

A Series of Working Papers

FORCED POPULATION TRANSFER: THE CASE OF PALESTINE

DISCRIMINATORY ZONING AND PLANNING

Working Paper No. 17

Editors: Amjad Alqasis, Nidal al Azza and Manar Makhoul

Research team: Simon Reynolds, Wassim Ghantous, Halimeh Al-Ubeidiya, Amaya El-Orzza, Katrien De Bock, Jessica Binzoni and Ricardo Santos

Design and Layout: Fidaa Ikhlayel

ISBN: 978-9950-339-38-5

All rights reserved

© BADIL Resource Center for Palestinian Residency & Refugee Rights

Working Paper No. 17

Forced Population Transfer: The Case of Palestine

Discriminatory Zoning and Planning

December 2014

Credit and Notations

Many thanks to all who have supported BADIL Resource Center throughout this research project.

Any quotation of up to 500 words may be used without permission provided that full attribution is given. Longer quotations, entire chapters or sections of this study may not be reproduced or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise, or stored in any retrieval system of any nature, without the express written permission of BADIL Resource Center for Palestinian Residency and Refugee Rights.

BADIL Resource Center working papers research durable solutions for Palestinian refugees and internally displaced persons as well as strategies of ending impunity for human rights abuses as part of a just and permanent solution to the Palestinian/Arab-Israeli conflict. Working papers do not necessarily reflect the views of BADIL.

BADIL Resource Center for Palestinian Residency and Refugee Rights

Karkafa St.

PO Box 728, Bethlehem, West Bank; Palestine

Tel.: +970-2-277-7086; Fax: +970-2-274-7346

Website: www.badil.org



BADIL Resource Center for Palestinian Residency and Refugee Rights is an independent, community-based non-profit organization works to defend and promote the rights of Palestinian refugees and internally displaced persons. Our vision, missions, programs and relationships are defined by our Palestinian identity and the principles of international law, in particular international human rights law. We seek to advance the individual and collective rights of the Palestinian people on this basis.

Table of Contents

Introducing the Series.....	5
Introduction.....	9
Discriminatory Zoning and Planning in Israel.....	15
Discriminatory Zoning and Planning in the West Bank	27
Discriminatory Zoning and Planning in East Jerusalem	37
Discriminatory Zoning and Planning in the Gaza Strip.....	49
Recommendations	57

Introducing the Series¹

This Series of Working Papers on forced population transfer constitutes a digestible overview of the forced displacement of Palestinians as an historic, yet ongoing, process, and one which detrimentally affects the daily life of Palestinians and threatens their national existence.

This Series is intended to encourage debate, and to stimulate discussion and critical comment. Since Israeli policies comprising forced population transfer are not static, but ever-changing in intensity, form and area of application, this Series will require periodic updates. The ultimate aim of the Series is to unpick the complex web of legislation and policies which comprise Israel's overall system of forced population transfer. It is not intended to produce a comprehensive indictment against the State of Israel, but to illustrate how each policy fulfills its goal in the overall objective of forcibly displacing the Palestinian people while implanting Jewish-Israeli settlers (colonizer) throughout Mandate Palestine (Israel and the occupied Palestinian territory).

Despite its urgency, the forced displacement of Palestinians rarely receives an appropriate response from the international community. While many individuals and organizations have discussed the triggers of forced population transfer, civil society lacks an overall analysis of the system of forced displacement that continues to oppress and disenfranchise Palestinians today. BADIL, therefore, spearheads targeted research on forced population transfer and produces critical advocacy and scholarly materials to help bridge this analytical gap.

BADIL seeks to present this Series of Working Papers in a concise and accessible manner to its designated audiences: from academics and policy makers, to activists and the general public. Generally, the Series contributes to improving the understanding of the human rights situation in Palestine among local, regional and international actors. We hope that the Series will inform stakeholders, and ultimately enable advocacy which will contribute to

1 Extract from BADIL, Introduction to Forced Population Transfer: The Case of Palestine (Bethlehem, Palestine: BADIL Resource Center for Residency and Refugee Rights, March 2014). Available at: http://www.badil.org/phocadownload/Badil_docs/publications/wp15-introduction.pdf.

the dismantling of a framework that systematically violates Palestinian rights on a daily basis.

The Series of Working Papers will address nine main Israeli policies aiming at forced population transfer of Palestinians. They are:

- Denial of residency
- Installment of a permit regime
- Land confiscation and denial of use
- Discriminatory zoning and planning
- Segregation
- Denial of natural resources and access to services
- Denial of refugee return
- Suppression of resistance
- Non-state actions (with the implicit consent of the Israeli state)

Forced Population Transfer

The concept of forced population transfer – and recognition of the need to tackle its inherent injustice – is by no means a new phenomenon, nor is it unique to Palestine. Concerted efforts to colonize foreign soil have underpinned displacement for millennia, and the “unacceptability of the acquisition of territory by force and the often concomitant practice of population transfer”² was identified by the Persian Emperor Cyrus the Great, and subsequently codified in the Cyrus Cylinder in 539 B.C.; the first known human rights charter. Almost two thousand years later, during the Christian epoch, European powers employed population transfer as a means of conquest, with pertinent examples including the Anglo-Saxon displacement of indigenous Celtic peoples, and the Spanish Inquisition forcing the transfer of religious minorities from their homes in the early 16th century.

Today, forced population transfer is considered one of the gravest breaches of international law. According to the Sub-Commission on Prevention of Discrimination and Protection of Minorities of the former Commission on Human Rights:

The essence of population transfer remains a systematic coercive and

2 Joseph Schechla, “Prohibition, Prosecution and Impunity for the Crime of Population Transfer” (BADIL Resource Center for Palestinian Residency and Refugee Rights, Spring-Summer 2012), <http://www.badil.org/en/al-majdal/item/1764-art4>.

deliberate [...] movement of population into or out of an area [...] with the effect or purpose of altering the demographic composition of a territory, particularly when that ideology or policy asserts the dominance of a certain group over another.³

International law sets clear rules to prohibit forced population transfer, including in the United Nations Charter, through the specific branches of international humanitarian law, international human rights law, international criminal law and international refugee law. Both internal (within an internationally recognized border) and external displacement are regulated.

Historical Context: The Case of Palestine

At the beginning of the 20th century, most Palestinians lived inside the borders of Palestine, now divided into the state of Israel, and the occupied Palestinian territory (The West Bank, including East Jerusalem, and the Gaza Strip). Five major periods or episodes of forcible displacement transformed Palestinians into the largest and longest-standing unresolved refugee case in the world today. By the end of 2013, an estimated 7.4 million (66%) of the global Palestinian population of 11.2 million are forcibly displaced persons.⁴

Methodology

All papers will consist of both field and desk research. Field research will consist of case studies drawn from individual and group interviews with Palestinians affected by forced population transfer, or professionals (such as lawyers or employees of organizations) working on the issue. The geographic focus of the Series will include Israel, the occupied Palestinian territory and Palestinian refugees living in forced exile. Most of the data used will be qualitative in nature, although where quantitative data is available – or can be collected – it will be included in the research.

Desk research will contextualize policies of forced population transfer by factoring in historical, social, political and legal conditions in order to delineate the violations of the Palestinian people’s human rights. International human rights law and international humanitarian law will play pivotal roles, and

3 A.S. Al-Khawasneh and R. Hatano, *The Human Rights Dimensions of Population Transfer Including the Implantation of Settlers*, Preliminary Report Prepared for Commission on Human Rights Sub-Commission on Prevention of Discrimination and Protection of Minorities, Forty-Fifth Session (Bethlehem, Palestine: BADIL- Resource Center for Palestinian Residency and Refugee Rights, August 2, 1993).

4 Palestinian Central Bureau of Statistics, “Special Statistical Bulletin On the 64th Anniversary of the Palestinian Nakba” (Palestinian Central Bureau of Statistics, 2012), http://www.pcbs.gov.ps/Portals/_pcbs/PressRelease/nakba_64E.pdf.

analysis will be supplemented with secondary sources such as scholarly articles and reports.

Disclaimer

The names of the individuals who provide testimonies have been changed. This is a result of fears of the participants that their involvement in this project might draw negative reprisals by the Israeli authorities. We thank the participants for their courage.

INTRODUCTION

Processes of urban planning are generally presented as positive, equitable and legitimate innovations aiming at producing better spatial, social and economic human environments.⁵ However, it is essential to realize that planning is not just a professional and technical procedure, but also a socio-political action that determines the allocation of resources.⁶ Therefore, the design and organization of space often serve as a political strategy.⁷

In this Working Paper, we will look into issues of zoning and planning in Mandate Palestine (Israel proper, the West Bank including East Jerusalem, and the Gaza Strip). Although the whole territory of Mandate Palestine is under the control of one authority, Israel, each territorial unit has a legal framework based on the different legal systems applied in that specific piece of land. Israeli zoning and planning policies aim to contain the growing Palestinian population. As a result, thousands of Palestinian families live in overcrowded and unsafe conditions because they are prevented from using their land or accessing public land. The natural growth in population, in addition to the lack of modern facilities and infrastructure, leaves many families in substandard, underdeveloped living conditions.

This Working Paper shows how Israeli zoning and planning policies adapt in space and time, and the role they have been playing in the inexorable displacement of Palestinians. Following the pattern outlined in the Introduction Paper for this Series, zoning and planning policies have been put in place since the Nakba in 1948 and the establishment of Israel as a result, until this day. Different geopolitical locations in Mandate Palestine have been subject to different legal, and thus zoning and planning regimes.

Planning and zoning laws seek to regulate and control rural and urban development and land use.⁸ There is no specific international instrument covering zoning and planning, and even the international legal framework covering the right to property is quite limited. However, zoning and planning

5 Jabareen, "The Politics of State Planning in Achieving Geopolitical Ends," 27.

6 Khamaisi, "Barriers in Achieving Urban Planning Rights in Jerusalem's Socio-Cultural Conflict," 14.

7 Chiodelli, "The Jerusalem Master Plan: Planning into the Conflict," 5.

8 Chief Justice Robert French AC, "Property, Planning and Human Rights."

policies are directly related to human rights, and especially to indigenous communities and forcible displacement.

Given the diverse cultural and legal traditions embraced in different regions and countries globally, we will, firstly, outline the lowest common denominator of standards of zoning and planning. In the following sections, we will show how Israel fails to meet them.⁹ Nevertheless, what this Working Paper shows, above all, is that Israel's failure to meeting the lowest democratic and legal standards stems not from a mere procedural fault, but rather from an inherent ideological drive. In other words, the consistency and persistence in which basic legal, ethical and logical zoning and planning standards are violated in all parts of Mandate Palestine, over a stretch of history almost seven decades long, manifests an unmistakable deliberate pattern of an ideology that aims at Palestinian transfer from their ancestral homeland.

Legality

European jurisprudence identifies legality as one of the principles to be adopted when making decisions, in order to avoid exercise of arbitrary action. This means every decision must be made in accordance with the law. Planning, to the extent that it involves the exercise of power, is subject to the law. No official can make a decision which affects the legal rights and interests or liberties of a person unless such decision is authorized by law. Even the widest ranging discretion must be exercised consistently with the scope and purpose of the law under which it is exercised. This applies to decisions affecting property rights generally.

Laws and regulations may specify matters which have to be taken into account or disregarded when the decision is made. They may, in the field of planning, include requirements for public notification, consultation and consideration of public objections or submissions. However wide the decision-making power, it will always be a requirement that the decision is only made in furtherance of the purposes of the law and by reference only to those considerations which are relevant to those purposes and not for collateral purposes.¹⁰

Proportionality

We define the principle of proportionality by linking it to the principle of legality, especially when it comes to the exercise of public powers and when

9 Council of Europe, "The Margin of Appreciation."

10 Justice Robert French AC, "Property, Planning and Human Rights"; See also Stephen Berrisford, "Why It's Difficult to Change Planning Laws in African Countries?"

producing norms.¹¹ According to the European Convention of Human Rights and the principles of the administrative law in Australia, among others, interference with property rights must be proportional. That is to say, there must be a reasonable relationship of proportionality between the means employed and the aim sought to be realized. It is seen as a limit for the activity of public powers with regards to the protections of human rights, and as a measure of control of the exercise of discretionary powers.¹² There must be a strong objective justification for the law and its application, this is, a pressing social need for the interference. To evaluate this need the principle of proportionality comes into action.¹³ For instance, the rightful owners cannot suffer disproportionate damage because of public interest, especially if the measure will bring significant benefits to the community.¹⁴

Rationality

Public authorities have the power to choose between different alternatives. The key is that they must offer an explanation as to why they chose one and not the other.¹⁵ It is only through choosing among possible outcomes that the policy maker exercises judgment. The logic of, and reasons for, the choices made are important to an assessment by others of 'essential fairness' of the decision.

Alternatives must be explored in good faith with equal degrees of detail and analytic rigor. Similarly, identification of consequences for each alternative. The rationale for the alternative chosen must be lucid and tenable, with a clear record of the chain of reasoning behind the choice. At no point in the administrative process is the concern for restraint of arbitrary power more significant than in connection with land use plans, planning and regulation.

Fairness/Equality

The process of the decision-making should be fair. This is a central requirement of any form of justice, administrative or otherwise. Fairness, and in particular procedural fairness, is not an optional moral extra. Where broad administrative discretions are concerned, common ideas of fairness, beyond procedural fairness, involve consistency in decision-making, that is to say that

11 José Ignacio López González, "The principle of proportionality in Administrative Law (El principio de proporcionalidad en Derecho Administrativo)."

12 Ibid.

13 Council of Europe, "The Margin of Appreciation."

14 Almudena Fernández Carballal, "Urban qualification and rationality: Concerning the Sports City of Real Madrid Football Club (Calificación urbanística y racionalidad. A propósito de la nueva Ciudad Deportiva del Real Madrid, Club de Fútbol)."

15 Ibid.

similar cases will be treated similarly.¹⁶ Urban planning is more than anything unequal, but this inequality must be justified during the planning process and compensated when is executed to make effective the superior principle of equality.¹⁷

Participation

The decisions should be explained intelligibly by the provision of reasons so that persons affected by the decision, and perhaps the wider community, will know why it has been made. Absent intelligibility in the decision, the first four standards of legality, rationality, proportionality and fairness may be of diminished practical effect because the capacity to judge compliance with them and to seek review will be compromised.¹⁸

Participation is especially relevant when zoning and planning involves indigenous communities or minorities. For instance, in Australia native title rights and interests are recognized by the common law and are in part protected by the Racial Discrimination Act.¹⁹ This means that every planning decision must take into account the rights and interests of the indigenous communities that are going to be affected, and that these communities must be consulted.

