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Executive Summary: Redrawing Occupied East Jerusalem

When Israel's construction of the Annexation Wall began in 2002, it quickly became apparent that the planned route did not follow the 1967 'Green Line', and that its purpose was to illegally annex areas of the West Bank, including East Jerusalem. The International Court of Justice confirmed the illegality of this policy in 2004.

Of particular concern herein are practises surrounding the construction of the Annexation Wall (the Wall) which appear intended not only to consolidate Israeli control of East Jerusalem, but also to contribute to a process of forcible displacement by denying residency status to those Palestinian Jerusalemites living on the eastern side of the Wall, thus preventing them and their families from entering the city and consolidating a Jewish demographic majority.

Many Palestinian communities have been divided or, in some cases, whole neighbourhoods have been completely cut off from the rest of Jerusalem by the route of the Wall. The neighbourhoods of Kfur Aqab and 'Anata – in the northern and eastern outskirts of East Jerusalem – are two of the most glaring examples of where this has occurred. Although these neighbourhoods are now located on the eastern side of the Wall, they continue to be included within the Israeli declared boundaries of the Jerusalem municipality.

The physical separation of these neighbourhoods from Jerusalem has resulted in a number of developments that may have serious repercussions for the residency status of Palestinian Jerusalemites. Over the past few years many Palestinians with Jerusalem residency status have moved into these areas in order to legally maintain residency in Jerusalem while enjoying cheaper costs of living, more secure housing and the ability to live with West Bank ID-holding Palestinian spouses, children, or other family members who are unable to enter Jerusalem or reside there without a permit, which is virtually impossible to obtain.

More recently, the Jerusalem municipality has set up a number of government services at the checkpoints bordering these areas, enabling Palestinian Jerusalemites easier access to services and to avoid crossing over to the western side of the Wall. There is growing unease amongst some Palestinian Jerusalemites about the future ability of residents of these areas to continue accessing East Jerusalem, as defined by the Israeli authorities consequent to the illegal annexation policy. Several Palestinian East Jerusalem residents remember their still-existing homes in West Jerusalem from which they were once displaced and therefore fear the consequences of another transfer from their city.

The facts on the ground indicate that the Wall could become the new Israeli municipal boundary for East Jerusalem. Enticed to move to areas on the eastern side of the Wall by the prospect of easier living conditions and the lack of restrictions, many Palestinian Jerusalemites believe that they will be able to preserve their legal status as residents of Jerusalem by remaining within the current municipal boundaries. The risk is simply that, at any time, Israel can unilaterally re-draw the city's municipal boundaries along the route of the Wall and exclude these areas from East Jerusalem. Any Palestinian Jerusalemite who has moved to these zones and is found to have consistently used Israeli government services located there over a prolonged period of time will be at serious risk of losing their Israeli-granted right to reside in East Jerusalem.

This report seeks to highlight the various factors that are currently inducing some Palestinian residents of East Jerusalem to move to areas on the eastern side of the Wall. It will further outline the potential risks that these residents face with respect to unilateral changes Israel may make to the municipal boundaries of East Jerusalem. Finally, it will consider the serious violations of international law that result from the various Israeli policies and practices used to consolidate their illegal control over East Jerusalem.

Background

The Illegal Annexation of Occupied East Jerusalem

In 1967, during the Six Day War, Israel occupied the West Bank, including East Jerusalem, and the Gaza Strip. Immediately following the end of the war, Israel illegally annexed East Jerusalem along with lands belonging to 28 surrounding villages to establish a continuous corridor comprising a total area of nearly 70,000 *dunums*¹ of land extending as far north as the governorate of Ramallah and south to the edge of Bethlehem. The *de facto* annexation was completed on 28 June 1967, when the Israeli Parliament amended the Laws of the State of Israel and used it to extend Israeli jurisdiction over the newly declared municipal borders.² In 1980, Israel took further steps to reaffirm its annexation of East Jerusalem when the Parliament passed the “Basic Law” on Jerusalem, stating unequivocally “Jerusalem, complete and united, is the capital of Israel”.³

The international community of States has never recognised Israeli sovereignty over occupied East Jerusalem and maintains that the annexation is in blatant violation of international law. In response to the initial annexation in 1967, the United Nations (UN) Security Council passed Resolution 242, declaring the “inadmissibility of the acquisition of territory by war” and calling upon the Israeli armed forces to leave territories that it had occupied in the conflict, including East Jerusalem.⁴ On 20 August 1980, following the Israeli Parliament’s ratification of the “Basic Law” on Jerusalem, the UN Security Council passed Resolution 478, determining that “all legislative and administrative measures and actions taken by Israel, the occupying Power, which have altered or purport to alter the character and status of the Holy City of Jerusalem, and in particular the recent “basic law” on Jerusalem, are null and void.”⁵

In spite of consistent international condemnation, Israel has continued with its expansionist and annexationist policies in East Jerusalem, which are focused on achieving a strong Jewish demographic majority within Israel’s declared municipal boundaries of the city. Since 1967, there has been a clear Israeli strategy to limit the Palestinian population of East Jerusalem. The initial annexation illustrates the beginning of this policy. While great portions of land from Palestinian villages around East Jerusalem were illegally annexed to constitute Israel’s new municipal boundaries, many heavily-populated Palestinian areas were specifically excluded.⁶ In the years following the illegal annexation, Israel articulated a clear government policy that sought to maintain a demographic balance of 70 per cent Jews to 30 per cent “Arabs” within the Israeli declared boundaries of the Jerusalem municipality.⁷ This official policy remains in effect today. Master Plan 2000 for Jerusalem, which was ratified by the Planning and Construction Committee of the Jerusalem municipality in 2007, directly addresses this policy while considering the more realistic option of achieving a 60/40 ratio because high Palestinian birth rates have made the 70/30 goal unlikely.⁸

¹ COHRE and Badil, “Ruling Palestine: A History of the Legally Sanctioned Jewish-Israeli Seizure of Land and Housing in Palestine”, (Geneva, COHRE and Badil, 2005), 125.

