



# PERMANENT RESIDENCY

A Temporary Status Set in Stone

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## **INTRODUCTION**

By Dr. Menachem Klein

## **THE STATUS OF JERUSALEM**

By Adv. Talia Sasson

## **BEING A RESIDENT OF JERUSALEM, NOT A CITIZEN**

By Adv. Oshrat Maimon  
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## INTRODUCTION

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Israel annexed East Jerusalem almost two generations ago. Israel considers both parts of Jerusalem as its united capital but was unable to change the city's status under international law, which does not recognize the legality of the Israeli annexation, nor of the neighborhoods Israel built on the annexed land. Nor can Israel change the Palestinians' connection to East Jerusalem and the city's status as their religious and cultural center as well as their emerging capital.

Israel annexed the territory of East Jerusalem but not the Palestinians who were born and live there. It gave the territory "full citizenship" by applying its law, jurisdiction and administration to it, anchoring that measure in basic laws that would make it difficult for any Israeli government to cede any land in East Jerusalem. But it did not grant Israeli citizenship to the Palestinians who live there. The Palestinians in question are not migrants who entered Israel but people who were born in Jerusalem and whose lives are centered here, in this city. One third of the city's residents are people without citizenship. They live in a country that views their territory as its own but does not view them as part of it. As far as Israel is concerned, they reside in the place of their birth by sufferance, not by right.

Israel has built huge Israeli neighborhoods in East Jerusalem but left the Palestinian neighborhoods in wretched squalor. The systematic neglect of the Palestinian population and the harassment of its public and civil institutions are the practical and inevitable manifestations of a "unification" which is actually a separation. Israel recognized as much in the Oslo Accords that were approved by the Knesset. In those accords Israel declared that the Arabs of Jerusalem are Palestinians. They received permission to vote for the political institutions of the Palestinian Authority. Israel thereby laid part of the groundwork for the future partition of the urban space between the two peoples by agreement, in cooperation and peacefully. By doing so Israel also recognized on the international level that Jerusalem was not "united and liberated."

Since the second intifada, both sides have taken actions that make reaching an agreed solution more difficult. Israel used the political vacuum of those years to step up its efforts to establish facts on the ground to reinforce its exclusive control of East Jerusalem and undermine the possibility of a political solution. Settlers backed by Israeli governments infiltrated Palestinian neighborhoods in order to disrupt the division of the city's neighborhoods between Jews and Arabs. There are plans at various stages of planning and execution for massive construction and a network of national parks that will separate the Palestinian city from the West Bank, physically connect Ma'ale Adumim to Jerusalem and separate the Old City from the Palestinian neighborhoods that surround it. The purpose of these measures is to forestall a settlement that recognizes the rights of both peoples to the city as part of a two-state solution.

The absence of a political agreement does not justify unilateral measures that allow one side to take over the city while pushing the other out, or the denial of people's full citizenship and political rights in the place where they live.

The assessment that there is no hope of reaching a two-state solution in the foreseeable future creates a new situation that forces us to take a fresh look at the facts Israel has established in East Jerusalem.

The Palestinians of Jerusalem vote for a Palestinian Authority that is not authorized to act in East Jerusalem; they do not pay it taxes nor do they enjoy its services. Their right to vote is meaningless because their vote has no power here, in Jerusalem, where they live. Those who want Israeli citizenship find their path almost completely blocked because Israel is concerned about the demographic consequences their citizenship would have for its Jewish character and the status of Jerusalem as its capital.

Indeed, the Palestinian residents of Jerusalem have the right to vote for the Municipality; but they do not exercise it because they do not want their votes to ratify the annexation of the territory, nor do they believe that by voting they can change their bitter lot or significantly reduce their systematic deprivation in every area of life. Their position is understandable because policy for Jerusalem is not made at City Hall but by the Israeli government, through the Ministerial Committee on Jerusalem Affairs, development authorities that answer directly to the Prime Minister's office and the Interior Ministry. Without the ability to vote on the national level and without political representation, the ability of Jerusalem Palestinians to affect their daily lives is minimal.

Were this situation merely temporary, for a few years, perhaps such an arrangement could be tolerated. But the unfortunate situation of the violation of basic civil rights has persisted for many years. In retrospect we must admit: this situation is not temporary but permanent, and there is no change in sight.

This situation has serious implications for Israel's character as a democratic state and for Jerusalem's status as its capital. Israel does not grant, nor does it want to grant, 300,000 Arab residents—about one fifth of the Arabs in Israel—civil rights. A Jerusalem that is not the city of nations—that does not belong to all its residents—is not democratic. And if Jerusalem is not democratic, Israeli democracy as a whole is seriously impaired.

If Israel wants to prevent the deterioration of its democratic character and strengthen Jerusalem, it has three options:

- **To offer full citizenship status to Palestinian residents of Jerusalem, with no restrictions.**  
This option would minimize the damage to democracy but would leave unresolved the issue of Palestinians' national link to Jerusalem.
- **To allow the Palestinian Authority to act in East Jerusalem and see to the Palestinians' municipal needs.** In that framework, the Palestinian residents of Jerusalem would be able to establish their own municipal and communal institutions that would work for them.  
This is an option Israel can offer even without negotiations over a final settlement.
- **To accept the principle offered by President Clinton in 2000: divide the city by areas whose residents are predominantly Israeli or Palestinian and establish a roadmap and short timetable to institute the arrangements to implement this principle with or without a comprehensive settlement.**

Dr. Menachem Klein  
Member, Ir Amim Board of Directors



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## THE STATUS OF JERUSALEM

By Adv. Talia Sasson

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### **Opening comment**

I was asked by Ir Amim to prepare this brief position paper—specifically, to review the legal-political status of Jerusalem, to analyze the legal conundrum created by Israel's application of its law, jurisdiction and administration to East Jerusalem and to propose possible solutions. I was asked to do all of these things concisely and prepared the following review accordingly.

### **Comment on content**

I wish to clarify that this position paper represents its author only. It does not intend to express or present the position of Ir Amim, which is permitted to reject or adopt the paper in its entirety or parts thereof. Furthermore, the author of this paper does not serve any role within the Ir Amim organization and therefore is not committed to its positions.

### **Sequence of discussion**

First we shall discuss the legal status of the West Bank at the end of the 1967 war according to international law. We will review the change of the legal status of Jerusalem immediately following the 1967 war and afterward, solely according to domestic Israeli law. We will describe the civil status of the residents of East Jerusalem according to domestic Israeli law. We will address the territory to which the term "Jerusalem" refers. We will describe the legal constraints Israel imposed to prevent the cancellation of its control of any part of East Jerusalem. Finally, we will articulate the democratic dilemma caused by the legal and political status Israel created in Jerusalem and we will present possible solutions. The paper concludes with a summary.



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**1.**

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# **LEGAL STATUS OF THE WEST BANK AT END OF THE 1967 WAR ACCORDING TO INTERNATIONAL LAW**

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The Six-Day War broke out on June 5, 1967. Subsequently, the IDF captured the West Bank, including the eastern part of Jerusalem, the Golan Heights, the Sinai Peninsula and the Gaza Strip. The legal status of those territories according to domestic Israeli law is different from the status ascribed by international law. Even according to domestic Israeli law, the status of the annexed territories is not uniform. In this section we will focus only on the legal status of the West Bank according to international law as East Jerusalem was an integral part of the West Bank until the 1967 war.

The West Bank is a territory under belligerent occupation, to which international conventions concerning occupied territories apply. Israel's Supreme Court recently ruled that "the legal regime that applies to these territories is determined by the rules of public international law, at the center of which are the rules of belligerent occupation."<sup>1</sup>

It is noteworthy that Israel never applied its law, jurisdiction and administration to the West Bank (as opposed to the Golan Heights and East Jerusalem), nor did it claim that it had sovereignty over the West Bank.

The accepted view according to international law itself is that the legal status of East Jerusalem is the same as the status of the entire West Bank because the unilateral legal measures Israel took in East Jerusalem, which will be detailed below, do not change the legal status of East Jerusalem in terms of international law. Therefore, international law does not distinguish between Israeli construction in the West Bank and in East Jerusalem. From the perspective of international law, as expressed in the 2004 Advisory Opinion of the International Court of Justice in The Hague on the separation barrier, the settlements in the West Bank are illegal.<sup>2</sup> A view similar to the Court's opinion on the separation barrier could probably apply to Israeli construction in East Jerusalem as well.

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<sup>1</sup> HCJ 1661/05 Gaza Coast Regional Council et al v Israeli Knesset et al, IsrSC 59(2) 481, 514 (President Barak).

<sup>2</sup> Since the Fourth Geneva Convention applies to the West Bank according to the International Court of Justice in The Hague and considering Article 49 of that convention.

**2.**

## **LEGAL STATUS OF EAST JERUSALEM FROM 1967 ONWARD ACCORDING TO DOMESTIC ISRAELI LAW**

The legal statuses of the different areas captured by Israel at the end of the 1967 war under domestic Israeli law are not uniform. Three different kinds of legal arrangements can be observed,<sup>3</sup> but this position paper will focus solely on Jerusalem.

Israel's "law, jurisdiction and administration" was applied to Jerusalem by virtue of section 11b of the Law and Administration Ordinance, 1948. That ordinance was added to the 1967 Law and Administration Order (in the Law for the Amendment of the Law and Administration Order (no. 11), 1967) and declared that "the state's law, jurisdiction and administration will apply to any area of the Land of Israel that the government decides by decree."

Following that ordinance, the government passed the Law and Administration Decree (no. 1), 1967, according to which:

**The territory of the Land of Israel described in the appendix is hereby determined as the territory to which the state's law, jurisdiction and administration apply.<sup>4</sup>**

In 1980, the Knesset passed the Basic Law: Jerusalem, Capital of Israel. It states that "the whole and united Jerusalem is the capital of Israel."<sup>5</sup>

It goes on to say:

**The boundaries of Jerusalem include, for the purpose of this basic law, among others, the entire area described in the appendix to the declaration of the expansion of the jurisdiction of the Municipality of Jerusalem from June 28, 1967, given according to the Municipalities Order.<sup>6</sup>**

The basic law also prohibits the transfer of the powers of the state or of the Municipality of Jerusalem to a foreign element.<sup>7</sup> It goes on to say that "the provisions of sections 5 and 6 cannot be changed other than by a basic law passed by a majority of Knesset members."<sup>8</sup>

<sup>3</sup> See review of this issue in HCJ 1661/05 Gaza Coast Regional Council et al v Israeli Knesset et al (hereinafter: the Gaza Coast affair).

