AMENDMENT 116 TO THE PLANNING AND BUILDING LAW AND THE PALESTINIAN NEIGHBORHOODS IN EAST JERUSALEM

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Table of Contents

Introduction 3

Background 4

Amendment 116 to the Building and Planning Law 6

Amendment 116 to the Law in View of Social Rights: Is Increasing the Severity of Punishment the Way to Go? 7

Responsibility of the Authorities for Building without a Permit – "Defense in Equity" 10

Effects of Tightened Enforcement on Palestinian Neighborhoods in East Jerusalem 12

Obstacles to Obtaining a Building Permit in East Jerusalem 12

1. Obstacles to Obtaining Building Permits Ensuing from a Planning Omission 13

2. Features and Limitations of Plans Prepared by the Jerusalem Municipality 14

3. Need for and Difficulty with Detailed Planning in Private Initiatives 16

4. Obstacles Pertaining to the State of Rights in the Land 20

The Obstacles Have Remained Unchanged While Enforcement Is Tightened: Impressions from the Field 25

Conclusion 26

Introduction

East Jerusalem: Tightening Enforcement without Any Improvement in Planning

Amendment 116[1] to the Planning and Building Law, 5725-1965 (hereinafter "**the Planning and Building Law**" or "**the Law**") is a comprehensive amendment of the chapter on enforcement in the Law, which was prepared following a Government Resolution regarding economic development in the Arab sector. The Amendment applies throughout the State of Israel and East Jerusalem and ostensibly has no particular designated community. However, the backdrop to its enactment attests to the fact that the Arab population was the primary designated community.

This document will relate to the Amendment of the Law in view of human rights, in general, and the Palestinian neighborhoods of East Jerusalem, in particular. We will demonstrate that in the government's view, tightening enforcement is legitimate, *inter alia*, in light of the ostensible improvement in planning in Arab localities and how this view is detached from the reality of Arab localities in Israel, and especially in East Jerusalem – where government budgets[2] were not allocated for improving planning and all obstacles to licensing building have remained unchanged.

A Palestinian Jerusalemite who wants to build lawfully and erect a home for himself and his family is currently required, as in the past, to face a long haul that is costly and exhausting, and the results of which are not optimistic. This is due to numerous planning issues that constitute the basis for granting permits and the impassable obstacles for obtaining a building permit even in cases where there is a plan that ostensibly allows this.

Promoting planning is important in and of itself, but cannot remedy all these obstacles, certainly not immediately. However, no planning budgets have been allocated at all for East Jerusalem. East Jerusalem was not included in the special budgeting that was determined for Arab localities in Israel in Government Resolution No. 2365, entitled "Government Activity for Economic Development in the Minority Sector for 2015."[3] It was budgeted in another Government Resolution No. 3790 entitled "Reducing Social and Economic Development

[1] At the outset a Bill was published known as "Amendment 109" and this is how several of the writers that will be mentioned below have referred to it.

[2] The Jerusalem Municipality allocates budgets for planning but these are insufficient and at times the planning procedures are frozen for extended periods due to the absence of a budget. In 2017, the work of the planning staff, which concerned the advancement of planning in Palestinian neighborhoods in East Jerusalem, was halted for a year.

[3] Http://www.moch.gov.il/GovResolutions/Pages/GovResolution.aspx"ListID=f33e0a4b-aa35-4b12-912e-d271a6476s11&WebId=fe384cf-21cd-49eb-8bbb-71ed64g47fr0&ItemID=600

Disparities in East Jerusalem."[4] However, in this Resolution no planning budgets were allocated. Thus, the obstacles to building lawfully in East Jerusalem – including an impossible planning situation – have not been removed. In this reality, tightening enforcement alone will worsen the situation of residents, who will continue to search for any possible housing solutions available to them, including building houses without permits.

Background

Amendment of the Planning and Building Law – Tightening Enforcement

On December 21, 2014, Government Resolution No. 2365, entitled "Government Activity for Economic Development in the Minority Sector in 2015," was passed. This Resolution concerned many aspects of routine life in Arab localities in Israel, including the subject of housing. The Resolution determined that a team would be assembled to formulate within 120 days a plan to deal with housing issues in minority localities. "The 120 Day Team" appointed 10 members, representatives of government ministries and agencies, as well as the head of the planning administration. The team was required to examine, *inter alia*, the subject of planning and increasing the extent of land available for development, marketing and developing infrastructure, assistance for the individual, and the effect of land taxation on construction in the minority sectors. According to the Government Resolution, the 120 Day Team was required to consult with representatives of civil organizations that promoted minorities and housing issues in the sector, and with heads of relevant local authorities from among the minority localities. A representative of Bimkom as well as representatives of other organizations regularly attended the 120 Day Team meetings.

Due to the definition of the target population in the Government Resolution as "minority localities," the 120 Day Team did not relate to mixed cities. The result was that the planning, building and housing situation in the Palestinian neighborhoods of East Jerusalem was not examined and in any event no conclusions were reached with respect to East Jerusalem and no targeted solutions or solutions adapted to these neighborhoods were proposed. A few years later, Government Resolution No. 3790 was passed, which concerned East Jerusalem, however, it allocated no planning budgets. Under the title "Planning and Land Registration" the Resolution included a directive and budgeting to promote land regulation and registration, as well as a directive, which did not include budgeting, to the planning committees to discuss plans for business and industrial areas – we will address this below. It turned out that within the

[4] Government Resolution 3790 of May 13, 2018, Reducing Social and Economic Development Disparities in East Jerusalem, on the Prime Minister's Office website: https://www.gov.il/he/Departments/policies/dec3790 2018

borders of Israel, tightened enforcement was accompanied by budgets and directives to improve planning, while in East Jerusalem enforcement was arranged separately. In any event, the work of the 120 Day Team constituted the background for tightened enforcement in building throughout Israel and in East Jerusalem.

