

The Right to the City: Jerusalem

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The context of conquest, demographic transformation and segregation makes realizing the “right to the city” a distant prospect in Jerusalem. However, notable Palestinian and Israeli parties still strive to promote and operationalize right to the city (R2C) values. As in previous centuries, Jerusalem also constitutes a focus and occasional staging area for resistance to occupation, continuous displacement and colonization. However, these daunting historical, political, institutional and military characteristics of Jerusalem also make urgent the application of R2C concepts for their transformative and problem-solving effects. In order for the residents to achieve well-being in the city, as well as for the wider states of Israel and/or Palestine to meet their domestic and international legal obligations, this study analyses the legal, institutional and civic features of Jerusalem within the framework of the right to the city principles. The presentation of the anatomy of this unique city concludes with an assessment of strategic entry points and possibilities for integrating the right to the city in a shared capital, as officially foreseen as an outcome of the sporadic negotiation processes at the diplomatic level, or any civil future.

Historic Introduction to Jerusalem: From Sanctuary to Segregation

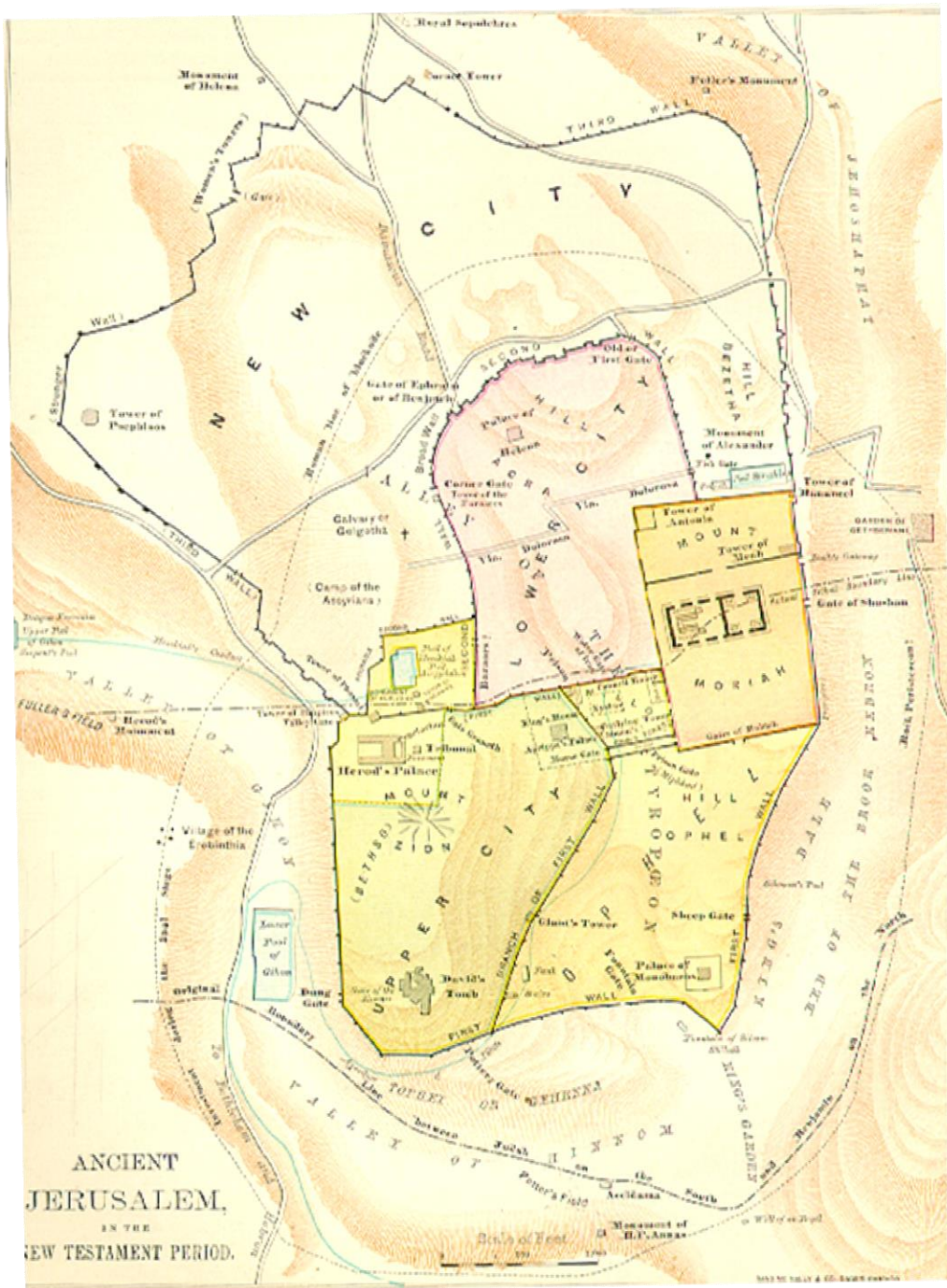
Located on a plateau in the inland hills between the Mediterranean and the Dead Sea, Jerusalem is one of the oldest continuously inhabited cities in the world. During its long history, Jerusalem has been destroyed twice, besieged 23 times, attacked 52 times, and captured and recaptured 44 times (Cline).

Today, it is considered holy to the three major Abrahamic religions—Judaism, Christianity and Islam.¹ Amid countless other sanctuaries in the region, the place named Ūrū Shalīm in the Sumer language arose in historic Canaan as a historic house of deities. Amorite priests founded the village,² and the Jebusites maintained and developed it. Later stories of the reign of King David (1007–967 B.C.) have dominated recorded memory of Jerusalem internationally, if not the indigenous historical narrative.³

Following long agricultural and commercial marginalization, Jerusalem became significant with the arriving migrants displaced in the Assyrian conquest of Galilee in the 8th Century B.C. With its 7th Century B.C. integration into the Assyrian Empire, Jerusalem suddenly grew 15 times its size into a 15,000-population covering 60 acres. Seventeen generations after the legendary King David, King Josiah reportedly banned all worship except for that at the Hebrew Temple of Jerusalem, and monotheism took root in the western Fertile Crescent, as it earlier had done in the Zoroastrian east. Ever since, the city’s religious identities have come to dominate definitions of its demographic space, amid repeated cycles of occupation (Finkelstein and Silberberg, 239–40).

Babylon’s conquest of ancient Palestine and a war with Egypt culminated in the 586 B.C.E. destruction of Jerusalem, its religious, royal and municipal structures, the

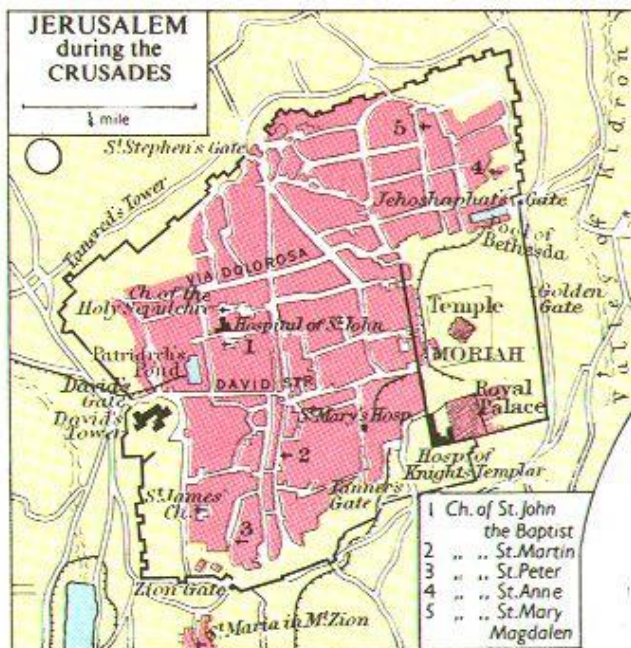
capture of some thousands of elites and artisans.⁴ The Neo-Assyrian conquerors reportedly left internecine chaos and only the most-impooverished inhabitants behind. Those events also re-establishing the myth of Jerusalem and its surroundings as an empty land (or, rather, political vacuum) suitable for colonization (Carroll, 79–93; Barstad, 28).



In the same century, Cyprus the Great decreed the first human right of return for those whom the Neo-Assyrians forcibly had displaced. His successor, Darius I, also contributed to the city's reconstruction.

With subsequent conversions to Judaism, Christianity and Islam, the faithful of the region and beyond attributed exalted status to the city, not least as an object of control for competing religious communities. Byzantine control gave way to prosperity as an urban center under Greek and Roman reigns. Its prominence rose especially after Christianity became the Roman Empire's official religion in 325 A.D. and the Church of the Holy Sepulcher was established. Jerusalem also prospered after the advent of Islam in 636 AD, especially after `Abd ul`-Malik bin Marwān and his son, al-Walīd, constructed al-Aqsa Mosque at the end of the 7th Century.

Serial European Crusader invasions met Muslim resistance and ultimate liberation under Salah al-Dīn al-Ayūbī al-Kurdī. Jerusalem's indigenous social and physical character today still reflects the legacy of its Arabized liberators; however, many international parties have constructed institutions of worship that have both contributed to, and diversified Jerusalem's essentially Palestinian-Arab character.



The Ayubbid Dynasty ruled the city until 1229, when it came under yet another brief Christian rule, when Germany's Frederick II held Jerusalem until 1244. In 1260, the city came under Egyptian Mamluk rule until the last day of 1516, when Turkish Ottoman Sultan Salim I conquered the city. The Ottomans, especially Suleiman the Magnificent, developed the city further, reconstructing the city's gated walls, and modernizing the underground water system with public water sources (*sabils*). To stress the importance of Jerusalem and the surrounding areas, Jerusalem became the second city, after Istanbul, to undergo municipal reforms and, in 1847, the Ottomans transformed Jerusalem into the center of a special *sanjaq*, or administrative district, belonging to the Ottoman sultan.

Prior to 1850, Jerusalem's housing and population had been confined within the Old City walls. However, with the decline of Ottoman rule, the city resumed its status as an "international" city. By the end of the 19th Century, nine foreign consulates operated in Jerusalem, including those of the British, French, Russians, Spanish and the USA. When Palestine came under the British Mandate in 1917, the occupiers announced

Jerusalem as the capital of Palestine, where they established the central departments of the Mandate Administration.

Ottoman and subsequent British occupations deeply transformed Jerusalem's spatial, institutional and legal features. However, the more-recent occupation by Israeli forces in two stages, in 1948 and 1967, has further transformed the city in ways profoundly altering demographics, culture, economy, governance, infrastructure and the built environment. Israel's acquisition of West Jerusalem by force in 1948 passed without any international challenge outside of the region, despite its illegality and the formal recognition of Jerusalem as an international zone (*corpus separatum*)⁵ (UNGA: 1947).

That invasion depopulated 39 Palestinian Arab communities of the Jerusalem area, dispossessing and expelling 97,949 of the indigenous people, confiscating 272,735 dunams of Jerusalemite Palestinians' land and untold properties and contents of Palestinian Jerusalemite family home (Tamari). This violent process of population transfer is commemorated as the Palestinian *Nakba* (catastrophe), which involved the expulsion and flight of some 780,000 (83%) of Palestine's indigenous inhabitants and Israel's destruction of over 500 depopulated villages that continued after the 1949 Armistice (HIC-HLRN: 2010).

Jordanian Hashemite rule after the *Nakba* made Jerusalem the second capital of Jordan in 1959. However, the 1967 War between Israel and Arab states involved Israel's further military invasion and occupation of East Jerusalem, causing the further uprooting of some 400,000 Palestinian inhabitants of Jerusalem and its West Bank hinterland,⁶ in addition to the refugees from the 1948 population transfer. Israeli destruction and confiscation of entire neighborhoods of the Old City directly after the 1967 War saw the demolition of homes and the forced eviction of approximately 5,000 Palestinians in order to create space for a new and expanded Jewish Quarter. This included the destruction of 125 Palestinian homes in the Mughrabi Quarter to make way for a plaza for Jewish prayer next to the Western Wall (foundation of the Noble Sanctuary, comprised of al-Aqsa Mosque and the Dome of the Rock). Many of the Jerusalem Palestinian inhabitants dispossessed and expelled from the Mughrabi Quarter in 1967 currently reside in the Shu'fāt Refugee Camp and in the northeastern parts of the city.



Hours after conquering East Jerusalem in the 1967 war, Israeli authorities demolished the Arab Mughrabi neighborhood in the shadow of the Western Wall. Photo: Getty Images.

After Israel conquered East Jerusalem in the 1967 War, its formal annexation of East Jerusalem in 1981 was deemed null and void under international law. (UNSC: 1980). Since then, Israel has striven to transform Jerusalem into a demographically Jewish city by applying its domestic laws and institutions privileging legal and natural persons holding “Jewish national” status, at the material expense and disadvantage of the indigenous Palestinian Jerusalemites. Municipal governance processes pursue a four-part demographic-manipulation policy of (1) confiscating and destroying Palestinian property and (2) forbidding Palestinian construction and development, (3) denying Palestinians residence in their self-acclaimed capital and (4) constructing and expanding Israeli-Jewish settler colonies on Palestinian public and private property.

Israeli authorities have built at least 17 settler colonies on the confiscated properties and occupied lands of Palestinian Jerusalem and its surrounding villages, including those depopulated and demolished in the context of war and/or incrementally demolished subsequently. These lands and properties are now incorporated into an ever-expanding zone under the occupying Power’s acclaimed Jerusalem Municipality jurisdiction. 80% of today’s occupied Jerusalem municipal zone was not part of the city before 1967, but rather parts of Bethlehem and 28 other West Bank towns and villages.

Israel’s policy of systematic and material discrimination against the Palestinian population has manifested in Jerusalem through the four-pronged policy of land expropriation, discriminatory planning criteria, prohibitive building laws and permissiveness toward Israel settlers. Like *apartheid* South Africa, Israeli occupation maintains a severe pass system, curtailing Palestinian movement into or out of the city. Jerusalemite Palestinians were accorded the legal status of “permanent residents” and

are subjugated to discriminatory laws, taxes and differentiated rights. Moreover, every year, Israel authorities revoke the resident status of hundreds of Palestinians in Jerusalem, reflecting a common tactic used to drive Palestinians out of their capital. However, unlike the foregone South African counterpart, the process in Jerusalem has involved waves of cross-border expulsion of the indigenous population, relying instead on immigrating Jewish and other foreign labor.

Palestinians officially demand that Jerusalem be shared, with the eastern portion of the city occupied by Israel in 1967 as the capital of their independent state. The official position of some Western governments supports dividing the city (although not necessarily along the lines that Palestinians prefer) and has predicated any eventual peace agreement on such an outcome. International law considers Jerusalem to remain an international zone (*corpus separatum*).⁷ (UNGA: 1947). Indeed, the much-contested “two-state solution” to the seemingly intractable Palestine question envisages an Israeli Jerusalem (Yerūshalayim) that would function as Israel’s capital, and a Palestinian capital of al-Quds (meaning, “the sacred”), contiguous with and integrally linked to development and service-delivery systems through a common development authority.