² John Quigley, “The legal status of Jerusalem under international law”, *The Turkish Yearbook*, Vol XXIV, (1994) 16, available at: <http://www.scribd.com/doc/23172480/The-Legal-Status-of-Jerusalem-Under-International-Law-John-Quigley>, accessed on 14 August 2010.

³ Article 1, The Basic Law: Jerusalem, Capital of Israel, 30 July 1980.

⁴ Al-Haq, *Building Walls, Breaking Communities: The Impact of the Annexation Wall on East Jerusalem Palestinians*, (October 2005) 24.

⁵ UN Security Council, Resolution 478(1980) S/RES/478 of 20 August 1980.

⁶ B’tselem, “East Jerusalem: Legal status of East Jerusalem and its residents”, available at http://www.btselem.org/English/Jerusalem/Legal_Status.asp, accessed on 16 August 2010.

⁷ Nadav Shragai, “Demography, Geopolitics, and the Future of Israel’s Capital: Jerusalem’s Proposed Master Plan”, (Jerusalem Center for Public Affairs, 2010) 14, available at <http://www.scribd.com/doc/27960017/Jerusalem-Master-Plan>, accessed on 17 August 2010.

⁸ *Ibid.*

To achieve its goal of maintaining a Jewish demographic majority and retaining its physical and political control over the whole city including occupied East Jerusalem, Israel actively engages in a systematic policy to acquire more land while attempting to reduce the number of Palestinian residents on that land. This paper will focus on three of the main policies and practices Israel employs to achieve this goal: the enforcement of the centre of life requirement for Palestinian residents of Jerusalem, the denial of family unification and the construction of the Annexation Wall.

The Centre of Life requirement

Israel's strategy of reducing the number of Palestinians of East Jerusalem is based on the strict enforcement of the Jerusalem residency permit regime. Immediately following the illegal annexation in 1967, Israel conducted a census of East Jerusalem and granted permanent residency status to approximately 66,000 Palestinian residents who were present within the newly defined municipal borders.⁹ These residents were granted Jerusalem permanent residency ID cards (Blue ID cards), while Palestinians in other areas of the occupied territory were granted West Bank ID cards (Green ID cards).

By according Palestinian Jerusalemites the immigration status of permanent residents, Israel's Minister of Interior has the discretion to revoke this status if a resident fails to meet certain criteria.¹⁰ Until 1995, the criteria imposed on Palestinian residents of East Jerusalem were minimal: as long as they renewed their exit permits at the Ministry of Interior regularly every three years, their status as permanent residents of the city was not affected and they were free to live outside the municipal boundaries of East Jerusalem.¹¹ Residency rights were only revoked if Palestinian residents of East Jerusalem remained outside of Jerusalem for over seven years without renewing their exit permit. Because they were not physically required to reside in East Jerusalem, many Palestinian Jerusalemites bought homes in other areas of the Occupied Palestinian Territory (OPT), feeling secure that their permanent residency status would not be affected.

In December 1995, the Ministry of Interior introduced a new policy with respect to the residency rights for Palestinian Jerusalemites. Essentially, the "centre of life" policy requires Palestinian permanent residents to consistently prove that they hold continuous residence in East Jerusalem by providing extensive documentary evidence including rental agreements, home ownership documents, tax receipts, school registration and receipts of medical treatment in Jerusalem. If Palestinian Jerusalemites cannot provide proof of this status to the Israeli authorities, they risk losing their residency rights.

The effect of the centre of life policy has been the revocation of over 10,000 Jerusalem ID cards since 1995.¹² In 2008 alone, 4,577 residents had their residency rights revoked after the Ministry of Interior decided to launch investigations into the status of thousands of Palestinian residents.¹³

⁹ United Nations (UN) – Office for the Coordination of Humanitarian Affairs (OCHA), "The Humanitarian Impact of the West Bank Barrier on Palestinian Communities", Update No.7 (June 2007) 10, available at http://www.ochaopt.org/documents/Pages1-23_Jerusalem_30July2007.pdf, accessed on 17 August 2010.

¹⁰ B'tselem and Hamoked, "Forbidden Families: Family Unification and Child Registration in East Jerusalem", (January 2004), available at www.hamoked.org.il/items/12600_eng.pdf, accessed on 16 August 2010.

¹¹ B'tselem, "East Jerusalem: Revocation of Residency in East Jerusalem", available at http://www.btselem.org/English/Jerusalem/Revocation_of_Residency.asp, accessed on 14 August 2010.

¹² B'tselem, "East Jerusalem: Revocation of Residency in East Jerusalem – Statistics on Revocation of Residency", available at http://www.btselem.org/English/Jerusalem/Revocation_Statistics.asp, accessed on 18 August 2010.

¹³ Nir Hasson, "Israel stripped thousands of Jerusalem Arabs of residency in 2008", *Ha'aretz* (English edition), 2 December 2009, available at <http://www.haaretz.com/print-edition/news/israel-stripped-thousands-of-jerusalem-arabs-of-residency-in-2008-1.3006>, accessed on 17 August 2010.

Despite the Interior Minister's affirmation that the centre of life policy would cease in March 2000, recent numbers demonstrate the considerable broadening of the Ministry's implementation of this policy.¹⁴ With the imposition of the centre of life policy, the burden of proof has been placed upon Palestinian Jerusalemites to regularly confirm to Israeli authorities that they live in occupied East Jerusalem. If they fail to do so, Palestinian residents of East Jerusalem face the constant risk of having their residency status revoked. As a result, this policy has serious repercussions for Palestinian Jerusalemites who wish to live with a West Bank ID-holding spouse or other family members.

