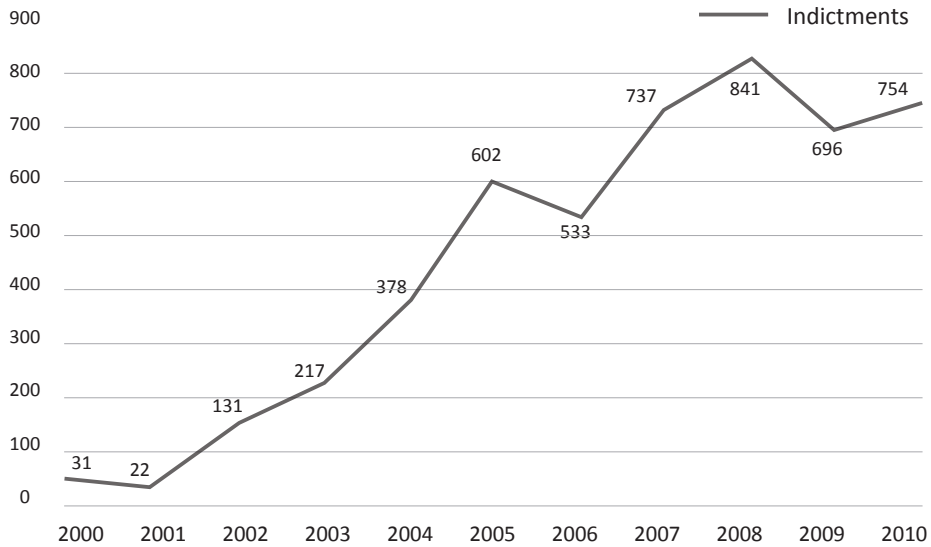
This kind of ruling is typically given in cases where the structure in question is situated in an area where obtaining a building permit is possible or when the owner of the house can prove that he is in an advanced stage of obtaining a building permit. However, when the period of time specified by the court

expires, and the owner of the house has failed to obtain a building permit and has not yet demolished his structure, the municipality serves him with a new indictment for violating a court order and transfers the responsibility for the demolition to the municipality. These orders are usually followed by an additional indictment for the “use of a building without a permit.”

**TABLE 1.7 INDICTMENTS FOR DISOBEYING A COURT ORDER IN EAST JERUSALEM, FILED TO THE COURT OF LOCAL AFFAIRS IN JERUSALEM**

<b>Year</b>	<b>Number of indictments</b>
2000	31
2001	22
2002	131
2003	217
2004	378
2005	602
2006	533
2007	737
2008	841
2009	696
2010	754
<b>Total</b>	<b>4,942</b>

FIGURE 1.7 INDICTMENTS FOR DISOBEYING COURT ORDERS



## THE NUMBER OF APPROVED REQUESTS FOR BUILDING PERMITS

In table 1.8, page 38, we present data relating to building permits issued in 2000-2010. This data, together with data concerning demolition orders, can help us see the full picture and place statistics for house demolitions in their proper context. There is a clear connection between illegal construction and building permits. As building permits become more difficult to obtain, more illegal construction takes place, and vice versa. We could assume that as restrictions on receiving a building permit are removed and permits become obtainable, there is less illegal construction. This assumption, however, has never been put to the test. Restrictions were never removed for a long enough period of time for it to be tested.

There are two possible procedures by which one may obtain a building permit: the green track for cases where the land is designated for construction by the municipality and has a zoning plan, and the red track for when the land is not designated for construction. In the latter case the municipal plan must be changed so that the area is reassigned for residential purposes. Then it may enter the green track. Accomplishing such changes is complicated and expensive. Indeed, the low number of approved changes in the municipal construction plan testifies to the difficulty in passing from the red track to the green track.

Architect Amalia Bichovski has conducted an unprecedented exhaustive survey, which puts a figure on the problem stated above. Her survey examines the process in which construction plans in East Jerusalem have been authorized over ten years, and reveals that out of 2,574 urban construction plans developed by the municipality<sup>12</sup> up to November 2009, only 310 were approved. This amounts to 12.04 percent of all submitted requests. This bleak situation speaks for itself. However, it should be mentioned that this is not only the municipality's fault; some of the responsibility lies with those submitting the requests. Amalia Bichovski's thorough examination has revealed that, of the cases that were not approved (2,264), approximately 30 percent (679) were shelved for remaining in their initial state. This is to say that the cases were opened but were not pursued by the landowners, perhaps due to budget limitations or to an implicit message from the officials at the Construction Supervision Unit that it was pointless to invest time and money in the plan, since there was no chance of it being approved.

An additional 30 percent of the total plans (i.e. 772 out of 2,574) were in some stage of the process, having received the various expert opinions required, a process which in itself can take up to two years, but eventually were not presented to the local building and planning committee, sometimes due to last minute demands made by the committee which the land owner was unable to meet, or (as in the earlier case) perhaps an official made it clear that there was no chance of receiving a building permit. At any rate, whatever the reason may have been, the result remains bleak.

Sixty percent (1,544) of all files are abandoned before being considered by the committee. Twenty-five percent (644) of the plans reach the local building and planning committee only to be rejected on "professional" grounds. An interesting fact pointed out by Amalia Bichovsky is that 85 percent (2,187) of the requests for changing municipal construction plans were submitted in an attempt to meet the court's requirement for legitimatizing the construction, after being indicted for building without a permit, perhaps in a last minute attempt to delay or change the court's ruling.

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15 A municipal construction plan is required in order to authorize land for construction. After the construction plan has been approved, obtaining a building permit is still required.

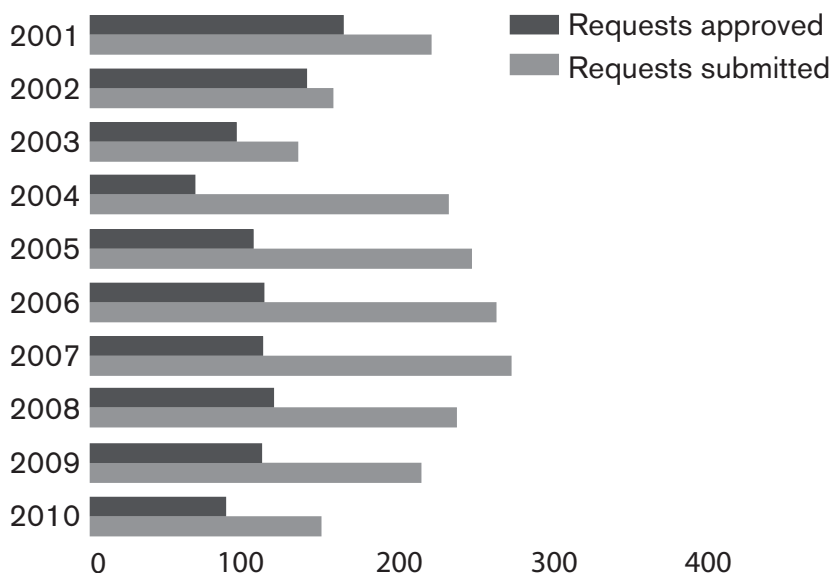
The number of applications for building permits submitted and the number of permits approved, including the number of housing units approved in East Jerusalem are as follows<sup>13</sup>:

TABLE 1.8 THE NUMBER OF APPLICATIONS FOR BUILDING PERMITS SUBMITTED AND THE NUMBER OF PERMITS APPROVED

<b>Year</b>	<b>Applications Submitted</b>	<b>Permits Granted</b>	<b>Number of housing units</b>
2000	360	215	612
2001	222	164	479
2002	158	141	432
2003	135	96	276
2004	233	68	169
2005	248	106	420
2006	264	118	462
2007	273	114	414
2008	238	120	437
2009	214	112	351
2010	152	89	405
<b>Total</b>	<b>2,497</b>	<b>1,343</b>	<b>4,457</b>

16 See Issuing Building Permits: A Complete Report on Housing Units, Sep. 12, 2010. This report includes all housing units approved in the past decade by the municipal licensing committee, as presented to us by the municipality's licensing department, from which we subtracted the number of housing units built in settlements. I would like to thank Sahar Vardi for her meticulous work examining each permit individually.

FIGURE 1.8 THE NUMBER OF REQUESTS FOR BUILDING PERMITS SUBMITTED AND THE NUMBER OF REQUESTS APPROVED



It is important to emphasize that the number of requests submitted is low in the first place because most requests are made by a landowner whose land is in an area already designated for construction. Usually, those whose land is on areas not designated for construction do not even bother submitting a request, understanding that opening the file, taking measurements and preparing the plan will most likely amount to a waste of money and nothing more.

## THE EXTENT OF UNLICENSED CONSTRUCTION

Currently, no estimate concerning the extent of illegal construction in East Jerusalem has been widely accepted. According to municipal estimates, about 20,000 structures were built without a permit in East Jerusalem. This number is sometimes used to describe a number of structures built illegally, whether for residential purposes or for other uses, as if they were all the same. At any rate, this number is brought up every so often, together with the statement that it amounts to a third of all real property in East Jerusalem.<sup>14</sup>

17 This figure is found in many documents, the last one being a document issued by the Mayor's office on July 30, 2011 titled «A new policy of planning and enforcement for East Jerusalem neighborhoods.»

This number is inconsistent with figures on record in the municipality's Property Tax Department, according to which about 47,000 units are billed for residential and other purposes. However, this number is consistent with new figures adopted by the municipality in 2012, according to which there are 56,300 East Jerusalem units, used for both residential and business purposes, in 23,000 separate buildings.

As for the annual figures, these too are based only on conjecture. The common estimate is that each year approximately one thousand illegal buildings or extensions are constructed without a permit. This figure was presented by the commissioner of the municipal supervision department during a deliberation in the Knesset in 2004.<sup>15</sup> The record high for illegal construction was in 2005, with 1,529 building violations,<sup>16</sup> a figure that was also presented to the state comptroller in 2009 for a report focusing on illegal construction in the neighborhood of El-Bustan.<sup>17</sup> On the other hand, according to the Construction Supervision Unit, after 2005 there was a noticeable decrease in the number of building violations detected each year.<sup>18</sup> This claim is true, but only for the years 2005-2007, after which there was an increase in illegal construction, which, according to the Municipality of Jerusalem, resulted from an economic revival in East Jerusalem.

The main reason for the increase in illegal construction up to 2005 is the construction of the separation wall. The building of the wall caused mass migration of Palestinians to the Israeli side of the wall, creating a shortage in residential structures on that side of the wall, driving up real estate prices. There are two main reasons for the decrease in building violations during the second half of the past decade. First, the confiscation of tools and construction materials, especially concrete mixers, made it difficult to build without a permit, and caused the price of concrete to increase significantly, due to the risk of confiscation<sup>19</sup> (this explanation is the one preferred by the municipality).

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18 The data concerning 2000-2004 was provided by Micha Ben-Nun, head of the Construction Licensing and Supervision Department, in a deliberation in the Knesset's Internal Affairs Committee, January 2004. See also Ofir May's statements quoted in Shuki Sade's House Demolition Policy in East Jerusalem, dissertation for a master's degree in Public Policy, The Hebrew University of Jerusalem, 2006, p. 40.

19 This figure was reported during a legal discussion on the matter of Beit Yehonatan, criminal file 7470\05, conducted by Judge Ben Zmora, July 2006.

20 State Comptroller 2009 audit report, chapter 2, Jerusalem municipality, Enforcing the Planning and Building Law in the GanHamelech compound (Al-Bustan), October 2010, p. 681.

21 Ibid., p. 692.

22 The municipality of Jerusalem, Licensing and Supervision Department, annual report for 2007, June 18, 2008. Similar statements are found in the annual reports' summaries.



The second explanation, which is more likely, is that the municipality stopped enforcing the law in large parts of East Jerusalem, especially those surrounded by the separation wall, such as Anata and Ras Hamis, or in neighborhoods north of the Qalandia checkpoint, where the municipal inspectors stopped visiting.

The 2009 municipal construction report stated explicitly what previously had been said almost in secret: "In the neighborhoods of Silwan and Isawiya it isn't possible to perform routine enforcement activities due to security limitations imposed on the police."<sup>20</sup> However, it should be noted that local testimonies from certain areas in East Jerusalem, especially Shuafat and Beit Hanina, confirm that there has been a noticeable decrease in the extent of illegal construction, due to the confiscation of concrete mixers, which deters the concrete supply companies.

By comparing the number of housing units registered at the municipality's property tax department to the number of units that have been authorized in the past decade, we may be able to put to the test municipal estimates concerning the number of housing units built without a permit. It should be noted that our estimate is that most of the structures in East Jerusalem are indeed registered with the municipality's Property Tax Section since the Ministry of Interior refuses to provide services for those who do not pay municipal taxes. In addition, there is a common misconception that registering a house for property tax will in some way legitimize the structure and grant immunity from prosecution.

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23 Licensing and Supervision Department, annual report for 2009. Signed by Ofir May, director of the municipal Construction Supervision Unit, Jan. 18, 2010.

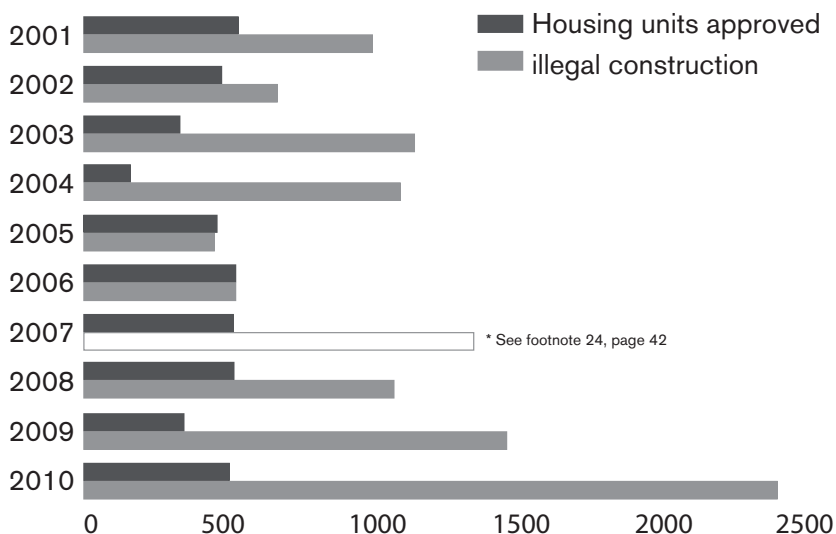
TABLE 1.9 THE DIFFERENCE IN ILLEGAL CONSTRUCTION AND ADDITIONAL HOUSING UNITS IN COMPARISON WITH THE PREVIOUS YEAR <sup>21</sup>

Year	Approved housing units	Additional units in comparison to the previous year	The difference in illegal construction	Total housing Units
2000	612	-	-	35,388
2001	479	1433	954	36,821
2002	432	1172	740	37,993
2003	276	1435	1159	39,428
2004	169	1233	1064	40,661
2005	420	829	409	41,490
2006	462	914	452	42,404
2007 <sup>24</sup>	414	137		42,541
2008	437	1,486	1049	44,027
2009	351	1,739	1388	45,766
2010	388	2686	2298	48,452

This data does not necessarily contradict the previously presented estimates, according to which 1,000 building violations are committed every year, since the property tax data relates to new construction, whereas the estimates made by the Construction Supervision Unit relate not only to new construction but also to extensions of existing buildings, such as an additional room or an additional floor, additions which the owners usually do not declare for property tax.

24 The data for 2007, which was provided by the municipality, is problematic because more than 140 housing units have been added that year. We did not receive a convincing explanation for this problem, other than the municipal computer's unit being on strike for six months during that year. This is the reason why more permits than housing units appear in the chart in that year. Despite the fact that 2007 raises some statistical difficulties, we chose to present all of the data as it was handed to us, as it does not change the overall picture.

FIGURE 1.9 HOUSING UNITS APPROVED AND ILLEGAL CONSTRUCTION



Hence, if we focus on new unlicensed construction, as it is presented the table above, we will see that in the first half of the decade, the average number of housing units built without a permit per year stood at around 900 units. In the years 2005-2006 there was a sharp decrease, with the average dropping to about 420 units per year. Every year since 2008 there has been a noticeable increase, rising from about 1,100 in 2008 to double that in 2010.

## FINES

In 2000-2010 the municipality collected over 220 million NIS (63 million \$ estimation: 1 US\$ = 3.5 NIS) in fines for construction without a permit. These fines are one of the main reasons for the economic hardship in East Jerusalem and are directly linked to the fact that 65 percent of the families live below the poverty line. This figure is based on the annual reports published by the Court for Local Affairs. Despite the fact that the court does not distinguish between fines imposed on Jews and Palestinians, according to reliable sources 70 percent of the fines have been collected from East Jerusalem residents. The overall picture in the past decade has been as follows:<sup>22</sup>

25 The calculation is done by adding 70% of the total amount of fines imposed by the Local Planning and Building Committee for construction violations to the district committee's files, all of which were against houses in East Jerusalem.

TABLE 1.10 FINES IMPOSED BY THE MUNICIPAL COURT

Year	Amount <sup>(NIS)</sup>
2000	7,869,575
2001	12,543,425
2002	20,620,136
2003	37,364,695
2004	34,084,823
2005	28,623,223
2006	19,948,352
2007	14,498,317
2008	13,670,616
2009	18,378,187
2010	14,392,852
Total	221,994,201 <sup>(NIS)</sup>
	63,427,000 \$

## THE DEMOLITION BUDGET

The demolition budget over the past few years for both the Municipality of Jerusalem and the Ministry of Interior has been estimated at around 2.5 million NIS per year. This amount includes the cost of operating bulldozers, hiring contractors to remove movable structures and taking and analyzing aerial footage to detect illegal construction. It does not include the inspectors' salaries, the use of patrol vehicles and the salary of the lawyers who prepare the indictments and present them in court.<sup>23</sup>

23 This figure is found in the municipal budget reports for each of these years. Jerusalem's budget item number in 2000-2007 was 179080020, and in 2008 it was changed to 179080178. This item number doesn't distinguish between East Jerusalem and West Jerusalem, but the portion assigned to West Jerusalem is insignificant.

TABLE 1.11 THE MUNICIPAL BUDGET FOR DEMOLITIONS, 2000-2010

Year	Amount <sup>(NIS)</sup>
2000	78,737
2001	1,452,367
2002	2,423,070
2003	2,386,148
2004	2,621,742
2005	2,247,239
2006	1,544,461
2007	1,978,939
2008	1,214,240
2009	1,877,345
2010	694,443
Total	18,512,811 <sup>(NIS)</sup>
	5.289.374 \$

Again, these figures do not include the Ministry of Interior's budget for demolitions. We were unable to obtain that budget, but we estimate it at approximately half a million NIS a year.

## **ADDITIONAL PUNITIVE MEASURES AGAINST ILLEGAL**

### **CONSTRUCTION**

In addition to the large number of demolitions, we are also witnessing new enforcement measures taken against the residents who have built without a permit. The Municipality of Jerusalem is of the opinion that standard punitive measures are ineffective in deterring people, and has therefore decided to take additional measures.

This new policy has five main components which we discuss below: reopening

of legal proceedings; issuing double fines; confiscation of construction equipment; incarceration of people who build without permit; and charging families for the cost of demolishing their houses.

## **THE REOPENING OF LEGAL PROCEEDINGS**

The reopening of legal proceedings is done in cases where people have been previously convicted of building without a permit, and failing to obtain a building permit or demolishing the structure in the period of time specified by the court. Sentences for illegal construction are comprised of two parts. The first is a fine which is determined according to the size of the building, its location (rich or poor neighborhood), the construction materials (a concrete ceiling or a tin roof, walls of cinder blocks or stone) and the family's socioeconomic status. In the second part the offender is required to present a building permit in a certain amount of time or restore the structure to its original state, i.e. demolish the building.

Paying the fine does not exempt the owner from obtaining a building permit for the structure. Between the 1970s and the 1990s, the municipality was content with the fines being paid and did not require the demolition of the structure by the owners, even without them obtaining a permit. Residents of East Jerusalem knew that so long as they paid the fine, their houses were protected. In the year 2000 the municipality started reopening cases in which the residents paid the fines but failed to obtain a building permit or demolish the structure and began prosecuting them for the offence, and also for "violation of a court order" and the "use of a building without a permit" (according to section 210 in the Planning and Building Law).

This change in policy was made on the theory that the fines were so low that the residents of East Jerusalem preferred paying the fines post factum to obtaining permits in advance. Therefore, in order to deter people it was decided to reopen old cases. Many of the residents of East Jerusalem were shocked by the change in policy. At first, they were sure it was a misunderstanding and went to the municipality with vouchers proving that they had paid their fines, only to discover that the torturous process they thought was behind them had started once again.

Needless to say, even though the state of affairs that forced them to build without a permit has not changed, the legal system now recycles the process by reopening cases and imposing a second fine and sometimes adding a jail sentence for violation of a court order.

According to data provided in response to MK Uri Ariel's query, the number of

indictments filed for “violation of a court order” between 1994 and the end of 2008 was 5,954.<sup>24</sup> By adding the figures from the years 2009-2010, supplied by the municipal Construction Supervision Unit, the number of indictments for the years 1994-2010 was 7,404.

## **DOUBLE FINES**

In addition to the reopening of cases, the municipality started imposing considerably larger fines for building violations, and frequently imposed a double fine, a measure which according to Israeli law must be used sparingly,<sup>25</sup> in cases in which the structure in question is particularly large or the violation is considered to be “extremely provocative.” The standard fine imposed by the court is calculated according to the construction cost, to which an optional 25 percent may be added. The cost of the construction is assessed by a municipal appraiser, with the average price of construction in East Jerusalem at \$200-\$300 per square meter (sq.m). This means, for example, that a resident who built a house of 150 sq.m. will be fined \$35,000, if he is “lucky” and the prosecution does not demand the additional 25 percent. Until recently, the municipal prosecutor’s office took into consideration the family’s socio-economic situation and used to show some flexibility concerning the amount of the fine. However, the municipal prosecutor’s office recently has been trying to impose the maximum amount possible for almost any structure and even presses for the implementation of double fines. In most cases, the judge agrees with the prosecution without giving it a second thought.

## **CONFISCATION OF CONSTRUCTION EQUIPMENT**

Another measure aimed at discouraging residents from building without a permit is the confiscation of heavy equipment seized from construction sites where unpermitted construction is taking place. This is done in accordance with section 32 of the 1969 Criminal Procedure Ordinance (Arrest and Seizure), which defines the owner of the equipment as an accomplice. Municipal inspectors accompanied by the police raid construction sites and seize everything in sight: trucks, concrete mixers, bags of cement, sand, wood and steel. This is done with the intention of causing contractors financial damage and to instill fear, so that in the future they will refuse to offer their services to people with no building permit. In the years 2003-2008 the municipality

24 The Ministry of Interior, district of Jerusalem, in an answer to MK Uri Ariel’s query, no. 1189, November 24, 2008, signed by Tzvi Schnider.

25 See the municipal legal adviser’s instructions to municipal prosecutors on July 26, 2005 which state that they «must request a double fine in every single case.»

confiscated 72 concrete mixers and a large number of construction tools such as jackhammers and drills. The fees for the recovery of confiscated equipment are between 10,000-40,000 NIS. (2,800 \$ - 11,400 \$) This policy has caused the prices of construction in East Jerusalem to increase considerably since the risk of having equipment confiscated made contractors and suppliers charge higher prices than before. This additional cost falls on the shoulders of the innocent residents (who are not even citizens.)

## **IMPRISONMENT**

Another extreme measure, which has recently been widely used, is the imprisonment of East Jerusalem residents who have not complied with the court's ruling by failing to obtain a building permit or demolish the structure. The sentence is usually three to six months of imprisonment. As in the case of fines, imprisonment does not provide an exemption from the legal requirement to obtain a permit or demolish the structure. After being released from prison the resident may find himself in the same situation time and again. In many cases, imprisonment is imposed when the defendant is unable to pay the fines due to the economic crisis in East Jerusalem.<sup>26</sup>

## **CHARGING HOUSE DEMOLITION VICTIMS FOR THE COST OF THE DEMOLITION**

Section 205 (1) of the Planning and Building Law states that the State of Israel is entitled to charge the owner of the illegal structure for demolition expenses. Furthermore, the law states that the owner may be required to move the demolition rubble to a site designated for construction waste.

In 2005, the municipal legal advisor explicitly instructed municipal prosecutors that "every case in which a demolition is carried out by the committee should be followed by a civil suit for recovering demolition expenses."<sup>27</sup> In practice, building owners in East Jerusalem are not forced to pay for demolitions and only rarely are civil suits filed or demands for removing the rubble.<sup>28</sup> In many cases families reported that the municipality demanded that they pay for the demolition expenses, but a thorough examination of this matter with the municipal prosecutor's office has revealed that the claims were not true and were probably caused by a misunderstanding.

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26 This is also backed by a statement made by a judge in the Court of Local Affairs, quoted by Iruv Braverman in *Powers of Illegality: House Demolitions and Resistance in East Jerusalem*, Tami Shtienitz Center, 2006, p. 41.

27 Atty. Yossi Havilio to chief city prosecutor, Atty. Danni Libman, and others, July 26, 2005.

28 Danni Libman, deputy to the municipal legal adviser, to: Meir Margalit, Jan. 5, 2010



However, this may soon change. A new law promoted by Knesset members from the right-wing Yisrael Beiteinu party and passed October 20, 2010 states that the demolition of an illegal structure will be done at the expense of its owner. According to the clarification notes for this law's proposal, it is meant to provide the state with "operative tools" for dealing with illegal construction. According to these members of Knesset it will create "budget justice" since the state should not be paying for the cost of illegal construction. It is important to note that although the law does not distinguish between Israeli and Palestinian illegal construction, those who promoted the law are well aware of the fact that most of the demolitions that take place within the Green Line are in the Palestinian sector, both in the Galilee and the Negev, so it is clear that the law is designed for the Palestinian population, even without an explicit statement.

And indeed, in the beginning of 2011 the municipality changed its policy and decided to enact "financial sanctions as a means of controlling illegal construction." According to this, not only would the cost of the demolition be collected from the defendant, but in addition "the demolition cost will be extremely high."<sup>29</sup> In a reply to our inquiry, the legal department announced that "many demands for payment and law suits are expected to be filed soon." The municipality also hired an external law firm to file civil lawsuits for retrieving demolition expenses.<sup>30</sup>

It should be noted that even though the changes in enforcement policy are well felt in the neighborhoods of East Jerusalem, there are some who claim that the purpose of this municipal policy is not the enforcement of law but rather the extortion of money from the residents. This was explicitly stated in a verdict by Justice Tamar Bar-Asher Tzaban: "The inescapable impression is that the only actions taken against a defendant who violates judicial orders are the issuing of additional indictments. This does nothing to promote the enforcement of the law but at most serves as a mechanism for collecting additional fines."<sup>31</sup>

## DIFFICULTIES WITH FILING APPEALS

The new policy against those who build without a permit is not carried out by the municipality alone, but also by other authorities, including courts of law. During the past few years we have witnessed a situation in which the district court imposes heavy fines on residents who appeal the rulings of the Court of

29 The Mayor's office, A new enforcement and planning policy for East Jerusalem neighborhoods, January 1, 2011.

30 Danni Libman, deputy to the municipal legal adviser, to Meir Margalit, Jan. 5, 2010.

31 Justice Tamar Bar-Asher Tzaban, criminal file 5634/07

Local Affairs, in an attempt to keep residents from filing any further appeals. Every resident has the right to appeal by law, and any person whose house is about to be demolished has a moral obligation to appeal as well. Even though there's nothing more ordinary than appealing to a higher court, the district court in Jerusalem punishes those who appeal with hefty fines, sometimes for as much as 10,000 NIS, claiming that the appeal is nothing more than an empty argument in an attempt to stall the demolition order. This is not the place to examine if these appeals are legally justifiable. It is enough to mention one case in which a district judge took over 17 pages to explain why an appeal filed by Attorney Sami Ershid is nothing but an empty argument. The question is, if this was merely an attempt to delay the execution of a demolition order, why take up 17 pages to prove that this was in fact a baseless appeal?<sup>32</sup>

It is clear that, from a moral perspective, every person is entitled to use any legal means necessary even if it seems futile. A state which takes extreme measures such as house demolition, must at least allow those affected by the policy to use any legal means possible to protect their homes. A court that imposes fines on the appellants violates their basic right to defend their property and sends a message of intimidation. And indeed, many fear that in addition to the damages caused to them from the demolition of their house and the cost of hiring a lawyer, an additional fine will be imposed on them, which they will be unable to afford. In effect, the court terrorizes these people and prevents them from defending their house with the use of a legitimate legal option, a right reserved for any resident, even if success is unlikely.

## **FUTURE CHANGES IN THE PLANNING AND BUILDING LAW**

At the beginning of 2008 the Ministry of Justice initiated a far-reaching reform in the Planning and Building Law in order to harden measures taken toward those who build without a permit. In the clarification notes for the amendment, submitted to the Knesset, illegal construction is considered a direct result of the lack of prosecution, the prolongation of proceedings and the court's lenient penalties. Not even once is it considered that it is the policy which forces people into becoming criminals. According to those who proposed the amendment, the reason for breaking the law is always an attempt to make an easy profit, which is why "the suggested amendments to the law express the need to strengthen the enforcement system together with the need for tougher punishments." They go on to state that "when the state shows determination and persistence...it helps to prevent new violations." Again it should be noted

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32 Justice Y. Noam's verdict, Jerusalem District Court, criminal appeal 2043/08, April 1, 2008. Also verdict by the same judge, criminal appeal 40168/07, April 16, 2007.

that Israeli law does not distinguish between Israelis and Palestinians and does not explicitly refer to the Palestinian sector. However, it is difficult to ignore the feeling that this amendment is intended to make life more difficult for Palestinians.

The proposed amendment grants the Local Planning and Building Committee additional powers, removes legal obstacles that make it difficult to demolish houses and, as the proposal describes it, “grants the district committee flexibility in carrying out its actions.”<sup>33</sup>

Thus, for instance, the amendment authorizes the Ministry of Interior to appoint an ad hoc committee to replace a local committee when the latter does not perform its duties. This step is meant to target the Palestinian sector’s planning and construction committees, who of course find it difficult to carry out demolitions in their own villages. This amendment restricts the judicial right to postpone the execution of a demolition order ex parte and requires the court to hear the state’s view before postponing the demolition and gives additional powers to the courts of local affairs in order to prevent people from appealing to the municipal court.

This amendment also targets the legalization of construction violations post factum. This practice is seen as encouraging illegal construction by holding people personally responsible for issuing building permits retroactively with a sentence of up to three years of imprisonment in cases in which the person signing the document has been aware of the structure not being built according to the local plan.

Another section in this proposal offers a prison sentence of up to three years for using the structure without a permit or any extensions made to a structure without a permit. This proposal includes granting building inspectors greater powers, including investigative authority that was previously given only to the police, along with the right to remove any person or object from an area in which a building violation occurs, the right to enter premises without the consent of the landowners and the right to use “reasonable force.”

One of the articles in this amendment touches on the violation of court orders and states that the punishment should be changed from one year of imprisonment to two and, in extreme cases, up to three. The state also claims that in many cases it is difficult to locate the person responsible for the building violation. Too much time and money are spent on a lengthy legal process, which is why the filing of a lawsuit is alleged to be unnecessary. Instead, the amendment

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33 The State of Israel, Ministry of Interior, the attorney general’s office, memo for the Planning and Building Law (Amendment), 2008, signed by Atty. Yehuda Zomrat, Feb. 25, 2008.

would allow the demolition of a structure even without a conviction, when the state finds that there is justification to do so, or if the prosecutor believes that there is no public interest in the continuation of the inquiry or in pursuing the legal procedure.

Another section in this proposal seeks to extend to 90 days (instead of 30 days) the time period for the execution of an administrative demolition. This “liberalization” is offset by the suggestion that instead of doubling the fine it should be quadrupled.

These proposals prove two counts: first, the existing enforcement policy does not prevent illegal construction or there would be no need for amending the law; second, the Israeli government is unable to think of any solution other than the use of punishment, and if that does not work, it must be because not enough punishment has been applied.

This proposed amendment will not solve the problem. Those who want to build in accordance to the law are faced with so many difficulties that they are left with no option but to build without a permit. We will elaborate on this dilemma extensively in the next chapter.

**הודעה ואזהרה**

עיריית ירושלים ממונה על אכיפת הוראות חוק התכנון והבנייה ומניעת בנייה ללא היתר כחוק. הבנייה הבלתי חוקית הפכה למכת מדינה הפוגעת באופן חמור באיכות החיים בעיר. עיריית ירושלים מודיעה כי בכוונתה להגביר את המאמצים לאכיפת הוראת חוק התכנון והבנייה. במסגרת מאמצים אלו ינקטו, בין היתר, הצעדים הבאים, שחלקם ננקטים כבר היום:

- יבוצעו תצלומי אוויר לאיתור עבירות.
- ייתמסו כלים המשמשים לביצוע עבירות בנייה (כגון טרקטורים, מערבלי בטון, משאבות בטון, גנרטורים, פטישי אוויר וכיוצא באלה).
- יונשו כתבי אישום במהירות כנגד מבצעי עבירות בנייה בהם תדרוש התביעה העירונית עונשים מחמירים לרבות מאסר בפועל בעבירות חמורות.
- יתבקשו צווי הריסה מיידים שיבוצעו על ידי הועדה המקומית וכן צווי איסור שימוש בלי שינתנו ארכות להכשרת העבירה.
- יוצאו צווי הריסה מנהליים.
- במקרים של עבירות חמורות או הפרת צוים או מקרים מתאימים אחרים תתבנד העירייה בועדות התכנון להכשרת העבירה.
- הצעדים הנ"ל נעשים לטובת כלל הציבור, שמירת חזות העיר ושלטון החוק.

אוסנת פוסט, אדר' מי"מ מהנדס העיר

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## NOTICE AND WARNING

A notice was published in the newspapers in Hebrew and in Arabic in which the municipality warns that it is increasing its enforcement against illegal construction, including confiscation of the equipment for building, rapid trials and heavy punishment including imprisonment, high fines, immediate destruction of the building, and opposition to obtaining retroactive building permits.

An internal source in the municipality explained that the notice is designed to warn the inhabitants of East Jerusalem, but fearing that the municipality would be blamed for deliberate injury to the Arab population, it was also published also in Hebrew.



## Discrimination In The Execution Of Demolition Orders

Discrimination against East Jerusalem residents is expressed in two areas over which the municipality has full control: 1) The appropriation of lands for residential purposes; 2) the channeling of funds for a variety of municipal services provided by the state via the municipality. The first control mechanism limits the areas in which a resident is permitted to reside and the second the quality of life he will have. The first confines him to a restricted physical area, and the second limits his status. For it should be acknowledged that unlike in West Jerusalem, where land and funds are appropriated by the municipality as a service to the residents, in East Jerusalem they are first and foremost tools used to consolidate Israeli control. With them, the municipality informs the residents who controls the city and allows them to know where their place is in the urban hierarchy.

Whenever a Palestinian resident comes in contact with the municipal system he is reminded what he is up against. East Jerusalem is in a state of neglect. The terrible condition of roads, the piles of garbage in the streets, the terrible state of classrooms, all of these etch in the mind of the Palestinian resident the notion that he is a second-class resident with minimal rights, at the mercy of the Jewish authorities. The message received is one of deprivation. Every trip to West Jerusalem reinforces the message that he is of inferior status and that as a second-class resident he must obey the governing authority. Hence, we see that discrimination and deprivation are tools used in order to discipline Palestinians and break their spirits. Without acknowledging this, one cannot understand what drives the municipality to discriminate against East Jerusalem and why the municipality is so eager to demolish “illegal buildings” in East Jerusalem or to spend millions of shekels for the demolition of houses in remote areas no Jewish man has ever set foot on.

## SELECTIVE ENFORCEMENT

*“There’s a sense that the law enforcement system never reaches the western part of the city. It’s in a state of anarchy, an ongoing state of total chaos. Everyone knows that in the Jewish sector building violations are never demolished, and those who build without a permit are fined three years later for 300 NIS and move on to their next building violation. The message that comes across is that breaking the law pays off.”<sup>34</sup>*

*David Kroyanker, one of the most prominent urban planners in Jerusalem.*

The ongoing debate over whether discrimination exists in Jerusalem has been long settled by reports written by the city comptroller and statements made by Mayor Nir Barkat himself. The issue of discrimination in the execution of demolition orders has been addressed by the city comptroller several times. In 2006 she inspected the distribution of demolition orders over East and West Jerusalem and wrote on the matter in dry, circumspect but unequivocal language that “the use of orders is not always impartial” and, to remove any room for doubt, she added that “the number of orders issued and carried out in East Jerusalem is much larger than in West Jerusalem. The number of orders that do not get signed, and, as a result cannot be carried out, is much larger in West Jerusalem.”<sup>35</sup>

In his efforts to prevent the sealing of Beit Yehonatan (a mid-rise building erected by Israeli settlers in the Palestinian Silwan neighborhood), Mayor Nir Barkat supplied us with additional evidence backing up our claim that the municipality has discriminatory policies. We should start by saying that Nir Barkat’s conduct is disgraceful, but even though his motives are not pure (we will elaborate later on this matter), they led him to insights in support of our understanding that East Jerusalem is discriminated against. He claims that when he looked into the question of law enforcement in East Jerusalem, he found a municipal authority that was acting in a way described by him as “flawed for having an illegitimate goal” and as “discrimination between equals.”<sup>36</sup> Barkat was of course not speaking of the discrimination against Palestinians; on the contrary, he was accusing the then municipal legal adviser, Yossi Havilio, of discrimination against Jews for political reasons. (This claim was rejected by the court). In light of the flaws he found in the system, he decided to delay the sealing of Beit Yehonatan pending the establishment of clear criteria and “transparent and unbiased standards, not only in essence,

34 Ilan Lior, «Shir Hashkhuna,» KolHazman, Oct. 3, 2003.

35 City comptroller report, Nov. 2006, p. 301.

39 ibid



but also in appearance.”<sup>37</sup>

Mayor Barkat explained that the need for establishing “unbiased standards” is due to the lack of clear criteria by which demolition should be carried out, and, with hundreds of demolition orders that have piled up on the desks of city hall, it is not clear what consideration the municipality takes into account when it decides to carry out one order but not the other.<sup>38</sup> “In the absence of a comprehensive policy, the question that arises is why the council [the Local Planning and Building Committee] took upon itself only some orders and also why there are hundreds of orders that the committee [has never asked] to be implemented despite the long period of time that has passed since the orders were supposed to be carried out.” For that reason he insists on setting up a series of criteria that will serve as an “important instrument for the realization of the principle of equality before the law [emphasized in the original] and with its implementation a sense of justice and social order will be strengthened.” These strong words confirm that the municipality’s conduct has been biased and unjust.

