

# Jerusalem: An Open City?

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## Introduction

Of all the issues that comprise the Israeli-Palestinian conflict, Jerusalem is one of the most, if not the most complex. Israel's annexation of East Jerusalem in 1967 and massive construction of thousands of housing units for the Israeli public in the annexed territory, along with the enormous growth of the Palestinian population, which today constitutes more than one third of the city's residents, has made the city's geopolitical and demographic reality an extremely complex mosaic. However, as a rule, Israelis and Palestinians have preferred to maintain their national distinction by living in separate and usually homogenous neighborhoods.

In the last few years, this trend has been changing, mainly by an increased Jewish presence in the middle of Palestinian neighborhoods in East Jerusalem. Even though this change clearly is driven by ideological motives, it is being treated as a simple real estate issue. Moreover, very senior figures have justified this trend with the argument that Jerusalem maintains a free real estate market in which each resident can establish residence wherever he or she pleases, regardless of their national or religious identity.

Thus, at a cabinet meeting on July 19, 2009, Prime Minister Binyamin Netanyahu declared, in response to reports of pressure from the US administration to stop Israeli construction in East Jerusalem, that "there is no ban on Arabs buying apartments in West Jerusalem and no ban on Jews buying or building apartments in East Jerusalem -- it is a policy of an open city and an undivided city, that is not separated by religion or national identity."

Various political and public figures recently made similar comments in reference to Israeli construction in East Jerusalem, as if there were a neutral policy allowing all residents of the city to purchase homes in

any area of their choice. The renowned Jewish author Elie Wiesel [reiterated that point](#) when he said "Jews, Christians and Muslims ARE allowed to build their homes anywhere in the city."

The question of construction in East Jerusalem is a complex issue in and of itself. The report by Ir Amim and Bimkom, "[Making Bricks Without Straw: The Jerusalem Municipality's New Planning Policy for East Jerusalem](#)" shows how limited construction options really are for the Palestinian residents of the city even inside East Jerusalem's Arab neighborhoods.

This brief report sets out to examine the declarations about a policy of an "open city" that supposedly exists in Jerusalem, and the possibility for Palestinian residents of the city to buy homes anywhere in Jerusalem, including West Jerusalem, and to ask: is that so?

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### **Categories of land ownership**

As a rule, land in Israel is divided into two categories: privately-owned land (including church properties) and state lands. State land is administered by the [Israel Land Administration](#) (ILA), a legally-appointed statutory body;; the Jewish National Fund (JNF); and the Israel Development Authority.

The ILA is in charge of three kinds of land, which, combined, constitute 93% of the total land of the State of Israel:

- **State land** -- land the State of Israel "inherited" from the British Mandate, and land purchased or expropriated for it after Israel was established.
- **JNF land** -- land purchased by the JNF since it was founded in the early 20th century, designated for Jews only.
- **Land belonging to the Israel Development Authority** -- a body established in 1951 to administer lands expropriated under the Absentee Property Law and transferred, sold or leased to the Development Authority by the Custodian of Absentee Property.

According to the basic law establishing the ILA and the covenant signed between the state of Israel and the JNF, a person wishing to purchase ILA land, or a building constructed on ILA land, does not acquire ownership of the property itself but rather leases it under a development contract or a leasing contract for residence (a "lease for generations" is for 25 years and up). An ILA leasing contract is restricted to people who are citizens of Israel or who are entitled to become citizens under the Law of Return (namely, Diaspora Jews). **The Palestinian residents of East Jerusalem, who are not citizens of Israel but rather have the status of permanent residents, are not entitled, therefore, to lease ILA land.**

### **Who has access to the land?**

Even though, as a rule, land is transferred from the ILA to private hands by leasing rather than purchase of the land, since the mid-1990s the ILA began, as part of a series of government reforms, to capitalize saturated building in order to reduce citizens' dependence on the ILA and allow the land to be registered with the Land Registry. According to the recommendation of the "[Ronen Committee](#)" of 1997, a government committee for reform in ILA policy, "all capitalized apartments (whose full leasing fees were paid in advance) in the urban sector will be transferred to private ownership."<sup>1</sup> This arrangement would be possible, by agreement with the JNF, only regarding property built on state land or Development Authority land, and would not apply to JNF land, which continues to be available only to Jews (i.e., not even to the Arab citizens of Israel).

In this way more than 400,000 apartments have already been registered in the names of their buyers at the Land Registry. In August 2009 an amendment to the ILA Law was passed in the Knesset, by which the lessees of 800,000 dunams would become owners of the land, but this reform has not yet been fully implemented.

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<sup>1</sup> "The capitalized apartments in apartment buildings will be registered in the names of their tenants without payment, and thereby their rights will be made equal to those of buyers of apartments built on private land [...] This arrangement will transfer ownership of more than 700,000 apartments and release their owners in the future from any ties to the ILA."

## **Categories of land owners in Jerusalem<sup>2</sup>**

In order to examine the veracity of statements by Prime Minister Netanyahu and other politicians about the "open city" policy in Jerusalem, granting every resident the possibility of buying a house wherever they wish, the composition of land ownership in the city must be mapped out. Following is a brief overview:

1948 -- At the end of the War of Independence Israel remained with the 16,261 dunams of the Mandatory city area (2,200 dunams remained on the Jordanian side). The division of ownership in that area was as follows:

- 5,478 dunams (33.69%) under Arab ownership -- this land was transferred to state ownership under the Absentee Property Law.
- 4,885 dunams (30%) under private Jewish ownership -- the ownership of that land remained as it was.
- 2,473 dunams (15.21%) -- other, mainly churches. Some of that land was leased to the state and to private individuals to build apartments.
- 400 dunams (2.47%) -- public land under municipal government ownership.
- 3,025 dunams (18.59%) -- infrastructures and roads (under municipal management).