In June 2015, the recommendations of the 120 Day Team were published.[5] Among other matters, it was stated there that until the year 2000 Arab localities had no updated master plans; that the existing plans did not offer sufficient land for building; and that there is a shortage of land in the country for development (see Section 35 and on, in the report). With regard to building without a permit, the report related to two kinds of building: building in open areas distant from an existing residential area and on land designated for public buildings and infrastructure, which is considered as building harmful to the general public. Building within built-up areas in an area zoned as residential is considered by the report as relatively easy to arrange, and primarily raises difficulties in principle regarding the rule of law and the aspiration not to benefit violators of the law (Section 51 of the report). The report views dealing with building without a permit as vital and recommends tightened enforcement and determining priorities with regard to enforcement (Section 53). In the recommendations, the 120 Day Report suggests a combined approach of accelerating the regulation of building, augmenting local authorities, handling rights in land and other steps, some of which have already found expression in later decisions and action.[6]

Prior to the publication of the 120 Day Team Report, in conjunction with the work of this team, the Ministry of Justice set up on February 10, 2015 "a team to handle illegal building." At the head of this team stood Deputy Attorney General Adv. Erez Kaminitz (Civil Law Department) and with him an additional 9 jurists who deal with enforcement (Jews). The Kaminitz team mapped the obstacles to enforcement of the law with regard to illegal building in all sectors in Israel, including the Arab and Druze sector (the Kaminitz Team report[7] Section 97). Among the primary obstacles were listed lengthening legal proceedings (Section 76), rebuilding after demolition, which creates difficulty with regard to deterrence, and thwarting the objectives of demolition (Section 82), lack of manpower for policing (Section 92), concern regarding violent resistance (Section 99 of the report), viewing building as legitimate for lack of any other option, and, on the other hand, viewing enforcement as unjustified (Section 98 of

[5] The 120 Day Team Report for coping with housing distress in minority localities, https://mof.gov.il/Releases/Documents/120%20Days%20Report.pdf
[6] See Page 2, Footnote No. 2 in the report.
[7] https://www.justice.gov.il/Publications/News/Docuemnts/FulllegalBuildingReport.pdf

the report). One of the report's main recommendations was the comprehensive amendment of Chapter X of the Law (Section 78 of the report).[8]

Amendment 116 to the Building and Planning Law

The Government Resolution to adopt the Kaminitz Report and implement legislative amendments to carry out its recommendations[9] appeared as Amendment 116 of the Planning and Building Law, which includes a comprehensive change in the chapter on penalties in the Law. The amendment was approved on April 25, 2017, after numerous deliberations in which, *inter alia*, human rights organizations and professional organizations participated. The amendment was based on a previous amendment bill [10] and includes in part the following:

A. **Increasing the Severity of Penalty**: Higher level of fines and periods of imprisonment (Section 242 and on, of the Planning and Building Law);

B. **Expanding the Sphere of Liability for Committing an Offense**: Currently it is possible to prosecute the owner of the land, the actual occupant and the person in control of the land, the permit holder, whoever actually performed the prohibited work and the chief contractor (except for their employees), the architect, engineer, technical engineer or those responsible for planning the work or supervising it (Section 243 (c));

C. **Expanding Administrative Enforcement**: Determining planning and building offenses as administrative offenses with fines of tens and hundreds of thousands of shekels with no legal proceeding by means of the Administrative Offenses Regulations (Administrative Fines – Planning and Building), 5778-2018, which came into force on December 20, 2018 (hereinafter: "**The Administrative Offenses Regulations**"). It should be noted that, *inter alia*, due to the high fines, detailed directives were published for the actual enforcement of Planning and Building Administrative Offenses. The directives relate as well to the State's position with respect to administrative offenses as a primary tool in improving enforcement and reducing the burden on the legal system;[11]

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[8] The report is extensive in scope and includes other recommendations as well, to which we are unable to relate here.

[9] Government Resolution 1559 of June 19, 2016, Sections 11-12, on the website of the Ministry for Social Equality.

[10] Previous bill for amendment of the law, which ultimately was not passed, is the Building and Planning Bill, 5770-2010 (Government Bill, 5770, page 600).

[11] The Ministry of Finance – National Unit for Enforcement of Planning and Building Laws, **Directive No. 4.1 – Imposing Administrative Fines with Regard to Planning and Building Offenses – Directives for Execution,** December 10, 2018 https://www.gov.il/BlobFolder/generalpage/files_manager_instructions_unit_3/he/Imposition_fines.pdf

D. **Limiting Judicial Discretion**: Drastic limitation of the extent of a judge's discretion both with regard to an administrative demolition order, which arrives in his court for a hearing and with regard to a judicial order – including the postponement of dates for executing orders, considerations for postponement of execution and duration of the delay – Section 254(d);

E. **Administrative Authority for Halting Use of a Vehicle or Mechanical Engineering Equipment that Serve for Work Without a Permit** (Section 218 of the Law) – We would note that seizing work tools and building materials was a widespread practice ten years ago in East Jerusalem and the same is true for preventing the transfer of work tools and building materials via the gates of the Old City.

F. **Permitting Entry of Supervisors to the Land at Any Time**, while **restricting** entry to a place of residence (Section 206A(4) of the Law) and its environs.