Human Rights and State Obligations

Jerusalem is currently claimed by two internationally recognized states as their capital: Israel, as a borderless entity that Jewish settlers proclaimed in 1948, and the State of Palestine, promised under British and UN responsibility and which the Palestine National Council declared on 15 November 1988, and since gained recognized as the 194th state within the UN System as of 2010.

However, Palestine does not have sovereignty in the exercise of self-determination in its territory. The State of Palestine is not yet party to any human rights treaties, whereas the occupying Power assumes effective control over land, territory and natural resources. As a sovereign state in the international system, Israel is a ratifying party to most of the international human rights treaties (see ANNEXES I and II).

Constitutional Provisions and Domestic Law

Israel has no formal Constitution. Despite Israel’s proclamation of independence committing a Constituent Assembly to prepare a constitution by 1 October 1948, the 1948 Harari Decision adopted during the Israeli Constituent Assembly determined instead that the State of Israel would instead enact a series of Basic Laws⁸ (Rozin, 251).

The Israeli legal system provides no clear rule determining the precedence of Basic Laws over regular legislation, and in many cases this issue is left to the interpretation of the judicial system. To date, Israel has enacted fourteen Basic Laws dealing with the government arrangements and fundamental rights and freedoms. The 1992 Basic Law: Human Dignity and Liberty declares that basic human rights in Israel are based on the recognition of the value of man, the sanctity of his life and the fact that he is free. It defines human freedom as right to leave and enter the country, privacy (including speech, writings, and notes), intimacy, and protection from unlawful searches of one’s

person or property. This law includes instruction regarding its own permanence and protection from changes by means of emergency regulations. However, neither this acclaimed pillar of the human rights regime, nor any other legislation in Israel prohibits discrimination.

Warfare and Lawfare

In 1948, Zionist colonial forces, with support from the World Zionist Organization/Jewish Agency for the Land of Israel (WZO/JA), conquered most of western Jerusalem, which the emerging State of Israel incorporated into its territory, driving out the majority of the indigenous Palestinian population there and in the Jerusalem's westward villages. Remnants of those communities took refuge in eastern Jerusalem, elsewhere in refugee camps or settled in and around Arab towns in Palestine's West Bank, or inside Israel. The new military and civilian state institutions proceeded to appropriate the lands, properties and possessions of the refugees, utilizing the parastatal WZO/JA and Jewish National Fund (JNF) to administer and/or redistribute these material gains according to their charters to serve people of "Jewish race or descendancy" (JNF, §3C).

Already in January 1949, the new Government of Israel (GoI) had signed over one million dunams⁹ of land acquired during the conquest to the JNF to be held in perpetuity for "the Jewish people." In October 1950, the state similarly transferred another 1.2 million dunams to the JNF¹⁰ (Granott, 107–11). The best estimate for the scope of titled lands that Israel acquired only from Jerusalem refugees during the military operations was 270,681 dunams (27 hectares) (UNCCP, 2) with properties having a net annual revenue of P£349,393 (at 1944/45 rates) (ibid). A JNF spokesman explained in 1951 that the transfer to JNF title "will redeem the lands and will turn them over to the Jewish people—to the *people* and not the *state*, which in the current composition of population cannot be an adequate guarantor of Jewish ownership" (JNF: 1951, 32–33 emphasis in original).

Nationality, Citizenship and Israel's "Development" Organizations

The State of Israel maintains a unique system of dual-tiered civil status, which conveys the privileged status of "Jewish national and citizen" to its Jewish population and denies civil status or conveys inferior status to Palestinian citizens and residents within pre-1967 Israel and – due to the 1967 annexation and extension of Israeli law– also to Palestinians in occupied East Jerusalem. Under the 1952 Israeli Citizenship Law, that system provides "Israeli citizenship" based on four criteria: "return" (reserved for Jewish immigrants), residency (for Palestinians who remained in the country after Israeli's establishment in 1948), birth and naturalization (of non-Jewish immigrants and relatives of Israeli citizens). The Law annuls the citizenship held by Palestinians during the British Mandate and excludes all 1948 Palestinian refugees from civil status in Israel, making them stateless, thereby violating the customary rules of state succession. The 1952 law and a new law adopted in 2002 also prohibit naturalization and residency in Israel for persons from Arab and other neighboring nationalities categorized as "enemy countries, including Palestinians from outside Israel and the annexed Jerusalem" (LCEI). Finally, the status of "citizen" alone does not ensure equal treatment and, in fact, forecloses a

bundle of economic, social and cultural rights that are for others claiming “Jewish nationality,” wherever they may live.

That is, Israeli law establishes and maintains a civil status superior to Israeli citizenship, classified as “Jewish nationality,” applicable in all aspects of life related to housing, land and economic life. That superior “Jewish national” status, available by way of descent from a Jewish mother or highly restricted conversion to the Jewish faith, entitles eligible persons to claim “Jewish nationality” and enter areas controlled by Israel, including all of Jerusalem, to claim rights and privileges over the indigenous Palestinians. They are explicitly foreclosed as non-Jews, whether citizens or not, Palestinian IDPs and refugees—indeed, the entire indigenous people—of historic Palestine.

The Israeli High Court has affirmed this fact of institutionalized discrimination on grounds of both legal judgment and state ideology. In the case of *Tamarin v. Ministry of Interior* (1970), a petitioner sought to register his nationality as “Israeli,” rather than “Jewish.” The Court ruled: “there is no Israeli nation separate from the Jewish nation...composed not only of those residing in Israel but also of Diaspora Jewry.” The President of the Court Justice Shimon Agranat explained that acknowledging a uniform Israeli nationality “would negate the very foundation upon which the State of Israel was formed” (HCJ: 1970).

The High Court decided on a more-recent legal challenge involving 38 petitioners before the courts since 2004. Finally, on 6 October 2013, the Court rejected the petition led by Uzi Ornan (90) after lengthy procedures that deferred and delayed a ruling on that petition for the State of Israel to recognize a common “Israeli nationality” (Cook: 2010 and 2013; Goral, Neiman; Orman; White). In response to the Supreme Court ruling, the lead petitioner commented that “Only the Jewish majority has been awarded national rights, meaning that Palestinian citizens face institutionalized discrimination.” Ornan added: “It tells the country's Arab citizens that they have no real recognition in their own country - that they will always be treated as foreigners and they will always face discrimination”(Cook: 2010).¹¹

The Ornan case dramatizes an essential aspect of the Israeli state’s segregation of rights. However, many Palestinian citizens of Israel do not welcome a struggle for a uniform “Israeli” nationality that supplants or negates their inherent own. Like failed conflict-resolution attempts, the invitation to the victim to shed her/his primordial and indigenous affiliation, is tantamount to nihilism. While citizenship rights and responsibilities theoretically must be uniform within the territorial state, the discrimination instituted on any other criterion delegitimizes the discriminating state in light of the UN Charter.

Israeli established a legal criterion of “Jewish nationality”; that is, belonging to a Jewish “nation” (*le’om yahūdī*). This concept is enshrined in the charters of mentioned Israeli state agencies, World Zionist Organization/Jewish Agency for the Land of Israel (WZO/JA), Jewish National Fund (JNF) and their subsidiaries, which were established for the purpose of colonizing Palestine. (The JNF charter also applies the terms “Jewish

religion, *race* or origin/descendancy” [emphasis added]) (JNF: 1953, §3C) Today, these parastatal organizations form the development superstructure of the state, assuming authority for many decisions involving land use, housing and “national” projects. The alienation of these organizations from the people they affect is cavernous.

While these parastatal institutions are organically part of the State of Israel today, as affirmed in its Status Law (1952) and Covenant with the Zionist Executive (1953, amended 1976), they claim to possess and manage 93% of all lands in Israel and Jerusalem (not counting direct and indirect holdings in the other occupied Palestinian territories). Their parochial charters also provide the fundamental principles referenced in much of Israeli legislation related to land use, housing, immigration and development. The Basic Law: Law of Return (1950), for example, establishes immigration for Jews as a “nationality” right not provided in the 1952 Law of Citizenship (*ezrahūt*), and effectively excludes as a class the indigenous refugees of Palestine dispossessed since 1947, including those expelled from Jerusalem, as well as all non-Jews.

The Israel Lands Law (“The People’s Land”) (1960) establishes that lands will be managed, distributed and developed in accord with the principles of the JNF and its discriminatory charter. The Israel Land Administration, also established in 1960, rested on four “cornerstones”: Basic Law: Israel Lands (1960), Lands Law (1960), the Israel Land Administration Law (1960), and the Covenant between the State of Israel and the Zionist Executive (World Zionist Organization/Jewish Agency and Jewish National Fund). The Israel Land Council (ILC) determines ILA policy, with the Vice Prime Minister, Minister of Industry, Trade, Labor and Communications as its chairman, while the 22-member Council is comprised of 12 government ministry representatives and ten representing the JNF and its conditions of Jewish-only beneficiaries.

Recent legislation in the form of the Israel Lands Authority Law, Amendment 7 (2009) and a 2010 amendment of the British Mandate-era Land Ordinance (Acquisition for Public Purposes) (1943) introduced tactical adjustments to the land tenure system in Israel during the period of this review. The 2009 amendment authorizes more powers to the JNF in its special status and role in land management. It also establishes the Israel Lands Authority (ILA) (no longer “Israel Lands Administration”) with increased powers, provides for the granting of private ownership of lands, and sets approval criteria for the transfer of state lands and Development Authority lands to the JNF.

The 2010 amendment “makes sure” that lands expropriated for “public use” do not “revert” to original owners and now can be transferred to a third party (likely the JNF). The 2010 legislation also circumvents the Israeli Supreme Court’s precedent-setting judgment in the 2001 Karsik case (Karsik), which obliged authorities to return appropriated land to its former owners in the event it has not been used for the purpose for which it was taken.

According to the amendments, the JNF will continue to hold large representation in the Israel Lands Authority with six of 13 members (which also can function with just ten members). That ensures JNF’s continued key role ensuring discrimination against

indigenous Palestinians in the development of policies and programs affecting 93% of lands in Israel.

These recent amendments allow the state and the JNF to exchange lands, in order to facilitate “development” through the privatization of lands owned by the JNF in urban areas. Such a swap would have the state receive JNF-acquired land in urban areas that could be privatized, while the JNF would receive 50–60,000 dunams of land in the Galilee and the Naqab, where the indigenous population of Palestinian citizens of Israel remain most concentrated.

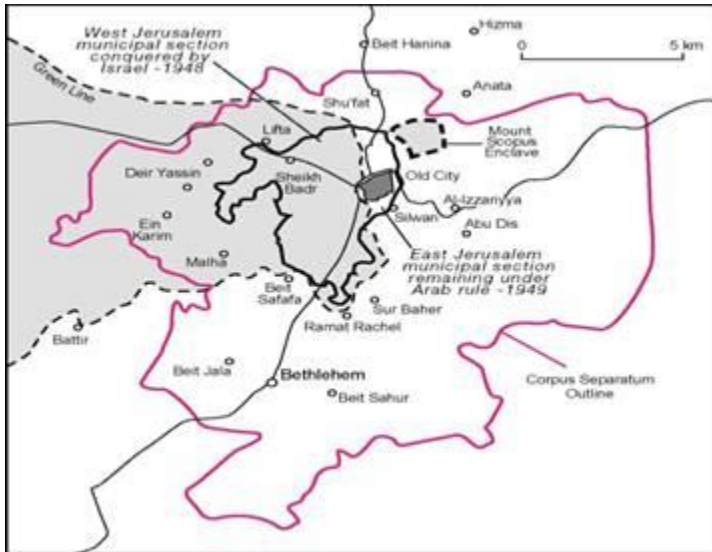
As in the past, the JNF agrees that the new Israel Land Authority (ILA) would manage its lands, whereas ILA is committed to do so consistent with “the principles of the JNF in regards to its lands” (Article 2). However, the 2009–10 amendments enable further circumvention of legal oversight and legislate against the equality in land use rights. As the JNF’s charter excludes non-Jews from benefiting from its land or services, any such transfer of public land to the JNF prevents citizens’ equal access to land. In other words, the state will be able more readily to “judaize” more land and discriminate against its non-Jewish citizens in Jerusalem—and elsewhere—by transferring these lands to the JNF.

The new 2010 law appears to prevent—or severely impede—Palestinian citizens of Israel from ever reclaiming their confiscated land. It forecloses such a citizen’s right to demand the return of the confiscated land in the event it has not been used for the public purpose for which it was originally confiscated, if that ownership has been transferred to a third party, or if more than 25 years have passed since its confiscation. Well over 25 years have passed since the confiscation of the vast majority of Palestinian lands and properties, including those in Jerusalem. Meanwhile the ownership of large tracts of land has been transferred to third parties, including Zionist institutions such as the JNF.

The ILA rationalizes its policy of restricting bids for JNF-owned lands to Jews only by citing the domestic Covenant with the state and the JNF (1961).¹² Under that agreement incorporated into law, the ILA is obliged to respect the objectives of the JNF, which include the acquisition of land “for the purpose of settling Jews” (JNF: 1953, §3(1)). Thus, JNF serves as the state’s subcontractor for discrimination based on a constructed “Jewish nationality” status, as enshrined in the JNF charter, and not Israeli citizenship.

This legal and institutional framework ensures that housing, land, immigration and development rights and values are exclusively for “Jewish nationals” to enjoy (Forman and Kedar, 809–30). Most indigenous inhabitants of Israeli-controlled areas are not Jewish, including East Jerusalem.

The same state-linked agencies of WZO/JA and JNF, the sources of the concept and administrative expression of “Jewish nationality,” also operate as tax-exempt organizations in some 50 other countries as “charitable organizations” also to recruit



UN Plan for Jerusalem as a *corpus separatum*, 1947, and Israeli conquest of West Jerusalem.

persons of Jewish faith and/or their (consequently tax-exempt) financial contributions to carry out development on behalf of Jewish settlers (JAFI).

Despite the obvious analogies, the forms of discrimination in Israel are distinct from those known in other places and times, as in apartheid South Africa or the “scientific racism” of the late 19th Century (Barkan). South African apartheid had established civil inequality through a crucial piece of legislation: the Population Registry Act, which some authors have referred to as the system’s lynchpin (Dugard). That single law established a hierarchy of status on the basis of skin

color, and imposed the separation of communities accordingly. Human rights, services and privileges in Israel are granted or denied not on the basis of a single legislative act or a single physiological feature, but rather through a series of laws and institutions dedicated to the exclusive benefit of those eligible for “Jewish nationality,” regardless of whether or not those putative beneficiaries are actually citizens of the State of Israel.

Jerusalem: Territory and Demographics

After Israel occupied East Jerusalem in 1967, it never “legally” annexed the conquered territory, but rather extended the city’s municipal boundaries to include 70 km² of Palestine’s West Bank (comprising 6 km² of East Jerusalem’s municipal boundary from 1948 to 1967, plus an additional 64 km² of West Bank territory). The Israeli parliament (Knesset) then adopted the affirming legislation¹³ (Lustick, 200–15) that authorized application of Israeli law in these areas, despite prohibitions under international law governing occupation (Hague, §43).