<sup>4</sup> Section 1 of the decree. See also Amnon Rubenstein and Barak Medina, "The Constitutional Law of the State of Israel," 5th Edition, Schocken Books, 1996 (hereinafter: Rubinstein), Vol. 1, p. 86.

<sup>5</sup> Section 1 of Basic Law: Jerusalem, Capital of Israel (hereinafter: the basic law).

<sup>6</sup> Section 5 of the basic law.

<sup>7</sup> Section 6 of the basic law.

<sup>8</sup> Section 7 of the basic law.

It should be noted that Israel did not explicitly state in the law that it was annexing<sup>9</sup> East Jerusalem to Israel; or, in other words, did not explicitly affirm in the law that it was applying its sovereignty to East Jerusalem. Israel took a different course of action by deciding to apply Israeli law, jurisdiction and administration to East Jerusalem. Nonetheless, according to Israel, East Jerusalem constitutes an integral part of the State of Israel.

Is there an essential difference between the two legal approaches? It seems that according to international law, applying sovereignty is a bilateral rather than a unilateral act, as Rubenstein asserts in his book<sup>10</sup>:

**According to international law, the boundaries of a state's sovereignty are determined by agreements with the states that border with it and by the factual assessment of the effective control of the state over a certain territory.<sup>11</sup>**

As for the application of the law, jurisdiction and administration he says:

**Conversely, the application of the law, jurisdiction and administration is the result of a 'unilateral' decision of the state authorities and therefore is a matter determined by domestic law.<sup>12</sup>**

What this means, then, is that from the perspective of domestic Israeli law, East Jerusalem is like any other part of Israel; but under the provisions of international law, East Jerusalem is an integral part of the West Bank. From the international perspective, the de facto annexation of East Jerusalem to Israel does not apply. This legal position is the basis of the political position of the vast majority of countries in the international community, including the US, i.e. the annexation of East Jerusalem to Israel is not internationally recognized (de facto or de jure), nor is Israeli sovereignty over East Jerusalem.<sup>13</sup>

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9 There is a dispute between scholars whether applying Israeli law to territories in the West Bank or the annexation of those territories to Israel by law are one and the same. Supreme Court Justice Haim Cohen doubted whether applying the law equaled annexation. He thought the law could be applied to those territories even without intending to annex them, as he ruled in HCJ 283/69 *Davidi v Hebron District military Court*, IsrSC 24(2) 419, 423. Prof. Dinstein expressed the opinion that annexation was not identical to merely applying the law: "Zion Shall Be Redeemed in International Law," *Hapratlit* 27 (1971), p. 5 [Hebrew]

10 See footnote no. 4

11 Rubenstein, p. 913.

12 Ibid., ibid.

13 It can be argued that the countries of the world, including the US, did not recognize West Jerusalem as the capital of Israel before the 1967 war either. It can be argued that there is no apparent difference between the international community's position on the status of West Jerusalem and that of East Jerusalem. Supposedly they both have the same status. I believe there is an essential difference between the world's position towards the two parts of the city for the following reasons: 1. Israel's eastern border was drawn as the armistice line in the Rhodes Agreements. Indeed, it is not an agreed international border. But the status of the border of West Jerusalem as it stood in 1967 is the same as the entire "Green Line." When a political agreement is made between Israel and Palestinians and an agreed border is determined, it will bring with it international and formal recognition of West Jerusalem as well. 2. Meanwhile, despite the aforesaid, in its advisory opinion on the separation barrier, the International Court of Justice in Hague implicitly recognized the 1967 borders. That recognition expresses a widespread international view that the 1967 border is definitely Israel's recognized and sovereign border. 3. That view is also necessarily implied by President Obama's declaration in Washington during the Netanyahu visit in May 2011 as to the principles of the peace agreement that should be reached between the Palestinians and Israel based on the 1967 borders with border adjustments and agreed territory exchanges. The 1967 border is the Green Line including West Jerusalem. 4. Recognition of West Jerusalem is consistent with the principles of the Clinton parameters, according to which the border in Jerusalem between Israel and Palestine should be determined by the kind of population that lives in each neighborhood. The vast majority of the population of West Jerusalem is Jewish so therefore, although West Jerusalem has not been formally recognized as sovereign Israeli territory, it should definitely be recognized as such when a peace agreement is reached between Israel and the Palestinians, and therefore the status of that territory is already de facto different than that of East Jerusalem.

**3.**

## CIVIL STATUS OF THE RESIDENTS OF EAST JERUSALEM

The Citizenship Law does not provide universal citizenship to the residents of East Jerusalem even though Israeli law was applied to the territory where they live.<sup>14</sup> According to that law, the interior minister is empowered to grant citizenship to any resident of "an area occupied by the Israel Defense Forces" in certain cases,<sup>15</sup> but such power applies to personal applications only, is limited by certain conditions and does not allow granting of universal citizenship to the residents of that area solely by virtue of their place of residence, as the language of the section explicitly states. It is also doubtful that the section applies to East Jerusalem because it is doubtful that Israel defines Jerusalem as "an area occupied by the Israel Defense Forces." Another possible strategy for obtaining citizenship for the residents of East Jerusalem can be found under section 4a of the Citizenship Law,<sup>16</sup> although this section also lacks the authority to grant universal citizenship to the residents in question.<sup>17</sup> What, then, is the status of the residents of East Jerusalem?

The Awad case<sup>18</sup> established that the residents of East Jerusalem who were not naturalized are permanent residents of Israel, and the interior minister's power to cancel that residency does not convert permanent residency into residency by sufferance. Permanent residency is conferred by right and only relevant considerations can justify the interior minister's use of power to revoke it:

**In conclusion: Israel's law, jurisdiction and administration apply to East Jerusalem. By virtue of that application, the Entry into Israel Law also applies to East Jerusalem and stipulates that the presence in Israel of the residents of East Jerusalem who were not naturalized is based on residency licenses, and anyone who was enumerated in the population census of 1967 is considered to have received a license for permanent residency.<sup>19</sup>**

<sup>14</sup> Even though normally, according to Prof. Dinstein, "when a state acquires territory – by consolidation, transfer or annexation – usually its citizenship is automatically bestowed on all of the permanent residents who live there. It is actually a kind of collective citizenship." See Dinstein, "The Powers of the State Internally", (1972) 27.

<sup>15</sup> Section 6(e) of the Citizenship Law, whose subtitle is "exemption from naturalization," says the following: "The Interior Ministry may at his discretion grant Israeli citizenship by way of naturalization to an adult resident of the territory occupied by the Israel Defense Forces who asks to be naturalized even if he does not fulfill the conditions in section 5(a), if the Minister is convinced that the applicant identifies with the State of Israel and its objectives and he or a member of his family have taken real action to promote the security, economy or any other important affair of the state or that granting such citizenship is in the special interest of the state."

<sup>16</sup> Section 4a of the Citizenship Law says: (a) A person born after Israel was founded in a place that was Israeli territory on the day of his birth and never had any citizenship will become an Israeli citizen if he applies for citizenship between his 18th and 21st birthdays and if he was a resident of Israel for five consecutive years immediately before submitting the application. (b) Where a person submitted an application according to subsection (a) and meets the conditions specified therein, the interior minister or someone authorized by him will approve his application; but he is permitted not to approve the application if the applicant was convicted of a violation of state security or was sentenced to five years or more in prison for another offense.

<sup>17</sup> See also on this matter Rubenstein's book, Vol. 2, p. 896.

<sup>18</sup> HCJ 282/88 Awad v the Prime Minister, IsrSC, 45(2) 424, 431.

<sup>19</sup> Ibid., ibid.

Therefore, we can conclude that the residents of East Jerusalem are permanent residents of Israel but most of them are not citizens, with the exception of those individuals who applied for citizenship and whose applications were approved. The number of such cases is apparently small. Therefore, as a rule, residents of East Jerusalem cannot participate in elections for the Israeli Knesset. Since Israeli law applies to East Jerusalem its residents, who are registered in the population registry as residents of Jerusalem, are allowed to register in Jerusalem's municipal electoral register and to participate in the city's municipal elections.<sup>20</sup>

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<sup>20</sup> See Local Authorities Law (Elections), 1965, Section 6a, which says: "Any person who is registered in the electoral register of a certain local authority is entitled to vote in the elections for that local authority." See too Section 11 of the same law as to registration in the electoral register.

**4.**


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## **LEGAL CONSTRAINTS ON CANCELING THE APPLICATION OF ISRAELI LAW AND CONCEDING GOVERNMENTAL POWERS IN EAST JERUSALEM**

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When the State of Israel was founded, it established Jerusalem as its capital. From the perspective of the Jewish people and the Jewish citizens of Israel, Jerusalem is the symbol of the rebirth of the Jewish people in its country of origin. The emotional, national, religious and historic connection of the Jewish people to Jerusalem beats in the heart of every Jew and requires no elaboration; nor does this position paper question the establishment of Jerusalem as the capital of Israel.

The specific problem this position paper is designed to address concerns the question of the definition of the territorial boundaries of the city. Once Israel applied its law, jurisdiction and administration to the territory called "East Jerusalem" it annexed—de facto if not de jure—that territory to the State of Israel. In order to prevent concession of that territory, Israel hastened to legislate, in 1980, in its Basic Law: Jerusalem, Capital of Israel, that

**No power concerning the boundary of Jerusalem which is by law vested in the State of Israel... shall be transferred to a foreign party.<sup>21</sup>**

In this legal context, "Jerusalem" is intended in its broad definition, including East Jerusalem as described in Basic Law: Jerusalem itself. The provisions of sections 5 and 6 of the basic law can be amended only by a basic law and only if passed by a majority of members of the legislature.

