



BRIEFING PAPER ON THE EASTERN RING ROAD

November 2008

Introduction: The Eastern Ring Road is an integral part of the Jerusalem Master Plan. It is intended to link the Israeli settlements in East Jerusalem to each other and to West Jerusalem. If constructed, the Eastern Ring Road (Plan No. 4585) will extend 11.5 kilometers through Sur Baher, Umm Lisson, Haj al-Madaris, al-Qunbar, Jabal al-Mukabbir (to the West of the Road) and Abu Dis, Surhai, Suahara Sharqiya, Sheikh Sa'ad (to the East of the Road). The plan will also require the construction of three bridges and five tunnels along the route. In order to build the Eastern Ring Road, Israel will need to confiscate a massive amount of private land belonging to Palestinians in the West Bank and to demolish homes along the route.

Objection filed: On 2 March 2008, Adalah, in partnership with the Civic Coalition for Defending the Palestinians' Rights in Jerusalem (CCDPRJ), submitted an objection to the Jerusalem District Planning and Building Committee, against Local Master Plan No. 4585/F (The Eastern Ring Road – Central Section), demanding the cancellation of the plan on the grounds that it violates Israeli and international law. The objection was submitted on behalf of Palestinian human rights and community organizations including the Jerusalem Center for Democracy and Human Rights, the Society of St. Yves, the Parents Committee of Jabal al-Mukabbir, the Islamic Philanthropic Association of Jabal al-Mukabbir; the mayors of Abu Dis, Izzariya, Suahara; and a group of Palestinian residents of East Jerusalem. It was filed by Adalah Attorneys Fatmeh El-'Ajou and Suhad Bishara and Adalah's Urban and Regional Planner, Hana Hamdan. To date, no hearing has been scheduled on the objection and thus, it remains pending.

Objectors' arguments:

The plan for the Eastern Ring Road is a flagrant violation of both Israeli and international law.

1. Violation of Palestinian property rights: The plan involves the massive confiscation of land from Palestinians as well as the demolition of many homes that fall along the road's path and the displacement of the residents. Homes will be demolished in Um Laysoun and homes in Gabal Al-Mokaber will also be threatened with demolition. The land seizure and house demolitions required for this plan contravene Article 53 of the Fourth Geneva Convention (1949) and Articles 23g and 46 of the Hague Regulations (1907), which prohibit the destruction and confiscation of property on occupied territory unless required by absolute military necessity. The First Additional Protocol to the Fourth Geneva Convention Article 52 and Article 57(2)(b) also guarantee protection of civilian objects and require that any damage to such objects not be excessive in relation to the concrete and direct military advantage anticipated. Additionally, the extensive destruction and appropriation of property constitute a grave breach of the Fourth

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Geneva Convention, according to Article 147 and as such a war crime. Section 3 of the Israeli Basic Law Human Dignity and Liberty also prohibits the violation of the property of a person.

2. Contradicts Israel's obligations as an occupying power: Israel's measures to change the legal status of East Jerusalem have been repeatedly condemned by the UN Security Council. The International Court of Justice affirmed in its 2004 Advisory Opinion on the Wall that the West Bank, including East Jerusalem, is occupied territory. The legal consequence of the occupation is that international humanitarian law (IHL) - in particular the Fourth Geneva Convention and the 1907 Hague Regulations - is applicable in East Jerusalem. Pursuant to Israeli Military Order No. 3, Israel has acknowledged the applicability of the Fourth Geneva Convention within the OPT. Under Article 55 of the Hague Regulations, an occupying state, such as Israel, shall act as the administrator or usufructuary of the occupied region. As former UN Special Rapporteur Prof. John Dugard recognized in his January 2008 report on the situation of human rights in the OPT, Israel has not complied with its obligations as an occupying power: "Israel has not taken steps to dismantle the infrastructure of occupation. On the contrary, it has maintained and expanded the instruments that most seriously violate human rights – military incursions, settlements, the separation wall, restrictions on freedom of movement, the Judaization of Jerusalem and the demolition of houses." The Eastern Ring Road is yet another example of Israel violating its legal obligations as an occupying power.