The Israeli government expanded Jerusalem’s municipal boundaries for two purposes: The territorial purpose compelled incorporation of the Old City and adjacent Jewish historical sites into Israel, establishing borders that facilitated the city’s defenses at the country’s extreme eastern frontier and complicated a future division of the city. The second goal was demographic, facilitating the implantation of settlers around the city to achieve a solid Jewish majority and administratively minimizing the indigenous population within Jerusalem’s expanded boundaries.

For many Israelis, the enlarged borders of municipal Jerusalem, including the ancient center and the Palestinian/Jordanian city, plus an additional 28 Arab Palestinian villages, has been ideologically associated with the Holy City’s sacred-pedigree character, overlooking other values and indigenous residents’ interests. The “unification” of Jerusalem in both spatial and epic terms is perceived in official Israel as an eternal revival of a primordial pedigree and, therefore, “right.”

Amid the aspiring Jewish state's claims of Jewish ascendancy, the city is currently home to a variety of faiths and ethnicities, represented by its residents. Of the total 804,000 inhabitants in 2011, the demographic composition showed the following disaggregation, without distinction by “citizenship” status:

- 499,400 Jewish (i.e., “*le’om yehūdī*” nationals)
- 296,000 Arab Palestinians (of various enforced distinctions)
 - 281,100 Muslim
 - 14,700 Christian
 - 200 Druze
- 9,000 unclassified (Fiske).

The Israeli occupation authorities never obliged the indigenous Palestinians of East Jerusalem to adopt Israeli citizenship and, instead, offered them the choice between citizenship and “permanent residency,” a status that confers certain rights, including to social security and voting in municipal—but not “national”—elections. This semi-privileged status accompanies obligations to pay municipal tax (*arnona*, in Hebrew).¹⁴ The majority has refused to become Israeli citizens; in the past ten years, fewer than 7,000 have applied (ICG: 2012b, 21).

At the same time, the demographic reality has not met the occupation authority planners’ targets. After Israeli planners expanded the municipal boundaries in 1967, the Arab population was roughly a quarter of the city’s total. Since then, it has grown to about 36% (over 290,000). From 1967 to 2010 Jerusalem’s Jewish population grew by 155%, while the Arab population grew by 314% (Shragai, 5).

By 2010, a three-decade pattern of Jewish-Israeli population migration out of Jerusalem became the norm. The migration of adult Jewish residents in 2012 saw 7,300 people moving to the city (including 2,900 new immigrants), while 17,400 left (CBS, 2013b). This, together with the enforced urbanization of the Arab population and the Arab population’s natural growth rate in Jerusalem, has contributed to the decline of Jerusalem’s Jewish majority. This unexpected trend recently has compelled Jerusalem’s planning institutions to update the demographic objective and

“Right to the city”: a slogan and claim of urban social movements to guide policies to be more equitable and inclusive, as an alternative to current policies and planning practices that lead to segregation, privatization and inequitable distribution of public goods and services. Henri Lefebvre is generally attributed as having developed the notion of a “right to the city” in his book, *Le droit à la ville* (Paris: Anthropos, 1968). Currently, the “right to the city” argument rests on a bundle of existing human rights, in addition to specific claims of right to access land, water, sanitation, transport and public space, as well as the concept of the “social function” of land, housing and related infrastructure and public goods and services. The “right to the city” is elaborated in the draft “Charter on the Right to the City,” which developed out of the urban social movements in Latin America and spread through the World Social Forum.*

* For more information, refer to “The Right to the City,” at Habitat International Coalition, at: <http://www.hic-net.org/indepth.asp?PID=18>.

the population target in Jerusalem for the year 2020. Their reality check projected no longer 70% Jews and 30% Arabs, as the municipal government sought to maintain during the 1970s and 1980s. The readjusted policy officially now seeks a demographic “balance” of 60% Jews and 40% Arabs (of all faiths) (Shragai, 9).

Urban-development Indicators

In 2012, 23% of Jewish residents of Jerusalem fell below the poverty line, while 60–78% of non-Jews were classified as impoverished (Alyan, et al.). Jews make up 48% of the Jerusalem labor force, compared to 38% of Arabs (Choshen et al.). East Jerusalem’s drop-out rate waivers between 40% and 50%, but only at 6–7% in Jerusalem’s Jewish areas (ACRI: 2008, 2012).

These social indicators pose a series of challenges to the Jerusalem Municipality and Israeli government institutions. These range from the operation of unauthorized schools to serve unmet educational needs in East Jerusalem, to various black market activities among drop outs. High poverty levels and their consequences also manifest as greater demands on employment and social services, as well as political disaffection.

Municipal Governance

Israel’s overwhelming domination of Greater Jerusalem would suggest that the city’s urban planning and service delivery reflect a coherent and agreed municipal plan. While a broad Israeli consensus has sought the solid integration of the city’s East into the State of Israel, the municipal and central government public works have built some urban infrastructures with a long-term development vision. However, close observers have characterized the process as a scene of infighting, rivalries and competition among various political and bureaucrats who have rendered Israeli colonization policy more chaotic and internally contentious than is often imagined (Cidor).

In this mix, the Jerusalem Municipality is relatively weak, a characteristic that harkens back to the British Mandate, when local authorities confronted a city deeply riven between Arabs and Jews. The Municipality then eventually transferred power away from the mayor and the feckless municipal government to the British governor.

The Israeli Ministry of Interior eventually inherited those powers and, along with other Israeli central-government ministries, remains influential in many aspects related to the enjoyment of the city (Dumper, 46, 99.¹⁵) For example, the Israeli Interior Minister is authorized to remove mayors, determine municipalities’ zones of jurisdiction, and to approve their plans, including determination of the scope of their income and the distribution of land resources in them on a centralized statutory planning basis.

Joint ventures involving central government and municipality also form a channel for national authorities to exert influence over developments (Dumper, 101–02).¹⁶ This highly centralized grip on local developments renders the municipality without sufficient autonomy, while bearing the burden of delivering services to Jews and Arabs, east and west.

The Jerusalem City Council is comprised of 31 members. The mayor is elected, serves a 5-year term and is paid from municipal funds. His six mayor-appointed deputies are well paid (Cidor, 2007)¹⁷ However, the 24 elected council members serve on a volunteer basis. Religious Jewish political parties traditionally dominate the Council. Most of the Council meetings are held in secret, holding only one public meeting per month.

According to Israeli jurisprudence(HCJ 1988),¹⁸ the non-Jewish residents of East Jerusalem are considered as bearers of “licenses” for permanent residency, eligible to those who were counted in the population census of 1967. This status applies even to Palestinians who did not “enter” Israel, according to the language of the law; whereas Israel rather “entered” their communities and areas of residence. This imposed residency status actually forces Arab residents of East Jerusalem into a situation in which their right to continue living in their homes and to conduct normal life in the place of their birth and continuous residency subjects them to the constant threat of expulsion from the city.

Although it set out the four criteria for “citizenship” (*ezrahūt*) in Israel (birth, residence, marriage and immigration), the Law of Citizenship (1952) does not grant universal citizenship to the otherwise-qualifying residents of East Jerusalem. The law only theoretically allows individuals to receive citizenship under the four stated conditions; however, it does not apply generally to the residents of East Jerusalem. Under the Basic Law: The Knesset, Jerusalemite Palestinians do not have the fundamental civil right to vote or to be elected for central government institutions, including Israel’s parliament (Knesset, § 5, 6). They are not allowed to carry Israeli passports.¹⁹ They are entitled to vote and run in elections for the Jerusalem Municipality under the Local Authorities Law (Elections) (1965), but are statutorily ineligible to contest the position of Mayor LAL. An early proposal to incorporate the then-Jordanian administration’s Jerusalem Arab council members into the occupation city council eventually failed (‘Amirav, 104). In practice, most of the Palestinians of East Jerusalem boycott the municipal elections as an expression of their refusal to accept Israeli rule and an affirmation of their affinity with the indigenous Palestinian nationality. Moreover, Palestinian national leadership has rejected the option of Palestinians participating in the local Jerusalem elections (Klein: 2008, 134–136; Sasson, 34). One Arab citizen of Israel originally from inside the Green Line did run in the last Jerusalem City Council election (Prusher)²⁰ without success.²¹

However, even these local decisions and municipal bylaws are subject to centralized authorities such as the Israel Lands Administration, which is responsible for local government. The Interior Minister has the power to remove mayors, determine municipalities’ planning zones of the reach of municipal jurisdiction, approve municipal plans, including the determination of municipalities’ income and the distribution of land resources in them through centralized statutory planning. These undermine the right to the city in Israel. While, in Jerusalem, the situation is subject to even more layers of control by central governmental committees, such as “The Ministerial Committee on Jerusalem” and a Minister for Jerusalem Affairs, which contradict municipal attempts to

establish agencies and neighborhood committees that would enhance city dwellers' involvement in city management (Merhav and Giladi).

The combination of Israeli official actors in the City of Jerusalem, thus, has determined a development pattern that seeks to isolate and further dispossess Palestinians in advance of any peace agreement based on spatial sharing. By consequence, Jerusalem's Israeli population is also largely stripped of local decision making in many aspects of public life in the city of residence.

Planning and Development

Israeli planners have transformed Jerusalem over the decades since conquering the city in stages: the west side in 1948 and the east in 1967. Mostly, the changes have seen expansion of the municipal borders and the creation of Jewish neighborhoods expanding over its fringes in a four-leaf clover pattern. Significantly, too, is Israel's transformation of the city from the new state's easternmost urban extension, at the first rise of Palestine's Jabal al-Khalil and Jabal Nablus hills, to the center of a matrix of settler colonies that now extend over the whole of the West Bank.

In the inner ring of this matrix is the Israeli suburb of Mevaseret Zion, to the west, and three settlements extending into the West Bank: Givat Zeev, in the northeast, Maale Adumim, to the east, and Gush Etzion, on the southern edge, abutting Bethlehem. This area, known as Greater Jerusalem, is home to some 80% of all Israeli settlers.

Palestinians mostly recognize the existence of two cities in Jerusalem, separated by the cease-fire line of 1949. Alien West Jerusalem, located west of the line, with a total area of 53 km², next to East Jerusalem, located east of the line, with a total area of 70 km². Indigenous Jerusalemites consider their city the very material and spiritual heart of Palestinian city, and Palestinians—officially and popularly—consider Jerusalem as the capital of an emerging democratic state, alternative to Israel.

Planning legislation and procedures in Israel are based on the Planning and Building Law (1965), which came into force also in East Jerusalem following the 1967 War. The Israeli planning system itself is similar to a great many other planning systems in requiring a hierarchy of physical plans that public bodies are authorized to prepare and approve. Planning authorities require a building permit for any new construction, which is possible only if that construction arises from a participatory and representative planning process.

Official plans are developed at three scales: national, regional (district) and local. Local plans (also known as “outline” or “metropolitan” plans) normally follow district plans and precede development. The plans are spatially very precise and normally cover only existing or proposed urban areas. Such plans are the responsibility of the local (i.e., municipal) council, failing which, the Regional Council undertakes the planning, and all plans are subject to central government approval.

According to the 1965 law, building permits are needed for all new development, and must accord with the local plan. If no local plan exists, then the zone is covered by the regional plan. However, in practice, a regional plan is unlikely to sanction development that is not already the subject of a local plan. Where unpermitted development is identified, the owner may be required to obtain a permit, failing which either (a) the property may be demolished after notice is given, or (b) the owner may be required to demolish it himself, fined if he does not do so, and the authorities then demolish the property. In either case, the official reason given is normally “lack of a permit,” and the owner is charged a fee for the demolition conducted by the state. These measures are most commonly applied to Palestinians in the city, while regional plans are strikingly more lenient in the case of unlicensed Jewish development.

In this context, across Jerusalem and its West Bank hinterland, Israeli various authorities have increased demolition of Palestinian homes by some 50% in 2013, over the previous year. This destruction of 663 structures in 2013 marks the highest rate in five years, including 122 structures built with international donor aid. With the greatest concentration of these demolitions in Area C and East Jerusalem, displacement of Palestinian inhabitants has increased by 74% over 2012. (*HIC-MENA News*, 2014a) Israeli official and unofficial actors have more than doubled the establishment of “outposts” (unauthorized colonies) in 2013, as compared with the previous year (*HIC-MENA News*, 2014b).



Planning and Development within the City

In consolidating control over East Jerusalem, Israeli planners created three more-or-less concentric belts of Jewish presence around the city. Some of these areas are outside Jerusalem’s expanded municipal boundaries, but all fall on the western side of the route of the West Bank Wall that Israel began constructing in 2002.

Former Deputy Mayor of Jerusalem Meron Benvenisti wrote that “the ultimate arbiters of the character of the Holy City were not the mayor, the municipal council, town planners, architects and historians, but [central] government ministers.” An early post-Conquest development plan for Jerusalem had announced that:

Any area in the city that is not populated by Jews is in danger of being cut off from Israeli jurisdiction and coming under Arab rule. Hence the administrative delineation of the municipal boundary must be translated into the language of deeds by building throughout the entire area, especially its farthest reaches. Jewish neighborhoods must not be left isolated: this consideration dictates the drastic reduction of open spaces in the city (Benvenisti, 154).

Palestinians typically refer to efforts at manipulating the population ratios in favor of a Jewish majority as “Judaization.” That term, once used by Israeli planners and politicians to describe official policy, is mainly used by its critics today.

The municipality’s planning capacities face a challenge to meet their responsibility of delivering services to Jews and Arabs alike. For reasons of efficiency, city hall reportedly has favored a “compact” city and service area, focusing on the development of core areas (Dumper, 47, 100–01). Meanwhile, the “national” ministries have sought a “horizontally extended” city. Amid these dynamics, the occupied East Jerusalem planning map has created three tactical urban belts.

The outer belt, around purported Greater Jerusalem, extends three suburban Jewish “ring” colonies—actually “fingers”—extending some 10 km from the city’s municipal boundaries into the West Bank. These colonies are: Givat Zeev in the north, Maale Adumim in the east, and Gush Etzion in the south (CBS).²² While some may debate whether Jerusalem ought to be divided in an eventual future agreement, broad Israeli consensus asserts that the three main Greater Jerusalem settlements should be incorporated into the State of Israel, no matter what the (negotiated) settlement (Xinhua).²³

A large residential zone within Jerusalem’s current municipal boundaries forms the second ring of older settler colonies established in the late 1960s–early 1970s. This strategic chain includes Givat Ha-Mivtar, Maalot Dafna, Ramat Eshkol and French Hill. Those areas formerly connected West and East Jerusalem near Mount Scopus, a UN-protected Jewish enclave from 1949 to 1967. Jerusalem planners and state and parastatal institutions have expanded this middle belt in the 1970s–early 1980s with the the “Ring Neighbourhoods” (Neve Yaacov, Gilo, East Talpiot, Ramot Alon and Pisgat Zeev), encircling the Jewish and Arab city center (Klein: 2008, 56).