Another statement in the same spirit was made by the Mayor in a meeting with high-ranking police officers when he asserted that these criteria are needed because there is a lack of a “clear enforcement policy that is egalitarian and transparent.”<sup>39</sup> Also, a document released by the Mayor’s office emphasizes new municipal policies for East Jerusalem, clearly stating that in the absence of a comprehensive policy, what has been created is a state of “selective enforcement,” which is really just a euphemism for discriminative enforcement.<sup>40</sup>

Everyone seems to agree on the fact that discrimination exists in the corridors of city hall, and the point of contention revolves around the question of who is the benefactor of this policy and who is discriminated against. We will make the case for what was stated by the city comptroller: The Palestinian residents are discriminated against, and not the other way around.

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37 City council meeting no. 22, Feb. 18, 2010. The Local Planning and Building Committee’s recommendation for criteria by which to execute enforcement orders and enforcement policy, Section 2.5.

38 Ibid., Section 6.

39 Summary of a meeting at the Mayor’s Office on July 13, 2010 under the topic “enforcement in East Jerusalem,” in the presence of Jerusalem District Police Commander Aharon Franco and other senior officials, Section 2.2.

40 Jerusalem Municipality, the Mayor’s Office, A new policy for planning and enforcement for East Jerusalem neighborhoods, Jan. 30, 2011.

## WHO IS THE VICTIM OF DISCRIMINATION?

The following table shows how disproportionately the law is enforced in East Jerusalem and covers the five years in which Uri Lupolianski was Mayor. The data make clear that most illegal construction takes place in West Jerusalem, while most demolitions are carried out in East Jerusalem.<sup>44</sup>

TABLE 2.1 EAST JERUSALEM VS. WEST JERUSALEM DEMOLITION STATISTICS

Year	Area	Building Violations Detected	Indictments Handed	Demolition Orders Issued	Demolitions Carried Out
2004	East J.	1,386	475	252	115
	West J.	5,583	1,235	77	13
2005	East J.	1,529	432	122	76
	West J.	5,653	925	53	26
2006	East J.	1,031	407	113	71
	West J.	3,724	867	45	37
2007	East J.	905	494	110	69
	West J.	3,295	747	42	35
2008	East J.	1,047	695	133	88
	West J.	3,164	798	46	40

A common claim made by the authorities is that the east/west comparison is not completely fair because there is a difference in the severity of the building violations in the two areas, with those in West Jerusalem being relatively insignificant and, thus not requiring demolition, whereas those in East Jerusalem are more serious and do require demolition. However, the data presented here proves that even when dealing with similar violations, the number of orders issued for East Jerusalem far exceeds that of West Jerusalem.<sup>42</sup>

41 House demolition data are according to the Licensing Supervision Division's report, written by Zachi Katz, Feb. 2, 2009. It should be noted that the number of demolitions in 2004 does not match the number that appears on other municipal reports, which is 128.

42 Micha Ben-Nun, head of the Licensing Supervision Unit, to councilor Pepe Alalu, Jan. 16, 2006.

It should be noted that self-demolitions are not included in this table, and, had they been included, the gap between the two parts of the city would have increased considerably.

In order to better understand the significance of the table, let us break it down to its constituents and look at all five years combined. By doing so we learn the following facts:

1. Most illegal construction took place in West Jerusalem. This should not come as a surprise, as two-thirds of the city’s population lives in West Jerusalem in more than 178,000 buildings. However, this is often forgotten in public debate, in which Palestinians are portrayed as repeat offenders and Jews as law abiding citizens.

TABLE 2.2 EAST JERUSALEM VS. WEST JERUSALEM ILLEGAL CONSTRUCTION

East Jerusalem	West Jerusalem
5,898	21,419

2. Even though the number of violations detected in West Jerusalem is larger, the percentage of violations that go on to become judicial or administrative demolition orders is much larger in East Jerusalem.

TABLE 2.3 EAST JERUSALEM VS. WEST JERUSALEM PERCENTAGE OF VIOLATIONS THAT GO ON TO BECOME JUDICIAL OR ADMINISTRATIVE DEMOLITION ORDERS

	West Jerusalem	East Jerusalem
Building Violations	21,419	5,898
Judicial Demolition Orders Issued	5,817 27% of all violations in West Jerusalem	5,004 84% of all violations in East Jerusalem
Administrative Demolition Orders Issued	390	361

As we have noted before, the municipality claims that the asymmetry in demolitions reflects the severity of the violations, with those in West Jerusalem being minor building violations not justifying a judicial demolition order. This

claim is unacceptable. It is not in the municipality’s authority to sift through violations and decide which should be enforced. Only a court of law may decide if a structure should be demolished. The municipality is required by law to file charges for all violations, and only a judge is allowed to determine the fate of an illegal structure, whether the violation is minor or not.

3. The proportion of the number of demolitions to the number of indictments and administrative demolition orders carried out is much higher in East Jerusalem. Even though the percentages of demolitions are low in both areas, the fact stands out that three times more buildings have been demolished in the east.

TABLE 2.4 ADMINISTRATIVE AND JUDICIAL DEMOLITION ORDERS ISSUED AND NUMBER OF DEMOLITIONS CARRIED OUT

	<b>West Jerusalem</b>	<b>East Jerusalem</b>
Administrative and Judicial Demolition Orders Issued	5,817	5,004
Demolitions Carried Out	153 2.6% of all orders in West Jerusalem	417 8.3% of all orders in East Jerusalem

We can give the data two explanations, both of them speculative. The first explanation is that the difference between east and west is due to political considerations on the part of the Mayor. The second is a lack of proper legal representation for many East Jerusalem residents, who cannot afford to hire experienced lawyers and lose time and again in court, often when they are represented by lawyers appointed by the public defense, who usually have no motivation to defend building violations in the Palestinian sector. Whatever the reason, the result is a large difference in the execution of demolition orders between East and West Jerusalem.

### **ORDERS THAT THE MAYOR REFUSES TO SIGN**

Additional data, focusing on the Mayor’s conduct, strengthens the argument that discrimination in the execution of demolition orders finds its source in the political leadership. Data has been released reluctantly by the municipality regarding the number of orders awaiting the Mayor’s signature. The chart below shows the number of orders that were handed over to the Mayor after being approved by the Construction Supervision Unit, Jerusalem’s legal

consultant and the municipal director, together with the number of orders the Mayor has refused to sign and authorize. The pattern proves that discrimination begins at the top of the pyramid.<sup>43</sup>

TABLE 2.5 NUMBER OF ORDERS THAT THE MAYOR REFUSES TO SIGN

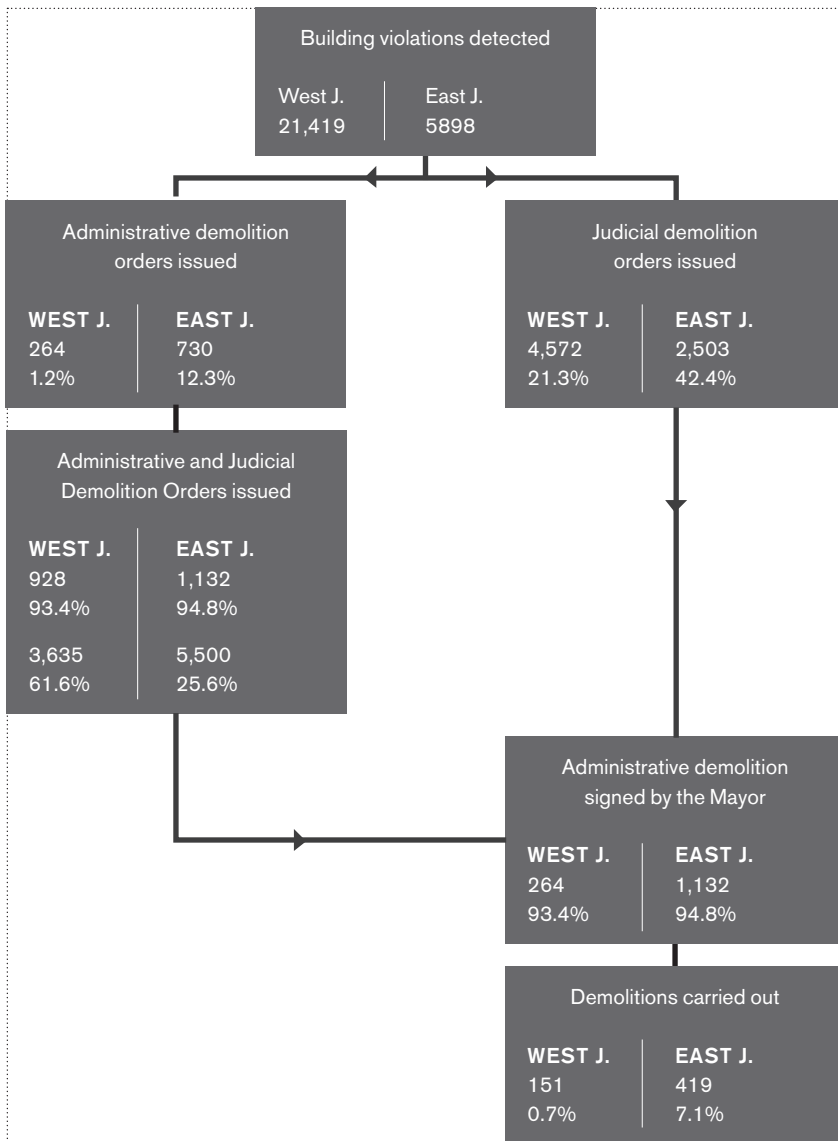
Year	East Jerusalem		West Jerusalem	
	Orders Received	Orders the Mayor Refused to Sign	Orders Received	Orders the Mayor Refused to Sign
2004	131	15	12	4
2005	122	6	52	11
2006	113	15	43	7
2007	110	6	43	12
2008	115	30	42	23
Total	591	72 (12%)	192	57 (29%)

These figures are clear-cut proof of discrimination because unlike the previously presented information, which the municipality could claim does not reflect the severity of the violations in the two areas of the city by pointing out that not every violation justifies demolition, here this claim is clearly not valid because the professional bureaucracy has determined that these violations indeed require demolitions. We are faced with a situation in which the Mayor, whose authorization for demolition is required, has refused to sign 29 percent of the demolition orders for West Jerusalem while declining only 12 percent for East Jerusalem. We have here a clear expression of discrimination coming from the Mayor. If the Mayor himself discriminates, it should come as no surprise that others take the hint and act accordingly.

It should be noted that the current Mayor, Nir Barkat, has paid attention to the city comptroller's criticism and enacted a new process, in which all cases are brought from the Construction Supervision Unit directly to him, before being forwarded to the other officials. He then decides in a preliminary stage which of the cases will be passed on, creating a situation in which there are practically no orders that the Mayor refuses to sign, having been pre-approved by him. The next flow chart presents the demolitions carried out from 2004 to 2008.

43 Data provided by Ofir May, head of the Construction Supervision Unit, 16.12.2008

FIGURE 2.1 DEMOLITIONS CARRIED OUT FROM 2004 TO 2008



It should be noted once more that even though the numbers speak for themselves, they do not reveal a stark reality: most of the constructions demolished in East Jerusalem are entire buildings, while those in West Jerusalem are only extensions added on existing buildings, not a complete house. A good way of illustrating the difference between demolitions in East Jerusalem and West Jerusalem is by comparing two cases of demolitions carried out only two days from each other, one in East Jerusalem, on

November 17, 2010, and the other in West Jerusalem, on November 19, 2010. The demolition in East Jerusalem was of an entire house of 110 sq.m in the neighborhood of Beit Hanina, whereas the one in West Jerusalem was of a balcony of 19 sq.m in the Musrara neighborhood. Both will appear on the Construction Supervision Unit's report as cases in which "a structure" has been demolished. Indeed, both of them are demolitions of "structures," but the one in East Jerusalem left a family with six children homeless whereas in West Jerusalem we are speaking of no more than a porch. It is no coincidence that the municipality uses the term "structure" and not "house," for if it used "house," the claim that there's equal treatment in the execution of demolition orders would be exposed as deceitful.

### **THE EPITOME OF DISCRIMINATION: A CASE STUDY**

Additional evidence for municipal discrimination was provided by the Court for Local Affairs in Jerusalem when Justice H. Lachowitzki found it necessary to cancel an administrative demolition order against a building under Palestinian ownership on the grounds that the municipality held a double standard, having failed to press charges against Jewish neighbors for a similar offence. This case exposes the ugly face of discrimination. By examining the indictment we learn that a structure of 105 sq.m under Palestinian ownership was served an administrative demolition order soon after it was detected. At the same time, in the same vicinity, a three-storey 345 sq.m building, intended to serve as a yeshiva for the Ir-David Foundation was served an order to desist from using the building. The judge rejected the municipality's arguments and noted that, faced with two similar offences, the municipality took harsh legal action against the Palestinian-owned building but has taken "less severe legal action" against the intended yeshiva by merely prohibiting the use of the structure.

The judge rescinded the demolition order against the Palestinian building and concluded by saying that "the ownership of the two buildings as it may be, and regardless of the purposes of the buildings, the difference between the courses of action taken by the respondent [the municipality] in treatment of the two cases was so disturbing and alarming that it could no longer be ignored by this court.... [Being] convinced that there was no reason to act differently in the two cases and not being provided with justification for the responder's unequal treatment of the two cases, I find that there is a major flaw in the bureaucratic procedure that justifies the cancellation of the order. The respondent may apply the same proceedings as were applied to the other structure... I hereby cancel the order."

## THE CASE OF BEIT YEHONATAN: ANATOMY OF INSTITUTIONALIZED DISCRIMINATION

Beit Yehonatan is a name given to a seven-storey building that was built without a permit in the neighborhood of Silwan and is populated by settlers of the Ateret Cohanim organization, which we will speak of at length later on. In February 2007 the court ruled that the building is to be emptied and sealed, but the municipality has failed to comply with the court's ruling and has been vigorously fighting to keep the building from being sealed. The measures taken by the municipality to circumvent the court's order shed light on the municipal establishment's behavioral patterns, and teach us how far it is willing to go when illegal construction for Jewish settlers in East Jerusalem is concerned.

In the case of BeitYehonatan, discrimination begins with the Construction Supervision Unit first "discovering" the existence of this building three years after the beginning of its construction. A municipal supervisor first learnt about it in October 2003 in a notification sent by the Meretz party to the municipality's legal advisor. A thorough investigation revealed that a local resident, who worked for the Ateret Cohanim organization, had been living there at the time for at least one year, and that the construction work had begun two years earlier, which adds up to three years. Three years that a seven story building had stood without being noticed by a single municipal supervisor. We can stop here and point out the inequality. Most Palestinian construction work is immediately detected and interrupted.

The discrimination is also expressed in the amount of time that passed from the building's "discovery" by the municipality to the issuance of the sealing order: the supervisory file was opened October 1, 2003. The first investigation was made seven months later on May 5, 2004. Six additional months passed before the first field inspection was made in December 2004, and the first indictment was filed in December 2005, a year later. Obviously, such a situation, in which two years pass between the discovery of the offense and the filing of the indictment, would never happen were it concerned with East Jerusalem Palestinians.

The trial itself was long and tedious. In the time since the court made its ruling at the beginning of 2007 and the time these lines have been written in 2012, five years have passed. Today, a combination of political pressure from right-wing parties, together with strong feelings of empathy towards settlers on behalf of the Mayor, explains the municipality's disregard for the court's decision.



The Mayor's decision not to seal the building was made at the beginning of his term in February 2009 and was possibly an attempt to secure the vote of the national religious community. Disagreement over Mayor Barkat's decision not to carry out the court's decision has resulted in a bitter struggle between Barkat and Municipal Legal Advisor Atty. Yossi Havelio. The Mayor claimed that it is in his authority to decide when and how court orders should be carried out and that he chose to delay the building's sealing on grounds of "public interest." However, after he realized that he would not be able to use this argument much longer, he initiated a large-scale plan for the legalization of Beit Yehonatan. The municipality's legal advisor, backed up by Israel's attorney general, argued vehemently that no political element, not even the Mayor himself, is authorized to intervene in a criminal proceeding. Once the court has made a ruling, the municipality has no choice but to carry out the ruling to the letter and without delay.

Their conflict brought about an absurd situation in which, when MK Uri Ariel appealed to the Supreme Court against the attorney general in yet another attempt to delay the order to seal the building, two separate legal opinions were presented by the municipality, one by the legal advisor and the opposite opinion by the Mayor, who was represented by a private lawyer. The director of the Division for the Enforcement of Real Estate Law at the state prosecutor's office, Hovav Artzi, supported Havelio's position, even though he had to admit in front of the state comptroller's committee that the municipality does hold the right to decide on the order in which it carries out orders: "We do not intervene by determining the order of operations. Our expectations are only for a fixed policy, to be carried out with reason and order." (This statement was made at the conclusion of a meeting at the Mayor's office on July 13, 2010).

In order to buy time until the institutions involved with planning approve this new urban plan, the Mayor presented an additional plan aimed at "creating regulations for illegal construction in Jerusalem." He harshly criticized the current East Jerusalem bureaucratic and planning situation, which has resulted from "years of neglect by the Israeli legal and planning systems." He continues to announce the municipality's intention to promote a general solution that would include the creation of zonal outline plans and would make the bureaucratic procedure of obtaining a building permit much easier. Gan Hamelech in Silwan, and the western slopes of Silwan, where Beit Yehonatan is located (both neighborhoods targeted by Jewish settlers) will act as pilot projects, after which more neighborhoods will be added. For that purpose, the municipality has approved a resolution that states, among other things, that a subcommittee headed by the chairman of the Local Planning and Building

Committee will examine ways for promoting urban plans “and in doing so will recommend the degree of necessity for carrying out each of the demolition and sealing orders.” In other words, the decision to carry out a demolition order or not will be left to the Mayor. After the court rules, the Mayor still has the final word. Again, the legal advisor was enraged, but the Mayor ignored him, and as a result of the struggle between the two, the legal advisor was forced to resign.

The Mayor’s fight against the sealing of Beit Yehonatan is a masterpiece of discrimination. The entire establishment was recruited in order to back up a decision that reeks of wrongful conduct and a pretentious and expensive project launched in order to save a building inhabited by settlers. Tens of municipal workers, mostly urban planners, engineers and architects from the engineering department worked to complete this new plan in record-breaking speed, in order to satisfy the Mayor’s desire and save the Jewish building in the heart of Silwan. The plan reached the Local Planning and Building Committee unfinished but was nevertheless authorized. Municipal officials said, off the record, that if any other plan had been brought to them in such a casual manner it would not have been tolerated. The municipality has proved that it is willing to spend a large amount of energy and resources on attempts to cover up discrimination and in addition claim with a straight face that the plan is also good for the Palestinian residents. Obviously, such a great effort to save a building would never have been made had there not been settlers. For a building owned by Palestinians the Mayor would not have bothered to make any effort.

In addition to the Mayor’s efforts, the deputy Mayor also made a small contribution which, though not as sophisticated as the Mayor’s, is just as deceitful. Since the beginning of 2010, Deputy Mayor David Hadari (Mafdal-National Union), who holds the economic portfolio, has applied a very unique tactic to prevent the sealing of Beit Yehonatan: he has suspended the activity of the Construction Supervision Unit by refusing to authorize the department’s budget. Without a budget the department cannot function. Many in city hall were outraged. The legal advisor to the municipality blamed him for interfering in the legal process while David Hadari, for his part, claimed that he is not willing to sign the budget because the department does not follow the city council’s decisions and carries out demolitions without following the criteria set by the council. He added, “in light of that...no funds for the execution of demolitions should be authorized, so long as it’s not clear that the council’s decisions and municipal policy is followed.” This tactic lasted for three months, after which Hadari was forced to authorize the budget. Even though it was not

the most elegant and sophisticated trick, it allowed Beit Yehonatan to be free of concerns for three more months.



## The Rational For illegal Construction

“We turned these people into criminals, having caused them to build illegally by not giving them any other option.”<sup>44</sup>

In these words former Jerusalem district planner Binat Schwartz sums up the reasons for illegal construction in East Jerusalem. In clear and explicit language she states that a set of systemic flaws render the process of obtaining a building permit practically impossible. This statement is joined by many others made by people who are familiar with this matter from various perspectives. The city comptroller sees a direct link between unlicensed construction and the long and exhausting process one must go through when trying to obtain a permit: “The process in which building permits are acquired takes so long, that it sometimes causes those who apply for it to commit a building violation by building before receiving the permit.”<sup>45</sup> Even though her statement was made in regards to both parts of Jerusalem, we may add that if this is the situation in West Jerusalem, the situation in East Jerusalem, with its additional difficulties, is more complicated. Even the director of the Construction and Licensing Supervision Department, the person directly responsible for house demolition in the municipality, responded to the comptroller’s statement by saying that “...the process of permit issuance borders [on] the absurd.”<sup>46</sup>

The Municipal Attorney’s Office also stated, in response to an appeal made

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44 Irus Braverman, *Powers of Illegality: House Demolitions and Resistance in East Jerusalem*, Tami Shtienitz Center, 2006, p. 43.

45 Municipality of Jerusalem, city comptroller’s report for 2009-2010, p. 219.

46 *Ibid*, p. 180. This comment, made by department director Tzahi Katz, is an attempt to excuse himself of personal responsibility for the flaws the comptroller found in his department.

against the approval of the construction plan in “Gan Hamelech” in Silwan, that the plan is part of a larger urban plan promoted by the Mayor and designed to address “years of neglect in the field of planning” from which the Palestinian residents of East Jerusalem suffer.<sup>47</sup>

As if the words of the professional staff were not enough, Mayor Barkat also recognizes that systemic flaws are responsible for illegal construction. He has expressed his opinions on causes for illegal construction in many occasions, and among the causes he notes: “Insufficient amount of land for construction or lands on which it is impossible to build large structures”; “a lack of an adequate outline plan”;<sup>48</sup> “a policy that does not meet the needs of the public”; “large gaps between the needs and reality,”<sup>49</sup> and more. The matter is so pressing that he declares that “the process in which licenses are obtained should be completely reworked,” and adds that by using only the existing tools at the establishment’s disposal there can be no solution to the problem, which is why he says that “we must search for solutions outside the box; this situation demands a reform in the way we think.”<sup>50</sup> The obvious question is this: why do Palestinian residents have to pay for the failures of an administration that is not accountable to them?

In this chapter we will specify the common difficulties that prevent the residents of East Jerusalem from building in accordance with the law.

## THE PLANNING AND BUILDING LAW

*“It’s impossible to work within the legal framework in East Jerusalem. East Jerusalem lives and behaves differently. Today almost no one is able to comply with the law and that is why the number of permits is so small...It’s almost impossible to issue building permits... The Planning and Building Law in its current form will not solve the problem.”*

*Yakir Segev, Jerusalem municipal council member holding the East Jerusalem portfolio.<sup>51</sup>*

The Planning and Building Law is the central problem faced by East Jerusalem residents. A special ministerial committee was formed by the Israeli

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47 The Jerusalem District Court, administrative appeal 26766-07-10

48 Report about illegal construction in East Jerusalem, submitted by the Mayor to the Constitution, Law and Justice Committee in the Knesset on Dec. 13, 2009.

49 Mayor Barkat at the municipal coalition meeting, Nov. 23, 2009.

50 Mayor Barkat at the municipal coalition meeting, Nov. 23, 2009.

51 Moshe Shtienmetz, “Yakir Mizrach Halr: How a right wing person became East Jerusalem’s representative at the municipality,” KolHazman and NRG Ma’ariv, Jan. 19, 2010.

government in order to prepare legislation for a new planning law to replace the existing one, showing that no one denies that the law is problematic and must be changed. Over the past ten years the law has been amended more than 90 times, creating a state of disorder and confusion, a patchwork of legislation that eventually did not solve the problem at hand. Justice Vardi Zeiler has strongly asserted that the existing law encourages corruption, favoritism, and other illegal practices. Dr. Nurit Alfasi of Ben-Gurion University wrote that “the moral bankruptcy of the planning system is an open secret.”<sup>52</sup> In light of these words, it should be added that if the law is unfit for the general population of Israel, it is even less suitable for Israeli Palestinians, and especially for the Palestinians of East Jerusalem.

No law is completely free of ideology and morally neutral. The Planning and Building Law of 1965, much like many other laws legislated by the Israeli government, expresses the world view of the ruling classes and is a tool used for consolidating their hegemony and the groups' particular interests. Planning is in essence a forceful act, as it determines what the urban order should be and imposes the planner's values on people of other sectors who live in the same area. It is a tool used by rulers to regulate social, demographic and urban processes according to their own interests. The planning and building policy in the State of Israel is no exception: “The main organizations that make decisions regarding land policy follow an ethnocentric line of reasoning that mainly serves the establishment.”<sup>53</sup> The establishment wants to preserve a Jewish majority in the state, and to create a society that has a Western, liberal and nationalistic ideology.

This could be considered to be a legitimate goal, or at least a necessary evil, when it concerns the application of planning regulations on the Jewish population, but becomes more problematic when imposed on the Palestinian population, which is essentially different from the Jewish population. Any attempt at forcing it to conform to Western practices of construction and planning should be viewed as cultural coercion, an intrusion into the heart of Palestinian tradition.

Indeed, democracy requires that all residents be treated equally. However, the large cultural gaps in Israeli society are, not to say between East and West Jerusalem, they oblige us to examine each sector individually. Different cultures cannot be measured by similar standards. What is appropriate for a Western society is not necessarily good for a rural Eastern society in

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52 Nurit Alfasi, “A new planning and building law is needed,” *The Marker*, Jan. 5, 2010.

53 Oren Yiftachel and Sandy Kedar, *On Power and Land: The Israeli Land Regime*, in Shenhav, Yehuda (ed.), *Space, Land, Home*, 2003, p. 31.

which the extended family lives together. The element of coercion inherent in planning becomes even worse when the population in question is under occupation, and suffers from an inferior status. It is therefore easy to see why the Western system has a very low chance of being adopted by the Arab, Palestinian population.

East Jerusalem is a classic example of laws and regulations being imposed with complete disregard to a rural structure, the traditions of a community and the basic needs of a local population. Any discussion of illegal construction in East Jerusalem must not overlook the context in which the law is imposed, most notably the fact that it is unsuited for the place and harms the local population. Instead of speaking of “illegal construction” we should be speaking of inappropriate laws. The Planning and Building Law is a draconian law, and since the public is unable to meet its requirements, it infringes on the basic human rights of East Jerusalem residents.

The problem of inappropriate laws intensifies in the context of East Jerusalem. The relentless effort to “enforce the law” in East Jerusalem is in fact another method of securing Israeli control over East Jerusalem. Forty-five years of so-called “unification” cannot hide the fact that in Jerusalem two communities live side by side, one dominating and the other dominated. The Palestinians of East Jerusalem live under occupation. The laws of the state are to them the laws of the occupier. International law agrees with them and states that the Israeli occupation of East Jerusalem is illegal.

The relationship between Jews and Palestinians in Jerusalem is one between occupiers and occupied, or to follow the Israeli philosopher Yeshayahu Liebowitz’s metaphor, it is one between a horse and its rider. There is not even one single moment in which the Palestinian resident is not reminded by the establishment of his place in the social order. His inferiority forever stands out, and his existence under occupation is constantly present in his consciousness. The municipality’s enforcement operations cannot be regarded differently by Palestinians when municipal inspectors are escorted by the police, are themselves armed, and house demolition is carried out in a manner similar to military operations, with hundreds of police and military personnel being deployed. In this reality, the Planning and Building Law is seen as another means of oppression, and as a result there is no chance that the population will agree to play by the rules of the authorities.

After examining the problems inherent in the law, we will specify the difficulties that make obtaining a building permit almost impossible.



## **DIFFICULTIES IN OBTAINING A BUILDING PERMIT**

As we have emphasized, there are many difficulties in obtaining a building permit in East Jerusalem, and the chances of receiving one are very slim.

The five most common reasons (excuses) given for not issuing permits are:

- Planning, such as restrictions put on the sizes of areas assigned for construction, low building ratios, or the unification and re-division of tracts of land,
- Legal, such as providing proof of land ownership,
- Physical, such as a lack in proper infrastructure,
- Bureaucratic, the complexity of the process in which permits are issued, the obtaining of permits retroactively,
- Economic, such as the cost of the permit.

We will elaborate on these reasons:

### **1. REASONS THAT HAVE TO DO WITH PLANNING**

*“Where East Jerusalem’s Palestinian population is concerned, the matter is more complex, because there are many problems with construction in East Jerusalem that do not exist in West Jerusalem, that make it difficult to estimate the number of approved housing units, and to know how many out of them have been built. The central problems are that land ownership is largely undetermined, the complexity of land ownership, serious problems with infrastructure, and a general inability to compress the urban fabric any further.”*

*Jerusalem Chief Engineer Shlomo Eshkol, Nov. 18, 2009*

#### **1.1. THE GENERAL CHAOS IN THE PLANNING REALM**

There is no doubt that planning in East Jerusalem is a difficult and often impossible task. When an urban planner starts to work on a given area, he must take into account everything that had already been built in that area, and in accordance address such planning concerns as additional roads, public buildings, residential areas, green space and so on. It is therefore crucial that all construction is suspended while planning takes place. Landowners are required to cooperate by not building until the plan is approved. This is a perfectly reasonable demand when the processes of planning and approving

plans take a reasonable amount of time. However, East Jerusalem landowners know from experience that the process of planning is slow and complicated to the point that it seems to go on forever. That is why, when new members are added to a family, for instance when a son gets married, building is done without a permit, with disregard to future plans that at any rate have been suspended by the municipality or the Ministry of Interior.

More than once, after planning is completed and the municipal committee is about to authorize the plan, it turns out that the area for which the plan was prepared had been completely transformed by construction. Decision makers are then faced with two options: either to throw away the plan since it does not reflect the current state of affairs, or authorize it as it is, and mark any construction added in the meantime as “designated for demolition.” In most cases the municipality decides not to decide, and the implication is that the area is left with no plan, which in turn leads to more unlicensed construction.

An expression of this dead-end situation was given in a court hearing concerning a house demolition in Anata, in which the municipal prosecutor argued that the municipality had prepared an outline plan for that area, but it was impossible to put the plan into effect because of the “chaos in planning” that, according to her, was caused by illegal construction. When the judge asked her if she could estimate how long it would take for the plan to be authorized, she said it was impossible to know. He then insisted and asked: “What would the municipality advise those residents who do not know how long they must wait until a plan is authorized?” The prosecutor did not reply.<sup>54</sup>

Indeed, for the most part, the situation in East Jerusalem is chaotic, but it is not the residents who are responsible for creating it, but rather the results of negligence on part of the municipality, which did not find it necessary to move plans ahead at a reasonable pace. This argument, made over the years by human rights organizations, and scornfully rejected by the establishment, has been recently reaffirmed by Mayor Nir Barkat, who said that the increase in illegal construction is a matter that should concern “the entire system, and has worsened as a result of being neglected for many years by those in charge of planning and of the legal system in Israel.”<sup>55</sup>

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54 Shadi Hamdan vs. the attorney general and others, administrative appeal 8103/08, May 29, 2008.

55 Nir Barkat, “Regularizing of building offenses throughout the system in Jerusalem,” a position paper submitted to the Knesset’s Internal Affairs Committee, as part of his effort to save Beit Yehonatan, Dec. 13, 2009.

## 1.2. RESTRICTIONS ON THE AMOUNT OF LAND ASSIGNED FOR CONSTRUCTION

*“As for additional [land] areas for residential construction in East Jerusalem, it is obvious that more areas are needed due to a troubling shortage in areas authorized for construction, leading, among other things, to unchecked illegal construction on a large scale.”*

*Dalit Zilber, Jerusalem district planner, Ministry of Interior, Nov. 18, 2009*

This remark by the Ministry of Interior’s district planner was made following a demand made by representatives of right-wing parties on the city council to cut down on the amount of land assigned for residential use in East Jerusalem. Strangely enough, only after being criticized from the right was the Ministry of Interior’s professional bureaucracy willing to admit something that we have been saying for a long time, viz., that the amount of land assigned for construction in East Jerusalem is insufficient for the residents’ basic needs, and as a result they are forced to build without a permit.

The total area of the Palestinian neighborhoods in East Jerusalem is approximately 46,000 dunams (about 11,000 acres). About half of the area is addressed by 25 authorized urban plans that together cover an area of 24,665 dunams. In addition, seven more plans are in the process of being authorized. However, only 37 percent of the land in those plans, amounting to 9,178 dunams, is assigned for residential purposes. The remaining 63 percent is assigned for other purposes, such as green spaces and open spaces, or for public institutions and roads that will never be built, but in the meantime serve as a convenient cover to prevent construction. As we shall see, even in areas designated for construction, the chances of obtaining a building permit are very low.

The new outline plan, as noted above, was not yet authorized by the Ministry of Interior, though the municipality already had begun implementing it and creating a new reality on the ground. The unplanned areas fit into two categories. The first, an area of about 4,500 dunams is assigned for residential buildings, industry and parks, under the title “combined areas,” without specifying the ratio of each of the three land uses. Building on these areas is prohibited until a detailed plan is prepared. The second area falls under a new category called “urban areas,” which stretches over 15,000 dunams, and supposedly replaces the category of “unplanned areas” in the old outline plan. When the

municipality announced in 2000 its intention to prepare a new plan that would cover the entire municipal area, it understood that it would be inconceivable to leave so many areas within the city without a plan. This new category was therefore invented in order to bypass this problem and avoid criticism from the legal system, while the residents still faced the same difficulties as before in obtaining building permits. Indeed, unlike the previous situation in which one could not even apply for a permit, in this new state of affairs one can apply for a permit but has almost no chance of being granted one, in the absence of a detailed plan. It is also questionable whether the municipality will ever get around to creating a detailed plan of these areas. The only changes that distinguish the new plan from the old one are cosmetic. They look better on the map, but actually change nothing, in the absence of a detailed plan. In one respect the situation is now worse: with the previous plan the injustice was at least visible, whereas now criticism can be silenced with the argument that the area does not have a plan. We are faced with a new situation in which some areas cannot be said to have a plan and cannot be said not to have one. This situation is an example of what Professor Oren Yiftachel of Ben Gurion University refers to as “permanent temporariness,” following an Israeli remark that “nothing is more permanent than a temporary solution.” The new plan has created a virtual reality that exists only on the map, when in fact only minor changes have been made. This virtual reality gives the false impression that the problems have been resolved. Indeed, the new plan does solve a problem, the municipality’s problem, but not the problem faced by those who wish to obtain a building permit.

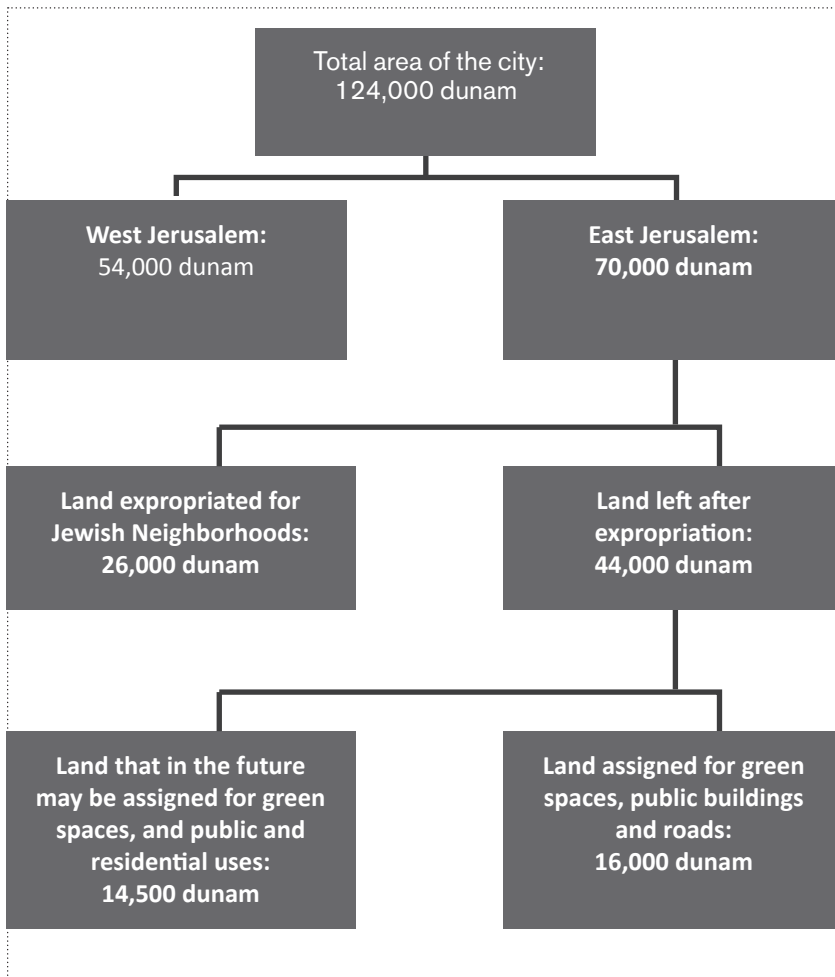
The obstacles in obtaining building permits are no coincidence. Amir Heshin, the Mayor’s former advisor for Palestinian affairs, wrote about the considerations taken into account in planning for East Jerusalem: “The planners in the city’s Chief Engineer’s Office, when outlining the borders of areas assigned for Palestinian neighborhoods, included only areas that have already been built on, while nearby open fields were assigned as “green spaces,” which means that they are off limits, or at least off limits until they are required for a residential project for Israelis.