All these significantly harm the means available to a private person to conduct a defense against demolition and even more so – harm the same residents who from the outset suffer from economic and social inferiority, as is the case among Palestinian residents in Jerusalem. These residents have not benefited from an improvement in the planning situation and are actually vulnerable now to severely tightened enforcement and the drastic restriction of discretion with regard to penalties.

Amendment 116 to the Law in View of Social Rights: Is Increasing the Severity of Punishment the Way to Go?

With regard to the Arab and Druze sectors, the Kaminitz team viewed its work as integrating with the resolutions of the 120 Days Team and with the government's work to provide benefits and incentives with regard to housing in these sectors (page 2 of the Kaminitz Report). Thus, the understanding underlying the team's work was that in light of the allocation of resources for promoting planning procedures, the justification for building without a permit is considerably lessened (page 2 of the report). The report does not propose criteria for examining the exceptional justification for such building. As aforesaid, in East Jerusalem budgets were not allocated for the planning and regulation of residential areas, and, therefore, this view cannot be maintained in any event.

Either way, the Government Resolutions and reports are operative in nature. The discourse concerning rights, such as relating to housing distress as infringement of the right to a home, is absent. These resolutions and reports do not include any considerations of the implications for building without a permit on the personal and familial level – the constant threat of enforcement, the affronts at every meeting with a government authority, the cost of legal proceedings, the fines and rebuilding in the event of demolition, and the mental anguish caused to

all members of a family at the time of the demolition of a residence. They disregard the singular nature of the planning and building offenses as offenses that are generally committed by normative persons,[12] as well as the role of some public authorities in the creation of the offenses in some cases.[13] From the position of the Kaminitz Report it may be understood that the allocation of resources to promote new plans immediately resolves the issue of defective planning infrastructure – which is not the case. First, the planning procedures tend to extend for lengthy periods of time.[14] Second, even after completion of the plan, the new planning does not encompass the entire area, is not sufficiently detailed, and primarily is unable to resolve overnight the neglect of many years – see below. In our opinion the government's logic and fairness require that tightened enforcement be put on hold until detailed planning is complete. The subject of landownership and the implementation of consolidation and parcellation plans has remained a significant obstacle to obtaining building permits (see below), so that in our opinion it weakens the legitimacy of enforcement considerably.

The Amendment to the Law concerns the importance of deterrence but does not ask the question of why deterrence is not apparent in certain kinds of building offenses, notwithstanding the high price that the builder is required to pay. This is particularly evident with regard to rebuilding, with respect to which it has been stated that it "instructs as to the difficulty in deterrence" (Section 82 of the Kaminitz Report), without explaining this insight. In our opinion, the accepted reasons for criminal penalty – prevention, deterrence, maintaining public peace and rehabilitation[15] – are generally irrelevant when a person builds without a permit in order to provide a reasonable home for himself and his children and/or when had he been able to obtain a permit, he would not have the financial means to bear the considerable costs of building lawfully: payment of professionals, payment of fees and levies, meeting standards and more. The features of the Palestinian population in East Jerusalem underscore the difficulty that arises here.[16] The report does not professionally examine the reasons for the ostensibly "delinquent" behavior that appears on the ground and, therefore, reaches a conclusion that is detached from reality, in our opinion, that an aggressive policy regarding punishment will prevent construction.

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[12] See herein below the position of the public defender with regard to the Bill for the amendment of the law.

[13] See for example, Leave for Criminal Appeal 2885 **the Tel Aviv-Jaffa Local Board vs. Mussa Dakha**, paragraph 21 of the Judgment of November 22, 2009, where the planning procedures for municipal renewal in the Jaffa neighborhood were extended so that for over 14 years it was impossible to obtain a building permit in the neighborhood.

[14] HCJ 827/17 **Zaidan vs. the Minister of the Interior**, December 18, 2018, published in *Nevo*

[15] Y. Vaki, Y. Werbin, Structuring Judicial Discretion Regarding Punishment: Situation Report and Thoughts about the Future, *Hapraklit* 52 5773, 413, page 418.

[16] Ir Amim, East Jerusalem – Primary Data, January 2018, page 9.

Criticism of Amendment 116 was heard from those involved in the rights and representation of the accused. The position of the Israel Bar Association, which was brought before the Knesset,[17] was that tightening enforcement of punishment has no real effect on deterrence. The Bar Association proposed making the current state of enforcement more effective, advancing education and information, and improving planning and licensing. The position of the Public Defender's Office[18] was, "this concerns fundamentally normative citizens, who despaired of the authorities' handling of their matters, work-weary people who groan under life's burden and battle the hardships of existence and earning a livelihood, who committed offenses out of basic, existential necessity … Accused who reside in areas in which there are no planning regulations at all or in areas where regulation takes many years and the authorities provide no solution for the basic needs of citizens who reside in their domain and are found in ever-increasing distress … An additional increase in the severity of punishment together with the limitation of judicial discretion will lead to the fact that the courts will be bound by the provisions of the law so that they will be unable to give proper weight to the particular characteristics of the offense or the accused, which is likely to infringe citizens' rights to a proper proceeding on their matters and to a fair and just trial, and thereby undermine the public's trust in the courts."

In a comprehensive article on the subject of increasing the severity of punishment in Amendment 116 of the Law,[19] the author views increasing the severity of punishment as dispensing with the state's authority to further proper planning and enforce the rule of law, and selecting penalty as the sole – yet unsuitable – instrument to create deterrence. In this manner, the state turns the convicted offender into "a tool in the hands of the state in an attempt to attain a general social objective" contrary to the basic tenets of democracy.