Denial of Family Unification Requests

Presently, West Bank ID holders are prohibited from entering and residing in occupied East Jerusalem without permission from the Israeli government. Since 1967, Palestinians with Green IDs have been required to apply for family unification to legally reside in East Jerusalem. However, because before 1991 the movement of West Bank ID holders was less restricted before 1991, enforcement of this law was lax. In 1991, Israel instituted a large-scale closure policy and began operating checkpoints to control Palestinian movement. In order to pass through checkpoints, Israel demanded that West Bank ID holders apply for permits to access East Jerusalem.¹⁵ Over the years, permits for Green ID holders have become increasingly difficult to obtain. Therefore, family unification approvals from the Ministry of Interior have become essential for mixed-residency couples to permanently reside together in occupied East Jerusalem.

Israel's Interior Minister is permitted significant discretion when deciding on family unification applications for Palestinian residents of East Jerusalem.¹⁶ As a result of discriminatory policies, such as quotas, Palestinian Jerusalemites have experienced great difficulties when applying for permanent residency status for a spouse or a child. Beginning in September 2000, family unification applications for West Bank ID holders were unofficially suspended.¹⁷ Since July 2003, the Knesset has regularly extended the "Nationality and Entry into Israel Law (Temporary Order)", prohibiting Israelis and permanent residents who marry residents of the OPT from living in Israel with their spouses.¹⁸ Furthermore, children born in the OPT to a Palestinian couple consisting of a West Bank and an East Jerusalem resident are not permitted to live in Israel or occupied East Jerusalem.¹⁹

¹⁴ *Supra* note 11.

¹⁵ Al-Haq, *Annual Report 2004: Waiting for Justice*, (2005), 206.

¹⁶ *Supra* note 11, 5.

¹⁷ *Supra* note 15, 208.

¹⁸ Since March 2007, this has been extended to include residents of Lebanon, Syria, Iran, Iraq and/or anyone who "is an individual defined by the Israeli security forces as residing in an area where activity is occurring that is liable to endanger Israeli security." See Adalah, "Special Report: Ban on Family Unification", available at <http://www.adalah.org/eng/famunif.php>, accessed on 15 August 2010.

¹⁹ *Supra* note 10, 6.

Firas Al-Maraghi, a Palestinian resident of East Jerusalem, was born and raised in the neighbourhood of Silwan in East Jerusalem to a Palestinian family with deep roots in the city. In 2007, Firas temporarily moved to Berlin to be with his wife, a German national, who is completing her doctoral thesis there. Since then, Firas has regularly returned to Jerusalem.

Knowing that they would return to Jerusalem after the completion of his wife's PhD, Firas has refused to apply for any other passport or travel document that might strip away his right to hold Jerusalem permanent residency or the *laissez-passer*, a travel document issued by Israel to Palestinian residents of East Jerusalem. Since 26 July 2010, Firas has been holding a hunger strike to protest a decision that was taken by the Israeli embassy to ban the couple's new-born daughter from being registered as a Jerusalem resident.

Information collected in interview with Firas' father, Yacoub Al-Maraghi conducted by Al-Haq on 11 August 2010.

The Construction of the Annexation Wall

The construction of the Annexation Wall around East Jerusalem is the most recent unilateral measure taken by Israel to physically reinforce its control over the illegally annexed territory and to completely sever it from the rest of the West Bank. In the area around Israel's declared Jerusalem municipality, the length of the Wall measures 168 kilometres, of which only three percent corresponds with the 1967 Green Line.²⁰ The route effectively cuts off Palestinian villages that have strong social and economic ties to East Jerusalem and prevents the West Bank ID-holding residents of these villages from accessing East Jerusalem unless they acquire a difficult-to-obtain permit.

The completion of the Wall around occupied East Jerusalem has created an absurd reality with enclaves of Palestinian communities along its path, some of which are surrounded on three sides by the Wall. The route of the Wall also deviates markedly from the Green Line and encroaches deep into occupied territory to effectively annex large Israeli settlement blocs. In other cases, the route deviates to carve out areas actually located within the Israeli-defined municipal boundaries of Jerusalem in order to exclude areas heavily populated with Palestinian Jerusalemites, such as Kufr 'Aqab, Semiramis, Shu'fat refugee camp and 'Anata.

The effect of the Wall on Palestinian Jerusalemites is immense. Movement between East Jerusalem and the rest of the West Bank is now strictly controlled through a total of 16 checkpoints located along the Wall.²¹ In addition, the route's digression from the declared boundaries of the Jerusalem municipality has left many Palestinian Jerusalemites on the eastern side of the Wall. Approximately 25 per cent of Palestinian Jerusalemites are required to cross a checkpoint to access health, education and other services to which they are entitled to as tax-paying residents of the city.²² For many Palestinian Jerusalemites, the long waiting times at checkpoints during daily commutes to work or school have become intolerable, and many have sought to move to East Jerusalem neighbourhoods on the western side of the Wall. Consequently, land and property values on the western side of the Wall have increased, while those on the eastern side have decreased.

The Annexation Wall is also having a negative effect on the family, social and cultural life of Palestinian residents of Jerusalem. Before its construction, many couples and families

²⁰ UN – OCHA, "Five Years After the International Court of Justice Advisory Opinion: A Summary of the Humanitarian Impact of the Barrier" (East Jerusalem, UN - OCHA, 2009), available at <http://www.reliefweb.int/rw/rwb.nsf/db900sid/EDIS-7USSEQ?OpenDocument>, accessed on 18 August 2010.

²¹ *Ibid* 13.

²² *Ibid* 13.

consisting of mixed Blue and Green ID holders had managed to find ways to live together, despite the permit requirements imposed by the Israeli authorities in 1991. The movement of West Bank Green ID holders is now further controlled, as many will not risk crossing over the Wall to access East Jerusalem. These physical restrictions have resulted in an impossible situation for many mixed-residency Palestinian families.

A.A. is a resident of Dar Salah, Bethlehem; he holds a West Bank ID card. In 2008, he married S.A who holds a Jerusalem ID card. The couple are not able to live within the municipal boundaries of Jerusalem. The couple did not choose to live within the Jerusalem municipality West Bank areas such as Beir Oneh in Bethlehem or Kfur Akab near Ramallah because of distance to A.A.'s workplace and because of the high rental costs in comparison to Beit Sahour. As a result, the couple rented an apartment in Beit Sahour.