Sustainable Development

At the heart of this principle is the idea of ensuring a better quality of life for everyone, in the present and in the future.²⁰ The United Nations defines Sustainable Development as, “Development that meets the needs of the present without compromising the ability of future generations to meet their own needs.”²¹ Sustainable development is central to the economic, environmental and social success of any country and in recent years it has become the core principle underpinning planning worldwide.

Sustainable development has three overall goals: to meet the present and future physical and social needs of the residents; to meet their economic needs and enable economic growth; and to protect the ecosystem. Sustainable

16 Chief Justice Robert French AC, “Property, Planning and Human Rights.”

17 Almudena Fernández Carballal, “Urban qualification and rationality: Concerning the Sports City of Real Madrid Football Club (Calificación urbanística y racionalidad. A propósito de la nueva Ciudad Deportiva del Real Madrid, Club de Fútbol).”

18 Chief Justice Robert French AC, “Property, Planning and Human Rights.”

19 Ibid.

20 The sustainable development commission, *Sustainable Communities and Sustainable Development. A Review of the Sustainable Communities Plan.*

21 United Nations, *Report of the World Commission on Environment and Development.*

development must address the different and contradictory needs that are derived from each of these aspects. This is why it requires detailed planning to provide appropriate solutions for all the needs of the community – both for residential buildings and for public areas.

These six principles are present and implemented around the globe and serve as guidelines for the zoning and planning policies of most of the democratic countries in the world. These common standards seek to ensure that public power is exercised lawfully, fairly, rationally and in a non-discriminatory, participatory manner. These should be the goals of any liberal democratic country where all administrative decisions must serve the general interest and respect the fundamental rights of their citizens and residents.

Discriminatory Zoning and Planning IN ISRAEL

Following the Nakba in 1948, Israel sought to strengthen and consolidate Jewish-Israeli presences throughout the territory, by using zoning and planning for expanding Jewish-Israeli localities. Between 1948 and 1960, Israel created legal structures to seize, retain, expropriate, reallocate and reclassify Palestinian lands²² belonging to the approximately 750,000 Palestinian refugees who were displaced during the Nakba,²³ and by confiscating about 50%²⁴ of the lands owned by the 160,000 Palestinians who remained within the borders of Israel and became its citizens.²⁵ Between 15%²⁶ and 30%²⁷ of Palestinian citizens of Israel are internally displaced persons, their lands were confiscated and their villages destroyed.

In later phases, when virtually no land remained in Palestinian hands, the legal focus shifted from expropriation of ownership and possession to zoning and planning policies and land-use limitations.²⁸ Israel created a large number of planning institutions in comparison to Western countries. In addition to laws that have direct effect on the use of land, the Planning and Building Law (1965) constitutes the main law that frames the organizational structure of the planning system, and grants the government extensive powers and the option to supervise the various planning-related decisions on all levels, including the power to design a variety of national land-use plans.

Palestinian citizens of Israel reside in three main geographic areas: the Galilee, the Triangle regions, both in the north of Israel, and the Naqab (Negev) in the south of the country. 1.6 million Palestinian citizens of Israel constitute more than 20% of Israel's population.²⁹ Today, approximately 90% of that community lives in 139 villages and towns, out of which 112 are bundled in

22 KEDAR, "The Jewish State and the Arab Possessor."

23 BADIL Resource Center for Palestinian Residency and Refugee Rights, *Survey, 2010-2012*, VII:XXIII.

24 Adalah, *Land and Housing Rights - Palestinian Citizens of Israel*.

25 Yiftachel, "Palestinian Arab Citizenship in Israel," 130.

26 Cohen, *The Present Absentees: The Palestinian Refugees in Israel since 1948*.

27 Sabbagh-Khoury, "Palestinian Arab Citizenship in Israel: The Internally Displaced Palestinians in Israel," 31.

28 Kedar, *The Third Annual Conference on Land and Housing: The Internally Displaced and the Arab Houses Under the Threat of Demolition*.

29 The State of Israel, "Central Bureau of Statistics 2013."

77 local authorities, 25 under regional Jewish-Israeli authorities, and 2 are part of Jewish-Israeli local authorities.³⁰ The other 10% of the population reside in several mixed cities, primary Haifa, Acre, Lydd, Ramleh and Jaffa.

Over the years, Palestinian localities transformed from a rural to urban characteristics, without any overarching strategy. Most of these localities lack proper planning procedures and the needs of their populations in terms of housing, infrastructure, allocation of land and development are not met. However, the central government in many instances promotes and develops the Jewish-Israeli localities through various means.³¹ Palestinian localities in Israel face several obstacles:

- **Institutional obstacles**, causing to absence of planning or insufficient planning, the case in most of the Palestinian localities;
- **Planning obstacles**, by which development plans are being postponed or rejected;
- **Jurisdictional-bureaucratic obstacles**, which prevent the implementations of approved plans for the development of Palestinian localities.³²

Institutional Obstacles

Israel's ethnocentric³³ nature has a large effect on the representation of non-Jewish communities, as planning institutions are being given the authority to decide on allocations of various public sources ranging between dispersion of land, which constitute the main material basis for any planning and building initiatives, to allocation of budgets, and above all the power to decide on such topics.³⁴ Israeli policies attempt to weaken the Palestinian citizens through segmentation, denial of most collective cultural or political rights, and pervasive material deprivation.³⁵ This denial of recognition is manifested in the denial of representation of Palestinian citizens of Israel in the planning system in Israel.³⁶ Planning in Israel is highly centralized, and state planners fail to include the Palestinian population in decision-making and in developing the Master Plans that govern zoning, construction, and development in Israel.³⁷

30 BIMKOM – Planners for Planning Rights and ACAP -The Arab Center for Alternative Planning, "Outline Planning for Arab Localities in Israel."

31 Ibid.

32 Nasser, *Severe Housing Distress and Destruction of Arab Homes: Obstacles and Recommendations for Change*, 11.

33 Oren Yiftachel, Interview at the Ben-Gurion University.

34 Adequate Representation for Arab Citizens in Planning and Building Institutions.

35 Oren Yiftachel, "Palestinian Arab Citizenship in Israel."

36 Hamdan, "The Status of the Palestinian Minority in the Israeli Planning System."

37 "Off the Map: Land and Housing Rights Violations in Israel's Unrecognized Bedouin Villages."



Two examples of national Master Plans TAMA 31 and TAMA 35, illustrate this exclusion and scarce representation. TAMA 31, which was approved in 1993, did not include a single Palestinian representative in the planning team, the national steering committee or work committee. Moreover, in a relatively recent national Master Plan, TAMA 35, which was approved in 2005, and had among its aims to “develop new planning approaches for the Arab population in Israel [sic.]...”, the same pattern of disregarding the Palestinian community and their representation continued.³⁸ As a result of the Israeli planning and zoning policies, most Palestinian villages and towns are prevented from development, were not integrated in urban planning, and the areas around them were marked as open areas or as pertaining high and sensitive natural scenery.³⁹

National Master Plans ignore the needs of Palestinian citizens in Israel and exclude them from the planning process pivotal for shaping the physical, social and economic space of the state.⁴⁰ According to the Arab Center for Alternative Planning (ACAP), until 2011, only 6% of the members of the National Planning and Building Committee (NCPB) are Palestinian, while among the members of the National Planning and Building Committee for Infrastructure, there was not a single Palestinian member.⁴¹

On the District Committees' level, in the six district planning committees and divisions, and in the regional council, there is a clear lack of representation of Palestinian citizens. For example, in the Northern District Planning Committee, even though Palestinian citizens comprise almost 50% of the population, only 2 out of 18 members are Palestinians. As a consequence, the Palestinian community is being prevented from voicing its needs, protecting its interests or gaining the tools to achieving them.⁴²

By law, ensuring updated local Master Plans is the duty of the relevant local planning committee and that of the District Committee. Israeli planning authorities constantly fail to meet their duties regarding Palestinian localities in Israel. As of December 2014, 25 Palestinian localities do not have valid building plans at all, and the other 77 localities out of 100, follow seriously outdated Master Plans that were approved 20 years ago.⁴³

38 Hamdan and Jabareen, “A Proposal for Suitable Representation of the Arab Minority in Israel’s National Planning System.”

39 Nasser, *Severe Housing Distress and Destruction of Arab Homes: Obstacles and Recommendations for Change*.

40 Hamdan and Jabareen, “A Proposal for Suitable Representation of the Arab Minority in Israel’s National Planning System.”

41 <http://www.ac-ap.org/>

42 ACAP -The Arab Center for Alternative Planning, A National Address for the Arab Citizens in Israel Regarding Land, Planning, housing, and Evelopment Issues.

43 Nasser, *Severe Housing Distress and Destruction of Arab Homes: Obstacles and Recommendations for Change*.

A study conducted by BIMKOM - Planners for Planning Rights and the Arab Center for Alternative Planning in 2012, examined the status and quality of outline planning in most Palestinian localities and compared some of them with Jewish-Israeli towns. The conclusions were that those outlines fail to provide solutions to the needs of Palestinian residents in many aspects, particularly housing and employment. Moreover, the study showed a clear discriminatory attitude by planning system towards Palestinians *vis-à-vis* Jewish-Israelis with regard to industry and employment, land reserves, and planning procedures.⁴⁴

There is an annual shortage of 5,000 building units in Palestinian localities, and until 2009 an accumulative shortage of 24,900 housing units. Absence or lack of up to date Master Plans, together with limited land reserves, in addition to the exhausting procedures of approval are direct reasons for building without Israeli permits in Palestinian areas. As a result, there are thousands of houses deemed illegal under Israeli law in the Palestinian localities which are under the threat of destruction. In 2009 approximately 167 buildings were demolished by Israel, and in 2010, 227 buildings were demolished, constituting an increase of 38%.⁴⁵

Case study: Wadi Al-Na'am in the Naqab

Before the 1948 War, 90,000 Palestinians lived in the Naqab. During the war, the vast majority were expelled and became refugees in the surrounding Arab countries (including the West Bank and Gaza Strip). Only 11,000 inhabitants remained in their homeland.⁴⁶ The Israeli government, military officials and representatives of the Jewish National Fund (JNF)⁴⁷ formulated the Alon Plan⁴⁸ to remove the remaining population from key Naqab routes and concentrate them in one area. This aimed to secure lands for settling Jewish-Israelis and for building bases of the Israeli military.⁴⁹ Consequently, the remaining community was confined to a restricted area called "al-Siyaj" (which translates

44 For further information on the research results please see: BIMKOM – Planners for Planning Rights and ACAP -The Arab Center for Alternative Planning, "Outline Planning for Arab Localities in Israel."

45 Nasser, *Severe Housing Distress and Destruction of Arab Homes: Obstacles and Recommendations for Change*.

46 Abu-Saad, "Palestinian Arab Citizenship in Israel: The Indigenous Palestinian Bedouin of the Naqab: Forced Urbanization and Denied Recognition."

47 The Jewish National Fund was created in 1901 to acquire land and property rights in Mandate Palestine and beyond for exclusive Jewish settlement. While indigenous Palestinians are barred from leasing, building on, managing or working their own land, the Jewish National Fund holds the land in trust for "those of Jewish race or descendance" living anywhere in the world to "promote the interests of Jews in the prescribed region." The Jewish National Fund has been a key pillar of the colonization of Mandate Palestine - from the founding of the State of Israel to the present. For more information see: <http://www.stopthejnf.org/>

48 After Yigal Alon, commander of the southern front and the Military Governor of the Negev.

49 "Off the Map: Land and Housing Rights Violations in Israel's Unrecognized Bedouin Villages," 12.

as 'fence' in Arabic; originating from the English word 'siege') on only 10% of the territory they used to inhabit and cultivate. Moreover, a military rule was imposed on them between 1948 and 1966,⁵⁰ during which Israel took control over most of their lands.⁵¹

In the late 1960s, the first Israeli Master Plan did not include the remaining Palestinian villages in the original plans, rendering them unrecognized. As a result, according to Israel's Planning and Building Law, all buildings in these communities were deemed illegal and under the threat of demolition. The villages lack, as a result, basic infrastructure such as electricity and water grids, government services and utilities (not even schools and medical centers).⁵²

There are over 200,000 Palestinians living in the Naqab. Out of those, approximately 70,000 live in 36 villages, unrecognized by Israel, under the risk of displacement. Approximately 45,000 of the structures in these villages are at risk of demolition. In June 2013, the Israeli Knesset approved the Praver-Begin Bill (commonly known as the Praver Plan), giving the green light for mass expulsion of the Palestinian community in the Naqab. If fully implemented, the Praver Plan would result in the destruction of the 36 villages and the forced displacement of their residents.⁵³ This plan was completed without consultation of the local community, and is a gross violation of the constitutional rights of the Palestinian citizens to property, dignity, equality, adequate housing, and freedom to choose their own residence.⁵⁴



In March 2012, the UN Committee on the Elimination of Racial Discrimination called on Israel to withdraw the proposed implementing legislation of the Praver Plan, on the grounds that it was discriminatory. In July 2012, the European Parliament passed a resolution calling on Israel to stop the Praver Plan and its policies of displacement, eviction, and dispossession.⁵⁵ On December 2013, after massive popular actions, legal advocacy and international pressure, Israel withdrew the proposed Praver-Begin bill, and the draft law was set to be considered for a second and third reading in the Knesset, as former Israeli cabinet minister Benny Begin admitted that the bill faced sweeping rejection from the Palestinian community, contrary to government assertions that they had approved of the plan.⁵⁶

50 Abu-Saad, "Palestinian Arab Citizenship in Israel: The Indigenous Palestinian Bedouin of the Naqab: Forced Urbanization and Denied Recognition."

51 The laws include: Land Acquisition Law, 1953; Planning and Building Law, 1965; Land Rights Settlement Ordinance, 1969; Negev Land Acquisition Law, 1980. See also: "Off the Map: Land and Housing Rights Violations in Israel's Unrecognized Bedouin Villages," 13.

