



Adalah Position Paper

The Illegality of Israel's East Jerusalem City Center Plan

March 2022

In October 2020, the Jerusalem District Planning and Building Committee ("the Planning Committee") submitted the East Jerusalem City Center Plan No. 101-0465229 ("the Plan"), an unprecedented move by Israel in the occupied city. The Plan covers a wide area of approximately 689 dunams (about 170 acres) that borders Bab al-'Amud (Damascus Gate of the Old City) to the south, and the Palestinian neighborhoods of Sheikh Jarrah and Wadi al-Joz to the north and east respectively. The area, which currently contains 976 housing units for 6,100 Palestinian residents, also includes the main thoroughfares of Nablus Road, Salah ad-Din Street, and A-Zahara Street. The area functions as an economic, political, social, and cultural center for Palestinians, including its current residents, who number around 367,000.¹

Adalah – The Legal Center for Arab Minority Rights in Israel, in partnership with the Civic Coalition for Palestinian Rights in Jerusalem (CCPRJ), submitted an objection to the Jerusalem Planning Committee on 14 September 2021 on behalf of 322 Palestinian residents of East Jerusalem. The objection was supported by two expert opinions: (1) a general analysis of the Plan and its shortcomings by Professor Yosef Jabareen; and (2) an analysis of transportation and traffic by engineer Haitham Muna.

In the objection, Adalah argues that the Plan disregards the current and future needs of the Palestinian residents of East Jerusalem; rather, it imposes long-term restrictions on their development in all areas of their lives, including housing, economy and employment, trade, education, culture and transportation.

Overall, the Plan must be understood within Israel's broader policy to segregate, control, and displace Palestinian communities in Jerusalem, with municipal planning as a tool used to:

- Prevent the urban expansion of these communities;
- Stifle their economic development and independence;
- Limit their access to independent, educational opportunities;
- Restrict their freedom of movement and free transportation of goods; and
- Expropriate community spaces and institutions, including markets, hospitals, schools, and places of worship.

I. **Background: Israel's Policies of Annexation and Control in East Jerusalem**

The goals of Israel's broader political project in Jerusalem are clear: to seize Jerusalem as the "complete and united" capital of the State of Israel, and to ensure Jewish demographic and territorial control. Immediately after its military conquest of the city during the 1967 War, the Government of Israel unilaterally annexed East Jerusalem, along with large swaths of land from 28 villages in the city's agricultural periphery.² The Knesset later passed constitutional

¹ Israeli 2020 Central Bureau of Statistics (CBS) data.

² The Israeli Government executed the annexation through a series of decisions that applied Israeli domestic law to the newly-occupied territory, and that incorporated it into the municipal boundaries of then-West Jerusalem. See Law and Administration Ordinance (Amendment No. 11) – 1948, 28 June 1967; Law and Administration Order (No. 1) – 1967, 28 June 1967; Municipalities Ordinance

legislation, in 1980 and in 2018, that confirmed the annexation of East Jerusalem and the status of Jerusalem as the capital of Israel,³ followed by later amendments in 2000 that further entrenched Israel's control over the area.⁴

Since 1967, Israel and its agents have used land and urban planning policies to displace Palestinians from East Jerusalem. The Israeli government, primarily the Ministries of Interior, Finance, and Housing, along with national, district, and local planning authorities, including the Israeli Jerusalem Municipality (IJM), have implemented wide-ranging policies to alter the demographic and spatial reality in East Jerusalem under the guise of regular municipal measures and in accordance to official plans and guidelines. For example, the Jerusalem Outline Plan – No. 2000, also referred to as the Jerusalem 2020 Mater Plan, which serves as the authoritative blueprint to which all municipal planning schemes must adhere, explicitly states that it aims to preserve a demographic ratio of 70% Jewish Israelis and 30% Palestinians.⁵

Urban planning policies that have displaced Palestinian communities and entrenched Israeli control over East Jerusalem over the past 54 years include: (1) denying building permits to and demolishing the homes of Palestinians; (2) seizing and expropriating Palestinian land for Israeli settlements; (3) isolating Palestinian neighborhoods from each other and from the wider West Bank, in part via the construction of the Apartheid Wall; and (4) confiscating Palestinian land and zoning it as “green spaces” or “closed military zones”.