That being the case, criticism of the Amendment to the law was voiced by public, governmental bodies or entities of a governmental nature, which routinely deal with issues of planning and building, in general and enforcement, in particular, and indicate the disparity between the conclusion on the need to take a hard line with punishment and the reality of those same "building offenders."

[17] Position Paper – Planning and Building Bill (Amendment No. 109), 5776-2016, the Planning and Building Board, Israel Bar Association, January 26, 2017.
[18] The Public Defender's Office did not officially present its position to the Board – see *Divrei Haknesset* (Knesset Plenary Records), Meeting No. 221, April 5, 2017, page 34.
[19] Hili Price Kaveh, "Increasing the Severity of Punishment? It Doesn't Work! Critical Thinking on Amendment 109 of the Planning and Building Law," *Mekarke'in* 15/4 (October 2016), on page 3.

Responsibility of the Authorities for Building without a Permit – "Defense in Equity"

"Defense in equity" is a doctrine first created in case law of the courts[20] and at present secured in the Criminal Procedure Law, where it was determined that an accused is permitted to introduce a defense argument to the effect that "submitting a charge sheet or conducting a criminal proceeding essentially contradict the principles of justice and fairness in law."[21] In other words, criminal law recognizes that a situation may occur in which a public authority has a part in the creation of an offense to the extent that it would be unfair to place a person on trial and this, separate from the question of guilt. With respect to the conduct of the accused, the directives of the Attorney General with regard to a plea bargain in a criminal proceeding[22] concern the weight of the circumstances under which the offense was committed, including personal circumstances, results of the offense, and special circumstances as part of the decision whether to reach a plea bargain.

In contrast, in the planning and building field, as a rule the authorities tend to attribute a great deal of weight to the rule of law as opposed to the circumstances of the offense and the conduct of the authorities. In a directive from the Attorney General regarding the deferral of dates in a criminal proceeding with respect to planning and building to provide an opportunity for regulation retroactively,[23] there is no reference to the circumstances of the building. The Attorney General's directives with respect to a plea bargain on planning and building offenses[24] refer to the circumstances that must be considered to close a file with a plea bargain as customary with regard to other offenses, with no mention of the possible infringement of the right to a home and suitable housing, which often characterizes offenses in this field. In complicated cases that reached the courts regarding planning and building offenses, the contention of a defense in equity or requests to act beyond the line of strict justice (leniently) are generally rejected in view of the need to maintain public order and enforce the law.[25] Nonetheless, these are not all of the cases and at

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[20] In the **Yafet** case (Criminal Appeal 2910/94 **Yafet et al. vs. the State of Israel**) it was first determined that according to the rules of defense in equity, a charge sheet may be canceled when the court is unable to offer the accused a fair proceeding or when conducting the trial violates the sense of justice and fairness, *inter alia*, due to "scandalous conduct" on the part of government authorities. Later, in the **Borowitz** case, a more flexible test was determined of "an actual violation of the sense of justice" – see Criminal Appeal 4855/02 **Borowitz vs. the State of Israel**.

[21] Section 149(10) of the Criminal Procedure Law (Consolidated Version), 5742-1982, Amendment No. 51, 2007.

[22] Directive of the Attorney General No. 4.3042, given in 2013, updated on January 13, 2019.

[23] Directive of the Attorney General No. 8.1150 of January 24, 2004.

[24] Closing a File with a Plea Bargain – Directive to Plaintiffs and Work Practice, State Attorney's Office – Department for Enforcement of Land Laws, July 29, 2014, paragraph (d).

[25] Thus, for example, in the **Dakha** case (2009 Footnote 5 supra), it was adjudicated that notwithstanding that in the neighborhood where the accused resided it was impossible to obtain building permits for 16 years due to extremely slow planning procedures, the demolition order issued against him must be enforced; in the **Matityahu** case (2014), it was adjudicated that a

times the court demonstrates understanding of a difficulty that stems from a planning situation, which is not under the control of the accused.[26]

Amendment 116 does not concern exceptions to being charged with planning and building violations and the discretion that allows for consideration of circumstances is extremely narrow. Judicial discretion to reject the execution of a judicial demolition order is exercised solely on special grounds that must be recorded for one year at most (Section 254D (a) of the Law). In light of case law's tendency to attribute a great deal of weight to "the rule of law" in the enforcement of planning and building offenses, and to be satisfied often with an expression of empathy in the event of difficult personal circumstances, and in light of the frequent return of the need to impose order in this field, it may be expected that only a few cases will come under the category of "special grounds." On the other hand, it is also possible that the same rigid restriction that the law imposes on judicial discretion will lead to flexibility when it is available. A long period of time must be allowed to pass for a consistent position to be followed.

It is interesting to note that the various directives of the National Unit for Enforcement of the Planning and Building Laws in the Ministry of Finance, intended for inspectors who carry out actual enforcement, mention infringement of rights. The directives state that execution of an administrative demolition order limits the freedoms of the individual and is liable to infringe proprietary rights and freedom of occupation and cause significant financial damages. Therefore, the authority related to administrative orders must be exercised in a rational and responsible manner.[27] There is no explicit mention of rights related to housing, living conditions and all that is related to this.

