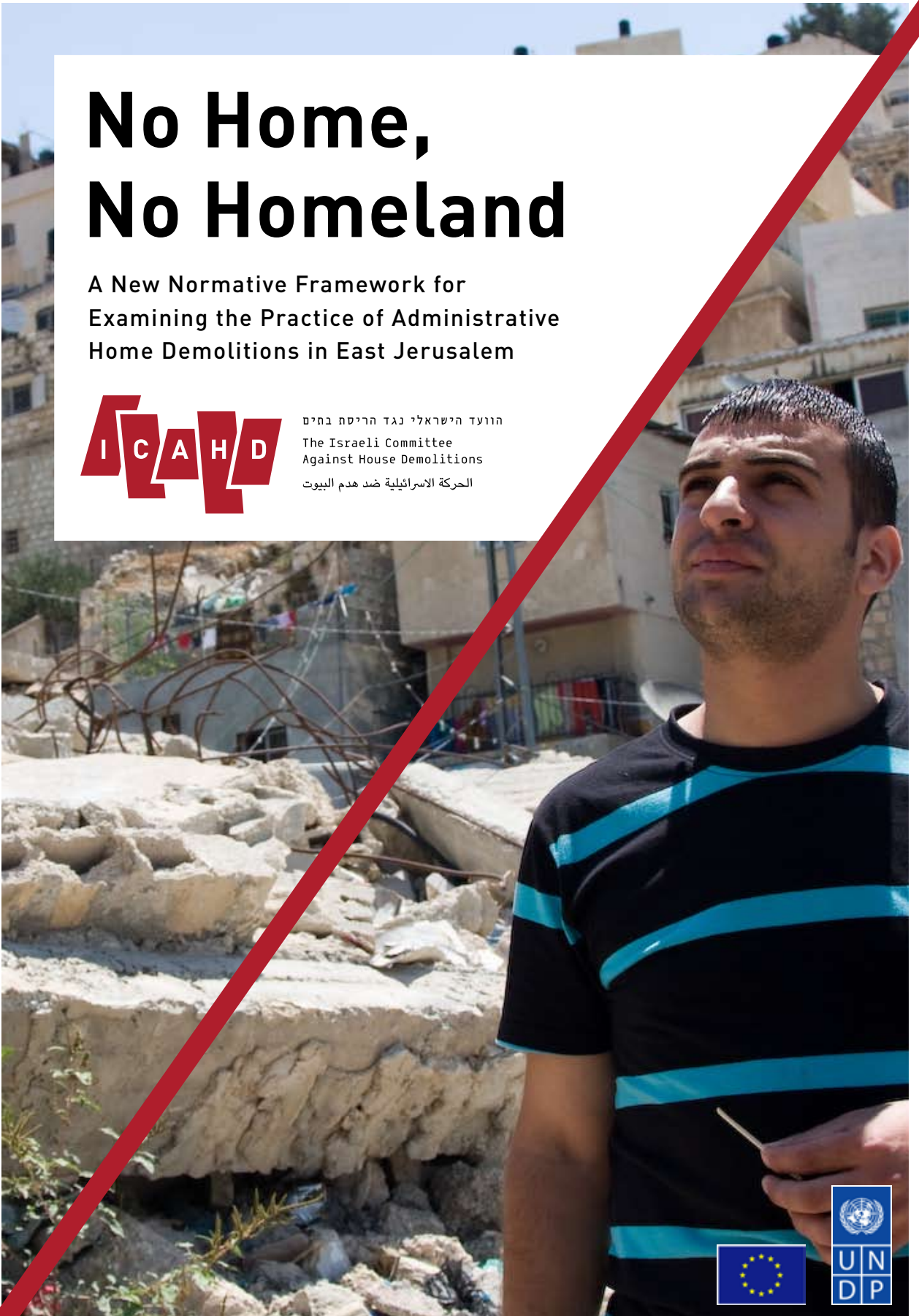


No Home, No Homeland

A New Normative Framework for
Examining the Practice of Administrative
Home Demolitions in East Jerusalem



הוועד הישראלי נגד הריסת בתים
The Israeli Committee
Against House Demolitions
الحركة الاسرائيلية ضد هدم البيوت