Israel has confiscated over 35% of Palestinian land in East Jerusalem for Jewish settlements and declared 22% as “green spaces” where Palestinians cannot build. Currently, only 13% of the total area of East Jerusalem is zoned for residential use for Palestinian communities, and most housing in this area is in densely-populated structures that do not adequately meet the population's needs. Land resources are mainly redirected to building and expanding settlements to serve the growing number of Israeli settlers, totaling more than 225,000 or about 40% of the population of East Jerusalem,⁶ living in 13 settlements or “neighborhoods”.

II. Israel's International Law Obligations to Palestinians in East Jerusalem

According to international law, as affirmed by the International Court of Justice (“ICJ”), East Jerusalem is occupied territory, and Israel, as the Occupying Power, has obligations and duties under international humanitarian law (“IHL”) towards its Palestinian residents.⁷ Some relevant principles of IHL include: prohibition on the transfer of sovereignty; restrictions on changes to local laws and institutions;⁸ prohibition on forcible transfers of the protected

(Amendment No. 6) – 1948, 28 June 1967; Municipalities Ordinance (Declaration on the Enlargement of Jerusalem's City Limits), 28 June 1967.

³ Basic Law: Jerusalem, Capital of Israel, 30 July 1980; Basic Law: Israel as the Nation-State of the Jewish People, 19 July 2018. While the Basic Law did not use the term annexation, and instead provides that “Jerusalem, complete and united, is the capital of Israel,” the Supreme Court of Israel has considered East Jerusalem as annexed. See, e.g., HCJ 256/01, *Rabah et al. v. Jerusalem Court for Local Matters et al.*, 56(2) PD 930, 934-5.

⁴ Basic Law: Jerusalem, Capital of Israel (Amendment No. 1) – 1980, 2000. Specifically, section 5 of the amended Basic Law constitutionally defined the borders of the Jerusalem, while section 6 prohibited the transfer of any authority over the jurisdiction of Jerusalem to a foreign government or political agent.

⁵ Jerusalem Outline Plan No. 2000. Though the plan was never deposited for public review or ratified, and therefore serves as an unofficial guiding document, the IJM treats it as though it has been formally adopted as constituting the planning policy for the city.

⁶ Israeli 2020 CBS data.

⁷ See Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, 2004 I.C.J. 136, 78 (July 9).

⁸ See Convention (IV) Respecting the Laws and Customs of War on Land and Its Annex: Regulations Concerning the Laws and Customs of War on Land art. 43, Oct. 18, 1907.

persons out of the occupied territory⁹ and prohibition on direct or indirect transfer of civilians of the Occupying Power to the occupied territory;¹⁰ respect for cultural property;¹¹ and the prohibition on the confiscation of private property and the expropriation of private property into public property for public use.¹² Generally, the Occupying Power must respect existing laws, act in the best interests of the civilian population, and facilitate the operation of local institutions.

The ICJ also determined that international human rights law applies in East Jerusalem, and that Israel must respect, protect, and fulfill the human rights of Palestinian residents of East Jerusalem.¹³ Israel has ratified the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social, and Cultural Rights; the International Convention on the Elimination of Racial Discrimination; and the Convention on the Rights of the Child. Thus, Israel must consequently guarantee Palestinians the rights to, *inter alia*: adequate housing, including the continuous improvements in living conditions;¹⁴ education that is available, accessible and acceptable to the local population, in terms of form and content;¹⁵ culture, including the safeguarding and preservation of cultural property;¹⁶ and the highest attainable standard of health.¹⁷

III. Overview of East Jerusalem City Center Plan No. 101-0465229

The Jerusalem Municipality submitted the Plan to the Jerusalem District Planning and Building Committee (“the Committee”) in October 2020 for public discussion and objections. The Plan covers an area of approximately 689 dunams (about 170 acres), and this area functions as an urban center serving the Palestinian residents of East Jerusalem – a population that numbers 367,000 today, and which is expected to reach approximately 580,000 by 2040¹⁸ – in terms of economy and trade, transportation, services, healthcare, culture, education, religion, and tourism. Most of the current Palestinian residents either lived in the area prior to the 1967 occupation or were born into these families afterwards, while some moved to Jerusalem for a variety of reasons such as proximity to workplaces or for educational opportunities.