52 Ibid.

53 *Demolition and Eviction of Bedouin Citizens of Israel in the Naqab (Negev) - The Praver Plan.*

54 Ibid.

55 Ibid.

56 "Adalah: Withdrawal of the Praver Plan Bill Is a Major Achievement."

The Regional Council for the Unrecognized Villages and Bimkom, formulated an alternative master plan for the Palestinian villages. Contrary to Israel's plans, the alternative master plan shows that it is possible, desirable and necessary to recognize all of the unrecognized Palestinian villages. The plan presented a professional outline for the recognition, planning and development of all villages, and was formulated together with the communities, while incorporating the planning standards used in the rest of the Israeli rural sector.⁵⁷ The plan was presented few times in the Knesset and in front of the Israeli Planning Association. However, the alternative plan does not have any legal power but it is used as a counter-plan that takes into account the populations' rights.⁵⁸

Wadi Al-Na'am, is the largest unrecognized Palestinian village with approximately 14,000 residents.⁵⁹ The village was established in the 1950s when Palestinian residents of the Naqab were moved there from their original villages during the Israeli military rule. For some sixty years the community has been deemed "temporary." It has not been connected to electricity, sewage, telephone, roads, and residents suffer from a severe lack of education, health and welfare services.⁶⁰

Testimony of M. Q. Wadi Al-Na'am



Since we were forced by Israel to leave our lands of origin in the early 1950s, we still live under daily threat of displacements and our homes and facilities demolished, and by this making our life unbearable and impossible.

Israel refuses to recognize our village, under the pretext that in this area there is the Ramat Hovav hazardous industrial park and industrial waste facility. One of the ironic claims of Israel is that these factories will affect the health of our community, while both of those sites were built in 1979 and our village has existed here long before.

Israel still denies us our basic municipal services, such as water, electricity, clinics and schools. However, after a long struggle with the Israeli authorities, during which we submitted dozens of applications to connect to water, finally in the 1980s they accepted to set up a single water-meter for the entire community. This water-meter serves more than 1,500 residences. Many families are forced to have their own water containers and buy tanks of water, which are very expensive.

57 *Alternative Master Plan for the Unrecognized Bedouin Villages in the Negev.*

58 Yiftachel. Interview, 10 November 2014.

59 *Israel: Bedouin Facing Mass Evictions From Their Land.*

60 *Unrecognized Bedouin Village Challenges Forced Urbanization Plan; Nasser, Severe Housing Distress and Destruction of Arab Homes: Obstacles and Recommendations for Change.*

The denial of electricity is particularly stark. It is incredibly ironic we don't have any electricity connection in the village, despite the fact that since 1981 the electric power generation plant has sat exactly in the middle of Wadi Al-Na'am, and is still expanding towards our houses, thus the only source of electricity is being achieved through gas generators and solar panels.

Moreover, we have only one school in the village, which goes up to the 9th grade, and we also had to struggle to keep it open. After the 9th grade, our students have to go to Shqeb Al-Salam (Segev Shalom) which is 12 km away. Furthermore, we don't have clinics in the village, and if anyone gets sick or injured, the nearest public clinic is in the city of Bir Al-Sabe' (Beer Sheva), some 16 km away.

We have home demolitions on a weekly basis, which are usually accompanied with random detentions. For instance, last week a young couple that were just about to get married, were both arrested for 15 days while trying to stop the demolition of their newly-built house, in which they were supposed to start their life in. The notion that the Prawer-Plan was stopped from being implemented is basically an illusion, the facts on the ground show that the plan is still ongoing, mainly through home demolitions.

Although alternative plans were submitted in order to recognize our villages, it does not seem that Israel will accept them. To Israel we represent a demographic threat to the Jewishness of the State. This very racist idea was publically expressed by the Minister of Agriculture Yair Shamir during a recent visit to the Naqab, where he also pointed out that Israel should examine ways to lower the birthrate of the Bedouin community!

The Israeli planning policies have become openly discriminatory in the last 10 years, by creating 59 individual farms, for Jewish-Israeli citizens only. These farms have everything: water and electricity connections, paved roads, tax relief and they also get financial help to develop agricultural farms in the desert.

Planning Obstacles

Planning obstacles refer to factors that lead to rejection of building plans submitted by Palestinian towns. Palestinian local authorities that submit building plans and zoning proposals face unreasonable delays in getting them approved, thus impeding the issuing of legal building permits. The rejection rate is high, and usually the justification for rejection tends to relate to national and district plans currently in place and Ministry of Interior policy which aims to inhibit Palestinian building and development.⁶¹

In order to approve a local outline plan, the plan should fit in the national and district Master Plans, otherwise the plan will be rejected. However, since their inception in 1951, national Master Plans have systematically aimed to limit the development of Palestinian localities through various pretexts such

⁶¹ Nasser, *Severe Housing Distress and Destruction of Arab Homes: Obstacles and Recommendations for Change*.

as defining the surrounding areas as of “forests and afforesting”, “national parks and natural reserves”, roads and infrastructure, as well as by excluding their development through designing criteria that the Palestinian villages do not fall within.⁶² According to a survey conducted by the Arab Center for Alternative Planning in 2007, TAMA 35 allocates 11,600 dunums for industrial areas in the Palestinian localities, while approximately 37,000 dunums in Jewish-Israeli towns. This means that while in respect to the population size, approximately 13 square meters is afforded to a Palestinian citizen, and 61 square meters to Jewish-Israeli citizens.⁶³

Legal and Bureaucratic Obstacles

Even when updated and relevant plans have been approved and are in place for Palestinian municipalities, private citizens still face tremendous obstacles in getting their permits approved. Approval of permits is conditioned upon a certain level of infrastructure (such as roads, sewage and electricity). Because such infrastructure is lacking in many Palestinian areas, obtaining permits is almost impossible.⁶⁴ One of the main problems in the outline plans prepared for the Palestinian localities is the fact that many of them do not include detailed instructions on acquiring building permits. Consequently, Palestinians citizens of Israel need to prepare detailed plans or reparcellation plans to be submitted to the planning institutions in order to receive building permits, after prolonged, expensive and exhausting procedures.⁶⁵

Most of the lands in the Palestinian localities within the jurisdiction of the Master Plan are considered private lands. As a result, planning procedures are longer and more complex than those in Jewish-Israeli localities in which the vast majority of the localities are built on state-owned land. Therefore, even after having an approved and updated local Master Plan, development and building in Palestinian localities advance very slowly.

Mixed Cities

The Palestinian and Jewish-Israeli citizens in Israel live largely in separate areas, with the exception of the so-called mixed cities.⁶⁶ In Israel, the term ‘mixed cities’ is broadly used for describing a situation in which Palestinian

62 Ibid.

63 ACAP -The ArabCenter for Alternative Planning, *a national Address for the Arab Citizens in Israel Regarding Land, Planning, Housing, and Eevelopment Issues.*

64 Nasser, *Severe Housing Distress and Destruction of Arab Homes: Obstacles and Recommendations for Change.*

65 BIMKOM – Planners for Planning Rights and ACAP -The Arab Center for Alternative Planning, “Outline Planning for Arab Localities in Israel.”

66 Abu 'Amer, “Palestinians of 48 in mixed cities .. Unending discrimination [in Arabic].”

and Jewish-Israeli citizens live in the same urban jurisdiction, such as the cities of Haifa, Jaffa, Acre, Lydd. However, in these cities, spatial and mental segregations between Palestinians and Jewish-Israelis are being exercised through a radical strategy of Judaization and de-Palestinization of the space.⁶⁷



Judaization and de-Palestinization

Judaization is a term used to describe the view that Israel seeks to transform the physical and demographic landscape of Mandate Palestine towards a fundamentally Jewish country.

Judaization inherently means, and requires, the de-Palestinization of the physical and demographic landscape of Palestine.

Judaization and de-Palestinization could amount for forced population transfer.

Three main types of mixed cities can be identified in Israel. The first are cities such as Haifa where Jewish-Israelis and Palestinians lived under the same municipality prior to 1948. The second are Judaized Palestinian cities that existed before the Nakba, but which received a Jewish-Israeli population as part of the Judaizing project of Israel after 1948, such as Ramla, Acre, Yaffa, and Lydd, and that became dominated by a Jewish-Israeli majority. The third includes cities established after 1948 as Israeli-Jewish cities but which have since experienced an influx of Palestinians, like, for example, Upper Nazareth.⁶⁸ The planning authorities deliberately failed to develop long-term strategies for dealing with increasing Palestinian populations and the need for their extra housing in the mixed cities.

Case study: The city of Lydd

The city of Lydd is located at the edge of the coast, between Jaffa and Jerusalem. During the Nakba, 250 Palestinians from Lydd were killed and about 20,000 inhabitants escaped or were forced by the Israeli army to leave the city. However, the need for specific professionals, such as railway workers, was the main reason for allowing 1,030 Palestinians to stay in the city.⁶⁹ Today, the city has a population of 74,000, 30% of whom are Palestinian.⁷⁰ Most of the Palestinian population live in poor neighborhoods that suffer from a lack of proper urban planning, poor sanitary conditions, and from high levels of crime and drug dealing.

67 Yiftachel and Haim, "Urban Ethnocracy: Ethnicization and the Production of Space in an Israeli 'mixed City'."

68 Ibid.

69 Morris, "Operation Dani and the Palestinian Exodus from Lydda and Ramle in 1948."

70 Daher, "Palestinians in Lod and Ramle on the sidelines of marginalization [Arabic]."

The municipality of Lydd has developed more than a hundred housing plans for the Jewish-Israeli citizens, but none for the Palestinian residents. A study by the Israeli rights group *Shatil* shows that 70% of Palestinians homes in Lydd were built without permits, therefore hundreds of them face demolition orders.⁷¹ However, the urban landscape in Lydd has been shaped through the years not solely by 'top-down' planning policies but also by 'bottom-up' initiatives of massive 'informal' construction of housing and services by the Palestinian community in the city, to which they were forced. In some areas, large separation walls have been erected to create a symbolic and territorial partition between the Palestinian and Jewish-Israeli residents.⁷²



Testimony of M.N. from Lydd

I am a Palestinian citizen of Israel married and a mother to three children. I was born in the city of Lydd. My parents are both internally displaced persons from Lydd. During the Nakba, my father fled to Jordan and my mother to the West Bank. Although they managed to return, they couldn't have their homes and lands back.

In 1998, my husband and I thought to build our dream home on our private land, although we knew that our land was designated as agricultural land, but still we relied on the successful story of the neighboring residential project Ganei Aviv, which was built in the mid 1990s on 140 dunums (0.14 km²) classified as agricultural land, to absorb Russian Jewish immigrants. The neighborhood was completely built without building permissions, but was retrospectively legalized. As our plot of land is designated the same as the one on which Ganei Aviv was built, and it is just adjacent to it, we were encouraged to build the house, and to legalize it through the same procedures.

Later we understood that we were really naive to think that Israel will treat us Palestinians equally and fairly in the same way they treat the Jewish-Israelis. Sadly, as soon as we finished building our home, the municipality of Lydd gave us a demolition order because we did not have a building permit. So we applied immediately for a building permit which was refused because the home was built on agricultural land, so we immediately applied for rezoning of our land as in the Ganei Aviv case, but sadly we did not receive the same equal treatment, our request was rejected, and in that same year the municipality demolished our house.

In that period we kept living with the feeling of instability and insecurity, for me and my husband building a home did not only mean rising up four walls and covering it with a roof. For us, home means a dream coming true after many sacrifices. It is a life project, a safe shelter for our family. Sadly, Israel demolished our home and with it all our securities and certainties.

71 UK Task Force, *UK Task Force Study Trip February 10 – 14 2013*.

72 Ibrahim and Rock, *Behind the Wall -Separation Walls between Arabs and Jews in Mixed Cities and Neighborhoods in Israel*.

Conclusion

Participation and representation are especially relevant when zoning and planning involves indigenous communities or minorities. However, Israel, through the Planning and Building Law, seems to disregard such internationally recognized standards within its planning system when it comes to its Palestinian citizens. The law does not ensure representation for the Palestinian citizens in the decision-making process and in developing the Master Plans, which severely undermines their ability to include their needs and visions in the planning. Moreover, Israel's few initiatives for local outline plans in Palestinian localities did not provide a satisfactory response in terms of housing needs, population growth, limited land reserves and lack of planning flexibility.

The Israeli zoning and planning policies and practices discriminate between the Palestinian and Jewish-Israeli citizens in many aspects of planning and building, as well in allocation of land. The huge differences in quality of life between the communities raise serious questions regarding the principles of equality and fairness. In addition, Israeli National Master Plans consistently created a situation delimiting the future development of Palestinian villages and towns, by not respecting the principle of proportionality. The vast designations of lands around the Palestinian localities for forests, highways or natural reserves, which further limits possible development of the affected areas seem to be unreasonable, mainly in the context of which the Palestinian towns and villages are being subjected to.

The evolution of zoning and planning policies towards the Palestinian citizens of Israel portray a clear pattern of consistent ideological drive to Judaize Israeli cities and towns. Starting with displacement and mass land confiscations in the 1950s, accompanied with zoning and planning practices causing serious limitations on development and housing since the 1960s, lead to unbearable conditions of living. This is so particularly in areas where the basic needs of the Palestinian citizens of Israel are being marginalized, as it is the case in the unrecognized Palestinian villages in the Naqab.

Discriminatory Zoning and Planning IN THE WEST BANK

Palestinian communities within Area C are subject to an oppressive zoning and planning framework consisting of selectively-deployed Ottoman, British Mandate and Jordanian-era land laws, supported by an extensive web of Israeli military orders. It is a framework designed to displace non-Jewish-Israeli inhabitants, primarily through arbitrary declarations of large swathes of land as belonging to the 'state' - and to replace them with Jewish-Israeli colonizers. As such, full control of the planning and construction process – from conception of its overarching strategy to its realization and enforcement on the ground – is retained by the occupying power. Under international humanitarian law, the introduction of new legislation or the amendment of existing legislation in occupied territory is subject to strict stipulations. Such actions are only permitted if they serve to restore/maintain public order; if they contribute to the genuine security of the occupation forces; if they assist the occupant in fulfilling obligations under international humanitarian law (IHL) and/or international human rights law (IHRL); or if such actions enhance the civil life and wellbeing of the protected population during occupation.⁷³

Case Study: E1

The E1 corridor is a strategically significant parcel of land, measuring roughly 12 km², located between Jerusalem and the Israeli colony of Ma'ale Adumim. Though relatively small in size, E1 can be considered a microcosm of Israel's occupation and colonization of the West Bank as a whole, and for years Israel has continuously sought to transfer its own citizens into this parcel of land. Representing a grave breach of Article 49 of the Fourth Geneva Convention, such actions are motivated by the intention to merge Jerusalem and Ma'ale Adumim; effectively surrounding the former with a bank of Jewish-Israeli colonies and thus making Palestinian access to the intended national capital virtually impossible. Moreover, the West Bank would effectively be severed in two, ending any remaining hope of a contiguous geographic entity.