East Jerusalem Administrative House Demolitions

The Israeli Committee Against House Demolitions (ICAHN) estimates that as of August 2011 approximately 26,000 homes had been demolished in the occupied Palestinian territories (OPT), including East Jerusalem, since the start of the occupation in June 1967. The phenomenon of home demolitions can be divided into three main categories: punitive, land-clearing/military, and administrative demolitions. Punitive demolitions involve the demolition of homes as punishment for the actions of people associated with the homes, typically for acts which are deemed to threaten the security of Israel and Israeli civilians and military personnel. Contrary to common perception, punitive demolitions constitute less than 10 percent of home demolitions carried out by the Israeli authorities. In February 2005 the Israel Defense Forces (IDF) suspended the practice; it was reinstated in January 2009, but its use since has been limited.

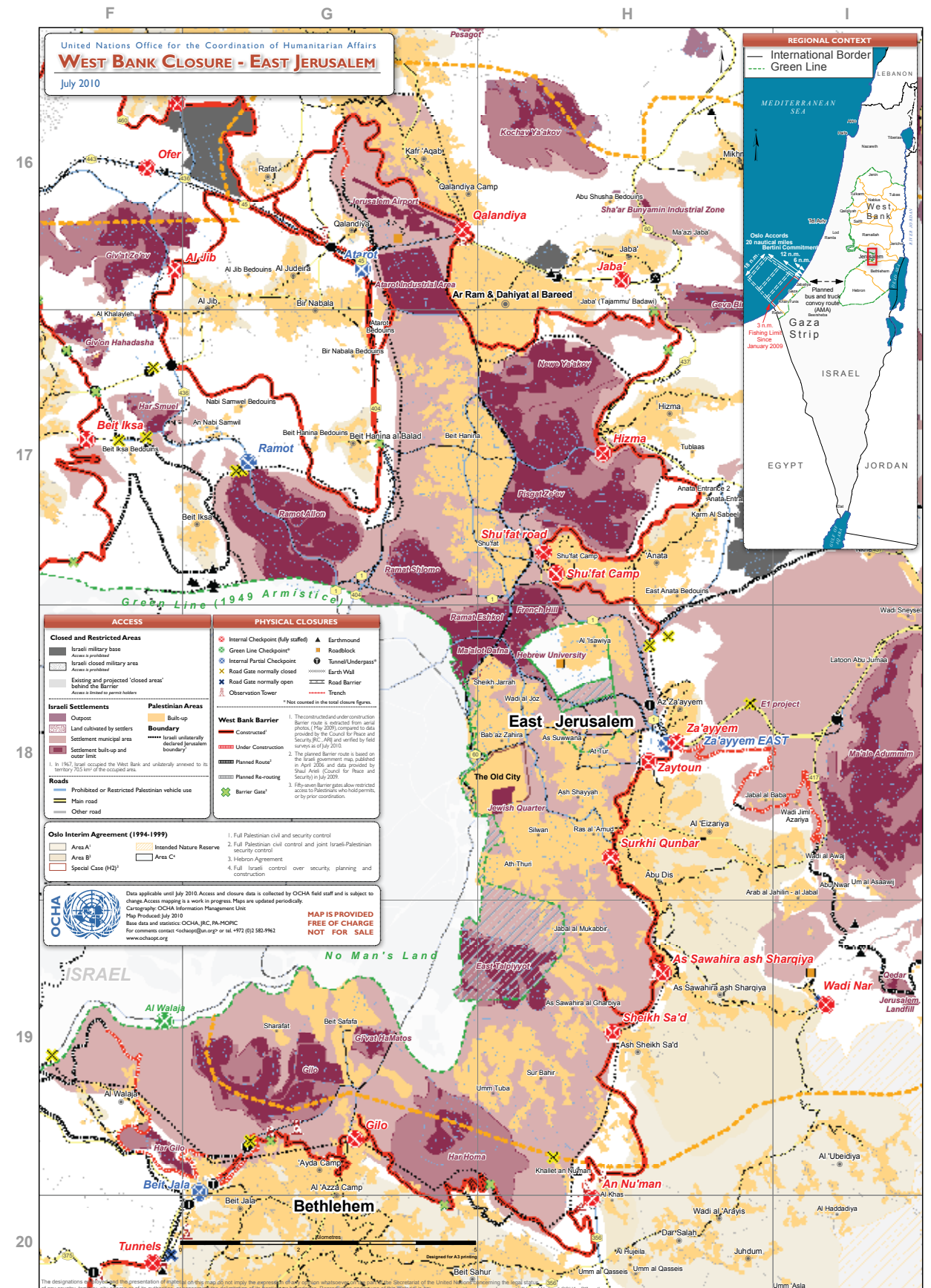
Land-clearing and military operations demolitions involve the demolition of a home or structure during the course of military operations and in order to achieve a military objective, such as clearing a piece of land to make way for military vehicles or other such purposes. Military operations demolitions constitute more than half of the demolitions of Palestinian homes and typically have been carried out in Gaza and the West Bank, excluding East Jerusalem.