Teddy Kollek’s plan from 1970 already contained the principals on which Israeli housing policy is based to this day: “The expropriation of Palestinian owned lands, the development of large Jewish neighborhoods in East Jerusalem, and the placing of limitations on the development of Palestinian neighborhoods.”<sup>56</sup>

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56 Amir Heshin, Bill Hutman, Avi Melamed, *Separate and Unequal, The Inside Story of Israel Rule in East Jerusalem*, 1999, p. 37.

FIGURE 3.1 LAND ASSIGNMENT IN EAST AND WEST JERUSALEM



At the beginning of 2012 an urgent query from the Foreign Ministry was received at the municipality, inquiring if a claim brought up at the UN Security Council was true, and whether East Jerusalem Palestinians are allowed to build on only 13 percent of the land. The municipality’s reply was this: “The Municipality of Jerusalem, like any other municipality in the world, is not entitled to ask a person for their religious beliefs or ethnicity when authorizing building permits, and would of course not discriminate on that basis. Requests concerning construction are examined by legal standards alone, which, as is known, do not distinguish a Jewish person from a Muslim or a Christian one. On privately owned land, the owner may build and/or sell land or an apartment, without any legal restrictions. The municipality and the state are forbidden by law from intervening in such cases, and would certainly not do so

on religious grounds. When state owned lands are marketed to the public, it is the highest bidding contractor or entrepreneur who wins the auction.<sup>57</sup> The obvious question that arises in light of this evasive reply is where is the answer to the question asked by the Foreign Ministry? It is no accident that they did not answer the question. It's not because the municipality lacks the tools for finding out the answer, but because they are ashamed to admit the truth. This correspondence is interesting because it sheds light on the mechanism by which the municipality keeps information not only from external elements, but also from itself. That is why it was important to quote the municipality's reply, which we will refer to again later on.

### 1.3. BUILDING RATIOS

Not only are there limitations on the areas appropriated for construction, but the building ratio is also controlled. According to the old outline plan, the building ratios on most of the lands designated for construction in East Jerusalem are between 35 percent and 75 percent, while those in West Jerusalem are between 75 percent and 120 percent, the official reason being "the rural character of the area should be preserved." As a result, while in West Jerusalem residential buildings may have up to six units per dunam on average in buildings of up to four stories, the buildings in East Jerusalem may have up to two units per dunam on average, in detached homes. A striking example of discrimination in building ratios is found in the East Jerusalem neighborhood of Ras El-Amud, where a Jewish settlement has been built in a compound called "Ma'ale HaZeitim." While the Jewish settlement was given a building ratio of 115 percent, its Palestinian neighbors received permission for only 50 percent. Another current example is found in the zoning plan in preparation for the "Giv'at HaMatos" area, which includes land assigned for the future expansion of the nearby neighborhood of Beit Safafa, where the plan recommends authorization of buildings of up to four storeys, while for the area assigned for the Jewish population eight storeys are recommended.

In the new outline plan, Jerusalem 2000, there is a certain improvement in the building ratios, but here too, the gap between East and West Jerusalem is maintained. While the ratios in West Jerusalem range from 280 percent to 320 percent, those in East Jerusalem range from 160 percent to 240 percent. This means that in West Jerusalem buildings may have up to 18 storeys (and up to 24 in the central business district), while in East Jerusalem the buildings may have no more than six storeys.<sup>58</sup>

57 Michal Shalem, chief of staff at the Jerusalem Municipality, to Gilad Cohen, head of the Foreign Ministry's coordination section, Mar. 14, 2012.

58 Table of rights and Building instructions, single planning structure 20077, plan no. 2000,

TABLE 3.1 BUILDING RATIOS IN EAST AND WEST JERUSALEM

Building Ratios in East Jerusalem	Building Ratios in West Jerusalem
160%-240%	280%-320%

It should be noted that recently the municipality has displayed some flexibility on this issue by authorizing buildings in which the permitted ratio has been exceeded. This, however, is done on a very small scale, does not meet the needs of the residents, and should be considered to be too little too late.

#### 1.4. APPROPRIATION FOR PUBLIC PURPOSES:

##### “REPARCELLATION”

In addition to the difficulties mentioned thus far, according to the law some of the area assigned for construction must be set aside for public purposes. When the land is owned by the state, and this is usually the case in West Jerusalem, the task is relatively easy, but when it's comprised of many small areas, each privately owned, as in East Jerusalem, this requirement is clearly unreasonable. In the northern part of East Jerusalem, in the neighborhoods of Beit Hanina and Shuafat, the appropriation of land for public purposes is accomplished through a complex process called “reparcellation,” in which all land parcels in a certain compound, owned by different people, must be first unified and then re-divided, with 40 percent being assigned for public purposes, and the rest divided among the owners.

Very rapidly this law turned out to be problematic. Attempts to reparable areas for over 20 years have been unsuccessful for many reasons, such as multiple ownership, the refusal of most landowners to give away their family's land and an inability to prove ownership.

Most East Jerusalem experts agree that this demand is draconic, impractical and inconsiderate of the cultural context. The architect Binat Schwarz, former Jerusalem District Planner at the Ministry of Interior, argues that this demand is foreign to the culture of Jerusalem Palestinians, because of their deep emotional attachment to their land,<sup>59</sup> which prevents them from even considering replacing it for a different tract of land. Despite the understanding that this process is unreasonable, the municipal establishment still requires it, and in recent years imposed it on East Jerusalem residents using a problematic method called “planning unification and reparcellation” in replacement of

Jun. 22, 2010, p. 44.

59 Irus Braverman, *House Demolitions in East Jerusalem: Illegality and Resistance*, Tami Steinmetz Center for Peace, Tel Aviv, 2006, p. 44.

the legal principle of “proprietary unification and reparcellation,” a method that bypasses the difficulty of determining land ownership, and imposes the partition and the arbitrary redistribution of tracts land among the owners. Using this method (which according to experts is legally unjustifiable) 30 plans of unification and reparcellation have been approved, and 20 more are expected, but it’s still not clear if they will be implemented.<sup>60</sup> In many cases, landowners have swapped the tracts of land that they ended up owning after reparcellation, so that each will keep his ancestral land. In many more cases, the redistribution of land has caused serious disputes between neighbors. It is still too early to appreciate the residents’ reaction to this aggressive method, where their land is taken away from them, and replaced by a different, smaller tract of land, and even worse, located in an area that doesn’t belong to the family.

If East Jerusalem Palestinians had a better chance of obtaining a building permit after reparcellation, they would at least come to terms with it. However, this is not the case. When a plan takes 20 years to get approved, an additional unexpected problem comes up: a sharp increase in the improvement tax, so that when a resident wishes to obtain a permit, he is required to pay a huge sum of money. The amount varies according to the size of the tract, its location, how developed its surroundings are, and other parameters. In the relatively costly neighborhood of Beit Hanina, the cost may reach up to 200,000 NIS (more than \$50,000) per dunam. The implication is that most of the neighborhood’s residents, who have waited many years for reparcellation to be completed, are now unable to afford the improvement tax. In other words, the municipality solved one problem only to create a second problem, which is just as bad. The new policy harms the residents just as much, and, under the current conditions, unification and re-dividing will remain an open wound for years to come.

## 1.5. DIFFICULTIES ENCOUNTERED WHEN TRYING TO CHANGE LAND DESIGNATION

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60 This is the data for 2010. It was provided by Amnon Arbel, the Deputy Director of the City Planning Department at the Jerusalem Municipality.



The Planning and Building Law allows the owner of land not designated for residential purposes to request a change in his land's designation. In such cases, however, municipal requirements make changing land designation almost impossible. According to the old outline plan, (which was in use almost until the end of 2010), the municipality was willing to discuss changes in land designation, but demanded that the size of the area in question was of at least 10 dunams, and thus being more convenient for the municipality than having to plan separately for several smaller tracts of land. This demand not only caused the price of planning to increase, but also required groups of neighbors, who were often not willing to cooperate with one another on sensitive property matters, to be well coordinated. Under these circumstances, it was practically impossible for the typical land owner, who in most cases owns less than one dunam, to apply for changing the land designation.

In addition to the 10-dunam requirement, the compound must be adjacent to an existing residential area. This requirement, designed to prevent the formation of construction enclaves inside green areas, prevents the possibility of changing the land designation of any green area to a residential area.

In the new outline plan, "Jerusalem 2000," requirements for changing land designation are still much harder to fulfill. According to the new plan, the land designation of "the entire compound" must be changed. This could easily come to as many as several hundred dunams. The task of planning on such a large scale is impossible for the residents without help from international organizations, as such is the case in the areas of Wadi Asul, Ain El-Luza and Tel 'Adasa, where Norwegian and British non-profit organizations have been financing the planning. But only a small part of East Jerusalem receives this kind of support, and for most residents there is no possibility of obtaining construction permits through changing the land designation.

## **2. LEGAL REASONS**

### **2.1. PROVIDING PROOF OF OWNERSHIP**

The most common obstacle in obtaining a building permit is the requirement

to provide proof of land ownership by obtaining certification from the Land Registry. This requirement is impossible for East Jerusalem residents, and as Mayor Barkat himself stated: "The requirement to present a certificate of ownership from the Land Registry is impossible to satisfy, since in East Jerusalem a land registry does not exist."<sup>61</sup> The requirement to provide proof of ownership is not a new one, but prior to the 1990s the municipality accepted proofs of ownership such as wills, a neighbor's signature, the approval of the village's mukhtar, a lawyer's affidavit, the publishing of an announcement in the newspapers and public places, or proof of property tax payment. The current policy includes the following requirements:

- Proof of ownership by registration at the Land Registry; registration is required not only for the person submitting the request, but for every person who shares ownership over the land,
- Personal information and signatures of all owners,
- An authorization from the settlement agent, stating that no other claims for the land were made by Palestinians in Jordan,
- Authorization from the Custodian of Absentee Property that the property is not under its authority,
- Authorization from the Survey of Israel that the land is recognized and no additional claims for it have been made.

The municipality argues that the new requirements are meant to prevent people from building on land that they do not own.<sup>62</sup> This is of course a worthy purpose, but in order to solve one problem, the municipality has created one far worse. In light of the situation in East Jerusalem, where land ownership over most of the land has not been legally settled, obtaining a permit becomes impossible. This situation is complicated further when the tract of land is inherited by multiple parties, some of whom live outside Jerusalem and are considered legally absent. It is true that these new requirements were not invented especially for East Jerusalem and are found in the Building and Planning Law, but it is hard to escape the impression that the state is using the law to tighten the noose around the necks of Palestinian residents. In addition, even if East Jerusalem residents wanted to register their land at the Land Registry, they are prevented from doing so by the state since 1967, when the Israeli government ordered the Justice Ministry to suspend land registration, with the justification that in the current situation it's impossible to determine land ownership, since

61 The Mayor's report about illegal construction in East Jerusalem, submitted to the Knesset's Constitution Committee, Dec. 13, 2009.

62 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, Nov. 27, 2002.

many of the possible owners are absentees, unable to voice their objections for registrations. The law indeed does allow the residents to file a preliminary request for registration which may be considered as proof of ownership – but it also has a catch, i.e. the registration request requires the authorization of the Custodian of Absentee Property, who always “discovers” that one or more of the land owners live in the occupied territories or abroad, and in their absence the applicant becomes merely a joint owner of the property.

The municipality’s requirement to prove ownership is controversial. Every time the matter has been debated in court, the municipality favored reaching a settlement, rather than setting a precedent that would force it to cancel the directive. Atty. Mohammad Jbara claims that the requirement to present proof of ownership from the Land Registry does not meet the requirements of the law, because the municipality has authority over planning, but not over property, and should not be inspecting ownership. Even though the municipality claims that it is required to confirm ownership, the Building and Planning Law requires only that the person applying for a permit proves some connection to the land, and that is sufficient for granting him property rights. According to Jbara, the municipality insists on interpreting the law in the most literal way possible, as if it were meant to protect from land theft. However, there are legal tools designed to cope with land theft, i.e. any landowner whose land is being built on without his approval may go to the police and file a complaint. It’s not the municipality’s job to pick a side in such cases of dispute.<sup>63</sup>

## **2.2. DIFFICULTIES FACED BY THOSE WHO TRY TO OBTAIN A PERMIT RETROACTIVELY**

The law states that a person who builds without a permit may apply retroactively

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63 It should be noted that starting from 2011 the municipality has tried to deal with the problem by appointing committees for approving land ownership for residents who wish to obtain building permits. These committees were modeled after the mukhtar approval procedure used during Teddy Kollek tenure and referred to in municipal jargon as “improved mukhtar committees.” Since this strategy is still experimental and goes beyond the scope of this study we will not elaborate on it.

for one. Many East Jerusalem residents do so after being served a demolition order, in the hope that it would delay or suspend the proceedings. However, since 2003 the Local Committee for Planning and Construction has decided to make it more difficult to receive a permit retroactively. The committee's decision, from October 2003, states that

*"the committee views with great severity illegal construction done with the intention of receiving this committee's authorization. This committee will not agree to be used to cover up building violations....The committee will discuss each of the cases brought forth, and will consider in its decision not only the planning aspect but also the fact that a violation has been committed and the gravity of the violation."* <sup>64</sup>

This decision was made based on the legal opinion of Atty. Benny Mazuz, who was serving at the time as the deputy to the attorney general, and has instructed the local committee to be tougher on building violations because:

*"the element of deterrence in this kind of criminal activity is critical, in light of the large number of violations and the financial profits they generate. Approval of corrections or changes in a building plan after the event, in order to authorize gross violations, sends the wrong message to the public and destroys the element of deterrence essential for enforcement. Even more so, often pressured by the accomplished facts, planning committees approve changes that are inconsistent with the principles of planning, which would not have been approved in the first place, and by doing so they encourage future violations, and reward criminals."*<sup>65</sup>

Following the instructions of the attorney general, the Ministry of Interior, in a circular sent to all municipalities, instructed the Local Planning and Construction Committees, *"when discussing a plan designed to legalize existing building violations, to give the appropriate importance to the discouragement of illegal activity."* <sup>66</sup>

In the same circular the attorney general mentions that there is a widespread problem of defendants who, in a race against time, try to legalize their violations before the court rules in their case. In order to prevent this from happening, he gave a directive meant to prevent the owners from buying more time with the use of "legal tricks," and instructed them to *"object, as a rule, to postponements of court hearings that are meant to allow the defendants*

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64 Atty. Yossi Havilio, legal advisor to the municipality to Yehoshua Polak, former Jerusalem deputy Mayor, Nov. 11, 2003.

65 Ibid.

66 Ministry of Interior, director general's circular no. 1/04, Jan. 8, 2004.

*[time] to promote plans that would legalize the violation before they have been convicted.*"<sup>67</sup> This directive is surprising since the postponements (or "legal tricks") are all done in accordance with the law (section 207). If they had no legal basis, the court would not allow them. In point of fact, more than 60 percent of requests for postponement are granted by the courts despite the municipal prosecution's objection.<sup>68</sup> The perverse meaning of the directive is that the defendants should be prevented from using legitimate legal tools to prevent their houses from being demolished.

These directives have created a Kafkaesque reality. Applications for structures that would have been retroactively legalized, and were already being authorized, were returned to the municipal committee and cancelled, all in order to teach the defendants a lesson, or as stated by the courts, *"not to reward building violations."* In 2006, for instance, the municipal committee decided to implement a plan that would have retroactively legalized a building violation in Beit Hanina, but under pressure from the municipal legal advisor the committee cancelled the plan even though *"from the standpoint of urban planning, it's possible to authorize the plan."*<sup>69</sup>

To make matters worse, at the beginning of 2009 a regulation was put into use by the municipality, which passes on responsibilities to the resident by requiring him, before opening a file for legalizing a violation, to provide the municipal legal advisor's opinion on the matter. The reason for this new regulation, which came into force in March 2009, is the large number of cases in which the committee unintentionally legalized building violations, thinking that it was approving future construction. That is why it was decided that *"new files will be opened only after receiving a document of authorization from the legal department that includes the date of authorization and a professional opinion concerning the existing violations in the area."* This regulation has a catch. In cases where the building violation has not been detected, the resident must himself report the violation to the legal department. Nowhere does it say that self-incrimination exempts one from being prosecuted, and indeed the legal department is required to prosecute by law. The municipality, therefore, forces the residents into self-incrimination.<sup>70</sup>

The absurdity of this regulation became evident to Mayor Barkat in his

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67 Ibid.

68 Jerusalem Municipality, the Mayor's Office, a new planning and enforcement policy for East Jerusalem neighborhoods, Jan. 30, 2011.

69 Justice Mussia Arad, Court for Administrative Affairs, verdict of administrative appeal 923/07, Osama Abu Khalaf v. Jerusalem's Local Planning and Building Committee, April 9, 2008

70 Irena Rubin, Planning Department manager, March 3, 2009

attempts to legalize Beit Yehonatan. He told the Knesset's Constitution, Law, and Justice Committee that *"sometimes in the State of Israel the right hand does not know what the left hand is doing."* For example, many times, the prosecutor, in cases of building violations, agrees to delay the execution of the demolition order and give the defendant time to regulate and legalize the violation. However, when the same person stands in front of the Municipal Building and Planning Committee, or the local committee, the attorney general's representative appears and absurdly announces that he objects to the legalization on the grounds of there being a "building violation" or a "violation of a court order."<sup>71</sup> In light of these insights the Mayor decided in 2011 (and only after the municipal legal advisor was replaced) on a change in policy, and instructed the professional bureaucracy to make a distinction between buildings that have no chance to be legalized and those that do, in order to make sure that the latter may be given additional time by the courts to obtain a building permit.<sup>72</sup> These instructions are obligatory for the local committee but not for the municipal committee, which works directly under the Ministry of Interior and follows the attorney general's instructions, so it is still too early to know if the Mayor's new policy will actually be implemented.

### 2.3. THE CONUNDRUM OF ACTING IN ACCORDANCE WITH THE LAW

A Palestinian resident who wants to build in accordance with the law is required first to open a "construction file" and to ask for a building line to be prepared. This procedure, which in every other place is nothing more than simple technical procedure, has become a trap. A new regulation, starting from the beginning of 2009, under the title *"Procedure for building lines in cases involving land registration plans,"* states that since there are so many cases in which residents have been required to create land registration plans before the building has been populated and failed to do so, it has been decided by the chief engineer and the municipal legal advisor to change the order of procedures, so that one is required to prepare a land registration plan and open a file at the land registry before receiving building lines. These requirements, at least at first sight, seem to be reasonable. However, most East Jerusalem landowners cannot open a file at the land registry, being unable to prove ownership.<sup>73</sup> In addition, according to a new municipal regulation,

75 2011 report about illegal construction in East Jerusalem, submitted by the Mayor to the Constitution, Law and Justice Committee in the Knesset on Dec. 13, 2009.

76 Jerusalem Municipality, the Mayor's Office, A new planning and enforcement policy for East Jerusalem neighborhoods, Jan. 30, 2011.

73 Menahem Gershoni, deputy manager of the Urban Planning Division, Jan. 29, 2009.

before building lines are approved, the files are forwarded to the Custodian of Absentee Property to confirm that the land is not “absentee property.” When the custodian finds that one of the land owners is registered as “*absent*,” he then prevents the issuance of the building lines, and in many cases proceeds to claim ownership over the property. In East Jerusalem, most of the land is registered under the names of a deceased family member, and inherited by their children or grandchildren, it is always the case that at least one of them will be living in the West Bank or in Jordan, and therefore considered to be legally absent. In such cases, their portion of the property is passed on to the custodian. Such was the case of a family in the neighborhood of Beit Hanina, who applied for building lines, and in return received the following reply from the municipality: “We have turned to Mr. Ronen Baruch, the general custodian, in charge of absentee property, in order to examine ownership over this land parcel. His examination reveals that the owners have not been in Israel since the Israeli law was put in force, and the property is defined by law as absentee property.” The family, who intended to build lawfully, in addition to not receiving the building lines, ended up losing its property.

### **3. PHYSICAL REASONS: OBSTACLES CREATED BY LACK OF PROPER INFRASTRUCTURE**

The lack of a proper water management system, sewage systems, electricity network and roads prevents East Jerusalem residents from obtaining building permits. Building plans have a section stating that it is forbidden to build in areas with no infrastructure. In addition, in the building and construction regulations (section 16) it is written that being connected to the infrastructure is a precondition for populating a building. As a result, even if a building permit was issued, and the construction has been completed, but still the infrastructure has not been completed, an authorization to inhabit the house may be denied.

The lack of infrastructure in East Jerusalem is a chronic problem. Data from a municipal survey dealing with infrastructure, conducted in 2010, gives us an idea of the extent of this problem. According to the survey, providing the basic infrastructure lacking in East Jerusalem would require an investment of close to 2 billion NIS. Obviously, neither the municipality nor the government has the possibility (or the intention) to spend such a large sum in East Jerusalem. As time passes, due to population growth and the collapse of old infrastructure, the amount only increases. The following table presents the amount of money that would have been required for building proper infrastructure and closing the gap between East Jerusalem and West Jerusalem, and reflects years of



neglect.

TABLE 3.2 AMOUNT OF MONEY THAT WOULD HAVE BEEN REQUIRED FOR PROVIDING PROPER INFRASTRUCTURE: 1994-2010

Amount of money that would have been required for providing proper infrastructure in 1994 <sup>78</sup>	520 million NIS
Amount that would have been required in 1999 <sup>79</sup>	776 million NIS
Amount would have been required in 2001 <sup>80</sup>	980 million NIS
Amount would have been required in 2005 <sup>81</sup>	At least one billion NIS
The amount would have been required in 2010	<b>1,896,822,603 NIS</b>

In 1997 the Israeli government decided to allocate 185 million NIS for the *"promotion of better construction conditions in East Jerusalem,"* which would have allowed the issuance of building permits for over 3,000 residential units. An inter-ministerial committee, the Efrati Committee, was formed for the purpose of carrying out the decision.<sup>79</sup> Out of the 185 million NIS that were required in order to promote the building plans, the municipality received only 4 million, to which it added another 5 million from the municipal budget, and that was the end of the project. In 2001 the government decided to deliver a budget of 65 million NIS for infrastructure in East Jerusalem, and an ambitious plan was prepared following the decision, but it was never carried out.<sup>80</sup> In November 2007, Mayor Lupolianski pompously announced the *"Marshall plan for East Jerusalem,"* which included the investment of over 200 million NIS *"in order to create a different city, unified and strong."* Nothing came out of that.<sup>81</sup> As a result, in most areas designated for construction in the outline plan, it's not possible to build in the absence of proper infrastructure. The ongoing municipal investment in infrastructure, which was approximately 27 million

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

75 Ibid.

76 Eitan Meir to Pepe Alalu, Oct. 21, 2001.

77 Tzipi Malkov, Yerusalayim newspaper, Sep. 23, 2005.

78 East Jerusalem infrastructure survey, conducted by Ehud Tayar for the Municipality of Jerusalem, November 2010.

82 Ehud Olmert, in a reply to a query from City Councilor Meir Margalit, Dec.16, 1999.

80 Municipality of Jerusalem, infrastructure development in East Jerusalem, plan for a special governmental budget, prepared by Yariv Civil Engineering, April 2002.

81 See newspaper reports, November 2007



NIS in 2003<sup>82</sup> and 45 million NIS in 2010, is far from being enough money to close the gap between East Jerusalem and Israeli West Jerusalem.

Therefore, even though in the approved outline plans in East Jerusalem there is a possibility of adding up to about 22,840 residential units,<sup>83</sup> or 26,000 according to a different account,<sup>84</sup> this possibility remains theoretical. In 2001 Mayor Olmert wrote to Foreign Minister Shimon Peres that out of 26,000 potential units, 6,000 are “immediately available,” and the remaining 20,000 units may be “available soon,” depending on the development of infrastructure. Olmert did not specify the time that preparing the land for construction would require, but every reasonable person understands that it would take years before the work is completed. That is why, even though the municipality presents an area that could theoretically accommodate 26,000 residential units, it is a misrepresentation, existing in theory alone.<sup>85</sup> The new outline plan, Jerusalem 2000, adds to the theoretical inventory another 13,500 units, and here too a detailed plan is required, so there’s no hope that any of them will be built in the foreseeable future.

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82 Meir Margalit, *Discrimination in the Heart of the Holy City*, IPCC, 2006, p. 112.

83 Charles Kohn, Jerusalem Municipality, Planning Department, *Comparison of Residential Supply and Demand in Jerusalem in 2000–2020*, Sep. 10, 2000.

84 Ehud Olmert to Foreign Minister Shimon Peres, Apr. 23, 2001.

85 *Ibid.*

#### 4. BUREAUCRATIC OBSTACLES

The process in which a building permit is obtained is extremely complicated. An article that appeared in the daily newspaper *The Marker* notes that the procedures for building and planning are designed to prevent residents from building in accordance with the law. The planning process takes so long that it breaks the spirit of many of the residents, who give up at an early stage of applying for the permit, and as a result are forced to build without a permit.<sup>86</sup> Additional data, also published in *The Marker*, shows that the process of obtaining a building permit requires going to 41 bureaucratic stations, which not every person can afford to do.<sup>87</sup> A contractor or an entrepreneur, who knows the system well, learns how to overcome the difficulties. Often a lawyer is hired for promoting the construction plan, at the expense of those who buy the apartments. When done privately, hiring a lawyer or an architect is extremely costly. More to the point, when we consider a Palestinian resident of East Jerusalem who wishes only to build a small house for his family, the task becomes almost impossible. A study published by the Technion (Israeli Institute of Technology) dubs this situation “*over-bureaucratization*,” adding that “*some of the Israeli bureaucratic institutions have grown larger than their objectives.*”<sup>88</sup>

It's worth paying attention to Mayor Nir Barkat's remarks in relation to the difficulties imposed by the legal system (not to mention the planning and building system, which are not any less complicated). Barkat says that the message passed on by the legal system is “a message about the inability of bureaucracy to work together with the public sphere...and that strengthens the public's impression that the bureaucracy is useless.”<sup>89</sup> And if the Mayor of Jerusalem himself complains about the problems of bureaucracy, what can Palestinian residents say?

The following diagram presents the process for obtaining a building permit:

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86 AviBar Eli, *The Marker*, Jun. 22, 2007.

87 AviBar Eli, *The Marker*, Feb. 10, 2006.

88 Shulamit Gertel and Rachelle Alterman, *Ethics for Planners amidst Political Conflict: The Case of Israel*, Center for Urban and Regional Studies, Technion, 1994, p. 52..

89 Nir Barkat to Attorney General Moshe Lador, Feb. 3, 2010.

FIGURE 3.2 LEGAL PLANNING AND ZONING PROCESS

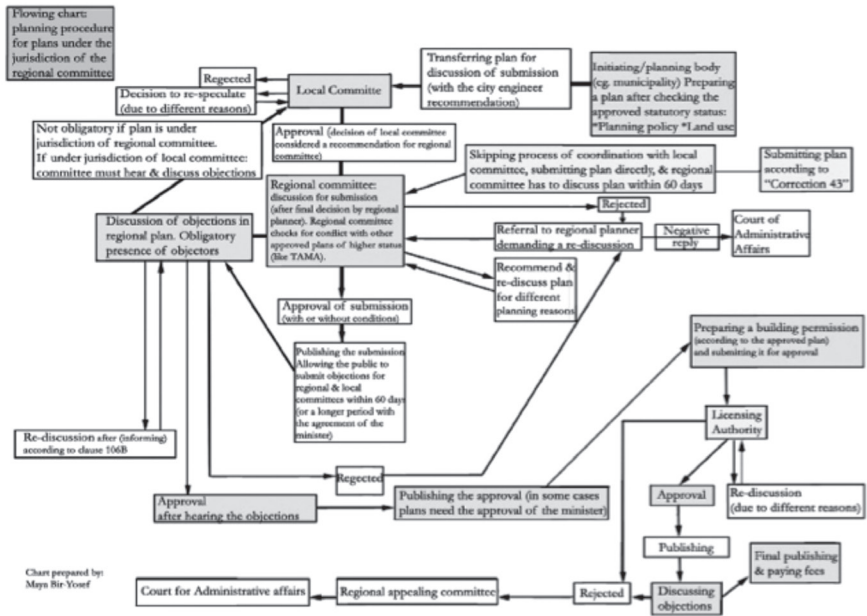


FIGURE 3.3 THE PROCESS FOR OBTAINING A BUILDING PERMIT

10. תרשים זרימה לקבלת היתר בניה



There is no need for further explanation; the diagram speaks for itself. The first impression one has when looking at the diagram is of a labyrinth from a Kafkaesque story. Looking at this diagram, it becomes obvious why a Palestinian Jerusalem resident would prefer not to obtain a permit in the first place.

The first diagram (figure 3.2) describes two situations: first when the plot of land is designated for residential purposes, the second is a much more complicated situation, but also one which is more common in East Jerusalem, where in order to obtain a permit one must first change the land designation from a green area to a residential area. The second diagram (figure 3.3) corresponds to the last part of the process described in the first diagram, in which one applies for a building permit in an area already approved for residential purposes. This process seems simpler, but it is still extremely complicated and demanding.

Even the city comptroller brought up the complexity of the diagram in a report on construction licensing in 2009,<sup>90</sup> where she states that the diagram titled *“The process of obtaining a building permit”* is *“not user-friendly, and makes it difficult for the person applying for a permit to understand the process.”*<sup>91</sup> The comptroller added that “a diagram should help the residents understand the process for obtaining a building permit in a friendly and uncomplicated manner, so that at every stage in the process they would know who is handling their file...whereas the diagram that was presented in the municipality’s website is difficult to understand and may discourage those who contact the department.” Surprisingly, following the report, the Construction Licensing and Supervision Department’s management removed the diagram from the municipality’s website, and replaced it with a verbal description, as if the diagram was the problem and not the process itself. What is even more astonishing is that the comptroller was satisfied with this change, and even saw fit to praise them for removing the diagram and replacing it with a verbal explanation, as if the process of obtaining a permit had become easier. The picture that emerges from the Licensing and Supervision Department’s conduct, and worse, the city comptroller’s approval, is a picture of a society that deals with its problems using cosmetic procedures, believing that the best way of dealing with problems is hiding them.

It’s important to note that there are those in the municipal system who are aware of this problem, and have criticized the municipality’s conduct more than once. A court ruling written by Justices Mosia Arad, Yoni Habash and

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90 City comptroller’s report for 2009/10, April 2010, p.177.

91 Ibid., p. 209.

Boaz Okon of the Jerusalem District Court expresses their discontent with the bureaucracy involved in obtaining a building permit in Jerusalem: "It is time to reconsider the enforcement policy in regards to all building violations. In many of the cases we dealt with, we received the impression that a vicious circle has been created. The service that the citizens or residents receive is neither fast nor efficient and the requests go through many unnecessary bureaucratic stages. That is the cause of the undesirable norm of taking the law into one's own hands. Construction is carried out without permits. Then there are legal proceedings...and again the citizen or resident is found in a dead-end situation...as usual, the root of the evil is the starting point. The authority must set a simple and affordable procedure for obtaining permits. It must preserve the principle of service which requires that every request is answered in a reasonable amount of time, whether it is authorized or rejected."<sup>92</sup>

## **CASE STUDY:**

### **THE COMPLICATIONS OF LICENSING PROCEDURES**

Municipal officials argue that the procedure of building-permit issuance is relatively simple, and that delays are caused as a result of the residents putting off the submission of plans. Contrary to this claim, Justice Moshe Sobel at the Court for Local Affairs in 2003 described the municipal system's conduct in an appeal submitted by a Palestinian resident of the Al-Sawahara neighborhood, represented by Atty. Abu-Hussein, against a demolition order that he was served for building without a permit, despite the fact that he applied for a permit six and a half years earlier. Arguing that the resident did everything in his power to obtain a permit, and cannot be held accountable for not receiving one, Justice Sobel wrote:

"...On 18.5.97 the defendant submitted to the Local Planning and Building Committee a localized outline plan (no. 5931) for the purpose of legalizing the structure. The local committee handled the file idly: more than two years passed before a professional opinion from the relevant municipal departments was filed, all of which gave their consent. After two years (in 1999) all of the departments apart from the Planning Policy Department submitted their professional opinions. The Planning Policy Department's opinion was received only on October 2001, four and a half years after the plan was submitted by the defendant.

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92 Jerusalem District Court, Hassan Sawahara v. the District Planning and Building Committee, criminal file 7437/03, Sep. 14, 2003.

This professional opinion was still incomplete, and did not include a thorough examination, which should be postponed until after the local committee decides whether changing the land designation of open spaces (such as the one the building was built on) for residential purposes should be allowed in general. Accordingly, the committee decided (on 5.11.01) to take the plan off the agenda. Since that decision was made two more years have passed, and still no decision has been made by the committee concerning the request. The current reason for this [inability to decide] is that the alternate course of the Eastern Ring Road has not been determined yet. It is impossible to estimate according to the letter when the course of action will be decided upon, and as a result it is impossible to know when the defendant will receive an answer regarding the plans he submitted six and a half years ago.”

We learn about the Ministry of Interior's position from Justice Sobel's following remarks:

“The prosecutor [the Ministry of Interior] does not dispute the fact that the pace in which the authorities handled this matter was far from satisfying. The prosecutor claims that the defendant did not give proper attention to detail in the plan he submitted and did not pursue it with due diligence. Due diligence, according to the prosecutor, would be filing an appeal to the Supreme Court or the Court for Administrative Affairs against the planning authorities. Since the defendant did not take this course of action, and at the same time continued to live in the unlicensed structure...he has showed [sic] that he has no interest in honoring court orders and therefore his punishment should be severe and deterrent”.

To this Justice Sobel replies:

“It's hard for me to accept the prosecutor's allegations. In principle, it doesn't seem reasonable that the State of Israel, with the planning committees operating under its auspices and under its supervision, may overcome the outcomes of these authorities' shortcomings by claiming that these shortcomings were not attacked by the resident at a court of law. The responsible authorities were supposed to act in a proper and lawful manner even without a court ordering them to do so. Therefore, so long as it's agreed that the delay on the part of the local committee was not lawful, it should be reflected in the severity of the punishment, even if the defendant did not address the delay in an appeal”.

Justice Sobel adds that had the defendant appealed to a higher court, his request to delay proceedings would have been granted, and he concludes:

The present case is a good example of the ineptness of licensing procedures. The defendant submitted an outline plan in order to legalize a structure that serves as a house for him and for his children. If we trace his moves since that time and up to the present day, they reveal that he never neglected the handling of this procedure, and fulfilled in a timely manner all of the requirements. In spite of that, after six and a half years, the authorities have not completed their handling of the plan, and it cannot even be estimated when they will. All the while, the Planning and Building Law restricts the treatment of outline plans to short periods of time, which have long expired where the defendant before us is concerned.<sup>93</sup>

## 5. ECONOMIC REASONS

### 5.1. THE COST OF BUILDING PERMITS

The statutory difficulties notwithstanding, acquiring a building permit is beyond the financial means of most East Jerusalem residents.

The first expense when trying to obtain a permit is the fee for opening a file, which varies in accordance to the size of the structure and is usually around 2000 NIS (approximately \$575). This figure gives no clue as to what lays ahead. The most substantial expenses are a toll for construction of roads and pavements (sometimes called a “development fee”), drainage system and tunnels fee, a water and sewage fee and an improvement fee.

Calculation of the tolls and fees is done according to the size of the entire lot, not the footprint area of the building. The costs for the different tolls and fees are as follows: for the construction of roads and pavements the minimal amount is 87.20 NIS per sq.m. for the structure itself, and 44 NIS per sq.m. for the lot (provided that the road closest to the lot is not wider than 7 meters and the pavement not more than 1.5 meters). The drainage fee is 23.55 NIS per sq.m. for the lot and 11.56 NIS for the building. In order to be connected to the sewage and water systems, one must pay the following: development fee of 7.94 NIS per sq.m. on the lot and 53.33 NIS per sq.m. for the building, a public sewage fee of 20.82 NIS for the lot and 28.75 NIS for building, and an additional sewage fee of 12.48 NIS for the building and 10.40 NIS for the lot (all per sq.m.).<sup>94</sup>

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93 The State of Israel v. Hussein Mohammad Alian, criminal case 4014/99, Oct. 29, 2003.

94 These are the municipality's rates as of Oct. 1, 2010, and the calculations of Uzi Cohen, Hagihon Water Corporation, Dec. 22, 2010.