In addition, in 2011 the Knesset amended its Law and Administration Law (Cancellation of the Application of Law, Jurisdiction and Administration), 1999. This law imposed constitutional restrictions that make it extremely difficult to cancel the procedure by which Israel applied its law, jurisdiction and administration. According to this law, if the government of Israel reaches an agreement with others to concede territory in East Jerusalem, or even if the government decides to do so unilaterally, without the agreement of another state, such a decision or agreement cannot be approved or ratified without first being transferred to the Knesset.<sup>22</sup> The Knesset will be allowed to approve such a decision only by a majority of its members.<sup>23</sup> If the proposed government decision is approved, the agreement will be subject to approval by a referendum. Only if it is approved by referendum by a majority of the participants<sup>24</sup> will the approved agreement go back to the government for approval.

Since, according to the Basic Law: Jerusalem, no governmental or political power over any of the territories defined as Jerusalem (East Jerusalem) shall be transferred to a foreign party unless such transfer was made by the approval of a majority of members of the Knesset in a

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21 See Section 6 of Basic Law: Jerusalem.

22 Section 1a (a) of the Law and Administration Law (Cancellation of the Application of Law, Jurisdiction and Administration), 1999.

23 See section 2(c) of the aforesaid law.

24 See section 3(a) of the aforesaid law.

basic law, if any government has such an intention it will have to pass a basic law (or amend the existing Basic Law: Jerusalem). I believe such a process will occur only after the agreement is approved by the government, which will do so only after it is already approved by referendum as described above. These legal constraints, imposed on the possibility of actually conceding any territory of East Jerusalem, reflect Israel's political intention not to concede these territories and, moreover, to forever maintain them under its control.

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**5.**

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## WHAT, THEN, IS "JERUSALEM"?

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The neighborhood of Rehavia in the Western part of the city is completely different from the Jerusalem of a Palestinian resident of Issawiya. There still seems to be a part of "Jerusalem" that belongs to no one, which receives no mercy and is hidden from the eye—a part of the city that also counts as the capital of Israel but about which nobody cares and in which nobody has any interest. When I mention the concept of "Jerusalem", I feel I must also mention this Jerusalem.

The municipal area of East Jerusalem includes many Palestinian neighborhoods, which are home to 300,000 Palestinians. This area was not physically demarcated until the separation barrier was built. The fence was built mainly along the municipal line of the city of Jerusalem; but there are neighborhoods that were split by the fence, with the part remaining outside of the barrier still being defined as part of the municipal area of Jerusalem. This phenomenon has therefore created enclaves east of the separation fence which are within the municipal boundaries of Jerusalem but, at the same time, physically within the West Bank. The Municipality does not provide services to these neighborhoods because they are located on the other side of the fence; nor does the Civil Administration provide them with services because, legally, their residents belong to the Municipality of Jerusalem. Finally, because these neighborhoods are under Israeli control, the Palestinian Authority (PA) does not provide services to their residents.

These neighborhoods suffer deeply as a result of this dangerous governmental anarchy. They are neighborhoods that are home to thousands of Palestinians who receive no municipal services. Because Israel does not enforce its governmental authority in these neighborhoods, they are experiencing a phenomenon of massive Palestinian construction: multi-story buildings that are being erected in the absence of formal engineering plans, inspection, building permits or city infrastructure; without expropriation for public purposes and without a preliminary determination of the means to deliver elementary public services. These neighborhoods have remained a sort of "no man's land" in which the warning of an impending humanitarian disaster is screaming from the walls. In the case of an earthquake these houses, hanging by a thread, could collapse on the heads of all of their inhabitants. Police responsibility for these neighborhoods resides with Israel, according to its own decision and made ironclad by the legal constraints previously described; as a result, on the day of reckoning, it is Israel that will be called upon to give a moral accounting both to itself and to the international community.

**6.**

## THE OSLO ACCORDS: DID THEY CHANGE THE STATUS OF PALESTINIANS IN JERUSALEM?

Israel signed the Declaration of Principles as to Interim Self-Government Arrangements (known as the Oslo I Accord) with the Palestinians on September 13, 1993.<sup>25</sup> The declaration asserted that the arrangements for Palestinian self-government would not apply to Jerusalem<sup>26</sup> and that the issue of Jerusalem would be discussed as part of the final settlement.<sup>27</sup> The Palestinian residents of East Jerusalem were given the right to participate—without specifying whether it was the right to vote or to be elected—in elections for the Palestinian Authority Council. The details delimiting this right would be determined in separate negotiations.<sup>28</sup>

Following the Declaration of Principles and the negotiations that followed, the "Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip" was signed (hereafter: "the interim agreement").<sup>29</sup> The agreement stipulated that issues concerning Jerusalem would be discussed as part of the permanent settlement<sup>30</sup> while making more immediate provisions for elections for the Palestinians of East Jerusalem.<sup>31</sup> The relevant article established the right of the Palestinian residents of East Jerusalem to vote for the Palestinian Council. It went on to stipulate that the council would be elected by the Palestinian people "in the West Bank, Jerusalem and the Gaza Strip."<sup>32</sup> However, the right of residents of East Jerusalem to be elected to institutions of the Palestinian Authority was limited to people with valid residential addresses within the jurisdiction of the Palestinian Council (including people with more than one valid address).<sup>33</sup> The agreement allows Palestinians living in East Jerusalem—except for Palestinians with Israeli citizenship<sup>34</sup>—to vote at Israeli post offices under the supervision of international observers. Furthermore, Article I (7) of the agreement states:

25 [http://www.knesset.gov.il/process/docs/oslo\\_eng.htm](http://www.knesset.gov.il/process/docs/oslo_eng.htm).

26 See Article 4 of the Declaration of Principles, according to which "Jurisdiction of the Council will cover West Bank and Gaza Strip territory, except for issues that will be negotiated in the permanent status negotiations."

27 See Article 5(3) of the Declaration of Principles; Permanent status negotiations were to commence "as soon as possible, but not later than the beginning of the third year of the interim period," according to the provisions of Article 5(2) of the Declaration of Principles.

28 See Annex 1 of the Declaration of Principles - Protocol on the Mode and Conditions of Elections, Article 1: "Palestinians of Jerusalem who live there will have the right to participate in the election process, according to an agreement between the two sides." The protocols are regarded as an integral part of the Declaration of Principles, according to Article 17 of the Declaration.

29 [http://www.knesset.gov.il/process/docs/heskemb\\_eng.htm](http://www.knesset.gov.il/process/docs/heskemb_eng.htm).

30 Article XVII of the Interim Agreement says: "In accordance with the DOP, the jurisdiction of the Council will cover West Bank and Gaza Strip territory as a single territorial unit, except for:

a. issues that will be negotiated in the permanent status negotiations: Jerusalem, settlements, specified military locations, Palestinian refugees, borders, foreign relations and Israelis [...]."

31 Article II of the Interim Agreement – Elections. The entire article appears at the end of the document; Annex II of the Interim Agreement: Protocol on Elections; Article IV - the entire article appears at the end of the document.

32 Article III of the Interim Agreement: Structure of the Palestinian Council; Article IV of the Interim Agreement: Size of the Council.

33 According to the provisions of Article III(1) of Annex II of the Interim Agreement, which says that "every candidate for the Council from the various constituencies set out in the Palestinian Election Law must have a valid address in an area under the jurisdiction of the Council in the constituency for which he or she is a candidate. Every candidate for the position of the Ra'ees must have a valid address in an area under the jurisdiction of the Council. A valid address shall be that of a residential property which is owned or rented or otherwise legitimately occupied by the candidate. This valid address shall be entered in the candidate's nomination paper. Where a candidate has more than one valid address, he may enter all such addresses on his nomination paper."

34 According to the provisions of Article II (1) e of Annex II of the Interim Agreement, "Israeli citizens shall not be entered on the Electoral Register," and Article III (1) c of the Annex, which says that "Israeli citizens may not be candidates for election to be a member of the Council or to be the Ra'ees."

**The offices of the Council, and the offices of its Ra'ees and its Executive Authority and other committees, shall be located in areas under Palestinian territorial jurisdiction in the West Bank and the Gaza Strip.**

In other words, said offices will not have jurisdiction in Jerusalem. The Oslo Accords were expressed in domestic Israeli legislation and the proclamation that applies to the West Bank (as part of the security legislation in the West Bank by the area commander).

Did the Oslo accords change the status of the residents of East Jerusalem described above? I do not think so. The Oslo accords addressed the issue of Jerusalem with great caution. They were careful to make a clear distinction between the territory of East Jerusalem—discussion of which was postponed to the final agreement—and the Palestinian population, which, according to the accords, may participate in decisions concerning control of the West Bank territory outside of Jerusalem but certainly not in Jerusalem. Jerusalem was and remains an area beyond the control of its Palestinian residents.

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**7.**

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## ISRAEL'S POLITICAL POSITION TOWARDS EAST JERUSALEM

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Israel's political position toward East Jerusalem has been coherent and consistent, despite the differing political ideologies of the various governments that have served in Israel. Politically, Israel treats East Jerusalem as an inseparable part of Israel. It created an extremely rigid constitutional system that ties the hands of all future governments as to the possibility of conceding governmental power and the de facto annexation of East Jerusalem. The binding constitutional structure previously described is designed to convey to the whole world—in and out of Israel—that the government of Israel intends for East Jerusalem to be an integral part of the capital of Israel for all eternity. However, it should be noted parenthetically that while the binding constitutional structure would indeed be politically difficult for any government to change, from a technical constitutional angle, the obstacle is not as insurmountable as it at first appears to be. In fact, it would only require a regular Knesset law to cancel the Law and Administration Law (Cancellation of the Application of Law, Jurisdiction and Administration), and thereby cancel the demand for a referendum, in one fell swoop. The conditions established for the cancellation of the application of Israeli law to East Jerusalem as they appear in Basic Law: Jerusalem can be avoided by amending the basic law itself, which would require a Knesset majority of 61 members. However, the law in its current form imposes heavy political constraints on any government that wants to change the constitutional status concerning Jerusalem.

At any rate, the constitutional status under discussion constitutes a clear declaration of intentions by Israel. The constitutional structure is accompanied by sweeping statements by prime ministers, most recently by Prime Minister Benjamin Netanyahu, who declared to the U.S. Congress in 2011 that Jerusalem is the eternal capital of Israel and its sovereignty is not on the agenda of peace negotiations with the Palestinians. Therefore, the "partition" of Jerusalem between the two peoples, which would involve ceding control of part of the territory of East Jerusalem and revoking the application of Israeli law to it or to part of it, is not on the political agenda as far as Israel is concerned at the time of this writing (April 2012). This situation creates a considerable internal difficulty for Israel, which we will address in the next chapter.