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person who is disabled and a widower, who is cared for by 11 children, does not justify the cancelation of a demolition order against illegal building that he built, notwithstanding that this concerns a room in which 6 of his children reside (here there was no issue of the Authority's conduct); The **Al Atrash** case (HCJ 8062/05 **Inas Al Atrash et al. vs. the Minister of Health et al.**) concerned the connection to infrastructure in an unrecognized Bedouin village, where the parents of a toddler with cancer petitioned to connect their home that was built without a building permit to the electricity grid so that medication could be refrigerated for their daughter. It was adjudicated that it was the parents' decision to set up their home in an unrecognized village with the knowledge that they would be unable to connect to basic infrastructure. We would note that in this case, the Court demonstrated a great deal of empathy and made an effort to resolve the problem. However, in actual fact no resolution was found. On the other hand, recently the Supreme Court canceled charge sheets due to improper conducting of affairs by a public authority, notwithstanding that the authority's actions were implemented negligently but not maliciously (Leave for Criminal Appeal 1611/16 **State of Israel vs. Vardi et al.**, October 31, 2018).

[26] See, for example, the comment of the Court regarding a citizen's despair with respect to the slowness of the planning procedure in Administrative Petition 31084-03-13 **Sualhi et al. vs. the Jerusalem District Planning and Building Board et al**., June 4, 2013, published in *Nevo.*

[27] Directives of the National Unit for Enforcement of Planning and Building Laws in the Ministry of Finance, Directive No. 3.1 – Administrative Stop Work Order, Provisional Stop Work Order and a Demolition Order for a Building Addition after the violation of an Administrative Stop Work Order, section 2.2.2; Directive No. 3.2 – Administrative Stop Use Order and Closure of a Building

Effects of Tightened Enforcement on Palestinian Neighborhoods in East Jerusalem

Up to this point we have related to the Amendment of the Law generally through a discourse on rights and, in particular, the right to a roof over one's head, which is part of Human Dignity protected under the Basic Laws.[28] We will now relate to the planning situation in the Palestinian neighborhoods of East Jerusalem and make a connection between the ongoing omission in planning these neighborhoods with enforcement of the planning and building laws in view of the absence of budget allocations for improving planning, the Amendment to the law and the increased severity in all means of enforcement related to this.

Obstacles to Obtaining a Building Permit in East Jerusalem

The phenomenon of building without a permit in Palestinian neighborhoods in East Jerusalem is quite extensive. In our estimate, half of the housing units in East Jerusalem were built without permits.[29] This situation does not attest to a criminal propensity of the Palestinian population but rather a real difficulty in obtaining building permits in these neighborhoods.

In most Palestinian neighborhoods there is no market for development and building large residential projects. The possibility of purchasing an apartment in nearby Israeli neighborhoods is not realistic for the majority of these residents since many Israelis do not wish to sell to them and in any event the high cost of purchasing is above and beyond the financial means of most Palestinians (see the poverty features of this population above). Also, municipal or governmental initiatives for building neighborhoods, similar to activity in the Jewish sector, are non-existent. Accordingly, most residents, even if they wish to save themselves the huge effort of planning, licensing and building independently and will prefer to purchase an apartment from a contractor or secondhand, will not find such available on the free market. The only possibility available to a Palestinian resident of East Jerusalem who wishes to provide his family with a home is to build it himself.

This means that most Palestinian residents, even if they have no experience or knowledge of the field, are required to operate in this difficult, complex and

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or Place after the Violation of an Administrative Stop Use Order, September 26, 2017, Section 2.2.3; Directive No. 3.3 – Administrative Demolition Order, Section 2.1.5.

[28] See, for example, the judgment in Leave for Criminal Appeal 08/2885 **The Tel Aviv-Jaffa Local Planning and Building Board vs. Mussa Dakha**, September 22, 2011, published in *Nevo*, paragraph 22 and the references there.

[29] Jerusalem Statistical Yearbook **Table XVI/9 – Residential Apartments in Jerusalem, according to Area, Quarter, Sub-quarter, and Statistical Area 2018** The total number of apartments in Jerusalem is 230,000 and the number of apartments in East Jerusalem is 60,000 (in our estimation this item is inaccurate due to the difficulty in obtaining reliable information as declared by the editors of the Yearbook).

challenging sphere. However, the difficulties they face are often not at all negotiable. Below we will describe the obstacles that the resident-developer will face when seeking to obtain a building permit and build a home in accordance with the permit.

The obstacles to obtaining a building permit for Palestinians in East Jerusalem may be divided into four groups:

1. Obstacles ensuing from a planning omission
2. Obstacles ensuing from the lack of development of public infrastructure
3. Obstacles ensuing from financial limitations
4. Obstacles pertaining to the state of rights in the land

We will detail the obstacles according to the groupings mentioned above.

1. Obstacles to Obtaining Building Permits Ensuing from a Planning Omission

Background

At the conclusion of the war in June 1967 and the conquest of the West Bank by the State of Israel, an area of 71,000 dunams was added to the municipal area of Jerusalem. The added territory included 6,400 dunams of territory of Jordanian Jerusalem as well as entire villages and parts of villages in the agricultural periphery of the city. As a result, the city's area increased under Israeli rule from 38,000 dunams in the western part prior to 1967 to 108,000 dunams. This rapid and extensive growth of the city's area did not ensue from planning considerations, but rather in accordance with a political principle of attaching "maximum area and minimum population." Since then, planning and development policy in East Jerusalem has been dictated by two complementary principles: the principle of demographic balance and the principle of land expropriation. According to the first principle, planning policy in the city is directed to ensuring a majority of the Jewish population. According to the second principle, the absolute larger part of vacant territory in East Jerusalem is planned for the Jewish population by creating Israeli spatial contiguity and preventing the creation of similar Palestinian spatial contiguity.