Until her marriage, A.A.'s wife did not encounter any problems with the Israeli Ministry of Interior or the National Insurance agency because of her Jerusalem residency status. The problem started when their son K.A. was born in 2009. Because S.A. married a West Bank Green ID holder, when she went to register the child under her Jerusalem Blue ID card at the Israeli National Insurance agency, she was asked to provide evidence such as a rental lease agreement, home ownership documents, water and electricity bills, and payment of the *arnona* (municipal tax) to prove that she had been living in Jerusalem for the past two years. Because the couple had been living in Beit Sahour, in the Bethlehem municipality, she could not bring forth such evidence. As a result, the family moved in with A.A.'s wife's family in Kufr 'Aqab, despite the fact their home is not large enough to accommodate two families.

At the moment S.A. resides in Jerusalem with her family and A.A lives in Beit Sahour. S.A. is doing so only to prove that she is living in Jerusalem. She is aware that employees from the National Insurance agency pay surprise visits to make sure that people who claim to be living in Jerusalem are actually living there. The couple has endured this situation for a year and a half and still have six more months until S.A. can present proof of Jerusalem residency to the National Insurance agency. Until now, the couple's son is without papers. He has no birth certificate and he is not registered under either of his parents' IDs. In effect the child has no official residency status.

Information collected in interview with A.A. conducted by Al-Haq on 11 August 2010.

Setting the Trap: Jerusalem Municipal Zones East of the Wall Provide a Way to Meet Requirements and Avoid Restrictions

When the Wall was being constructed around East Jerusalem, Palestinian Jerusalemites who lived in areas on the eastern side of the Wall initially panicked. Many feared that Israel would *de jure* exclude these zones from the Jerusalem municipality, resulting in their inability to satisfy the centre of life policy. As the years passed, these residents began to relax somewhat as they found their residency situation relatively unchanged. While the already low levels of Israeli municipal services such as garbage collection, police services and road repair ceased to exist, these residents were still required to pay the *armona* (the Jerusalem municipal tax) but could continue to access health and other services in Jerusalem. In spite of the lack of municipal services, many Palestinian residents of East Jerusalem have discovered a number of benefits associated with life in these zones.

Unofficial Family Unification

For many mixed-residency couples and families, the Jerusalem municipality zones on the eastern side of the Wall are the only places where they are able to reside together while fulfilling the requirements of the centre of life policy. Israel has thus far failed to enforce permit requirements for West Bank ID holders in these municipal areas. The lack of permit enforcement by the Israeli authorities has been consistent since 1991, the year the first checkpoints surrounding East Jerusalem were erected, and the situation has not changed with the construction of the Wall. As such, these areas are the only part of East Jerusalem where West Bank ID holders are permitted to enter and reside.

N.A. is a permanent resident of Jerusalem who married a West Bank Green ID holder in 1991. From 1992 until 1995, the couple lived in the Beit Hanina neighbourhood of Jerusalem because N.A.'s husband had been able to secure a permit that allowed him to reside in the city. In 1994, N.A. gave birth to the couple's son, J.A., at the Augusta Victoria hospital in Jerusalem.

Following the birth of her son, N.A. applied to the Ministry of Interior for family unification for her husband and attempted to have her son registered as a Jerusalem resident on her ID card. She received no response for either application. During that time, N.A.'s husband began having trouble obtaining a permit to reside in Jerusalem because he worked in Ramallah. Consequently, due to the presence of checkpoints restricting her husband's access to Jerusalem, the couple moved to Ramallah in 1995. In the years following, N.A. began to fear that she was at risk of losing her Jerusalem ID because she could not provide evidence of her residency in the city. For this reason, the family moved to a flat in Semiramis in 1997. This allowed N.A. to both live with her family and remain in Jerusalem.

In 2007, N.A.'s husband passed away, leaving her as the sole parent to J.A. Following the death of her husband, N.A. wanted to move back to Beit Hanina to be closer to her family. However, the Interior Ministry again refused to register N.A.'s son under her ID, providing no rationale for the decision. Instead, until the age of 16, J.A. was issued a permit, renewable every year, which permitted him to remain living with his mother in the Beit Hanina neighbourhood in Jerusalem. This year, J.A. is no longer eligible for a permit as he has reached the age of majority that Israel has declared for Palestinians. Therefore, in order to remain living with her son, N.A. must move back to the area of Semiramis.

Information collected in interview with N.A. conducted by Al-Haq on 10 August 2010.

Cost of Living, New Housing and Lack of Demolitions

One of the main reasons many Palestinian residents of East Jerusalem move to the municipal zones is largely connected to the low cost of living on the eastern side of the Wall. Because of the physical separation from occupied East Jerusalem, these areas have been able to retain their connection to the West Bank economy. As such, the price of rent and commodities is markedly lower than in Palestinian neighbourhoods on the western side of the Wall. In addition, since the construction of the Wall, the costs of buying and renting property on the eastern side have gone down. The minimum monthly rental price for a two-bedroom flat in the outlying municipal areas is approximately USD 450. In comparison, the monthly cost for a similar flat in a Palestinian neighbourhood on the western side of the Wall is approximately USD 700.



Construction boom in Kufra Aqab. August 2010, Al-Haq©.

The lower costs of property are also closely associated to the building boom that is occurring in the municipal Jerusalem zones on the eastern side of the Wall. Over the past five years, construction in these areas has been largely unregulated by Israeli authorities, resulting in a vast increase in poorly planned, but readily available housing. In addition, it is widely known amongst Palestinians that the risk of home demolitions in the municipal areas east of the Wall is much lower than the risk of demolition on the western side of the Wall. The increased threat of home demolitions west of the Wall, combined with the effects of discriminatory zoning restrictions, result in rampant over-crowding and inflated rent prices that drive some Palestinian East Jerusalem residents to seek alternative options on the eastern side of the Wall. Although the Israeli authorities continue to issue demolition orders for some structures in the Jerusalem municipality zones east of the Wall, few demolitions are actually carried out and most of those cases are within close proximity to the Wall or a settlement.