Lastly, administrative home demolitions entail the demolition of homes and structures built without Israeli authorization. Since the Oslo Accords and the division of the West Bank and Gaza into Areas A, B and C, the practice of administrative home demolition has been limited (with few exceptions) to Area C of the West Bank and East Jerusalem, where Israeli authorities have exclusive control over all planning, zoning and building activities. Administrative home

demolitions account for roughly 25 percent of all demolitions, and in East Jerusalem they constitute the overwhelming majority of home demolitions.

This report focuses on the specific set of laws, policies and practices applied to Palestinians in East Jerusalem related to, and often resulting in, administrative home demolitions. Administrative home demolitions in East Jerusalem do not occur in a vacuum, and often the most serious violations of Palestinian rights occur at earlier stages leading up to, or threatening, demolition – as well as in the lack of meaningful alternatives to unauthorized building risking demolition (such as leaving the area). The situation in East Jerusalem is also distinct in many ways from that of the remainder of the OPT, in that Israel has illegally annexed the territory and therefore applies its own domestic laws to the area in full – rather than treating it as occupied territory and its Palestinian residents as protected persons under applicable international law. Thus, Israel applies a different set of laws and policies to Palestinians in East Jerusalem than to the remainder of the OPT, which are explained and analyzed in this report vis-à-vis its obligations under international human rights law and international humanitarian law (the laws of war and occupation). Furthermore, the fate of East Jerusalem will hold a critical role in any resolution to the Israeli-Palestinian conflict.

East Jerusalem is currently home to approximately 300,000 Palestinians. Since the June 1967 occupation and immediate annexation and incorporation of the area now known as “East Jerusalem” into Israel, the various Jerusalem municipal governments, along with the Ministry of Interior, have applied policies that aim, directly and indirectly, to maintain a Jewish majority in the city of Jerusalem. In certain cases, these demographic motivations have been expressed explicitly by public officials; in other cases these motivations are simply evidenced by the consistent and overwhelmingly telling results of the policies and practices applied to Palestinian East Jerusalem, which serve to maintain



a Jewish majority. Alongside the restrictions placed on Palestinian growth, Jewish population growth is encouraged and enjoys state support, including the continuous expansion of Jewish neighborhoods – or settlements – in East Jerusalem.

One of the main methods of controlling Palestinian growth in East Jerusalem is via the imposition of restrictions on planning and building in the Palestinian sector. To begin with, only 13 percent of the total land area in East Jerusalem is zoned for Palestinian building (with less than nine percent zoned for housing), ostensibly based on the need to maintain open, “green spaces” (such as parks, nature reserves and agricultural zones), to preserve holy sites and archaeological areas, and for other municipal construction (such as roads and infrastructure). However, given the major housing shortage among the Palestinian sector, these restrictions place grave burdens on Palestinians seeking housing whose only option is to build new housing. Additionally, Palestinian areas are typically zoned for lower “plot ratios” than in Jewish areas. In other words, the approved building density in the Palestinian sector (the percentage of the total land area on which the building may be constructed, as well as its approved height) allows for fewer housing units than in the Jewish areas of the city, oftentimes even with regard to neighboring communities.

Naturally, proper zoning is a prerequisite for obtaining a permit to build. Additional requirements include adequate infrastructure, proof of land ownership, as well as significant costs and fees. While these requirements are identical for both Jewish and Palestinian building permit applicants, the two communities' respective socio-economic and political realities vary significantly. Firstly, many areas of the Palestinian sector lack adequate infrastructure, mainly due to underinvestment in the Palestinian sector over the years and disproportionate allocation of municipal funds between Palestinian and Jewish

areas in the city. Given that installing the necessary infrastructure without municipal support is often either unauthorized or cost-prohibitive, many areas in which Palestinians would wish to build, even when properly zoned for building, do not meet the standards for obtaining building permits. Secondly, unlike in West Jerusalem where the Property Registry has been maintained, proving land ownership in East Jerusalem is extremely complex. The majority of the area was not registered during the periods of British and Jordanian control prior to 1967, and in that year Israel froze the process of land registration there. In fact, the ownership of over half of the land in East Jerusalem is not registered, thereby rendering it effectively impossible under the current procedures (tightened since the start of the Second Intifada) for landowning residents to obtain permits for new construction on their land.