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## THE DEMOCRATIC CONUNDRUM POSED BY THE LEGAL AND POLITICAL SITUATION IN JERUSALEM

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The constitutional arrangement concerning East Jerusalem, taken along with Israel's political declarations and demonstrated behavior, point to only one conclusion: Israel's intention to continue controlling East Jerusalem as if the territory were under its eternal sovereignty. Under this matrix, the Palestinian residents of East Jerusalem—a population of 300,000—have been relegated to a status under which they are not citizens of Israel nor, for most, citizens of any other country.<sup>35</sup> They are therefore devoid of political rights and devoid of the right to vote or be elected for the legislative body of the country of their residence—namely, Israel.

Not having the right to vote for the legislative body of one's country of residence has profound significance and is a fundamental question of basic human rights. At the center of the democratic system is the individual. The "people," comprised of individuals, is the sovereign in the state. In representative democracies, the members of the legislative body are representatives of the sovereign, or, the people. Representatives decide on the distribution of resources and the priorities by which they are distributed in the state, within the geographic territory of the individuals called the "people." People who do not have the right to vote or to be elected do not have the ability to influence the distribution of resources in the state, nor do they have any influence on the state's national priorities or on the extent of their share of the state's resources. They are not involved in the allocation of resources for infrastructure, healthcare or education. The avenues through which they can express their collective needs to the government are extremely limited. Their basic human rights, such as freedom of expression and the right to equality, depend on the goodwill of the ruler, because unrepresented individuals have no effect at all on the election or nonelection of that ruler. All of these considerations explain why, under international conventions, citizenship is defined as a basic human right. When a certain population does not have the right to vote for the legislative institution of the country of its residence, it has virtually no influence on its own way of life.

Such a situation was forced on the Palestinian residents of East Jerusalem, most of whom view themselves to be politically affiliated with the future Palestinian state, once established. Israel, for its part, is sending these residents a clear message, in every possible way, that their present status, as far as Israel is concerned, is permanent. The result is that for more than four decades these residents have been living without citizenship and, as a consequence, without any real control over their own lives. They are disconnected from the State of Israel, in which they live but of which they are not citizens. They are disconnected from their people—the Palestinian people—both because they do not have a state and because the territory in which they live is not subject to the control of the Palestinian Authority (PA). Their inclusion in elections for the PA, inasmuch as it exists, has no actual effect on their lives because they live under the complete control of Israel.

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<sup>35</sup> Before the 1967 war most of them were Jordanian citizens.

The inferior civil status of the Palestinian residents of East Jerusalem not only explains the severity of their neglect but also poses a problem for Israel itself. Let us focus now on the problem this situation creates for the citizens of Israel.

Israel states in the Basic Law: Jerusalem that Jerusalem is one city, a united city, "a city joined together." But the unity of the city is not measured only by opening roads between neighborhoods without erecting border posts between them. There cannot be one united city as long as there is basic discrimination between two populations on a national-ethnic basis, which is the root of the matter. Whereas members of the Jewish population have citizenship, and all the other rights that citizenship confers, the Palestinian population has no citizenship. That denial of citizenship entails a long list of deprivations in all areas of life, including rights and services which ought to be provided by the state that presents itself to the world as—and this must be emphasized—the sovereign in the territory. From Israel's point of view, it is not ruling over a civil population under an occupation regime; it is ruling over a civil population under Israeli sovereignty in the State of Israel itself.

There is a deep internal conflict between Israel claiming that the city was united into one city, without having given the Palestinians civil rights, and Israel being a democracy. How could such a large population not have the basic right of any democratic regime—the right to vote and be elected? And how could the denial of those rights be anchored in a national-ethnic test? What are the grounds—other than their national-ethnic identity—for leaving those Palestinians without civil rights? And if it is argued that they must not be given citizenship because they belong to the Palestinian people, considered enemies of the state of Israel (since no peace accord has been signed with the Palestinian people), it must be remembered that Israel made clear, in a 1970 law, that it does not attribute to that population the rationale of enmity!<sup>36</sup> Moreover, Israel rightfully did not refrain from granting citizenship to all the Palestinian residents who remained in their homes in the 1948 war and presently constitute 17% of the population of Israeli citizens. What, then, has caused the State to act differently towards the residents of East Jerusalem? Why did these residents remain devoid of civil rights? It would appear to be a fundamental defect in a democratic state.

It would appear to be a fundamental defect unless, the answer might be, Israel's basic political assumption is that the population in question should be subject to the State of Palestine when such a state materializes. The ascription of those Palestinian residents to Israel is temporary and will find its rightful arrangement in a future political settlement between the two peoples. But that answer does not meet the test of time, at the very least because denial of basic rights for 45 years cannot be justified as temporary. The case of Jerusalem is even more problematic because Israeli law says that the (de facto) annexation of East Jerusalem to Israel is intended to be eternal, as is the constitutional structure erected by Israel, its practical policy and the declarations of its leaders. So where does the concept of temporality of the status of the residents of East Jerusalem come from? And if the situation is not temporary, then we must go back to the original question.

What answer, then, can be offered to the problem presented above?

It appears that Israel makes a clear but undeclared distinction between its treatment of the territorial area of East Jerusalem and its treatment of the population living within it. According to Israel, the territory is an integral part of the State. Its residents are Palestinian, with no particular distinction from the residents of the West Bank other than the fact that formally, they are permanent residents of Israel.

The aforesaid situation creates a dilemma for Israel, both domestically and internationally.

Domestically, the situation described above diminishes Israeli democracy and calls it into question. In the territory where Israeli law and governmental powers apply there are 300,000

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<sup>36</sup> See Section 4 of the Law and Administration Law [Combined Version], 1970: "Where a person is a resident of a territory to which the decree of application of the law applies, the court or tribunal on a civil matter will not recourse to the argument that he is an enemy or an enemy subject, unless that argument was made by the attorney general or by his written agreement."

residents living without rights—a profound insult to Israeli democracy.

Internationally, Israel is viewed as a country that discriminates on a national-ethnic basis between two populations which—by its own definition—live within its sovereign territory. The international community largely attributes this national-ethnic discrimination to racist motives<sup>37</sup>, especially in the absence of other bases such as national security—a justification that Israel itself eliminated in 1970 by declaring that it does not attribute the rationale of enmity to its Palestinian residents.

The situation described above supports the international claim shared by several states that Israel does not have sovereignty in East Jerusalem, according to international law as claimed above, because Israel itself does not treat the population living in that area as if it were an integral part of the citizen body of Israel. That situation also supports the Palestinian position that East Jerusalem ought to be controlled by the Palestinian people and not Israel. Had Israel wanted from the outset to create a factual situation by which East Jerusalem was an integral part of Israel, it should have fundamentally changed its attitude toward the population living in that area. Since Israel has made it clear by its actions and its laws that the Palestinian population is not part of the citizen body of Israel, its position as to the unity of the city does not appear to be convincing.

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<sup>37</sup> See definition of "racism" in the Convention against Racism. (International Convention on the Elimination of All Forms of Racial Discrimination?)

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## POSSIBLE SOLUTIONS

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The solutions that can be offered on the question of Jerusalem are a function of the speaker's political views and positions. That being said, any solution offered, from any point of view, must take into consideration both international law and domestic Israeli law.

Jerusalem is a core issue for achieving a peace accord with the Palestinian people, meaning that without an agreement on the question of Jerusalem, there will be no peace accord with the Palestinian people.

Anyone who believes that Israel must reach a peace agreement with the Palestinians and end the protracted conflict between the two peoples—and who supports a two-state solution—necessarily accepts the principle of the partition of Jerusalem between the two peoples because each of the peoples views Jerusalem as its capital. The partition of Jerusalem—a partition that actually exists as described above since the city never was truly united—is an integral part of a future peace agreement.

There are those who wish to prevent the partition of the city. They wish to maintain Israel's de facto sovereignty in the city and its continued control over the city for eternity, whether they believe such a state can be achieved by agreement or not. Those who maintain this position must ask themselves what solution they propose to address the issue of the Palestinian residents of East Jerusalem. I stress: offering a solution is necessary because the present situation, by which the territory of their residence is "Israeli" while the residents themselves are actually Palestinian residents of the West Bank, without civil rights, is inconsistent with the democratic principles at the basis of the establishment of Israel and is a material violation of Israel's democratic profile. Furthermore, such a situation perpetuates the conflict between the two peoples and the justified feelings of discrimination experienced by the residents of East Jerusalem, as compared to the city's Jewish residents, all of whom are Israeli citizens by birth. Given its poor education and health systems, its economic deprivation and rising crime rate, this area poses a negative security potential and the possibility of disturbances in other parts of Jerusalem as well.

The present status is unacceptable and there is no chance that it will ever be acceptable to the international community. It gives fodder to Israel's critics and even to enemies who seek to paint it as an aggressive, racist, expansionist country that persecutes Arabs out of racial motives.

The practically inevitable solution that stems from that view—a view which the author of this paper does not embrace in any form—is to give that population the right to vote for the Knesset. But would the people who hold that position really suggest giving the Palestinian population of East Jerusalem the right to vote for the Knesset?

Even if there are Israeli citizens willing to "pay the price" of giving that population civil rights in order to maintain the "unity" of the city under Israeli control, they ought to think about the consequences such a decision would have for the status of the residents of the entire West Bank. The latter might argue in the future that there is no difference between residents of the West Bank and the residents of East Jerusalem; after all, under international law they are accorded the same status. Would such a decision not embolden the Palestinian residents of the West Bank to demand, in the future, the right to vote for the Knesset, should a two-state solution fail to materialize? Would it not provide leverage for international pressure on Israel in the future? Does it serve the interests of the state of Israel? Does it serve the purpose of its foundation as the nation state of the Jewish people and as a democratic state? Outside of these questions, granting universal citizenship to the residents of East Jerusalem might be completely rejected by its Palestinian residents because, in the absence of a peace agreement between Israel and the Palestinian people, the territory of East Jerusalem continues to be a fundamental bone of contention between the peoples. It is likely that no Palestinian would dare take a stand and accept Israeli citizenship before a political agreement is reached on the question of Jerusalem. Maintaining the current situation of the absence of civil status for the Palestinian residents of Jerusalem, whether it was caused by Israel or by the Palestinians, has very pernicious consequences for Israel.