The innermost planning belt, encircling the Old City basin, is the site of the most-revered historical monuments and shrines. The principal agent of Jewish colonization in historic Jerusalem is not the municipality or the central government, but settler organizations. These typically involve registered charities and *yeshivas* (Jewish institutes of religious learning) that enjoy government support in the form of archaeological, educational and touristic ventures. These organizations are occupying a contiguous pattern of Jewish colonies in and around the Arab Old City, consistent with the pattern of earlier Israeli planners seeking to complicate any Israeli withdrawal from the captured city.

Mr. Adi Mintz, an Elad Organization board member is frequently quoted as having said:

[O]ur goal is clear: To get a foothold in East Jerusalem and to create an irreversible situation in the holy basin around the Old City (Rapoport).

Yoni Ovadia, a settler spokesman in Nahlat Shimeon [Sheikh Jarrah], explained how Jewish residence would create: “territorial continuity to Maale Zeitim and Mt. Scopus”²⁴ Likewise, Matti Dan, chairman of the Ateret Cohanim Yeshiva, observed how

the Kidmat Zion neighbourhood, in Abu Dis, can be seen from the Palestinian parliament. This neighbourhood will prevent all the [Yossi] Beilins and all the [Yasir] Arafats from turning Abu Dis into a mini-Gaza. The entire world wants to divide Jerusalem, including the United States. They do not even recognise the fact that Ramot [cited above] belongs to us. The soft belly of East Jerusalem is the Old City, the Mount of Olives and its East. Jewish settlement in these places is a more significant human shield than any wall or fence (Rotenberg).²⁵

The firewall would be composed of Jewish housing—initially “micro-settlements” and (unauthorized) “outposts.” and settler-operated national parks. These are small but numerous enterprises requiring an expansive security presence that curtails Palestinian life wherever they squat. The inner ring extends slightly beyond the Holy Basin, touching and expanding into the northern Sheikh Jarrāh and southern Jabal Mukābir Palestinian neighborhoods, to the peak of the Mount of Olives, to the east.

Despite the Oslo promises to freeze any alteration of the status of any territories within the Palestinian-claimed self-determination unit, or perhaps goaded by them, Israeli parastatal organizations, central government and municipal authorities built additional settler colonies at Ramat Shlomo, in the north, and Jabal Abu Ghunaym (renamed Har Homa), in the south, through the 1990s. These colonies continued the ring and filled gaps in the Jewish-colony encirclement of Jerusalem. Only a small gap in the east, between Mount Scopus and Jabal Mukābir, linked to Jerusalem’s West Bank hinterland. Over two decades, Israeli construction in this belt has expanded and thickened Jewish residential zones.

The multiple layers of planning and execution of colonization efforts involve a variety of self-interested Israeli institutions. Israel’s National Planning Council acts under the aegis of the Israeli Interior Ministry, and hosts representatives from the housing, transportation, agriculture, trade and industry, and tourism ministries, as well as representatives of various cities and relevant national institutions. The Regional Planning Commission—stacked with a Jewish Agency majority—has veto power over municipal proposals (Dumper, 46, 99).

Unique to Israeli planning and development in Jerusalem is the Company for the Reconstruction and Development of the Jewish Quarter. That agency boasts being the only fully Israeli government-owned company operating within the Old City. Its principle program since 199 is implanting Jewish settlers in the Old City of Jerusalem captured by force in 1967 (MoCH).



The Israel Lands Administration, a “national” institution, also plays a

Armed Israeli settlers circulate throughout Jerusalem under Israeli police and army protection.

major role in developing the city. It is the city's largest landlord, having acquired 10,000 dunams (10 km²) in 1948 and three times as much in 1967. (See explanation of refugee land and property transfers below.) The body is integrated with and follows the charter of the Jewish National Fund, which means that land it controls must be used exclusively for the benefit of Jews (Dumper, 101–02).

Land Acquisition in Jerusalem

The distinctive feature of the Israeli system, however, is that land is controlled not only through the planning system, but through Israel's unique land-tenure system, which is the product and beneficiary of the discriminatory principles of the JNF as mandatory under the 1953 and 1960 legislation, particularly as they apply to the Land Council, the Israel Land Authority (ILA). This is a crucial determinant in all land-development policy and planning decisions, affecting (a) the location and timing of major projects, and (b) the eligibility of citizens for individual plot allocations. Processes (a) and (b) take place in coordination with the preparation of the appropriate (regional or local) development plans.

However, as the plans are public documents, the ILA's strategy and input to the planning process are opaque. As noted above, the ILA is not simply a government body subject to the normal processes of democratic accountability, but is controlled by a council, half of whom are nominated by the Jewish National Fund, a parastatal institution whose charter commits it to discrimination in favor of "Jewish race or descendency" (Kedar and Yiftachel, 129--296).

While the former British Mandate authorities had upheld the legal fiction that uncultivated land belonged to the state, the State of Israel later assumed and embellished that notion as a means of acquiring lands under the color of law.²⁶ Israel's Land Rights Settlement Ordinance (1969) asserted that: "Lands, which at the time of the enactment of this law were classified as *mawāt*, will be registered in the name of the State" (Harris, 14–15). Defining all uncultivated land in Jerusalem District, in addition to other areas elsewhere, to be "state land," thus, under this single Ordinance, the state seized more than 61% of Israel's claimed territory and much of the surface area of East Jerusalem, regardless of its tenure status.

Following a decade-long phase of land confiscations and military rule after proclaiming the State of Israel, the newly formed Gol sought to make the acquisitions of lands and villages permanent with a modified policy toward the Arabs in Israel, as announced by David Ben-Gurion in 1959. The policy prioritized:

- (d) passage of a law to mandate settlement of the Bedouins and their transfer to permanent homes...
- (e) speedy solution of the problem of compensation to the "present absentees"²⁷ for their land;
- (f) encouraging permanent Arab migration from the rural areas to the mixed cities (LAP).

The absence of land registration arrangements for East Jerusalem impedes proper planning and forms an obstacle to legal construction. The absence of formal land-registration arrangements and Israel's abstention from regulating the land in that part of the city encumbers the work of local planning authorities. It also is one obstacle to the East Jerusalem population's access to building licenses. Since the 1967 War the policy of the State Attorney General has expressed this denial of building permission through practical and diplomatic explanations. However, the policy of refraining from resolving freehold tenure issues on most of the land of East Jerusalem also compounds the consequent "illegal" construction there. This neglect also undermines property rights and creates additional problems such as dual registrations and contradictory transactions that generate disputes and prevent mortgaging of properties where plot boundaries are not formally recognized.

Depopulated Palestinian Villages Converted to Jerusalem Parks				
No.	Village Name	Refugees (Dec 2002)	Current park	Park Developer
1.	Allar	3,291	US Independence Park	JNF
2.	Aqqur	131	Sataf Forest	JNF
3.	Bayt 'Itab	4,848	Beit 'Itab NP / US Independence Park	JNF & NPA
4.	Bayt Thul	2,147	Hakfira Forest	JNF
5.	Bayt Umm al Mays	299	The Saints' Forest	JNF
6.	Dayr Aban	18,150	US Independence Park	JNF
7.	Dayr al Hawa	309	US Independence Park	JNF
8.	Dayr ash Sheikh	1,064	Sorek River NR	JNF & NPA
9.	Islin	2,071	Eshta'ol Forest	JNF
10.	Jarash	1,603	Nahal Dolev NP / US Independence Park	JNF & NPA
11.	Kasla	1,446	The Saints' Forest	JNF
12.	Nataf	276	Kfira river NP	JNF & NPA
13.	Qabu al	2,546	Begin Park	JNF
14.	Qastal al	881	Qastel NP	JNF & NPA
15.	Ras Abu 'Ammar	4,808	Begin Park	JNF
16.	Saris	3,978	Rabin Park	JNF
17.	Sataf	4,563	Sataf NP	JNF & NPA
18.	Suba	4,590	Zova NP	JNF & NPA
19.	Sufia	445	Nahal Dolev NR / US Independence Park	JNF & NPA
Total No. Refugees		57,446		
Legend: JNF = Jewish National Fund, NPA = National Parks Authority, NP = National Park, NR = Natural Reserve The number of villages whose land was expropriated by JNF wholly or partially is 372. JNF converted 116 villages into such parks as follows: 71 parks planted on capital village land partly expropriated by JNF 9 parks planted on non-capital villages similarly expropriated 17 parks planted on capital village lands expropriated by the state 2 parks planted on non-capital villages similarly expropriated 16 parks planted on pre-1948 Jewish land 1 park planted in Beer Sheba subdistrict (al-Naqab), an example of several such parks				

Ultimately, this policy enables the takeover of urban land by brute force and numerous forgeries, the notorious tactics of Israeli settlers. Consequently, many residents, as well as public bodies, have been dispossessed of their properties. In such a chaotic planning environment, the municipality cannot—and does not—properly plan, omitting to carry out needed infrastructure works, construct public facilities such as schools, maintain sanitation, drainage, electricity, roads and other public facilities. Theoretically, the municipality cannot allocate land for public purposes without the need for expropriation and payment of compensation (Shragai, 7).

A New Master Plan

The Jerusalem Master Plan 2000 never was officially approved. Nonetheless, it serves as the basis for urban planning and maintains that the planners' original demographic goal is unachievable, and that even a more-modest 60:40 Jewish majority could be achieved by 2020 only under uncertain conditions (ICG, 5).

After serial deliberations on the new Jerusalem Master Plan led by Jerusalem's District Planning and Construction Commission Director Moshe Cohen, the Jerusalem Municipality ratified its deposit on 7 October 2008, pending objections by the public. A month later, following the election of Jerusalem Mayor Nir Barkat, the mayor requested

that the District Commission grant him the option to voice his criticisms of the Master Plan prior to its deposit. In May 2009, Mayor Barkat appeared before the Commission and introduced a few changes. The Commission decided again to deposit the plan that the mayor also signed. However, within the ensuing year, other conflicts of interest arose, impeding any common or locally autonomous development vision (Shragai).²⁸

The laws and policies that govern the distribution of land and development resources are a mixture of national legislation and planning ordinances. Most influential of these are the Land Acquisition Law (1943), which formed the basis for appropriating Palestinian and other private lands for “public interest” in order to construct 15 settler colonies in East Jerusalem. The Law of Absentee Property (1950) authorizes the Custodial of Absentee Property to take possession of lands and properties confiscated on the pretext that any one of its owners was absent during the 1967 census.

By planning decree, 40% of lands in Jerusalem have been declared “green areas,” especially in East Jerusalem, where Palestinian residents are prohibited from building. These lands supposedly reserved as public green spaces, were later used for Israeli Jewish colonization, notably the colonies of Har Homa (at Jabal Abu Ghunaim) and al-Ra’s, in Shu’fat. The Jewish National Fund has been pressing for—and implementing—expansion of this plan to further deny Palestinian use of their lands in an “environmental” scheme to ring the city with parks (JNF: undated).

“Israelization” and Residency Rights

As mentioned above, the administrative measures in place, whether by active or passive means, effectively deny building licenses to Palestinians in the city. Meanwhile, a process of “Israelization” has absorbed 22% of the Palestinian population under Israeli Jerusalem’s administration & services sectors. The arbitrary practice of confiscating Jerusalem Palestinians’ IDs and the statutory denial of residency and family unification also affect the size and quality of life of the indigenous inhabitants of Jerusalem.

The city’s Jewish population mostly carries Israeli citizenship (and all hold the status of “Jewish nationality”), while Palestinian Arabs in East Jerusalem mostly hold “permanent residency,” a status subject to arbitrary revocation. As far as development and rights to the city are concerned, the state’s legal and institutional composition makes even those few thousand Jerusalemite Palestinians who have opted for Israeli citizenship perpetually ineligible to achieve full rights reserved to “Jewish nationals.” Thus, within the context of the State of Israel, the principal administrative mechanism of development operates under the control of an agency that is unaccountable to—and, in fact, inimical to the interests of—the indigenous citizens, in general, and “permanent residents” of Jerusalem, in particular.

An initiative of the central government also has contributed to this pattern. The Sharon Plan (1993), while the former military commander was minister of housing, extended Israeli control and settlement within the Old City. The plan has involved measures that sought to guarantee safe passage for Jews from Damascus Gate to the Wailing Wall

across the Palestinian Old City, and guarantee Jewish settler presence over all of the Old City to make it difficult to divide it upon peace agreement.

Institutionalized Discrimination in Israel's Legal System
NO Israeli nationality status Citizenship or "Jewish nationality" "Nationality" versus Citizenship Law of Return (1950) Law of Citizenship (1952) World Zionist Organization-Jewish Agency (Status) Law (1952) Basic Law: Israel Lands [The People's Lands] (1960) Covenant with Zionist Executive (1954) (1971) Basic Law: The Knesset (1958), Amendment 9 (1985) Agricultural Settlement Law (1967) Absentee Property Law (1950) Keren Kayemet Le-Israel Law (1953) WZO/JA & JNF chartered to discriminate, Govt. of Israel follows suit

Most dramatic of measures is found in the form of evicting Palestinian Arab residents (Islamic and Christian Quarters) under the Master Plan for 2020, the expansion outside Old City walls to include 26 settler colonies and to disconnect Palestinian neighborhoods of Ras al-`Amud, Mount of Olives, Sheikh Jarrah, Wadi al-Jawz from each other, permitting Israeli Jewish settlers to seize Palestinian properties and built in those areas, sustaining friction and dispossession the indigenous population.

The Eastern Gateway (E-1) Plan of 1994, ratified in 1997, also has absorbed 1,2443 dunams of the Palestinian suburbs of al-Tūr, Anāta, al-`Izarīyya (Bethany) & Abu Dīs, MoD. That extended Jerusalem plan is creating an industrial zone over 1

km², 3,500 housing units for new settlers and five hotels. This current Jerusalem 2020 plan will completely foreclose space for Palestinian expansion in East Jerusalem and encircle Anāta, al-Tūr and Hizma Palestinian suburbs. The ostensible objective of this plan is to prevent the establishment of East Jerusalem as capital of Palestine by connecting all settler colonies east of Jerusalem and outside its city limits with those inside the municipality, creating a newly defined "Greater Jerusalem" 600 km² (i.e. 10% of West Bank). These plans are concurrent with the building of highways, tunnels and roads especially for settler colonies to connect them (e.g., Adam & Neve Ya'acov) and, while doing so, to both bypass and disconnect Palestinian areas. Jerusalem 2020 foresees consolidating Jewish colonies to envelope Jerusalem in the three concentric planning circles, already separating many areas from city center by army checkpoints (e.g., Beit Hanīna). This is already happening with the establishment of permanent checkpoints, especially at the entrance of several densely populated Palestinian areas in north Jerusalem (e.g., Shu'fat Camp & Zu'ayyim, footpaths to Bethany and Abu Dīs) & 11 gates at Palestinian areas (e.g., Shu'fat and Kalandia "Terminals"). These combined measures aim at reducing Palestinians' presence by imposing security and economic controls that regulate the Palestinian population so as not to exceeding 12% of the population within municipal boundaries (Jordanian 6.5 km² only).