Lastly, the building permit process entails high costs and fees. While in the Jewish sector, the costs of construction projects are typically shared by construction companies and home purchasers, Palestinian building endeavors are often carried out by individuals or small groups of individuals – particularly given that Palestinian areas are almost without exception zoned for smaller buildings, rather than apartment complexes and high-rise condominiums. The high costs therefore present an additional obstacle to Palestinians in obtaining building permits in East Jerusalem.

The situation is merely worsened by the major population growth experienced by the Palestinian sector in East Jerusalem. As it stands, Israel has not updated the regional urban plan for East Jerusalem since its occupation and annexation in 1967, and no new Palestinian neighborhood has been created since. Meanwhile, in the 44 years that have since passed, the Palestinian population has more than quadrupled (from 66,000 in 1967 following the war to 300,000 today). This growth is partly explained by natural population



Silwan, East Jerusalem © Ben Guss

growth (notably at slightly higher rates than the Jewish population), and partly by the current laws and policies regarding residency rights for Palestinians and their family members.

Residency Revocation

Palestinian East Jerusalemites are eligible for resident status in Israel, but that status is

conditioned upon many criteria that oftentimes pose challenges for Palestinians who work, travel and live in other parts of the world (including the West Bank and Gaza), in order to be with family or for various other reasons. Permanent residency status was revoked from 13,000 Palestinian East Jerusalemites between 1967 and 2008, and reinstating residency status is a lengthy, often unsuccessful legal process, and without

Mission Accomplished Flow Chart

The 70/30 Demographic Policy or “Judaization” of Jerusalem

Local / National Planning and Building Policies
+
Lack of Adequate Planning for Population Size
(Discriminatory Zoning, Restricted Construction Areas, Low Plot Ratios, Lack of Infrastructure, Proof of Ownership, Cost of Permits)

Increased Demand for Housing in East Jerusalem
(Natural Population Growth, the Wall, Risk of Residency Revocation, Family Unification Issues)

Lack of Ability to Obtain Building Permits

Lack of Available / Authorized Housing

Large-scale Unauthorized (“Illegal”) Building

Discriminatory/Disproportionate Demolition of Palestinian Homes
+
Forced Eviction of Palestinians from their Homes

Lack of Housing • Overcrowding and Harsh Living Conditions
Lack of Community Development • Displacement
Residency Revocation • Life of Constant Fear and Uncertainty

**Mission (Almost) Accomplished:
70/30 Policy Nearly Maintained**

residency Palestinians risk deportation from East Jerusalem – even if they and their families were born there. Fearing losing their residency status and its accompanying rights and benefits, many more Palestinians choose to remain in the city despite the array of obstacles placed before them, including the shortage of legally available housing.

Similarly, many Palestinian East Jerusalemites meet their spouses through family members or in common cultural spaces, which do not necessarily correspond to the artificial border Israel has created between East Jerusalem and the West Bank. Since the start of the Second Intifada, Israel has all but canceled the ability of spouses and family members of Palestinian residents to obtain residency permits based on family unification. However, faced with the prospect of losing the East Jerusalem residency status and benefits granted one spouse and owed to her/his children, many Palestinian families choose to live in East Jerusalem despite the fact that at least one family member lacks authorization and lives under constant threat of deportation.

Additionally, the erection of the separation barrier (or “wall”), beginning in 2002 in the Jerusalem area, placed many Palestinians formerly considered East Jerusalem residents and holding permanent residency in Israel on the “Palestinian” (West Bank) side of the barrier. Fearing loss of residency rights should they continue to live on the “wrong side of the fence,” over one hundred thousand Palestinians fled to the “Israeli” (remaining East Jerusalem) side of the wall, and many of them stayed on that side, thereby increasing the Palestinian population and its density in what remains within the city of Jerusalem.