Since planning in the Palestinian neighborhoods of East Jerusalem is subject to the two principles stated above, the planning that was passed was inadequate and intentionally limited. For most Palestinian neighborhoods plans were prepared but the development possibilities made possible by those plans were limited, both with regard to public infrastructure and private residential construction, and actual implementation was partial. Notwithstanding the

continual improvement in the quality of the plans that were prepared for the neighborhoods, most plans do not provide a real response to the requirements of residents in all areas and particularly regarding residential construction. As a result, these plans differ patently from plans that were prepared and approved for Jerusalem's Jewish neighborhoods.

In view of this, during the period of rule of the State of Israel in East Jerusalem, most Palestinian neighborhoods were planned in two stages: In the first stage – beginning at the end of the 1970s until the 2000s – the Jerusalem Municipality prepared (limited) plans for entire neighborhoods. And in the second stage – beginning from the mid-1990s until today – small and specific plans randomly dispersed were prepared and continue to be prepared by private landowners.[30]

2. Features and Limitations of Plans Prepared by the Jerusalem Municipality

Small planned area – Plans prepared by the Jerusalem Municipality for the Palestinian neighborhoods, which were approved in the district, are small in area and do not include most of the land under the ownership of residents of the villages and neighborhoods. The plans are limited generally to the actual built-up area. In the instances in which a plan is larger than the built-up area, the additional area is zoned as open scenic space. The total of all planned land for Palestinian neighborhoods in East Jerusalem (including open public areas), as well as the planning changes that were prepared over the course of the years (but not including the plans currently being prepared) constitutes 20,000 dunams, comprising less than one-third of the area of Jerusalem beyond the Green Line and 15% of the area of the whole of Jerusalem.

Areas designated for development and building are limited and restricted to an area in which construction is actually taking place.[31] This method recognizes the situation on the ground and enables certain building additions. However, it does not create significant land reserves for development. In most of the neighborhoods, the construction options in areas zoned for building in the valid plans have been used up. In places where vacant areas remain zoned for building in accordance with the plans, the construction generally is not carried out, whether because the owner of the land no longer resides in Jerusalem or because this concerns a landowner who owns many plots of land that were included in the areas where it is permitted to build but his family at the moment has no need to exercise the right to build on that land. The total area zoned for residential

[30] For additional reading on the subject of Israeli planning in Palestinian neighborhoods of East Jerusalem see **Trapped by Planning – Policy, Planning and Development in Palestinian Neighborhoods of East Jerusalem**, Bimkom, 2014, http://zik.co.il/z7a4

[31] In Israel it is customary that zoning land for residential purposes is the most common zoning in municipal neighborhoods – zoning which comprises 50-60 percent of the area of neighborhoods.

building in the general and specific plans, which are currently valid, is 9,200 dunams, which constitute 46% of the total area of the plans as related above. This area covers only 13% of the area of East Jerusalem and only 7.5% of the area of the whole of Jerusalem.

Extremely limited building rights – The plans determine two floors as the maximum number of floors permitted, apart from a limited area in the heart of the villages and neighborhoods where 3 floors can also be built. The maximum building percentages stand at 25-50% of the net area of a lot, apart from the same village cores in which some plans permit building 70% of the construction coverage or no limitation is indicated with regard to building percentages.[32] Some of the plans have an additional limitation, which determines that the maximum number of apartments per dunam will be only 3 apartments.[33]

Sparse road network that does not reach the innermost area zoned for development – The area for development and building is dependent on a system of infrastructure. In order to build residential homes, public institutions and industrial buildings, infrastructure for electricity, sewage, and water is necessary as well as access roads to the construction area. In regular planning, most of these infrastructure systems are planned and executed according to the routes of roads. That being the case, the absence of roads then precludes the development of the plots of land.

Insufficiently detailed plans – In many instances only general master plans were prepared for which a building permit cannot be issued or there is a limit on the size of the area for which a building permit can be issued by virtue of these plans. In such instances an additional plan that is detailed must be prepared, based on which it will be possible to issue building permits.

Few suitable areas for public buildings – Among the areas zoned for public buildings, the plans propose areas almost exclusively for educational institutions. Areas zoned for public buildings, which the plan permits to be used for purposes of health and recreation, such as sports facilities, community centers, clubs, and parent and child clinics are the exception rather than the rule. In addition, areas zoned in the plans for educational institutions were discovered to be problematic. Many areas zoned for schools do not meet the minimum standards accepted in the State of Israel, in terms of both size and location of the plots of land, which are often situated on steep gradients that are difficult to develop.

[32] For comparison, in Jerusalem's Jewish neighborhoods – prior to the era of urban renewal which aims to increase density by means of providing additional building rights – common building rights were 90 percent building coverage in four stories.

[33] For comparison, according to TAMA 35 (National Master Plan 35), in urban areas in Israel no less than 12 residential units must be built per dunam net and no more than 24 residential units net. Three residential units constitute 25% of the limited access and 12.5% of the expanded access.

Many large-scale public open spaces – Upon completion of comprehensive planning of the Palestinian neighborhoods in East Jerusalem, 40% of the total land in the plans was zoned as "open scenic space." As part of the changes that were introduced to the plans over the course of the years in specific detailed plans, the area zoned for open space was reduced and it currently stands at 30% of the total land planned.