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## SUMMARY

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As reviewed above, Israel maintains a dual attitude towards East Jerusalem. Constitutionally, politically and practically, Israel makes a clear distinction between the territorial area of East Jerusalem to which it applied its sovereignty *de facto* and the Palestinian population of the area, considered permanent residents of Israel but actually treated like the Palestinian residents of the West Bank.

The failure to grant civil rights—primarily, the right to vote and be elected to office—to the Palestinian residents of East Jerusalem, in an area where Israel claims sovereignty, is a serious violation of Israeli democracy because the right to vote for the Knesset—the most fundamental right in a democracy—is being denied to a particular population of 300,000 people on national-ethnic grounds. This situation undermines Israel's claim of sovereignty in East Jerusalem and is a material violation of Israeli democracy. The continuation of the situation described here causes ongoing and deep injury to Israel's international status and requires it to offer a solution.

The high road to solving the situation described above is achieving a peace agreement between the Palestinian people and Israel, with Jerusalem constituting a core issue in the conflict and its solution. The two-state solution, including the partition of Jerusalem, would provide an adequate solution to that problem.

Those who think Israel must continue holding Jerusalem in the present framework, whether in an agreement with the Palestinians or without one, must offer a solution to the status of the Palestinian residents of East Jerusalem. In other words, those who maintain that position must accept granting the Palestinian residents of East Jerusalem the right to vote for the Knesset, because failing to do so harms Israeli democracy, strengthens international criticism of Israel and provides a justification for it. Granting the residents of East Jerusalem the right to vote could provide the Palestinian residents of the West Bank support for a similar demand if a two-state solution is not reached, and for the justification of the one bi-national state solution which might gain supporters among the Palestinian people.

Those who think that a bi-national state would be a disaster for Israel—and that is the position of this writer—must present a different solution that does not require Israel to grant citizenship to the residents of East Jerusalem. The only other solution is two states for two peoples, the consequent partition of Jerusalem and a peace agreement with the Palestinian people.

In conclusion, I would like to state my personal position to the reader: the continuation of the present status of Jerusalem, without solving the issue of citizenship presented above with all its implications, causes continuous damage to life in Jerusalem, peace in the city, Israeli democracy and Israel's grave international standing. This situation requires fundamental change in the interest of the State of Israel.



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## **BEING A RESIDENT OF JERUSALEM, NOT A CITIZEN**

By Adv. Oshrat Maimon  
Adv. Tamar Luster  
**Policy Advocacy, Ir Amim**

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**At the end of the Six-Day War, Israel applied its law, jurisdiction and administration<sup>1</sup> to East Jerusalem, thereby annexing it, without the law explicitly stating so. Therefore, according to domestic Israeli law, East Jerusalem is like any other part of Israel. According to international law however, East Jerusalem is an integral part of the West Bank and its annexation to Israel is not recognized. None of the countries that maintain diplomatic relations with Israel at the ambassadorial level have recognized the annexation, the rationale given for not locating their embassies in Jerusalem.**

**International law views East Jerusalem as an occupied territory under belligerent occupation. Therefore, according to international law, and as articulated in the thorough and comprehensive petition submitted by Hamoked: Center for the Defense of the Individual and the Association for Civil Rights in Israel last April (hereinafter: the Hamoked and ACRI petition),<sup>2</sup> as residents of the occupied territories, the Palestinian residents of East Jerusalem should be recognized as "protected" persons entitled to protections under humanitarian international law. For example, Article 49 of the Fourth Geneva Convention forbids any kind of "forced transfer" of protected persons.**

**According to the Israeli Central Bureau Statistics 2011 Yearbook, at the end of 2010 the Palestinian population of Jerusalem was 283,900 out of a total of 788,100 residents of Jerusalem (36%).<sup>3</sup> According to Municipality figures based on the population registry, at the end of 2011 the Palestinian population of Jerusalem was 360,880 out of a total of 933,133 residents of the city (38.7%).**

1 Section 11b of the Law and Administration Ordinance, 1948; the Law and Administration Order (no. 1), 1967.

2 HCJ 2797/11. The petition was withdrawn by the parties at the recommendation of the judges on the grounds of its being general, on March 21, 2012.

3 Central Bureau of Statistics figures, Table 2.5, "Sources of Population Growth, by Type of Locality, Population Group and Religion." The Jerusalem Institute for Israel Studies cites similar but slightly higher figures in its publications.

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**1.**

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## HOW THE STATUS OF PALESTINIAN RESIDENTS OF EAST JERUSALEM AS PERMANENT RESIDENTS OF ISRAEL WAS ESTABLISHED

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In 1967, Israel conducted a population census in East Jerusalem. The census was conducted under curfew and included only the people actually found at home by enumerators who conducted their work from house to house. The Shuafat refugee camp was not included in the census even though it was part of the annexed territory, and "there were cases in which the enumerators did not reach isolated houses and distant locations because access to them was difficult," as noted in the actual census (*p. 26*). The census documents also indicate that 27% of the households had sons/daughters abroad and that these individuals were not recorded in the census. The census enumerated 65,857 people.

The Interior Ministry census was extremely significant for the residents of East Jerusalem. The census determined their eligibility for Israeli identity cards, which they required in order to maintain residency in the city. Every counted person received a registration voucher, in exchange for which s/he received an identity card. Without identity cards, the Arabs of East Jerusalem were unable to maintain contact with the authorities, even to receive basic services. Without identity cards they could not register in the employment bureau, move freely through the city, realize their entitlements to welfare or National Insurance Institute allowances or receive government recognition of personal status changes. Licensed professionals such as lawyers, doctors and tour operators in East Jerusalem were required to obtain Israeli licenses and to register by Israeli law.<sup>4</sup>

In June 1967, during discussions to determine the legal framework required to apply Israeli law to the area, officials considered the idea of imposing Israeli citizenship upon the residents of the annexed territory. The ministerial committee charged with drafting the unification procedures rejected the idea. Its members were convinced that the rules of international law forbade forcing the citizenship of one country on the citizens of another. An opposing proposal—to let the residents keep their Jordanian identity cards—was also ruled out. In the end, the Arabs of East Jerusalem became Israeli residents with Jordanian citizenship (*Benziman, 204*).

At one point, information about the special conditions under which the Israeli administration was willing to grant Jerusalem's Arabs citizenship was spread quietly, but Israel never offered or allowed universal citizenship to the Arab citizens of East Jerusalem as a whole and the number of people who responded to the individual track was negligible. The Arabs of East Jerusalem remained citizens of Jordan. As part of limited understandings and ad hoc arrangements made between Jordan and Israel, the East Jerusalem Chamber of Commerce continued to renew Jordanian passports and obtained permits that allowed the residents of East Jerusalem to travel to Jordan.

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4 Uzi Benziman, "Jerusalem: A City without a Wall" (Schocken Books, 1973), [Hebrew], p. 190.

**2.**


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## THE CIVIL STATUS OF THE RESIDENTS OF EAST JERUSALEM

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According to the interpretation of case law of Section 1(b) of the Entry into Israel Law, 1952 (the Awad case<sup>5</sup>), the residents of East Jerusalem are considered to have received licenses for permanent residency, based on the recognition of those who were counted in the population census conducted in the area in 1967. This is the case even though the Palestinians did not "enter" Israel as the language of the law describes; rather, it would be more accurate to say that Israel "entered" the area where the residents lived. The status of residency was actually forced on the residents of East Jerusalem because refusal to receive resident status would have constituted the denial of their right to continue living in their homes and to conduct normal life in the place where they were born and lived and further, would have exposed them to the threat of deportation. The court rejected the argument of the petitioner Awad that his status in Jerusalem was the status of "quasi citizenship."

The Citizenship Law, 1952, does not grant universal citizenship to the residents of East Jerusalem. The law theoretically allows individuals to receive citizenship on certain conditions, but in any case it does not apply generally to all the residents of East Jerusalem. The residents do not have the fundamental civil right to vote or to be elected for central government institutions. They cannot vote or run for the Knesset<sup>6</sup> and do not carry Israeli passports.<sup>7</sup> They are entitled to vote and run in elections for the Jerusalem Municipality<sup>8</sup> but cannot run for the position of mayor.<sup>9</sup> In practice, most of the Palestinians of East Jerusalem prefer to boycott the elections, an expression of their refusal to accept Israeli rule and an affirmation of their affinity with the Palestinian nationality. Various discussions among Palestinians about participation in the local elections were rejected by the Palestinian leadership.<sup>10</sup>

There are additional restrictions in other laws that limit the election of certain positions in Jerusalem solely to Israeli citizens; for example, "a person who is not an Israeli citizen"<sup>11</sup> cannot serve as a board member or executive member of the Jerusalem Development Authority. The Jerusalem Development Authority has broad powers concerning the planning and development of Jerusalem. By government approval, it received NIS 50 million for each of the budget years 2006-2013 for the development of the Old City basin.<sup>12</sup> By law, a resident of East Jerusalem cannot be a member of that authority's executive board.

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<sup>5</sup> HCJ 282/88 Awad v The Prime Minister and Minister of the Interior, PD 45(2) 424 (1988).

<sup>6</sup> Sections 5 and 6 of Basic Law: The Knesset.

<sup>7</sup> Sections 2 of the Passport Law, 1952.

<sup>8</sup> Local Authorities Law (Elections), 1965.

<sup>9</sup> Local Authorities Law (Election of Authority Head and Deputies and their Tenure), 1975.

<sup>10</sup> Menachem Klein, "Doves over Jerusalem's Sky: The Peace Process and the City 1977-1999" (Jerusalem Institute for Israel Studies, 1999) [Hebrew], pp. 134-136.

<sup>11</sup> Article 11 of the Jerusalem Development Authority Law, 1988

<sup>12</sup> Government Decision no. 4090 from August 9, 2005.