All of these factors have contributed to the growth of the Palestinian population in East Jerusalem far beyond the amount of authorized housing

and other building. For a variety of reasons – including the desire to remain in the physical place in which they originated, to maintain ties with their communities, and in order to avoid the loss of residency rights and benefits – many Palestinians choose every year to remain in East Jerusalem and to build without authorization (illegally). As of 2007, and since the start of the Second Intifada, for every building built with a permit, there were approximately 10 more built without authorization. Currently, there are at least 15,000 and up to 20,000 unauthorized buildings in the Palestinian sector of East Jerusalem.

House Demolitions and Forced Evictions

Enforcement of building and planning laws, including demolition and the levying of fines, is executed in a discriminatory manner. For instance, numerically speaking, Palestinians are accountable for only approximately 20 percent of the building infractions in the city, but more than 70 percent of demolitions in Jerusalem are carried out against Palestinian buildings. While Jews represent approximately 64 percent of the population in Jerusalem, demolitions of their buildings over the past several years have represented only 28 percent of the demolitions

carried out. What is more, given the zoning and planning situation in Jerusalem, Palestinians are more likely to engage in more serious building infractions than Jews who face far fewer obstacles in obtaining permits. As the municipality ostensibly prioritizes more serious infractions, entire Palestinian homes and structures are more likely to be demolished than Jewish homes and structures. Additionally, based on practices on the ground, Palestinians in Jerusalem are more likely than Jews to experience expedited demolitions and evictions with limited opportunities to defend against them. Lastly, the more serious the offense the greater

the fine that may be levied on the offender, and thus Palestinians pay a disproportionately higher amount of the fines to the Jerusalem Municipality and Ministry of Interior for building infractions.

Two additional, related phenomena are present in East Jerusalem: self-demolition and forced (or court-ordered) evictions. In many cases, Palestinians whose homes or other buildings have received demolition orders prefer to conduct the demolition themselves and to spare themselves, and particularly their children, the psychological burden of the indefinite wait for the day of demolition and the experience of witnessing one's home or business demolished – physically. In addition, over recent years forced evictions have taken place in several neighborhoods in East Jerusalem, evicting over 200 Palestinians from their homes in order to allow Jewish building, typically based on claims of Jewish land ownership from prior to 1948 or based on the historical, religious or archaeological importance of an area. These evictions also increase the demand for housing, the motivation to build illegally, and indirectly, the number of demolitions, and of course cause further displacement of Palestinians.

Ultimately, the combination of these policies and practices results in – whether intentionally or not – the displacement of Palestinians and the preservation of Jewish demographic control over the city. This report contains a “mission accomplished flow chart” graphically representing the variety of laws, policies and practices and how they interact to create a “domino effect,” placing great hardships before Palestinians in East Jerusalem, and eventually resulting in a slow migration out of the city that serves the demographic policy apparently motivating them.

Our detailed analysis of these policies and practices under international human rights law

(which applies to areas under a state's “effective control”), and international humanitarian law (which applies to occupied territory), leads to the conclusion that Israel is in violation of at least five major legal obligations or prohibitions, which form the basis of the new normative framework presented in this report – or a new legal “language” – for examining and critiquing administrative house demolitions in East Jerusalem.

Violation of the Right to Adequate Housing

First, Israel's practices in East Jerusalem violate the right to adequate housing enshrined in several bodies of international human rights law. Specifically, the human right to adequate housing is contained, inter alia, in the Universal Declaration of Human Rights of 1948 (Art. 25(1)); the International Covenant on Economic, Social and Cultural Rights of 1966 (Art. 11); the International Covenant on Civil and Political Rights of 1966 (Art. 17); the International Convention on the Elimination of All Forms of Racial Discrimination of 1969 (Art. 5(e)(iii)); the Convention on the Rights of the Child of 1990 (Arts. 16, 27); and General Comments 4 (1991) and 7 (1997) of the UN Committee on Economic, Social and Cultural Rights. Additionally, Israel, as the occupying power, is obligated to protect the homes of the protected persons (Palestinians) under international humanitarian law (namely the Hague Regulations and the Fourth Geneva Convention).