A.K. is a Palestinian West Bank ID holder. In 1991, he married a Palestinian woman with Jerusalem residency. They had six children, all of whom hold Jerusalem residency status. Years ago, A.K. applied for family unification, but was refused.

The family has resided in several rental properties within the borders of the municipality in order to maintain the wife and children's Jerusalem residency status. Due to the family's financial situation, they lived in a small and miserable flat, measuring 35 square metres, located in Qalandiya refugee camp. The rent was 1,000 NIS per month.

The family was unable to bear living in that small and run-down flat. In 2009, they decided to buy a new house in much better condition located near the refugee camp in an area called Ras Khamis. There was intensive construction activity in this area, and most buildings were built without the required construction licences. These buildings were located in an area considered to be within the borders of the Jerusalem municipality, which ensured that A.K.'s family would maintain their residency status.

As construction works were going on in the area, A.K. was not afraid that his flat would be demolished. The Israeli authorities had not demolished any houses in that area except for those located near the Wall or the settlement of Pisgat Ze'ev. The Jerusalem municipality did not pay attention to buildings in the area, as it is located outside the Wall and beyond the checkpoint controlling movement to Jerusalem.

A.K. had seized a rare opportunity. Someone in his position would rarely have the chance to purchase and own his own home. Land in Jerusalem is very expensive, and even those who own land are prevented from building because of the difficulties of obtaining a construction license from the authorities. Licences are issued on very scarce occasions and A.K. would not have been able to afford paying the fees. Furthermore, the minimum cost of a licensed flat in Jerusalem is USD 200,000, a price A.K. could never afford to pay. For that reason, A.K. felt that his only option to secure a decent standard of living for his children was the area of Ras Khamis.

Information obtained from Al-Haq Affidavit No. 5020/2009

Comparison of Number of House Demolitions carried out in East Jerusalem Neighbourhoods located East and West of the Wall from 1 January 2005 to 10 August 2010²³

Area	Number of Home Demolitions
East Jerusalem Municipal Neighbourhoods East of the Wall ²⁴	17
East Jerusalem Municipal Neighbourhoods West of the Wall ²⁵	203

²³ Al-Haq Monitoring and Documentation Department statistics.

²⁴ Includes the total number of demolitions in the five major neighbourhoods east of the Wall: Semiramis, Kufr 'Aqab, 'Anata & Ras Khamis, and Shu'fat Refugee Camp.

²⁵ Includes the total number of demolitions in East Jerusalem, with the exception of the five neighbourhoods listed above.

Provision of Public Services

Over the past three years, Israeli authorities established various offices for essential government services at the Qalandiya checkpoint, which borders some of the Jerusalem municipal neighbourhoods on the eastern side of the Wall, such as Kufr 'Aqab and Semiramis. A similar plan is expected to be implemented at the new checkpoint currently under construction near the East Jerusalem neighbourhood of 'Anata. The addition of National Insurance, Ministry of Interior, Labour, and Post offices at the checkpoints has meant easier access to these services for Palestinian residents of Jerusalem municipal zones east of the Wall, allowing them to avoid the difficulties associated with crossing the checkpoint. For some residents of these zones, particularly those who work in the West Bank, the addition of these services has meant that they no longer have any need to enter the areas of East Jerusalem on the western side of the Wall.

שעות פעילות המנהל הקהילתי					
יום ראשון	יום שני	יום שלישי	יום רביעי	יום חמישי	
09:00-15:00	09:00-15:00	09:00-15:00	09:00-15:00	09:00-15:00	מנהל קהילתי
08:30-15:30	08:30-15:30	08:30-13:30	08:30-15:30	08:30-15:30	דואר
08:30-12:00					ביטוח לאומי
	08:30-12:00		08:30-12:00		משרד הפנים
08:30-12:00	ביום ה' בשבוע הראשון של כל חודש בלבד				שירות התעסוקה
אوقات דואר המרכז الجماهירי					
יום الاحد	يوم الاثنين	يوم الثلاثاء	يوم الأربعاء	يوم الخميس	
09:00-15:00	09:00-15:00	09:00-15:00	09:00-15:00	09:00-15:00	المركز الجماهيري
08:30-15:30	08:30-15:30	08:30-13:30	08:30-15:30	08:30-15:30	البريد
08:30-12:00					التأمين الوطني
	08:30-12:00		08:30-12:00		مكتب الداخلية
08:30-12:00	في يوم الخميس، في الاسبوع الاول من كل شهر فقط				مكتب العمل

Timetable for Israeli government services offered at Qalandiya checkpoint. August 2010, Al-Haq©.

Residing in Jerusalem municipal zones on the eastern side of the Wall exempts Palestinian Jerusalemites from a range of restrictions on family life and building that Israel deploys to make life extremely difficult for Palestinian residents of East Jerusalem neighbourhoods on the western side of the Wall. Crucially, however, living in these zones enables Palestinian Jerusalemites to believe that they are maintaining their centre of life within the city.

Closing the Trap: The Wall as the New Municipal Boundary of Jerusalem

Although it would initially appear that the lack of enforcement of various regulations and the provision of new services in the Jerusalem municipal zones east of the Wall seem to improve the situation of Palestinian residents, the fear amongst many Palestinians is that they are being lured into a trap. Just as Israel implemented the centre of life policy in 1995, catching many Jerusalem ID holders by surprise, it is widely believed that at some point in the near future, Israel is likely to unilaterally declare the Wall to be the new municipal boundary of occupied East Jerusalem. In the enormous cost of the Wall's construction combined with various statements made by Israeli cabinet ministers provide strong evidence that the Wall is intended to be the future border of the State.²⁶ The *de jure* implementation of this action by Israel would leave Palestinian Jerusalemites residing on the eastern side of the Wall unable to fulfil the centre of life requirement, resulting in a serious risk to their status as permanent residents of East Jerusalem.