3. Need for and Difficulty with Detailed Planning in Private Initiatives

The way to overcome some of the issues specified above is by preparing new detailed plans that will change the problematic plans prepared by the Municipality. Since 1995, with the entry into effect of Amendment 43 to the Planning and Building Law, which expanded the sphere of those permitted to submit plans, many landowners began to promote detailed spot plans for their land. However, the private planning momentum that characterized the 2000s came to a halt with the advancement of Local Outline Plan "Jerusalem 2000" – a plan whose statutory promotion was frozen and which turned into a policy document.[34]

The "Jerusalem 2000" policy document, whose contents are a failed statutory outline plan for all intents and purposes, recognizes in fact the planning omission that preceded it and suggests two new frameworks for development: greater density in existing neighborhoods by means of increasing building rights and expanding the neighborhoods into open areas. Since this concerns a policy document – or had it been deposited and approved as its authors intended in a local outline plan and not in a detailed outline plan – then implementing the proposed new potential would be possible only within the context of additional statutory planning.

Detailed planning at the initiative of landowners for increased density within the existing housing fabric continues to occur, little by little. As opposed to this, approval of detailed planning in open areas zoned in the policy document for the expansion of neighborhoods is stipulated in accordance with the same policy document on comprehensive planning approval for the expansion areas – wide-scale planning, which owners of private land are unable to prepare alone and the Municipality on its part promotes sluggishly. We would note that to date only one comprehensive plan has been approved for the proposed expansions in the Jerusalem 2000 Plan (policy document). This concerns a master plan for Es-

[34] The Court rejected a petition submitted by Bimkom and the Association for Civil Rights against the use of a master plan as "a policy document" by circumventing all provisions of the law including a directive for public objections – Administrative Petition 36572-04-13 **Bimkom et al. vs. the Jerusalem District Planning and Building Board**, September 29, 2013, published in *Nevo*. We would note that the master plan was frozen ten years ago and notwithstanding that it has not been updated the plan continues to be used. We recently learned that the new mayor has directed that a new plan be prepared.

Suahara and it is not statutory. In these areas of expansion residents' detailed specific plans have also not been approved, notwithstanding recurrent attempts. Additional plans, in particular those that were promoted by a group of residents, such as H'lat Al Ein in A-Tur and the plan for the expansion of Al Issawiya were halted and, despite years' long efforts, were never approved.[35]

Within the context of specific planning for increased density in neighborhoods, to date 1,000 plans have been approved for existing neighborhoods. These plans improve planning infrastructure and the possibility of obtaining building permits within their limits. However, these apply to tiny random areas and do not constitute a comprehensive solution to the housing shortage in the neighborhoods. A large part of these plans concern the regulation of existing building with the amendment of building lines and building additions that at times do not even include one residential unit. Others concern the addition of isolated residential units. A small part of the plans include 6-20 apartments.

We would note that from the detailed spot planning perspective there are huge disparities among the neighborhoods. While in Beit Hanina and Tsur Baher several hundred such plans were approved, in other neighborhoods, such as Issawiya and Silwan, only a few plans were approved.

2. Obstacles to Obtaining Building Permits Due to a Lack of Infrastructure

Access roads to buildings – According to the plans that apply to the neighborhoods and according to Municipality requirements, one of the conditions for granting a building permit is the presence of a statutory access road to the building area, which will enable bringing infrastructure to the location. In practice, a considerable number of the statutory roads that appear in the master plans do not exist on the ground. On the contrary, the existing roads do not correspond to the plan that applies to the neighborhood and therefore are not considered "roads" for the purpose of obtaining a permit. Hence, obtaining a permit to build a new building or an addition to a building requires, *inter alia*, that the detailed plan will include a section of road that connects the intended building site to a statutory road. At times this concerns sections of road that are too long and pass through land under other ownership, which requires reaching understandings with other owners who are not necessarily motivated to provide their consent; and so another difficulty is added and additional costs created.

Sewage infrastructure – In accordance with the requirements of the Ministry of Environmental Protection and the Ministry of Health, it was determined in the

[35] With regard to the efforts and failures in promoting suitable planning in East Jerusalem, see Deliberately Planned – On the Policy to Thwart Planning in the Palestinian Neighborhoods of Jerusalem, Ir Amim and Bimkom, February 2017 http://www.ir-amim.org.il/e/node/2082

District Planning Office in the Ministry of the Interior that for all plans approved in East Jerusalem a section will be added that stipulates the granting of building permits for large projects[36] on the existence of an "end solution" for the neighborhood sewage system (a facility for purifying sewage, Wastewater Treatment Institute). Many neighborhoods in East Jerusalem have no end solution and therefore it is impossible to obtain building permits for building large projects there.

In addition to the issues of an end solution, in East Jerusalem there is a huge shortage of main sewage pipes[37] and in many Palestinian neighborhoods soak pits are used, which are not approved in accordance with the standards of the Ministry of Environmental Protection and the Ministry of Health. Installing main sewage pipes to which pipes can be connected is a project that a private entity cannot at all implement. When there is a public sewage system, home owners can, in return for payment, connect to it. If there is no such system, then a building permit cannot be obtained at all.

Parking standard – In accordance with Urban Building Plan No. 5166 for the regularization of parking standards in Jerusalem, each residential unit requires at least one parking space in accordance with the size of the residential unit and the area under regulation. As a prerequisite to obtaining a building permit, due the high density in the built-up areas in the neighborhoods of East Jerusalem, there is no land available for parking for new units built as additions to existing structures. With regard to new construction the solution is simpler but more expensive – building underground parking or raising the building for the preparation of parking spaces underneath it at street level. Many building permits are rejected at this stage. It should be noted that the lack of a parking solution constitutes at present an obstacle not only when it comes to issuing building permits but already in the stage of preparing the plans. Local and district boards reject plans that do not present reasonable parking solutions.[38]

3. Obstacles to Obtaining a Building Permit due to Financial Limitations (Fees and Levies)

[36] In a certain period it was decided that a project of 100 residential units and more is considered large while in other periods this was defined as 50 residential units and more.