Furthermore, the municipal boundaries of the city were expanded to include the neighborhoods/villages of Lifta, Malha, Deir Yassin, Ein Karem and part of Beit Safafa, adding 22,000 dunams to the city, and which became state land under the Absentee Property Law.

1967 -- After the Six-Day War 70,500 dunams of the West Bank were annexed to Jerusalem. Of that area:

- 24,500 dunams (35%) were expropriated and turned into state land.

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<sup>2</sup> The figures are taken from a mapping by Sami Hadawi, a former official in the Collection Office of Mandatory Palestine, from: Salim Tamari, (ed), *Jerusalem 1948 - The Arab Neighborhoods and their Fate in the War*, The Institute of Jerusalem Studies, 1999.

- 27,000 dunams (38%) were private land planned for Palestinian neighborhoods (of which only 20,000 dunams were designated for construction).
- 19,000 dunams (27%) were private land that was not planned at all.

### **So where can the Palestinians build?**

The figures presented above show that about 50% of Jerusalem's land is ILA land. This includes mainly the Palestinian villages expropriated in 1948 under the Absentee Property Law and the areas expropriated after the annexation in 1967. Furthermore, some of the land that was under Jewish ownership in West Jerusalem after the War of Independence is JNF land; it too is unavailable to the city's Palestinian residents.

Naturally, not all of the land in the municipal area of Jerusalem is designated for development and housing, and therefore is not available for those purposes -- either for Jews or for Arabs. Therefore, in order to assess the gap in housing opportunities for these two populations, we must look at the figures for the city land designated for development and housing.

The total area of Jerusalem is 126,000 dunams. The total land dedicated for development of residential neighborhoods is 55,000 dunams or 44% of the city's area. It breaks down as follows: 20,000 dunams for Palestinian neighborhoods, 20,000 for neighborhoods in West Jerusalem and 14,000 for Israeli neighborhoods in East Jerusalem.

### ***Is the city open?***

Out of 55,000 dunams slated for housing development in the city, 20,000 dunams are in the Palestinian neighborhoods. As stated above, even on the land **inside** the Palestinian neighborhoods, the actual possibility of receiving a building permit is very limited. But can the Palestinians indeed buy land and build in the other areas dedicated for development in the city's Jewish neighborhoods?

Considering the fact that theoretically only private land is available to Palestinian residents for purchase in Israeli neighborhoods both in West and East Jerusalem (since as residents but not citizens, they are legally barred from leasing ILA land), the amount is very limited: it includes 4,885 dunams that were Jewish-owned before 1948 (some of which, as aforementioned, is JNF land dedicated for Jews only), and another 2,473 dunams that were owned by other parties, mainly churches (and were partly leased to the state and to individuals for residential housing construction).

**Therefore, of all the land designated for housing development in West Jerusalem and in the Israeli neighborhoods in East Jerusalem (35,000 dunams), at least 79% (27,642 dunams) is ILA land, and therefore theoretically off limits to the city's Palestinian residents.**

### **Epilogue: Between theory and practice**

To examine in depth the credibility of the declarations of "an open city for Jews and Palestinians," it is not enough to present figures about the composition of land ownership in East and West Jerusalem. As presented above, the legal situation theoretically prevents the Palestinian residents of Jerusalem from buying land in substantial part of the city. In practice, there are many more factors that influence the nature and shape of municipal life in the city.

Two separate national communities live in Jerusalem side-by-side, with very little desire to mix with each other. Jerusalem's neighborhoods generally maintain a homogenous national character, and in cases where Jewish settlements are established in the middle of Palestinian neighborhoods serious tension between the Palestinian residents and their new neighbors erupt. For the same reason, it is likely that a Palestinian wishing to buy an apartment in an Israeli-Jewish neighborhood in Jerusalem, in those few areas that are privately-owned and accessible to him by law, he will be met with suspicion and even hostility, making the process of purchase very difficult or even impossible. This is not a wild guess: in certain Israeli neighborhoods such as Pisgat Ze'ev and French Hill, into which Palestinian families have moved, usually by renting apartments,

residents have organized to protest this process and try to push the Palestinians out of their neighborhoods.

On the other hand, despite the restrictions cited in the ILA leasing contract, they are not always actually enforced and in many cases the Palestinian buyer's blue identity card is sufficient to close the deal, without his status as a resident, rather than citizen, being investigated and posing an obstacle to the process. But even when such a transaction is completed, the danger of cancellation will always hover over it, because article 19 of the ILA leasing contract says that the lessee, or the party on behalf of which the lessee is acting, being a foreign national (i.e., not an Israeli citizen, and not someone with the potential to become an Israeli citizen under the Law of Return) "is considered a fundamental breach of the contract for which the lessor is entitled to cancel the contract."

Ultimately, the rare cases when the two populations -- the Israeli and the Palestinian -- share a common residential space, derive either from an ideology wishing to convert the national character of the city's Palestinian neighborhoods through Jewish settlement, or from constraints (the lack of building possibilities inside the Palestinian neighborhoods, crowding, poor living conditions, neglected infrastructures, etc.) that squeeze the Palestinian residents out of their neighborhoods. Jerusalem's urban reality reflects the two populations' desire to segregate themselves from each other, and neither community welcomes, to put it mildly, the entrance of the other into its boundaries. In this context, the declarations about an "open city" sound detached from reality at best, and misleading at worst.