In particular, the government services being offered at the checkpoints are cause for two main concerns. First, despite improving the situation of Palestinian Jerusalemites in the short term by allowing them easier access to essential government services, in the long term, these residents are actually becoming less connected to East Jerusalem. As travelling to neighbourhoods on the western side of the Wall becomes less and less of a necessity, residents in Jerusalem municipal zones east of the Wall are more likely to avoid the humiliating treatment and lengthy delays associated with crossing the checkpoints by utilising the services provided there. Second, if Israel declares the Wall to be the new municipal boundary of East Jerusalem, any Palestinian Jerusalemite who has been consistently using government services at the checkpoint faces the risk that their information will be used as evidence in any future centre of life test to prove that the resident has not been actually residing within Israel's recognised municipal boundaries of East Jerusalem.

Any action by Israel to unilaterally exclude Jerusalem municipal zones east of the Wall from the declared municipal boundaries of Jerusalem would place over 30,000²⁷ Palestinian residents of East Jerusalem at risk of losing their residency rights, resulting in their effective displacement from East Jerusalem. Although the repercussions of such a measure are, at this point in time, only speculative, it is crucial that the existence of this threat be highlighted. Clearly identifiable, however, is that the policies and practices Israel has implemented to effectively consolidate its future control over Jerusalem have resulted in serious violations of the rights of the Palestinian population.

²⁶ Donald Macintyre, "Sharon 'sees wall as Israel's new border'", *The Independent* (2 December 2005), available at <http://www.independent.co.uk/news/world/middle-east/sharon-sees-wall-as-israels-new-border-517787.html>, accessed on 17 August 2010; and Yuval Yoaz, "Justice Minister: West Bank fence is Israel's future border", *Ha'aretz* (1 December 2005) (Article available only in Hebrew) at <http://news.walla.co.il/?w=/1/817863>, accessed on 17 August 2010.

²⁷ According to UN-OCHA, the combined population of three of the most prominent East Jerusalem neighbourhoods east of the Wall - Shu'fat refugee camp, Kufr Aqab and Semiramis – totals over 30,000. See *supra* note 9, 14.

The illegality of Israeli policies and practices aimed at consolidating the Annexation of Jerusalem

Legal Status of East Jerusalem under International Law

The acquisition of territory by use or threat of use of force is prohibited under international law. Accordingly, throughout Israel's 43-year occupation of the OPT, numerous UN bodies, including the General Assembly, the Security Council and the International Court of Justice (ICJ), have reiterated the illegality of Israel's occupation and annexation of East Jerusalem. Attempts by Israel to *de jure* change East Jerusalem's status as occupied territory have been repeatedly condemned.

In July 2004, the ICJ Advisory Opinion on the Wall confirmed the status of East Jerusalem as occupied territory when it stated,

The territories situated between the Green Line and the former eastern boundary of Palestine under the Mandate was occupied by Israel in 1967 during the armed conflict between Israel and Jordan. Under customary international law, these were therefore occupied territories in which Israel had the status of occupying Power [...]. All these territories (including East Jerusalem) remain occupied territories and Israel has continued to have the status of occupying Power.²⁸

The Court further confirmed the applicability of international humanitarian and human rights law to the OPT, including East Jerusalem, thereby invalidating Israel's assertion that it is not bound by these norms of international law with respect to its actions in the West Bank and Gaza²⁹.

International Humanitarian Law

Annexation

As the Occupying Power in the OPT, Israel is bound by the obligations set out in Hague Regulations of 1907 and the Fourth Geneva Convention of 1949, which codify in large part the rules governing belligerent occupation. Articles 43 and 55 of the 1907 Hague Regulations establish that the Occupying Power must endeavour to respect the existing laws of the occupied territory and that while occupying authorities may administer the land, they are ultimately prohibited from claiming sovereignty over it.

The authoritative Commentary to the Fourth Geneva Convention lays out two fundamental propositions with respect to belligerent occupation: that occupation is a *de facto* and temporary situation, and that the Occupying Power is prohibited from claiming sovereignty over any of the occupied territory in its possession.³⁰ The Occupying Power is therefore not permitted to unilaterally create facts on the ground with the intention of claiming eventual sovereign rights over that area and changing its status.

²⁸ International Court of Justice, *Advisory Opinion on the Legal Consequences of the Construction of a Wall in Occupied Palestinian Territory*, 9 July 2004, para 78.

²⁹ *Ibid*, para 106-113 and 134.

³⁰ Jean Pictet (ed), *The Geneva Conventions of 12 August 1949, Commentary – Fourth Geneva Convention Relative to the Protection of Civilian Persons in the Time of War*, (International Committee of the Red Cross, 2005), 275.

Article 47 of the Fourth Geneva Convention specifically protects the occupied civilian population from being deprived of their rights under the Convention as a result of the annexation of any part of the occupied territory. The Commentary affirms that this provision cannot be interpreted to imply the recognition of this method of acquiring sovereignty.³¹ Instead, this provision is meant to provide increased protections to the occupied population against such unilateral actions by the Occupying Power.

The provisions of international humanitarian law are clear in establishing that Israel's assertion of *de jure* sovereignty over East Jerusalem and other parts of the West Bank is contrary to international law and therefore illegal. Moreover, the practices and policies Israel implements to consolidate its illegal annexation of East Jerusalem violate a number of other international humanitarian law provisions.

Forcible Displacement

Forcible deportation or transfer of protected persons is expressly prohibited in Article 49(1) of the Fourth Geneva Convention, and is recognised as a principle of customary international law.³² Article 49(1) states,

“Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motive.”