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**3.**

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## RESIDENTS, NOT FULL CITIZENS OF ANY COUNTRY

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### **Between Jordan and Israel**

Before 1967, Jordan granted citizenship to the residents of the West Bank—including the residents of East Jerusalem—which allowed the residents of East Jerusalem to vote for the Jordanian parliament. In July 1988, the Hashemite Kingdom severed its constitutional and administrative relations with the West Bank (but continued to maintain the religious subordination of the Waqf—the Islamic trust—to Jordan as well as its responsibility for the holy sites in Jerusalem). Consequently, the status of the residents of the West Bank, including those of East Jerusalem, gradually changed. The residents of East Jerusalem could no longer vote for the Jordanian parliament. Today, some of the residents of East Jerusalem have Jordanian passports with identity numbers (apparently those who were previously citizens) and some have Jordanian passports without identity numbers.

### **Between Israel and the Palestinian Authority**

On November 15, 1988, the PLO declared Jerusalem the capital of the State of Palestine. The PLO was generally accepted at that time as a legitimate organization and the sole representative of the Palestinian people (*Klein, pp. 74-75*), although not by Israel. In secret negotiations over the Oslo I Accord (September 1993), Israel recognized Palestinian institutions in East Jerusalem *de facto* (*Klein, p. 109*). It did so even though it was decided in the public channel of the Oslo I Accord that negotiations over the final settlement would include the subject of Jerusalem and that during the interim period Palestinian self-rule arrangements would not apply to Jerusalem. That accord also determined that the jurisdiction of the Palestinian Authority Council—which would constitute the Palestinian government authority during the transition period—would not include Jerusalem.

The Palestinian Authority (PA) was established in May 1994. The agreement signed between the PA and Jordan on January 25, 1995, did not highlight Jordan's special status in Jerusalem, while at the same time citing the Palestinian people's political affiliation with Jerusalem. Jordan undertook in that document to help the Palestinians realize their right to self-determination and to a state whose capital would be Jerusalem (*Klein, 126*).

Between 1996 and 2006 there were a number of election cycles for the PA's legislative council and presidency, all of which attracted the participation of the residents of East Jerusalem, who were given the right both to vote and to run for office. According to the Oslo II agreement from September 1995, only Palestinian voting cards—not Israeli identity cards—constituted a valid means of identification for participating in the elections.<sup>13</sup>

Ahead of the first elections for the PA in 1996, the Israeli High Court of Justice was petitioned with the demand to order the government to prevent the elections in East Jerusalem, and the

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13 For further information about the complex election procedures in Jerusalem, see Klein's book, pp. 164-181.

participation of its residents in the elections, because of the apparent violation of Israel's sovereignty over Jerusalem. The government defended its decision to allow the elections and the petitions were rejected. The court ruled that no conflict was found between the election arrangement proposed subsequent to the Oslo accords and Israel's sovereignty in Jerusalem.<sup>14</sup> Petitions against the government decision to allow the elections for the PA in 2006 were also rejected. The government again defended its decision, arguing among other reasons that it was acting within its authority, under the laws for the implementation of the accords, in order to realize its commitments.

Then Deputy Prime Minister Ehud Olmert spoke about the government decision to allow elections in East Jerusalem, and in the following quote, posted on the official website of the Prime Minister's Office, expresses point blank Israel's intention to continue controlling the territory of East Jerusalem, without responsibility for its residents:

**I want to remind you that in 1996 and 2005 there were also elections in Jerusalem. The responsible approach that I supported both in 1996 and 2005 was that while we do not concede our authority and sovereignty over all parts of Jerusalem, it is certainly in our interest to maintain the affiliation of the residents of East Jerusalem with the Palestinian state and not the State of Israel. We never thought it was in the interest of the State of Israel for all of the Arabs of East Jerusalem to be its citizens and to participate in its election processes. Surely we cannot deny them the right to vote in the elections for the PA. Since we are not interested in their participating in elections in Israel, we should surely agree for them to participate in elections in the PA and therefore that decision was the right one then and is still the right one now...I suppose that most of the Israeli public prefers for the Arabs of East Jerusalem not to participate in elections in Israel but to participate in elections in the state with which they identify, which is the Palestinian state. As far as the neighborhoods, that has nothing to do with it, nor did it in the past either.**<sup>15</sup>

However, voter turnout in East Jerusalem compared to other districts was the lowest in the country at only 30% (*Klein*, 175). Israel posed many obstacles to voters on their way to the polls—difficulties compounded by the election organizers, who caused technical problems and confusion over voting sites. Furthermore, East Jerusalem voters were reluctant to vote because of their own criticism and reservations about the Palestinian political system and the fact that they lived relatively far from the political center (*Klein*, 176).

Therefore, the Palestinians of East Jerusalem today:

- **Do not have full Jordanian citizenship, only Jordanian passports.**
- **Are permanent residents of Israel but not Israeli citizens. They live in Israel and are subject to Israeli law and authorities. They do not have Israeli passports but can obtain travel passes (*laissez passer*).**
- **Have Palestinian identity and can vote for the Palestinian authorities, but do not have Palestinian passports (as do residents of the West Bank). The PA for which they are able to vote is unable to act in the place of their residence, Jerusalem.**

In other words, in the full sense of citizenship, the Palestinians of East Jerusalem are persons without recognized citizenship—stateless residents of the state.

<sup>14</sup> HCJ 298/96, Peleg v. Government of Israel (decision from January 14, 1996).

<sup>15</sup> The Prime Minister's Office's website: <http://www.pmo.gov.il/PMO/Archive/Events/2006/01/eventpre170106.htm> [Hebrew] (emphases added).

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## CITIZENS OF NO COUNTRY: A VIOLATION OF THE BASIC RIGHTS OF THE RESIDENTS OF EAST JERUSALEM

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**"The Palestinians of Jerusalem have Jordanian passports but are not Jordanian, we have Israeli identity cards but are not Israeli, and our identity inside is Palestinian, but we have nothing that expresses that status. We have no citizenship."** *Ahmad, resident of the Old City, East Jerusalem.*

The status of resident—as opposed to citizen—affects all areas of the lives of the Palestinians of East Jerusalem, who have resided under Israeli rule for 45 years. As we shall later see, an abyss exists between the Jerusalem of its Israeli citizens and the Jerusalem of its Palestinian residents.

### **A stateless person**

Because it embodies a range of values and institutions, the concept of "citizenship" is difficult to define compared to other political concepts. A possible definition of citizenship is a legal and political framework for achieving full membership in society. Citizenship is one expression of the idea of the social contract, expressing the relations between the people who constitute the society and the government, and between the members of that society, and allows them to realize their natural rights. Plato and Aristotle both viewed citizenship as a virtue through which the individual takes part in public life and realizes a high level of humanity. Aristotle claimed that man is a political animal in the sense that he cannot realize his human purpose without the state. Furthermore, the citizen is not a citizen merely because he lives in a certain place but is distinguished from others by his participation in the jurisdiction and government.

The right to be a citizen was recognized in the UN 1948 Universal Declaration of Human Rights. Without citizenship, a person is unable to realize even his most basic rights.

As explained above, the Palestinians who live in East Jerusalem are not full citizens of any state—either of Israel or of Jordan or of Palestine. They are people devoid of citizenship in all its essential elements. They are thereby denied a fundamental, primary and profound basic human right. As we shall detail below, the lack of citizenship with all its components has concrete significance for daily life.

### **A resident today but not tomorrow**

The status of residency, unlike citizenship, requires constant verification and is always subject to expiration and revocation. The status of residency leaves a large measure of discretion to the Israeli authorities, which have radically changed their policies over the years, outside the lens of public discussion or even public notification. The connection of the residents of East Jerusalem to the place where they were born and raised for generations is cast in perpetual

doubt. They are required to repeatedly prove their connection to Jerusalem to the authorities, to continually present numerous documents and to withstand examinations and investigations. There is no explicit provision in the Entry into Israel Law stating that a license for permanent residency expires if the license holder leaves Israel and settles in a country outside of Israel, yet there are provisions to that effect in the Entry into Israel Ordinances. Ordinance 11(c) states that a license of permanent residency will expire if the license owner leaves Israel and settles in a country outside of Israel. Ordinance 11(a) provides that a person will be considered to have settled in a country outside of Israel if one of the following conditions is satisfied: s/he stayed out of Israel for at least seven years, s/he received license to reside in another country permanently or s/he received the citizenship of that country.

In the Awad case, the court, speaking through then Justice Barak, ruled that the conclusion that the license for permanent residency had expired could have been reached even without the ordinances by virtue of the interpretation of the Entry into Israel Law alone. The court therefore opined that the license could expire even without an "external" act of revocation.

As described in the Hamoked and ACRI petition,<sup>16</sup> upon which this section heavily relies, the Interior Ministry's interpretation turned the Awad ruling into a destructive and pernicious bureaucratic-administrative tool:

**In the last 20 years, the Interior Ministry's interpretation of the Awad ruling has served as an instrument to revoke the status of thousands and to 'dilute' the Palestinian population of East Jerusalem. This policy is in keeping with a general policy of harassment of those residents, meant to push the Palestinian residents of Jerusalem out of the city and achieve a Jewish majority in Jerusalem (paragraph 2).**

As described in the petition, the residents of East Jerusalem were once permitted, like the rest of the residents of the occupied territories, to spend time in Arab countries for various purposes such as work, education or even family life. In the mid-1990s, the Interior Ministry began to revoke the status of many of these activities. The status of residency was interpreted as one which requires constant demonstration of proof that the "center of one's life" is in Jerusalem. Beginning in the late 1990s, many residents of East Jerusalem who applied to the Interior Ministry with various requests were met with refusal and received a brief standard letter informing them that their licenses for permanent residency had expired because, according to the Interior Ministry, they had moved the center of their lives outside of Israel. In most cases, the expiration of such residency also applied to the residency status of the resident's children. The notice concluded with the order that the resident and his family members return their identity cards and leave the country, normally within 15 days.

This policy, which came to be known as the "silent transfer," was also applied toward people who resided in Jerusalem at the time, but whom the Interior Ministry claimed had previously moved the center of their lives outside of Israel, as well as to others who were abroad at the time the policy was implemented and were unaware that their residency had expired. For these purposes, even the West Bank and the Gaza Strip were considered to be locations "abroad," as opposed to what was stated in the previous policy, according to which people who moved to the Occupied Territories—sometimes to suburbs near the municipal boundaries of Jerusalem—were able to maintain their status.