The improvement tax varies from neighborhood to neighborhood, and is calculated according to the value of the land, the size of the structure, building ratio, market value and more. If it is the family's first house and is not larger than 140 sq.m., there is a full tax exemption. If the house is larger, then only the difference above 140 sq.m. will be taxed. For an ordinary East Jerusalem family this tax is unbearable. In expensive areas such as Beit Hanina, the tax may vary from 1,500 to 2,500 NIS (approximately \$430 to \$710) per sq.m. In less central areas, like in Umm Tuba, the cost is between 700 and 1,500 NIS (\$220 and \$430) per sq. m. However, the exemption for the family's first house only applies for one house per lot. In East Jerusalem, Palestinians' extended families build more than one house on their land, and so starting from the second house they have to pay the improvement tax in full.

An additional expense in the process of obtaining a building permit is payment for a measurement map. Until recently, an East Jerusalem resident who wished to build in an area whose ownership was not legally settled was required to provide a graphic presentation of the lot, signed by all of the surrounding neighbors and the local mukhtar, to show that they affirm that the person is the land's lawful owner. In the past several years the Jerusalem Municipality has begun requiring a land registration plan, which is a map based on the State of Israel's mapping system, and is authorized by the Survey of Israel. Preparing a land registration plan is a costly process. In the past it was possible to hire a local surveyor to prepare a graphic map for \$300 per dunam. The new map must be prepared by a surveyor certified by the Association of Licensed Surveyors in Israel, who charge \$3,000 per dunam. In addition, a lawyer is needed for registering the plan at the Israel Land Administration, the cost of which is at least \$1,000.

This calculation does not include the cost of digging trenches for the pipes and of connecting to the sewage system, which are done privately at a cost of 200 NIS per meter, and the total cost depends on the distance from the nearest municipal water line. We should note that due to the high costs, many residents in East Jerusalem are not connected to the municipal pipes and use cesspits instead.

In the following chart we present the various expenses that the resident must pay in order to obtain a building permit. This incomplete list does not include payments for the architect, the lawyer and the surveyor. Suffice it to say that acquiring a building permit is often more expensive than construction itself.



TABLE 3.3 VARIOUS EXPENSES RESIDENTS MUST PAY IN ORDER TO OBTAIN A BUILDING PERMIT

Indicator	Amount for a 140-sq.m. house on a lot of a quarter of a dunam (NIS)	Amount for a 200-sq.m. house on a lot of half a dunam (NIS)
Opening the file	2,000	2,000
Roads and pavements toll on lot	11,000	22,000
Roads and pavements toll for building	12,208	17,440
Drainage and tunnels on lot	5,887	5,780
Drainage and tunnels for building	1,618	4,710
Development tax on building	7,466	10,600
Development tax on lot	1,985	3,970
Public sewage toll on lot	7,187	10,410
Public sewage toll on building	4,025	5,750
Sewage collection tax on lot	2,600	5,200
Sewage collection tax on building	1,747	2,496
Land registration plan	15,000	15,000
<b>Total</b>	68,698 NIS	105,356 NIS
	<b>19.600 \$</b>	<b>30.100 \$</b>
Betterment tax		
After adding the Betterment tax, the total cost would be as follows (the calculation is for a 200 sq.m. house):	Inexpensive neighborhoods	Expensive neighborhoods
	147,356 (NIS)	255,356 (NIS)
	<b>42.100 \$</b>	<b>72.950 \$</b>

## **5.2. PROPERTY TAX**

This is another expense that doesn't appear in the table. Property tax is paid by the landowner for owning the land. This tax was cancelled in the year 2000, but whoever wishes to be registered as a land owner and claims to have owned it prior to the year 2000 must pay the tax for the years prior to 2000. Payment is mandatory, but usually the authorities settle for payment of the last five years. The sum depends on the location of the property. In the Shuafat and Beit Hanina area the cost per dunam is estimated at around 40,000 NIS. It should be noted that according to the law, there is no property tax if the land has been inherited.

It's important to stress that even though Jews and Palestinians pay the same tax rates, there are significant socio-economic differences between East Jerusalem and West Jerusalem. East Jerusalem Palestinian residents are unable to afford these costs. Furthermore, in West Jerusalem most of the buildings constructed are multi-storey buildings, so the expenses are divided among several tenants, while in the Palestinian sector it is customary for a family to build on its land, which means that the entire cost must be paid by one family.

The various taxes and other expenses add up to such a large amount that many are simply unable to pay them. When faced with the decision to either live cramped in their parents' houses or build without permit, most choose to take the chance and build.

## **6. ADDITIONAL BARRIERS TO OBTAINING BUILDING PERMITS**

### **6.1. THWARTING PALESTINIAN CONTINUITY**

As we have already stated, the motives for making it difficult for East Jerusalem residents to obtain building permits are mainly political, even though the problems are often presented as relating to urban planning. One example for the politicization behind municipal excuses is the sweeping prohibition on construction in areas close to the West Bank, in order to prevent Palestinian territorial continuity. In the new outline plan, much like in the previous one, the municipality insists on keeping the peripheral areas as green areas in which construction is forbidden. Many urban planners agree that a city should be surrounded by parks. However it is obvious to us that the real reason for having green areas has nothing to do with urban planning. City council member Yakir Segev, who held the East Jerusalem portfolio, said

in an interview to the news website NRG that construction should not take place in Palestinian neighborhoods, so as not to create a territorial continuity between Jerusalem and the territories: "If we create a territorial link between the Palestinian neighborhoods of East Jerusalem, Palestinian villages in the territories and the Old City, we are actually creating a Palestinian country with Jerusalem as its capital, and this we must not do."<sup>95</sup> A similar statement made by city council member Yair Gabai (from the National Religious Party) opposed construction in an area of Sur Baher near Beit Sahur, because this would create a "territorial mass, which will affect the borders of Jerusalem and facilitate its division."<sup>96</sup> This attitude also explains why Senan Abdelqader, an architect promoting an urban plan in the area of Sawhara near Bethlehem, was instructed by the municipality to keep construction at a distance of 100 meters from the municipal border, even though there is no practical reason to do so, and, in the narrow 100 meter wide strip left, many buildings are waiting to be legalized.

## 6.2. THE PROJECTED EASTERN RING ROAD

In vast areas of East Jerusalem it's impossible to obtain a permit because the plan of the new Eastern Ring Road has not been authorized yet. This road will affect a large area. It is a twenty-kilometer road covering around 1,250 dunams. It crosses East Jerusalem from north to south, and will include bridges, three tunnels, and a system of roads that will connect it to the various neighborhoods. This project involves the expropriation of many tracts of land and the demolition of structures on its planned route, a process that has taken many years with still no end in sight. As we shall see further on, even in areas where the route has been authorized the municipality refuses to approve outline plans on account of "a lack of a comprehensive planning policy," a state of affairs that no one knows how to approach, and there is no knowing when it will end.

## 6.3. LACK OF INFRASTRUCTURE

In a different part of East Jerusalem, along the Kidron Valley, starting from the Old City and ending at the Dead Sea, the municipality and the district committee are unwilling to approve construction plans until the problem of open sewage is solved. This means until the construction of infrastructure that would channel the sewage currently polluting Kidron Valley and prevent it

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95 Moshe Shteinmetz, «Yakir Mizrah Ha'ir: How a Rightist Became East Jerusalem's Representative on the Jerusalem City Council,» NRG Ma'ariv, Jan. 19, 2010.

96 Ya'ir Gabai to Kobi Kachlon, Sep. 7, 2009.

from further polluting the Judean Desert and the Dead Sea. The reason for not approving any construction is that in a populated area it is much more difficult to build the infrastructure. Again, this refusal would have been reasonable had the infrastructure work been completed in a reasonable amount of time. However, in actuality, no budget has been assigned for this project and no timetable has been set. In addition, a project of this magnitude would require the cooperation of the PA, which will most likely be unwilling to cooperate, due to its frustration with Israel's attitude in negotiations. The practical implication of the current policy for the residents is a complete suspension of construction work for an indefinite span of time.

#### **6.4. THE SEPARATION WALL**

As if existing limitations on construction were not enough, a new restriction was recently added, banning construction near the separation wall in Jerusalem. These new instructions approved at the district planning and building committee on October 2008 state that "no construction plan will be accepted for the area along the barrier and within 120 meters of the barrier, and plans for roads crossing the barrier on the seam will only be accepted after consultation with the Minister of Defense's representative at the district committee."<sup>97</sup> It should be pointed out that, in addition to the 120 meter wide strip, the separation barrier is a huge complex which often includes, in addition to the wall itself, a 500-meter-wide strip of land with an intrusion-tracking dirt road, border police guard posts and checkpoints, all of which are located in East Jerusalem and require land expropriation and house demolitions on a massive scale.

### **THE IMPACT OF GOVERNMENT DECISIONS ON ILLEGAL CONSTRUCTION**

Any account of the reasons for illegal construction in East Jerusalem must consider the recent rise in demand for housing, which is the outcome of two unwise decisions taken by the Israeli government: revoking the right of residency of East Jerusalem Palestinians who reside outside city limits, and the construction of the separation wall inside the municipal borders of East Jerusalem. Since the enactment of these decisions, both the demand for housing in East Jerusalem and illegal construction have increased dramatically.

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97 Ministry of Interior, Regional Planning Institution, protocol no. 022/08, Tuesday, Oct. 7, 2008.

## 1. RESIDENCY STATUS

The policy of revoking Jerusalem residency status from Palestinians who live outside the municipal borders has been operative for more than a decade, since first decreed by the former Interior Minister Eli Suissa (Shas political party). Prior to that, young Palestinian Jerusalemite couples could avoid the high rents of East Jerusalem by choosing to live in the West Bank suburbs. Many communities of Jerusalemites were established on the periphery of the city, from Beit Jala in the south to Al-Ram in the north, and in villages to the east such as 'Anata, Hizma and Abu Dis. Thousands of Jerusalemites lived in these West Bank communities, while their lives still centered on Jerusalem proper. This trend changed in 1993 when the Ministry of Interior published new regulations, revoking the Jerusalem residency status of Palestinians who lived outside the city. The revocation effectively terminated all social benefits associated with residency, including national insurance and health care; and, further, it denied them access to the city, which would prevent many from maintaining their employment there and also from staying in touch with their families in the city. That is why many returning families who own land in the city prefer to build illegally, even in green areas, rather than risk losing their residency. As a result, tens of thousands of Palestinians have immigrated back into Jerusalem, and their return has caused a dramatic increase in housing demand and in rental rates.

## 2. INTERNAL MIGRATION

Return migration from West Bank suburbs became stronger in the year 2002, when the building of a separation wall was first brought up, and even stronger in 2004, when the construction of the wall began and those who resided outside the city understood the implications of living beyond the wall. Ever since, we have witnessed a constant wave of families who have decided to lock doors, leave their suburban houses behind, and move to the "right" side of the barrier, to any place they can find within the municipal limits of the city, so as not to be stranded on the "wrong" side. The neighborhood of Sheikh Sa'ad, which borders Sur Baher, has been emptied of its inhabitants, and the area north of Qalandia Checkpoint, of Kafr 'Aqab and Semiramis, in which over 20,000 Jerusalemites lived, has been partially abandoned by the returning Jerusalemites. Entire families relocated, sometimes moving only a few hundred meters, to avoid losing their jobs, or in order to spare themselves daily humiliation at the checkpoints. In Kafr 'Aqab for instance, the cost of rent in the past year dropped 50 percent, while on the other side of the wall it increased by over 150 percent.

This massive influx into Jerusalem has caused a demographic crisis, which has resulted in illegal construction among other things. Once the migration was under way, the municipality lost control over East Jerusalem, because the necessity of providing shelter for one's family prevailed over the municipality's power of deterrence. Those who thought that the "demographic demon" could be dealt with using administrative tools have created a much larger "urban demon." Faisal Hussein once said that one day, when the Palestinian State awards the "Jerusalem notable contribution prize," he will recommend giving it to former minister Eli Suissa, for strengthening East Jerusalem by causing many young Palestinians to relocate within city limits. Indeed, it is the State of Israel who sowed these seeds of destruction with which it now finds difficult to manage. We are again witnessing a pattern manifested throughout the conflict, where the state itself is responsible for creating problems which it finds difficult to solve. It uses one hand to push people to build without a permit, while the other fights illegal construction to no avail.



## The Motives Underlying Municipality Demolition Policies

*"Let's not talk of political decisions but of decisions that are a result of a policy.... The political aspect is always there."*

*Mati Huta, the former director of the Jerusalem District at the Ministry of Interior.<sup>98</sup>*

Attorney Mati Huta, formerly the director of the Jerusalem District at the Ministry of Interior, pointed out in an interview to a local newspaper the direct and unmediated connection between planning and politics. Indeed, the municipality's policy of making it difficult for East Jerusalem residents to build their houses rests on a combination of politics, paranoia and an organizational culture of discrimination.

Urban planning is in essence political: ideology plays a central role in the process of decision-making. Planning policy is always an expression of a world view and is usually implemented to help the ruling elite maintain its power. This is how it has been used since the beginning of the Zionist enterprise, and this is how planning is used today for every piece of land in Israel and most especially in Jerusalem.<sup>99</sup>

Meron Benvenisti, who served as deputy Mayor of Jerusalem and is considered an authority on municipal policy, has written extensively on the link between urban planning and politics in Jerusalem: "In Jerusalem almost every decision that has to do with planning is political. Efficiency, aesthetics and other real considerations are secondary." According to him, the norms that have formed

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98 Eldad Brin, The District Governor, KolHa'ir.

99 Elad Torgovnik, The Political Dimension of Urban Planning in Israel, Jerusalem Center for Public affairs, 1994.

the basis for Jerusalem's urban planning since 1967 were first and foremost political and nationalistic, and their declared goal was to strengthen the Jewish-Israeli identity of the city. *"The decisions that determine the character of Jerusalem for many generations to come were not made at the drafting table but by the government."* For that reason, he adds, the outline plans are not the result of orderly urban planning, but an expression of ideology and have been understood by decision makers as a patriotic duty rather than a task of urban planning.<sup>100</sup>

Prof. Elisha Efrat, an expert in the field of political geography, has claimed that geographic space is always political. Space and society are in constant political interaction. In the case of Jerusalem, it would be more accurate to speak of a *"political arena"* in which the Jewish majority is trying to achieve national objectives. Toward that end, many resources have been channeled to East Jerusalem in order to create a political situation in which it would be impossible to divide it in the future and strengthen its position as the Israeli capital. This was done in such haste *"to the point that more than once the actions were performed prior to the planning."*<sup>101</sup>

Perhaps the clearest example of how politics shape the planning in Jerusalem is the decision to maintain a *"demographic balance"* of 30 percent Palestinians and 70 percent Jews in the city. This policy was decided on in 1973 by the Gafni Commission, an inter-ministerial body assigned with the task of examining the rate of development in Jerusalem. This policy was created out of fear that in just a few years, due to the natural growth rate in the Palestinian population, the city's *"Jewish character"* would be at risk, and the Palestinians may even have the ability to determine the identity of the Mayor. A municipal document prepared by the Planning Policy Department in 1977 clearly states: *"One of the cornerstones in the process of the planning of Jerusalem is... keeping the demographic balance of the different ethnic groups according to a decision made by the Israeli government."*<sup>102</sup> Another official document written by the municipality's Urban Planning Department in 1996 clearly states that one of their basic guidelines for planning is keeping that ratio of the two populations at 30:70.<sup>103</sup>

In the new outline plan, Jerusalem 2000, a substantial change was made in

100 Meron Benvenisti, *Jerusalem: A City with a Wall in its Heart*, HaKibbutz HaMeuchad, 1981.

101 Elisha Efrat, *Geography and Politics in Israel*, 1984. *Geography of an Occupation*, Carmel, 2002

102 Israel Kimhi, Director of the Department for Planning Policy, 1977.

103 Municipality of Jerusalem, Urban Planning Department, "Planning in Jerusalem's Arab Sector," p. 19



the policy of demographic balance, and with the awareness that the 30:70 ratio had not been maintained, a new target of 40:60 was set. This goal is to be achieved with the use of a stimulus package designed to encourage Jews to move to the city and stop the negative Jewish migration that Jerusalem has experienced for over a decade. The outline plan lists the benefits designed to increase the Jewish population, i.e. presents the improvements that must be made in order to encourage Jews to stay without mentioning even once any actions to limit the number of Palestinians in Jerusalem. However, the subtext of the outline plan is clear. Together with the improvements meant to appeal to the Jewish population, an attempt to limit the Palestinians' natural growth is concealed.

This method is not new. Amir Heshin, who followed the planning policy in East Jerusalem throughout Teddy Kollek's service and the beginning of Ehud Olmert's, testified that in Jerusalem *"the State of Israel has turned urban planning into a tool used by the government...to prevent the expansion of the city's non-Jewish population. It was a cruel policy if only because the basic needs (not to mention the rights) of the Palestinian residents were ignored. Israel saw the implementation of a strict urban planning policy as a way of limiting the amount of new houses built in Palestinian neighborhoods, thus ensuring that the percentage of Palestinian residents stays the same at 28.8 percent as in 1967. If 'too many' houses are allowed to be built in the Palestinian neighborhoods, it follows that there will be 'too many' Palestinians in Jerusalem. The idea, then, was to move as many Jewish residents as possible into East Jerusalem and as many Palestinians as possible outside the city altogether. The housing policy of East Jerusalem focused on this game of numbers."*<sup>104</sup>

Today even more so, the government operates on the assumption that by limiting the areas in which the Palestinian population is allowed to build, the demographic growth can be contained. The most recent example is the refusal of Minister of Interior Eli Yishai to authorize the new outline plan, Jerusalem 2000, arguing that too much room has been allotted for residential use in East Jerusalem, and any addition may lead to an increase in the Palestinian population, which would tip the demographic balance. This is not the only example. Urban building plan No. 3000, which includes the neighborhoods of Shuafat and Beit Hanina and originally allowed for the construction of 17,000 residential units, was trimmed down to 7,500 because the larger allotment was not consistent with the policy of keeping a demographic balance.<sup>105</sup>

104 Amir Heshin, Bill Hutman, Avi Melamed, Separate and Unequal, The Inside Story of Israel Rule in East Jerusalem, 1999, pg. 31-32

105 Avraham Khila, Deputy Mayor, city council meeting no.52, June 29, 1992.

Another case that illustrates the mind-set of Mayor Nir Barkat's city council began during a formal move to approve the meeting's protocol for the municipal building committee, which dealt with the plan for channeling sewage into the Kidron Valley. A broad front of right-wing council members opposed the approval of the protocol because a section in it implied that solving the problem for the Kidron Valley would promote, among other things, the new outline plan for Jabel Mukaber, a Palestinian neighborhood which was supposed to include the construction of 2,500 residential units. This section angered most of the city council members, including Deputy Mayor David Hadari, who claimed that *"the municipality let in the approval of an Palestinian neighborhood through the back door."* Eventually, the Mayor gave in to pressure from the right and removed the offending section from the protocol.<sup>106</sup>

Yakir Segev, who held the East Jerusalem portfolio at the time, has openly expressed a similar opinion when asked if the new plans promoted by Mayor Barkat for East Jerusalem will allow Palestinians to build according to their needs. His answer was, *"We will not allow the residents of East Jerusalem to build as much as they require...I don't think that our most important mission is to solve the problem of the housing shortage in East Jerusalem. Ultimately, even though it is not politically correct to say so, we will monitor the demographic situation in order to make sure that in 20 years from now we do not wake up in a Palestinian city."*<sup>107</sup>

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106 City council meeting no. 34, pg. 107-137.

107 Moshe Shteinmetz, «How a Right Wing Leader Became East Jerusalem's Representative on the City Council,» KolHazman and NRG Maariv, Jan. 19, 2010.

## **“DEMOGRAPHY” IS THE NAME OF THE GAME**

As stated, the motives for demolitions cannot be understood without devoting some attention to Jerusalem’s demographic trends. All limitations, obstacles and difficulties, including house demolition, imposed by the state on the Palestinian population of East Jerusalem are done with the intention of containing their demographic growth and consolidating the Jewish hegemony over the city. The prevalent conception among Israeli policy makers is that the best way to control population growth is by creating a housing shortage that will force the Palestinians to immigrate to West Bank territory, where it will be easier for them to build houses.

Data concerning the demographic situation as of 2010 tells us that Palestinians constitute 36 percent of the total population of Jerusalem. At first sight it would seem that the Jewish majority is stable. But the true picture is revealed when we consider the younger age groups, in which the younger Palestinian age groups constitute more than 40 percent of the total Jerusalem population. For instance, in the age group of 70-75 the Palestinian population constitutes only 20 percent, and above age 75 the number is below 15 percent. In the younger age groups the trend is very different. The Palestinian age group of 9-10 alone constitutes more than 45 percent of the total Jerusalem population. The latter statistic is one over which the Israeli leadership loses sleep. Without knowing these numbers we cannot understand the driving demographic force behind the demolition policy.<sup>108</sup>

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108 This data is taken from the Ministry of Interior’s population registry. Distribution according to age and nationality in Jerusalem as of Dec. 31, 2010.

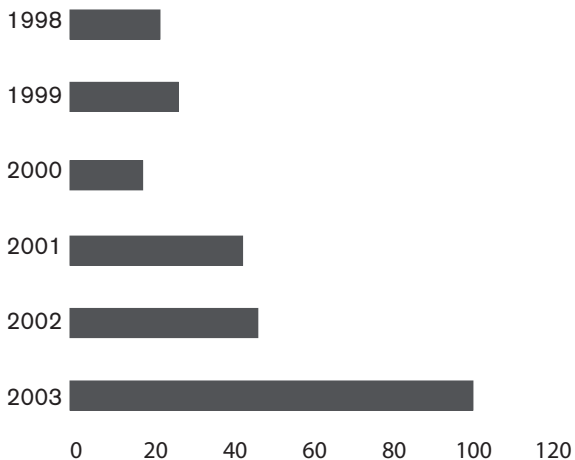
TABLE 4.1 AGE DEMOGRAPHICS OF JERUSALEM, PALESTINIAN AND JEWISH RESIDENTS

Age group	Total number of residents	Jewish residents	Non-Jewish residents	% Palestinian population
1	20494	12982	7512	36.65
2	20853	12715	8138	39.02
3	19926	11968	7958	39.93
4	19357	11392	7965	41.14
5	18742	10889	7853	41.90
6	18240	10526	7714	42.29
7	18318	10259	8059	43.99
8	18209	10188	8021	44.04
9	17975	9835	8140	45.28
10	17339	9523	7816	45.07
11	16961	9408	7553	44.53
12	16788	9372	7416	44.17
13	16758	9498	7260	43.32
14	16187	9287	6900	42.62
15	16248	9331	6917	42.57
16	15832	8995	6837	43.18
17	15686	9244	6442	41.06
18	15624	9122	6502	41.61
19	15394	9257	6137	39.86
20	15416	9457	5959	38.65
20-25	70824	45230	25594	36.13
25-30	63584	40582	23002	36.17
30-35	54834	31918	22916	41.79
35-40	48856	28174	20682	42.33
40-45	42360	25448	16912	39.92
45-50	40397	25683	14714	36.42
50-55	38059	26743	11316	29.73
55-60	34854	26299	8555	24.54
60-65	30963	23895	7068	22.82
65-70	20109	15396	4713	23.43
70-75	17894	14300	3594	20.08
75-80	14388	12131	2257	15.68
80-120	23749	20481	3268	13.76
<b>Total</b>	<b>851218</b>	<b>539528</b>	<b>311690</b>	<b>36,66</b>

The key to controlling the city is controlling its demographic trends. There are still some officials in Jerusalem who toy with the idea that demographics may be shaped according to Israeli needs, and the idea that the level of development in the Palestinian society can be fine-tuned by limiting construction still dominates. It is a simple notion to make life so difficult for the Palestinians that they should prefer to immigrate elsewhere.

There is a widely held view that the sharp increase in house demolition came as a result of the Second Intifada, which began at the end of the year 2000. Even though the two may be connected, the strict enforcement policy had already been put into effect before the start of the intifada. The violent events that swept across Jerusalem at the time have caused many to forget that at the same time discussions about the so-called “demographic problem” in preparation for the new outline plan, Jerusalem 2000, were also taking place. According to different estimates the Jewish population had been steadily losing its majority to the Palestinian population, which made Israeli policymakers uneasy and caused them to initiate a series of measures meant to maintain Israeli control over East Jerusalem. Among them are construction restrictions and house demolitions. The number of house demolitions has greatly increased as a result of the fear that the Jewish majority may be lost; the surveys made for the new plan put into question the continuation of effective Israeli control over East Jerusalem. Evidence that house demolitions in East Jerusalem have come as a result of the municipality starting to work on the new outline plan can be seen in the sharp increase in demolitions starting from 2001.

FIGURE 4.1 NUMBER OF DEMOLITIONS 1998-2003



Interestingly, as with every other matter concerning Jerusalem, the data concerning the demography of Jerusalem is controversial, and researchers give varying numbers. Two approaches are taken for calculating the statistics in Jerusalem: that of the Central Bureau of Statistics, which gets its data from a census carried out once every several years and is updated yearly according to a mathematical formula to calculate the change, and that of the Population Registry at the Ministry of Interior, which goes according to the number of people whose address is listed in Jerusalem and is updated automatically every time a baby is born, someone relocates to Jerusalem or someone passes away. The number of people listed in the Population Registry is 20 percent higher than that in the Central Bureau of Statistics.

Each system has its own rationale. The criticism of the Population Registry is that it includes many people who have left the city without updating their address. This may indeed be the case for the Jewish population, even though the number of those who have left is possibly balanced by those who have moved to Jerusalem also without updating their address. However, among the Palestinian population this claim should be treated skeptically. It's true that until the late 1990s it was still possible to find communities of Jerusalemites who lived in villages outside the city. However, since the Ministry of Interior began cancelling the residency of those living outside the municipal borders of Jerusalem, and even more so since the separation wall has been constructed, the number of those who are willing to take their chances and live outside Jerusalem has decreased dramatically. Even though we have no empirical evidence, testimonies of inhabitants of villages such as Al-Ram and Bir Nabala confirm that most of the enclaves in Jerusalem's periphery have been abandoned, and most people have relocated to East Jerusalem, so that the Population Registry's figures concerning the Palestinian population are much closer to reality than those of the Central Bureau of Statistics. The establishment chooses to ignore the Population Registry's figures and prefers those given by the Central Bureau of Statistics, mostly because the latter's data reflect a larger Jewish majority but also because the state sets the budget for each municipality according to the number of its inhabitants, and the Ministry of Finance prefers lower numbers, which require the channeling of a smaller budget for Palestinians.

## MUNICIPAL PARANOIA: FEAR OF LOSING CONTROL OVER EAST JERUSALEM

*"We are fighting a war over the city."*

*Yakir Segev, Jerusalem council member who held the East Jerusalem portfolio, KolHa'ir, April 17, 2009.*

It is commonly argued in governmental circles that political elements trying to undermine Israeli control over East Jerusalem are responsible for the illegal construction or that criminal elements are taking advantage of the law to make easy profits.<sup>109</sup> The first argument centers on letters found in the Orient House by Israeli security forces when it was closed on August 2001, in which Faisal Husseini, who held the Jerusalem portfolio in the Palestinian Authority, asked Yasser Arafat for financial aid for construction in East Jerusalem in order to prevent the land from being taken by settlers.<sup>110</sup> While these letters point at Husseini's intention to build as a means of protecting the land, President Arafat never replied and the PA never channeled any funds for that purpose. Husseini's associates at the time say that he did not hide his frustration from the lack of support from the PA for the cause of keeping Jerusalem Palestinian.

The claim that illegal construction is based political motives is also based on overly dramatic statements made by Palestinian leaders who presented illegal construction as if it were done for political objectives without regard to the actual intentions of the families who built the houses. It is common practice for politicians, who are not only Palestinian, to use the actions of others in order to serve their personal goals. That is why scholars such as Justus Weiner, who belongs to a school of political science in which considerable importance is attached to statements made by leaders while the testimonies of ordinary people are ignored, is led to believe the claims of opportunistic politicians who brag about their many achievements even though they have little to do with reality. Indeed, the residents of East Jerusalem build without

109 For instance, Director of Jerusalem Municipality Ra'anana Dinor, in a meeting attended by Mayor Olmert, Police Chief Aharoniski and others, said: "This is a war with national and economic motivation. This social phenomenon has a guiding hand." Jerusalem Municipality, Mayor's Office, June 5, 2001.

110 This argument and confiscated documents were published by Justus Weiner in his book *Illegal Construction in Jerusalem: A Variation on an Alarming Global Phenomenon*, published in 2003 by the Jerusalem Center for Public Affairs, headed by Dr. Dori Gold, former advisor to Prime Minister Netanyahu and Israeli ambassador to the UN. The fact that these documents were provided by the Shin Bet shows the strong relationship this research institute has with the security forces.

any political or national goal in mind but out of a need to have a roof over their heads. Illegal construction in East Jerusalem is devoid of political awareness and is a product of necessity resulting from the limitations imposed by the establishment. This is far from being trivial. Considering the pressures they are under, and the endless humiliation and discrimination that they face, it could be expected that each of them would take an active role in the national struggle. However, this is not the case. The Palestinians of East Jerusalem do not take an active part in the national struggle.<sup>111</sup>

Even though illegal construction is initially done without political motivation in mind, house demolition turns the construction of the house into a political statement. The political dimension that was absent during the construction is present after the demolition is carried out. Families who have never before engaged in politics adopt after their homes have been demolished a radical political discourse, and the house owners play the role the state forced them into, namely, that of the victim in a struggle between two nations or, even worse, in a religious conflict between Judaism and Islam.

Demolition accomplishes the complete opposite of what the government has been trying to achieve. The state, unwisely, added political, national and religious dimensions to the situation. The Palestinian establishment and the Palestinian press emphasize the national aspect of house demolition, and the public naturally accepts it because in the overall picture the relationship between the two nations takes place in the political sphere. Once demolished, the house acquires a political significance and becomes another aspect of the struggle over territory. By demolishing houses the municipal establishment adds fuel to this endless struggle.

From this perspective, house demolition works like a boomerang on the Zionist goal of unifying Jerusalem, for unification in the deepest sense would require the willingness of East Jerusalem residents to share the same space with the Jewish residents, and this can only be achieved if they feel secure under Israeli rule. The hostility that is caused by issuing such a large number of demolition orders sabotages any chance that the conditions for unification of the city will take place. For that reason, there is nothing more valuable to the Palestinian national movement than demolition orders, which keep the flames burning and prevent any chance of integration. This is another proof that the policy pulls in opposite directions, or in other words that it is a policy in which the left hand does not know what the right hand is doing.

As for the claims about criminal elements that encourage illegal construction

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111 Hillel Cohen, *The Rise and Fall of Arab Jerusalem, 1967-2007*, 2007.



in order to make an easy profit, to be fair, even though they are exaggerated, there is some truth in them. The construction business has been known to include undesirable elements, who build on land not owned by them, mostly in areas where the presence of Israeli police is not felt, such as in 'Anata or the Shuafat refugee camp. Municipal paranoia has led people to believe that these criminals are controlled by the PA.<sup>112</sup>

This kind of criminal activity was relatively uncommon in the past and became more widespread in the period after the Oslo Accords were signed in 1993 and before the Orient House was shut down in August 2001. In that period, criminal elements took over the vacuum left after the PA's security forces were expelled from Jerusalem and the Israeli police showed no interest in blocking the new residents. According to rumors, these criminal elements have been secretly tied to the Shin Bet (Israeli Security Service); otherwise it is hard to explain how these offenders have been able to build without a permit in broad daylight under the noses of the municipal inspectors.<sup>113</sup>

City leaders view illegal construction as an act of political defiance with far reaching implications meant to undermine the foundations of Israeli rule over East Jerusalem. Since the national discourse is the hegemonic discourse, the illegal construction is perceived as an expression of a counter-hegemonic discourse. In their mind's eye, it is seen as part of a global war waged by Islam against Western civilization. A research institute with an unmistakable right-wing agenda in a study published and funded by the municipality has actually described the illegal construction as part of an international conspiracy or in their own words "a variation on an alarming global phenomenon."<sup>114</sup>

This perspective suggests that the threat has many solutions, all of which include the use of force. The municipality and the Ministry of Interior see every unlicensed building as another move in the struggle for control over Jerusalem. They claim that the construction is funded by the Palestinian Authority, and as a result every house owner is regarded as a subversive and a rebel fighting a war of attrition against the Israeli regime.<sup>115</sup>

Without acknowledging this, one cannot explain why the municipality is so

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112 On this matter Irus Braverman quotes Shalom Goldstein, Mayor Olmert's Advisor for Arab Affairs, in *House Demolitions in East Jerusalem: Illegality and Resistance*, Tel Aviv University, 2006, p. 34.

113 Similar uses of criminal elements as informants and their compensation with governmental authorizations are described in Hillel Cohen's books, *Army of Shadows* (2004) and *Good Arabs* (2006).

114 *Illegal Construction in Jerusalem: A Variation on an Alarming Global Phenomenon*, Jerusalem Center for Public Affairs, 2003.

115 See a letter from Mayor Olmert to Foreign Minister Shimon Peres, Apr. 23, 2001.

eager to demolish “illegal buildings” in East Jerusalem in places where no Jewish foot has ever stepped. Hundreds of houses have been demolished in East Jerusalem in the name of this struggle for control. That is the only way by which we may understand the words of the former director of the Construction Supervision Unit, that the fight against illegal construction is “the real battle over Jerusalem.”<sup>116</sup> Only in light of this may we understand Ehud Olmert’s demand to increase the number of demolitions in order to regain control over East Jerusalem<sup>117</sup> and also grasp Yakir Segev’s statement cited earlier, that we are “in a war over the city.”

The Israeli obsession over controlling East Jerusalem proves beyond all doubt that fear has taken over the ability to reason. The Israeli regime operates with the assumption that Jewish sovereignty over East Jerusalem is at risk. Under the influence of this paranoia, every house, every tree and every flowerpot become part of a global political conspiracy. Every wall must be funded by the Palestinian Authority, by Hamas or by Iran, and every floor tile equals an explosive device. This gives rise to a nationwide conspiracy theory that sees every building as a part of a full-scale attack on the state. Under these circumstances, every house becomes a threat in the observer’s overactive imagination, which sees only political conspiracies instead of ordinary people who simply want to carry on with their lives. Paranoid behavior is the only explanation for City Councillor Yael Antebi’s warning that “wherever the construction law is not enforced there is no control over the accumulation of weapons, which are gathered in huge quantities.”<sup>118</sup> Yakir Segev, who also sees a direct link between illegal construction, the undermining of Israeli sovereignty and the strengthening of Palestinian control over the city, has said: “House demolition is only a small step in the effort to impose Israeli law against those who break it. Today there is practically no Israeli sovereignty over East Jerusalem; Israeli sovereignty is fictitious....It is the PA who issues building permits in the Old City. The reality on the ground is that the Palestinian Authority is slowly taking control over Jerusalem....We have the responsibility to exercise Israeli sovereignty over East Jerusalem, and that is done first by making sure that they respect the Israeli municipal laws. Without supervision over illegal construction or parking...it should not surprise us if riots similar to

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116 Koti Fundaminski, “This is the real battle over Jerusalem,” an interview with Micha Ben-Nun, Director of the Construction Supervision Unit, Jerusalem Newspaper, Mar. 18, 2002.

117 Nadav Shargai, “Olmert: we will demolish houses in East Jerusalem every week,” Ha’aretz, Feb. 6, 2002.

118 City Councilor Yeal Antebi, in a letter to all council members, Nov. 5, 2009.

the one that occurred a few days ago should break out.”<sup>119</sup>

Israeli rule over Jerusalem has created a view of reality founded on false assumptions. It is a twisted world view that prescribes a defective solution for a real problem with disastrous consequences; it sabotages the chance of coexistence for the two peoples and complicates further the Israeli-Palestinian conflict all as a result of groundless interpretation.

## **DESTRUCTION WITH A “SENSE OF MISSION”**

All of this politically charged ideology described above is eventually channeled into the municipality’s licensing department, which executes the demolition policy. Unlike most other municipal departments, who try to keep a façade of impartiality, the officials in this department do not hide their political motives. The person who headed the department in 2001-2006 and was personally responsible for East Jerusalem demolitions, Micha Ben-Nun, is an unsettling example of the kind of municipal official who does his job out of a “sense of mission.” In interviews given to the press, he revealed his innermost motives and spoke about the war over the future of Jerusalem. His colleagues tell us that he used to preach “Zionism” to them in order to motivate them.

Thanks to a study written by Shuki Sadeh as part of his graduate studies in the School of Public Policy at Hebrew University, we are able to take a deeper look into Ben-Nun’s inner world. Sadeh’s research includes a series of interviews with municipal officials of different ranks, who in one way or another are connected to the problem of house demolition in East Jerusalem.<sup>120</sup> Ben-Nun’s interview was conducted at a time when he was the head of the department, and at the beginning of the interview he took the state’s official position and spoke of the damage the illegal construction causes local infrastructure, public service and the quality of life. However, as the interview progressed, he felt more comfortable with his interviewer and started to reveal his true beliefs. House demolition was perceived by him as a political instrument with far reaching implications for the peace process. “If the sovereign does not hold the territory or control it, it’s hard for it to come to the other party in the negotiation and claim that it is part of Jerusalem.” In his view, the proof that house demolition has a central role

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119 This was said on Benny Toker’s radio show on Channel 7, Oct. 29, 2009 and published on Channel 7’s website under the title «The PA is taking over Jerusalem.» Yakir Segev, holder of the East Jerusalem portfolio, warns that the PA is slowly becoming the sovereign of East Jerusalem in practice.