The forcible transfer of a protected person within occupied territories constitutes a grave breach as per Article 147 of the Fourth Geneva Convention, giving rise to individual criminal responsibility. Moreover, under the Rome Statute of the Criminal Court, forced displacement is a war crime, in particular when it is carried out as part of a plan or policy, or as part of a wide-scale attack. Recent jurisprudence has clarified that deportation is to be interpreted as transfer beyond the borders of a State, whereas forcible transfer results when displacement occurs within a State, and both amount to grave breaches of the Geneva Conventions.³³

Transfers that occur contrary to the free will of protected persons are included within the scope of Article 49 of the Fourth Geneva Convention.³⁴ In effect, the term “forcible” is broadly interpreted, and the absence of genuine choice is sufficient to make the displacement unlawful. In addition to the use of physical force by an Occupying Power, threats of force or coercion, or taking advantage of a coercive environment may render an act involuntary.³⁵ The test for whether genuine choice was exercised depends on a series of factors including the prevailing situation, general atmosphere, and the victim's vulnerability.³⁶ In this regard, the promotion of an environment that makes it extremely difficult for people to remain in their homes and causes them to abandon their homes to move to different areas of the same territory, amounts to indirect forcible transfer and is in violation of international law.³⁷

³¹ *Ibid*, 276.

³² Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law – Volume I: Rules* (Cambridge, Cambridge University Press, 2005) 257.

³³ *Prosecutor v Krstic* (IT-98-33-T) International Criminal Tribunal for the former Yugoslavia (ICTY) Trial Chamber Judgment, 2 August 2001, para 521.

³⁴ *Supra* note 29, 279.

³⁵ *Prosecutor v Stakic*, (IT-97-24-A), ICTY Appeals Chamber Judgment, 22 March 2006, para 279-281.

³⁶ *Prosecutor v Blagojevic and Jokic*, (IT-02-60-T), ICTY Trial Chamber Judgment, 15 March 2002, para 475.

³⁷ *Prosecutor v Krajsnik*, (IT-00-39-T), ICTY Trial Chamber Judgment, 27 September 2006, para 729.

In light of the above, unlawful forcible displacement extends to Palestinian Jerusalemites who are compelled to leave their homes because of the unbearable living conditions created by the annexationist policies of Israel, the Occupying Power. Measures including but not limited to: the construction of the Annexation Wall; home demolitions; movement constraints between East Jerusalem and the rest of the West Bank; and severe restrictions on family unification, building permits and zoning applications have resulted in the displacement of Palestinian Jerusalemites. The hardships are a result of politically-motivated policies that create a coercive situation, taking away any genuine choice from the protected population. As such, the displacement of Palestinian Jerusalemites is involuntary and therefore in violation of international law. Of particular concern is the overall atmosphere within which the forcible transfer is occurring, and the numbers of protected persons being affected.

International Human Rights Law

The various policies associated with Israel's attempts to consolidate its control over East Jerusalem also result in serious violations of international human rights law. As the ICJ has confirmed, the international regime of human rights law is applicable to the situation of Palestinians in the OPT. The provisions of international human rights laws are enshrined in numerous international treaties to which Israel is a State Party. As such, Palestinians in the OPT are entitled to the enjoyment of these rights in addition to the protection they are accorded as protected persons under international humanitarian law. Israel's annexationist policies and practices infringe upon many of the protections Palestinians are accorded under the treaties.

The Right to Self-Determination

The right to self-determination is the fundamental principle of international human rights law, as reflected in its status as common Article 1 to both the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). The right is rooted in the UN Charter and is recognised as a peremptory international legal norm, from which no derogation is permitted. With respect to the situation in the OPT, in its Advisory Opinion on the Wall, the ICJ expressly states that Israel has violated the *erga omnes* obligation "to respect the right of the Palestinian people to self-determination."³⁸

Israel's attempts to consolidate further control over occupied East Jerusalem are deliberately aimed at undermining the right to self-determination of the Palestinian people. The construction of the Wall has physically severed occupied East Jerusalem from the rest of the West Bank through the construction of a *de facto* border over which Israel exercises complete control. The disruption of the territorial contiguity of the OPT has been particularly evident in the areas surrounding Jerusalem, and is intended to prevent Palestinian aspirations of having East Jerusalem as a capital for their State. Through the simultaneous implementation of other Israeli policies such as the denial of family unification to Palestinian Jerusalemites and imposing the centre of life test, Israel is effectively trying to limit Palestinian growth in occupied East Jerusalem to fundamentally change the Palestinian character of the city.

Freedom of Movement

Article 12(1) of the ICCPR guarantees all individuals freedom of movement and the right to freely choose their residence within a State. States are permitted to restrict this right only if such restrictions are legal and necessary to "protect national security, public order, public health and morals or the rights and freedoms of others."³⁹ However, States must ensure that

³⁸ *Supra* note 28, para 154.

³⁹ ICCPR, Art. 12(3).

restrictions on this right are not implemented in a disproportionate or unnecessary manner. Israel regularly takes measures to restrict the movement of Palestinian residents for reasons that are proclaimed to address national security concerns. However, the ICCPR clearly states that even in situations of national emergencies, restrictions on rights must not be related to discrimination based on “race, colour, sex, language, religion or social origin.”⁴⁰

Of the range of restrictions Israel imposes on Palestinian freedom of movement in and out of East Jerusalem, the Wall has been the most severe. The effects of the Wall and its associated permit and ID regime severely obstruct Palestinian movement throughout the OPT. The Israeli-imposed measures have had a disproportionately negative effect on Palestinian residents of occupied East Jerusalem and residents of other parts of the West Bank, cutting them off from their lands and from each other by dividing neighbourhoods and families on opposite sides of the Wall. Movement restriction measures are applied in a manner that is clearly discriminatory, as by-pass roads, motorways and a light-tram rail system have been constructed to facilitate movement between Jewish settlements in East Jerusalem. Meanwhile, Palestinian Blue and Green ID holders are finding it increasingly difficult to travel to other Palestinian communities in the West Bank.