Even though this development constituted a radical change of policy, the Interior Ministry did not see fit to publicize its new policy. Furthermore, the policy was applied retroactively. The Interior Ministry claimed that its policy was an outcome of the Awad ruling, even though in the Awad case it was determined that the interior minister's power to revoke citizenship does not change the status of permanent residency into residency by sufferance. According to that

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<sup>16</sup> HCJ 2797/11 above.

ruling, the interior minister cannot with mere words expel all of the residents of East Jerusalem by canceling their permanent residency licenses: "Their permanent residency is by law and only relevant considerations can activate the power of the interior minister" (*Awad*, p. 430-431).

Following a petition by human rights organizations and residents of East Jerusalem who had been harmed by the policy,<sup>17</sup> the interior minister at the time, Natan Sharansky, submitted a deposition that somewhat mollified the effects of the aforesaid policy. According to Sharansky's deposition, a resident whose residency was revoked could restore his status if he satisfied certain conditions. Following the petition and deposition, there was a temporary lull in the policy of massive revocations of residency status.

According to figures from the Interior Ministry published by B'Tselem, Hamoked and ACRI, from 1995 to 2000, the Interior Ministry revoked the residency of more than 3,000 Palestinians from East Jerusalem. Beginning in the early 2000s, it was clear that the change in policy had merely been temporary. According to Interior Ministry figures collected by B'Tselem and Hamoked, in 2006 the Interior Ministry revoked the residency of 1,363 people and in 2008 of 4,577 people.<sup>18</sup> All told, since 1967 the Interior Ministry revoked the residency of more than 13,000 people.

The Hamoked and ACRI petition also details the blatant gender implications of the Interior Ministry's policy, which caused even greater discrimination against and violation of the rights of female residents of East Jerusalem. Until the mid-1990s, Israel would not entertain requests by women residents of East Jerusalem for family unification; these women were completely stranded in cases of failed marriages. A woman who moved out of Jerusalem upon marriage could not return even if her marriage failed because her status as a resident of Jerusalem had been revoked in her absence.

These cases illustrate that the residents of East Jerusalem were actually denied the right to leave Jerusalem for long periods in pursuit of such endeavors as acquiring an education or working, out of fear that they would lose their resident status and their entitlement to live in East Jerusalem would be revoked. The application of the *Awad* ruling by the Interior Ministry became

**... a legal cage that imprisons the residents of East Jerusalem, does not allow them to be mobile like anyone else and binds them to the narrow and neglected area where they were born. The sanction for leaving the city for a limited time, even for education or work (which are not available for the residents in the city), or in order to gain status in other places, means losing their homes... (Section 3 of the Hamoked and ACRI petition).**

In their petition, Hamoked and ACRI demanded that the status of the residents of East Jerusalem be recognized as a special status that can not expire when a resident leaves the country or moves the center of one's life, even though the status is contingent on possession of a license for permanent residency granted under the Entry into Israel Law. Since the petition was withdrawn, Hamoked and ACRI have put forward these arguments as part of an individual appeal over denial of residency currently pending in the Supreme Court.

### A grave violation of the right to family life

In 2000 the government decided to suspend the naturalization procedures of a Palestinian couple; thus began a process that led to the violation of the right to family life of tens of thousands of Israeli citizens as well as residents of East Jerusalem. The greatest harm was caused to the Arab minority in Israel and Jerusalem, which maintains family and marriage ties with the Palestinian community in the Occupied Territories. ACRI petitioned the High Court of Justice (HCJ) against the government decision and while the petition was pending in court,

17 HCJ 2227/98 Hamoked – the Center for the Defense of the Individual v Minister of Interior.

18 [http://www.btselem.org/jerusalem/revocation\\_statistics](http://www.btselem.org/jerusalem/revocation_statistics).

the Knesset passed the Citizenship and Entry into Israel Law (Temporary Order), 2003, which anchored the government decision of the suspension in law. This law restricted the ability of Palestinian residents of East Jerusalem to legalize the status of their Palestinian spouses (if they did not have Israeli status) and to live with them and their children in East Jerusalem.

Before the temporary order was passed, there had been a graduated procedure for the legalization of the status of foreign spouses of permanent residents in Israel. That process was longer than the equivalent process for citizens, which had a duration of five years and three months. In contrast, a graduated process to legalize the status of unmarried partners took seven years to complete. Until the permanent residency license was granted, temporary residency licenses were issued and periodically renewed, subject to proof of the sincerity of the relationship, proof of center of life in Jerusalem and the absence of security or criminal preclusions.

The temporary order excluded Palestinian spouses from the arrangement so that the graduated procedures for the legalization of the status of spouses of Israeli citizens and residents no longer applied to them. From this point forward, residents of East Jerusalem could not live with their Arab spouses under the procedure of "family unification" (if the nonresident was under 35 in the case of men and under 25 in the case of the women). Even if older than the age criteria, the spouses of residents could only receive residency permits that did not include entitlements to social security and national health insurance. The same applied to the couple's minor children over the age of 14. Anyone who received a temporary residency permit in Israel without a work permit and without social benefits would remain locked in that status and be required to renew it every few months.

In September 2003 ACRI petitioned the HCJ against the law for the first time. The petition was heard by a panel of 11 judges, along with other petitions challenging the law. In May 2006 the HCJ rejected the petitions by a majority of 6-5, ruling that the law served a temporary security purpose. However, the majority of the panel of judges ruled that the law was unconstitutional because it gravely violated constitutional rights to family life and quality.

Since then, despite the HCJ's criticism of the law and despite the state's claims that the order was designed to be temporary, the law has been extended again and again. Moreover, its application has been expanded and now also prevents the legalization of the status of family members of Israeli citizens and residents of East Jerusalem who were born in Iran, Lebanon, Syria and Iraq or other countries designated as risk areas which the government has the authority to add to the order. It was also decided that residents of the Gaza Strip can no longer acquire status in Israel, not even under exceptions in the law. In 2007, four more petitions to cancel the citizenship law were submitted. On January 11, 2012 the petitions were rejected<sup>19</sup> by a majority of 6-5, President Beinisch being one of the 5 dissenting judges, who made her decision just a few days before retirement.

The law is estimated to adversely affect thousands of Israeli citizens and residents of East Jerusalem and their Palestinian spouses. In the case of the residents of East Jerusalem, those whose spouses are residents of the West Bank (or residents of Iran, Lebanon, Syria, Iraq or Gaza) cannot obtain licenses to reside in Israel or permits to stay in Israel. Consequently, some couples live in forced separation. In other cases, the Palestinian spouse resides in Israel with temporary permits that do not allow them to work or drive; nor can they be insured by the National Insurance Institute or enjoy public health care. If residents of East Jerusalem choose to live in the Occupied Territories with their spouses, they risk losing their resident status and all the benefits that status confers.

Since the court decision, the temporary order was extended once again until January 31, 2013.<sup>20</sup>

<sup>19</sup> HCJ 5030/07, 830, 544, 466.

<sup>20</sup> Citizenship and Entry into Israel Order (Temporary Order) (Extension of Validity of Law), 2012.

**The provisions of the Citizenship and Entry into Israel Law... threaten to take us a step closer to the philosophy of 'maintaining the facade of a democracy without leaving a shred of its essence intact' (Menahem Hoffnung, "Israel – The Security of the State versus the Rule of Law," (1991), p. 105) ...The continued existence of the Citizenship and Entry into Israel Law (Temporary Order), 2003, casts a dark shadow on the chances of Israeli democracy to meet the challenges to which it has so far been equal. Anyone who thinks that the majority, whose decisions brought this law into being, will be able to withstand its ill effect for long is mistaken. I am afraid it will threaten to reach every Israeli wherever they are, because it has the potential to undermine the basis upon which we all stand shoulder to shoulder... In the words of my colleague, Judge E. Hayut: 'We must consider the price we shall pay as a society in the long run if the citizenship law with its sweeping prohibitions continues to have a place in our law book" (HCJ 7052/03, Adala, ibid, p. 492).**

*Section 29 of the ruling of Judge Levy in minority opinion, HCJ 466/07, from January 11, 2012.*

And further:

**The Citizenship and Entry into Israel Law in the form presented to us for our review threatens to open more than a crack in the wall which has so far stood firm and is called 'a Jewish and democratic state.' The damage of this law is grave. Its harm resonates. Its legislation is a foundational event in the history of Israeli democracy** (Section 45).

As a result, despite the geographical and cultural proximity between the residents of East Jerusalem and the residents of the West Bank, the former cannot maintain normal family life with the latter; they are forbidden to live together in Jerusalem, and if they wish to do so outside the city, they risk losing their residency and all of its benefits.

#### **Discrimination in exercising rights**

Being a citizen of a democratic country means being able to influence the processes that affect life in the country in which one resides. Palestinian residents of East Jerusalem cannot vote for the state authorities. Theoretically, they can vote for the municipal authorities but for political reasons do not; and even if they participate in elections for the PA, Israeli law forbids the PA from operating in Jerusalem.<sup>21</sup>

Therefore, even though the residency licenses given to Palestinian residents entitle them to employment in Israel, equal services, infrastructure and socio-economic resources,<sup>22</sup> there is a vast gulf between Jewish neighborhoods and the Palestinian neighborhoods of East Jerusalem. This divide is evident to anyone walking the streets of Jerusalem where the city of the citizens ends and the city of the residents begins: a city of physical, social and budgetary neglect, forsaken by the Israeli authorities in every facet of life.

East Jerusalem is one of the poorest and most neglected places in which Israeli law applies.

In the Jerusalem district, the poverty rate and intensity of poverty were the highest in Israel in 2010. The poverty level of Arab families in Jerusalem was three times higher than that of Jewish families and the overall poverty rate in East Jerusalem reached the staggering level of 78.4%.<sup>23</sup>

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21 The Law for the Implementation of the Interim Agreement concerning the West Bank and the Gaza Strip (Restriction of Operations), 1994; Section 6 of Basic Law: Jerusalem the Capital of Israel (Law Book 1760, December 7, 2000).