73 Art. 64 International Committee of the Red Cross (ICRC), "Fourth Geneva Convention."

The E1 Master Plan which received approval in 1999, is split into separate detailed plans. Of these, three (a water reservoir,⁷⁴ industrial zone⁷⁵ and police station⁷⁶) have already been deposited for public review and subsequently approved by the planning committee, with the police station already constructed. Three other detailed plans – 420/4/3, 4204/7 and 420/4/10 – pertain to a total of almost 3,700 housing units, and over 2000 hotel rooms, but have not yet received formal approval, largely on account of vocal international opposition. Following a successful Palestinian bid in 2012 to be admitted as a UN observer state, however, Israel sought to push forward with these outstanding plans, and the Civil Administration subsequently opened up the plans for filing of objections.⁷⁷ Furthermore, the planned route of the Annexation and Separation Wall sees it surround the entire Adumim colony bloc, resulting in the de facto annexation of some 48,000 dunums (48 km²).

Under Israeli plans, the remaining Palestinians in E1 are to be relocated to three townships: the first at the existing al Jabal site, and the two largest – Nuweimeh North and Armonot Hashmonaim – to be built near Jericho in the Jordan Valley. The far-reaching individual and societal benefits of the right to ownership and enjoyment of property is universally recognized. However, in exceptional circumstances this right may be curtailed, such as in the event of development projects which confer an overwhelming public benefit. Israel has attempted to use this utilitarian principle to justify its forced displacement of Palestinian communities in E1, arguing that the relocation plans are in the best interests of the affected communities. Consideration of this rationale, however, reveals it to be fallacy, with no rooting in international law.

Firstly, in the context of belligerent military occupation, any forced transfer of the occupied population (as well as any associated confiscation and/or destruction of property) by the occupying power represents a gross breach of international humanitarian law.⁷⁸ Therefore, any Israeli plans to permanently relocate occupied individuals and communities represent – regardless of any attempted Israeli framing of the situation as being for the benefit of the displaced – a war crime. The same is true for the act of implanting colonizers inside the occupied territory.

Similarly, the legal concept of proportionality – i.e. whether the means is justified by the end – is utterly disregarded in the conception of these plans; the relocation of traditionally nomadic and pastoral Palestinian communities

74 "Plan 420/4/1 – for a Water Pool (storage of Water): 11 Dunams," 1.

75 "Plan 420/4/2 – for Industrial Zone: 1,340 Dunams," 2.

76 "Plan 420/4/9 – for a Police Station and the Roads to It (was Already Built): 191 Dunams," 9.

77 B'Tselem, "The E1 Plan and Its Implications for Human Rights in the West Bank."

78 Temporary evacuations are permitted, though only if necessary for the safety of these populations or for imperative military reasons.

to cramped townships in the Jordan Valley representing a devastating blow to the cultural practices of these populations, severing links to “fundamental elements in their economic, commercial and social universe”.⁷⁹ In interviews with BADIL, members of Palestinian communities in E1 reiterated the negative impact that this planned relocation would have on their future prospects; “We want the desert life. In Nuweimeh, there would be many issues for us: a bad economy, lack of education, no place for our animals.” Another commented, “You can’t just put us in a town. What would our role be in a future Palestinian society? You cannot just change from a shepherd to a lawyer or an engineer.” This could be seen as Israel’s intended ghettoization policy of Palestinians, which was raised by the Human Rights Committee as point of great concern during Israel’s fourth universal periodic review.⁸⁰

Despite the difficulties, such as limited access as a result of cost considerations, the cases being heard in courts in Israel – to which these communities must seek special permits to gain physical access – and with proceedings being conducted in Hebrew, some Palestinian communities have challenged the legality of the relocation process in the Israeli courts. Yet this has achieved only hollow victories in the form of existing demolition orders being stayed in anticipation of the creation of the resettlement sites; “we have stopped the demolitions, but for how long? We do not know”. This is, therefore, merely a temporary reprieve, and according to the Coordinating Office of Government Activities in the Territories (COGAT), an Israeli governmental institution, once the resettlement plans are finalized and building plots allocated, all ‘illegal’ Palestinian construction “will be dealt with in accordance with the Israeli law”.⁸¹

This outcome reveals the inherent bias of the law conceived and applied by Israel within the occupied Palestinian territory. It is a bias reflected in the multiple petitions filed with Israeli courts by the colonist movement, demanding that such demolition orders be executed without delay, thus creating a perverse scenario whereby individuals whose very presence in the West Bank (colonizers) constitutes a war crime are able to utilize the existing legal system to further their own interests at the expense of the occupied population.

Even when the Israeli legal system does include some form of procedural check on arbitrary displacement – such as the Israeli High Court’s recommendation to ensure consultation with the Palestinians during the conception of relocation plans – these rulings are ignored. To this end, neither the Jerusalem Bedouin Cooperative Committee nor individual Mukhtars (village leaders) were

79 Dawn Chatty, *From Camel to Truck: The Bedouin In The Modern World*, 30.

80 Human Rights Committee, “Concluding Observations on the Fourth Periodic Report of Israel (Advance Unedited Version),” para. 9.

81 Amira Hass, “Israeli Government Plans to Forcibly Relocate 12,500 Bedouin.”

consulted as part of this process. In addition, some Palestinian communities report that they were informed of their planned relocation through verbal means only, creating uncertainty and depriving them of key information pertaining to their rights and the process to follow. Thus, in practice, the meaningful participation of affected communities in a process which carries an existential threat, is denied. This is not an isolated failure, but rather a continuation of Israel's exclusion of Palestinians from the planning process, which started with the introduction of Military Order No. 418.

Military Order 418



Adopted in 1971, transferred the powers of the Ministry of Interior, which included powers of appointment to the relevant bodies, to the Commander of the Israeli Military. The same order removed the planning functions from village councils, transferring these functions to a Central Planning Bureau.⁸² Through this highly centralized planning system the Israeli authorities inhibited the growth of Palestinian population centers in the occupied Palestinian territory.

Israel's treatment of Palestinians under threat of eviction in E1 is conducted in grave breach of both international humanitarian and human rights law. Key procedural standards, including legality, proportionality, rationality and participation, are either implemented in such a way as to be unfit-for-purpose, or are entirely absent. As evidenced in the content of the International Labor Organization (ILO) Conventions 107 and 169, as well the operating policy of the World Bank, this dereliction of duty regarding procedural standards is especially troubling where the land rights of indigenous communities are concerned.

Archaeological sites as a tool of displacement

Most of the communities in the West Bank have been in place for centuries, and as a result, the majority of them are located on a site of archaeological importance.⁸³ The Archaeology Department of the Israeli Civil Administration decide whether to declare a location an archaeological site or not, and also if and under what conditions construction is allowed in such an area.⁸⁴

Usually, the declared area will be considerably larger than the actual

82 Lein, *Land Grab: Israel's Settlement Policy in the West Bank*. Jerusalem: B'Tselem- The Israeli Information Center for Human Rights in the Occupied Territories, May 2002. http://www.btselem.org/download/200205_land_grab_eng.pdf

83 Isaiah Silver, "Digging the Occupation: The Politics of Boycotts and Archeology in Israel."

84 Emek Shaveh, *Archaeology and Villages in the West Bank – Antiquities Sites and Their Integration into Master Plans in Area C*.

archaeological site. In theory, this is because other remains could be found around the site itself.⁸⁵ However, Israel abuses this accepted common practice by declaring as archaeological sites areas several times larger than the actual site, areas that most often are inhabited by Palestinians. Under the umbrella of protecting the archaeological ruins, they have also evicted residents from those areas, demolished temporary structures and rejected locally developed alternatives to preserve the site. These decisions, although they are made in accordance to the Israeli law, are neither proportional nor rational.⁸⁶

The Israeli authorities have also shown a double standard when it comes to allowing construction in the site. For example, the Israeli Civil Administration is calling for the demolition of the Palestinian village Khirbat Zanuta, south of Hebron, because it is located on an archaeological site. However, the same authorities have allowed new construction of Israeli colonies on archaeological sites, such as Tel Rumeida, also in Hebron, or the Jewish Quarter in the Old City of Jerusalem. In these two cases, construction was allowed on the actual site, and Israel invested significant amounts of money to combine excavations and housing.⁸⁷ In Khirbat Zanuta, not only new construction is forbidden, but the village itself, which was in place before the declaration of the archaeological site, risks demolition.

The lack of policy regarding construction and development on antiquities sites makes it almost impossible for Palestinian communities to appeal the decisions of the Archaeology Department of the Israeli Civil Administration.⁸⁸

Case Study: al-Nabi Samwil

Al-Nabi Samwil is a Palestinian village located in the West Bank, north of Jerusalem. According to the Oslo Accords signed in 1995, all lands of al-Nabi Samwil were classified as Area C.⁸⁹ However, Israel cut off the village from the rest of the West Bank when they built the Annexation and Separation Wall, leaving al-Nabi Samwil in what is known as a 'seam zone'.⁹⁰

85 Ibid.

86 Isaiah Silver, "Digging the Occupation: The Politics of Boycotts and Archeology in Israel."

87 Amira Hass, "Civil Administration Calls for Demolition of West Bank Palestinian Village Built on Archaeological Site."

88 Emek Shaveh, *Archaeology and Villages in the West Bank – Antiquities Sites and Their Integration into Master Plans in Area C*.

89 ARIJ, *An Nabi Samwil Village Profile*, 14.

90 Following the 1995 Oslo Accords, the West Bank was divided into Areas A, B and C. The three administrative areas reflect tiers of civil and security control allocated to Israel and the Palestinian National Authority. In theory, the Oslo Agreements endowed the Palestinian National Authority with full control over civil and security matters in Area A, while Israel was awarded control of movement across Area A's borders. In Area B, which consists of inhabited but rural regions, the Palestinian Authority is responsible for civil matters and public order, but military functions remain under the control of the Israeli military. Area C, is under full Israeli military and administrative control.

Most of the residents of al-Nabi Samwil fled the village to Jordan during the 1967 War, except 100 that managed to stay. At the time, these residents were living in their houses around the mosque, inside the designated area what is now the archaeological site.



Seam zones are sections of Palestinian land within the occupied Palestinian territory, which fall between the illegal Israeli Annexation and Separation Wall and the 1949 Armistice Line and are therefore severed from the oPt. These swaths of land have been designated by Israel as closed areas. Access to these isolated areas is controlled by an Israeli-controlled permit system thereby severely restricting Palestinian access to their lands.

Those who live within seam zones must apply to the Israeli Civil Administration for a 'permanent resident ID' in order to remain on their own land. Their movement is tightly controlled through the use of checkpoints and a permit regime, which in turn intrudes upon all aspects of their day-to-day activities and greatly compromises the quality of life.⁹¹

In 1971, the Israeli military came in the middle of the night, forced the residents to abandon their homes and demolished all the houses. The villagers were not allowed to take anything with them, so all their possessions were destroyed with the houses. No previous notice was given, and the official justification provided by the Israeli authorities was that those houses were unstable and unsecure, and therefore could collapse on the tourists or the ruins. This was despite the fact that some of the demolished houses were newly built. As their homes were destroyed, the residents were forcibly displaced to other homes further away from what is now the archaeological site. Besides being located in a seam zone, al-Nabi Samwil is also situated in an archaeological site and a national park. These categorizations impose a further set of restrictions on the residents.⁹² In September 1995, Israel declared an area of some 3,500 dunums as a national park. The declaration was based on the protection of its unique flora and Mediterranean landscape, and on the importance of the antiquities at the location. Despite declaration of the site as a national park, the construction of the Annexation and Separation Wall years later divided the declared park area.⁹³ The residents of the village were not consulted or given any information about this decision. The area of the antiquities site is approximately 30 dunums large. Despite this, the Israeli Nature and Parks Authority declared an area 100 times this size as a national

91 For more information on this, see Reynolds and Alqasis, "Seam Zones Turn 50,000 Palestinians into 'Internally Stuck Persons.'"

92 Elise Hannaford, "Nabi Samwil: Balancing Historical Heritage and Human Rights."

93 Emek Shaveh, Nabi Samuel.

park. Emek Shaveh, an Israeli organization of archeologists and community activists, stated that “A visit to the national park clearly attests that there is almost no flora on these lands, and certainly no unique Mediterranean flora. As far as we understand, with the exception of the archaeological site, there is no justification for declaring the site a national park.” In 2014, Israel issued a new order to confiscate 187 dunums of the village lands to enlarge the national park.

In 2013, Israel presented a plan to make the archaeological site of al-Nabi Samwil a touristic attraction. The villagers were not notified in advance about this plan. The plans to convert the area into a tourist center allows Israel to construct roads, a parking spot, a restaurant, a visitor’s center, a souvenir shop, walking paths and other structures that will be established adjacent to and occupying the archaeological area and many other attractions to encourage tourist activity. However, the villagers will be unable to profit from tourism by opening their own local restaurant, shop or vegetable stand.⁹⁴ The Master Plan proposes construction of up to 1.2 dunums.⁹⁵ The village of al-Nabi Samwil has no approved Master Plan. Residents of the village are in urgent need of such a plan to develop infrastructure, expand their homes, and to make proper divisions between private, public and agricultural-commercial zoning areas.