120 Shuki Sadeh, House demolition policy in East Jerusalem, dissertation for a master’s degree in public policy, submitted to the School for Public Policy in the Hebrew University in Jerusalem, Nov. 2006.

among political considerations is the fact that discussions on the matter are held at the highest levels, including the prime minister's office, "because they have all reached the conclusion that Israel is losing its grip over Jerusalem." This matter has even greater importance in the Old City because "the Old City is the very heart of the Jewish people; this is a national matter," and that is why it should be handled with determination. Even though the problem of illegal construction exists in other places throughout Israel, in Jerusalem it has a different significance: "We have a similar problem in the Negev, only there the land is not lost but stays a part of the state of Israel. In Jerusalem, on the other hand, the territory is lost."

At times during the interview he tried to create the impression that his perspective is purely professional but he kept contradicting himself. On the one hand he claimed that the demolition policy has nothing to do with the attempt to limit the number of Palestinians in Jerusalem but on the other hand he said that "Jerusalem is the capital city, and therefore from its nature it's desirable that it should have a Jewish majority; this is a legitimate principle and an indisputable Zionist interest." When he describes the team that works for his department, he explains that the inspectors are Jewish and that they understand the importance of their work: "They understand what Jerusalem is, they don't need it to be explained; they completely understand the political objectives in the deepest sense." The terminology he uses points to his attitude towards East Jerusalem: "The inspectors on the ground feel that they are part of a war fought over Jerusalem. Their motivation comes not only from wanting to play their part in the national struggle but also from understanding and believing in what they are doing." He is of course very critical of the Israeli legal system, which he calls "the Achilles heel of this process," because of the "unbearable lightness" with which it delays demolition orders. In his view, the courts put too much emphasis on considerations of property and human rights, offering too much protection for criminals without protecting society from them.

Completing the picture is another department employee, referred to in the study by the Hebrew letter Teth, who worked at the department starting from the beginning of the 1990s until 2006 and agreed to be interviewed on condition that he remained anonymous.<sup>121</sup> He tells us that inspectors are motivated to bring as many demolition orders as possible because that is how the quality of their work is measured and also because East Jerusalem inspectors find meaning in their work and are proud of it. Teth, who knew the municipal system from the inside, suggested paying attention to what type of

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121 Ibid., p. 49

people work as inspectors in East Jerusalem and particularly “to the political background many of them come from.” The inspectors believe that they are fighting an actual war, and “every person involved in this matter knows and understands that demolition is a tool used in the Israeli-Palestinian conflict.” Over the years Teth had many times heard inspectors speak of their work as being “at the forefront in the war over Jerusalem,” and following a terror attack they would make an effort to detect building violations in the area from which the terrorist emerged. This attitude trickles down from the municipality’s leadership.

Confirming remarks made in Ben-Nun’s and Teth’s interviews, we offer the statements of two additional interviewees who support the argument that political elements used house demolition to influence the peace process.<sup>122</sup> The first, who worked for the department in 1985-2000 and now works as a private consultant for planning and building, says that during Olmert’s term as Mayor, the demolitions were ordered because of his need to demonstrate hegemony over Jerusalem. It was implied that the inspectors should increase the number of demolitions in times when a new development in the peace process, initiated by left-wing governments, has occurred. Second, attorney Hussein Ganaim, who has in-depth knowledge of the municipal system, confirms that “in past years officials in city hall have taken advantage of this window of opportunity in order to advance a political agenda that fits their world view.”<sup>123</sup>

Unlike many other municipal employees, those in the licensing department do not hide their political motives and do not try to cover-up their ideological actions with bogus “professional” statements. They have a primary objective. They are fulfilling what they consider to be a national goal. The goal has seeped down from the highest political ranks. It is supported by the city council, which is dominated by right-wing parties and by the municipality’s general director at the time, Yair Maayan, himself a settler and close associate of the radical rightist Avigdor Lieberman. In other departments, such as engineering, legal and welfare, the staff are not so open: they cover their political motives; or in some cases, their colleagues act in the spirit of these beliefs even though they may not share them.

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122 Ibid., p. 51

123 Ibid., p. 55



## Legal Tools For Executing The Demolitions

According to the Planning and Building Law of 1965 there are two procedures by which houses may be demolished. The first is with the use of an administrative demolition order, which is the “fast track,” allowing for the demolition to be carried out without the need to press charges or any take legal measures, within 30 days after the order has been issued. The second is with the use of a judicial demolition order, which requires sequential and lengthy legal proceedings.

### THE ADMINISTRATIVE DEMOLITION ORDER

Section 238(a) of the Planning and Building Law provides the municipalities with this fast and efficient tool for nipping illegal construction in the bud, in order to prevent the creation of Palestinian facts on the ground. In order for the administrative demolition order to come into effect, only the signature of the Mayor is required. The law allows imposing such an order in three cases: when the structure has not been populated yet; when the structure has not been populated yet, and its construction has been completed no more than 60 days; and when the structure has been populated but for less than 30 days.

The demolition of a structure with the use of an administrative order is not defined by law as a form of punishment, but as an administrative procedure for “restoring the site to its previous state,” and as a result does not require any legal procedure, and does not involve the opening of a criminal record, fines or imprisonment.

An administrative order may be carried out only up to 30 days from the moment

it has been issued.<sup>124</sup> However, the law also gives the court the right to extend the order according to its discretion, so long as the circumstances justify it. For instance, it may be extended if the owner of the structure appealed to a higher court, and is in the midst of a prolonged legal process, even if the building has been populated in the meantime, or if exterior causes prevented its execution, i.e. when the police are prevented, for operational reasons, from securing the premises for the demolition. As a result, every time that “completion is interrupted, due to reasons other than negligence, carelessness, or lack of interest on part of the municipality or the person acting on its behalf,”<sup>125</sup> the administrative order is automatically extended. Such extensions have become extremely common, especially throughout the Second Intifada, and the court almost always never questions the police’s explanation. In addition, the court may extend the administrative order even if the request for its extension was submitted after the thirty-day period has expired. These directives make the administrative order a flexible instrument for house demolition, guaranteeing the state has room to maneuver, and allowing the extension of administrative orders almost indefinitely.

Only the Mayor or the district manager at the Ministry of Interior may sign administrative orders. They are required by law to consult with the municipality’s legal advisor or the Ministry of Interior’s legal advisor, in order to confirm that the conditions for signing the order have been met. In the Jerusalem Municipality, in addition to the consultation with the legal advisor, the Mayor also consults with the director of the municipality’s Construction Supervision Unit, the director general of the municipality, and sometimes with the city engineer. This is done “due to the importance that the municipality sees in the issuance of demolition orders on the one hand, and out of the need to act cautiously on the other.”<sup>126</sup> It is interesting to point out that the municipality disregarded a plea made by scholars in the field of social work, who demanded that the social services be consulted, and that the family’s socio-economic situation and health be considered before the demolition is carried out. The municipality rejected this plea, arguing that the law does not require it, and that “the administrative demolition order is issued against a building and not a specific person.” This is obviously a cold and technical

124 i.e. From the moment the Mayor has signed it. It’s a common mistake to start the count from the moment the order has been placed on the house.

125 Justice M. Gal, Jerusalem municipal court, *Annas Aton vs. the local committee for planning and building in Jerusalem* cf. 2373/00.

126 Atty. Einat Ayalon, deputy to the municipal legal advisor, to Prof. Abraham Doron, Dec. 3, 2009, in a reply to a letter in which requests that the opinion of social services will be requested before the demolition. The letter was signed by Prof. Abraham Doron, Israel prize recipient for social work, Prof. Charlie Greenbaum, and others, Oct. 7, 2009.



argument, which demonstrates how blind and detached municipality officials have become.<sup>127</sup>

To make matters worse, the method in which administrative orders are delivered is problematic. Since the order is issued against a “building,” and not a person, it is not necessary to personally deliver the order to the owner. The law only requires that the order be posted on the walls of the building. The bulldozer may come as early as 24 hours after the order has been posted. The posting of the order is in itself outrageous: time and again we come across people who swear that they have never seen the order. The director of the Construction Supervision Unit has himself commented that “it may be true [that the owner never saw the order], we posted it 36 hours before the demolition, on a rainy night.”<sup>128</sup> This reply confirms claims made by a former municipal inspector (who refuses to reveal his identity because he is still in the middle of a lawsuit against the municipality) in which he describes numerous ways of guaranteeing that the owner will not be aware of the order, thus preventing him from going to court in an effort to have the demolition suspended: the order may be posted in a hidden corner; in winter it is usually posted in a place where the wind and rain may tear it down, and there are many other tricks. The municipality makes sure that a picture of the order is taken after the order has been posted, in order to disprove any future allegations made by the owner in court, but there are also testimonies of people who saw inspectors remove the order after the picture had been taken.

Once the order has been posted, the family finds itself in a race against time, trying to obtain a stay of proceedings, while the municipality makes final arrangements for the demolition with the company that supplies the bulldozers, with the contractor hired to remove the rubble, with the Israeli Electric Corp. which cuts the power, with Magen David Adom, who sends an ambulance just in case something happens, and with the police. This is all done as fast as possible, so that the family does not have the time to go to court,<sup>129</sup> and also because after the 30 days have passed and the order expires, a long and costly process for a judicial order becomes the only alternative.

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127 Ibid.

128 Ofir May to Meir Margalit, Feb. 10, 2011.

129 About 60 percent of all appeals to suspend demolitions are granted by the courts. The Jerusalem Municipality, the Mayor’s office, «A new policy in the field of planning and enforcement for East Jerusalem neighborhoods,» Jan. 30, 2011.

## THE JUDICIAL DEMOLITION ORDER

The issuance of a judicial order against a house, in accordance with section 204 of the Planning and Building Law, starts a process that may last many years. It begins in the local court and may reach the Supreme Court. However, the fate of most of the houses that enter this process is sealed, because even the Supreme Court cannot authorize illegal construction, even if the judges disagree with the policy that leads to these demolitions. This view was expressed by former President of the Supreme Court, Justice Aharon Barak, in these moving words: "Often I 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. The ruling is made in accordance with the law, but I would be very glad if the legislator would direct otherwise and prohibit house demolition."<sup>130</sup>

Moreover, for the most part, East Jerusalem residents never reach the Supreme Court, unable to afford the cost of hiring a lawyer and the preparation of the appeal.

The court may impose the task of carrying out the demolition order on the municipality or on the owner himself. Section 205 of the Planning and Building Law states that the defendant himself may be ordered to demolish, disassemble or remove the structure, and in many cases the court prefers to impose the task on the owner, so that the municipality will not have to pay for it, understanding that the municipality on its own is unable to carry out all of the demolitions due to their cost. For the same reason most owners are also unable to demolish their house on their own, and as a result the court imposes heavy fines for "not complying with a court order" and for the "use of the building without permit," after which it orders the municipality to carry out the demolition. In these cases the owner is punished four times: 1. He is fined for illegal construction; 2. He is fined for not complying with the judicial order; 3. He is fined for the use of a building without permit; 4. Finally, the municipality demolishes the house.

In cases when the owner of the building cannot be located, section 212 of the Planning and Building Law allows the issuance of the judicial order in the defendant's absence.

After the court has ratified the demolition order, and 24 hours have passed, the bulldozers may appear at any given moment, and without prior notice. The emotional stress, when not knowing when to expect the bulldozer, is tremendous, and is the cause of many other problems such as health issues,

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130 Yossi Levi, «Aharon Barak: It would make me glad if the legislator would prohibit house demolitions,» Ma'ariv, Jun. 20, 2011.

anxiety, and sometimes domestic violence and other traumatic experiences. People who fear for the fate of their houses are afraid to leave their house, and often lose their jobs due to frequent absences from work. This is the product of a well-orchestrated tactic, which uses terror and distress as main ingredients in the enforcement policy, because they “discourage” Palestinians from building.

## **SELF-DEMOLITIONS**

A different method, simple but Machiavellian, also prescribed in the Planning and Building Law and increasingly used in the past decade, is that of self-demolition, in which the family itself demolishes the house.

The court may order the family to “restore the property to its original state,” which means to demolish the house. Our experience over the years tells us that most court rulings ordering self-demolitions are not carried out, and as a result a complaint is filed by the district attorney, in accordance to section 210 of the Planning and Building Law, which states that if the owner fails to follow the court order, the task of demolition will be imposed on the municipality. Such cases, in which the court imposes the task of demolition on the family, are nevertheless in a sense preferable to those in which the municipality is ordered to carry out the demolition, because they allow the family more time, and every delay is invaluable.

However, a common form of self-demolition occurs without a court ruling. In many cases, municipal inspectors find a resident that seems weak, and pressure him to demolish the house himself, without ever filing an indictment. After the resident caves in and demolishes his own house, the demolition is not registered anywhere and will not appear in the municipal statistics. In these cases the inspectors have kept the municipality not only from spending money on expensive bureaucratic proceedings, but also from being publically criticized. Knowledge about these demolitions remains an internal affair, and they are not recorded.

Even when it is the court that orders the self-demolition the authorities' conduct is questionable. Inspectors show up at the door to announce that the building will be demolished within a few days, and remind the owners that they can still demolish the house themselves, and thus save the high cost of the demolition (for which they would be billed), or in some cases they send letters with the title “Notice before the execution of the demolition order,” in which they note that they “intend to carry out the demolition in accordance with the court's decision. In order to minimize damages you are advised to remove from the building any person and property within 10 days of receiving

this notice.”<sup>131</sup> The police also play a part in these methods, by summoning the family to the police station, an extremely stressful situation, for a “pep talk,” designed to pressure the family into demolishing the structure. As we shall see in the following case study, the police do not deny the use of this practice.

### CASE STUDY

Two brothers from the Atarash family, residents of the neighborhood of Jabal Mukaber, were summoned in June 2012 to the Oz police station, and two police officers, Doron Zehavi, who acts as “advisor on Palestinian affairs” for the Jerusalem district commander (he was formerly known in the Shin Bet as “Captain George,” and is notorious for his role in the Dirani affair) and a second officer by the name of A'id (known as “the Druze”) tried to persuade them to self-demolish two rooms built around 15 years ago. The officers informed them that the rooms are going to be demolished in the following week, and they should demolish the structures before the municipality does, if they don't want to pay for the cost of the demolition. These rooms are extensions to a small house that was built in the Jordanian period, and were built out of necessity when the family expanded and the house was too small to accommodate the entire family.<sup>132</sup>

The Israel Police's legal department, in a reply to our request to clarify this matter forwarded our query to the district commander who confirmed that this was indeed true. He justified the motives of the Jerusalem district police by stating that “the Israel Police routinely and as an integral part of its duties helps the various municipalities in carrying out demolition orders, as part of its duty to maintain public order, and within its authority to use force granted to it so that the [demolition] order may be carried out.”

The police made its case by pointing to a court ruling in which the defendant was ordered to self-demolish, and in case she failed to do so, the demolition would be carried out by the state, at the family's expense.

131 For instance, in a letter sent to the Dgani Family of the Neighborhood of At-Tur on Jun. 17, 2010, signed by Elias Yaron, demolition coordinator at the Licensing and Supervision Department. The letter adds another threat: «The municipality is not responsible for any damages caused to property if the building is not evicted by the time stated in this notice.»

132 This information was first documented by the non-profit organization Combatants for Peace, which has been assisting the family, and was reconfirmed by their lawyer in a conversation with Meir Margalit on Jun. 10, 2010.

“In light of this, the police found it reasonable to contact the defendant, so that the implications of not demolishing it himself may be explained to him, in terms of upholding the rule of law and public order, as well as in terms of the financial damage that he may suffer as a result. Inquiries with all of the parties who attended the meeting indicate that contrary to your claims no pressure was exerted on the defendant.”<sup>133</sup>

It should be noted that self-demolition, which to us appears incredibly cruel, may be interpreted differently by the victims. A rare and touching testimony of a woman called Intisar, who preferred to demolish her own home rather than having strangers invade her privacy, has been documented by Hagit Keysar as part of her research at the Hebrew University, and holds feminist insights that would have never occurred to us, because it is usually the men who are interviewed. This woman’s testimony shines a new and disturbing light on self-demolitions: “It’s easier for me to demolish it with my own hands than have them remove my furniture. I’d rather die than let them remove the furniture from my house. The furniture is extremely important. Every daughter has her own clothes, her own underwear, which is private. When they come, first they take you outside, and then take out your belongings.”<sup>134</sup> It’s clear that she’s not concerned with the furniture being removed, but by the possibility that strangers will see her daughters’ underwear and invade their privacy, which in Palestinian culture is considered a desecration of their honor. This testimony offers new insights not only because the research overwhelmingly centers on the masculine point of view, but also because of the western mentality, which most researchers in this field share, a matter which will be dealt with in Chapter 9, which deals with the trauma experienced by the family whose house has been demolished.

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133 Atty. Michael Frankenburg, assistant to the municipal legal advisor, to Meir Margalit, Jun. 24, 2012.

134 Hagit Keisar, Signs of Life. The imagined property and the house in store, HomeLess-Home, Museum on the Seam Catalog, edited by Ariela Azulai, January 2010, p. 107.

## DEMOLITION WITH A MUNICIPAL BYLAW

In addition to the two options for house demolition mentioned in the Building and Planning Law, the administrative order and the judicial order, the Jerusalem municipality demolishes structures using a third, controversial method – a municipal bylaw for maintaining cleanliness and order. This bylaw allows the removal of junk and movable property from public space. Even though it is not the original intent of the law, the municipality interprets it to include all structures that are “not rigid,” such as huts, tin shacks, containers, storage facilities, peddler’s booths, or structures for keeping animals such as pens or hen houses. According to the municipality, this is completely legal: *“On the issue of removing structures and installations that are not permanent (i.e. are not made of concrete or blocks), we act in accordance to the municipalities’ ordinance and under the directives of the Ministry of Justice, received from the attorney general’s office on March 3, 2001, which consider installations situated in a public area to constitute an obstacle to the public domain... which the municipality is obligated to remove.”*<sup>135</sup>

These demolitions do show up in the statistics of the municipality’s Construction Supervision Department because they are not carried out by this department, but appear on the reports of the Municipal Supervision Department, usually under such headings as “clearing” or “removal of structures,” and they are almost never referred to as “demolition.”<sup>136</sup> This contributes to the large gap between the number of structures actually demolished and the numbers published by the municipality.

It should be noted that the legality of this method is questionable. The municipality misuses the law by defining structures used as storage facilities or as houses for very poor families as “junk” or as “a nuisance,” and refers to open spaces as “streets” in order to meet the requirements of the bylaw. It understands the law according to its own needs, while imposing new definitions whose relation to reality is purely coincidental.

The municipal bylaw does not grant the municipality the authority to demolish a permanent structure that has been in existence for a long time, nor to remove it, especially when it’s located on private property. The law states that after a warning has been sent and a demand to clear away the structure has been made, a legal suit is to be filed, and the offender punished, but the municipality does not have the legal authority to carry out a demolition without a court

135 Attorney Danny Liebman, Jerusalem Municipality deputy legal advisor, to Meir Margalit, Feb. 3, 2010.

136 See reports filed by Meir Dadia, head of the Enforcement Department, at the request of council member Meir Margalit, on Jan. 20, 2011 (northern part of Jerusalem) and Mar. 13, 2011 (inside the walls).

order. In Atty. Sami Arshid's opinion, the reliance on a municipal bylaw for carrying out demolitions is a strained interpretation of the law, opposed both to its letter and purpose.<sup>137</sup> In addition, primary legislation has precedence over a municipal bylaw, and when an objective may be achieved with the use of primary legislation, the municipality must act in accordance to it, and not the secondary legislation (i.e. the municipal bylaw). The municipality, by bypassing the primary law, exempts itself from the requirement to press charges, and demolishes structures through the misuse of a municipal bylaw.

Until recently, the municipality made only sporadic use of the bylaw for demolishing structures, but in 2010 it made extensive use of it, mostly in the Issawiya and At-Tur, neighborhoods to the point that in just one single day (December 29), in a joint operation involving the municipality, the Ministry of Interior and the Israel Nature and Parks Authority, 18 structures were demolished on the slopes of At-Tur.

### **CASE STUDY: THE BEDOUINS OF ANATA**

The most grotesque attempt to demolish a residential structure by implementing the municipal bylaw took place in 2007, when the municipality of Jerusalem ordered the demolition and clearing of tents and huts in the outskirts of Anata, facing French Hill, in which the Jadua-Kabua clan, part of the Jahalin tribe, had been living since the 1980s.

The municipality argued that the demolition of these structures by means of the bylaw was permitted, in light of a ruling at the Court for Local Affairs in Tel Aviv, which allowed the removal of the encampment in "KikarHaLechem" by means of the bylaw, and a ruling of the court in Eilat, which allowed the removal of an encampment of homeless people on the beach, because "technically" tents are not considered as "dwellings," which may be demolished only by means specified in the Planning and Building Law. The Jerusalem municipality claimed that since here too in Anata the structures involved were tents and huts, there was no reason not to apply the same rule and treat the Bedouins in the same manner as the "intruders" were in Tel Aviv and Eilat.

The municipality's position is composed of three arguments. The first is that the tents and huts in which the Bedouins live cannot be considered to be "residential structures." Moreover, the fact that these "installations" may meet the definition of the term "structure," will not prevent the municipality from

137 Sami Arshid, legal opinion concerning the demolitions on the slopes of At-Tur. Jan. 5, 2011.

removing them, especially when the structures in question are transportable and not “permanent structures” made of concrete or building blocks.

The second argument is that even if the installations were considered to be “houses,” they were built in an open public space for which (in the absence of an outline plan) no permits may be issued, and for that reason in itself they should be demolished.

The third argument is that there is no room for a Bedouin tribe in the capital of Israel, or as it was put by the municipality: “This lifestyle is not suitable for the capital of Israel.” Each of the arguments is interesting in its own right, on account of its own twisted logic. It is therefore worthwhile to expand on each of the arguments.

The first argument, that the structures should not be considered “residential,” ignores the fact that each culture has developed its own unique way of life, and in Bedouin culture a tent is as legitimate a place of residence as a penthouse is in western society. The municipality’s attempt at defining what may be considered to be “a place of residence” is not only pretentious and narrow minded, but also reflects its attitude towards the Palestinian population in Jerusalem, filled with paternalism, arrogance and contempt. The municipality’s efforts are more than just an attempt at defining what should be considered to be a place of residence, but also what values and cultural norms are acceptable. Moreover, the municipality outdid itself when explaining the necessity of clearing the compound with its concern for the city’s “appearance,” while the Jabua-Kabua compound borders an illegal waste dump, in which trucks unload construction waste freely. If the municipality had any concern for the appearance of the city it would have first taken care of this nuisance, instead of attacking the Bedouin compound.

The second argument, according to which huts and tents also require building permits, is shameful and outrageous. The municipality is well aware that the Bedouins are unable to obtain permits because no outline plan for this area was prepared. In other words, the municipality admits never having authorized an outline plan, even though it has been its responsibility to do so for over 42 years, and the law requires municipalities to create plans in a reasonable amount of time. Second, the argument is not consistent with various precedents, such as those set by Judge Daniel Fisch of Haifa Magistrate’s Court, Judge Michal Agmon-Gonen of the Tel-Aviv District Court, or of Judge Yisrael Axelrod from Be’erSheva, who have all ruled that in cases where the municipality had been incompetent and did not prepare a plan, the residents are not to be held responsible, and enforcement should not take place in



cases where the state itself fails to obey the law. We have so far argued that the municipality's position is shameful. At this point we should add that it is shameful and insolent.

The third argument embodies the municipality's entire position. Someone in the municipality has decided that Bedouins should have no place in Israel's capital city. This brings to mind several questions: Who decided on this matter? On what authority may one decide who is allowed to reside in the city and who is not? Why should it be forbidden for a Bedouin encampment to exist in the capital city, but perfectly acceptable for a refugee camp of 11,000 people to be in the neighborhood of Shuafat? Why should it be forbidden for a Bedouin encampment to exist in the capital city and not for housing projects for the poor like those on Hanurit St., Stern St. or Hevroni St.? If Bedouins are not allowed to reside in the city, who can guarantee that in the future a new Mayor won't claim that it is forbidden for homosexuals, foreign workers, or simply Christians, Muslims or even leftists to live in the capital of Israel? Every demand to expel a certain sector of society from the city is racist by definition.

It should be noted that the municipality is determined to use this bylaw not only because it makes it easier to demolish, but also because it is helpful in setting a precedent that will allow the expulsion of Bedouins from their land not only in Jerusalem, but throughout the country, by a fast and inexpensive method.

The way in which the state makes instrumental use of a law with the intension of harming people brings to mind dark regimes and historical periods in which expulsion was done with the backing of the law and in the name of public order. Ultimately, it does not matter if the actions are legal. Countless crimes have been committed in the name of the law. These injustices may be possible to defend from a legal standpoint, but not from a moral one. It is evident to any person who has not lost his humanity how deeply immoral this policy is.

## **DELAYING EXECUTIONS OF DEMOLITION ORDERS BY**

### **THE MAYOR**

The legal procedures taken against illegal construction are criminal procedures for all intents and purposes. According to the law, once the court has ruled that the building is to be demolished or sealed, there is no room for discretion on part of the executive branch; it must be carried out to the letter and without

delay.<sup>138</sup> This has been known to Mayors throughout the generations, and, whenever representatives of foreign countries demand that the municipality put a stop to house demolition, replies in the spirit of these words are provided. However, two ongoing affairs prove beyond reasonable doubt that when the Mayor wants to delay a demolition order, he can. These are the cases of Gan Hamelech, in the neighborhood of Al-Bustan, and Beit Yehonatan.

More than four years have passed since the court ordered the eviction and sealing of Beit Yehonatan. Despite that, the municipality has systematically refrained from carrying out the court's ruling. We have already discussed Beit Yehonatan in Chapter 2, which deals with double standards in the execution of demolition orders, and there's no need to expand on this matter again, but it is worth mentioning here as it teaches us that when the interests of a sector favored by the Mayor are in question, even a court order may be overlooked. Such a violation of a court order would not have occurred if Palestinian construction were involved.

The case of Gan Hamelech/Al-Bustan also demonstrates that the Mayor is capable of violating court orders, when it serves the settlers' interests. In the neighborhood of Al-Bustan there are dozens of pending demolition orders, ticking like a time bomb, which may be carried out at any moment. A municipal plan for demolishing 88 buildings was devised in 2004, but was prevented mostly due to international pressure. Mayor Barkat wanted to prove that he is capable of succeeding where others have failed and thought up an original scheme, in which the old plan would be carried out in several stages and without opposition: he declared his intention to build a tourist site on part of the compound, which would require the demolition of 22 structures, while promising to provide housing solutions to the families whose houses are demolished, and even an inclusive solution for the inhabitants of the remaining 66 buildings. Mayor Barkat adopted a clever strategy because the compound is so important for the settlers of the Ir-David Foundation. Instead of storming in like a bull in a china shop, he offered incentives for those who would voluntarily vacate their homes.

Barkat's scheme fits well with his experience as a businessman, and seems to have had a certain appeal, because some of the residents were already considering the proposal favorably. However, in order to speed up the negotiations, he needed to create a relaxed atmosphere. This he achieved by suspending legal proceedings against the residents, which again proves that when he cares for an issue, even court orders do not stand in his way.

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141 The court even ruled against the Mevaseret-Zion municipality for not carrying out a judicial court order in a reasonable amount of time. The municipality was ordered to compensate the claimant. Jerusalem Magistrate Court, criminal appeal 3633/05.

Cases such as these, even though not extremely common, are far from being isolated incidents. The authorities have many ways of preventing house demolitions. At the end of 2004, as a result of the supervision department being unable to deal with their work load, the municipality of Jerusalem decided to “suspend the enforcement proceedings” of about 300 cases filed before 1999 and to which a statute of limitations applies, providing that the structures are small and are not a public nuisance.<sup>139</sup> Similarly, in July of 2005, 40 structures in Al-Bustan that were built before 1992 were spared.<sup>140</sup> One should pay attention to the phrase “suspend the enforcement proceedings” because this doesn’t involve the deletion of the criminal case. This is merely an administrative process in which the municipality’s legal advisor authorizes the shelving of the cases. The deputy to the municipal legal advisor explained that the decision is “not about closing criminal cases, but merely an administrative decision.”<sup>141</sup> Still, it doesn’t matter how the municipality refers to these cases, what does matter is that when it wants to suspend demolition proceedings, it finds a way to do so. Ultimately, it turns out to be no more than a matter of semantics, and it’s always possible to find the right regulation in order to prevent demolitions.

In addition to the Mayor’s decisions, the Israeli national government also has been involved in demolition policy. In 1998 Prime Minister Benjamin Netanyahu decided with Minister of Public Security Avigdor Kahalani that house demolition would be carried out at a rate of three buildings per week. In contrast, during Ehud Barak’s term, Minister of Public Security Shlomo Ben-Ami and Minister without Portfolio Responsible for Jerusalem Affairs, Haim Ramon, re-evaluated this matter and decided to considerably decrease the rate of the demolitions.<sup>142</sup> In 2009 the prime minister’s office had a decisive role in the suspension of demolitions, following American pressure to stop the demolitions so long as discussions with President Abbas continued. Another example is the directive from the Foreign Ministry not to carry out any demolition during visits of high-ranking diplomats and while the prime minister is abroad. The most striking example is that of Secretary of State Hilary Clinton, who during her visit in 2009 demanded to put a stop to the

139 See cf. 7470/05, the State of Israel v. Eyal Gottlieb and others, Jerusalem Court of Local Affairs, July 2006.

140 State Comptroller’s report for 2009, published in 2010, second chapter «Jerusalem Municipality: Enforcement of the Planning and Building Law in Gan Hamelech Compound,» p. 695.

141 Attorney Danny Liebman, Jerusalem Municipality deputy legal advisor, to Meir Margalit, Jan. 25, 2011.

142 According to Director of the Municipality Ra’anan Dinur, in a discussion about house demolition in East Jerusalem, in the presence of Mayor Olmert and General Commissioner Aharonishki. Jerusalem Municipality, Mayor’s office, Jun. 5, 2001.

demolitions, and as a result demolitions ceased for several months, and the prime minister's office ordered the municipality not to demolish any building without explicit approval.<sup>143</sup>

## PRIORITIZING DEMOLITIONS

In addition to the procedures mentioned above, there is another at the Mayor's disposal for suspending demolitions, which is efficient, flexible and completely legal – the setting of criteria for deciding the order in which demolitions will be executed. The municipality can easily justify prioritizing – it may claim that even though it does not object to the execution of demolitions, considering the amount of demolitions at hand, and the limited resources, it has no choice but to prioritize. Thus any demolition order that the Mayor doesn't want to carry out can be legally buried. Barkat did not invent this method (it first appeared towards the end of Lupolianski's term),<sup>144</sup> but he perfected it in his efforts to prevent Beit Yehonatan from being sealed.

The municipality explains that the need to prioritize is due to its inability to carry out all of the demolitions on its own, mostly because it lacks the funds required for the task, but also because the police are unable to provide the security for the demolition operations often enough.<sup>145</sup> "The sensitive nature of demolition operations, together with budget limitations and the need for police backup, when faced with the large amount of orders, has caused the orders to pile up, and that is why the goal of carrying out every order immediately cannot be realized in practice."<sup>146</sup> This state of affairs, according to Mayor Barkat, has damaged the ability to use enforcement as a means of deterrence, or as the municipal prosecution admitted when filing for an administrative appeal: "Since in practice the municipality and other enforcement agents are unable

143 See Minister of Internal Security Yitzhak Aharonovich to a query from MK Yariv Levin (Likud Party), May 2010.

144 The legal advisor at the time, backed by the Ministry of Justice, spoke out against the decision to set criteria for the order of demolitions, claiming that it goes against the spirit of the law, the attorney general's recommendations and previous court rulings. He blamed the council for making a decision that politicizes demolitions, and added that it should be cancelled. See Yossi Havilio to Yehoshua Polk, Jan. 9, 2008, Yossi Havilio to Mayor Lupolianski Feb. 4, 2008, Hovav Artzi, Head of the Department of Real Estate Law Enforcement, to Yossi Havilio, Apr. 28, 2008, and others.

145 According to the Jerusalem Municipality the most important factor is the police backup and not the budget: «The crucial element in this matter is the Israel Police, which is supposed to provide assistance in operations of demolition/adjustment/sealing.» Atty. Hodaia Ben Naim, assistant to the municipal legal advisor, to Atty. ZiadKawar, Feb. 8, 2010.

146 City council meeting no. 22, Feb. 18, 2010, recommendation by the local committee for planning and building to approve the criteria for the exercising of enforcement orders and enforcement policy.

to cope with the amount of illegal construction by means of legal proceedings, imposing demolition orders is equivalent to doing nothing.”<sup>147</sup>

This state of affairs was used in order to authorize a new set of criteria with the goal of creating a supposedly professional way of prioritizing, but in fact, as we shall see, the true purpose was to move demolition orders against West Jerusalem residents and against East Jerusalem Jewish settlers to the end of the list.<sup>148</sup>

The criteria were supposedly created according to impartial professional considerations, only for some reason orders at the top of the list were all against East Jerusalem Palestinians, while orders against settlers or for West Jerusalem were pushed back to the end of the list. According to the local committee for planning and building “these criteria are meant to reflect the policies of the committee’s members.”<sup>149</sup> It goes without saying that a committee, whose members are prominently right-winged, will not treat East Jerusalem favorably. In the explanatory remarks made in the same meeting, the need for setting criteria for the demolitions is explained as resulting from a “large number of building violations, which have added 20,000 residential units to East Jerusalem.”<sup>150</sup> That is to say, the reason for establishing new criteria was violations in East Jerusalem. No mention was made of violations in West Jerusalem.

It’s easy to see what the Mayor was hoping to achieve with the new criteria, but if his intentions are not sufficiently clear, a thorough examination of the criteria reveals how this system actually works.

The criteria that were approved in the Jerusalem municipality are as follows:<sup>151</sup>

- Top priority will be given to illegal structures situated in the city center, the Old City, public spaces and open spaces, nature reserves and areas designated for conservation, central junctions and roads.
- An urban plan of some sort is being promoted in the area.
- The severity of the offence, the size of the structure and its use will be taken into consideration, i.e. if the building is a massive 300 sq.m. structure, or if it hurts the aesthetics of the urban fabric, or was built for financial profit,

147 The Jerusalem District Court, 26766/07/10, Meir Margalit and others against the Jerusalem Municipality.

148 This was approved at the Local Committee for Planning and Building on Dec. 21, 2009, and at the city council on meeting no. 22 in Feb. 2010.

149 City council meeting no. 22, Feb. 18, 2010, recommendation by the Local Committee for Planning and Building to approve the criteria for the exercising of enforcement orders and enforcement policy, Section 2.

150 Ibid., p. 1.

151 Summary of a meeting that took place in the Mayor’s office, on Jul. 13, 2010. The subject of the meeting was “enforcement in East Jerusalem.”

it will be given priority.

- There is a possibility of the building being legalized in the near future.
- There are security and public safety concerns.
- The building is harmful to the environment.
- The building harms areas valued for their landscapes and wildlife or that have historical value.
- Operational difficulties faced by the police and the municipality will be taken into consideration.
- There have been various past legal proceedings against the offenders.
- Too much time has passed since the order has been issued.
- The violation has trampled the rule of law to an unacceptable degree.

The list of criteria is a masterpiece of deception. Someone who is unfamiliar with the terrain might get the impression that the criteria were established according to objective professional standards, but those who know the reality on the ground see a sophisticated trick designed to place East Jerusalem violations at the top of the list for demolitions. The first criterion (ostensibly dealing with sensitive locations) is a good example. It involves such sites as the central center, green spaces, public spaces, nature preserves, and heavily trafficked areas and intersections. The committee members are well aware that the building violations in West Jerusalem almost never match those described under this criterion. Jews have virtually no need to build in such areas. Illegal construction in East Jerusalem, on the other hand, is almost always in such locations, since most of the area in East Jerusalem is assigned to one of these categories: green spaces, public spaces, open spaces, nature reserve and areas for conservation, central junctions and roads. The outline plan assigns East Jerusalem these categories precisely in order to limit Palestinian construction in East Jerusalem. Thus, it comes as no as a surprise that most of the illegal construction is located in these areas. Indeed, one may ask for example, where else is there construction that is harmful to areas valued for their landscapes, if not East Jerusalem, where most of the buildable area is designated as “green space” or “open space?”

The criterion stating that priority will be given to violations of 300 sq.m. is also customized for East Jerusalem, for illegal construction in West Jerusalem is mostly smaller extensions added on existing buildings and not entire structures. Establishing public safety as a criterion is also designed for East Jerusalem, because illegal construction in East Jerusalem is performed without the supervision of an engineer, and not according to Israeli building regulations. It

is inherently a greater public safety risk.

A criterion about historical value seems to have been custom made for the Gan Hamelech settlement in Silwan.

Even the seemingly tolerant criterion that takes into consideration the possibility that a current building infraction might be legalized in the near future works against East Jerusalem. The East Jerusalem planning process is so slow that there's usually no chance of legalizing in the foreseeable future.

Admittedly, this list does not openly state that Palestinian-owned structures should be demolished first, and that illegal Jewish-owned buildings should be demolished only if there are department funds remaining after Palestinian structures have been demolished. The municipality is neither so stupid nor so transparent as to do that. However, if one understands the patterns of illegal construction in Jerusalem, the meaning of the criteria is obvious. The very fact that a political body such as the municipality, which is right-wing-dominated, supported the proposal so enthusiastically, is sufficient proof that there is a hidden agenda.