22 National Insurance Law [Combined Version], 1995; National Health Insurance Law, 1994.

23 The National Insurance Institute, "The Dimensions of Poverty and Social Gaps, 2010," (November 2011).

**The following disparities illustrate the deep gaps in Palestinians' realization of basic rights in East Jerusalem—an inevitable result of their secondary civil status:**

### **Violation of the right to housing**

Since 1967, the main instrument used to block legal Palestinian construction in East Jerusalem has been the planning instrument. The Israeli planning policy in East Jerusalem has been driven almost exclusively by considerations of national conflict and seeks to maintain a solid Israeli majority in the city. One of the ways Israel has attempted to achieve such a majority is by erecting artificial barriers to Palestinian development.<sup>24</sup> Since 1967, Israel has expropriated 35% of the territory of East Jerusalem to build Jewish neighborhoods; another 35% of the planned area has been slated as a no building area ("green") and the building density permitted in the city's Arab neighborhoods is usually substantially lower than in Jewish areas. Even for Palestinians lucky enough to own land in parts of Jerusalem where construction is permitted in principle, their chances of obtaining a building permit remain extremely slim. As a result of residents' inability to build legally, there are currently about 20,000 buildings in East Jerusalem built without permits.

Due to the severe restrictions on construction, the residents of East Jerusalem must choose between two impossible options: build illegally without building permits, infrastructure or supporting services and live in highly congested areas with the pending threat of demolition, or cross Jerusalem's municipal boundary and risk losing permanent residency status.

Living conditions in East Jerusalem are crowded and harsh.<sup>25</sup> Jerusalem Institute figures show that the housing density in East Jerusalem in 2008 was almost double that in the western part of the city at 1.9 people per room compared to one person per room in West Jerusalem. In 2010 the housing density in East Jerusalem was the highest in Israel, twice that of the general population.<sup>26</sup> The organization Bimkom - Planners for Planning Rights estimates that there is currently a shortage of 10,000 housing units for the Palestinian population living in East Jerusalem. The shortage is expected to grow by some 1,500 housing units each year. On the other hand, the level of home demolitions in East Jerusalem is unprecedented. Since 1967, it is estimated that some 2,000 houses have been demolished in East Jerusalem.<sup>27</sup>

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24 Ir Amim, "A Layman's Guide to Home Demolitions in East Jerusalem," March 2009.

25 Hamoked and ACRI petition (HCJ 2797/11), section 28.

26 Table 5.23 in the Israel Statistical Yearbook, no. 62 (2011).

27 OCHA, "East Jerusalem: Key Humanitarian and Concerns," (December 2011).

**The lives of the Palestinian residents of East Jerusalem in those neighborhoods located within the city's municipal boundaries but on the other side of the separation barrier constitute a grim microcosm of the status of the residents of East Jerusalem. There are eight such neighborhoods in East Jerusalem, in the area of Qalandia in the north and the Shuafat Refugee Camp in the northeast, both of which lay completely within the boundaries Israel declared in 1967 as the jurisdiction of Jerusalem.**

**The separation barrier built in the middle of the last decade left these neighborhoods isolated on the other side of the wall. As soon as the barrier was erected, municipal services all but disappeared from the neighborhoods, which became crowded and neglected enclaves where city officials dare not set foot. Some 70,000 Palestinian residents of Jerusalem currently live in those centers of poverty and are required to pass through checkpoints (Qalandia or Shuafat) each time they want to enter their own city. For many, having to cross a checkpoint is a daily requirement.**

**Under a balance of fear—for Israel, a perceived demographic threat and for neighborhood residents, anxiety about losing their permanent residency—Israeli enforcement agencies rarely enter these areas; as a result, residents can build without risking instant demolition orders. This ambiguity has led to a tremendous building boom, which is now drawing residents from other neighborhoods of Jerusalem who can no longer tolerate the building barriers imposed by the Municipality. This massive construction is being undertaken without the minimal infrastructures required and in a void of police and emergency services, sanitation, welfare or any other basic vital service the city is obligated to provide.**

**The building density and absence of infrastructure and services have created areas on the verge of a humanitarian disaster, whose residents are left to struggle in a “no man’s land” all but completely cut off from municipal services and the city itself. Since the barrier was built, these residents have faced an additional threat: that Israel will realize an unspoken intention to completely and permanently disconnect them from the city.**

**With no other alternative, the residents of the eight neighborhoods beyond the wall cling to the fragments of residency they still possess—these fragments being the only tentative guarantees of their connection to Jerusalem, to their families and communities, to their places of work and to the services they so desperately need, as inadequate as those services may be.**

## Violation of the right to education

Despite the state's obligation to provide free education, thousands of children in East Jerusalem remain outside of the education system every year. Years of neglect of the Arab education system in Jerusalem have resulted in a severe shortage of classrooms, classroom overcrowding, inadequate educational facilities and extremely high dropout rates. Because of this deficit, thousands of children are relegated to private or unrecognized schools, requiring their parents to pay exorbitant costs in order for their children to receive the "free" education to which they are entitled by law.<sup>28</sup> More than 4,300 Arab children are not enrolled in any educational institution. The dropout rate at the high school level is roughly 50%, an inconceivable rate compared to any other place in Israel.<sup>29</sup> According to the 2009 State Comptroller's Report, there was a shortage of 1,000 classrooms in East Jerusalem.<sup>30</sup> The extreme shortage of classrooms for children in East Jerusalem led to a Supreme Court ruling that strongly criticized the authorities:

**The result is that many children in East Jerusalem remain without an adequate educational framework. That is an intolerable result.**

*(Section 4 of decision by President Beinisch, HCJ 5373/08 Abu Libdeh et al v Minister of Education et al, ruling given on February 6, 2011).*

There is also evidence of deep discrimination in the current administrative budgets of the official schools in East Jerusalem, as well as in professional personnel standards.

The application of separate and unequal standards can be seen in most facets of life in East Jerusalem:

The **welfare system** in East Jerusalem suffers from years of underfunding and discrimination compared to West Jerusalem and is, in fact, on the verge of collapse.<sup>31</sup> Despite the staggering poverty rate of more than 78%, only a small percentage of the residents of East Jerusalem are served by the welfare system and the standard positions allocated to them constitute only half of that to which they are entitled by the size of the population, even before taking into account the glaring poverty rate. The number of standard positions allocated to the welfare bureaus in East Jerusalem is the lowest in all of Jerusalem, and there are only three bureaus in that sector, compared to the twenty in West Jerusalem.

**There is an acute shortage of infrastructure in East Jerusalem.** An estimate based on figures from Jerusalem Gihon Water and Sewage Enterprises Ltd. show that more than half of the population of East Jerusalem does not receive a regular water supply. The official estimate of Gihon Enterprises is that there is a shortage of 50 km of sewage lines in East Jerusalem.

East Jerusalem receives **extremely inadequate public services** in areas such as employment and postal services. Jerusalem is the only city in Israel that has two separate offices of the Interior Ministry population registry: one is general and the other serves the Palestinian residents of East Jerusalem. The office that serves the Palestinian residents is impossibly crowded, the processing of cases drags on for months or years and high fees are charged for basic services such as registering children. The service is separate and unequal.

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28 Ir Amim and ACRI, "Failed Grade: the Education System in East Jerusalem," August 2010, and "The East Jerusalem School System – Annual Status Report," September 2011.

29 Yuval Wagen, "Education in East Jerusalem," Knesset Research and Information Center, 2006, [Hebrew], p. 13.

30 State Comptroller, Annual Report 59b (May 2009), p. 624.

31 ACRI, "Human Rights in East Jerusalem: Facts and Figures," (May 2010), p. 18.

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## EPILOGUE

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The status of residency for East Jerusalemites must be examined from a broad political perspective as a silent, hidden but tendentious and clear policy: to deepen Israeli control of the territory of East Jerusalem while pushing its Palestinian residents out.

Since 1967, Israel has treated the territory of East Jerusalem as if it were part of Israel—the territory but not the Palestinians living within its boundaries. After taking control of the territory where Palestinians had lived for generations, Israel granted them a status by virtue of the Law of Entry [into Israel] and they remained without full citizenship of any country—certainly not of any country with the authority to influence their own lives. As residents, rather than citizens, they cannot vote or be elected for government authorities; even if they do choose to vote for the Municipality, because Jerusalem is administrated by the government of Israel, the vote they are allotted is a virtual one. These residents are excluded from the political arena and are not entitled to full political rights. Without equal civil status, they operate in a constant struggle to overcome the obstacles to realizing their social rights; are subject to grave discrimination in every area of life; are exposed to the blatant violation of their right to enjoy full and undisturbed family lives and suffer from unfathomable disparities in their basic human rights.

This situation makes the lives of East Jerusalem residents unbearable and demonstrates a deliberate albeit inexplicit policy to push them out of Jerusalem.

This is the essence of the anti-democratic anomaly that was created in East Jerusalem: Israel intends to maintain the territory of East Jerusalem without sustaining its residents. It is a place where the fundamental values of Israeli society are routinely violated. It is a space that was seemingly created temporarily but that has continued to operate outside the parameters of both domestic and international law for 45 years, with the damage it is causing only intensifying.







Ir Amim ("City of Nations" or "City of Peoples") focuses on Jerusalem within the context of the Israeli-Palestinian conflict. Ir Amim seeks to render Jerusalem a democratic, pluralistic city for the Israelis and Palestinians who share it. Ir Amim envisions a city that ensures the dignity and welfare of all its residents and that safeguards their holy places, as well as their historical and cultural heritages, and works to secure this vision – today, as well as in the future. Ir Amim aspires to a sustainable political future for Jerusalem, achievable only through a negotiated process between Israel and the Palestinians.

Bearing in mind both the symbolic and actual status of Jerusalem as a city of two peoples and three religions, as well as the city's pivotal significance in reaching a political agreement, Ir Amim aspires to a stable Jerusalem—a city that ensures the dignity and welfare of all its residents and that safeguards their holy places as well as their historical and cultural heritages.

Ir Amim offers its knowledge and expertise on the political, economic and social conditions in Jerusalem to a range of organizations and individuals, including governmental authorities responsible for management of the city, the Israeli public and the international diplomatic community.



**Ir Amim for an Equitable and Stable Jerusalem  
with and Agreed Political Future**