According to the Jerusalem Municipality, the Plan’s main declared goals are the development of East Jerusalem and the preservation, development, the arrangement of planning and building rights, and the creation of a planning framework for detailed planning. Main features of the Plan include providing for some new construction while renovating and preserving existing buildings, redesigning public space, and reducing road traffic. The Plan includes a long list of buildings and sites for historic preservation, and it restricts the height of buildings to maintain the Old City’s skyline. The Plan changes the flow of traffic in the area, re-

⁹See Convention (IV) relative to the Protection of Civilian Persons in Time of War (Geneva IV) art. 49, Aug. 12, 1949.

¹⁰See *id.*

¹¹See Geneva IV, art. 56, Aug. 12, 1949; see also Convention for the Protection of Cultural Property in the Event of Armed Conflict, 14 May 1954.

¹²See Geneva IV and Its Annex: Regulations Concerning the Laws and Customs of War on Land art. 46, Oct. 18, 1907.

¹³See Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, 2004 I.C.J. 136, 106–113 (July 9).

¹⁴See International Covenant on Economic, Social and Cultural Rights (ICESCR) art. 11(1), Jan. 3, 1976; Committee on Economic, Social and Cultural Rights (CESCR), The Right to Adequate Housing (Art. 11(1) of the Covenant), U.N. Doc. E/1992/23 (1991).

¹⁵See ICESCR, art. 13, Jan. 3, 1976; CESCR, The Right to Education (Art. 13), U.N. Doc. E/C.12/1999/10 (1999); see also Convention on the Rights of the Child art. 28, Nov. 20, 1989.

¹⁶See ICESCR, art. 15; CESCR, Right of Everyone to Take Part in Cultural Life (Art. 15, Para. 1 (a)), U.N. Doc. E/C.12/GC/21 (2009).

¹⁷See ICESCR, art. 12, Jan. 3, 1976.

¹⁸Yosef Jabareen, Expert Opinion - East Jerusalem City Center Plan No. 101-0465229 (September 2021), p. 2.

designating some of the main roads into one-way streets or pedestrian-only paths. The Plan also re-classifies privately-owned properties, housing, and public institutions, such as schools and mosques, as public land subject to confiscation and direct authority by the IJM.

IV. The Plan as a Colonial Tool of Control, Displacement, and Dispossession

Adalah highlighted the principal flaws in the Plan, including its non-participatory drafting process, completed without meaningful consultations with members of the local Palestinian population, and without taking account of its current and future needs. The following sections describe some of these flaws.

A. Lack of Input from Palestinian Communities

Despite the large-scale and long-term implications of the Plan, and notwithstanding Israel's obligations under international law, the IJM developed the Plan in a unilateral and coercive manner, with no meaningful participation of the Palestinian population whatsoever. Although the planning documents indicate that the local planning committee met with a number of church officials and traders in the area, such meetings were, at best, preliminary, partial, and inconsequential to the Plan and to any of its underlying decision-making processes. Moreover, such limited and selective meetings do not constitute a participatory public process, and is a far cry from the required process of consultation centered on Palestinians and their needs and interests.

The local planning committee did not conduct a survey of the current services and unfulfilled developmental needs of the area and its residents, including in the fields of housing, education, culture, employment and trade, employment of women, poverty, transportation, public services, and infrastructure. While the planning documents reference a survey from 24 December 2019, this assessment only covered the areas of housing, education, and public services, and it was not comprehensive, and, despite being referenced, the results of the survey were not even incorporated into the provisions of the Plan.

The Palestinian public's participation in the planning and decision-making processes regarding the vision of the development of the area in which it lives is critical given the status of East Jerusalem as an occupied territory. Under international law, the best interests of the local population should direct any planning process. Its importance also stems from the prohibition in international law of long-term changes driven by illegitimate political considerations that could hinder the exercise of the Palestinian people's right to self-determination, including in this area. The right to self-determination includes the right to decide on the vision of the social, economic and cultural development of the protected population. The long-term changes proposed by the Plan prevent Palestinians in East Jerusalem from developing their space naturally and sustainably. Instead, the space is designed to serve the interests of the occupier, and is in direct contravention of the Palestinians' interests and rights.