Quite apart from the Palestinian-proposed Jerusalem-sharing plan with a common Development Authority, measures are currently underway to disconnect electricity to settler colonies that Palestinian Jerusalem Electricity Company serves, allocating \$11 million dollars for linking East Jerusalem infrastructure to West Jerusalem and allocating \$100 million dollars to Judaize the city.

The 8-meter high concrete Wall of *Hafrada* (Hebrew for "separation" or "apartheid") snakes for 181km around Jerusalem's Palestinian communities, further shutting them

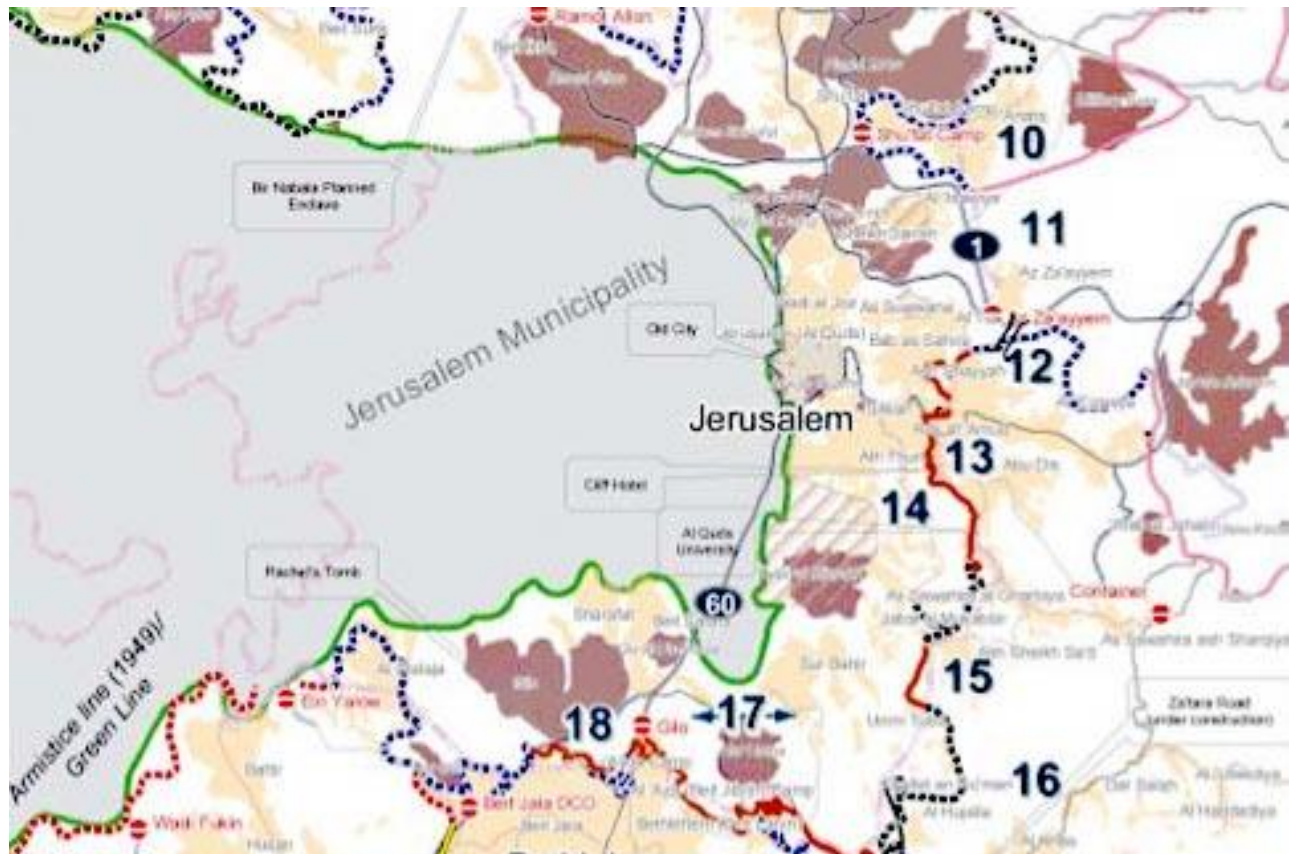
out of the city. Settler colonies then expand and new ones emerge on the Palestinian lands left isolated on the west side of the Wall. The year 2014 marks the tenth anniversary of the International Court of Justice Advisory Opinion, requiring the removal of the *Hafrada* Wall in areas outside the internationally recognized jurisdiction of the State of Israel and reparations for the losses, costs and damages to affected legal and natural persons.

Prospects and Social Capital for the Right to the City

Jerusalem is embroiled in spatial, material and existential conflict, governed by an ideological group that seeks to maintain dominance of these spheres of urban life at the progressive expense of the indigenous inhabitants. Israel claims the city as the capital of the “Jewish state,” despite international law and diplomacy reject that claim. Official Palestinian claims propose East Jerusalem as the capital of the State of Palestine to be shared with Israel within a common development authority for Greater Jerusalem (Hasson, 311–22). At the popular level, communities reflect a spectrum of mutual rejection and coexistence. From the indigenous people’s perspective, however, many civil Palestinian voices reject attempts at normalization with “Jewish Israel actors; i.e., members of the group of oppressors” (NGO letter). As in all articulations of the right to the city, the national context is significant. In the case of Jerusalem, the political dimensions and physical manifestations are inexorably linked to the contentious and increasingly impractical two-state solution that Israeli and Palestinian negotiators and the international community ostensibly pursue as an ultimate objective.

The City of Jerusalem is literally consumed by spatial conflicts and identity politics over land ownership, resource distribution and cultural expression, while it is haunted by the legacy of the 1948 and 1967 conquests, mass displacement and dispossessions (Tamari) that hangs over Jerusalem like a thermal inversion. It is this highly ideologized system that controls the use of space and, thus, permits or denies the expression of inhabitants’ identity.

The right to the city, from Lefebvre to the present, has embodied the claim for local control and democracy in the urban context, but this prospect confronts the overwhelming power of Israeli laws, institutions and individuals implementing material discrimination against the indigenous inhabitants’ self-determination remains the principle obstacles to local democracy. In the material sense, the right to the city is also a direct challenge to the dominant property rights regime (Purcell: 2003a, 564–90; 2003b: 99–108). Such dynamics that govern social expression and coerces behavior are, in part, what led Lefebvre and the urban social movements ever since to call for the right to the city.



Map of the *Hafrada*/Separation/Apartheid Wall cutting through occupied East Jerusalem. The brown zones are Jewish settler colonies erected under Israel' Source: [UN OCHA](#).

Originating from Lefebvre's concern with class segregation and the displacement of poor immigrants and the working class to the suburbs in Paris during 1960s, the right to the city seeks to redefine local political membership, challenges logic the logic of self-interest and alters residents' vision of, and control over spatial production (Lefebvre: 1991 and 1996) Therefore, in exercising the right to the city, private and discriminatory landowners and elites must not be the decision makers regarding land use, but rather the people most directly affected by those very decisions (Purcell: 2003a and 2003b).

The characteristics of Jerusalem's urban governance, with its pedigree of war crimes and lopsided power structure, form the context in which thus some local parties, nonetheless, have adopted and celebrated the right to the city as a political tool for positive change in pursuit of communities local control of space and self-expression.

In the extent to which these counterforces have raised the language of the right to the city, their local articulation of that right argue for democratizing development decisions, by having citizens take power over the production and management of their socially produced space. Within the global right to the city framework, urban citizenry is not rooted in nationality, rather by local urban residency. However, in the Jerusalem case, national identity remains very much at stake.

Some authors assert that identity based claims to the right to the city appear to contradict a universalistic right to the city (Rosen and Shlay). However, in this case, it is perhaps unrealistic to expect communities undergoing settler colonization to shed their respective indigenous and constructed identities. In the main, Israeli expressions and visions of the right to the city tend to address inequality, while offering only to equate the competing claims to the city space (Ibid). Meanwhile, the Palestinian Jerusalemites generally assert and pursue their right to the city as primordial and part of their liberation from a century of invasion and colonization.

Recently, some authors and students have grappled with the idea that the applying the right to the city concepts in the context of divided cities (Nagle: 2009, 326–47; Nagle et al.: 2010). In the particular Jerusalem context, urban planner Rassim Khamaisi²⁹ has proposed the alleviation of the Palestinian plight through the realization of the right to the city in Jerusalem and elsewhere under Israeli state control (Khamaisi). He poses that the right to the city based upon municipal “citizenship,” while recognizing that the lack of the right to the city in Jerusalem stems from the centralized nature of the State of Israel with political regime of dispossession, control and distribution of resources skewing the balance of power (Nachmias). In many ways localizing *de facto* residency as the principal criterion of municipal citizenship would disentangle the highly centralized governance of the city, as referenced above, by the Israel Lands Administration, the Interior Ministry, “The Ministerial Committee on Jerusalem” and the Minister for Jerusalem Affairs.

Political Positions & Claims		
PLO's position	Israel position	Interntl. position
East Jerusalem (pre-1967 municipal boundaries) is capital of Palestine, and West Jerusalem the capital of Israel, with each state enjoying full sovereignty over its respective part of the city and with its own municipality and joint development council; Palestinian people have the right to sovereignty over East Jerusalem	Jerusalem the "complete and united" capital of Israel governed under Israeli law and institutions	UN GA resolution 58/292 (2004): military occupation duties under 4 th Geneva Convention and The Hague Convention; Palestinian self-determination and sovereignty over their territory; two viable, sovereign and independent States, based on the pre-1967 borders; UNSC 478 (1980): Israeli annexation “null and void”; UN GA resolution 181 XX (1947): Jerusalem international zone and <i>corpus separatum</i>

Palestinian civil society organizations have engaged in *de facto* right to the city activities by engaging local communities in advocacy and alternative planning. Among them is the International Peace Cooperation Center (IPCC), which is a nongovernmental organization (NGO) dedicated to the vision of a vibrant, sustainable and democratic Palestinian society and state through an integrated approach of research, urbanism, community engagement and training. IPCC supports the development of a highly informed, competent and active Palestinian civil society that is capable of defending its social, economic and political rights and “energizes urban participatory democracy.” develop scenarios, policy options, and community engagement programs that address issues of the geopolitical conflict, social and economic development, urban peace

building and democratization. IPCC's program includes a current project for Raising Awareness on Palestinian urban rights to Jerusalem.³⁰

IPCC plays a leadership and advisory role both locally and with international forums and partners to conduct urban planning, zoning and development of Palestinian neighborhoods in Jerusalem and other localities in the West Bank. This the Center does in order to support urban rights and prevent further escalation of the conflict. The Center

Social Capital / CSOs	
(Palestinian in green, Israeli in blue, mixed in black)	
1.	Adalah: The Center for Arab Minority Rights in Israel
2.	Alternative Information Center
3.	Applied Research Center—Jerusalem (ARIJ)
4.	Arab Association for Human Rights (Nazareth)
5.	Association for Civil Rights in Israel (ACRI)
6.	BADIL Resource Center for Palestinian Residency and Refugee Rights
7.	Bimkom
8.	BirZeit University Institute of Law
9.	The Civic Coalition for Palestinian Rights in Jerusalem
10.	HaMoked: Center for the Defence of the Individual
11.	Al Haq: Law in the Service of Man
12.	Im Amim
13.	Israeli Committee against House Demolitions (ICAHD)
14.	Land Research Center (LRC)
15.	Al-Maqdese for Society Development
16.	Zokhrot (Remembrance)

works with local communities to develop bottom-up alternative-planning methods that secure the needs and “rights of [Palestinians] to the city” of Jerusalem and surrounding areas.

The Civic Coalition for Palestinian Rights in Jerusalem (CCPRJ) is an independent, nongovernmental, nonprofit coalition of organizations, institutions, societies and associations dedicated to the promotion and protection of Palestinian rights in Jerusalem. Established in 2005 and based in Jerusalem, CCPRJ has been working to combat human rights abuses under the Israeli occupation through research and legal analysis, advocacy and human rights education. The Coalition's primary focus is on the following areas: (1) housing, land and planning rights; (2) civil and political rights; (3) economic, social, and cultural rights; (4) the rights of the child (including the right to education); and (5) and the right to freedom of expression.

Recently, the Coalition has developed “Guidelines for Advocating for Palestinian Rights in conformity with International Law” (CCPRJ: 2014) in cooperation with Bir Zeit University's Institute of Law. The Guidelines aim to help non-lawyers understand and apply international law

to Israel's oppressive regime over the entire Palestinian people: those in the occupied Palestinian territory since 1967, Palestinian citizens of Israel, and the Palestinian refugees since 1948.

The Land Research Center (LRC) is a long-established Palestinian NGO that focuses on both rural and urban cases of land deprivation. It published regular monitoring reports on Israel's demolition of Palestinian homes land confiscation. Its outputs are rich in statistics and mapping of progressive denial of Palestinians' enjoyment of their rights to Jerusalem.

Officers of the LRC have experience in human rights monitoring arising from some of the earliest efforts to document abuses during the first *Intifada* of 1987–91 (through the former Palestinian Human Rights Information Center—PHRIC). In that period, PHRIC was a principal actor in the Palestinian Housing Rights Movement, which culminated in the shared platform of Palestinian groups in the Jerusalem Declaration (1996) (PHRM:

1996). In a LRC conference on World Habitat Day, on 29 May 2011, the organization formally relaunched the Palestinian Housing Rights Movement (PHRM: 2011). LRC also has been a regular participant to the HIC-HLRN Middle East/North Africa Land Forum, contributing on the segment on the right to the city with a focus on Jerusalem.

Another Palestinian civil society organization promoting human rights in Jerusalem is al-Maqdese for Society Development. The organization releases annual reports on Israel's demolition of Palestinian homes in East Jerusalem, as well as conducts training and public information activities on a range of social issues and their human rights dimensions. However, to date, al-Maqdese has not explicitly used the language or concepts of the right to the city.

On the Israeli side, certain civil society initiatives have focused on institutionalized discrimination in Jerusalem, including discussion of the concepts of the right to the city. Ir Amim (Hebrew: עיר עמים; "City of Peoples" or "City of Nations") is an Israeli activist nonprofit organization founded in 2004 that focuses on the Israeli-Palestinian conflict in Jerusalem. It seeks to ensure the "dignity and welfare of all [of Jerusalem's] residents," safeguarding their holy places, as well as their historical and cultural heritages. While the organization describes itself as "left wing," its program is seen as promoting coexistence within a frame of normalization.

The organization has worked with some Palestinian nonprofit organizations to strengthen civil society in East Jerusalem, emphasizing infrastructure works such as sanitation, water, roads, sidewalks, street utilities (streetlamps, bus stops) or neighborhood services (clinics, emergency services, mail delivery, waste collection).³¹ An example of one such organization is Nuran Charitable Association, which provides emergency ambulance service in East Jerusalem (Nuran).