In effect, the “protection” of archaeological sites and the national park severely harms the residents, even though most of their activities do not involve harm to the antiquities or to the unique flora.⁹⁶ The village has been limited to the few houses that were not destroyed in 1971.⁹⁷ “We are not allowed to establish or build any kind of infrastructure; we cannot pave the roads or renovate our houses. Once, an organization donated materials to pave the road, but Israel confiscated everything.” The residents are not even allowed to put fences. The Israeli Civil Administration has started issuing demolition orders for fences.

Moreover, there is only one school in the village that cannot accommodate more than 10 students. As a result, many children and youth are forced to go to schools outside the village, which means crossing military checkpoints on a daily basis. The residents have to cross the checkpoint into the West Bank to buy food and other goods, since there are no shops in al-Nabi Samwil. However, they are not allowed to buy whatever they want. They need to coordinate with the checkpoint about all the things they have bought. Then the soldiers decide whether they allow them to bring it into the village or not.

94 Elise Hannaford, “Nabi Samwil: Balancing Historical Heritage and Human Rights.”

95 Emek Shaveh, *Nabi Samuel*.

96 Ibid.

97 Elise Hannaford, “Nabi Samwil: Balancing Historical Heritage and Human Rights.”

There are no health centers or ambulances in the village, so they have to go to other villages more than 10km away to get medical treatment. In 2014, alone, five families were forced to leave the village because of the harsh living conditions. “We are facing silent forcible displacement. Slowly, but many people are leaving the village. We do not have any basic living conditions and people cannot continue to live this way.” In the village itself, two of the houses are now occupied by Jewish-Israeli colonizers. These people do not face the same restrictions as the Palestinian villagers and can amend and renovate their houses. One of the houses has a new floor, but never received a demolition order.⁹⁸

Lastly, the promotion of the site as a religious center attracts many Jewish-Israelis to the area. The harassment by these visitors is very common and clashes take place almost weekly. During Muslim religious holidays the villagers are vulnerable to attacks by Jewish-Israeli colonizers. However, during Jewish holidays the Palestinian residents are not allowed to access their mosque, and no transportation is allowed to the village. The presence of Jewish-Israeli worshippers, many of them from colonies in the West Bank, create an unsecure atmosphere in the village, and add stress to the already difficult lives of the Palestinian residents.

Conclusion

A holistic consideration of Israel’s approach to zoning and planning in the West Bank reveals a clear and highly discriminatory pattern of behavior, underpinned by the motivation to reduce Palestinian presence within this territory. As demonstrated above, the legislation and ‘legal’ practices implemented by the occupying power in respect to ownership and control of Palestinian land –namely legality, proportionality, rationality, equality and participation cannot be said to satisfy any of these stringent requirements. Moreover, Israel is not affording Palestinian communities the level of protection demanded by international human rights norms and standards. For instance, the right to adequate housing is enshrined within the International Covenant on Economic, Social and Cultural Rights (to which Israel is a signatory), and this right entitles individuals and communities to be protected from arbitrary displacement. On the contrary, the illustrated cases reveal an Israel-administered zoning and planning system which has drawn scholarly comparisons with South African state-legislated apartheid. It is a system inherently discriminatory in conception and deed; designed from its foundations to serve the strategic purpose of the occupying power: forced transfer of the indigenous population, and their subsequent replacement

98 Nawal Barakat, al-Nabi Samwil, Jerusalem. Interview, 18 November 2014.

by Israeli-Jewish colonizers. It is important to note that forced population transfer is not restricted to physical force:

[...] but may include threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power against such person or persons or another person, or by taking advantage of a coercive environment.⁹⁹

As such, Israel is turning zoning and planning laws into a tool for forced population transfer, and all Palestinian victims of this practice hold a legal entitlement to reparation, i.e. return, housing and property restitution, compensation, satisfaction (guarantees of non-repetition, prosecution) and rehabilitation.¹⁰⁰

99 International Criminal Court, 'Rome Statute of the International Criminal Court: Elements of Crimes' (International Criminal Court, 2011), Article 6(e) <<http://www.icc-cpi.int/nr/rdonlyres/336923d8-a6ad-40ec-ad7b-45bf9de73d56/0/elementsofcrimeseng.pdf>>.

100 United Nations, 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, 2005, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/RemedyAndReparation.aspx>.

Discriminatory Zoning and Planning IN EAST JERUSALEM

In June 1967, Israel annexed 70.5 km² of the occupied areas in and around Jerusalem. This unilateral act, contradictory to international law, meant the confiscation of a third of the area of East Jerusalem.¹⁰¹ These parts were added to the municipal areas of Jerusalem under Israeli rule, which applied the administration, law and jurisdiction of Israel. However, Israel annexed the land without its people: even though the Palestinian population of East Jerusalem was granted the status of 'permanent residents in Israel', they were not granted citizenship.¹⁰²

After the 1967 occupation of the West Bank (including East Jerusalem), Israel adopted a policy of systematic and deliberate inequity against the Palestinian population of Jerusalem in all matters relating to land expropriation, planning and building. For example, in order to curb the authorization of building permits for areas not zoned for construction or which lack planning schemes, Israel applied *the Planning and Building Law* of 1965.¹⁰³ This law is still applied and demonstrates a considerably discriminatory application as, for example, between 1996 and 2001, 82% of the recorded building violations were located in the western part of the city while 80% of the administrative demolition orders concerned construction violations were in the eastern part of the city.¹⁰⁴ As another example of such discrimination, Palestinians can build maximum three floors, while in the western part Jewish-Israeli are allowed to build up to 300% or more.¹⁰⁵

Jerusalem Municipality presents Master Plan 2000 as a tool to outline the city's development in the next decades, ensuring the urban quality of life to *all*

101 BADIL Resource Center for Palestinian Residency and Refugee Rights, *Israeli Land Grab and Forced Population Transfer of Palestinians, A Handbook for Vulnerable Individuals and Communities*, 7.

102 Khamaisi, "Barriers in Achieving Urban Planning Rights in Jerusalem's Socio-Cultural Conflict," 7.

103 BADIL Resource Center for Palestinian Residency and Refugee Rights, *Israeli Land Grab and Forced Population Transfer of Palestinians, A Handbook for Vulnerable Individuals and Communities*, 106.

104 Nathan Marom for Bimkom and Ir Amim, *The Planning Deadlock*, 4.

105 Khalil Tufakije, , the head of the Mapping and Geographic Information Systems Department of the Arab Studies Society in Jerusalem. Interview, 30 October 2014.

residents.¹⁰⁶ However, as has been the case in the past, one goal dictates the current municipal planning policy: to create a demographic and geographic reality capable of curbing any efforts to challenge Israeli sovereignty in East Jerusalem. Planning restrictions, burdensome procedures, and political bias create serious planning difficulties that complicate, in theory and in practice, the insurance of the Palestinian right to the city as a political, cultural and religious capital.¹⁰⁷

Furthermore, the *Planning and Building Law* also revealed the most important means for supervising municipal planning: the Local Town Planning Schemes (TPS). The main purpose of these TPS is to define development, to allocate territory in accordance with expected demand and population growth and to determine infrastructure such as roads. The planning authorities use three main mechanisms to limit the building possibilities for Palestinians: not preparing a TPS, delaying its preparation or preparing plans that limit the Palestinian building possibilities.¹⁰⁸ It is remarkable that, since the occupation of Jerusalem in 1967, no comprehensive Local Town Planning Scheme for Palestinian neighborhoods has been approved. Given the impossibility to obtain a building permit without an approved plan, tens of thousands of people have no legal way to build and many are forced to build without a permit.

At the same time, other plans approved for Palestinian neighborhoods ignore the population growth. Their purpose seems clearly to prevent Palestinians from making use of the little land available to them and to grant legal validity to the prevention of building in most of the area of the Palestinian neighborhoods.¹⁰⁹

The first plan approved for East Jerusalem (AM/9), in 1977, was a general outline plan in which no building permits could be achieved. Since then, over 20 local zoning plans in East Jerusalem were approved on an area of approximately 24,700 out of 46,000 dunums of East Jerusalem that remained under the ownership of the Palestinian residents.¹¹⁰ This led to the present situation in which only 13% of East Jerusalem is zoned by Israel for Palestinian construction. Out of the in 1967 annexed area, 24.5 km² (35%) was confiscated for 'public purposes', mainly in order to build new Israeli colonies. Another 24.7 km² (35%) has Master Plans approved by the Jerusalem District Committee, yet on 22% of this area it is not allowed to build, nor to buy or

106 Ir Amim, "Jerusalem Master Plan 2000."

107 Khamaisi, "Barriers in Achieving Urban Planning Rights in Jerusalem's Socio-Cultural Conflict," 3.

108 BADIL Resource Center for Palestinian Residency and Refugee Rights, *Israeli Land Grab and Forced Population Transfer of Palestinians, A Handbook for Vulnerable Individuals and Communities*, 106.

109 B'Tselem, *A Policy of Discrimination, Land Expropriation, Planning and Building in East Jerusalem*, 58.

110 *Discrimination, Neglect and Deprivation: Planning and Construction Policy in East Jerusalem*, Written by Attorney Nasrat Dakwar (Association for Civil Rights in Israel) and Architect Efrat Cohen - Bar ("Bimkom" - Planners for Planning Rights)

to sell, until an approval of consolidation and redistribution.¹¹¹ The remaining 21.3 km² (30%) has remained unplanned.¹¹²

The Jerusalem Local Outline Plan 2000

On 13 September 2004, Jerusalem Master Plan 2000 was presented as a comprehensive and authoritative Israeli Planning Scheme that served as the authoritative blueprint for all municipal planning within the Jerusalem Municipality. According to the Plan, all Local Planning Schemes developed for specific neighborhoods within the Municipality must conform the zoning and planning provisions as detailed in the Master Plan. Although its guiding policy only becomes mandatory once it is approved by all relevant bodies, it already constitutes a guiding strategy supplanting pre-existing and already approved plans driven by the authorities' political considerations.¹¹³ However, until today, this is exclusively the case if it serves the increase of the Jewish-Israeli population and the decrease of Palestinians in Jerusalem:

If we look at the new planning units in the colonies, you would see that these fit exactly in the Master Plan. They have plans to build approximately 23,000 units, all part of the Master Plan. [On the day of the interview] they announced the construction of 660 new units in Ramat Shlomo. These units fit exactly in the Master Plan. On the other hand, when the Palestinians go to the planning authorities to use the Master Plan for their new areas, for example in Beit Haninah where – according to the Master Plan – the ability exists to build 2000 new units, they were told: 'ok but we did not approve the Master Plan yet.'¹¹⁴

Accordingly, the Jerusalem Municipality's planning policy continues to be applied in a discriminatory way. For instance, although the Local Outline Plan 2000 foresees 13,500 new housing units for the Palestinian population of East Jerusalem, there will be a tremendous shortfall of 15,000-30,000 housing units by 2030.¹¹⁵ In the meantime, 5000 dunums are foreseen for the expansion of Israeli colonies in East Jerusalem, serving a population of

111 Large areas of land in East Jerusalem are not registered and not resolved/arranged and aren't registered in the Land Registry on the name of their owners. According to the Local Committee's position, proving land ownership is a prerequisite for the issuance of a building permit. This is an insurmountable hurdle for the residents as this involves political and legal complications - especially the problem of absenteeism and the fears of residents from the loss of land rights, if they could not prove ownership.

112 OCHA, *Special Focus: East Jerusalem Key Humanitarian Concerns*, 29; CCPRJ, *Urban Planning in Jerusalem*, 1.

113 B'Tselem, *A Policy of Discrimination, Land Expropriation, Planning and Building in East Jerusalem*.

114 Ahmad Sub Laban, field researcher and expert regarding planning and zoning in Jerusalem. Interview, 3 November 2014.

115 BADIL Resource Center for Palestinian Residency and Refugee Rights, *Israeli Land Grab and Forced Population Transfer of Palestinians, A Handbook for Vulnerable Individuals and Communities*, 108.

200,000 colonizers.¹¹⁶ These practices of inequity become possible due to the exclusion of Palestinians in the planning process as well as by pursuing the main goal of all planning processes: maintaining a Jewish-Israeli majority inside Jerusalem According to the *Authority for Developing Jerusalem Law* of 1988, non-Israeli citizens are not permitted to serve as council members or as members of the management of the Authority for Developing Jerusalem,¹¹⁷ immediately excluding Palestinian residents of Jerusalem from the planning process of the city.

The Master Plan has been devised by three main committees: the Steering Committee, the Professional Planning Committee and the Working Committee,¹¹⁸ none of which have Palestinian members. Furthermore, even though the Professional Planning Committee has focused on public participation and issued a questionnaire regarding the future vision of Jerusalem, community problems and their neighborhood vision, these questionnaires were only available in Hebrew and no meeting regarding public participation in the planning process was held in Palestinian neighborhoods or in cooperation with Palestinian committees.¹¹⁹ Acknowledging the basic principles of zoning and planning, it is crucial to realize that, by rejecting to involve Palestinians within the planning process, Israel clearly violates their participation rights leaving them totally powerless.

One of the main aims in the Jerusalem Outline Plan 2000 is maintaining a 'demographic balance'. However, this phrasing can be misleading insofar as it implies a neutral policy intending to safeguard a balance between the Palestinian and the Jewish-Israeli population inside the Jerusalem Municipality. Since 1967, Israel practically always adopted a policy of ensuring a Palestinian minority in Jerusalem that is no larger than one-third of the city's inhabitants.¹²⁰ The same ideology is now explicitly mentioned in the Master Plan, in which 'keeping a solid Jewish-Israeli majority' features as a major political objective:

In order to preserve the Jewish majority in the city one would have to reduce the number of Jewish residents leaving the city and attract Jewish residents from other parts of the country.¹²¹

The so-called demographic balance, in fact, seeks to maintain a ratio of 70% Jewish-Israelis and 30% Palestinians within the Israeli defined municipal

116 OCHA, *Special Focus: East Jerusalem Key Humanitarian Concerns*, 33.

117 Alkhalili, Dajani, and Leo, "Shifting Realities: Dislocating Palestinian Jerusalemites from the Capital to the Edge," 262.