The Right to Work, Health, Education and Family Life

In addition to the right of self-determination, the ICESCR enshrines a number of fundamental economic and social rights such as the right to work,⁴¹ the right to the highest attainable standard of health,⁴² the right to family life⁴³ and the right to education⁴⁴. For many Palestinians, the restrictions on their freedom of movement between occupied East Jerusalem and the West Bank have substantially undermined their ability to access workplaces, schools and hospitals. In addition, the continuing policy of denying family unification applications between Blue and Green ID holders constitutes a serious and systematic violation of Israel's duty to protect the integrity of Palestinian families.

Conclusion

The combined effects of the centre of life policy, denial of family unification, and the Annexation Wall are having devastating consequences for Palestinian residents of Jerusalem. The increased hardships they face in attempting to firmly root themselves in Jerusalem to preserve their residency rights while being increasingly cut off from Palestinian society in the West Bank have put Palestinian Jerusalemites – particularly those with family in the West Bank – in a very difficult position. It is clear that some Palestinian Jerusalemites are being compelled to move to the Jerusalem municipal zones east of the Wall, despite the concern that Israel is likely to exclude these areas from the rest of East Jerusalem by declaring the Wall as the new municipal border. Although it remains unclear if or when Israel would initiate a *de jure* change to its declared municipal boundaries of Jerusalem, the risk is real and present and should be monitored. Of immediate concern, however, are the devastating effects of Israel's annexation policies on both West Bank and East Jerusalem Palestinian residents, which constitute serious violations of international law and must be addressed by the international community before the situation deteriorates further.

⁴⁰ *Ibid*, Art. 4(1).

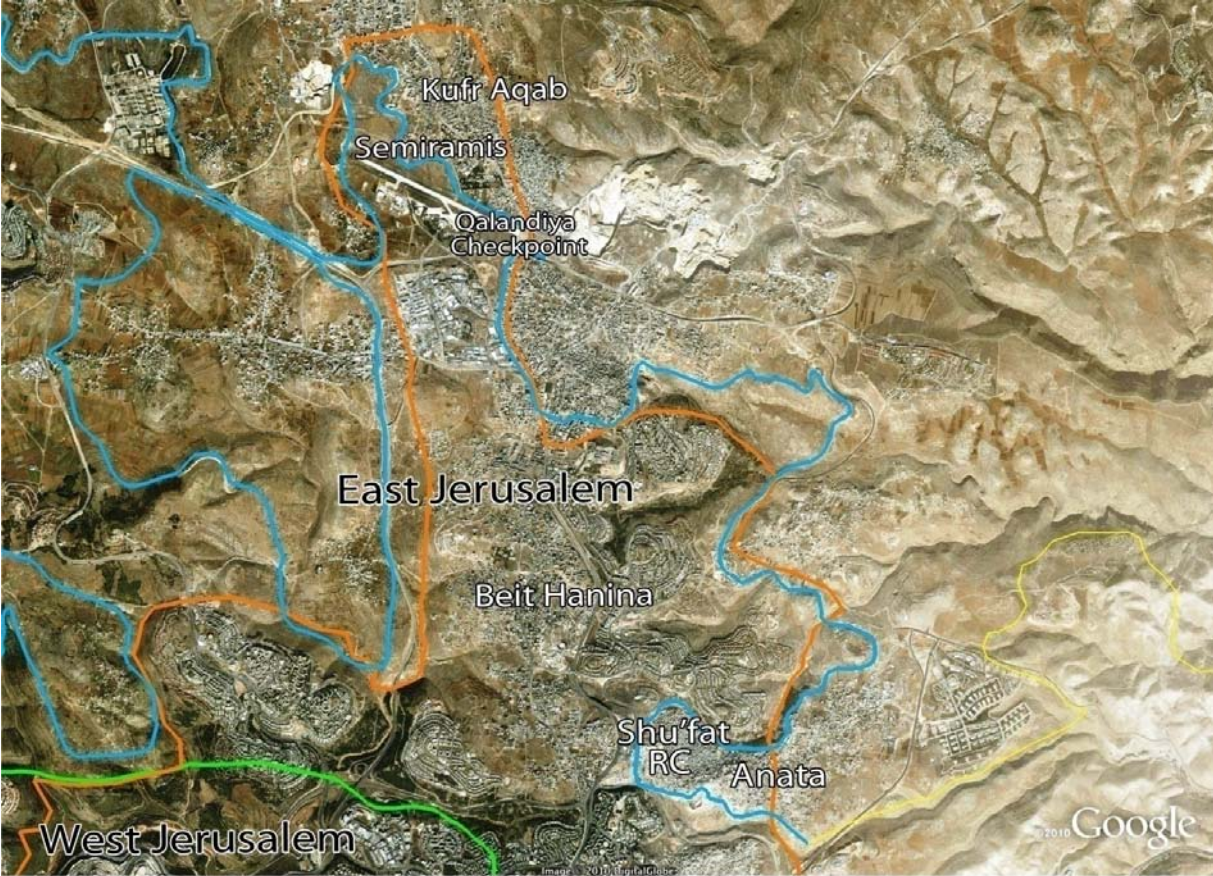
⁴¹ ICESCR, Art. 6.

⁴² *Ibid*, Art. (12).

⁴³ *Ibid*, Art. (10).

⁴⁴ *Ibid*, Art. (13).

Annex: Map of Occupied East Jerusalem



- 1967 Green Line
- Jerusalem Municipal Boundary as declared by Israel
- Route of the Annexation Wall (Completed)
- Route of Annexation Wall (Planned)

This report has been endorsed by the following Palestinian human rights organisations:

Addameer Prisoners' Support and Human Rights Association

Aldameer Association for Human Rights

Al-Haq

Arab Association for Human Rights

Al Mezan Center for Human Rights

Badil Resource Center for Palestinian Residency and Refugee Rights

The Civic Coalition for Defending Palestinians' Rights in Jerusalem

Defence for Children International - Palestine Section

Ensan Center for Human Rights and Democracy

Jerusalem Center for Legal Aid and Human Rights

Palestinian Centre for Human Rights

Ramallah Center for Human Rights Studies

Women's Centre for Legal Aid and Counselling