

The Planning Deadlock: Planning Policy, Land Regularization, Building Permits and House Demolitions in East Jerusalem

Abstract

Over 450 houses have been demolished in the Palestinian neighborhoods of East Jerusalem between 1987 and the first half of 2004. In recent years, especially, there has been an unprecedented rise in the number of demolitions. According to reports and data published by the Jerusalem Municipality, 51 houses were demolished in 2003, while in the first half of 2004 alone, already 58 houses had been demolished.

The purpose of this report is to examine house demolition policy in Jerusalem as an enforcement measure, within the wider context of planning policy that has been adopted in the Palestinian neighborhoods of East Jerusalem, of the state of planning in these neighborhoods and of the housing and other planning needs of Palestinian residents.

The report was initiated by the organizations **Ir Shalem** – *Jerusalem* and **Bimkom** - *Planners for Planning Rights* and was researched and written by Architect Nathan Marom. It is based on official data from the Jerusalem Municipality and on an analysis of past and present master plans for Jerusalem.

Deadlock

Planning in East Jerusalem – which falls under the dual authority, responsibility and supervision of the Jerusalem municipality and the Jerusalem district of the Ministry of the Interior– has reached a deadlock. Over the years, the authorities have adopted a range of planning policies and measures that have constrained the development of Palestinian neighborhoods in East Jerusalem and led to a severe housing shortage. More recently, new administrative constraints have been introduced, the legality of which is questionable, which prevent most East Jerusalem residents from obtaining building permits. To meet their housing needs, residents are thus pushed into building new houses or extensions to their existing homes without having acquired the necessary permits. The sheer scale of the unauthorized building makes it politically impossible for the authorities to enforce the demolition of all or most of the many thousands

of buildings that are considered "illegal" according to the building and planning regulations. As a result, house demolition is aimed at deterrence only, and it is generally the weak and more disadvantaged members of society who cannot afford proper legal defense, that suffer the most.

According to our understanding and the findings of this report, planning in East Jerusalem is based on considerations that do not meet accepted legal, administrative and constitutional norms, such as government fairness, reasonability, proportionality and the protection of human rights.

There is clearly a problem of "illegal" building in Jerusalem. But it is equally clear that the solution lies not in house demolitions but in the development of equitable planning policies that meet the needs of the Palestinian communities.

Policy failure

In the decade between 1992 and 2001, 6,700 construction works were carried out in East Jerusalem, whereas only 1,400 building permits were issued. It can therefore be assumed that 80% of the construction work was carried out without having received the necessary permit.

During the same period, 5,318 construction violations were reported in East Jerusalem, with the municipality issuing 616 demolition orders and overseeing the demolition of 238 homes.

In other words, the average number of demolition orders issued each year was nearly half the number of building permits issued. For every 2.3 building permits the municipality delivered for a building in East Jerusalem, it issued one demolition order.

These figures show there is very little correlation between the number of building permits issued by the Municipality and the actual construction going up in East Jerusalem. When one takes into account that by the time the majority of master plans for neighborhoods and villages of East Jerusalem were approved, they no longer met the needs of residents, it is clear that rather than representing a disregard by the Palestinian population for Israeli law enforcement authorities, the situation reflects the basic failure of the planning system to deliver and provide an adequate and satisfactory response to the real housing needs of the Palestinian population.

The huge gap between the number of building permits issued and the number of homes actually built, reflects not only the limited number of planning options available to translate building plans in East Jerusalem into permits (through detailed plans, consolidation and division plans, etc.), but also the long and exhausting procedures that need to be followed before a permit can be delivered; the unlikelihood that reparcelling plans will actually be completed; the significant reduction in the avenues open to residents who wish to acquire building permits following the introduction of the new regulations; and the many administrative obstacles placed in their way at every stage of the process.

Jewish demographic superiority

Since the annexation of East Jerusalem in 1967, the planning and development needs of the Palestinian population have been systematically ignored. The government's declared policy for Jerusalem has been to secure a Jewish majority in the city, and to adjust the pace of its development and population growth to this end. Considering the higher natural growth rate among the Palestinian population, the implication of this policy on planning is that the pace of the city's development, including the projected growth of the city's Jewish population, is dictated, first and foremost, by the growth rate of the Palestinian minority, in a manner that defies normal planning logic. This policy is clearly articulated in the new plans currently being drafted for Jerusalem.