Here too the municipality's legal advisor came out strongly against the committee, arguing that the criteria authorized are illegal, and the committee, being a political body, has no right to interfere with a matter that is essentially a legal matter.<sup>152</sup>

This affair sheds a light on the various methods at the Mayor's disposal when he wishes to defy a court order, and at the same time points to the fact that the Mayor, up to that time, decided on the order in which houses were demolished without any criteria, with no transparency, or for criteria known only to the decision makers.

This is exactly what we have consistently argued.



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152 See a letter sent by council member Dudi Hershkovitz to Atty. Yossi Havalio, May 17, 2010.





## The Apparatus For Executing Demolitions

*“Systematic fixation and lack of support.”*

*Nir Barkat, describing the attitude of the legal system regarding illegal construction in East Jerusalem, Feb. 3, 2010.*

*“We all know that the local committees are not blameless.”*

*Ron Huldai, The Marker, Feb. 12, 2012.*

In September 2009 the daily newspaper The Marker reported that a reform authored in the prime minister's office aimed to simplify the bureaucratic process in the procedures for planning and building by annulling the district committees for planning and strengthening the local committees. Prime Minister Netanyahu explained that a reform was needed because “in order to get a building permit, one must go through the seven circles of hell.”<sup>153</sup> Without delay, a ministerial committee for planning and construction was formed to prepare legislation that would “improve, shorten and simplify the planning process.”<sup>154</sup> The plan gave rise to an intense public debate in which most people agreed that the current situation was intolerable but disagreed over which of the committees was at fault, the local committee or the district committee. The representative of the Society for the Protection of Nature in Israel argued that “experience teaches us that a large part of the problems with the planning system, such as politicization, corruption and an inability to enforce the law, originates in the local committees as a result of the problematic nature of the relationship between elected officials and their electorate.”<sup>155</sup>

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153 Guy Lieberman, The Marker, Sep. 21, 2009.

154 Ibid.

155 Ibid.

This discussion has been going on for many years in different circles. An article published in the same newspaper two years earlier dealt with the local committees' poor performance caused by impossible bureaucratic procedures, its politicization and the low quality of the members, who not only lack an understanding of urban planning but are also constantly in a conflict of interest, being more committed to their voters or their donors than to the local outline plans. The power the local committees are entrusted with is tremendous, as they not only have the authority to approve building plans but are also in charge of municipal enforcement. "Most of the ailments that characterize the real estate industry in Israel result from the flawed makeup of the local committees" because "on the local committees...sit the elected council members of the municipality....Their membership on the committee has nothing to do with their knowledge in the field, their general education or even their interest in the issues at hand." This implies that the "conflict of interest faced by council members is inherent in the law."<sup>156</sup> The article gives many examples from the field of real estate which demonstrate how personal economic interests of council members come into conflict with planning considerations and even outweigh them. And even though the article deals only with economic considerations, not with political concerns, we should include both categories when appraising district and local committees in Jerusalem. The article presents data provided by the police, according to whom most planning and building committees in Israel are under investigation. The National Economic Crimes Unit of the Israel Police, since its establishment in 2004, has interrogated under warning no less than 150 local and district council members. At the same time, the National Fraud Unit has questioned for similar offences even more people, including heads of municipalities. The severity of the situation in Jerusalem was exposed with the Holy Land affair, which is a good example of how the political leadership pressures the municipality's professional bureaucracy. The manager of the Licensing and Construction Department at the Jerusalem municipality has attested that "the department has been operating under tremendous pressures, both political and administrative."<sup>157</sup>

We have so far presented problems with the processes of planning and construction that exist throughout Israel. Compared with the Jewish sector, the situation of the Palestinian population of East Jerusalem is much worse. In Jerusalem, we must add to the list of difficulties the fact that most local committee members represent right-wing parties and would do whatever they

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156 AviBar Eli, *The Marker*, Jun. 22, 2007.

157 City comptroller report for 2009-2010, April, 2010, p. 255, and the 2009 report which dealt with illegal construction in Al-Bustan neighborhood, p. 693, footnote 16.

can to prevent any Palestinian from building in Jerusalem.

## **THE CONSTRUCTION SUPERVISION AT THE MUNICIPALITY**

The municipal body responsible for house demolitions in Jerusalem is the Construction Licensing and Supervision Department. Since 2007 Tzachi Katz has been the director of the department, replacing Micha Ben-Nun. The department operates about 30 inspectors in West Jerusalem and another six to eight in East Jerusalem.<sup>158</sup> These inspectors locate and document building violations. If the building is still under construction, a stop-work order is issued and evidence to be used against the “criminal”<sup>159</sup> is gathered. Finally, an administrative demolition order is issued, or, if the building has already been populated, the case is forwarded to the legal department to prepare an indictment. There are several methods for finding building violations: inspectors patrol the neighborhoods with police escort; complaints are sometimes made by neighbors who may be displeased with the effect of the building on their environment; and aerial photographs are also used. In addition, an extensive network of collaborators works for the authorities, and they receive various benefits in return for their assistance.

City Comptroller Attorney Shlomit Rubin examined the work procedures of the Construction Licensing and Supervision Department in 2001, 2003 and 2006. In 2009 she specifically examined the Construction Licensing Division, following severe cases of irregularities, including bribery and other offenses, occurring over the years. The first report, in 2001, revealed that the supervision of constructions is performed without authorized and updated regulations. In a minimalistic and dry legal style, the comptroller wrote: “The municipality doesn’t work according to a demolition procedure that has been authorized and has been updated. The existing procedure is unsuitable, being old and not up-to-date.”<sup>160</sup> As a result, demolition orders have been issued according to the arbitrary decisions of the division’s manager. In addition, even the old regulations have been disregarded by the municipality, which in fact operates without orderly working procedures. “Procedure 41.5203 for demolition of a structure with the use of a demolition order is a procedure dating from

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158 See Beit Yehonatan’ at the Jerusalem local court, criminal file 7470/05, in front of Judge Ben Zimrah, section 4.

159 See Hagit Keysar, Hamakom: The Place, a dissertation submitted to the University of Manchester, School of Social Sciences, 2008. Her research is an analysis of pictures that appear in demolition files which are prepared at the municipality against unlicensed construction and of the invasive practices with which the Planning and Building Law is enforced. The main idea has been further developed by Kesar in her artwork, exhibited at Zochrot gallery in 2009 and at Museum on the Seam and appears in the museum’s “HomeLessHome” catalogue in 2010.

160 City comptroller report for 2001, p. 279.

February 1, 1987. Professional examination reveals that it is unsuitable for the changes that have come about in the department over the years. The department does not follow this procedure.”<sup>161</sup> The comptroller notes how important it is to maintain proper procedures whenever demolition orders are concerned: “The auditing entity is aware of the sensitivity of the subject of demolitions in Jerusalem. That is why it sees great importance in the existence of an updated procedure that is designed to prevent, as much as possible, any mishaps in the execution of demolition. There’s no need to point out the importance of having suitable and up-to-date procedures.”

We should understand, the comptroller’s dry and restrained language notwithstanding, that effectively the report states that as far as house demolition is concerned, anything goes. Crucial decisions are made without clear criteria and with no public transparency. The considerations followed by the municipality are unclear, politically motivated and sometimes guided by personal interest, as attested by indictments filed over the course of 2002 against some of the workers of the Construction Supervision Division.

In light of the findings exposed by the comptroller, the city councilor (author of this book) approached the director of the Construction Supervision Unit on March 19, 2001 and demanded that the demolition be suspended until proper regulations were approved. The director replied that a draft for the new procedure had already been prepared and was about to be published. He saw no reason to delay any demolitions prior to the completion of the process: “The fact that there was no authorized procedure is not a good enough reason to delay and prevent the demolition of illegal structures especially since executions have stood the test of law. I find no reason to suspend the execution of demolition orders till the publication of the procedure since this is a matter of enforcing the Planning and Building Law.”

Two years later, in November 2003, the city comptroller published a follow-up report revealing that the situation had remained the same. The comptroller found that the new procedure had still not been authorized by the director of the municipality even though more than two years had passed since the previous report. The municipality’s director promised the comptroller in February 2003 that by the end of the month the procedure would be authorized, but as she writes in the follow-up report, “the proposal for the procedure is waiting to be approved by the director.” Again the comptroller determines that this is a highly sensitive matter: “The audit sees great importance in the existence of a procedure regulating technical and other aspects of house demolition, whose outcomes touch on the matter of property rights.”

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161 Ibid., p. 283.

In 2006, the city comptroller examined the performance of the Construction Supervision Unit for the third time. Here too the comptroller notes that the municipality still works with no clear procedures on one of the most delicate matters in the city. "The audit found no clear and written criteria from which the municipality's policy may be deduced as to when the municipality intends to issue administrative orders and when it intends to take the alternative course of filing indictments."<sup>162</sup> It is true that she did find that there was "verbal agreement in regards to the criteria for administrative demolitions." However, in a work environment where new employees are often hired, instructions that are passed on orally tend to change without anyone realizing it. She explicitly states: "Demolition of a structure with an administrative order is an aggressive and irreversible act.... The rules and criteria... must be written down so that they may be observed and criticized."<sup>163</sup> For instance, a procedure that was decided at the beginning of 2005, according to which demolition orders shall be passed on to the Mayor only after being signed by the chief engineer was cancelled after several months for no apparent reason. In addition, the comptroller found that files that have been passed on to the Mayor's office have "vanished from there" in a way that made municipal legal advisor believe that "there is reason to suspect that a criminal offense of disruption of proceedings took place."<sup>164</sup>

Astonishingly, even according to the Mayor's own office, not everything is done lawfully. The director of former Mayor Uri Lupolianski's office wrote to the municipal legal advisor that the Mayor had used his authority to review demolition orders since "to our dismay, more than once the Mayor has found that not everything was in order, as he had hoped it would be."<sup>165</sup> In one instance documented by the comptroller, the Mayor refused to sign a demolition order in Beit Hanina because the information provided by the director of Construction Supervision Unit did not match the information in the urban plan.<sup>166</sup>

Another matter addressed by the comptroller in her 2006 report (which we referred to in Chapter 3) is the prevailing trend in building supervision to treat Palestinian building violations in a harsher manner. The comptroller pointed to the fact that where the execution of demolition orders is concerned, the Palestinian population is discriminated against. Attorney Shlomit Rubin writes clearly and unambiguously: "The use of the orders aforementioned is not

162 City comptroller report for 2005-2006: planning procedures, administrative demolitions and the handling of invasion into public spaces, Nov. 2006, p. 307.

163 Ibid., p. 310.

164 Ibid., p. 315.

165 Ibid., p. 316.

166 Ibid., p. 327.

always equal.” And to remove any room for doubt she adds: “The number of orders both issued and executed in East Jerusalem is much larger than in West Jerusalem. The number of orders that have not been signed and as a result cannot be executed is larger in West Jerusalem than in East Jerusalem.”<sup>167</sup> According to the comptroller’s findings for the years 2004-2005, the rate of the execution of orders in West Jerusalem was 45 percent (39 out of 85 orders were executed) while in East Jerusalem the rate was 82 percent (191 out of 233).<sup>168</sup>

The comptroller submitted an additional report in April 2010. This report focused on the Construction Licensing Division. This is not the place to specify the many defects that were found in the division but suffice it to point out that the comptroller found it necessary to summarize the report by noting that the division’s director’s management style (Tzahi Katz, also in charge of demolitions) “indicates a malfunction in management.”<sup>169</sup> No doubt that the same malfunction in management still continues to exist in the Construction Licensing Division to this day.

Despite the comptroller’s systematic criticism of the lack of proper working procedures in the demolition apparatus and the countless promises that the situation will improve, Mayor Barkat declared in February 2010 that the Jerusalem Municipality has no clear and transparent criteria for enforcing demolition orders and that “in the Municipality of Jerusalem...no clear criteria were published for their prioritization. Execution of enforcement is carried out sporadically and occasionally without ever presenting the local committee with a clear and comprehensive policy for the implementation of orders.”<sup>170</sup> However, unlike the comptroller who placed the responsibility on the Construction Supervision Unit, Barkat went so far as to blame the municipal legal advisor for allowing this ongoing situation concerning demolitions and even determined that “...the municipal prosecution sets hidden directives and criteria grounded in partial information...without clear criteria for prioritizing.”<sup>171</sup>

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167 Ibid., p. 301.

168 Ibid., p. 311.

169 City comptroller report for 2009-2010, April 2010, p. 258.

170 Nir Barkat to Attorney General Moshe Lador, Feb. 3, 2010, sections 15 and 19.

171 Ibid., Section 27.

## **THE LOCAL PLANNING AND BUILDING COMMITTEE**

A resident who wishes to receive a building permit is faced with two main obstacles: the Local Planning and Building Committee, which operates within the municipality and the District Planning and Building Committee, which operates under the Ministry of the Interior. We will now expand on the former, which is the statutory body that decides on matters of policy and recommends to the district committee if it should approve requests for building permits. The committee is composed of 11 members, who represent the various parties on the city council, with the number of members each party has being relative to its power. It is headed by the deputy Mayor from the Mayor's party, who also serves as the chairman of the local committee. The local committee is therefore a political committee. Its considerations and its decisions are made in accordance to the political parties' interests, and its agenda is an expression of the majority. The Jerusalem Municipality is dominated by a right-wing orthodox majority which is fueled by the vision of a Jewish East Jerusalem. Since 2008 the committee has been headed by a representative of the Mayor's independent list, which is associated with the Likud Party. In addition to him the committee has two representatives of the orthodox party Degel Israel, two from Shas, one from the Likud, one from the Mafdal, one from Israel Betenu, one from the opposition (who identifies with the religious right), and one from the Meretz party, Pepe Alalu, who for over ten years has been the only person on the committee who represented the interests of East Jerusalem Palestinians. With such a composition, the right always has an overwhelming automatic majority. Faced with such a broad front of right-wing and orthodox representatives, there is no possibility of passing any resolution that would benefit East Jerusalem or change a decision that hurts its residents' interests.

It is evident that in this reality, where the policy of planning and building is in the hands of politicians with a right-wing point of view, a Palestinian resident's chances of promoting a building plan are close to zero. The chances are extremely slim that the municipality will create conditions that would allow for extensive and fair construction in East Jerusalem. It is true that the Building and Planning Law treats Jews and Palestinians equally. However, in the grey area in which the world view and the secret desires of committee members are manifested, where there are a thousand ways of promoting plans for "associates," the "unwanted" plans for Palestinians are bound to be shelved. The most recent example is the outline plan created by the architect Claude Rosenkowitz for the Palestinian town of Al-Walaja, which was rejected in favor of a Jewish settlement of 13,500 housing units, meant to decrease the



housing shortage in the orthodox community. This new settlement is planned to connect the orthodox settlement Beitar-Ilit to Jerusalem.

The Planning and Building Committee is one of the most sensitive committees in Jerusalem due to the amount of power it has and the economic interests involved. Therefore, the problem of illegal construction in East Jerusalem is regarded as a political and criminal problem from the outset and not as a problem requiring an immediate creative solution.

## **THE SUPERVISION UNIT OF THE MINISTRY OF INTERIOR**

The Ministry of Interior operates a unit called “The National Building Supervision Unit,” which is supposed to operate in open spaces outside areas with an approved urban building plan. The unit has been headed throughout the past decade by Avi Dotan. The head of the Jerusalem district is Zvi Schneider. Very little is known about the unit’s operations in the Jerusalem district. Unlike its municipal counterpart, which works with relative transparency, the Ministry of Interior’s unit is managed like an army unit and even withholds information. Even the Ministry of Interior’s comptroller does not inspect the unit, which is considered “off limits.” The little knowledge that we do have about this unit points to a completely insensitive group of people capable of doing anything to carry out a demolition. It is an aggressive group that tramples everything in its path. David Biton, formerly the head of the municipal supervision unit, knows the unit’s conduct very well and stated that they used to “shove around Palestinians” for no reason and are driven by their hatred of Palestinians. “The Ministry of Interior’s inspectors were much less considerate [of humanitarian cases]. They would go to houses of poor people who had nothing. They were much more extreme.” One of the inspectors, Biton tells us, was driven by his religious faith and believed that his job was to redeem the Jewish land from the hands of the Palestinians.<sup>172</sup> Even more surprising to us is the testimony of the former district committee’s prosecutor, Ilan Hecker: “As for the personality of the director of the district supervision unit...it was obvious that he disliked Palestinians, to say the least.”<sup>173</sup> He continues to tell us about the conflicts he had with this director as a result of his own insistence on deeply examining each demolition order and his willingness to search for solutions other than demolition while the unit’s personnel “wanted the bulldozers to arrive immediately.” This also explains how house demolitions could have been carried out against court orders, as in cases discussed later, below. In order

172 Irus Braverman, *House Demolitions in East Jerusalem: Illegality and Resistance*, Tel Aviv University, 2006, p. 34.

173 *Ibid.*, p. 58



to describe how this unit works, we will present a complaint filed by Attorney Shlomo Lacker, which contains all the elements that characterize the Ministry of Interior's Building Supervision Unit's misconduct, and the support the unit gets from the system. The complaint was filed to the attorney general in May 2003:

## CASE STUDY

On March 10, 2003 the District Construction Supervision Unit, under the order and supervision of its director, Mr. Zvi Schneider, demolished a residential home in the neighborhood of Beit Hanina in Jerusalem ...during the demolition of the structure there was a pending judicial order suspending the execution of the administrative demolition order issued by the Jerusalem municipality. The building was demolished even though its owner, Mr. Guwad Sawiti, waived the judicial order in front of Mr. Schneider, who as noted was supervising the event from beginning to end...after the demolition was executed I wrote to Mr. Schneider and to Attorney M. Kedar, who represented the Ministry of Interior and requested a copy of the demolition order by virtue of which the building had been demolished. Kedar replied that 'the incident is not familiar to my client,' despite the fact that the Ministry of Interior issued a press release concerning the demolition. Only after appealing to the court did I receive one page out of a demolition order that was issued on February 4, 2003. After Kedar flatly refused to provide a full copy of the demolition order, I turned to Matti Hota, chair of the Ministry of Interior's district committee. Hota completely ignored my letter. After my requests to receive a copy of the demolition order were bluntly denied, I applied in this matter to the Court of Local Affairs, which ordered Kedar to forward me a complete copy of the demolition order issued by the Ministry of Interior within seven days. Even this ruling was not honored. Instead of compliance with the court's order, I was presented with 'a notice to the court and a request for clarification on behalf of the respondent.'

This is a strange document, devoid of any legal basis. I applied once more to court and the same day a decision was made by Judge Ben Atar, who wrote: 'I read the notice/request filed by Atty. Kedar and since I could not believe my eyes I read it again. I shall begin by saying that this request should never have been filed, certainly not when it is filed in the name of the State of Israel.'

On May 13, 2003 I filed an application according to section 6 of the Contempt

of Court Ordinance. As is stated in the complaint and in the annexed material, it becomes obvious that both Attorney Huta and Mr. Schneider acted in a manner unbecoming to their office. I am of the impression that criminal offenses were committed during the preparation of the demolition order, during the execution of the order and in the measures taken afterwards with a clear goal: concealing the information required for examining the moves that brought about the illegal demolition of my client's house. Their behavior gives rise to the suspicion that they are trying to hide incriminating evidence or information that points to gross negligence in carrying out their duties.<sup>1</sup>

Again, not much is known about the unit, but the little that has been exposed reveals a grim picture of an organization that operates with an over-eagerness to demolish at any cost and in contempt of the law.

## **THE DISTRICT PLANNING AND BUILDING COMMITTEE**

The District Planning and Building Committee is the body that approves building plans in Jerusalem. The committee is assigned with examining, among other things: accordance with national outline plans; approving plans for depositing; discussing any objections that may arise and more. The committee is headed by the director of the Jerusalem district at the Ministry of Interior and is appointed by the Minister of the Interior. Out of the 18 members of the committee, 10 are government representatives of ministries concerned with land affairs, five are representatives of local municipalities (four from the Jerusalem municipality and one from the Judea municipality), and three are representatives of environmental organizations, e.g. the Society for the Protection of Nature in Israel. The government's representatives, just as the municipality's representatives, naturally represent the policies of their ministers. These officials have a strong political agenda where land distribution is concerned. This of course also applies to the four committee members who represent Jerusalem's coalition. Given such a composition, not only are East Jerusalem Palestinians not represented, most committee members have a vested interest in making their lives difficult. For instance, when Benjamin Elon of the National Union Party was the Minister of Tourism, his representative on the district committee proposed a plan to build a national park in the Kidron-Wadi al-Joz area for "environmental reasons" at the expense of residential building areas designated for Palestinians. At the same time his office promoted massive construction in patently green areas in the west, such as

the Deer Valley and the promenade in Armon HaNatziv. Considering Benjamin Elon's activity in Sheikh Jarach, one cannot escape the conclusion that his motive behind the proposal was political and had nothing to do with planning considerations. This example is important because it illustrates how building plans are manipulatively used to steal land from Palestinians. No one has openly suggested reducing their living space. God forbid! The idea was only to build a national park for everyone's good. This is the art of "word laundry" at its best. Who can argue that this is a case of discrimination when the park is supposed to serve both Jews and Palestinians? The representative of the Society for the Protection of Nature in Jerusalem, Avraham Shaked, attacked "the Ministry of Tourism's hypocrisy," pointing out that they have suddenly become "greener than the Greens."<sup>174</sup>

The district committee's conduct is disturbing not only because of its aggression or the vulgarity of its members but also due to the professional, seemingly neutral, manner in which the public authority tramples over the Palestinian residents of East Jerusalem. This is bureaucracy at its best: attending to buildings while neglecting the people who live in them, all the while ignoring the political context of their actions. The journalist Meron Rappaport gave a detailed account of their meetings, and we have chosen to bring it forth in its entirety immediately below.

**The face of the occupation's administration: a visit to the District Planning and Building Committee, Haokets.org website, February 24, 2009**

At the Ministry of Interior's offices at the Generali Building in Jerusalem the smell of rulership pervades the atmosphere. It has passed on from one generation to the next, from the British Mandate to the Zionist mandate. This is a meeting of the District Planning and Building Committee. The hall is old and shabby; the long table displays no clear hierarchy. There's a jumble of microphone wires on it. There are no nameplates. It's not clear who the speakers are or what bodies they represent, but it's obvious that every single one of them represents the authority. The face of the authority is glorious as the lines in Israeli clinics.

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174 Dana Tzoar, "KolKorehBaMidbar" ("A Voice Crying in the Wilderness"), Kol Hair, June 11, 2004.

Ruth Yosef, the chairwoman of the committee, is seated at the end of the table. She is a pleasant woman according to the gossip in the outside corridor. Inside, at the meetings, she is mean. She rudely interrupts those who present plans and [she] makes petty remarks. She twists their words and makes fun of them. This is especially the case when the person is a Palestinian. Attorney Nasrat Dakwar, representing the residents of Al-Bustan neighborhood, tells of Minister Raleb Majadele's attempt to intervene on behalf of the neighborhood's residents. 'MK Majadele,' Ruth Yosef corrects him, unable to digest the fact that Majadele was and still is a minister. In Ruth Yosef's world it is a job not fit for Palestinian. When for a moment Dakwar gets confused and has a slip of the tongue, the committee members laugh at him to his face. This Ma'arakh-Mafdal-Likud togetherness which doesn't allow admission to any outsider, is stronger than the vote they put in the ballot box.

On the agenda are two plans submitted by residents of two East Jerusalem Palestinian neighborhoods, Walaja and Al-Bustan. Around 300 families live in Walaja, about a hundred in Al-Bustan. The Walaja neighborhood (it should really be referred to as a village) has been around for 60 years, and Al-Bustan (a part of Silwan, several hundred meters from the Old City) about 30. The State of Israel has been in control of this territory for 42 years but never bothered to prepare plans for these neighborhoods, and that is why all of the houses, which are built on land owned by the same Palestinian residents, were illegally constructed. The fear of demolition is ever present. 'We are afraid to go on vacation,' a resident of Al-Bustan told me once, 'afraid to return and find out that our house has been demolished.'

Several years ago the residents decided to play by the rules of the Israeli occupier, and submit well-ordered building plans. They were also encouraged by the municipality to do so. The municipality, they were told, has no money. You will do the planning and we will promote the plan. The residents spent over a hundred thousand NIS. They are the poorest residents of East Jerusalem, which is the poorest part of Jerusalem, Israel's poorest city. Jewish architects full of good intentions sketched beautiful plans embracing the landscape with a Mediterranean feeling. Al-Bustan's architect, Ayala Ronel, told the committee members that with little effort Al-Bustan could be transformed into a tourism gem similar to those in Greece or in Spain.

If only the residents were given the legitimacy to live in their houses. She did not speak of Marrakesh or Damascus. There's no need to exaggerate.

The committee members play the game. They ask the resident's representatives questions that ostensibly relate to planning: What about preservation of the landscape? Where are the open spaces? Where will the public institutions be located? But everyone knows it's all baloney. The plan doesn't stand a chance. Now it's the municipality's representative's turn to speak. We plan a green space in that area, he says. We have no intention of approving the plan. However, in order for these areas to be "green," for Walaja and Al-Bustan to be colored in green, houses of hundreds of residents must be demolished; their life's works must be destroyed. Only then may Jerusalem residents have green spaces to enjoy.

This is where the occupation, the dispossession, resides, in this dull, tired and worn out committee. Jabotinsky's iron wall has been replaced by a tight coalition of worn jackets and a stained table map. The outcome is the same. Everyone in this office knows exactly who is included and who is left out, who belongs and who doesn't. Walaja and Al-Bustan do not. Kfar Shalem doesn't belong either, by the way.

## **ADDITIONAL ENFORCEMENT AGENCIES**

The municipality and the Ministry of Interior receive substantial support from other agencies who supervise land: inspectors of the Israel Land Administration; inspectors of the Green Police, who are authorized to enforce the Planning and Building Law; and the Nature and Parks Authority's inspectors. In 2007 this amounted to 12 additional inspectors, which is a significant reinforcement. In addition, the Antiquities Authority operates two inspectors within the walls of the Old City. Their job is to look after archeological sites and at the same time report new construction sites to the municipality. In recent years, the Border Police has also done substantial enforcement work. According to Ofir May, director of the Construction Supervision Unit, "the policemen of the Border Police patrol the neighborhoods of East Jerusalem 24 hours a day and help the municipality in its work. I consider them as municipal inspectors for all intents and purposes. They know in what areas it is allowed to operate and in which not, and they initiate the enforcement themselves. They report directly to me....Their help leads to fewer building violations."<sup>175</sup>

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175 Shuki Sadeh, House Demolition Policy in East Jerusalem, dissertation for a master's degree in public policy, submitted to the School for Public Policy at the Hebrew University in Jerusalem, Nov. 2006.

The Israel Police also does its share and has set up a special unit called the Unit for Enforcement of Construction Laws, whose purpose is to accompany inspectors and secure demolition sites. At the moment it employs six policemen.<sup>176</sup> Hence, East Jerusalem has one of the tightest supervision systems in Israel, and as a result the residents live under extreme pressure. This information does not agree with a complaint often made by the Construction Supervision Unit's staff about being understaffed. We may understand their claim as an attempt to dodge accusations about being unable to enforce the law in the face of the large increase in building violations in East Jerusalem.<sup>177</sup>

All of the agencies work in cooperation and once every six weeks hold a meeting in a forum called "the enforcement forum," which is composed of members of the Shin Bet, the Israel Police, the Border Police, the municipality, the Ministry of Interior, Social Security, the Israel Tax Authority, the Nature and Parks Authority and others when needed. "The forum makes the enforcement more efficient," says the former director of the Construction Supervision Unit Micha Ben-Nun, "because all of the senior officials work together in order to detect building violations and have an understanding of their common interests. All of these bodies not only share information but also determine where to concentrate the effort and in which neighborhoods to put more pressure."<sup>178</sup> The Israel Tax Authority's participation is due to tax evasion, which often goes together with illegal construction. However, the Shin Bet is the dominant force in these meetings. According to a former municipal employee involved in this issue, it has become so influential that the municipality has become nothing more than the Shin Bet's subcontractor.<sup>179</sup>

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176 Miki Levi, Jerusalem police commander, in a discussion at the Mayor's office with Mayor Olmert and Chief of Police Aharonishki, June 3, 2001.

177 See MK Uri Ariel's letter to Mayor Uri Lupolianski, Aug. 5, 2007.

178 The forum's existence is almost a secret. See Micha Ben-Nun, Ofir May and a worker referred to as «T,» in Shuki Sadeh's research, submitted to the School for Public Policy at the Hebrew University, 2006.

179 *Ibid.*, p. 51.

## The System That Enables Demolitions

The operative units that carry out the demolitions in East Jerusalem are backed up by a large municipal system, which includes lawyers, architects and even social workers. Without these professional bureaucrats the policy of demolitions would be impossible to carry out. In order to understand how this system works, one must consider the role played by these municipal functionaries, who prepare the ground for the policy of demolition, legitimize it, and create a tangle of urban plans designed to confuse the public. They facilitate the demolitions with both their active support and through their tolerance of the injustices caused by the system.

To borrow from military imagery, the municipal system is made up of operational units who perform the demolitions and support units who give logistic and organizational support, which make the demolitions possible. These municipal officials that support and back up the demolitions are not motivated by an ideology, but rather operate in an organizational culture that maintains and preserves the system. "Bureaucracy, rather than being neutral, became the facilitator of ideology."<sup>180</sup>

This phenomenon is not unique to the municipality. Since the state was founded, the professional bureaucracy was used to carry out the policies that the leaders wished to implement. The policy of discrimination against Jewish immigrants from Arab countries in the 1950's was carried out by the Ministry of Interior's officials, who sent those immigrants to live in god-forsaken towns without asking for their consent. Architects built housing projects that created numerous social problems, and even social workers, doctors and teachers have made significant contributions to the creation of underprivileged communities and to the systematic disciplining of the oriental Jews. Without

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180 Hagit Keysar, *Hamakom: The Place*, dissertation submitted to the University of Manchester, School of Social Science, 2008.

the work of these professionals, who for ideological motives joined the effort of imposing Ashkenazi authority over oriental Jews, this task would not have been possible.

Like these professionals in the 1950s, today the municipality's professional bureaucracy is driven by professional considerations, but these considerations not surprisingly also agree with current political trends.<sup>181</sup>

## **PLANNING AS A TOOL FOR DEEPENING THE GAPS**

"Planners, in their professional capacity, are subject to the influences of political ideologies, be they the basis for the national political system or the planner's own personal beliefs."<sup>182</sup>

Former chief engineer Uri Shitrit is a striking example of how a professional official cooperates with the political branch. A professional architect, with a liberal worldview, Shitrit helped implement a right-wing agenda, using purely nonpolitical professional considerations. For instance, in 2005 he gave instructions to decline all requests made for building permits in the Abu Tor neighborhood because authorizing any construction in the absence of an outline plan would create a patchwork of plans, and planning should be made with a "comprehensive view of the area." Professionally speaking, his point is undeniable. Urban planning proceeds from the general to the specific: in the first stage an outline plan for the entire area is prepared, and only in the second stage may building permits be granted. However, considering that since 1967 the municipality did nothing to promote an outline plan in this neighborhood, the probability of it doing so now is pretty low. Faced with this grim reality, what solution did the chief engineer offer that would address the legitimate needs of the residents? How could the municipality demand that the residents wait till the municipality finds the time to prepare a plan for that area when we know it has no intention of investing in such a large scale project? His decision may be backed up by professional considerations, but as a result the residents continue to live in an unbearable situation.

Much more problematic (and perhaps more puzzling) is the chief engineer's conduct in the case of Al-Bustan (the King's Valley) in the neighborhood of Silwan, when in 2005 he ordered the demolition of 88 buildings in order to facilitate the construction of an archeological site in their place. The order

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181 Rachel Kalosh and Yubert Lo Yun, *The National Home and the Personal Home: the Role of Public Housing in the Design of Space*, in Yehuda Shenhav, *Space, Land, House*. Van Leer Institute, 003, p. 166.

182 Shulamit Gertel and Rachele Alterman, *Ethics for Planners Amidst Political Conflict, the Case of Israel*. Technion, Haifa, 1994, p. 53.



was explicitly made in an official document in 2004, which on account of its importance, we found suitable to bring here in its entirety:

**Subject: the evacuation of illegal buildings in the King's Valley**

The City of David is the oldest settled neighborhood in Jerusalem. This hill and its surroundings contain archaeological remains that go back more than 5,000 years. These remains have great national and international value and secure the city's position as one of the most important cities of the world.

The King's Valley, an important part of the Kidron Valley, constitutes, together with the City of David, a comprehensive archaeological unit, in which all sites are connected, and together play a central role in the understanding of the complex that is composed of many areas built in different time periods.

From a statutory perspective, since modern city planning was first employed during the British Mandate, it was decided that the valleys surrounding the Old City would serve as open spaces.

This approach was adopted by Israeli planning authorities in a municipal outline plan for the Old City and its surroundings, prepared at the beginning of the 1970s, in which guidelines were established for planning and development, land use and street networks, including detailed architectural guidelines with the purpose of preserving the character of the city within the walls together with the entire area surrounding the Old City. According to this plan, the area of King's Valley was assigned to be an open public area.

In light of the above, I hereby order the removal of the illegal construction in the King's Valley.

No one disputes the archeological significance of this site. However, even though close to a thousand people live there, the municipal engineer did not take into account any humanitarian considerations. The injustice here is twofold, for the municipal engineer must have known that once the residents have been driven out, the site would sooner or later end up in the hands of the settlers of the Ir-David foundation, who have been gradually taking over the area, by dispossessing the local population and preventing any attempt in peaceful coexistence. The municipality has clearly become the executive branch of a dangerous political agenda, a subcontractor for the extreme right.

The chief municipal engineer's conduct is only one instance of a general trend

common throughout the municipality. As technocrats loyal to the rules of their profession, these municipal officials make decisions based on professional considerations. However, by ignoring the political circumstances in which their decisions are made, they in fact play along with a right-wing agenda. They only do what they are expected to do, and are innocent of having political objectives, but this is precisely why their professional contribution to the occupation is so disturbing. Hundreds of professional bureaucrats work for the municipality without understanding that they have become occupation technocrats.

## **THE LEGAL SYSTEM: LAW ENFORCEMENT AS THE ESSENCE OF EVERYTHING**

Another example of bureaucrats not driven by a nationalistic agenda but still serving nationalistic political trends are the jurists who work in the municipal attorney's office. The authorities may choose one of two approaches toward illegal construction. The first one is to follow the law to the letter, and the other is a more pragmatic approach, that comes from the understanding that in the reality of East Jerusalem insisting on every single regulation is utterly unrealistic. According to the first approach, breaking the law cannot be justified under any circumstances. The second approach sees life as dynamic and complex, and as a result it accepts that it is sometimes better to come to terms with offences caused by circumstances that were beyond the resident's control. This approach does not deny that building without a permit is illegal, but maintains that one problem should not be solved by creating another, especially when the offence is perpetrated out of necessity. This principle is even more valid when heavy and irreversible punishment is involved. It is based on humanist values that place the person in the center, and is also supported by the Jewish halacha.

The prevailing approach of the legal establishment in Jerusalem in regards to illegal construction in East Jerusalem is that the law should be followed to the letter without compromise. Justice must be done regardless to the suffering it may cause residents and their families, because any concession on the court's part will be interpreted as rewarding the illegal activity and encouraging future criminal activity. This attitude is not only unjust, but it also disregards the Jewish spirit – “the force of arbitration is greater than that of legal judgment”<sup>183</sup> – and it is destructive, as it creates waves of hatred that may erupt at any moment and result in bloodshed. A boy who has

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183 Sanhedrin, 5b.

witnessed his home being demolished will forever wish to avenge his family's humiliation. If preventing a house from being demolished is seen as rewarding a criminal act, then demolishing should be seen as rewarding extremists, who will happily use the incident as a pretense for further escalation. In the long run, the cost of demolishing a house is immense. By repeatedly ignoring the political context in which the demolitions are carried out and pretending that everything other than the building violations is lawful, the legal system has become the backbone of a right-wing policy aimed at making life impossible for the Palestinians, so they would have no other choice but to leave. The legal system ostensibly does not engage in politics. This plays into the hands of politicians, by creating the impression that it is all done in the name of the law. We all know that law and justice are not one and the same, but in East Jerusalem the law causes systematic and ongoing injustices. Municipal prosecutors trample innocent people who wish for nothing more than a home; the municipal system that they represent prevents them from allowing "illegal" construction. They are well aware of this situation and are regretful of it, but since they represent the law they are not supposed to take these special circumstances under consideration. From their point of view illegal construction is a criminal offence, and beyond that no further considerations are allowed. That is exactly what the extreme right expects of them – to stick to the letter of the law – and not to allow for any other consideration, e.g. human needs, to sneak into the municipal system.

A lawyer representing the municipality may never consider the possibility that the criminal is not the person who builds illegally, but the one who prevents him from obtaining a building permit. This inability to contain humanistic attitudes that take circumstances into consideration and go beyond a fragmented picture of reality points to an emotional and mental handicap.