B. Widespread Restrictions on the Construction of Housing Units

While Palestinians in East Jerusalem critically need housing, the Plan effectively prevents the addition of housing units in the area, and thus it fails to address the existing, let alone future, residential needs of the community.¹⁹ According to the planning documents, the planning area currently contains 976 units that house 6,100 Palestinian residents, and these housing units are themselves overcrowded, inadequate, and in poor condition. The Palestinian population

¹⁹See Transcript of the District Committee's hearing dated 6 January 2020 on p. 102 (Hebrew) (on file with Adalah).

in the planned area is projected to reach around 10,020 residents by the target year of 2040, and they will need approximately 2,290 housing units.²⁰

Given the current situation, the prevention or restriction of additional housing construction in the planned area in East Jerusalem will have far-reaching consequences for the local population. The Plan does not even meet the Palestinians' current residential needs and will inevitably lead to a severe shortfall in the number of housing units needed by 2040. Thus, the plan will not fulfill its stated goal of development, rather, it will actually harm and further restrict the right of Palestinian residents to adequate housing, creating new and exacerbating existing problems.

C. Using Cultural Conservation to Limit Urban Growth

Another one of Israel's tools for Palestinian population control is the designation of historic and religious sites for conservation. This Plan makes extensive classification of plots, buildings and complexes for conservation or as historic buildings, and this directly inhibits Palestinians' urban growth. The Plan made these classifications in a sweeping and arbitrary manner, without conducting specific, individual professional inspections. According to its appendices, the Plan identifies 146 buildings, 20 compounds, and four heritage centers for conservation, and it defines a historic structure as any structure with a façade, or part of a façade, that can be dated to 1967 or earlier. Moreover, the Plan prohibits any new construction or additions to buildings within 75 meters of the Old City's walls, and imposes severe restrictions on buildings between 75 and 100 meters away from the Old City's walls.

These classifications impose multiple onerous constraints on Palestinians, who would thereby be required to present detailed, extensive plans to apply for building permits. Given the high expenses associated with preparing a detailed plan, coupled with the IJM's rejection of almost all permit applications by Palestinians, the classifications effectively preclude any reasonable future development. The practical result is that the conservation provisions formulated in the Plan make future development in the area impossible for its Palestinian residents.

D. Stifling Economic Life and Future Development; Subjugating Existing Economy to Dependency on West Jerusalem

Despite the planned area serving as a trading, economic and employment center for Palestinian residents of East Jerusalem, the Plan for the city center lacks a vision for its economic development to provide any significant employment or business opportunities for the Palestinian community. Palestinians in East Jerusalem suffer from high rates of poverty and unemployment, particularly among women. Areas populated by Palestinians in East Jerusalem have the lowest socio-economic rankings, and the majority of Palestinians live below the poverty line, with low labor force participation²¹ and inadequate income.²²

The Plan ignores the current residents' economic situation and does not contain any measures for economic development to alleviate the current crisis or meet the future livelihood needs of the local population. Rather, the Plan significantly reduces the space for employment and commercial activity, by 37,800 square meters. The Plan's implementation will therefore lead

²⁰ Yosef Jabareen, Expert Opinion - East Jerusalem City Center Plan No. 101-0465229 (September 2021), p. 18.

²¹ In 2019, the percentage of labor force participation in Jerusalem among the Palestinian population stood at just 38.7%. This figure represents a drop from as recently as 2017, when this figure was 42.7%, providing an indication of a deterioration in the current situation.

²² In general, the average monthly per capita income in East Jerusalem is very low, amounting to 40% of the average per capita income of West Jerusalem residents. State Comptroller's Report, "Social Services for the Arab Population in East Jerusalem," p. 368 (June 2019).

to a significant aggravation of the dire economic and employment situation, especially given the young demographic makeup of the Palestinian population in East Jerusalem.

E. Limiting Access to Educational Opportunities

The Plan does not address the need to develop the Palestinian education system in the planned area, where Palestinian students suffer from an acute shortage of classrooms and a significant dropout rate. According to Israel's State Comptroller, approximately 10,800 children aged 6-18 dropped out of schools in East Jerusalem in 2017, and between 2015-2018, the dropout rate among Palestinian students was 26.5%.²³ There is a current shortage of nearly 3,800 classrooms in East Jerusalem, according to one estimate.²⁴ The available classrooms are severely overcrowded, and many fall below basic education and health standards. The picture for the 40,000 children aged between 0-4 is even gloomier. As of January 2020, about 40,000 children between the ages of 0 - 4 lived in East Jerusalem, but there were only four public day care centers, with a total of 24-20 classes and only 28 recognized daycare centers.²⁵

The Plan not only fails to address the severe shortage in classrooms, but the new restrictions it imposes on construction will make it nearly impossible to close current gaps or meet future needs through the building of new schools or expansion of existing ones.