118 Jabareen, "The Politics of State Planning in Achieving Geopolitical Ends," 33.

119 Ibid.

120 Khamaisi, "Barriers in Achieving Urban Planning Rights in Jerusalem's Socio-Cultural Conflict," 8.

121 "Jerusalem Master Plan 2000," chap. 7.

boundary. It is worth mentioning that, despite the aim to pursue this proportion, the plan explicitly recognizes the most probable demographic ratio of 60:40 between Jewish-Israelis and Palestinians respectively in 2020.¹²²



According to the Authority for Developing Jerusalem Law of 1988, non-Israeli citizens are not permitted to serve as council members or as members of the management of the Authority for Developing Jerusalem, immediately excluding Palestinian residents of Jerusalem from the planning process of the city.

In October 2010, the Israeli cabinet unanimously approved a draft law to Judaize the city of Jerusalem.¹²³ The law is described in Master Plan 2030 which grants financial and national priority status to the development of Jerusalem. Its main goal is to encourage young Jewish-Israelis to settle in Jerusalem by affording housing and tax benefits as well as allocating budgets for the construction of new colonies. While the Plan treats the Eastern part of Jerusalem as an empty space and entirely available for use by colonizers, it restricts land available for Palestinian development by expanding mandatory zoning and urban planning guidelines.¹²⁴

The Master Plans do not suggest a sufficient program for the development of East Jerusalem but, instead, imply an intensification of the existing Palestinian neighborhoods: they present the possibility of additional housing units for Palestinians by means of densification of existing neighborhoods and by re-zoning certain areas for expanded residential construction. Further densification, however, only applies to homes built with a building permit in Palestinian neighborhoods and the additional construction is limited to two storages.¹²⁵ Moreover, many of the expansion areas for Palestinian homes are already built-up with unauthorized construction. At the moment, an estimated 33% of all Palestinian homes in East Jerusalem lack building permits.¹²⁶

Acquiring a building permit entails proving ownership, filling an application form and receiving approval of the application. Considering the difficulties associated with procuring a permit, the risks to Palestinian housing rights in

122 Ibid.

123 The Civic Coalition for Defending Palestinian Rights in Jerusalem, *Aggressive Urbanism*, 3.

124 BADIL Resource Center for Palestinian Residency and Refugee Rights, *Israeli Land Grab and Forced Population Transfer of Palestinians, A Handbook for Vulnerable Individuals and Communities*, 108.

125 OCHA, *Special Focus: East Jerusalem Key Humanitarian Concerns*, 33.

126 ECCP, *EU Obligations and Duty to End Israeli Policies of Forced Transfer, Colonialism and Apartheid in Occupied East Jerusalem*, 14.

East Jerusalem have reached a mass scale.¹²⁷ In the recent years, 94% of all Palestinian building permit applications have been rejected.¹²⁸

Palestinians don't love to build without a permit, they simply don't get the ability to build with a permit. If we look at the figures, since 1967 until today, the Jerusalem Municipality gave only approximately 4,000 permits in East Jerusalem. On Israeli side they gave approximately 53,000.¹²⁹

Assuming that the only answer to unauthorized housing is to demolish them,¹³⁰ the Jerusalem Master Plans ignore the above mentioned difficulties and practices related to the process of obtaining a building permit and do not consider, instead, the option of legalizing homes built without a permit. Furthermore,, the extension of land for Palestinian use within the municipal borders of Jerusalem becomes rather impossible seen the limited reserves left to build on.

In order to enforce the above mentioned demographic balance, different 'tools' have been exploited. According to the Arab Studies Society¹³¹, the Israeli policy in East Jerusalem is currently put into practice through the confiscation of large quantities of lands; the building of Jewish-Israeli colonies; the shrinking of areas available for Palestinian construction of homes; the inflation requirements and fees to make it difficult for Palestinians to apply for construction permits; the allocation of services to Palestinian residential areas; the sealing of East Jerusalem from the rest of the Palestinian areas of the West Bank and Gaza Strip; and the conduction of a policy of denying residency rights and creating difficulties on Palestinian demographic registration.



See BADIL's Working Paper No. 16 on Denial of Residency

127 BADIL Resource Center for Palestinian Residency and Refugee Rights, *Israeli Land Grab and Forced Population Transfer of Palestinians, A Handbook for Vulnerable Individuals and Communities*, 109.

128 ECCP, *EU Obligations and Duty to End Israeli Policies of Forced Transfer, Colonialism and Apartheid in Occupied East Jerusalem*, 14.

129 Ahmad Sub Laban, field researcher and expert regarding planning and zoning in Jerusalem. Interview, 3 November 2014.

130 Chiodelli, "The Jerusalem Master Plan: Planning into the Conflict," 13.

131 The Arab Studies Society, Map and Survey Department, *Breaking the Siege of Denying the Natural Growth of Palestinian Neighborhoods in East Jerusalem*, 10.

Roads as political tools: the case of Beit Safafa

One of the major aims within Jerusalem's planning strategies is limiting the quantity of Palestinians inside Jerusalem. However, an annexation of Palestinian territory for Israeli colonial expansion, too, is pursued, benefiting more than 176,000 Jewish-Israeli colonizers.¹³² This contributes to the idea of a 'Greater Jerusalem', representing another attempt of colonial expansionism around Jerusalem to diverse colony blocks.¹³³ To optimize this plan of a 'Greater Jerusalem', a network of highways and other transport infrastructure is set up to connect East and West Jerusalem with colonies in the West Bank.

This planning strategy impacts different Palestinian villages within Jerusalem Municipality, among them Beit Safafa. Firstly, the construction of the Annexation and Separation Wall and the resulting influx of Palestinians deciding to stay within neighborhoods on the western side of the Wall (under Israeli jurisdiction), affected Beit Safafa since it does not possess any land reserves to manage the population increase, nor for future development. Since its annexation by Israel in 1967, people of Beit Safafa lost approximately one-third of their land.¹³⁴ Furthermore, the village was affected by two large-scale Israeli land confiscations allegedly undertaken for 'public purpose' in 1970 and 1991. However, Israel used the expropriated Palestinian land for the development of the Jewish-Israeli colonies of Gilo and Givat Hamatos.¹³⁵ Currently, Beit Safafa is surrounded from all sides by Jewish-Israeli colonies and by main roads limiting the possibility of expansion.¹³⁶

The most urgent matter today is the construction of Road no. 4. This is a 1.5 km long and 6-lane wide highway, with 10-11 lanes in some parts, connecting the colonies of Gush Etzion with Jerusalem.¹³⁷ In order to establish this road, a total of 234 dunums were confiscated.¹³⁸

Given that Beit Safafa was cut in the 1970s by another road connecting the colony of Gilo with Jerusalem, Road no. 4 would now cut the village from west to east and thereby slicing the village into four parts. It will disconnect local internal roads and block all access to kindergartens, schools, the health

132 ECCP, *EU Obligations and Duty to End Israeli Policies of Forced Transfer, Colonialism and Apartheid in Occupied East Jerusalem*, 23.

133 *Ibid.*, 17.

134 *Ibid.*, 18.

135 BADIL Resource Center for Palestinian Residency and Refugee Rights, *Israeli Land Grab and Forced Population Transfer of Palestinians, A Handbook for Vulnerable Individuals and Communities*, 74.

136 Bimkom, "Survey of Palestinian Neighborhoods in East Jerusalem - Jerusalem South - Beit Safafa."

137 Stop the Wall, "Stop Israeli Illegal Settlement Highway in Jerusalem."

138 Bimkom, "Survey of Palestinian Neighborhoods in East Jerusalem - Jerusalem South - Beit Safafa."

clinic and places of work and worship.¹³⁹ Besides, the people of Beit Safafa, will not be able to utilize, or benefit from the highway because there is no direct access to it from the village. Moreover, under Israeli planning law, no construction is permitted within 150 meters from both sides of this highway.¹⁴⁰ Given that many locals were unaware of the plans, this means that tens of homes are now effectively rendered illegal under Israeli planning law and thus risk being demolished at any time. Likewise, no permits will be available in the future for their renovation or extension.

Although alternatives for Road no. 4, such as a tunnel, were proposed by the residents of Beit Safafa and the corresponding costs were calculated by engineers and lawyers, Jerusalem Municipality refused to change the plan claiming that they did not object the highway in time. This reasoning was based on the local outline plan 2371 approved in 1991.¹⁴¹ The people of Beit Safafa, pointed to the fact that the plan was outdated and did not have a valid planning document for the construction of this particular highway. Yet, the Jerusalem District Court ruled that the plan was legitimate and the construction could start. The case was taken to the Israeli High Court which, on the 26 January 2014, then approved the completion of the road under the same reasoning as the Jerusalem District Court.¹⁴² The construction of the highway started in September 2012, without awaiting the decision of the High Court and even though the former UN Special Rapporteur on the occupied Palestinian territory, among others, had called for an immediate halt.¹⁴³

The road is planned to be an extension of the Begin Highway, the western Jerusalem ring road that expedites travel between North and South Jerusalem.¹⁴⁴ The section of the highway under construction in Beit Safafa would close the gap between the Begin Highway and Road 60 contributing to an improved network of roads serving the 'Greater Jerusalem'.¹⁴⁵ Yet, the impact of building this road on the village of Beit Safafa is out of proportion as no sustainable development is provided for its residents. As the road serves to ease the living circumstances of Jewish-Israeli citizens only, it blocks the development of Palestinian villages and isolates them entirely. These unbearable living condition, however, function as triggers to push Palestinians out of the city.

139 OHCHR, *Israel: UN Expert Warns against Israel's Plans for a Six-Lane Settlement Highway in East Jerusalem*.

140 Stop the Wall, "Stop Israeli Illegal Settlement Highway in Jerusalem."

141 Alaa Salman, resident of Beit Safafa. Interview, 3 November 2014.

142 Stop the Wall, "Stop Israeli Illegal Settlement Highway in Jerusalem."

143 OHCHR, *Israel: UN Expert Warns against Israel's Plans for a Six-Lane Settlement Highway in East Jerusalem*.

144 The Civic Coalition for Palestinian Rights in Jerusalem, *Urban Planning in Jerusalem*.

145 Ibid.

The exclusion of Kufr Aqab by the Annexation and Separation Wall

Another major tool pushing Palestinians outside the borders of the Jerusalem Municipality is the Annexation and Separation Wall. The construction of the Wall between 2003 and 2006 resulted in many home demolitions and withdrawals of building permits. Furthermore, different Palestinian neighborhoods, such as Kufr Aqab, Shu'fat refugee camp, Ras Khamis, Dahiyat al Salam or al-Walaja, even though within the Jerusalem municipality jurisdiction, became geographically excluded from Jerusalem as they ended up on the 'Palestinian', eastern, side of the Wall.¹⁴⁶ Today, an estimated 90,000 Palestinian inhabitants are barred entry to Jerusalem. Some 60,000 of them live in Kufr Aqab, in the north of East Jerusalem.¹⁴⁷ This is three times more than before the construction of the Wall. The continuing tendency of population increase is mainly guided by one impulse: protecting their residency right to the city of Jerusalem (*see box on Center of Life*).

Center of Life



Israel's Ministry of Interior initiated a "center of life" policy whereby residency became a matter to be maintained by its holder through daily practice. The policy gave the Ministry of Interior the power to invalidate the status of a permanent resident if it determined that their "center of life" had moved "outside of Israel" – this includes Palestinian-controlled areas of the West Bank and the Gaza Strip. The policy made residency revocation easier by establishing more stringent criteria than the previous Entry into Israel Regulations.

To implement this policy, the Ministry of Interior began to demand that permanent residents prove that Jerusalem was their "center of life" by submitting a high standard of proof, including home ownership papers or rent contracts, bills for municipal services like water and electricity, payment of municipal taxes, telephone bills, salary slips, proof of receiving medical care in the city and certification of any children's school registration in the city. Because of the stringency and often non-transparent processes of the policy, the "center of life" was – and still remains – an impediment even to a person who had never lived outside of the city.

All Palestinian Jerusalemites who could not meet the severe criteria for seven years or more lost their right to live in the city and were forced to leave their homes, their families and their jobs. Palestinians with revoked residency were denied the right to live and work in Jerusalem as well as in Israel. Furthermore, they and their families were deprived of social benefits. The status of their children was also revoked, except for cases in which the second parent had valid residency status.¹⁴⁸

146 Chioldelli, "The Jerusalem Master Plan: Planning into the Conflict," 13.

147 Grassroots Al-Quds, "Kufr Aqab."

148 BADIL Resource Center for Palestinian Residency and Refugee Rights, *Denial of Residency: Working Paper No. 16*.

The resulting population boom is often exploited by speculators and contractors selling houses, but without adequate infrastructure or building permit. These buildings risk being demolished in a later stage as the majority of Kufr Aqab inhabitants already received ‘stop working’ or demolition orders. Furthermore, since the Israeli authorities have deliberately left this building boom largely unregulated while denying the Palestinian authority to intervene, these areas are brought to the brink of a humanitarian catastrophe. In Kufr Aqab, for instance, high-rises, sometimes up to 14 stories are being built without proper supervision entail inherent engineering risks.

Similar to residents of other areas excluded by the Annexation and Separation Wall, the inhabitants of Kufr Aqab only receive a bare minimum of means as the Jerusalem Municipality refuses to supply them with basic services, such as sanitation, welfare or emergency services and the maintenance of water and electricity infrastructures, claiming that it is ‘too dangerous and too difficult to cross the Wall’.¹⁴⁹ Despite this lack of basic requirements, however, residents are obliged to pay equally high municipal taxes.¹⁵⁰

The Annexation and Separation Wall serves the political objective of enforcing the so-called demographic balance. Whereas, currently, these periphery areas are theoretically included inside the municipal borders of Jerusalem, their future status remains unclear. Jerusalem Mayor Nir Barkat previously declared that Palestinians living outside of the Annexation and Separation Wall should be transferred to the West Bank Civil Administration (which is in fact the Israeli *Military Administration* in the 1967 occupied Palestinian Territory).¹⁵¹ Although this ending is only speculative, it is vital to stress the fact that thousands of individuals risk a *de facto* dispossession of their Jerusalem ID cards.

Conclusion

By means of laws, sometimes more than 5 decades old, Israel continues to legitimize its practices in (East-) Jerusalem. However, these laws are arbitrarily applied enforcing Israel’s discriminatory actions against Palestinians. Furthermore, many issues, such as massive home demolitions, the isolation of Palestinian villages for the sake of new highways, archeological excavations or the expulsion of Palestinians to periphery areas, directly demonstrate the intention to displace Palestinians out of Jerusalem Municipality’s borders. As

149 Alkhalili, Dajani, and Leo, “Shifting Realities: Dislocating Palestinian Jerusalemites from the Capital to the Edge,” 261.