To ensure that a Jewish demographic superiority is maintained in the city a policy of 'demographic balance' was introduced aiming to limit the Palestinian population in Jerusalem to under 30% of the city's total population. This has been carried out by expanding the city's municipal boundaries westward and through the accelerated development and construction of Jewish neighborhoods in both West and East Jerusalem, but also by attempting to limit – directly and indirectly – development and building in Palestinian neighborhoods.

Thus, the expropriation of vast tracts of Palestinian-owned areas in East Jerusalem on which new Jewish neighborhoods were subsequently built, has created an urban contiguity between these neighborhoods, while preventing the expansion of the Palestinian neighborhoods and villages, and progressively severing territorial contiguity between East Jerusalem neighborhoods and villages and nearby Palestinian villages in the West Bank.

The inequity of the measures implemented by the Israeli government and planning authorities, is thus reflected in the twin policies of planning neglect and restrictive planning in East Jerusalem from 1967 to this day, which systematically fail to take into account to an adequate degree the local Palestinian population

and considers their development interests and needs as secondary and peripheral to those of the Jewish population in Jerusalem.

Discriminatory enforcement

Most Palestinian construction in East Jerusalem has taken place outside the framework of Israeli planning and building law. Unfortunately, the authorities are impervious to the results of their policy and its implications, and continue to view this construction as “illegal”. The fact that the authorities are able to demolish only a small proportion of these constructions, has increased the arbitrary and random nature of these demolitions: very often the houses that are demolished in East Jerusalem stand next door to houses which were also built without permit – and which presumably meet the same 'demolition criteria' - but are left standing. Disadvantaged groups are particularly affected since they lack the means to defend their rights.

There is also considerable discrimination between the Jewish and Palestinian population in the enforcement of building and planning regulations. According to municipal figures, between 1996 and 2000, **the recorded number of building violations in the Jewish neighborhoods was 4.5 times greater than in the Palestinian neighborhoods of East Jerusalem: 17,382 violations in West Jerusalem compared to 3,846 in East Jerusalem** (even prorata to the size of the population, the number of violations recorded in West Jerusalem, was more than twice that recorded in East Jerusalem. Nonetheless, **the number of administrative demolition orders issued concerning buildings in the Palestinian neighborhoods was 4 times higher** than those issued in the western part of the city: 348 administrative demolition orders for buildings in East Jerusalem (i.e. one demolition order for every 200 violations recorded) compared to 86 such orders for buildings in West Jerusalem.

Overall, between 1996 and 2001, **82% of the recorded building violations were located in the western part of the city, while 80% of the administrative demolition orders concerned construction violations in the eastern part of the city.** That trend actually intensified in 2001 with figures rising to 85% (about 6,000) for building violations recorded in West Jerusalem, and to 91% (about 70) for administrative demolition orders affecting East Jerusalem.

Restrictive planning and legal tools

1. Land registration

Most of the land in East Jerusalem is not registered with the Israeli land registration bureau, nor does it appear in the partial register established by the

Jordanians prior to 1967 and which successive Israeli governments have always avoided completing. Over the past three years however, as a result of the new administrative restrictions that were introduced, the planning administration has required East Jerusalem residents to register their land with the Israeli Land Registrar when they seek a building permit. This is a departure from previous arrangements which required only that residents prove their connection to the land by presenting deeds of inheritance or purchase, in order to begin permit application procedures.

The position of the Municipality and Ministry of the Interior is that the new regulations are intended to encourage land owners in East Jerusalem to abide by the law and register their property with the Land Registrar. The new policy being imposed on the residents of East Jerusalem is however having the exact opposite effect. Just as the state of Israel has since 1967 avoided establishing a comprehensive register of East Jerusalem land – a measure that would have led to the expropriation of absentee landlords (Absentee Law, 1950) - for fear of the political and legal complications, so now Palestinian residents of East Jerusalem are not registering the land they hold or on which they live, fearing, justifiably, that their rights to the land will not be accepted by the Israeli authorities, and that the land could be declared absentee property and expropriated. As a result, virtually no new licensing files are being opened and the delivery of building permits has slowed to a trickle, seriously harming the rights of Palestinian residents to housing, private property, due process and equality.

2. Land designation

One of the most common planning tools to restrict Palestinian construction in East Jerusalem is the designation of areas within the boundaries of the local plan as open landscape areas (“green areas”), on which no construction is allowed. About 35% of the planned area of Palestinian neighborhoods in East Jerusalem is designated as open landscape areas, and in some cases, such as in Jabel Mukabbar, this reaches as much as 68.8%. The only way for landowners of these areas to legally build on their land, is to ask for the land to be rezoned, and be prepared for the long, uphill struggle to change the designation of the land to residential use.