Ir Amim regularly provides information to Knesset members and members of the Jerusalem Municipal Government about actions in East Jerusalem that they believe to undermine Jerusalem's stability, impede equitability among residents, or threaten the possibility for future final-status negotiations in Jerusalem such as the construction of Israeli colonies in Palestinian neighborhoods. The organization also petitions the Supreme and Municipal courts in cases involving public services such as building permits and social benefits in East Jerusalem.

The Jerusalem Policy Forum is a joint project of Ir Amim and the East Jerusalem-based Palestinian NGO, the Peace and Democracy Forum (PDF), that functions as a public institution self-described as adhering to the Universal Declaration of Human Rights and upholding the basic principles of respect for human life and dignity.³² More specifically, PDF policy analysis focuses on economic development in East Jerusalem, educational disparity in Jerusalem, solid waste management and resolving the planning disparity.

The Association for Civil Rights in Israel (ACRI) has focused especially on discrepancies in the enjoyment of the human right to education in Jerusalem³³ (Alyan, et al.). With the start of the 2013–14 scholastic year, ACRI and Ir Amim published an

annual update on the dire state of education in East Jerusalem, revealing deep discrepancies in educational investments and outcomes in the two parts of the city (ACRI and IR Amim). The report concludes that the Jerusalem Municipality and state authorities are failing to meet their obligations under a High Court ruling that ordered the completion of all missing classrooms in East Jerusalem by 2016. Faced with a shortage of 2,200 missing classrooms in the official Arab school system in Jerusalem, the groups demonstrate that the authorities are doing too little to close this intolerable gap.

While these Israeli organizations focus on aspects of the right to the city in practice, they have not explicitly used the language or concepts of right to the city in their work. Exceptions are found in the case an interview with Ir Amim's Executive Director Yudith Oppenheimer in the magazine +972 (Surrusco) and, specifically, calling for the Palestinian residents of Shu`fat to enjoy the "legal right to be in the city denied to West Bankers" (Friedman; Seidman).

Operating within Jerusalem and the West Bank, the prominent Israeli human rights organization B'Tselem: The Israeli Information Center for Human Rights in the Occupied Territories was established in February 1989 by a group of prominent academics, attorneys, journalists, and Knesset members. It endeavors to document and educate the Israeli public and policymakers about human rights violations in the occupied Palestinian territories, to combat the phenomenon of denial prevalent among the Israeli public and help create a human rights culture in Israel.

B'Tselem regularly investigates and publishes high quality reports about specific rights violations in the urban environment. Recently, B'Tselem recently updated readers on the phenomenon of Palestinian persons not present in the city for whatever reason who forever have lost their right to reside in Jerusalem (B'Tselem). Previous investigation and publication on the subject has seen B'Tselem joining efforts with the Israeli organization HaMoked: Center for the Defence of the Individual. B'Tselem regularly covers also house demolition policy, the implantation of settlers and settler colonies in Jerusalem and the occupied Palestinian territories, as well as the consequences of the *Hafrada* Wall.

Based in Israel, but with operations and activities all across historic Palestine is Adalah: The Legal Center for Arab Minority Rights in Israel. The Galilee-based organization, established in 1993, involves Palestinian and Jewish citizens of Israel working together to provide legal defense and analysis to uphold human rights. Adalah's use of the language and concepts of the right to the city have been most explicit through its publications, in particular *Makan*, the *Adalah Journal for Land Planning and Justice* (Bishara and Hamdan-Saliba).

While the various organizations profiled here involve some strategic partnerships, it is not the norm for Palestinian and Israeli organizations to collaborate in formal structures or projects. Others are predisposed to work on a right to the city agenda and/or its corresponding principles (cited above).

Conclusion: Imagining the Right to the City

The Palestinians of Jerusalem, as part of a distinct indigenous people living within the jurisdiction of the State of Israel, the State of Palestine and in their diaspora, have a right to the City of Jerusalem that is being systematically denied. They are expressly the most restricted category of persons restricted from entry and residence there. As subjects of a right to the city movement, Palestinians should expect from the responsible local and central governments not only fully equal treatment as accorded to all other citizens, but also the recognition of their rights as a historically excluded and marginalized indigenous people, institutionally discriminated against and subject to cruel treatment and human rights violations for which the modern state and the international community bear liability. These conditions call for a right to the city movement with an explicit affirmative-action agenda in favor of this excluded class of Jerusalemites.

Considering, as it must, the state context of the city, the Jerusalem right to the city movement would reveal this city to be the tip of a proverbial iceberg of institutional, locally “legalized” and policy-driven discrimination affecting the Palestinian people as a whole. Generalized practices of discrimination and dispossession, particularly carried out and/or managed through the operations of the State of Israel’s WZO/JA, JNF and affiliates’ official practice since the founding of the State of Israel. A right to the city movement in Jerusalem logically would have to face the social justice dilemmas of this past.



Israel demolition of Jerusalemite Palestinian homes, in Beit Hanina, 29 October 2013. Source: ECCP.

Given its international character, the planned social disparity, institutionalized material discrimination and its corresponding legal regime, few cities are would be needier candidates for a right to the city movement. Simultaneously, few cities are polarized more than today’s Jerusalem.

The abstract language of socially produced space and social function of property may not suffice to affect the current situation where even notions of “social cohesion” have become so distorted as to shed their positive meaning and become tools of material discrimination (Bishara). The definition and pursuit of the right to the city in Jerusalem may require an accompanying process of deconstruction and disambiguation of fundamental concepts that the Israeli Occupation has constructed.

As much as the city is the focus, it is not the main subject of this review; the subject rather is the human well-being and the norms of civilization intended to achieve that

condition. Sustaining both in Jerusalem requires also an ambitious remedial process in which the right to the city upholds a standard and normative frame, as developed in other more-hopeful urban contexts. This calls for the right to the city in Jerusalem as that concept relates to wider processes of transitional justice.

Recommendations

In such a situation of institutionalized discrimination, international norms recognize that temporary special measures³⁴ may be needed to correct historic discrimination and its disadvantageous effects, among other actions to reform laws and institutions. For example, the CESCR's General Comment No. 20 urges that

Such policies, plans and strategies should address all groups distinguished by the prohibited grounds and States parties are encouraged, amongst other possible steps, to adopt temporary special measures in order to accelerate the achievement of equality. Economic policies, such as budgetary allocations and measures to stimulate economic growth, should pay attention to the need to guarantee the effective enjoyment of the Covenant rights without discrimination. Public and private institutions should be required to develop plans of action to address non-discrimination and the State should conduct human rights education and training programmes for public officials and make such training available to judges and candidates for judicial appointments (CESCR: 2009, §38).

Institutionalized discrimination also have been accompanied by acts having grave material and other consequences for both the Palestinian urban and rural (e.g., villager and Bedouin) communities, particularly by way of dispossession, demolition and forced displacement. Such acts constitute grounds for remedy through transitional-justice processes that include reparations, which also find their definition and normative content in general principles of international law as developed (see Annexes). These include the elements of restitution, including return, resettlement and rehabilitation, compensation, satisfaction and guarantees of nonrepetition (UNGA: 2006a).

The UN General Assembly has recognized a principle of international cooperation in cases of prolonged conflict and institutionalized discrimination within states. Already in the early 1950s, the question of apartheid in South Africa came to the General Assembly agenda despite the protestations of the South African delegation that the world body's discussion of institutionalized discrimination inside the Union of South Africa breached the principle of state sovereignty and noninterference. Ultimately, the deliberations affirmed that a matter of domestic violations of human rights constitute a responsibility of the international community of states when such a situation undermines regional peace and security (UNGA: 1946; 1950; 1952; 1953)³⁵ and (UNGA: 1954).³⁶

Potential R2C Campaign Assets, Opportunities

1996: Declaration of Jerusalem (revived in 2011)

1998: Rome Statute on ICC

2004: ICC Advisory Opinion

2011: Palestinian Housing Rights Movement revival

EU Heads of Mission Report (2011)

2011–13: Russell Tribunal on Palestine findings

2014: 10th anniversary of ICJ Advisory Opinion

In light of the international community's responsibility for Palestine through the UN, and the corresponding body of international law specifically applying to the city, governments have a responsibility to eliminate institutionalized discrimination (CESCR,

§10). The UN Committee on the Elimination of Racial Discrimination repeatedly has found that Israel has failed to uphold its treaty obligation to combat apartheid within its jurisdiction and effective control (CERD: 2007; 2012)

The importance of implementing right-to-the-city principles in Jerusalem cannot be over emphasized. The city is not only geographically central to the country, it lies at the strategic core of resolving the protracted Arab-Israeli crisis and epitomizing social justice, rather than repelling it at the city limits. Given the interlacing of Israeli municipal and central government jurisdictions in Jerusalem as implementers of institutional discrimination, the movement for the right to the city inevitably forms part of a wider effort to democratize the state. Failing to correct the intense injustice in Jerusalem is to perpetuate conflict, erode the legitimacy of any state and/or contain the seeds of the state's own undoing in the longer run (Kymlicka; Vondung, 163; HIC-HLRN 2004).

Further, Jerusalem's status at the core of the Palestine question raises also the international responsibility of the United Nations and extraterritorial states for the situation in the city. In this context, the call for the right to the city in Jerusalem takes on a global dimension.



ANNEX I

Applicable International Norms

Local Application of Human Rights in the City

Human rights norms and obligations are the responsibility of the State; however, its institutions include civil servants and authorities at every administrative level. Implementing the bundle of human rights and obligations to respect, protect and fulfill them is an inevitably local task.¹

Human rights obligations and practical tools to implement them can serve local public services and political representation for the majority of citizens and noncitizens. While human rights law theoretically applies to all aspects of public life, the review of a State's performance of its human rights treaties requires local authorities to face dilemmas and choices within human rights norms.

The question of operationalizing human rights at the important local level has been a subject of Human Rights Treaty Bodies' general treaty interpretation and specific State party reviews. Notably, the Committee on Economic, Social and Cultural Rights (CESCR) advises States parties to the Covenant on Economic, Social and Cultural Rights to take steps "to ensure coordination between ministries and regional and local authorities, in order to reconcile related policies (economics, agriculture, environment, energy, etc.) with the obligations under article 11 of the Covenant," in particular the human right to adequate housing.² CESCR also has observed how fees imposed by local authorities and other direct costs may constitute disincentives to the enjoyment of the right to education.³

The Harmonized Guidelines on Reporting to the Treaty Bodies advises involving local governmental departments at the central, regional and local levels and, where appropriate, at the federal and provincial levels in the preparation of periodic reports.⁴ CESCR's current reporting guidelines are replete with questions for States about the progressive realization of economic, social and cultural rights through the rule of law, nondiscrimination, the maximum of available resources and international cooperation in the provision of local services and infrastructure.⁵ This reflects the centralization of tasks, authorities and duties as a global practice of subsidiarity that diffuses burdens, responsibilities and functions.

The General Comment on the right to food stresses how responsibilities at multiple levels are essential to realizing that right. While "the State should provide an environment that facilitates implementation of these responsibilities," increasingly local measures are needed to ensure food security and food sovereignty. In recent years, numerous good practices and policy models exemplify the pivotal role of local decision making and preparedness to ensure the right to food⁶ (DVRPC). The Special Rapporteur on the Right to Food Olivier de Schütter also has noted the role of local government in ensuring realization of the right to food through an integrated national strategy.⁷ (CBC)

This integration of central and local government performance is essential, too, to the realization of the human right to water and sanitation.⁸ (CESCR, 15) The Independent Expert on the right to water and sanitation Catarina de Albuquerque has found a wealth of examples of good practice in which a State's holistic approach involves local government monitoring and implementation of that right.⁹ (Albuquerque and Roaf)

CESCR has observed that “violations of the rights...can occur through the direct action of, failure to act or omission by States parties, or through their institutions or agencies at the national and local levels.”¹⁰ Indeed, the gross violation of the right to adequate housing through forced eviction is often carried out by local authorities. The proposed Advisory Committee study could help further operationalize the UN Guidelines on Development-based Evictions and Displacement.¹¹ (Kothari)

Many of the elements of an adequate standard of living without discrimination have been affirmed in international law through the International Labour Organisation (ILO), since 1919, the United Nations Organization, since 1945, and serial conventions on international humanitarian law, from The Hague Regulations (1907) through the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War (1949) and its Protocols. The human rights that apply in the urban context are enshrined in the nine principal UN human rights treaties.¹² Those legal instruments all guarantee their application without discrimination, as rights are to be enjoyed by all humans within the jurisdiction or effective control of the state. Therefore, each right corresponds with obligations that the state has assumed to “respect, protect and fulfill” most human rights without distinction as to nationality, citizenship, residency or other status. Therefore, no human is “illegal” or without rights in Jerusalem, where Israel is the *de facto* jurisdictional state.

The state discharges its obligations under treaty law when it simultaneously applies seven over-riding and mutually complementary principles of application set forth in articles 1 through 3 of the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR).¹³ These include (1) ensuring self-determination of the peoples within it, (2) combating discrimination, (3) ensuring equality between the sexes, (4) effectively applying the rule of law to uphold rights, and (5) engaging in international cooperation, including effectively regulating external behavior of the state's constituents in accordance with the rights guaranteed in the human rights treaties that it has ratified (UN GOAR, De Schutter, Skogly and Gibney)

In the particular case of economic, social and cultural rights affecting living conditions, housing and land, the implementation measures are specified in treaty law to be “progressive” and to ensure that everyone has the capability to attain and sustain a living for herself/himself and her/his family to ensure (6) “continuous improvement of living conditions.” ICESCR also requires that ratifying states (7) apply “the maximum of available resources” in the implementation of human rights, including through international assistance and cooperation (§2.1).

However, the principal norm in the context of unrecognized villages in Jerusalem arises from the human right to adequate housing, which, is a matter of principle and customary law is enshrined in Article 25 of the Universal Declaration of Human Rights (1948). (UNGA, 1948) The human right to adequate housing is guaranteed under treaty in its fundamental form bearing state obligations in Article 11 of the International Covenant on Economic, Social and Cultural Rights (1966), which treaty Israel ratified in 1991.

The legal definition of the human right to adequate housing (CESCR, 1991) provides the normative content and its sources in international law, as well as clarifies state obligations and the elements of a violation. That normative content of the right and corresponding obligations defines housing “adequacy” consistent with the human right to include the following qualities:

- (a) Legal security of tenure (§8(a))¹⁴;
- (b) Access to public goods and services, materials, facilities and infrastructure¹⁵;
- (c) Access to environmental goods and services (§8(c))¹⁶;
- (d) Affordability (§8(d))¹⁷;
- (e) Habitability (§8(e))¹⁸;
- (f) Physical accessibility (§8(f))¹⁹;
- (g) Adequate location (§8(g))²⁰;
- (h) Cultural adequacy (§8(h)).²¹

In practice, the right to housing can be achieved only by respecting, protecting and fulfilling other complementary rights and applying corresponding state obligations that enable persons and communities to attain and sustain adequate living conditions.