150 ECCP, *EU Obligations and Duty to End Israeli Policies of Forced Transfer, Colonialism and Apartheid in Occupied East Jerusalem*, 24.

151 ECC Palestine, “Briefing Paper on East Jerusalem.”

in the past, many Master Plans are created and applied within Jerusalem, yet no Palestinian voice is heard. By excluding Palestinians from the planning process, however, Israel clearly opposes one of the basic principles of zoning and planning: the necessity of all residents to participate. The denial of this participation paves the way for the Jerusalem Municipality to pursue the goal of maintaining a Jewish-Israeli majority in Jerusalem.

Palestinians are not only excluded from participation within the planning process, many of them become barred from living inside Jerusalem Municipality. In order to obtain a 'demographic balance' of 70% Jewish-Israelis and 30% Palestinians in Jerusalem, policies of discrimination are used to displace Palestinian residents out of the city. Different tools are exploited to enforce these practices, opposing all principles of fairness and equality. While the Israeli parts of Jerusalem and their connection with the surrounding colonies are being developed, improvement and extension of Palestinian villages and property in Jerusalem is virtually non-existent.

As a consequence, no sustainable development exists when it comes to the Palestinian population in Jerusalem given that the needs of the Palestinians today as well as the needs of the future ones are systematically ignored. In sum, although the municipality of Jerusalem presents its Master Plans as ways to ensure the urban quality of life to *all* residents, in reality, a policy of forced population transfer appears enforcing the Judaization and de-Palestinianization of Jerusalem.

Discriminatory Zoning and Planning IN THE GAZA STRIP

The Gaza Strip consists of a narrow strip of land by the Mediterranean sea, with an area of 360 km² and a population of about 1.8 million Palestinians,¹⁵² constituting one of the most densely populated areas in the world.¹⁵³ In 2005, Israel's "Disengagement Plan" prompted the unilateral withdrawal of Israeli military and colonizers from Gaza.¹⁵⁴ However, despite the 2005 disengagement, Israel remains in control, *inter alia*, of the land adjacent to the Gaza-Israeli border, considered a buffer zone, as well as of the movement of people and goods in and out of Gaza, through its complete control of Gaza's airspace, territorial waters and land crossings.¹⁵⁵ The Israeli control over Gaza's territorial waters also includes a naval buffer zone.¹⁵⁶

Following the victory of Hamas in the Palestinian general elections, Israel imposed a land, air and sea blockade on the Gaza Strip in June 2007, intensifying thus the closure applied since the early 1990s.¹⁵⁷ Israel prevents any movement of people and goods by air or by sea,¹⁵⁸ which leaves the land crossings between Gaza and Israel, and Gaza end Egypt as the only way of Gaza's interacting with the outside world and developing its economic life. As of September 2014, only the Kerem Shalom Crossing (Karm Abu Salem), which connects the Gaza Strip with Israel, is open five days a week during daytime for movement of authorized goods only. The Rafah Crossing (Al Awda), on the border with Egypt, is partially open on a daily basis between 9:00 and 15:00 for emergency cases, foreign nationals, authorized Palestinians, as well as urgent humanitarian goods. The Erez Crossing (Beit Hanoun) with Israel is

152 OCHA - Occupied Palestinian Territories, *Gaza Initial Rapid Assessment*, 6.

153 BADIL Resource Center for Palestinian Residency and Refugee Rights, *Israeli Land Grab and Forced Population Transfer of Palestinians, A Handbook for Vulnerable Individuals and Communities*, 7.

154 *Ibid.*; OCHA, *Between the Fence and a Hardplace*, 7.

155 In addition, Israel also exerts control over: the population registry, which is common to the Gaza Strip and the West Bank; the tax system, "which forms part of a single customs envelope along with Israel and the West Bank"; and civilian infrastructure, such as the electricity system as well as wired, wireless and internet communications. Bashi and Feldman, *Scale of Control*, 12–25.

156 BADIL Resource Center for Palestinian Residency and Refugee Rights, *Israeli Land Grab and Forced Population Transfer of Palestinians, A Handbook for Vulnerable Individuals and Communities*, 80.

157 OCHA - Occupied Palestinian Territories, *Five Years of Blockade: The Humanitarian Situation in the Gaza Strip, June 2012*, 1.

158 Bashi and Feldman, *Scale of Control*, 12–14.

“open for exceptional cases”, which means the movement of international workers and limited number of authorized Palestinians including aid workers, medical workers, humanitarian cases, businessmen.¹⁵⁹

The Land Buffer Zone

Restrictions on access to land located close to the fence that surrounds the Gaza Strip started at the beginning of the second *Intifada*, in September 2000.¹⁶⁰ Israel designated those areas as “access restricted area”, or “buffer zone”, which can be seen as a zoning mechanism through which Israel restricts the access of farmers – which constitute the majority of the inhabitants in this area¹⁶¹ – to their land. In most areas, the buffer zone covers land within 300 meters of the fence.¹⁶²

According to the UN Office for the Coordination of Humanitarian Affairs (OCHA), as of September 2014, all the land within 100 meters from the fence on Gaza’s side constitutes a military “no-go zone”, in which access is expressly prohibited; in the land ranging from 100 to 300 meters from the fence, Israel permits access on foot and for farmers only.¹⁶³ However, all the area within 1000 meters from the fence – that is, even beyond the buffer zone itself – is considered a risk zone.¹⁶⁴

The land buffer zone affects up to 35% of Gaza’s agricultural land,¹⁶⁵ and, prior to 2012, Israel’s restrictions of access to land caused a loss of some 75,000 metric tons¹⁶⁶ of agricultural produce, worth USD 50.2 million, per year.¹⁶⁷ Specifically, Israel does not allow for the cultivation of plants or trees that can reach more than 80 cm, because they could allegedly be used as a natural hide-out.¹⁶⁸ In addition, farmers do not know how to proceed with regards to accessing their own land, since the enforcement of restrictions of access to those areas is irregular:

159 The remainder of crossings between Gaza and Israel remain closed: Sufa’s crossing, since September 2008 (even though it was exceptionally opened from March to April 2011); Karni’s crossing, since June 2007; and Nahal Oz’s crossing, since January 2010. OCHA - Occupied Palestinian Territories, “Access and Movement (Gaza Crisis), September 2014.”

160 OCHA, *Between the Fence and a Hardplace*, 8.

161 BADIL Resource Center for Palestinian Residency and Refugee Rights, *Israeli Land Grab and Forced Population Transfer of Palestinians, A Handbook for Vulnerable Individuals and Communities*, 79.

162 See OCHA, *Between the Fence and a Hardplace*, 8; OCHA - Occupied Palestinian Territories, *Access Restricted Areas (ARA) in the Gaza Strip*, 1.

163 OCHA - Occupied Palestinian Territories, “Access and Movement (Gaza Crisis), September 2014.”

164 *Ibid.*

165 OCHA - Occupied Palestinian Territories, *Access Restricted Areas (ARA) in the Gaza Strip*, 1.

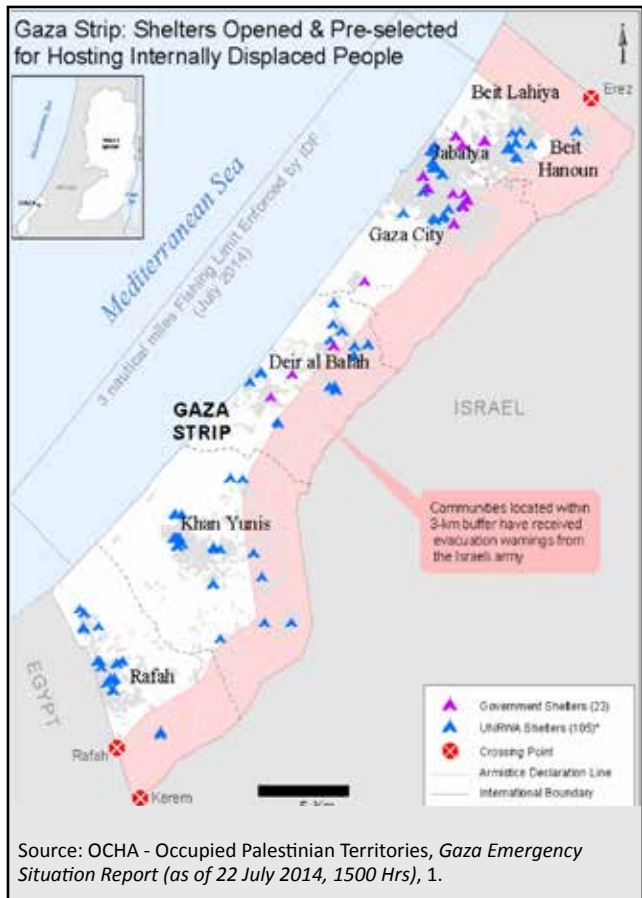
166 1 metric ton = 1,000 kg.

167 OCHA - Occupied Palestinian Territories, *Access Restricted Areas (ARA) in the Gaza Strip*, 1.

168 BADIL Resource Center for Palestinian Residency and Refugee Rights, *Israeli Land Grab and Forced Population Transfer of Palestinians, A Handbook for Vulnerable Individuals and Communities*, 79.

In general, I can say that sometimes we are allowed to reach our lands and at other times we are shot at, like other farmers, in order to prevent us from reaching our lands. We are confused and do not know how to deal with the Occupation since the soldiers behave irregularly and we do not receive up-to-date guidelines. Sometimes they even allow some farmers to access their lands while they shoot at others, tells Faysal Odeh, a farmer from Khuza'a, Khan-Yunis.¹⁶⁹

Such irregularity in enforcing the buffer zone curbs the understanding of the historical variations of the buffer zone's range.¹⁷⁰ Still, the buffer zone seems to expand in times of conflict in Gaza. In 2010, OCHA reported that Israel had been expanding the buffer zone up to 1,000-1,500 meters after November 2008, when the "ceasefire" between the Palestinian Authority in the Gaza Strip and Israel collapsed,¹⁷¹ leading to "Operation Cast Lead". Most recently, during "Operation Protective Edge", Israel declared a three-kilometer wide strip along the fence as "buffer zone", covering 44% of Gaza's land (see map).¹⁷²



During the this wide spread Israeli attack, the number of Palestinian internally displaced persons reached approximately 500,000, mostly coming from

169 Ibid., 80.

170 OCHA, *Between the Fence and a Hardplace*, 8.

171 Ibid.

172 OCHA - Occupied Palestinian Territories, *Gaza Emergency Situation Report (as of 22 July 2014, 1500 Hrs)*, 1.

areas within the Israeli-imposed buffer zone, mainly from northern Gaza and eastern Gaza City.¹⁷³ Communities within the buffer zone “experienced ground operations and fighting and were the worst affected”.¹⁷⁴ Therefore, Gaza’s land buffer zone constitutes not only a mechanism of land-access restriction, but also leads to forced displacement of Palestinians.

Even though ceasefires prompted a decrease in the number of the internally displaced,¹⁷⁵ some could not return to investigate if their homes had been destroyed, “for example: Khuza’a was located in the Israeli-declared buffer zone, we could not even go back to check on our belongings”, tells Yasir Abu Reda, inhabitant of Khuza’a.¹⁷⁶

Even after the end of “Operation Protective Edge”, the former Israeli-imposed three-kilometer buffer zone still results in restrictions of access of Palestinians of Gaza to their homes in that area, particularly dangerous to civilians due to explosive remnants of war therein.¹⁷⁷

Finally, Israeli practices related to Gaza’s land buffer zone lead to civilian casualties and property damage.¹⁷⁸ According to OCHA’s most recent report on protection of civilians, on 29 October 2014 Israeli forces’ open fire toward Palestinians in the buffer zone resulted in the injury of a 21-year-old “who was reportedly hunting birds at approximately 300 meters from the fence”.¹⁷⁹

The Naval Buffer zone

The 1994 Jericho-Gaza Agreement (or 1994 Cairo Agreement) between Israel and the PLO, established a fishing area of 20 nautical miles westwards along the Gaza Strip. However, similarly to Gaza’s land buffer zone, since the beginning of the second *Intifada*, there have been increasing restrictions on fishermen’s access to the sea. In 2002, Israel committed to allow fishing activities up to 12 nautical miles from shore, but such commitment was never fully implemented.¹⁸⁰ In 2006, after the capturing of an Israeli soldier, Israel further limited access to sea areas within six nautical miles from shore.¹⁸¹ In

173 OCHA - Occupied Palestinian Territories, *Gaza Initial Rapid Assessment*, 10.

174 Such communities include, “particularly Khuza’a, East Rafah, Al-Qarara, Bani Suhaila, Al-Maghazi Camp, Al-Bureij Camp, Ash-Shuja’iyeh neighborhood in Gaza City, East of Jabalia, as well as Beit Hanoun, Umm An-Nasser and Beit Lahiya in northern Gaza”. *Ibid.*, 7.

175 *Ibid.*, 10.

176 OCHA - Occupied Palestinian Territories, *Humanitarian Bulletin: Monthly Report, September 2014*, 10.

177 *Gaza Emergency Situation Report (as of 7 August 2014, 0800 Hrs)*, 1; see also OCHA - Occupied Palestinian Territories, *Gaza Crisis Appeal - September 2014 Update*, 25.

178 BADIL Resource Center for Palestinian Residency and Refugee Rights, *Israeli Land Grab and Forced Population Transfer of Palestinians, A Handbook for Vulnerable Individuals and Communities*, 79.