Similar criticism of the legal system recently came from an unexpected source: Mayor Nir Barkat has sharply rebuked the legal system for forcing him to seal Beit Yehonatan, the seven-storey building built without a permit by Jewish settlers in the center of the Silwan neighborhood. It is worth noting the Mayor's argument: "A narrow legal perspective that doesn't see the broad picture that has been unfolding in East Jerusalem...is tantamount to examining each and every tree in the forest separately while being unaware of the existence of a forest." The Mayor explained his position by claiming that the legal system fails to take into consideration how fragile and potentially explosive the situation in the city is. It ignores the various political, security and international considerations. As a result serious damage may be caused to

the city, damage that “no legal expert, however distinguished, could possibly undo.” Barkat added that the strict legal approach does not allow for a dialogue with the residents to take place, and this could lead to the establishment of new models for planning and building. “The legal advisor imposes his fixated ideas, and by doing so he actually functions as an all-powerful ruler, who suppresses any attempt to change the reality.” Furthermore, Barkat added that he is amazed to discover time and again how blind the judicial system is and how it violates the faith entrusted to it by the public. “The doings of the municipal legal advisor and the prosecution...strengthen the impression that the bureaucratic process is hopeless.” The Mayor is also aware of the fact that the law effectively does not allow the issuance of building permits in East Jerusalem, and that legal requirements, such as proof of ownership, are not appropriate for East Jerusalem, and forcing the residents to act in accordance with the law only makes it more difficult for them and for the municipality, who are interested in promoting new outline plans.

It is possible to demonstrate the shortsightedness of the municipal legal branch in a matter directly related to planning and building, the shortage of classrooms in East Jerusalem. It is a well-known fact that there is a shortage of about 1,000 classrooms in East Jerusalem. The number has been substantiated by the Supreme Court, which also held that thousands of students are unable to find a classroom, and by not addressing this matter, the municipality is in violation of the Compulsory Education Law.

As of 2010, in the neighborhood of Jabel Mukaber, more than a thousand children were reported to have been left with no educational framework due to the shortage of classrooms. Since the municipality was unable to provide timely buildings to accommodate enough classrooms, the residents found a privately owned building that required only minor adjustments for safety in order to function as a school. The municipality's education department was willing to rent the building, but the legal department vetoed the proposal, arguing that the building is illegal because unauthorized extensions have been added to the structure. Indeed, the building is illegal, and making use of it is in violation of the planning and building law. However, not using the structure leads to violation of the Compulsory Education Law, which requires that the state must provide an educational framework for all children. The situation in Jabel Mukaber is clear and simple: in the absence of appropriate legal structures, the choice faced by the municipality is between violating the building and planning law and violating the compulsory education law. The legal department decided that it is more important to uphold the building and planning law, and accordingly it ruled out the possibility of renting the only

structure suitable for accommodating a school. This case is a good example of the municipal legal department's attitude, which looks at the world through a narrow prism and is unable to take any additional considerations into account.

## **THE DEPARTMENT OF WELFARE: FALLING IN LINE WITH THE ADMINISTRATION**

The discrepancy between personal opinions every municipal worker has and municipal policy in East Jerusalem is even harder to reconcile in the case of social workers. They experience a cognitive dissonance on two levels: the first as a result of the personal humanistic worldview shared by most social workers, and the second from the professional ethic of social work, according to which house demolition is clearly an anti-social act, since it has a devastating effect on the family. According to the professional ethics of an urban planner or a legal advisor, unlike those of the social worker, house demolition is not inexcusable. However, the professional ethics of the social worker sees house demolition as unjust by nature and obliges the social worker to stand up against it. Not doing so would be a betrayal of the values of their profession. Therefore, the compliance of the municipal welfare system is astounding. How can it observe the events from the side, take no action, and in silence allow the bulldozer to complete its task? The basic human rights of families are trampled; many are poor families who for years saved just enough to afford a modest house. These social workers act as though this matter does not concern them, as if the suffering of these poor families whose houses have been demolished has no bearing on their line of work; it is only a police matter, because by building illegally they are criminals, and should be treated as such.

The most grotesque example of the Department of Welfare's attitude took place in June 2009, when a criminology student organized a conference that was supposed to deal with the question of house demolition in East Jerusalem. There was a municipal social worker who worked in the East Jerusalem office among the speakers invited to the conference. When this became known to the management of the Department of Welfare, the worker was forbidden from participating in the conference, because it is "unthinkable" that someone who works for the Department of Welfare should participate in a conference in which the municipal policy is criticized, and that despite the fact that most social workers are against house demolition, they must present their views through "the appropriate channels," i.e. to the municipality's director, and not in public events. It is not unreasonable to assume that the department's

management was worried about the Mayor's reaction, but what is truly outrageous is that the municipality's director is a settler, known for having a right-wing agenda. He is a confidant of Avigdor Lieberman. Little can be expected from a man with such a profile when it comes to the demolition of homes belonging to Palestinians in East Jerusalem.

After the department's management prevented the social worker from speaking in the conference, no one in the department, not even the Arab social workers employed in the department, dared protest, fearing that if they did, the municipal system would harass them. The long shadow of Mayor Barkat paralyzed them, but more than being cowards, even without realizing it, they became collaborators. For in East Jerusalem keeping silent equals collaboration. A social worker who does not speak up against house demolition becomes part of the system, and betrays not only his personal principles, but also the basic values of his profession. Our attempt to explain to the department's manager the implications of her conduct was of no use. She stood firm in her view, and showed no sign of having a guilty conscience. The municipal system has turned the social workers into another component in a policy that tramples on the fundamental values of their profession.

## OCCUPATION TECHNOCRATS

Each of the municipality's departments deals with a specific aspect of demolition. No one other than the municipality's director is required to see the complete picture. Mayor Nir Barkat explicitly criticized this state of affairs, stating that the difficulty in planning is caused by "the absence of a comprehensive outlook, while each of the elements in the municipal system sees the world through the narrow eyehole of their office door."<sup>184</sup> The administrative division into separate departments encourages not only narrow-mindedness, but also a distorted image of reality, with all its implications.

This professional environment, in which each of the departments work in isolation, serves as a platform for a dogmatic attitude, which results in the maltreatment of East Jerusalem Palestinians. Even such a sensitive issue as illegal construction, which directly concerns four central municipal offices, the Construction Supervision Unit, the Legal Department, the Engineering Department, and the social workers, has not been comprehensively addressed. Each of the departments is separated from the rest, which makes it easy for each official to play ignorant and pass the responsibility on to the next department. The inspector in search of building violations, the chief engineer who creates the outline plans, the legal advisor in charge of law enforcement,

184 Nir Barkat to Attorney General Moshe Lador, Feb. 3, 2010, Section 20.

and the social worker who takes care of the families, each of them experiences only a narrow section of reality, and suffers from professional autism, each in his own line of work, as if they were living in parallel worlds. The legal advisor must take into account only legal considerations, but he knows that in the absence of an outline plan, or when proof of ownership is difficult to provide, the residents are forced to build without a permit. But since this is outside of his jurisdiction, the responsibility is passed on to the chief engineer, who for his part knows that for a considerable part of East Jerusalem no outline plan has been authorized, and for other areas an outline plan has been authorized, but since the detailed plans have not been authorized, building permits are impossible to obtain. However, from his point of view, solving this problem is not up to him, since the planning and building of infrastructure requires funds, which are the responsibility of the treasurer, who in his turn will say that the problem is not new to him, but there is little he can do without receiving additional funds from the Ministry of Finance. In the meantime, the Department of Welfare looks the other way while the municipality destroys entire families, but keeps silent, because matters of law enforcement or urban planning are beyond its authority.

This myopic system, which is dominated by compartmentalization, with each official required to perform his duty and never see beyond his area of expertise, provides an ideal platform for human rights violations and the consolidation of the occupation. It requires only that each official concentrates on his own work and has the discipline to stick to professional matters.

This technocratic attitude, shaped by the structure of the bureaucratic system, leads to the diffusion of responsibility. It allows for each person to pass the blame on to the next person. It makes it easy to deny any personal responsibility and prevents one from having to answer embarrassing questions or from examining one's own actions. Consequently, people who are often excellent in their profession allow for injustices to take place, and are unaware of the results of their actions, seeing them as nothing more than a professional matter, and not something to be taken personally.

Technically speaking, each of them does his job the best he can. The municipal system is full of well-intended bureaucrats, who try to cope with systemic problems that should not have been created in the first place. They are guided by professional guidelines, and not political considerations. However, when the existing laws are inapplicable to the reality on the ground, and the reality on the ground does not allow for planning to be carried out purely according to professional criteria, keeping in line with one's job description serves a political agenda. For the most part, these bureaucrats are well-intentioned.



However, unwittingly, their work helps preserve and deepen Israeli control over East Jerusalem.

## **AN ORGANIZATIONAL CULTURE PROMOTING DEMOLITIONS**

The technocratic shield that these departments provide, under which the demolitions are carried out, is supported by an organizational culture that is innocent of having a political agenda or malicious intentions, but the set of values at its core lead to segregation on a national scale.

The culture draws its values first and foremost from Zionist ideology, which like any other form of nationalism is separatist, ethnocentric, and egocentric. It claims the entire historical land of Israel for itself, with house demolitions being an important method by which to achieve this goal. Deportation and house demolition are an integral part of the notion of land redemption, the process by which land is appropriated in order to be settled by Zionist pioneers. From the beginning, the history of the State of Israel has been saturated with the systematic demolition of over 400 villages and 300,000 houses inside the green line and in the occupied territories, for both civilian purposes and military purposes. Towns for Jewish immigrants and settlements were founded on their remains; their lands expropriated for moshavim and kibbutzim or handed over to the Jewish National Fund for the planting of forests. The event that marked the “reunification” of Jerusalem, in June 1967, soon after the Mendelbaum Gate was torn down, was the demolition of the Mughrabi Quarter in the Old City in order to make room for the Western Wall Plaza.

The practice of house demolition is rooted deep in the Israeli collective consciousness, and is part of an ancient tradition of demolition carried out throughout history. As a result, municipal bureaucrats do not perceive the demolitions as unusual or disturbing, but as another chapter in a long history of demolition carried out for the benefit of the nation.

This organizational culture did not originate in the corridors of city hall, but found its way from the Israeli military to Safra Square. The fact that over half of the high ranking officials in the municipality had military careers has far reaching implications on the policy of house demolition. The military bulldozer that crushed the American activist Rachel Corrie to death in Gaza is directly linked to the bulldozers that demolish houses in East Jerusalem. The point of view they have brought from the military to city hall is that a Palestinian will forever be the enemy, even if he is a citizen of the state. He will always be seen through a gun-sight in their subconscious. This mentality explains why the means of dealing with the Palestinian minority range from administrative demolition orders to judicial demolition orders.



These values are passed down from one generation to the next, without ever being written down. Municipal officials have no need for them to be explicitly stated. They are communicated subliminally, and permeate the bureaucracy on all levels. Every bureaucrat understands that illegal construction in East Jerusalem is a problem of national importance, and this message is acquired in the process by which newcomers learn the norms for functioning in a society by way of imitation, referred to by social psychologists as socialization.

The attitude of the municipal bureaucracy towards demolitions is therefore not exceptional in the Israeli landscape, but a local manifestation of a general approach civil servants have towards Palestinians. The planning policy of East Jerusalem and the policy of land expropriation from Palestinians in the Negev and the Galilee were made in the same image, just as house demolition in Jerusalem is a local version of those carried out in the Negev and the Galilee. The same organizational culture is embedded in the genetic make-up of Israeli society and influences decision-making throughout the country. It should not come as a surprise that house demolition does not trouble municipal officials.

## **REPRESSION AND DENIAL AT THE BUREAUCRATIC LEVEL**

Repression and denial begin with the language used by municipal workers to describe their actions. The operational unit that performs the demolitions is called “The Unit for Enforcing Building and Planning Laws,” a neutral name, easy to identify with, for who does not agree that the law should be enforced? The unit’s official name is an Orwellian deception which makes it easy to repress the fact that their job involves house demolition. It hides their actions behind a legal façade, and brings them in line with other law enforcement agencies, without which chaos would take over.

The second term that is commonly used, and not by accident, in order to cover up the true meaning of their work, is “structure.” The houses that they demolish will always be referred to as “structures,” and never houses or homes. For the word “house” implies a family with parents and children. Unlike “structure” it brings to mind a whole world of mental images that is hard to ignore. The use of legal terminology also makes it difficult for them to acknowledge the implications of their actions. The figure of speech, “illegal construction,” creates the impression that the house takes part in the world of organized crime, and the fact that in Israel a building violation is considered as a criminal offence, like murder, robbery, rape, and drug trafficking, allows the municipal inspector to be unaware of the meaning of his actions. In addition, the fact that the Hebrew term for building violation, which is used to describe construction without a permit, literally means “building offence,” and the

person building the structure literally means “outlaw,” helps to strengthen the mechanism of denial and repression.

Of course, both those directly involved in carrying out the demolitions and those who work to legitimize them deny that there is anything wrong, immoral or unjust taking place. They fail to take responsibility for their actions, and even worse, do not ask any “unnecessary” questions. They choose to deny the notion that their actions are unjust because if they were, they would have to answer for their actions. However, since they have no other solution to the problem of illegal construction other than demolition, they prefer to avoid the subject as much as possible. Coping with the injustices caused is much more difficult than ignoring them. This is the same psychological mechanism of moral corruption described by Susan Sontag, which causes people who participated in crimes to ignore any topic that might cause them embarrassment.<sup>185</sup>

There are many tactics one may use to keep from coping with his wrongdoings. Some people would argue that they are doing their part in a national struggle; some that they were upholding the law (“You wouldn’t let a Jew build a house in the middle of Independence Park”). An inspector with the unvarnished title of “demolitions coordinator” explained to Hagit Keysar, in the course of a study she conducted, that in his view, his work is done in order to uphold the rule of law. He agreed that the actions he performs are “brutal,” but added: “I’m on the side of the law. I have no choice....This is a matter that is not about stories and not about people, but about the law. Any person who doesn’t understand this point is not fit for the job.”<sup>186</sup>

The most sensitive and profound explanation of this attitude was provided by the sociologist Professor Dan Horowitz, who wrote about the “operative code” of Israel’s founding generation.<sup>187</sup> According to Horowitz, the aspirations for justice and equality in that generation were overshadowed by security considerations, and left room for executive flexibility. The gap between moral principles and actual practices exists not only in the context of the Palestinian-Israeli conflict, but also in all ethical issues. These aspirations become an abstract notion interpreted in accordance with the changing circumstances. The executive echelon’s values are fine, but that level also carries a kind of “license” that allows deviation from these values when faced with certain constraints. A humanistic vision is important on a theoretical level, but in

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185 Susan Sontag, “Sobre la Resistencia,” in: *Al Mismo Tiempo: Ensayos Conferencias*, Barcelona, 2007, p. 187.

186 Hagit Keysar, in a quote taken from her exhibition *SnapShots*, Zochrot Gallery, 2009

187 Dan Horowitz, *Tekhelet ve-avak: Tashah Generation*, Self Portrait

practice is ignored. Instrumental and even opportunistic considerations have precedence over it, being forever more urgent than the vision itself. This approach of moral permissiveness, dubbed by Horowitz as “constructive hypocrisy,” made it possible to overcome the cognitive dissonance brought about by the enactment of discriminatory policies, and legitimizes any deviation. The executive echelon is aware of the gaps, but regards them as being caused by temporary circumstances and not as resulting from moral choices. They continue to believe in equality as a universal value, even though “for the time being,” they are unable to put it into practice. In this way they can live in peace with the discrimination, since their background vision keeps them enlightened and humane. It is the reality that they themselves created that forces them to “shoot and cry,” or in the context of Jerusalem to “demolish and cry.”

## **THE COGNITIVE DISSONANCE**

A sociological study conducted by a graduate student at Bar-Ilan University offers a rare glimpse into the private world of a former employee of the Construction Supervision Unit in the Jerusalem Municipality, in charge of house demolition. This interview reveals not only the principles that guided him in his work, but also the doubts that accompanied him in his 15 years on the job. The official agreed to be interviewed, but asked to remain anonymous. This request in itself is revealing, as it tells us that he was aware that according to international law house demolition is a crime to which he could be held accountable. Even so, this did not prevent him from carrying out demolitions, and did not cause him to reconsider his actions. He spoke eagerly, as if he were waiting for the opportunity to confess, as if he had been given a chance to unburden himself and relieve his conscience.

He tried to present his actions as “protecting the rule of law,” however at the same time this protector of law was unwilling to expose his identity, so that he could “continue to go to Europe on vacations.” The conversation was highly emotive, but he kept coming back time and again to two basic views: 1) His job was to protect the rule of law; 2) Any person who builds without a permit is a criminal. These two principles provide the ideological foundation for his work. He was an agent of the law, just another cog in the law enforcement machine essential in every sovereign state, and the proof for that is that the courts always authorize the demolition orders, and the Palestinian is always a criminal, an outlaw. By simplistically dividing the situation into good and evil he formed a rationalization that allowed him to carry out the demolitions with a clear conscience. Furthermore, he sees himself as a civil servant who was

working for the greater good, because illegal construction harms the general public first and foremost, and creates anarchy. As a result, his work served not only the values of law and order, but made an important contribution to society, for without it the situation would be intolerable.

However, his rationalizations did not always work, and despite his efforts he sometimes recognized that the victim is not always a criminal, just as the person enforcing the law is not always right. He did empathize with some of the families, and he admitted that after evicting families from their houses he found it hard to sleep at night. “When people were present, and sometime kids were as well...it turns into a personal story, and is much tougher to deal with, much more difficult...I was in great distress...After returning from a demolition, when I had to pull children out of their beds in the morning, and there were such cases. I would later become physically sick, just like that, because it’s not a simple thing to do, it’s not easy.” He also acknowledges that the municipality forced the Palestinians into becoming criminals, and that the obstacles raised by the municipality in order to prevent them from building left them no choice but to do so illegally: “You can’t expect that large communities whose needs have not been addressed by municipal planning will refrain from taking the necessary action to guarantee a basic human right, that is, having a roof over one’s head.” He is even aware that the difficulties faced by East Jerusalem’s Palestinian population are not primarily administrative, and understands the political agenda behind the policy: “The reasons [that planning in East Jerusalem] have been put off are many and varied, and I don’t think this is the place to get into them. They are motivated by political, demographic and national considerations, among others.” More than once he took his victims’ point of view and asked himself how he would react in their place. His answer is surprising. This is how the interview’s transcript runs:

Employee: ... On the other hand [I ask myself] how would I react if I were in the same situation, and I know the answer, but I prefer not to share it.

Interviewer: What would you do in their place?

Employee: I prefer not to say.

Interviewer: Even though you don’t want to say, the answer is clear.

Employee: OK, but those were your words.

Even though he empathizes with families whose houses he demolished, and

understands the wider context, he was not dissuaded: “Still, even though there were difficulties involved, they did not keep me from doing my job....I was committed to the organization I worked for, and performed my job the best I could.”

When the interviewer asked if his job was comparable to being a soldier, he answered: “No, it’s not like being a soldier. When you work for an organization, and have a specific job, you can always say ‘I don’t want this job.’ But I said ‘I want this job.’ I understood what it meant to do this job, what it would actually require of me. How I feel at the end of the day and what I take home with me is not relevant for carrying out the job the best possible way...It has nothing to do with my worldview, or my political views, or anything else.” He was aware of the injustices created, but said that “this is not what would stop me from doing my job.” This general attitude recurs several times during the interview, and on one occasion he reinforces the point: “I understand the implications of my actions.” He then immediately repeated his argument that anarchy in construction cannot be tolerated, and that unlicensed construction causes the state to be in “complete anarchy.” According to him, “You can’t expect any state to allow this kind of permissiveness, and not enforce the law.” Despite his assertive tone of voice, and his determination when repeating his argument that he was still doing the right thing, he was unable to completely free himself from his guilty conscience. Towards the end of the interview he pulled out an additional line of defense for justifying his actions, which was surprising considering his efforts to portray himself as someone humane in an impossible situation. After describing in detail the situations in which he sympathized with his victims, trying to comfort people whose houses are about to be demolished, and even keeping the police from using unnecessary force, he explained why he thought that he was the right person for the job: “I think that despite all the difficulty and misery involved, we have no choice. And it’s better that the person who does the job, and I’m not talking about policy making, only about carrying out the job, is a person that is able to contain the difficulties involved, and has the sensitivity required to understand them. Such a person pays a personal price, but it’s more appropriate than having someone indifferent do the job.”

This former employee is an archetype of municipal workers in all echelons. They live with cognitive dissonance, but easily overcome it by activating a set of justifications drawn from the national ethos. Being part of the conceptual world, they have internalized the IDF; their minds are highly receptive to these arguments. So deeply ingrained are these cognitions in their sub-conscience, that they are easily reanimated by every external stimulus.



## The Non-Formal Apparatus

Alongside the formal system that deals directly and indirectly with house demolition according to strict regulations, there are also non-formal practices acting beyond the letter of the law. A former director of the Municipal Supervision Division has told the story about the time when he decided on his own initiative to cancel a demolition in Beit Hanina after he realized that eight children and a pregnant woman live in the house. “No one ever asked me why I did not demolish that house as well...No one could have said anything because we are the only people who would have taken care of the problem, so if we don’t initiate it, who else would?”<sup>188</sup> The same director explained that he had this kind of power because the higher echelons were not aware of which of the buildings are actually being demolished, and added that when he was the head of the department, “the manager of the municipality was sitting on Olympus and almost never went into the field.” He had so much power as the division’s director that he would choose which cases should be forwarded for prosecution and which not.

Indeed, non-formal features have always been part of bureaucracy. Wherever a clerical system operates, a non-formal system grows beside it in order to solve problems the formal is unable to solve. It cannot be depended on, but it cannot be ignored either, especially not when trying to understand the functioning of bureaucracy in full.

The non-formal approach in the field of planning and building was widespread during Teddy Kollek’s Mayoral tenure due to the municipal organizational culture of that time. This trend reversed during Olmert’s tenure and then gradually reemerged during Lupolianski’s, in the second half of the previous decade as a result of the orthodox community’s organizational culture, which

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188 Dudu Biton, cited in Irus Braverman’s article «Illegality in East Jerusalem: Between House Demolitions and Resistance,» *Theory and Criticism* 28, pp. 11-42.

operates to a large extent on non-formal moves. However, this is not the sole reason for the return of the non-formal approach: the work surrounding the preparation of the new outline plan, which gathered momentum at that time, brought up the need to find a creative solution for the impossible situation of East Jerusalem residents and only a flexible non-formal system could offer a creative solution. Judicial review of the bureaucratic tangle and international pressure also played a part in forcing the system to show more flexibility.

For the most part, the non-formal procedures evolve in one of two situations: the first is one in which a high-ranking official is touched by a humane situation. The above-noted case of the division director who cancelled the demolition is a good example of that. A different inspector, Pini Vaxenbaum, told Shuki Sadeh that often he takes social considerations into account. He told of a case in which he decided not to file an indictment against a woman who wanted to adopt a child since a criminal record would have prevented her. According to Vaxenbaum, he uses this kind of discretion in other cases as well: "We are policemen, inspectors, social workers and psychologists."<sup>189</sup> Another example, more interesting because it comes right from the top of the pyramid, is that of Manager of the Municipality Ra'anana Dinur, who in the year 2000, while following a humanitarian request, ordered to connect to the municipal water system a tent belonging to a large family whose house had been demolished by the municipality in violation of the law. The second situation is one in which the municipal system itself realizes that formal procedures lead to a dead end. For instance, sometimes the municipality authorizes building permits in East Jerusalem even though they do not meet the requirements prescribed by the law, to such an extent that urban planners in the planning department complain that the municipality has a double standard and that some of the plans authorized for East Jerusalem do not even meet the threshold conditions for West Jerusalem. Indeed, senior officials from the Chief Engineer's Office confirm that the bar is often lowered where East Jerusalem is concerned. This is often the case with authorizations of building plans that legalize existing building violations such as building beyond the permitted building ratios or the building lines specified in the plans. This flexibility begins with the mid-level officials and is backed by the current chief engineer, whose flexibility is worth noting. The political echelon and especially the chair of the Local Planning and Building Committee also encourages a certain amount of flexibility and allows deviation from the strict rules in exceptional cases. It should be pointed out that near the end of the previous decade both the Mayor's office and the local committee started to show more flexibility in areas where no urban plan

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189 Shuki Sadeh, *House Demolition Policy in East Jerusalem*, dissertation submitted to the Hebrew University's School for Public Policy, Nov. 2006.



had been approved. The non-formal solutions often take advantage of the complicated statutory situation, which is the outcome of having two outline plans, the old plan and the new plan that the Minister of Interior refuses to authorize. This situation allows one to play with both plans in order to find specific solutions for specific problems. Another situation which allows for the existence of non-formal procedures is the lack of clear policy in the field of planning and building. "There is no policy and that's a good thing," says the municipal inspector Pini Vaxenbaum. "Had there been one, it would have limited the inspectors' freedom to use their discretion...I would have not been able to be flexible where one should be flexible and to be tough where one should be tough."<sup>190</sup> To this he adds that "policy is not always a good thing." This is true indeed. More than once the political echelon has deviated from the rules of urban planning by creating a grey zone which allows leeway for the official's worldview to be manifested: "The lack of clear policies leaves a vast space for individual decision-making and legitimizes a flexible variety of practices. This is where the precariousness of the Palestinian home is designed and processed, not only by a master plan but rather within a delicate fabric of little decision makers."<sup>191</sup>

Non-formal procedures have also evolved in the municipal legal department as a result of the need to reduce the court's workload rather than from humanitarian considerations. The municipal prosecution has at last understood that the mass filing of indictments places an impossible burden on the courts. As a result the municipality adopted a new approach in which it summons the offenders for a hearing and tries to work out a solution without filing an indictment. The municipal prosecution referred to the procedure as "becoming more efficient." It is true that the hearing is conducted in accordance with the law, but often the two sides reach compromises that the Planning and Building Law would not allow. These settlements are only one of the non-formal procedures that have the approval of the attorney general, and one should be grateful that they exist.

As we have stated, the residents cannot rely on non-formal procedures that depend on an official's mood, good will or on the relationships that the lawyer or architect who represents them has with the municipal bureaucrats. However, these practices are becoming more common.

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190 Ibid., p. 37.

191 Hagit Keysar, *Hamakom: The Place*, a dissertation submitted to the University of Manchester, School of Social Sciences, 2008.

## THE INSPECTOR

The non-formal procedures do not always work for the benefit of East Jerusalem's Palestinian residents. Unlike the instances described thus far, the non-formal practices of municipal inspectors, who have the power to promote a demolition or suspend it, often work against the residents. Inspectors have the power to influence the quantity and the rate of demolitions and do so according to their outlook and perhaps their mood as well. This state of affairs is not unique to Jerusalem. The official who does field work has a central role in every form of governance since for the most part policies are created from the bottom up and out of necessity. As a result, the inspectors doing the field work serve as a source for decision making. Due to their strategic position inspectors are in fact able to shape policies.

Despite the existence of unambiguous laws and procedures, the inspector still has some room for using his judgment in the field, a grey area completely under his control. Here the inspector answers only to himself and does as he pleases, for better or worse. The Beit Yehonatan affair, in which the inspector claimed that he "did not see" a seven-storey structure in the center of Silwan, is a striking example of the inspector's power to turn a blind eye when he wishes to or when he thinks that he is expected to do so by his superiors.

The inspector's centrality is manifested in the criticism that a former director of the Construction Supervision Unit had towards the director who replaced him. He argued that since he had been replaced, the number of illegal constructions had only increased because "the inspectors are lazy and do not do field work." This means that a lazy inspector can cause a decrease in the number of demolitions, whereas a hyperactive one may cause an increase. The current director of the unit is also aware of his ability to influence the number of demolitions in East Jerusalem by assigning inspectors to certain areas.<sup>192</sup> He knows that the policy is made by the elected administration, but the degree of its execution is up to him. The former inspector testified that the influence of officials who do fieldwork grew at times when there were no clear instructions or general agreement over criteria.<sup>193</sup> In the absence of clear operating procedures, his judgment carried more weight. This kind of situations is more common when the political leadership sends mixed messages. The absence of clear procedures for East Jerusalem was thoroughly examined by the city's comptroller in 2001, 2003 and 2006 and was presented earlier in Chapter

192 Unit Director Ofir May, in an interview with Shuki Sadeh. This appears in Sadeh's dissertation submitted to the Hebrew University's School for Public Policy, Nov. 2006.

193 *Ibid.*, p. 52. The former inspector asked to remain anonymous and in the dissertation is referred to by the Hebrew letter Alef.

6. It is therefore easy to understand why the inspectors feel so powerful. The inspectors have more power not only due to the lack of authorized and updated procedures but also due to the vagueness that has resulted from the existence of two incompatible outline plans. In some periods this was also because it was unclear whether East Jerusalem would remain forever under Israeli control or if international pressure will lead to the division of the city. In this state of extreme vagueness, which has persisted in the past ten years, the inspector has been extremely powerful. Shuki Sadeh adds in his research that the inspectors' authority derives from this vagueness, as well as the shared values of the higher echelons and the inspectors. The senior bureaucratic echelons, he writes, give the inspectors a free hand, assuming that they have internalized the municipal policy objectives and know what to do even if it's not explicitly stated. "In the broader context of public policy, one may say that in the case of house demolition in East Jerusalem the political leadership, the senior bureaucracy and the lower levels of the bureaucracy act as one continuous sequence, with the policy being applied in the course of being determined."<sup>194</sup>

## THE INSPECTOR AGAINST THE RULE OF LAW

Inspectors who agreed to present their views to various interviewers have openly argued that the central problem standing in their way is the court. In Hagit Keysar's research, one of the inspectors criticized the legal system by claiming that the legal proceedings take many years and sometimes end with the demolition order being cancelled (when the rare resident has been able to obtain a permit) and that is why the courts damage their efforts to maintain law and order, reducing the state's authority over East Jerusalem.<sup>195</sup>

Similar statements were made by the head of the Construction Supervision Unit, Micha Ben-Nun; they have already been cited in Chapter 4, but are worth repeating here. According to Ben-Nun the legal system is the "the Achilles heel of this process" because of the "unbearable lightness" with which it delays demolition orders. In his view, the courts put too much emphasis on considerations of property and human rights, offering too much protection for criminals without protecting society from them.<sup>196</sup> From these words we learn that this law enforcement department has a fundamental problem with the law, at least as long as the law helps Palestinians keep their houses. How then do they deal with this "problem?"

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194 Ibid., p. 73.

195 Hagit Keysar, *Hamakom: The Place*.

196 Shuki Sadeh.

The inspectors' deep frustration with the courts was manifested in a miserable affair that took place in 2003 when the supervision unit decided to take the law into their own hands and disregard a court ruling to delay a demolition. This disobedience came as a result of the deep frustration that arose on those occasions when they were about to begin the demolition and a lawyer appearing with a stay of proceedings order for delaying demolition arrived just as they were about to demolish the structure, with the police and the bulldozers on site. This last-minute scenario is very common. Often the owner of the structure often is unaware of the existence of the demolition order since the demolition order was not served personally but placed on the structure, very often in places where the rain will wash it away or where it is not easily seen. Sometimes the owner's negligence or lack of funds has prevented him from hiring a lawyer on time. Whatever the reason, many times in the hour between the arrival of the police and the arrival of the bulldozers, a capable lawyer is able to get a judicial order. When this happens, a game of cat and mouse begins with the inspector trying to avoid being handed the judicial order in order to carry out the demolition.

The inspectors are known to have turned off their radio transmitters so that the municipal prosecutor, who is supposed to inform them of the stay of proceedings order right after the ruling has been given, is unable to contact them. Immediately after the demolition is completed, the radios magically begin functioning again. Typical excuses would be offered: "We had no reception." "We couldn't hear through the bulldozer's noise."

In some cases the family's lawyer calls the owner on the phone to inform him that he was able to obtain the judicial order, but when the owner informs the inspector, the inspector replies that he will continue with the preparations so long as he is not instructed to do otherwise by his superiors in city hall. In such cases begging and pleading do not help. The inspector will demolish the structure without bothering to look into the resident's claim and will even urge the bulldozers to begin the demolition before the lawyer shows up with the order. Even worse, the Israeli police, which provides security for the operation, collaborates with the inspectors by delaying the lawyer with all sorts of excuses. In one of the cases that will be presented further on, the order was handed to a police officer securing the site. The officer, who was standing next to the inspector, did nothing to stop the demolition and became a collaborator in the violation of a court order.<sup>197</sup> All of the above strengthen the impression that the police and the supervision unit work in collaboration in order to complete demolitions at any cost.

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197 See Test Case – Dabash Family, Sur Baher

As we have noted, cases in which the stay of proceedings arrives just moments before the bulldozer starts the demolition drive the authorities crazy both because of the frustration and also because of the loss of the money spent on hiring the mechanical equipment operator. In these cases, the authorities try every possible trick to dodge the order. Here officials of the municipality or of the Ministry of Interior trample the law underfoot.

House demolition in violation of a court order is outrageous because the authorities who deal with supervising construction claim to operate in the name of the law. Equipped with a court order, they exuberantly set out to hunt down illegal construction and issue demolition orders in the name of law and order. Presumably, they are only concerned with upholding the rule of law and dignifying the courts. In their determination to enforce the law they storm the houses of innocent residents whose only sin is constructing a shelter for their families after being denied a building permit. Regardless, the inspectors maintain that they are mere messengers of the court and view themselves to be the long arm of the rule of law in East Jerusalem. Faced with criticism of human rights organizations, they roll their eyes heavenward and innocently wonder what all the fuss is about. After all, we all want to live in a country with the rule of law and are obliged to dignify the court's decisions.

However, contrary to the impression created by the authorities, we know that the inspectors of the municipality and the Ministry of the Interior will stop at nothing to carry out the demolition even if the law stands in their way. If it were only one or two isolated incidents, one might claim that it was a technical mistake. However, when cases accumulate to three or more, we begin to see a pattern. In addition, our argument is backed by the city comptroller's report, which reveals severe irregularities in matters concerning municipal procedures for the execution of demolition orders.

We have found it necessary to dwell on this issue because it touches not only on house demolition but also on the systematic destruction of democracy and the continuous erosion of the rule of law. The foundations of our society and the state's moral image are being undermined. That is not to say that had all of the buildings been demolished in accordance with the law we would not protest. We believe that an occupying state has no right to demolish residential buildings on occupied territories, and that includes East Jerusalem. However, it is important to dwell on this matter in order to shatter the myth that there are two camps, that of those who uphold the rule of law, i.e. the authorities, and that of the criminals, consisting of Palestinians. We wish to shed light on a reality in which it is the state itself that tramples the law. This form of law breaking has become an administrative norm, and Israeli society

seems not the least bothered by it.

It should be noted that after we petitioned the state comptroller, the president of the Supreme Court and other authorities, a stop was put to the practice. Nevertheless, 2003 will be remembered as the year of the most severe violations of stays of proceedings for house demolitions. Several cases from that year are detailed below.

## FOUR CASE STUDIES

### ***First case: demolition of the Dabash house in Sur Baher, August 26, 2003***

Imad Dabash built a house in 2003. On receiving an administrative demolition order, his lawyer Attorney Nahum Solan applied to the local court for a stay of proceedings. Judge Ben Zimrah heard the motion ex-parte on August 26, 2003 and denied their request. He ordered the court's secretariat to send the decision to the Dabash family by registered mail, and he allowed them to appeal to the municipal court. In addition, he expressly stated that "the 30-day interval in which the order may not be executed will begin from the day a copy of this decision reaches the hand of the applicant's attorney." Instead of being mailed without delay as the judge ordered, the decision was mailed on Sunday, August 31 and reached its destination on Tuesday, September 2 after the bulldozers had arrived and without the municipality bothering to verify that the court's decision reached the family's attorney.

While the police started to clear the house of the family's belongings, Attorney Solan rushed to the courthouse to obtain a stay of proceedings order. He then rushed to city prosecutor Attorney Danny Libman in order to personally hand him the order and at the same time faxed the order to the police officer who was securing the site of the demolition. All this he was able to do before the demolition had begun. The city prosecutor, instead of ordering the inspector at the site to suspend the demolition, chose to go to court and try to convince the judge to change his decision.

Meanwhile, in the midst of preparations for the demolition, municipal inspector Yaron Eliav heard from the officer that a stay of proceedings had been issued. The inspector then called the director of the Construction Supervision Unit,

Micah Ben-Nun, to ask for instructions. Ben-Nun replied that since so far he had not received the order, as far as he was concerned “it does not exist.” In addition he ordered the inspector to begin the demolition immediately, before the stay should reach him. Later on he told the police officer, who in the meantime had received a copy of the stay, that he does not take orders from the police but only from the municipality, and proceeded to instruct the bulldozer operator to strike the building.

After one blow, which caused a large crack to open throughout the structure, the order finally arrived, but the municipality claimed that due to the crack in the structure it had now become a “hazardous structure” and an engineer working for the municipality instructed them to complete the demolition.

It should be noted that in a conversation City Councilor Pepe Alalu had with Ben Nun it was revealed that the unit’s director was well aware that the stay of proceedings was on its way. According to Ben-Nun, “a rumor that there is an order on its way” had reached him, but he chose to ignore it, claiming that he is not “nourished by rumors.”

### ***Second case: home of Sawiti family, in Beit Hanina, March 10, 2003***

Jawad Sawiti built a house during the first half of 2002, and on June 30, 2002 the Municipality of Jerusalem posted an administrative demolition order on the structure. On the same day the family turned to Attorney Shlomo Lecker, who obtained a stay of proceedings order at the Court of Local Affairs. Judge Morris Ben Atar granted the request and ordered a suspension of the demolition indefinitely “until another decision is received.” The debate went on after the judge made his decision, but the decision was not changed. A hearing was scheduled for March 18, 2003, a week after the house had been demolished.