According to this legal framework, Israel is obligated not only to ensure that Palestinian East Jerusalemites are guaranteed access to legal, affordable, safe housing, but also to focus on their needs in particular, as they are disadvantaged politically, economically and socially whether examined under Israel's obligations under



Silwan, East Jerusalem © Ben Guss

international human rights law or international humanitarian law. Instead, the multitude of policies and practices applied in East Jerusalem result in a dearth of legally available, affordable, and accessible housing for the Palestinian population.

A Process of Ethnic Displacement

Second, institutionalized policies designed to alter the ethnic, religious or racial composition

of an affected population – here Palestinian East Jerusalemites – have led to a situation in which many members of that population leave the area not necessarily by choice but based on lack of alternative, or in other words, because they are obliged to leave.

This situation has spurred the start of a process of ethnic displacement of Palestinians from East Jerusalem, which constitutes a violation of international human rights law and international



Sheikh Jarah, East Jerusalem © Activestills

humanitarian law. Israel's policies also create a situation not only of obliged displacement but also of de facto forced deportation, which may rise to the level of a war crime. In cases in which Palestinians have been physically deported out of the city or refused reentry, Israel has indeed committed the war crime of forced deportation. Additionally, Israel's policies and practices in East Jerusalem may constitute "inhuman acts" under the Article 7(1)(d) of the Rome Statute of the International Criminal Court, as well as a violation of the UN Convention on the Suppression and Punishment of the Crime of Apartheid of 1973. Third, the policies and practices applied to

East Jerusalem leave many Palestinians with little choice but to either remain in the area, build illegally and risk demolition of their homes and displacement, or leave the area and risk losing their residency rights – and in most cases their right to return to Israel (and East Jerusalem). This places many Palestinians at risk of becoming stateless (or "residency-less", as many already lack citizenship in any state). The basic right to nationality is enshrined in international human rights law (including the Universal Declaration of Human Rights, the International Convention on Civil and Political Rights, and the Convention on the

Reduction of Statelessness), and it includes the right to non-discrimination in acquiring and maintaining nationality as expressed in Article 5 of the Convention on the Elimination of All Forms of Racial Discrimination.

Even in cases in which a Palestinian former East Jerusalem resident has not been rendered stateless (or "residency-less") by her/his exclusion from Israel (as s/he has successfully obtained residency or citizenship elsewhere), s/he has been barred from returning to her/his place of habitual residence – and in most cases, her/his homeland. This situation constitutes both a violation of the right to return to one's home under universal human rights law provisions, as well as the specific rights of members of indigenous groups. Additionally, Palestinian East Jerusalemites' inability to access, travel between and live in any part of the occupied territory (East Jerusalem, the West Bank and the Gaza Strip) violates several basic provisions of international humanitarian law.

Violation of the Right to Development

Fourth, Israel is obligated under international human rights law to create and maintain conditions for Palestinians' realization of their rights to self-determination, participation without discrimination in public affairs, and the collective ability of groups to develop and advance their respective communities economically, socially, culturally and politically, according to their needs. Additionally, Israel's obligations under international humanitarian law are relevant here, as the occupying power has a duty to maintain public order and safety in the occupied territory, which it cannot be said to uphold when the lack of development either for or by Palestinians in East Jerusalem leads to housing shortages, displacement, and more.

Destruction of Property

Finally, the very act of home demolition in occupied territory often constitutes a violation of international humanitarian law, and even a war crime. Property destruction – absent military justification – is a clear violation of Article 23(g) of the Hague Regulations and Article 53 of the Fourth Geneva Convention, among other sources of international humanitarian law. It is safe to say that the majority of administrative demolitions conducted in East Jerusalem that the Jerusalem Municipality defends as enforcement of building and planning laws in fact are not justified, as they are not based on laws that conform with Israel's duties and rights under international humanitarian law and cannot be considered military necessity, and thus constitute illegal property destruction. That said, there will be exceptions to this rule that fall under the fulfillment of Israel's duties toward the Palestinians as the protected persons, and thus it cannot be said that the practice of administrative home demolitions in East Jerusalem is per se illegal. Nonetheless, in a large percentage of cases Israel is in violation of international humanitarian law, and due to the large scale of the violation, it may well constitute a grave breach of international humanitarian law and even a war crime.