Thus, the bundle of civil, cultural, economic, political and social rights are, in both theory and practice, indivisible. In addition to the qualities that affect the material dimensions of adequate housing, upholding certain other rights ensure the processes necessary for physically adequate housing. These include the human rights to:

- Self-expression, association, peaceful assembly and participation;²² (ICCPR, §19, 22)
- Education, information and capabilities;²³ (ICESCR, §13, 14)
- Physical security and privacy;²⁴ (ICCPR, §9, 17)
- Freedom of movement and residence, *nonrefoulement* of refugees and reparations for victims of forced eviction and other gross violations;²⁵ (ICCPR, §12)
- Right to security of person and privacy (ICCPR, §17 and 9(1), respectively).

In addition to these covenanted norms, the international human rights treaties of specific application also enshrine the human right to adequate housing with all other categories of human rights. The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), adopted in 1965 and which Israel ratified in 1979, requires that the state prohibit and eliminate racial discrimination and apartheid in all their forms, and “to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of...the right to own property alone as well as in association with others (Article 5(d)(v))...[and] the right to housing...” (Article 5(e)(iii)).

By its 1991 ratification of the Convention on the Elimination of All Forms of Discrimination against Women (CEDaW), Israel has guaranteed that women “enjoy

adequate living conditions particularly in relation to housing sanitation, electricity and water supply, transport and communications” (Article 14.2(h).). The State of Israel and, by extension, the Government of Israel (GoI) likewise have accepted the binding obligation under the Convention on the Rights of the Child (CRC) in 1991 to respect, protect and fulfill “the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development” (Article 27.1). This obligation embodies the commitment “to take appropriate measures to assist parents and others responsible for the child to implement this right and shall, in case of need, provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing” (Article 27.3).

Israel has not yet ratified several relevant international treaties establishing norms of policy and treatment toward certain vulnerable social groups, including relevant standards of remedy in the case of violation.²⁶ However, the 17 relevant treaties that Israel has ratified form a significant framework comprising the binding norms of statecraft in the form of treaty obligations to respect, protect and fulfill the human right to adequate housing and related human rights without discrimination. (See the relevant ratifications are indexed in Annex II.)

International human rights law theory maintains that a state's obligations under treaty are applicable in its domestic legal system, and that legislatures are bound to harmonize domestic laws consistent with those principles and obligations of human rights instruments. The Vienna Convention on the Law of Treaties (1969), which Israel has yet to ratify, is substantially a codification of customary international law, provides that “a state is obliged to refrain from acts [that] would defeat the object and purposes of a treaty when it has undertaken an act expressing its consent thereto” (Article 18). The Convention also provides that a state “may not invoke the provisions of its internal law as justification for its failure to perform a treaty” (Article 27).

The UN Committee on Economic, Social and Cultural Rights (CESCR) has repeatedly affirmed the Palestinians' rights to their lands and the treaty-bound obligation of Israel to respect, protect and fulfill those rights (CESCR: 1998, §10–12, 26–28, 32 and 42; 2003, §16, 20, 27, 43). More recently, the Committee on the Elimination of All Forms of Racial Discrimination (CERD), monitoring state compliance with the International Convention against All Forms of Racial Discrimination (ICERD), also has made similar observations (CERD: 2007, §25).

Several other UN and international instruments plainly provide that discrimination against any group of people on grounds of ethnic identity constitutes a fundamental human rights violation and cannot be permitted. In the same vein, the General Assembly of the United Nations has adopted the UN Declaration on the Rights of Indigenous Peoples, which recognizes the right of these peoples to their own lands, territories and resources as well as their cultural identity (UNGA: 2007).²⁷

ANNEX II

Israel's Ratification Status under Relevant International Human Rights Treaties

Treaty	Date signed	Date ratified
ILO Convention No. 11 Right of Association (Agriculture) (1921)	—	—
ILO Convention No. 29 Forced Labour (1930)		07 Jun 1955
Convention on the Prevention and Punishment of the Crime of Genocide (1948)	17 Aug 1949	9 Mar 1950
ILO Convention No. 87 Freedom of Association and Protection of the Right to Organise (1948)		28 Jan 1957
ILO Convention No. 98 Right to Organise and Collective Bargaining (1949)		28 Jan 1957
Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War (1949)	6 Jul 1949	8 Dec 1951
ILO Convention No. 105 Abolition of Forced Labour (1957)		10 Apr 1958
ILO Convention No. 102 Social Security (Minimum Standards) (1952)		16 Dec 1955
ILO Convention No. 111 Discrimination (Employment and Occupation) (1958)		12 Jan 1959
ILO Convention No. 117 Social Policy (Basic Aims and Standards) (1962)		15 Jan 1964
ILO Convention No. 118 Equality of Treatment (Social Security) (1962)		09 Jun 1965
International Convention on the Elimination of All Forms of Racial Discrimination (1965)	7 Mar 1966	3 Jan 1979
International Covenant on Economic, Social and Cultural Rights (1966)	19 Dec 1966	3 Oct 1991
ILO Convention No. 141 Rural Workers' Organisations (1975)		21 Jun 1979
ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries	—	—
ILO Convention No. 182 Worst Forms of Child Labour (1999)		15 Mar 2005
Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (2008)	—	—
International Covenant on Civil and Political Rights (1966)	19 Dec 1966	3 Oct 1991
Optional Protocol to the International Covenant on Civil and Political Rights (1966)	—	—
Convention on the Nonapplicability of Statutory Limitations to War Crimes and Crimes against Humanity (1968)	—	—
Vienna Convention on the Law of Treaties (1969)	—	—
International Convention on the Suppression and Punishment of the Crime of Apartheid (1973)	—	—

Additional Protocol (I) to the Geneva Conventions (1977)	—	—
Additional Protocol (II) to the Geneva Conventions (1977)	—	—
Convention on the Elimination of All Forms of Discrimination against Women (1979)	17 Jul 1980	3 Oct 1991
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)	22 Oct 1986	3 Oct 1991
Convention on the Rights of the Child (1989)	3 Jul 1990	3 Oct 1991
Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)	—	—
Convention on the Rights of Persons with Disabilities (2006)	30 Mar 2007	—
Convention for the Protection of All Persons from Enforced Disappearance (2006)	—	—

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The Palestinian Non-Governmental Organizations Network, The Civic National Commission in Jerusalem and The Palestinian BDS National Committee (BNC) letter to Mr. John Gatt Rutter, European Union Representative for the West Bank, Gaza Strip and UNRWA (NGO letter) (29 January 2013), rejecting the EU's "People to People and Partnership for Peace."

Notes

- ¹ According to the Biblical tradition, King David established the city as the capital of the united Kingdom of Israel and his son, King Solomon, commissioned the building of the First Temple there. However, no archaeological evidence supports the Bible reference to Solomon's Temple. At the dawn of the 1st Millennium BCE, people of Jewish faith attributed central symbolic importance to the city. The appellation of "holy city" or "holy foundation" (עיר הקודש, transliterated *'ir haqodesh*) was probably attached to Jerusalem during the period of Cyrus the Great. The holiness of Jerusalem in Christianity, conserved in the early *Septuagint* Latin translation of the Hebrew Bible, which Christians adopted as an authoritative reference, reinforced also in the New Testament account of Jesus's crucifixion there. In Islam, Jerusalem is the third-holiest city, after Mecca and Medina. In 610 CE, Jerusalem became the first *qibla* (the focal point for Muslim prayer). The Qur'ān also records that the Prophet Muhammad made his Night Journey to Jerusalem ten years later, ascending to heaven where he spoke to God.
- ² After being expelled from (Phoenician) Ugarit, the purportedly "extremist" religious community named the spot as the foundation (*ur*) of their Ugarit god of death/dusk (*Šalīm*). It later became an Egyptian administrative garrison and trading town (*Urshalimum*).
- ³ King David reportedly called the city "Yerushalayim" (1003 B.C.E.?), but the Aramaic pronunciation is "Yerushalem" and the Anglicized version became "Jerusalem."
- ⁴ Estimated in various historic accounts between 4,600 and 20,000.
- ⁵ As recognized in United Nations General Assembly resolution 181 XX, 29 December 1947.
- ⁶ 400,000 is the total number of 1967 refugees, approximately half of them are persons already displaced once in 1948. The figure (350 – 400,000) is not for Jerusalem only, but for all of 1967 occupied Palestine.
- ⁷ UN General Assembly, "Future government of Palestine," Part III: City of Jerusalem, A/RES/181(II)(A+B), 29 November 1947; Division for Palestinian Rights, *The Origins and Evolution of the Palestine Problem: 1917–1988*, Part II 1947–1977 (New York: United Nations, 30 June 1979), p. 31. On 1 March 2001, Theodor Wallau, Germany's ambassador to Israel, sent a letter to Israeli Foreign Minister Ariel Sharon, reaffirming the European Union's longstanding formal support for Jerusalem's internationalization as outlined in UN General Assembly Resolution 181 (II), stating: "We reaffirm our stated position regarding the specific status of Jerusalem as a *corpus separatum*. This position is in accordance with international law." Palestine Information with Provenance database, at: <http://www.corkpsc.org/db.php?eid=548>.
- ⁸ The delay and the eventual 13 June 1950 decision to legislate the constitution chapter by chapter resulted from the inability of the different "Israeli" social groups to agree on the purpose of the state, the state's identity, and its long term vision. Another factor was the opposition of the first Prime Minister David Ben-Gurion himself, including his refusal to determine the state's borders.
- ⁹ Or dönüm; i.e., one decare = 1,000 m².
- ¹⁰ The first JNF acquisition totalled 1,101,942 dunams: 1,085,607 rural and 16,335 urban; the second amounted to 1,271,734 dunams: 1,269,480 rural and 2,254 urban.
- ¹¹ Cook, op. cit.
- ¹² Adopted following the Basic Law: Israel Lands (Israel Lands Administration Law, in 1960).
- ¹³ By amendments to two existing laws: "Law and Administration Ordinance" and the "Municipal Corporations Ordinance", and the interior minister issued a corresponding administrative declaration, "The Jerusalem Declaration, 1967."
- ¹⁴ Though termed "permanent", residency can be revoked in a variety of circumstances, most notably when a resident can no longer prove that his or her "centre of life" is in Jerusalem. "East Jerusalem: Key Humanitarian Concerns, Special Focus", UN Office for the Coordination of Humanitarian Affairs – occupied Palestinian territory (OCHA-oPt), March 2011. Since 1967, 14,000 East Jerusalem Palestinians – just under five per cent of the current total – have had their residency status revoked, approximately half of them since 2005 when a sharp increase occurred, a policy referred to by Israeli human rights organisations as "quiet deportation". Israel maintains this policy today though revocations have dropped dramatically: in 2008 the interior ministry revoked the residency of nearly 4,600 East Jerusalem Palestinians while in 2010, the number dropped to less than 200. Ibid, 31 July 2011 Ibid. The ministry claimed that most of the revocations resulted from relocation abroad in which the individual in question was granted citizenship or permanent residency.
- ¹⁵ Michael Dumper points out that the foreign affairs ministry is concerned with the status of Christians in the country; the religious affairs and defense ministries play central roles in the status of, and access to holy sites; and the housing, trade and industry as well as absorption ministries ensure space for their own development projects. See his *The Politics of Jerusalem since 1967* (New York, 1997), p. 46. Israel's National Planning Council acts under the aegis of the interior ministry and is composed of representatives from the housing, transportation, agriculture, trade and industry as well as tourism ministries plus representatives of various cities and relevant national institutions. The result, predictably, is gridlock. The District Planning Commission – which has veto power over municipal proposals – is plagued by many of the same problems. Ibid, p. 99.

¹⁶ An example is the Company for the Reconstruction and Development of the Jewish Quarter. The Israel Lands Administration, a national institution, also plays a major role in the city. It is the city's largest landlord, having acquired 10,000 dunams (10 sq km) in 1948 and three times as much in 1967. The body is integrated with the Jewish National Fund, which means that land it controls must be used exclusively for the benefit of Jews. Ibid, pp. 101–02.

¹⁷ Between NIS36,000 and 46,000 (€7.455–9,525) per month.

¹⁸ The court rejected the petitioner's argument that his residency in Jerusalem constituted a status of "quasi citizenship."

¹⁹ Sections 2 of the Passport Law, 1952.

²⁰ Fuad Sliman, running on the Meretz Party ticket.

²¹ Outcome of October 2013 municipal election:

Percentage	Total votes	Party	Party leaders
24.84%	53,208	United Torah Judaism	Yitzchak Pindrus
16.22%	34,747	Shas	Eliezer Simhayoff
13.82%	29,595	Jerusalem Will Succeed	Nir Barkat & Rami Levi
10.98%	23,525	Hitorerut	Ofer Berkowitz
7.37%	15,787	Yerushalmim	Rachel Azaria
5.6%	11,995	Meretz-Labor	Pepe Alalu
4.36%	9,334	United Jerusalem	Shmuel Shekdi & Arie King
4.04%	8,649	Bayit Yehudi	Dov Kalmanovitz
3.37%	7,224	Bnei Torah	Haim Epstein
3.24%	6,943	Likud/Yisrael Beiteinu	Moshe Lion & David Amsallem
2.74%	5,865	Pisgat Ze'ev on the Map	Yael Antebi
1.41%	3,022	Neighborhoods & Businesses	Ofer Ayoubi
0.96%	2,056	Ometz Lev	Naomi Tzur
0.86%	1833	Tov L'Yerushalayim	Chanoach Werdiger
0.15%	331	Yesh Am Ehad	Amos Madar
0.04%	80	Veterans and Pensioners	Avraham Albert Tubul

²² Maale Adumim and Beitar Illit's populations are more than 35,000 and Givat Zeev has more than 11,500 residents. "Kovetz Yishuvim 2010," Central Bureau of Statistics (CBS).

²³ Prime Minister Netanyahu left no question about where he stands: "Efrat and Gush Etzion are an integral, fundamental and evident part of greater Jerusalem They are the southern gates of Jerusalem and will always be part of the State of Israel. We are building them with enthusiasm, faith and responsibility."

²⁴ Channel 10, HaMakor, 10 November 2010.

²⁵ Yossi Beilin is a former Israeli cabinet minister renowned for pursuing a negotiated settlement over Jerusalem with the Palestinian leadership. Yasir Arafat is the PLO leader and Palestinian president (d. 2004).

²⁶ The Israeli courts ensured acquisition of land and other properties from Palestinians by interpreting British Mandate legislation in favor of state, including the *Transfer of Land Ordinance* (1921); *The Correction of Land Registers Ordinance* (1926); *Land Settlement Ordinance* (1928); *Town Planning Ordinance* (1936); *Defence [Emergency] Regulations* (1939), which the British later repealed; *Roads and Railways (Defence and Development) Ordinance* (1943); *Land (Acquisition for Public Purposes) Ordinance* (1943). The Knesset efficiently adopted complementary laws such as *Law and Administration Ordinance [Amendment] Law [1948]* to reverse the British repeal and reinstate these *Emergency Regulations*; *Area of Jurisdiction and Powers Ordinance* (5708-1948); *Abandoned Areas Ordinance* (5708-1948) ; *Emergency Regulations (Absentees' Property) Law* (5709-1948) ; *Emergency Regulations (Cultivation of Waste [Uncultivated] Lands) Law*, 5709-1949; *Emergency Land Requisition (Regulation) Law*, 5710-1949 ; *The Absentee Property Law* (5710-1950)²⁶; *Development Authority (Transfer of Property) Law* (5710-1950); *State Property Law* (5711-1951); *World Zionist Organization – Jewish Agency (Status) Law*, (5713-1952); *The Land Acquisition (Validation of Acts and Compensation) Law* (5713-1953; *Jewish National Fund Law* (5713-1953).