3. Direct discrimination against Palestinians: The road is planned in a way that will restrict its use by Palestinians, resulting in an apartheid road. The western section of the Ring Road which has already been constructed in West Jerusalem did not require demolition of homes belonging to Jewish citizens. Further, Adalah's analysis of the plan indicates that in practice, the Eastern Ring Road will be used exclusively by Israelis. This would conform to a broader trend: Route 443, for example, was originally intended for "local use" but has been accessible only to Israelis since 2002. UN Special Rapporteur Prof. John Dugard in his 2008 Report described the settler roads, which link the settlements to each other and to Israel, but which are largely closed to Palestinian vehicles, as creating "a system of 'road apartheid.'" Prof. Dugard also referred in his report to the alternate roads built for Palestinians as "part of Israel's broader plan to replace territorial contiguity with 'transportational contiguity' by artificially connecting Palestinian population centers through an elaborate network of alternate roads and tunnels and creating segregated road networks, one for Palestinians and another for Israeli settlers, in the West Bank." Articles 3(1) and 13 of the Fourth Geneva Convention clearly prohibit adverse treatment on the basis of national belonging or religion. Article 5(d)(v) of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) guarantees the right of every person to equality before the law, without distinction as to national or ethnic origin, in the enjoyment of civil rights.

4. Restriction of movement: The Eastern Ring Road, in conjunction with the Wall and the settlements, is intended to isolate Arab neighborhoods and impede travel between Palestinian neighborhoods in East Jerusalem and the West Bank. This would contravene Article 12 of the International Covenant on Civil and Political Rights (ICCPR), which guarantees freedom of movement and freedom to choose one's residence. Although this right is subject to restrictions for national security concerns, the restrictions must be proportional and consistent with the ICCPR. The Israeli Supreme Court has considered freedom of movement among a person's most basic rights, deriving from the right to dignity as guaranteed by the Israeli Basic Law: Human Dignity and Liberty.

5. Suppression of economic development: The Ring Road's geographical and transportational isolation of Palestinian neighborhoods will likewise result in economic isolation and undermine economic development by separating farmers from their agricultural lands, stunting the

development of property, and impeding access to workplaces. This bodes poorly for Palestine as a whole, as approximately 35% its economy is dependent on Metropolitan East Jerusalem, which will be isolated from the West Bank by the Ring Road. In addition to Article 6 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) which guarantees the right to work, Article 39 of the Fourth Geneva Convention guarantees that protected persons who have lost their gainful employment as a result of war shall be granted opportunity to find paid employment. The Fourth Geneva Convention specifies that the “opportunity shall, subject to security considerations and to the provisions of Article 40, be equal to that enjoyed by the nationals of the Power in whose territory they are.”

6. Social development and access to health, educational, and social services:

The imposition of the Ring Road will also affect social development by impeding access to health services and schools, severing neighborhoods, and fragmenting families. The Eastern Ring Road will disrupt the lives of approximately 250,000 Palestinians in Metropolitan Jerusalem. The Fourth Geneva Convention Additional Protocol I, Article 14(1) specifies that “the Occupying Power has the duty to ensure that the medical needs of the civilian population in occupied territory continue to be satisfied.” Article 55 of the Fourth Geneva Convention similarly indicates that the occupying power “has the duty of ensuring the food and medical supplies of the population.” Article 12 of ICESCR guarantees the right to enjoyment of the highest attainable standard of physical and mental health. Article 50 of the Fourth Geneva Convention indicates that the occupying power “shall, with the cooperation of the national and local authorities, facilitate the proper working of all institutions devoted to the care and education of children.” The right of everyone to education is also guaranteed by Article 13 of the ICESCR Article.

The Israeli Basic Law: Human Dignity and Liberty also protects the freedom and dignity of human beings. Israel has further obligations under Article 43 of the Hague Regulations and Articles 27-78 of the Fourth Geneva Convention to ensure the basic safety and well-being of civilians in the OPT.

7. Connecting illegal settlements to Jerusalem: The Eastern Ring Road is intended to facilitate Israeli access to settlements in East Jerusalem and the West Bank, linking them directly to each other and to West Jerusalem. However, the illegality of these settlements under international law has been reaffirmed numerous times. Article 49(6) of the Fourth Geneva Convention indicates that an occupying power “shall not deport or transfer parts of its own civilian population into the territory it occupies.” The UN Security Council has stated that Israel’s policy of settlements in OPT has “no legal validity” and constitutes a flagrant violation of the Fourth Geneva Convention. The Security Council has also unanimously adopted Resolution 465 of 1980 calling on Israel to dismantle existing settlements and cease, on an urgent basis, the further establishment of settlements. Under Israeli law, outposts (as distinguished from settlements in Israeli law though not in international law) are illegal.

Conclusion: Israel will benefit from the construction of the Eastern Ring Road as it will facilitate the annexation of Israeli settlements in the West Bank to the municipality of Jerusalem, resulting in an even larger “metropolitan Jerusalem” with a Jewish Israeli majority. The Ring Road will also further “Judaize” East Jerusalem through demographic change and confiscation of private Palestinian property, in order to reinforce Israel’s illegal annexation of East Jerusalem in 1967. The Israeli government will thus gain control over the Palestinian towns in East Jerusalem by transforming them into security zones and will be able to prevent further development and building in these towns by Palestinians by turning them into isolated cantons.