Conclusion

In sum, Israel is bound by both international human rights law and international humanitarian law, and the set of laws, policies and practices it applies to Palestinians in East Jerusalem render it in violation of several major provisions of international law that together form the new normative framework presented in this report. Israel must remedy these violations in order to fulfill its obligations as a law-abiding nation, and in order to pave the way for a viable, peaceful and just resolution to the Israeli-Palestinian conflict

East Jerusalem in Numbers

Association for Civil Rights in Israel, Human Rights in East Jerusalem: Facts and Figures, 41 (May 2010).

Residents 303,429



Education

50% School dropout rate



[2008 data]



children under the poverty line

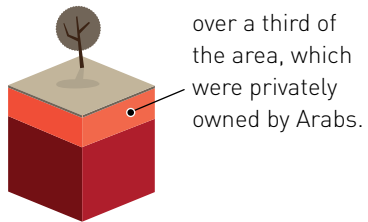
- 74.4% of the Arab children
- 45.1% of the Jewish children

Families under the poverty line

- 65.1% of the Arab families
- 30.8% of the Jewish families

Expropriated land

Since annexing East Jerusalem, the Israeli government has expropriated **24,500 dunams**



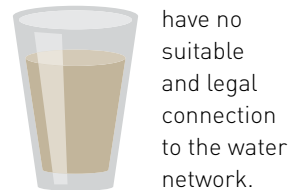
Construction

By the end of 2007 **50,197 housing units** had been built on the expropriated land, of which **NONE** for the Palestinian population



Infrastructure

160,000 Palestinian residents



50 km of main sewage lines are lacking

Home demolitions

In East Jerusalem, in the year 2009



Postal Service

8 post offices in East Jerusalem

42 post offices in West Jerusalem.

Allowable Building Percentages

ICAHD, Destructive, supra note 29, at 19.

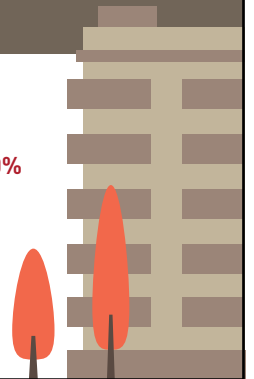
Palestinian Neighborhoods

- Beit Hanina **50-75%**
- Beit Safafa **50%**
- Jabal Mukaber **50%**
- Issawiyeh **70%**
- Shu'fat **75%**

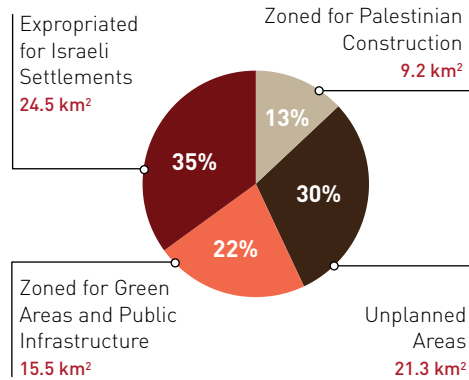


Jewish Neighborhoods

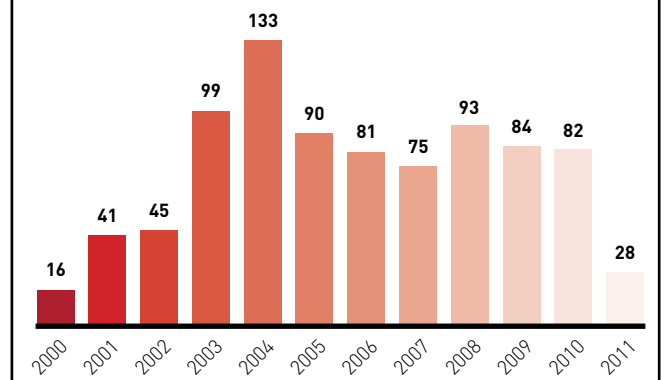
- Neve Yakov **90%** / Pisgat Zeev **90-120%**
- Gilo **75%**
- Armon Hanaziv **75-90%**
- French Hill **70%**
- Ramat Shlomo **90-120%**