²⁷ Absentee: persons whose status is defined in Israel's Basic Law: Law of Absentees' Property (5710 - 1950) and applied both *retroactively* and prospectively for the State of Israel possession by confiscation properties (mostly to be administered by the Jewish National Fund and subsidiaries). Those whom the Basic Law identifies as "absentees" include anyone who:

1. At any time during the period between 16 Kislev 5708 (29 November 1947) and the declaration published under Section 9(d) of the Law and Administrative Ordinance, 12 Iyar 5708 (21 May 1948), has ceased to exist as a legal owner of any property situated in the area of Israel or enjoyed or held by it, whether by himself of and another and who, at any time during the said period,
 - (i) was a national or citizen of the Lebanon, Egypt, Syria, Saudi Arabia, Transjordan, Iraq or the Yemen; or
 - (ii) was in one of these countries or in any part of Palestine outside the area of Israel; or
 - (iii) was a Palestinian citizen and left his ordinary place of residence in Palestine
 - (a) for a place outside Palestine before 27 Av 5708 (1 September 1948); or

(b) for a place in Palestine held at the time by forces that sought to prevent the establishment of the state of Israel or that fought against its establishment.”

Absentee property: a type of individual or collective possession denied to an indigenous class of inhabitants of Palestine through military and legislative events of the State of Israel's proclamation of establishment process.

Israel's Absentee Property Regulations (1950) vested possession of properties belonging to indigenous Palestinian Arabs in the “Custodian,” which was an acquisitive function within the Israeli Finance Ministry in 1947, established well in advance of the Regulations. The Law of Absentees' Property (LAP) (see also “present absentee” below) provided the Custodian a new name, The “Custodian of Absentee Property” (CAP), also replaced the temporary and vague legal category of “abandoned” property with the better-defined and soon-to-be permanent category of “absentee property.” The CAP possessed broad administrative and quasijudicial powers, as well as evidentiary and procedural devices, to seize property at CAP's own discretion, and ensured that the burden of proving “nonabsentee” status fell heavily on the newly dispossessed Palestinian Arab property holders.

The British *Trading with the Enemy Act* (1939), which created an extremely powerful property custodian and formally extinguished all rights of former owners, inspired the Israeli Absentee Property Regulations. Israel thus treated absentee property as State property, but the nature of the emergency legislation model from which the Israeli Absentees' Property Law derived also made it subject to long-term legal challenge.

Therefore, the State of Israel incorporated the ideologically Zionist protostatal institutions within the State under 1953 legislation, but maintained them arguably outside of “government.” So, in order to retain the “absentee” properties and shed the potentially constraining State obligations governing the Custodian under general principles of public international law (see “obligations” above.), the State of Israel began transferring newly acquired properties—especially such properties acquired outside internationally recognized Israeli territory—to the parastatal institutions (Jewish National Fund, World Zionist Organization/Jewish Agency and their subsidiaries and affiliates) and, subsequently, other State-managed institutions that share the Zionist protostatal institutions' covenanted principles of Jewish-only presence in, and possession of the land, properties and productive resources contained in all areas of the Land of Israel (*Eretz Israel*), defined as the whole of historical Palestine.²⁷

The illegal transfer of Palestinian refugees' and internally displaced persons' (all “absentees'”) properties (see “Internally displace person(s)” above) to the Jewish National Fund (JNF) in exchange for revenues to the nascent colony was to a (then) off-shore England-registered entity, the JNF, which reunited with the State of Israel under the above-mentioned 1953 Knesset legislation. That transfer of “absentee property” took place over five years, after no standing party posed an international law challenge to Israel's territorial expansion beyond the 1947 Partition Plan (UNGA resolution 181 [II]). That omission is despite the fact that UNGA 181 was merely one of the General Assembly's contemporary nonbinding recommendations on the Palestine question, but submitted to a vote on 29 November 1947.

The “absentee property” lost in this gradual process is undetermined, but subject to reparation, including restitution, to Palestinian refugees and present absentees.

Present absentee: a person or descendant of a person living in Israel after 21 May 1948 with the “absentee” status created under the *Basic Law: Law of Absentees' Property of 5710/1948* (LAP), especially those consequently dispossessed; a dispossessed citizen of Israel. Technically, this status affected virtually all Arabs who exited their actual homes or other possessed or owned properties during the 1947–48 War of Independence/Conquest, regardless of whether they returned. Also technically, the legislative dispossession order covered most residents, indigenous Palestinian Arabs and Israeli Jews (LAP, Article 1[iii]). However, the LAP regulations embedded a clause that systematically exempted Jews from the law's intended dispossession.²⁷ Consequently, tens of thousands of Arabs citizens who became citizens of Israel were dispossessed absentees, but practically no Jewish Israelis were. The dispossessed Arab citizens of Israel thus assumed the paradoxical legal identity and simultaneous materially dispossessed status of “present absentee.”

²⁸ For instance, in June 2009, Minister of Interior Eli Yishai, members of the Jerusalem City Council, the Mayor of Jewish settler colony Maale Adumim, the Knesset Speaker, and additional political and planning bodies approached the Chairman of the District Commission, claiming that the approved plan substantially differed from the one that the local commission had recommended, and that substantial changes had been introduced without involving the local commission.

²⁹ Professional urban, regional planner and Senior Lecturer in the Geography Department at Haifa University.

³⁰ Funded by the Middle East Peace Initiative (MEPI). For details, visit: <http://ipcc-jerusalem.org/mepi.php>.

³¹ For further information, see Ir Amim's Empowerment Project, at: <http://www.ir-amim.org.il/Eng/?CategoryID=188>.

³² See PDF website at: <http://www.pdf-palestine.org/>.

³³ Nisreen Alyan, Ronit Sela and Michal Pomerantz, “Policies of Neglect in East Jerusalem: The Policies that created 78% Poverty Rates and a Frail Job Market” (May 2012), at: <http://www.illp.ps/Files/Uploads/634766598957504731.pdf>;

³⁴ The International Convention on the Elimination of All Forms of Racial Discrimination (1965), which Israel ratified on 2 February 1979, provides in Article 1(4): “Special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms

shall not be deemed racial discrimination, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved.”

³⁵ The resolutions affirmed that “it is in the higher interests of humanity to put an end to put an immediate end to religious and so-called racial persecution and discrimination” and that “it is highly unlikely, and indeed improbable, that the policy of *apartheid* will ever be willingly accepted by the masses subjected to discrimination.” In particular, the resolutions recognized that “The question of race conflict in South Africa resulting from the policies of apartheid of the Government of the Union of South Africa”

³⁶ The resolution affirmed also, in para. 1, that “enduring peace will not be secured solely by collective security arrangements against breaches of international peace and acts of aggression, but that a genuine and lasting peace depends upon the observance of all the Principles and Purposes established in the Charter of the United Nations, upon the implementation of the resolutions of the Security Council, the General Assembly and other principal organs of the United Nations intended to achieve the maintenance of international peace and security, and especially upon a respect for observance of human rights and fundamental freedoms for all and on the establishment and maintenance of conditions of economic and social well-being in all countries”; and that “in a multi-racial society harmony and respect for human rights and freedoms and the peaceful development of a unified community are best assured when patterns of legislation and practice are directed towards ensuring the equality before the law of all persons regardless of race, creed or colour, and when economic, social and political participation of all racial groups is on a basis of equality.”

Notes to Annex I:

¹ A/HRC/23/NGO/85.

² General Comment No. 4: “the right to housing” (1991), para. 12.

³ General Comment No. 11: “Plans of action for primary education (art. 14),” para. 7.

⁴ “Harmonized guidelines on reporting under the international human rights treaties, including guidelines on a common core document and treaty-specific targeted documents,” HRI/MC/2005/3, 1 June 2005, para. 50, at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G05/422/26/PDF/G0542226.pdf?OpenElement>.

⁵ “Guidelines on Treaty-Specific Documents to be Submitted by States Parties under Articles 16 And 17 of the International Covenant on Economic, Social and Cultural Rights,” E/C.12/2008/2, 24 March 2009.

⁶ Delaware Valley Regional Planning Commission (DVRPC), The Greater Philadelphia Food System Study (2010), at: <http://www.dvrpc.org/food/FoodSystemStudy.htm>; DVRPC, *Food System Planning* Municipal Implementation Tool # 18 (April 2010), at: http://www.ruaf.org/ruaf_bieb/upload/3304.pdf; Victoria Local Governance Association, *Municipal Food Security Dimensions & Opportunities: Municipal Food Security Scanning Report* (2010), at: <http://www.vlga.org.au/site/DefaultSite/filesystem/documents/Food%20Security/VLGA.2011-09-06%20Food%20Security%20Report%201.pdf>; Kameshwari Pothukuchi and Jerome L. Kaufman, *Placing the food system in the urban agenda: The role of municipal institutions in food systems planning* (Kluwer Academic Publishers, 1999), abstract at: <http://newruralism.pbworks.com/f/PothukuchiKaufman.pdf>.

⁷ “Report of the Special Rapporteur on the right to food, Olivier De Schutter: Mission to Canada,” A/HRC/22/50/Add.1, 24 December 2012, para. 16, at: http://www.srfood.org/images/stories/pdf/officialreports/20121224_canadafinal_en.pdf. In his country mission to Canada, the Special Rapporteur noted that “Numerous municipalities across the country have opposed this restriction [posed in the draft Comprehensive Economic and Trade Agreement with the European Union] on the ability of local authorities to promote urban-rural linkages and local economic development through institutional purchasing, and have requested exemptions.” “UN food envoy scolds Ottawa's anti-poverty efforts,” CBC News (3 March 2013), at: <http://www.cbc.ca/news/politics/story/2013/03/03/pol-cp-un-food-envoy-slaps-ottawa-on-scrapping-census-and-eu-trade-talks.html>.

⁸ CESCR General comment No. 15: “The right to water (arts. 11 and 12 of the Covenant)” (2002), para. 51.

⁹ Catarina de Albuquerque with Virginia Roaf, *On the right track: Good Practices in realising the rights to water and sanitation* (Geneva: OHCHR, 2012), at: http://www.ohchr.org/Documents/Issues/Water/BookonGoodPractices_en.pdf; and “Report of the independent expert on the issue of human rights obligations related to access to safe drinking water and sanitation, Catarina de Albuquerque: Mission to Egypt,” 5 July 2010, A/HRC/15/31/Add.3, paras. 37, 45, 49, at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/149/35/PDF/G1014935.pdf?OpenElement>.

¹⁰ General Comment No. 16: “The equal right of men and women to the enjoyment of all economic, social and cultural rights (art. 3)” (2005), para. 42.

¹¹ “UN Basic principles and guidelines on development-based evictions and displacement,” Annex I of the Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Miloon Kothari, A/HRC/4/18, 5 February 2007, at:

<http://daccess-ods.un.org/access.nsf/Get?Open&DS=A/HRC/4/18&Lang=E>.

- ¹² International Convention on the Elimination of All Forms of Racial Discrimination (1965); International Covenant on Economic, Social and Cultural Rights (1966); International Covenant on Civil and Political Rights (1966); Convention on the Elimination of All Forms of Discrimination against Women (1979); Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984); Convention on the Rights of the Child (1989); Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990); International Convention for the Protection of All Persons from Enforced Disappearance (ICCPED) (2006); Convention on the Rights of Persons with Disabilities (2006).
- ¹³ International Covenant on Economic, Social and Cultural Rights, adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI), 16 December 1966, 21 UN GAOR Supp. (No. 16) at 49, UN Doc. A/6316 (1966); 993 UNTS 3, entered into force 3 January 1976; International Covenant on Civil and Political Rights, adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI), 16 December 1966, 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force 23 March 1976.
- ¹⁴ Legal safeguards that guarantee legal protection against forced eviction, harassment and other threats and the state's immediate measures to confer legal security of tenure upon those persons and households currently lacking such protection. See *Ibid*, para. 8(a).
- ¹⁵ Including safe drinking water delivery, sanitation, energy and emergency services essential for health, security, comfort and nutrition. See *Ibid*, para. 8(b).
- ¹⁶ Including natural and common resources, proper waste disposal, site drainage and land access for livelihood and recreational purposes. See *Ibid*, para. 8(c).
- ¹⁷ Such that personal or household financial costs associated with housing be at such a level that the attainment and satisfaction of other basic needs are not threatened or compromised, including the state's prompt measures to ensure that the percentage of housing-related costs is, in general, commensurate with income level. See *Ibid*, para. 8(d).
- ¹⁸ Whereas housing must be habitable, providing inhabitants with adequate space and protecting them from the climatic elements and other threats to health, structural hazards and disease vectors. See *Ibid*, para. 8(e).
- ¹⁹ So that everyone, particularly those with special needs, have full and sustainable access to adequate housing resources. See *Ibid*, para. 8(f).
- ²⁰ Within reasonable access to employment options, services, schools and other social facilities, whether in urban or rural areas. *Ibid*, para. 8(g).
- ²¹ Corresponding to building patterns, methods and materials enabling the expression of cultural identity and diversity of housing. *Ibid*, para. 8(h).
- ²² Enshrined in Articles 19, 21, 22 and 25, respectively, of the International Covenant on Civil and Political Rights (ICCPR), which Israel ratified in 1991.
- ²³ The rights to education (enshrined in Articles 13 and 14 of ICESCR), information (Article 19 of ICCPR), and particularly to uphold these rights so as to ensure capabilities of inhabitants to realize their housing rights.
- ²⁴ Physical security (ICCPR, Article 9), including freedom from domestic and social violence, and privacy (ICCPR, Article 17).
- ²⁵ (Article 12 of ICCPR), and the rights of victims of displacement to reparations, which includes the entitlements to remedy and reparation, entails restitution, return, resettlement, compensation, rehabilitation, the promise of nonrepetition of the crime and satisfaction that justice has been restored, as affirmed in general principles of international law and most-recently adopted in General Assembly resolution "Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law," A/60/147, 22 March 2006.
- ²⁶ Among the standards that Israel has not yet accepted are: ILO Convention No. 11 Right of Association (Agriculture) (1921); ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries (1989); Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (2008); International Covenant on Civil and Political Rights (1966); Optional Protocol to the International Covenant on Civil and Political Rights (1966); Convention on the Nonapplicability of Statutory Limitations to War Crimes and Crimes against Humanity (1968); International Convention on the Suppression and Punishment of the Crime of Apartheid (1973); Convention on the Rights of Persons with Disabilities (2006).
- ²⁷ However, the Israeli delegation was absent from the Assembly during the vote.