3. Building percentages

Another means used to restrict Palestinian construction in East Jerusalem is the allotment of lower building percentages in comparison to Jewish neighborhoods nearby. Low building percentages lead to low-density construction that cannot satisfy housing needs that grow over time. With time, or even from the outset,

many Palestinian residents add one or more stories to their homes exceeding the building percentages stated in the plan. Thus, imposing low building percentages - which, by definition, prevent effective and efficient solutions such as "saturated building" from being exploited - has, de facto, resulted in an increase in the number of tall buildings being built, or building on plots not designated for that purpose, both practices which are forbidden by the plans.

The residential building that has gone up in the Palestinian neighborhoods in East Jerusalem in the past years cannot be considered simply as a manifestation of unauthorized building ("high risers by land thieves," according to the municipality). It is essentially a reflection of a demand for denser, higher buildings and expresses a transformation in the housing culture within the Palestinian public towards a greater demand for apartments in condominiums. The size of these buildings is no greater than buildings that go up in Jerusalem's Jewish neighborhoods.

4. Consolidation and division

Another means used to freeze the possibility of building, is in the way reparcelling are drawn up. This process, which consolidates individual plots that are privately owned by residents and then re-divides them in a different configuration, allows for up to 40% of the reparcelled area to be expropriated for public use. The elaboration of such plans takes many years, with no fixed deadline for approval. And, until they are approved, residents are faced with a de facto planning paralysis since the issuing of building permits is conditional on the approval of the consolidation and division plans.

The plans are drawn up behind closed doors, without involving local residents or community representatives in any way. They are then disclosed to the public for possible objections. Because of the lack of transparency and local consultation, a large number of objections are submitted at this stage, causing the approval process to drag on for years. This delay is compounded by the insufficient public funding allocated to advance necessary work on the plans.

In the case of Beit Hanina and Shuafat, the delays in approving the planning scheme and subsequent consolidation and redivision plans for their neighborhoods, have been dragging on for nearly 20 years (!), with derisory results. Of the 51 reparcelling plans that have been submitted for East Jerusalem neighborhoods only one (!) has been approved (and even that was promoted by funding raised by the residents themselves).

The planning authorities use reparcelling plans to promote a goal that is in itself positive – allocating land for public use. The lack of transparency, however, only

serves to further erode the trust between the local population and the planning authorities. Since these plans, and the stage they are at within the planning system, are not disclosed to residents, residents give up waiting for the plans to be made known and approved, and end up building on their land, without being able to know whether it has in fact been re-designated as public land. The absurdity of the situation increases when taking into account that the longer the preparation of the plans takes, so their effectiveness decreases. This situation harms all concerned: the landowners who cannot obtain building permits, the local residents whose public needs are not being met, and the municipality, which finds itself unable to build the public buildings foreseen in the plans without first having to issue demolition orders for the houses that have in the meantime gone up on the land that was rezoned for public use.

This report shows that the policy of demographic balance that underlies Jerusalem's planning and development, together with the existence of unreasonable and constantly changing regulations consistently undermine the fundamental rights of the Palestinians of East Jerusalem to dignity, equality, housing, private property, adequate living conditions and access to basic public utilities such as water, electricity and sewage disposal.

Palestinian residents of East Jerusalem have been held in a vice for many years. On the one hand they are subject to Israeli law and authority against their will, while on the other, the law and the authorities are denying them basic, human rights to which all are entitled.

The complex nature of the relationship between Palestinian residents of East Jerusalem and the state of Israel does not absolve the Israeli government of its duty and responsibility to act within the law and in accordance with basic legal standards. To the contrary, it raises the need to listen with redoubled attention to the needs of the minority population and its rights.

Irrespective of the future status of East Jerusalem, the State of Israel has an obligation, under international law, to meet the existing planning needs of all the civilian populations living within the areas governed by the State.

The importance of a planning policy is that it is an inseparable part of a population's ability to maintain and promote basic human rights. The desirable balance between the rights of the local population, the principles of good governance and the rule of law requires the Israeli planning authorities to rethink the subject, to abandon their current planning concept and to adopt a new policy – based on basic principles of equality and human dignity that afford Palestinian residents of East Jerusalem the quality of living space to which they are entitled.