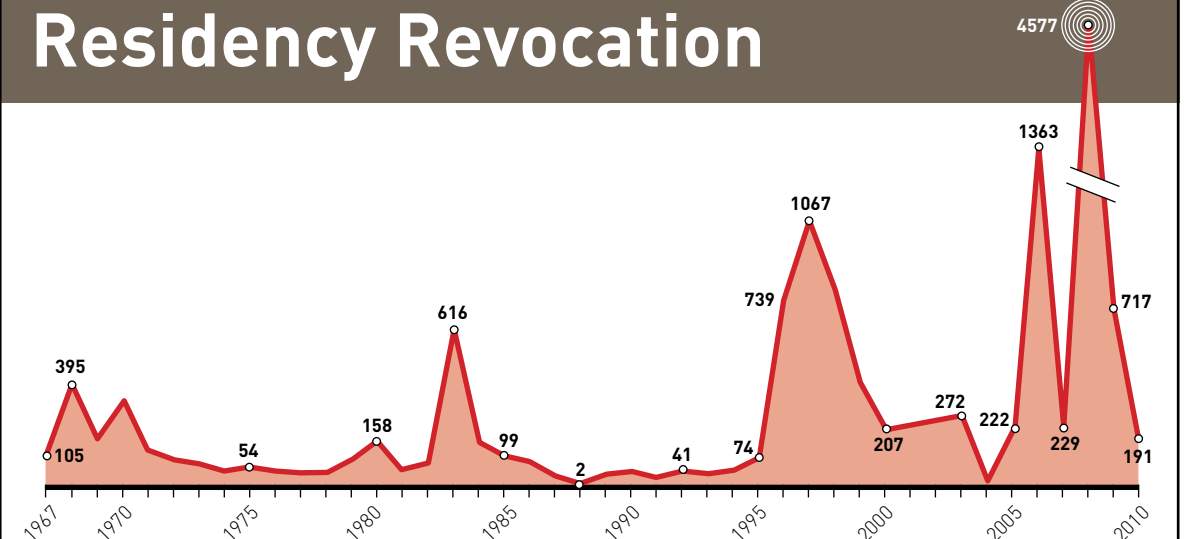
Zoning



Demolitions



Residency Revocation



Normative Framework

INTERNATIONAL LAW

▲ **International Human Rights Law** (individual and collective rights in all spheres of life, and responsibility of states to ensure them)

▲ **International Humanitarian Law** (laws relating to armed conflict and occupation)

VIOLATING OF THE RIGHT TO ADEQUATE HOUSING

Through its lack of appropriate planning, building and permit policies and discriminatory home demolitions, Israel violates its obligations under international human rights law to ensure that Palestinians in East Jerusalem are guaranteed access to legal, affordable, safe housing. Israel is further obligated under international humanitarian law to ensure safety and order and find an appropriate housing solution for Palestinian residents living under its occupation in East Jerusalem.

PROCESS OF ETHNIC DISPLACEMENT

The demographic policy applied to East Jerusalem explicitly aims to alter the ethnic composition of the city of Jerusalem and is a motivating factor behind the imposition of discriminatory laws, policies and practices on the Palestinian population. The result is a process of ethnic displacement through creating a situation in which leaving is not by choice but based on lack of alternative, and rendering the displacement unlawfully obliged, according to both international human rights law and international humanitarian law.

VIOLATION OF THE RIGHT TO A NATIONALITY

Under international humanitarian law and human rights law, the permanent residency status held by Palestinian East Jerusalemites must not be revocable or conditioned on presence.

According to international humanitarian law, Israel has no legal authority to bar Palestinians from moving around within the OPT, nor may it deny them reentry. Under international human rights law, Palestinians must have the right to return to East Jerusalem because it is their “country” of origin.

RIGHT TO DEVELOPMENT, CULTURE AND COMMUNITY

The right to development is rooted in international human rights law that recognizes self-determination and obligates states to create conditions for participation without discrimination in public affairs, and the collective ability of groups to develop and advance according to their needs. Israel’s policies and practices toward the Palestinian community in East Jerusalem stifle development and do not meet the requirements of safety and order, including in building, housing and development, imposed by international humanitarian law.

HOME DEMOLITIONS AS PER SE ILLEGAL

The majority of house demolitions in East Jerusalem are carried out based on laws and policies that do not conform with international law and without military necessity, and thus constitute illegal property destruction under international humanitarian law. Due to the large scale of the violation, it may well constitute a grave breach of international humanitarian law and even a war crime.

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The Israeli Committee Against House Demolitions (ICAHD) is a human rights and peace organization established in 1997 to end Israel's Occupation over the Palestinians. ICAHD takes as its main focus, as its vehicle for resistance, Israel's policy of demolishing Palestinian homes in the Occupied Palestinian Territory and within Israel proper.