179 OCHA - Occupied Palestinian Territories, *Protection of Civilians, 28 October - 3 November 2014*, 4.

180 OCHA, *Between the Fence and a Hardplace*, 10.

181 OCHA - Occupied Palestinian Territories, “Access and Movement (Gaza Crisis), September 2014.”

addition, Palestinians are also forbidden from “accessing a 1.5 [nautical miles] wide strip along the maritime boundary with Israel, and one nautical mile wide strip in the south, along the maritime boundary with Egypt”.¹⁸²

Israel’s restrictions on Palestinian access to the sea affect 85% of Gaza’s fishing waters (as defined in 1994). Moreover, they are responsible for a potential fish catch loss of approximately 1,300 metric tons between 2000 and 2012, and for a reduction in the number of fishermen from 10,000 in 2000 to 3,500, as of July 2013.¹⁸³ Similar to the land buffer zone, this naval buffer zone faces further restrictions in times of conflict: in 2008, in the context of “Operation Cast Lead”, it was reduced to three nautical miles; and during last summer’s “Operation Protective Edge”, fishermen had no access to the sea at all.¹⁸⁴

Between 2009 and 2013, at least 300 fishing boats were confiscated,¹⁸⁵ and, only in 2013, at least 12 boats were damaged or destroyed by Israeli gunfire.¹⁸⁶ Palestinian fishermen remain exposed to being harassed, detained, having their boats confiscated as well as to warning and even direct fire from Israeli naval forces: most recently, on 22 October 2014, “Israeli naval forces detained seven fishermen, and seized their two boats”;¹⁸⁷ during the following week, “Israeli naval forces opened fire towards Palestinian fishing boats reportedly sailing within the Israeli declared six nautical mile fishing limit, forcing them ashore”.¹⁸⁸

Conclusion

Israel’s land and naval buffer zones in Gaza contribute to keeping many families in underdeveloped living conditions. This is achieved by, “undermin[ing] the fishery and agricultural sector in Gaza[,] which is the primary source of income for thousands of fisherman and farmers and their families”.¹⁸⁹ Operation Protective Edge directly affected at least 40,000 people employed in the agriculture and fishery sector and has largely contributed to a situation of severe food insecurity that affects about 57% of Gaza’s population.¹⁹⁰ This is a result of limiting the ability of most households to purchase food and to engage in production for subsistence and income.¹⁹¹ Finally, as OCHA has

182 OCHA, *Between the Fence and a Hardplace*, 11.

183 OCHA - Occupied Palestinian Territories, *Access Restricted Areas (ARA) in the Gaza Strip*, 1.

184 OCHA - Occupied Palestinian Territories, “Access and Movement (Gaza Crisis), September 2014.”

185 BADIL Resource Center for Palestinian Residency and Refugee Rights, *Israeli Land Grab and Forced Population Transfer of Palestinians, A Handbook for Vulnerable Individuals and Communities*, 82.

186 OCHA, *Fragmented Lives: Humanitarian Overview 2013*, 14.

187 OCHA - Occupied Palestinian Territories, *Protection of Civilians, 21-27 October 2014*, 4.

188 OCHA - Occupied Palestinian Territories, *Protection of Civilians, 28 October - 3 November 2014*, 4.

189 OCHA - Occupied Palestinian Territories, *Protection of Civilians, 21-27 October 2014*, 4.

190 OCHA - Occupied Palestinian Territories, “Access and Movement (Gaza Crisis), September 2014.”

191 OCHA - Occupied Palestinian Territories, *Gaza Initial Rapid Assessment*, 4.

observed, the methods Israel uses to enforce Gaza's land and naval buffer zones "raise serious concerns under international law".¹⁹²

The establishment and continuous reinforcement of Gaza's naval and land buffer zones show Israel's disregard for the principles of legality and participation, insofar as those zones were arbitrarily self-imposed by Israel on Palestinians, not giving them the right to appeal against it in courts. Moreover, the very fact that the land buffer zone only applies to the Palestinian side of the fence surrounding the Gaza Strip raises question about the fairness or equality of what constitutes a *de facto* zoning policy. Finally, the irregular way Israel reinforces such buffer zones – both land and naval – demonstrates a lack of rationality in their application.

The blockade on Gaza "has had a devastating impact on the lives and well-being of Gaza's civilian population and on Palestinian development",¹⁹³ while Israel's control over exports "determines which of Gaza's industries will function".¹⁹⁴ Along with the cyclical escalations of conflict (in 2008/2009, 2012 and 2014, most notably), the blockade has rendered 80% of Gaza's residents dependent on humanitarian aid for their survival.¹⁹⁵

In addition, by controlling the entry of construction materials, Israel curbs the reconstruction of the region, whose infrastructure and private buildings are severely damaged during Israel's operations. Two years after "Operation Cast Lead" (2008/2009), only 13.3% of the families whose homes were totally destroyed or damaged have rebuilt their homes, while 86.6% were not able to do so "because they did not receive the assistance necessary to rebuild them".¹⁹⁶ Similarly, in late 2012, after "Operation Pillar of Defense", Israel's blockade, once again, "seriously undermined the provision of essential services in Gaza", and its ban on construction materials kept those internally displaced from rebuilding their homes.¹⁹⁷ Therefore, Israel's restrictions on the entry of construction materials not only prevents Gaza from reestablishing its social and economic life after its devastating wars, but also functions as a tool of forced displacement, preventing those displaced from rebuilding (and returning) to their homes. Furthermore, such control over the entry of construction materials allows Israel to curb the urban development of Gaza and to influence its shape: for example, in 2010, Israel's "Coordinator

192 OCHA - Occupied Palestinian Territories, *Access Restricted Areas (ARA) in the Gaza Strip*, 1.

193 Hartberg, *Beyond Ceasefire*, 1.

194 Bashi and Feldman, *Scale of Control*, 14.

195 Norwegian Refugee Council, "A Crisis Within a Crisis: Humanitarian Emergency in the Gaza Strip."

196 Al Mezan, *Ongoing Displacement: Gaza's Displaced Two Years after the War*, 5.

197 Al Mezan Centre for Human Rights, *Violations of International Human Rights and International Humanitarian Law Committed by the Israeli Occupation Forces in the Reporting Period: 14 November 2012–21 November 2012*, 2–3.

of Government Activities in the Territories” reviewed UNRWA’s list of sites for Gaza schools and, in “one or two occasions [...] [they were] asked to move the location a few hundred meters, since they were [allegedly] near Hamas installations”,¹⁹⁸ as a condition for allowing the entry of the necessary construction materials.¹⁹⁹

After Israel’s “Operation Protective Edge”, in summer 2014, Israeli and Palestinian authorities reached an agreement, brokered by the United Nations regarding the reconstruction of Gaza.²⁰⁰ The “Gaza Reconstruction Mechanism”, as it is called, will supposedly “allow for the entry into Gaza of large amounts of basic construction materials (mainly aggregate, cement and metal bars) and machinery (i.e. trucks, tractors, forklifts, buses, diggers, cement and pumps)”.²⁰¹ Although the details of the mechanism remain so far undisclosed to the general public, journalist Ali Abunimah got further information from one of the attendees of high-level briefing given by Nicholas O’Regan, the country director of the United Nations Office for Project Services, on 14 October 2014.²⁰² According to the journalist, Palestinian households must go through a four stage process in order to rebuild their homes:

It begins with a needs assessment for families whose homes were destroyed. Data for each household including confidential information like family ID card numbers, GPS coordinates of the family’s home and other personal information is then put into a database ostensibly under the control of the PA. Once the information is in the database, Israel will be given forty-eight hours to object to any name on the list.²⁰³

It seems, therefore, that under the new mechanism, Israel does have a final say²⁰⁴ on the entry of construction material and, more broadly, on the reconstruction of Gaza itself. Such ultimate control of Gaza’s reconstruction amount to a *de facto* planning policy that, for its arbitrariness, disregard the principles of legality and participation, similarly to Gaza’s self-imposed buffer zones. The same reasoning applies to the blockade itself, which, in addition, constitutes a form of collective punishment, expressly prohibited under

198 Yaakov Katz, “Israel Reviewing UNRWA List of Sites for Gaza Schools.”

199 Bashi and Feldman, *Scale of Control*, 14.

200 Office of the Special Coordinator for the Middle East Peace Process (UNSCO), “Gaza Reconstruction Mechanism - Fact Sheet.”

201 OCHA - Occupied Palestinian Territories, *Humanitarian Bulletin: Monthly Report, September 2014*, 11.

202 Abunimah, “Under Cover of Reconstruction, UN and PA Become Enforcers of Israel’s Gaza Siege.”

203 Ibid.

204 See also Al Jazeera, “Gaza Plan ‘Relieves Israel of Responsibility.’”

international humanitarian law.²⁰⁵ The blockade, as a tool of *de facto* zoning and planning, also raises concerns regarding the principle of proportionality, to the extent it prohibits the entry of some products that can surely not be linked to security justifications.²⁰⁶

According to a secret cable sent to Washington²⁰⁷ by US officials in Tel Aviv of 3 November 2008, “Israeli officials have confirmed to Embassy officials on multiple occasions that they intend to keep the Gazan economy functioning at the lowest level possible consistent with avoiding a humanitarian crisis”. Since the Palestinian elections in 2006, Israel has designated Gaza as a “hostile entity”, which has resulted the tightened embargo on the Strip.²⁰⁸ Israel’s blockade on Gaza, as well as the Israeli-enforced land and naval buffer zones, seem to further this strategy. Amounting to *de facto* zoning and planning policies, those two mechanisms (the blockade and the buffer zones) – through which Israel curbs Palestinian access to land and sea areas, limits the reconstruction of public and private buildings, and even has a final say on urban planning – serve the purpose of strangulating Gaza’s economic and social life, of keeping the region “on the brink of collapse”, and its population in substandard living conditions.²⁰⁹

In practice, to discriminatory practices of zoning and planning insofar as it curbs Palestinians’ access to their land, influences the shape of the urban growth in Gaza, contributes to a lack of modern infrastructure and leaves many families in underdeveloped living conditions.²¹⁰

Palestinians in Gaza are at continuous risk of forcible displacement, due to the zoning policies explained above and which have undermined their physical security, lowered their standard of living, and increased their poverty levels and dependence on humanitarian aid.

205 OCHA - Occupied Palestinian Territories, *Easing the Blockade: Assessing the Humanitarian Impact on the Population of the Gaza Strip*, 22; see also International Committee of the Red Cross (ICRC), “Customary IHL - Rule 103. Collective Punishments”; and International Committee of the Red Cross (ICRC), “Fourth Geneva Convention”, Article 33.

206 For example, in June 2009, the blockade was eased and began to allow the entry of hummus, “but not hummus with extras such as pine nuts or mushrooms”. Shackle, “Israel Tightens Its Blockade of Gaza for ‘Security Reasons.’”

207 Gentile, “WikiLeaks Cable Reveals New Details of Gaza Embargo | Need to Know | PBS.”

208 WikiLeaks, “CASHLESS IN GAZA? - Cable: 08TELAVIV2447_a, of 3 November 2008,” para. 1.

209 Ibid., para. 2.

210 See BADIL Resource Center for Residency and Refugee Rights, *Forced Population Transfer: The Case of Palestine - Introduction*, 30.

RECOMMENDATIONS

The BADIL Resource Center urges the state of Israel to:

- End the discriminatory zoning and planning policies towards Palestinian localities, inside Israel proper, East Jerusalem, and West Bank and Gaza Strip;
- Ensure that, with regards to zoning and planning, public power is exercised lawfully, proportionally, fairly, rationally and in a non-discriminatory and participatory manner;
- Establish procedures to ensure adequate housing, rather than adding to the large existing backlog.

To the Palestine Liberation Organization:

- Promote a rights-based durable solution for displaced persons;
- Ratify the Rome Statute and immediately engage the International Criminal Court with the task of examining Israeli war crimes and crimes against humanity;
- Reject the fragmentation of Palestine and Palestinian communities by establishing a register for all Palestinians worldwide.

To Member States of the United Nations:

- Ensure that state policies do not support or recognize Israeli practices that violate international humanitarian and human rights law;
- Downgrade diplomatic relations with states committing and abetting these offenses;
- Freeze the assets of legal and natural persons responsible for violations of international law, namely forced population transfer;
- Ensure that United Nations organizations and programs conform to these remedial measures.

To the United Nations Human Rights Council (and relevant bodies):

- Clarify the mandates of agencies and bodies responsible for developing and implementing durable solutions. The UN Relief and Works Agency for Palestine Refugees (UNRWA), UN Refugee Agency (UNHCR), UN Conciliation Commission for Palestine (UNCCP), UN Committee on the Exercise of the Inalienable Rights of the Palestinian People and other relevant bodies should clarify mandates in order to coordinate effective protection for all Palestinian refugees;
- Find that Israel's policies in Israel proper and the occupied Palestinian territory constitute forced population transfer;
- Condemn Israel's policies for violating the prohibition of forced population transfer pursuant to the Fourth Geneva Convention;
- Urge the Special Rapporteur on the Human Rights of Internally Displaced Persons to conduct an investigation within the occupied Palestinian territory as well as in Israel proper;
- Develop and implement effective measures to bring Israel into compliance with its obligations to international humanitarian and human rights law, and particularly address Israel's arbitrary and discriminatory zoning and planning policies;
- Thoroughly examine Israel's institutionalized discrimination that distinguishes between Jews and Palestinians in a multi-tiered system of rights encompassing Israel proper and the occupied Palestinian territory;
- Reaffirm the fundamental rights of refugees and internally displaced persons to repatriation of their homes, lands and properties, and compensation for losses and damages;
- Establish a comprehensive registration system for Palestinian refugees and internally displaced persons. The UN should coordinate a comprehensive registration system for protecting, crafting durable solutions, and fulfilling reparations. Such a system should include all categories of Palestinian refugees and internally displaced persons, and recognize instances of multiple displacement.

To International and National Civil Society:

- Expand and develop research and workshops to inform Palestinians at risk of forced population transfer of their rights to adequate housing and Israel's tactics for undermining those rights;
- Expand and develop campaigns and research relating to the abolition of Israel's discriminatory zoning and planning policies;
- Lobby governments to cease diplomatic, military and economic support of and cooperation with the State of Israel until it adheres to international law;
- Study and address the root causes of the ongoing forcible displacement of Palestinians by Israel;
- Develop mechanisms and take effective measures to bring Israel into compliance with international law.

This Series of Working Papers on forced population transfer constitutes a digestible overview of the forced displacement of Palestinians as a historic, yet ongoing process, which detrimentally affects the daily life of Palestinians and threatens their national existence. The Series will utilize an inclusive interpretation of the human rights-based approach, emphasizing that obligations under international law must supersede political considerations. Outlining the nuances and the broader implications of forced population transfer requires careful scrutiny of Israeli policies aimed at forcibly transferring Palestinians, and their role in the overall system of oppression in Palestine.