On the morning of March 10, 2003 police forces and bulldozers of the Ministry of Interior arrived at the family’s house under the supervision of Zvi Schneider. Schneider ordered the family to get out of the house and take essential belongings with them. The family’s claims that they had a stay of proceedings were of no use. Mr. Schneider pushed Mr. Sawiti back, refused to speak with the family’s lawyer and instructed the bulldozers to demolish the building without further delay.

Zvi Schneider argued in his defense that his office posted the demolition order on February 24, 2003 without being aware of the existence of a stay of proceedings. This claim is clearly unlawful because according to the Planning and Building Law (section 238 A (B1) (3)) before proceeding to issue a demolition order the Ministry of Interior must impose the task of demolition on the municipality. Only if the municipality has refrained from doing so, for no good reason, is the Ministry of Interior permitted to issue a demolition order of its own and carry out the demolition.

***Third case: Al-Sheikh family, in Al-Walaja, August 13, 2003***

Mohammad Ismail Al Sheikh lives in a 250 sq.m. two-storey house with his five children and their families numbering together 23 souls. The Ministry of Interior sued him for building the second floor of the house without a permit. Attorney Eitan Peleg, who represented the family, obtained a stay of proceedings until a court hearing in the presence of both parties could take place. On the morning of August 18, 2003 with the order still in effect, the Ministry of Interior's bulldozers appeared at the outskirts of the village, accompanied by large police forces, which closed off the area. An inspector of the Ministry of Interior ordered the family to vacate the house and allowed them to take only money. Foreign workers went up to the second floor and started to throw clothes out the windows and to bring down furniture. One of the family members present phoned his brother, Mohammad Mussa Al-Sheikh, who was in West Jerusalem at the time, and informed him of what was going on. Mohammad ran to see Attorney Peleg, and together they went to the local court. The judge heard their case and issued a stay of proceedings. Without delay Mohammad faxed the order to a neighbor of the family, Abu Nidal, and to the head of the village, Mustafa Abu Tin. Both of them rushed to the demolition site to show the order to the Ministry of Interior inspector. Each of them arrived separately and was blocked by the police and prevented from presenting the order to the inspector. During the entire affair Mohammad Al-Sheikh maintained telephone contact with the brother who had phoned him and with the two neighbors, who stood 100 meters away from the brother, waving the order in their hands, to no avail. They were simply prevented from handing over the order. The brother told the inspector that the neighbors came with a stay of proceedings order and the police are preventing them from approaching, but the inspector was indifferent to him and explicitly said that so far as he was concerned the demolition order was still in effect. He then urged the workers to complete the evacuation of the house as fast as possible.



The inspector knew that in any given moment the order might reach his hand, so he urged the bulldozer operator to start the demolition as soon as possible. At the same time Attorney Peleg realized what was taking place and phoned the Ministry of Interior's legal advisor in order to inform him of the gravity of this case. The legal advisor directly contacted the Construction Supervision Unit's director and the unit's director ordered via the two-way radio that the demolition stop. By that time the bulldozer had already destroyed one wing of the house. Attorney Peleg sent a complaint to the Minister of Interior.

***Fourth case: the house of the Adnan Kanaan Shahin family  
December 10, 2003***

42-year-old Adnan Shahin built a house of 66 sq.m. for his family of eight. He was prosecuted for constructing illegally and fined but was granted an 18-month extension in order to try to obtain a building permit. Mr. Shahin understood there was no point in initiating the process of obtaining a permit since the municipality would reject his request, as it had rejected those of his neighbors, due to the absence of a town building scheme for the area.

On the morning of December 10, 2003, while the house owner was at the municipality, where he worked as a janitor, Ministry of Interior inspectors arrived at his house, accompanied by the police and by workers for vacating the house. They started making preparations for the demolition. At the same moment the owner's brother in law, who was present, phoned Attorney Munam Thabat, who rushed to the Court for Local Affairs to obtain a stay of proceedings. The Ministry of Interior's attorney, Micki Kedar, did not file an objection, and Judge Ziv issued the order. Attorney Thabat phoned family members who were at the site and was relieved when they told him that the demolition had not started yet and the house still remained standing. The owner's brother in law, Mr. Shawiki, informed the inspector, Zvi Schneider, who was running the operation, that a stay of proceedings had been issued, but Schneider ignored him. Shawiki then tried to connect him on the phone with Attorney Thabat, but Schneider refused to talk to him. The family begged him to delay the demolition for a few minutes till the stay of proceedings arrived, but Schneider took no notice of their pleas and ordered the bulldozer operator to begin the demolition even before the workers were done removing the furniture from the home.

At 10:00 the bulldozers started to demolish the house. The task of demolition was very easy because it was a small house built of bricks with no stone cladding. Five minutes after the demolition had begun a message arrived from

the Ministry of Interior ordering the suspension of the demolition due to the stay of proceedings order. At that time almost the entire house had been demolished, and only the restroom was still intact.

When preparations for the demolition were taking place, the author of this book, who at the time was a field coordinator of the Israeli Committee against House Demolitions, was present at the site. Realizing that something unlawful was taking place, even though unaware of the existence of the stay of proceedings, he contacted Mr. Naor Nekhushai, advisor to the Minister of Interior and asked him to examine the legality of the demolition. The minister's advisor phoned Avi Dotan, the person in charge of demolitions at the Ministry of Interior. Dotan first denied that it was the Ministry of Interior that was performing the demolition and claimed that it was the municipality that was demolishing the house. Only at the insistence of Margalit did he admit that the Ministry of Interior was behind the demolition and ordered Schneider at the demand of the minister's advisor's to come down and present the order before commencing demolition. Not only did Mr. Dotan mislead the minister's advisor and not only did Mr. Schneider not comply with his instruction but both of them urged the crew to begin with the demolition as fast as possible.

### **“GETTING EVEN” THROUGH DEMOLITION<sup>198</sup>**

The following cases shed more light on the conduct of the municipality's Construction Supervision Unit and in particular on the way in which decisions are influenced by personal and non-professional considerations. In the first case the demolition was executed by the book but still in error because even though the demolition was “legal,” it was not necessary. All that was needed to save the house was some good will, a rare commodity in the corridors of city hall.

Such was the demolition of the house of the Al-'Amas family in Sur Baher in January 2007. To be fair, we should start by saying that the owner of the house made every possible mistake when building the structure. He could have possibly steered clear of the problems by consulting with experts. However this is not the place to judge his behavior. The large structure, a building of

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198 This chapter and the following chapter draw from data provided by municipal officials working in the municipal enforcement system and want to remain anonymous. After cross-referencing the information we reached the conclusion that it is reliable and decided to publish it without revealing its sources.

four storeys with pink stone facing, was perceived by municipal inspectors as a provocation and “a personal matter,” as one of the municipal inspectors explained. They felt as if the building, by being so large, was daring them to demolish it. This is what made them want to raze the structure at any cost. When the owner received the demolition order he applied both to the court, to have the demolition suspended, and to the municipality, in order to obtain a building permit. The family’s architect worked frantically to prepare a plan and have it authorized, and one year later on January 8, 2007 the Local Planning and Building Committee approved the plan and recommended to the Ministry of Interior’s district committee to authorize it. From the moment the local committee submits a recommendation it takes the district committee a month to authorize it. The municipal inspectors, who knew that the authorization was on its way, were not willing to wait for the authorization procedure to be completed. On January 22 they had the bulldozers demolish the building. Even though the demolition was carried out in accordance with the law, one cannot escape the feeling that the inspectors’ desire to “get even” motivated them to demolish the building.

Another example of “getting even” occurred on October 26, 2009 when the municipality demolished the house of Khamis Tekhan in Dahiyat Al-Salaam near the Shuafat refugee camp. Six months before the demolition, the building of the separation barrier completely surrounding the area was completed. The construction of the wall took over two years, and from the moment construction began the Jerusalem Municipality stopped providing municipal services to the area and completely gave up on enforcing the Planning and Building Law, understanding that soon the area would be left outside of the municipality’s authority for all purposes. From the moment the residents realized that the inspectors would refrain from visiting the area, a wave of unprecedented illegal construction washed over the barrier-surrounded area. Buildings of eight and nine storeys were built, and the municipality did not lift a finger to prevent it.

However, even though the municipality did in fact give up on enforcement in that area, and despite no longer providing it with municipal services, the municipal bulldozers came to the Tekhan family’s house, a small 45 sq.m. building with a tin roof, and tore it down. The obvious question is this: Why did they choose to demolish this small house when there were so many large illegal structures in its vicinity? What made this house worthy of such special treatment that nine-storey buildings somehow evaded?

The answer lies in the fact that the house was re-built in August 2007 by activists of the Israeli Committee against House Demolitions shortly after the municipality demolished it the first time. The municipal inspectors, who

were surprised to find a new house in the same place, could not contain their rage and swore that they would demolish the structure. Their honor was too offended to allow the house to remain standing. These petty people could not stand a house being built in spite of them. They did not forget and would not forgive. The house was demolished for personal vengeance, and the municipal system was proud that it would not be fooled by peace activists.



## The Approach Of The Legal System To Building Violations In East Jerusalem

Former Supreme Court Judge Zvi Tal once said that a judge is only a human being, and his judgment is influenced by his views: “A Supreme Court judge deals with values of good and evil, not of truth and falsehood. He brings his entire spiritual baggage, his education and his values; and therefore it is not surprising that one is able to guess the position that every judge has on matters such as, for instance, religion and state, according to his spiritual baggage. He cannot decide otherwise.”<sup>199</sup>

District Court Judge Shelly Timan made a similar remark upon retiring in 2008: “Judges are flesh and blood. Each has his own upbringing, agenda, past professional background... [that] cannot be set aside.”<sup>200</sup> Speaking further of agendas, former Supreme Court President Aharon Barak himself objected to Professor Ruth Gabizon’s appointment to the Supreme Court arguing that “Ruthi has an agenda.”<sup>201</sup> Indeed, a judge’s personal agenda has a crucial role even in matters concerning everyday life and even more regarding such a sensitive issue as illegal construction in East Jerusalem. It seems that to a great extent the judge’s ideology dictates his court rulings.

However, it is not only a judge’s personal background that influences rulings. Public atmosphere also plays a part. Judge Timan stated it explicitly concerning a different matter, but the point is applicable to our context as well: “We have a fear, a fear of public opinion among other things. It cannot be ignored. Some

199 Shachar Ilan, «Nachonu Lanu Yamim Kashim» (Difficult Times are Ahead of Us), Ha’aretz, Jan. 13, 2006.

200 Tomer Zarchin, «De’atYachid,» (single person’s opinion) Ha’aretz, Mar. 14, 2008.

201 “Barak: I object to Gabizon’s appointment because she has an agenda,” Ynet, Nov. 11, 2005.

elements gather more support than others and make themselves heard. This apparently has an effect."<sup>202</sup> The obvious question is to what extent judges are influenced by public opinion in Jerusalem in general or in city hall in particular. This is especially important considering that the Court for Local Affairs works closely with the municipality.

## COMPARING COURT RULINGS

In order to see how much weight judges' personal agenda carry, let us examine the rulings of the judges at the Court for Local Affairs in Jerusalem in 2005. In that year, six judges dealt with cases relating to building and planning. The cases were randomly assigned to the judges by the court's secretariat. The cases that were assigned to the six judges were similar, none of them more complicated than the others. Despite this, the difference in punitive measures is astounding.<sup>203</sup>

One of the judges found 80 percent of the defendants guilty. Another judge found 57 percent guilty. In other words, there was a 23 percent difference between the two judges. The same gap may also be observed in the size of the penalty that the judges imposed. The average fine imposed by one of the judges was 43,000 NIS, whereas the average fine imposed by another judge was 19,973 NIS. The average fine imposed by the former judge was 125 percent higher than that imposed by the latter.

A strange case that illustrates the gap in punitive measures occurred when two judges at the Court for Local Affairs were assigned 14 petitions to suspend the demolition of houses in the Al-Bustan neighborhood in Silwan. Attorney Ziad Kawar represented the 14 families; and since all of the houses had the same legal status the petitions that he filed were virtually identical. The court's secretariat assigned the cases to two judges, eleven cases to Judge M. Benatar, who granted the families a 10-month extension,<sup>204</sup> and three to Judge Ruth Zochovitzki, who declined the requests and refused to grant extensions.<sup>205</sup> Again, the houses had the same legal status. The difference between the rulings is due to the difference in the judges' views and not the cases themselves. Judge Zochovitzki stated this explicitly when ruling against

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202 Tomer Zarchin, *ibid.*

203 Jerusalem Court for Local Affairs, Jan. 1, 2005 to Dec. 31, 2005. The cases include all sorts of building violations from new construction to failure to carry out the court's decision, unlicensed use of a structure and more.

204 *The State of Israel v. Shafa Ahmed*, criminal file 6617/99, Jerusalem Court for Local Affairs, Judge M. Benatar.

205 *The State of Israel v. Rawdi Hassan Mohammad*, criminal file 1596/96, Jerusalem Court for Local Affairs, Judge Ruth Zochovitzki.

the three families: “Judge Mishael Cheshin held that the court should grant building offenders extensions if it finds a good reason to do so...I do not see a good reason to grant an additional extension. It is time to uphold the court’s decision.” It is indeed legitimate for different judges to have different views, but when dealing with Palestinians they too often border on politicization.

The most notable example is that of Judge Ben Zimra, who was unable to keep his personal views out of the hearings that he conducted. That two of his sons live in settlements has surely influenced his rulings. During trials he commonly made remarks such as “this is a Jewish state.” Even though these remarks became a habit, they were always left out of the protocols. However, the spirit of his hearings can be felt in protocols on Beit Yehonatan, from a hearing in which, even though he rejected the settlers’ request, he did not miss the opportunity to preach patriotism to the municipality:

The logical conclusion from the allocation of such limited manpower to enforce the application of building regulations on East Jerusalem means that the local authority, with the knowledge of the central authority, abdicates the full sovereignty of the state over the eastern part of the city, being satisfied with partial sovereignty (not only within the sphere of planning and building regulations, but also of business licensing regulations and municipal bylaws that are almost not applied in the east of the city). As mentioned, the central authority is fully aware of the matter of ‘partial sovereignty,’ but does not do what is required to change this situation.

To this he added that according to the Basic Law regarding Jerusalem, the state is required to practice “full sovereignty over the territories that were annexed to Jerusalem in 1967...so that the borders of the area of jurisdiction fully correlate with the extent to which sovereignty is practiced.”<sup>206</sup>

## **JUDICIAL PATERNALISM**

The Israeli legal system’s general attitude towards building violations in the Palestinian sector is considered to be paternalistic. Some even argue that it displays features of cultural arrogance. The legal system operates by Jewish, liberal and Western standards. While the cultural ideals it aims for may be suitable for a modern Western society, they are inappropriate for the Oriental Palestinian society. The courts’ paternalistic attitude towards East Jerusalem Palestinians is the inevitable consequence of an effort to impose Western

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206 The State of Israel v. Gottlieb Eyal and others, criminal file 7470/05, Jerusalem Court for Local Affairs, Judge Ben Zimra, p. 270. The last line was emphasized in the original.

norms on an Palestinian population. This attitude is not only patronizing but also leads to a situation in which inappropriate norms are thrust upon an entire population.

Judge Cheshin, as early as in 1994, stated that planning considerations should include “a comprehensive environmental approach of society, economy and quality of life in urban and rural areas.”<sup>207</sup> There is a name for the considerations Judge Cheshin lists: ideology. The Building and Planning Law, like any other law, is designed to enforce an ideology. The question is, of course, whose ideology it is and who does it serve.

Supreme Court Judge Ayala Procaccia went even further when she stated in 2006 that the “Planning and Building Law strives to achieve goals for the public good...Unlawful construction or [illegal] land use go against the public interest...The promotion of public and private good requires that development and construction be done in accordance with the law.” To this she added that enforcement is not only important for upholding the rule of law but also sends “an educational message to the individual and to society.”<sup>208</sup> When a judge emphasizes so strongly the notion of public and private good, what public is she referring to? Was the East Jerusalem Palestinian population asked for its opinion? When a judge concludes that illegal construction “damages the ability to maintain a suitable standard of living,”<sup>209</sup> the obvious question is this: suitable to whom? Who is to say what is suitable and what is not? Societies that have a different set of values, such as the Palestinian society or the Jewish orthodox society, consider different things as suitable. What is right for one society is not necessarily suitable for the other. When a judge argues that illegal construction “damages important values,”<sup>210</sup> which and of whose values is he speaking? When a judge states that the purpose of a demolition order is to “serve the public good,”<sup>211</sup> what public is he referring to? Is it the Jewish public or the Palestinian public? If something is suitable to the Jewish population would it necessarily be also suitable to the Palestinians? When judges use norms derived from the values of the Jewish population’s values, crucial distortions of justice are bound to happen. From Karl Marx to Michel Foucault, many have held that the legal system is mostly a conservative system designed to serve the existing social order and bestow legitimacy on

207 The Supreme Court, administrative appeal 2920/94, Adam TevaV'din v. the National Council for Planning and Building.

208 The Supreme Court, administrative appeal 2273/03, EeHatcheletShutafutKlalit v. the Society for the Protection of Nature in Israel, Dec. 7, 2006.

209 Criminal file 2115/98, Qasim Ismail v. the State of Israel, Oct. 22, 1998.

210 Appeal 377/87, Kalka Nahum Ltd. v. the State of Israel, p. 680.

211 Criminal case 6034/99, Limor Cohen et al. v. the chairman of the Local Planning and Building Committee in Jerusalem.



it. Professor Nili Cohen writes that “the law is a tool used in order to achieve a social goal. It was created by human beings in order to allow them to live together in a society that is based on justice and fairness...The legal rules do not reflect a scientific truth. They are supposed to express a conception of justice with which the court seeks to establish long lasting order and stability... It provides the foundation for social order and stability.”<sup>212</sup> This “social goal” that she speaks of, is determined by legislators from a certain sector: Jewish, Zionist, Ashkenazi, liberal and wealthy. This ethnic sector’s views do not necessarily correlate to those of other sectors: Oriental Jews, Orthodox Jews and especially Palestinians.

### **WHEN IS A HOUSE “SUITABLE” FOR HABITATION?**

The same cultural gap is also found in laws set to determine whether a house should be considered suitable for habitation. This matter is important because administrative demolition orders are issued against buildings whose construction has not been completed and have not been inhabited.<sup>213</sup>

In one case, a family tried to get the court to cancel an administrative order that was issued against the family’s house, arguing that they had been living in the house for a very long time. The judge, M. Benatar, ruled that the structure was unfinished because windows had not been installed in it. With the use of complex legal sophistry he first determined that a building suitable for habitation is one whose “construction has been completed.” According to pictures provided by the municipality and taken at the time the demolition order was posted on the building, the “building’s window holes had no windows in them.” The judge then proceeded to list a number of criteria which he dubbed “objective indicators” for considering a house to be completed, so that “the completion of the building will not be decided by the builder’s subjective intentions... but by the building’s ability to fulfill its purpose.”<sup>214</sup> According to this criterion the actual habitation of a house is not enough for it to be considered “suitable for habitation”. The judge chose to disregard the family’s pointing to kitchen cabinets, cleaning appliances and more. Instead, he focused entirely on the absence of windows and concluded that “a residential building is not fit for its purpose unless windows have been installed.”<sup>215</sup> For this reason he found the house unfit for habitation.

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212 Nili Cohen, *Memory, Forgetfulness, Precedent* (Hebrew), Hamishpat 13, 2006

213 6526/03 Nur al Din Dmiri v. the Local Planning and Building Committee in Jerusalem, Dec. 16, 2004, Judge M. Benatar.

214 *Ibid.*

215 *Ibid.*

Another example is a case in which Judge Gad Ehrenberg ruled against a poor family from Sur Baher. The family's house was being built gradually whenever they were able to afford to carry on with its construction. Judge Ehrenberg ruled that even though he agreed that the family had been living in the structure for almost two years at the time the administrative demolition order was issued and had even paid property taxes to the municipality, "this occupancy should not be regarded as the occupancy required by section 238(a) of the Planning and Building Law. A property that is [adjudged unfit for habitation cannot be considered as occupied even if] it is inhabited by someone. Therefore [occupancy] will not bring about the cancellation of the demolition order."<sup>216</sup> In his view, the fact that the family had been living in this house for two years is irrelevant. That he considered the structure to be "unfit for habitation" was enough evidence for him to rule out the possibility that the house could be habitable.

In both cases, the standards by which the court examined this matter were that of the Israeli middle-class, completely ignoring the possibility that any family, be it Jewish or Palestinian, would have a different set of priorities, would build its house in several stages and would live in a house even if its construction had not yet been completed.

## THE RELATION BETWEEN THE SIZES OF FINES AND RESIDENTIAL CULTURE

A similar problem arises when the court needs to rule on the fines and monthly payments imposed for building violations. Judge Gad Ehrenberg fined Tweel Shkhada Yusef for building without a permit in Abu Tor in the amount of 100,000 NIS in monthly payments of 2,000 NIS. The judge ignored the fact that the defendant was unemployed and that he and his family of 10 were living off of a monthly national insurance benefit of 2,400 NIS. The judge explained his decision, saying that "it could not be ignored that the defendant was able to build a two-story building with a total area of 460 sq. m. This must indicate financial capabilities in addition to the National Insurance benefit."<sup>217</sup> Basing an estimate of a person's financial situation on the size of his house is typical of a Western society, in which the two usually correlate. However, this is not the situation in among Palestinians, where a large house does not necessarily indicate wealth. In their society a person may borrow money or spend an

216 8046/05 the State of Israel v. the Local Planning and Building Committee in Jerusalem, Feb. 1, 2005, Judge Gad Ehrenberg.

217 Criminal file 8046/05, the State of Israel v. Tweel Shkhada Yusef, Dec. 12, 2005, Judge Gad Ehrenberg.

inheritance to build houses for all of his children. This does not indicate a high economic status. It appears that, for the Israeli judge, the possibility of someone investing all of his money in constructing a house does not exist. To him, if a person builds a big house then he must be wealthy and must also have additional savings with which he could pay a monthly fine that is almost as high as his income. Here too the judge's opinion has been distorted by the cultural gap.

Another example is a case in which a Jerusalem local court judge, E. Z. Ben-Zimra, imposed on the defendant a monthly fine of 4,000 NIS, even though the defendant's salary was only 3,300 NIS and he had seven children.<sup>218</sup> In his ruling the judge stated that he was "aware of the defendant's personal circumstances, but a person who has the means to build such a structure will have the means of paying the fine stated above. Whoever comes across enough money for building a large house will know where to find the money to pay the monthly tax, even if it surpasses his monthly income." In this case the court ignored the fact that the defendant sold a tract of land in order to finance the construction of the house. After selling the land and building the house he had nothing left. This attitude, according to which a person who builds a private house is of such a high economic status that he should have no problem paying a monthly fine that is far greater than his salary, also assumes that a person who builds a house must have other assets and savings. Here too we see how capitalistic urban behavioral patterns are projected on a rural society that has a different set of priorities than that of the Jewish society. The legal system's approach to illegal construction in the Palestinian sector ignores not only the political context but also the cultural, social and traditional background that characterizes Palestinian society. In the Jewish sector there is a direct link between a person's financial situation and the quality of his housing. A person chooses his place of residence according financial parameters. He will build a house or buy a house or an apartment if he can afford to, and if he can't, he will rent. In the Palestinian sector the rental option is almost non-existent. It is seen almost as a moral obligation for the head of the family to provide his family with a house, usually on his family's land. While in the Jewish sector building and owning a house is a social matter, in the Palestinian sector it is first and foremost a matter of honor. It is unthinkable for a man at the age of marriage not to own a house. In Israeli Jewish society a young couple can get married without owning a house. In Palestinian society a couple will postpone the wedding until the house is built. A young man who does not own a house will have a hard time finding a proper match because

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218 Criminal file 6290/04, Amira Mohammad v. the State of Israel, Dec. 14, 2004, Judge Ben Zimra.

no self-respecting parent would give his daughter to a person who does not own a house. It should be noted that there are very few apartments for rent in the Palestinian sector because first, it is not customary to rent an apartment to strangers (with the exception of diplomats) and second because until recently there was no market for apartments for rent. Only after tens of thousands immigrated into city limits following the construction of the separation barrier did a Western style real estate market develop in East Jerusalem. The housing shortage is not recognized and not taken into account by the Israeli legal system, and for that matter, neither is the devastation caused to families whose homes have been destroyed by financial, political or social forces that touch every aspect of life for East Jerusalem Arabs. Judges who pride themselves on having treated every person as equal before the law act against their own beliefs by measuring the building violations of Jews and Palestinians by the same yardstick. They ignore the difficulties that the Palestinian population faces amid the political backdrop of planning in the eastern sector, bringing injustice to tens of thousands of residents. Furthermore, by disregarding the cultural gap between the two sectors, they operate mechanically in every case of building violation, even when they are aware of the municipality's corrupt practices, thus giving their seal of approval to what is clearly a political act.

We encounter the same disregard of Palestinian culture and tradition in cases in which the court rules against a defendant, by reasoning that he chose to build in an area where construction has not been approved instead of building in a neighboring village where lands have been authorized for construction. This argument ignores the fact that, unlike in West Jerusalem, where it is normal to relocate from one neighborhood to another, in East Jerusalem the option of moving from one Palestinian village to the next is almost nonexistent. The urban fabric of East Jerusalem is comprised of a collection of villages; and even though the municipality insists on referring to them as "neighborhoods," they still function as closed communities for all intents and purposes. The residents of the village see the land reserves as belonging to the villagers and not to outsiders, and a person who relocates to the village will find it hard to integrate into his new environment. Furthermore, in Palestinian society one does not abandon his land and his family merely because the land he owns has not been authorized for construction in the urban outline plan. Thus, the Israeli courts ignore cultural background and use western standards that are foreign to the Palestinian sector.

## PROPORTIONALITY

Not only does the Israeli legal system approach the issue of illegal construction from a narrow perspective, it also misunderstands the central dilemma at hand. As a result, its rulings are defective and aggressive.

Judge Yael Yitav of the Jerusalem Court of Local Affairs rejected an appeal to rescind an administrative demolition order even though the demolition would leave the family who lived in the house homeless. The judge argued that “in the balance between the right to own property and the disallowance on illegal construction, the disallowance has the upper hand.”<sup>219</sup> Her argument is incoherent because her choice was in fact not between “property” and “illegal construction,” but between human dignity and illegal construction. Her reasoning would perhaps have been cogent had the owner been a wealthy person who built a house in order to make an easy profit. But this family had only one house and its demolition would force them to live on the street. For this reason, the real dilemma that should have been in her sights was between leaving a family homeless and the need to enforce construction law. This was not about property rights but of human rights. The judge’s perspective was narrow because the court only knew how to deal with such well-defined administrative matters as the right to own property but did not consider human suffering since it had no constitutional status. The human aspect is completely left out, and in its absence the problem is presented as a conflict between two administrative issues, as if it had no implications for actual human beings.

## TAKING ADVANTAGE OF LEGAL AMBIGUITY

The demolition of the Hamdan family house in Anata at the beginning of April 2008 is a good example of how the municipality uses the vagueness of the law in order to manipulate it.

An administrative demolition order against the house was issued in July 2007. On February 11, 2008 Attorney Sami Ershied filed an administrative appeal to the District Court demanding the cancellation of the order. He made powerful arguments in a document 30 pages long.<sup>220</sup> This is not the place to elaborate on each of the arguments. Suffice it to note that Judge Noam Solberg decided that they should be addressed and scheduled a hearing for May 29, 2008. However, the judge did not see fit, on the same occasion, to issue an injunction that would prevent the municipality from demolishing the

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219 Jabari Rikhab v. the chairman of the Planning and Building Committee in Jerusalem, 7867/07, Jan. 28, 2008.

220 Shadi Hamdan v. the Attorney General et al, 191/08

building before the hearing. For that reason, a week later an additional request for an injunction was submitted to the same judge, who then refused to grant the injunction on the grounds that the request was submitted “dishonestly” because the defendant had built without a permit for the second time. What is even more astonishing is that, in addition, the judge renewed the demolition order and scheduled the 30-day period in which the demolition order might be carried out to begin on February 28, i.e. before the hearing that he himself scheduled. It should be noted that his act was not illegal; however, it was illogical, not to mention unjust. For it is obvious that the creation of new facts (i.e. the demolition) would render the hearing meaningless. This should be avoided especially when the facts as are irreversible as house demolitions.

The municipal legal advisor jumped at the opportunity, and even though he was well aware that the hearing was to take place on May 29, he ordered the demolition of the house prior to the hearing, knowing that technically nothing could prevent him from doing so. Indeed, on the morning of April 2 the bulldozers arrived at the outskirts of Anata, the police knocked on the door of the Hamdan family house, and the demolition machine started to operate as planned.

Ershied was notified of the demolition while it was still taking place. He rushed to the Court for Local Affairs and made his argument that the demolition should be stopped because, first, a hearing at the Municipal Court was scheduled for May, and, secondly, the order had expired since the 30-day period starting on February 28 had passed.<sup>221</sup>

After hearing the municipality's side, Judge Yael Yitav reached an outrageous, albeit legal, decision that, first, the demolition did not make the scheduled hearing pointless. The hearing could still take place and if it turns out that the court rules in favor of the family and the demolition order is revoked, the family will have the option of suing the state for damages. Secondly, in regards to the expiration of the demolition order, the municipality claimed that the order reached city hall on March 5 and presented a stamped document as evidence. The family's attorney argued that the 30-day count should have started on February 28, the date on which the court notified the municipality of the decision by fax because as far as anyone knew it could have taken the secretary at city hall several days to catalog and stamp the document. Surprisingly, the municipal prosecutor did not deny the possibility of such a scenario. Under normal circumstances this would have been sufficient grounds for granting the request to suspend the demolition. However, the judge determined that

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221 Jerusalem Court for Local Affairs, file 9550/2007, Shadi Hamdan v. the chairman of the Local Planning and Building Committee in Jerusalem, Feb. 4, 2008.

the document presented by the municipality was reliable because the family's attorney did not back up his claim by presenting a confirmation page from the Municipal Court's fax machine showing that it was sent and received on February 28. Even though finding the original fax machine would not have taken more than several hours, the judge refused to grant the attorney the time needed for locating the form since the demolition forces were already on site and there was no need for any further delay. To this she added that had the order indeed expired several days earlier as the family's attorney claimed, the municipality would still have had the option of requesting an extension and the court would have probably granted it. Therefore, even if the order had indeed expired, she saw no reason to stop the demolition. As if that was not enough, the judge denied the attorney's request to suspend the demolition for several hours in order to give him enough time to appeal to the Municipal Court since she saw no good reason for doing so.

The case was disgraceful even though all the court's decisions were in accordance with the law. It brought up several questions: 1) Why did the Municipal Court judge not issue an injunction preventing the demolition? 2) Why did the municipality carry out the demolition despite being aware of the court hearing? 3) Why did the judge at the Court for Local Affairs, also aware of the scheduled hearing, not suspend the demolition? 4) Why did the judge refuse to give the family's attorney the time to find and present to her the original fax that would have proven that the document was faxed on February 28? 5) Why did she assume that the court would have granted the municipality an extension for the demolition? 6) Why did she refuse to suspend the demolition by enough time to allow the attorney to appeal her decision at the Municipal Court?

At the moment, the Supreme Court is in the process of investigating these questions. However, the facts that we have gathered make it clear that the Israeli legal system is unable to address the needs of Palestinians. The Hamdan case is decisive proof that the court of law has nothing to offer the Palestinian resident. The game is rigged. We may get an indication of just how much the game is rigged from the fact that the only Jerusalem Municipal Court judge who deals with building violations, Judge Noam Solberg, has never, not even once, reversed a court decision. This indicates to us that the legal system is biased in favor of the Jewish establishment.

Getting in line with the establishment: an ethical dilemma. It sometimes seems that the legal system is in a conundrum. On the one hand, it is aware that the state has put East Jerusalem residents in an impossible situation by making it extremely difficult for them to obtain building permits and thus forcing them to



build illegally. On the other hand, the courts, being obliged to follow the letter of the law, are unable to help the residents. They approve every demolition order because, as Judge Solberg stated, no judge in Israel has the power to legalize a building violation.

In the course of an administrative appeal filed by the residents of Anata in an attempt to have demolition orders suspended (because it was impossible for the village's 30,000 residents to obtain a building permit) Judge Solberg showed a genuine understanding of the resident's suffering.<sup>222</sup> In response to the municipal attorney's statement that due to the chaotic state of urban planning in that area there was no chance of outline plans being advanced, the judge asked the municipal attorney if the municipality had any advice to give the residents of Anata. If it was impossible to prepare an outline plan, what did the municipality propose? Furthermore, after the municipality's attorney blamed the unfortunate residents for this situation by causing chaos and preventing the possibility of planning by building without a permit, the judge rejected her argument and emphasized that the municipality was at fault and not the residents. He clearly understood the dilemma and the implications of the municipal policy, but at the same time he denied the request to suspend the demolition orders because the law forbade unlicensed construction and he could not take the circumstances in which the violations were committed into account.

It could be said that the court's attitude indicates a lack of courage in that one would expect a judge who understands that the defendant is a victim of circumstances to grant the defendant's request. However, the court's attitude points to much more than a mere lack of courage. It points to a worldview in which the state comes before human rights. When faced with two sides, both having broken the law, the resident that has built in violation of the Planning and Building Law and the municipality that has violated the same law by not providing an outline plan to an area under its authority, the legal system always sides with the municipality. The message that it sends to the resident is that the court is part of the establishment. It is loyal to the state even when it rebels against it. It grants immunity to the privileged at the expense of the dignity and the freedom of the weak. This conclusion raises heavy doubts about the nature of the Israeli regime, especially when the legal system, considered to be the last line of defense against human-rights violations, falls in line with a policy that tramples basic human rights. It again raises a question. If this is the situation, what kind of democracy do we live in?

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222 Shadi Hamdan v. the Attorney General et al, criminal appeal 8103/08, May 29, 2008. The judge's comments indicating this understanding do not appear in the protocol.



## Final Remarks

### THE CUMULATIVE DAMAGE TO THE URBAN FABRIC

In his book, *The Jerusalem Syndrome*, Moshe Amirav writes that as a rule, policy toward East Jerusalem has been characterized by setting unrealistic goals on the one hand and by choosing the wrong strategies for their implementation on the other. Indeed, house demolition is a good example of this flawed policy.<sup>223</sup>

Most problems can be solved once their origin is understood. Throughout history, there have been many examples of conflicts that erupted as a result of misconceptions and false assumptions. The Israeli-Arab conflict is filled with misunderstandings due to cultural differences and packed with incidents that resulted from misinterpretation and demonization of the other camp. National conflicts have lives of their own and, being motivated by ideology, they do not require facts. However, in order to address the problem suitably, it is essential to strive for an objective understanding of the events.

The municipality's solutions for unauthorized Palestinian housing always involve the use of force. As far as the municipality is concerned, this is a matter of national security. When a Jew builds a house without a permit it is seen as a problem relating to urban matters, whereas a house built without a permit by Palestinian is considered to be a "strategic threat." A Jew who builds illegally defies the law; Palestinian who does the same act goes up against Jewish sovereignty over Jerusalem. As a result, all of the authorities' solutions for dealing with the problem amount to violent acts of enforcement, including demolitions, heavy fines, confiscation of equipment, imprisonment of the owners and so on. These acts will not solve the problem because the needs of the local population are stronger than the measures taken by the

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223 Moshe Amirav, *The Jerusalem Syndrome: The Palestinian-Israeli Battle for the Holy City*, Sussex Academic Press, June 2009.

municipality. People do not normally take the risk of losing everything they own for ideological reasons. A national struggle does not justify having one's house demolished. However, providing a house for one's wife and family is an essential need that does justify taking that risk. This is the reason that the municipality's solutions do not deter the residents and are unsuccessful in creating order in this part of Jerusalem.

Indeed, no one denies the importance of urban planning and the need for building regulations. In every area, whether urban or rural, there is a need for rules that determine building regulations. Every developing city needs a guiding hand to direct the process of urbanization and prevent improper use of land and problems with planning.

The claim that East Jerusalem has a problem with urban planning that demands attention is correct. However, a combination of misinterpretation and nationalistic paranoia has resulted in the city's leadership addressing this very real problem with tools that are inefficient and extremely harmful. Instead of approaching the problem with a constructive and creative attitude, they entrench themselves even further in their notion of fighting a national struggle.

Mayor Nir Barkat went one step further when he announced that he intended to address the problem with a new approach, one involving a carrot and a stick, i.e. the promotion of urban plans along with increased enforcement. This will allow residents to build lawfully. Still, despite his effort to think outside the box and offer constructive solutions, and despite his realization that the problem had been caused by the systemic failure to address the needs of East Jerusalem Palestinian residents, he still insists on using the stick. Even though the Mayor has gained the correct insights, he is still unwilling to translate them into policy because the "carrot" requires huge budgets which he is unable to obtain, whereas the "stick" is readily available at any time and there are people who are eager to make use of it.

Once the problem of illegal construction is seen as an attack on the state, there is no room for compromise, the range of solutions becomes narrow and the solutions themselves always involve the use of force. There is no room for flexibility and no openness to new ideas when the national interest seems at stake. The proposed solutions are determined according to erroneous parameters. When these parameters are politically motivated, the solutions will always involve aggressive courses of action.

If the city's leadership understood that this is an issue of human rights, maybe they would deal with it humanely, and then, one of the largest obstacles on the way to coexistence in this tormented city would be removed.

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