F. Restricting Transportation

As noted, the area is a central occupational, commercial, cultural and educational hub, and accessibility and transportation to this area is of utmost importance. Yet, and despite the Plan's declared goal of reducing road traffic, it fails to solve current traffic and congestion problems, and its provisions stand to exacerbate these problems, and to isolate the area from other Palestinian neighborhoods in East Jerusalem. According to the State Comptroller's report, transportation accessibility and travel routes within East Jerusalem are deficient, significantly prolonging the travel times for Palestinian residents commuting to their workplaces, commercial areas, medical centers, and other institutions where social services are provided.²⁶ Due to its centrality, the planned area is the site of regular traffic jams and lacks adequate parking spaces for private vehicles. Prior to the Plan's announcement, the local planning committee failed to examine the issue of transportation and road traffic in the area, and to examine potential solutions to current and future problems.

The Plan also impedes the existing transportation system in the area. For example, the Plan suggests cancelling the western section of Sultan Suleiman Street, which serves as an important connection to the Ras al-Amud and at-Tur neighborhoods. The Plan also seeks to convert existing streets into pathways limited to pedestrians and cyclists, which creates problems for owners and users of existing buildings and makes obtaining permits for building additions yet even more difficult due to the lack of access for vehicles and emergency services.

G. Expropriation of Community Spaces and Public Institutions, including Markets, Hospitals, Cultural Centers, Schools and Places of Worship

²³ State Comptroller's Report, "Social Services for the Arab Population in East Jerusalem," pp. 385-386 (June 2019).

²⁴ Ir Amim, The State of Education in East Jerusalem: Discrimination Against the Backdrop of COVID-19 (2020).

²⁵ Noa Dagoni and Erez Wagner, "Monitor for the Implementation of Government Resolution 3790 for Investment in East Jerusalem: December 2020 Quarterly - Early Childhood Education", Ir Amin and Maan Working Association (December 2020), p. 3.

²⁶ State Comptroller's Report, "Social Services for the Arab Population in East Jerusalem," pp. 369-370 (June 2019).

The Plan also proposes the arbitrary, sweeping, and extensive expropriation of community spaces and institutions in East Jerusalem, seizing properties and transferring them to the IJM, purportedly “for public purposes.” Under Israeli law, specifically section 188(b) of the Planning and Building Law – 1965, local authorities may expropriate property “for public purposes”, including roads, parks, parking lots, bus stations, markets, cemeteries, educational, religious, and cultural structures, communal institutions, hospitals, and medical clinics. About 55.2% of the land (approximately 269 dunams or 66.5 acres) in the planned area would be classified as for public use, with an additional 132 dunams (or 32.6 acres) as for mixed land use. In the planned area, the institutions subject to expropriation include community and cultural centers run by churches and Islamic charities (*Waqf*), as well as Palestinian cultural institutions. If expropriated, these areas will join the 38% of East Jerusalem that Israel has confiscated since 1967, largely for the purpose of building settlements or curbing the expansion of Palestinian communities.

The institutions in the planned area have been functioning and providing services to Palestinians in East Jerusalem for decades. Beyond the associated violation of the right to property, the expropriation of Palestinian institutions and their transfer to the IJM will inevitably reduce their ability to function and continue to provide services to Palestinians. Therefore, the purpose of this move appears to be to tighten control over the Palestinian residents and the institutions that serve them, while transferring them to Israeli control. Such purpose is illegitimate and does not serve the interests of the local population.

V. Conclusion

In conclusion, the Plan, as analyzed above, fails to provide any prospect for development for Palestinian residents of East Jerusalem; instead, it imposes long-term restrictions in all areas of their lives, from housing, the economy and employment, to trade, education, culture and transportation. Its aggregate effect will be to create a significant deterioration in the existing situation.

As its principal provisions reveal, the Plan aims to impose a variety of restrictions on development and construction in Palestinian communities, to the point of making these tasks impossible. It will cause harm to existing properties; reduce the volume of trade and level of employment; block transportation and vehicular traffic in the area; impair the functioning of the area’s educational and cultural infrastructure, and allow for large-scale, arbitrary expropriation of land, thereby thwarting basic, sustainable development for Palestinians in East Jerusalem, a protected population under international law. The plan is a political tool that serves Israel’s illegitimate interests in perpetuating its control of and restricting the development of the Palestinian population.