[37] Since 2009, there has been a slow improvement in the field since the Gihon Co. began to lay sewage lines in some of the neighborhoods. Only by means of aggressive action of the authorities over a period of several years will it be possible to close the gap.

[38] On November 8, 2009, the District Planning Board rejected Plan 13002 for the addition of residential units in Ras Al-Amud, *inter alia*, contending that "it is impossible to approve additional residential units without a parking solution."

A primary obstacle to obtaining a building permit for a population that primarily lives under the poverty line[39] is the heavy financial burden of preparing a plan by virtue of which it will be possible to obtain a building permit. The cost of preparing a plan amounts to tens of thousands of shekels and at times can be equivalent to the cost of the building itself. Even if the landowners manage to surmount this hurdle, often after a journey of years to obtain approval of a plan and after a great deal of money has been invested in this, no financing remains for submitting the application for a permit – a costly and lengthy process in itself.

In order to obtain a building permit, applicants are required to pay a variety of fees and levies. These include a licensing fee,[40] development tax,[41] betterment levy[42] and until several years ago also property tax.[43] (According to a calculation made about ten years ago by the Israeli Committee Against House Demolitions, a person who wishes to build a house of 200 sq. meters (which can comprise several residential units) must pay 110,000 New Israeli shekels only for fees and levies, not including payments for connecting to the sewage system and attorneys' fees and architects' fees.[44] Today, it must be assumed that the costs are even higher.)

The Licensing Fees imposed on residents of the city who apply to obtain a building permit are identical in both the eastern and western parts of the city (as in the other parts of Israel). However, the per capita income in East Jerusalem is one-third of the per capita income in the western part of the city.[45] The reasonable bar for determining the cost of services and fees in Jerusalem was determined according to the standard customary in the Jewish sector. Payment

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[39] Jerusalem Institute for Policy Research, Statistical Yearbook, Table 2/l – the Occurrence of Poverty among Families in Jerusalem, according to Population Groups and Family Features, 2016, 2017.

[40] Building Licensing Fee – Local authorities, including the Jerusalem Municipality, charge a fee for granting building permits. Payment is intended to cover the Municipality's expenses of handling the application.

[41] Development Tax – Municipal tax, which constitutes mandatory payment required of landowners or perpetual lease holders by a Local Authority and/or the water and sewage company, while laying the municipal infrastructure and/or prior to granting a building permit. Development Tax was intended to finance the laying of municipal infrastructure, including roads and sidewalks, installation of rainwater channels and drains, water delivery pipes and sewage flow pipes.

[42] Betterment Levy – Payment that the Local Planning and Building Board collects for increasing the land value as a result of the approval of a new plan that increased the building rights. The Betterment Levy amounts to half of the difference between the value of the lot prior to the plan's approval and its value after the plan's approval.

[43] Property Tax is a tax imposed in the past on non-agricultural undeveloped land, even if building has not yet been approved. Property Tax was canceled in 2000. The cancelation came into force on January 1, 2000, to the effect that as of that day the property tax rate will stand at 0%. In the absence of proof of ownership of the land, the payment of Property Tax provided sufficiently good proof to demonstrate that the property owner has at least a connection to the land.

[44] Meir Margalit [in English only]: Meir Margalit, *Discrimination in the Heart of the Holy City*, The International Peace and Cooperation Center, Jerusalem 2006, page 50.

[45] See Footnote 35 above.

of the fees is beyond the financial capability of many Palestinian residents of East Jerusalem.

Also, the basic development tax for connecting to water and sewage is identical in the eastern and western parts of the city. However, in practice the burden that falls on the Palestinian residents is heavier. First, because of the nature of the traditional familial building style in Palestinian society and the fact that frequently the financial unit is common to several nuclear families, the cost of laying infrastructure is imposed entirely on one financial unit, in place of dividing it among a number of residents in an apartment building, as occurs in the Jewish neighborhoods. Second, the shortage of infrastructure in the eastern part of the city leads to an increase in the cost of connecting to the water and sewage systems due to the distance between the building and the nearest connecting point with the municipal system. This additional cost, in many cases, makes building with a permit financially unfeasible.

In the western part of the city, as opposed to this, the government participates in development costs and subsidizes them in various ways. The fact that laying infrastructure is carried out for dozens or even hundreds of residential units at a time considerably reduces the costs per housing unit. In addition, the Ministry of Housing subsidizes contractors in a way that significantly reduces development costs. Grants have also been given directly to Jewish apartment buyers in East Jerusalem.

4. Obstacles Pertaining to the State of Rights in the Land

One of the main obstacles to obtaining building permits in East Jerusalem, particularly since the beginning of the 2000s, is the issue surrounding the rights in the land and the absence of land registration. According to Israel government policy, which was never publicized as an official resolution, the procedure of land arrangement that began during the British Mandate and continued during the rule of the Jordanian Hashemite Kingdom was frozen in 1967.[46]

This policy created the current reality where the land that was not expropriated in East Jerusalem is divided into three classes: Regulated land whose registration was completed prior to 1967; land whose registration commenced prior to 1967 but has not been completed; and unregulated land whose registration has not commenced at all.[47] Usually in areas in which the land is regulated, every piece of

[46] Levin-Shnur, Ronit, *Privatization, Separation and Discrimination: The Cessation of Land Settlement in East Jerusalem* [in Hebrew] *Iyunei Mishpat*, Tel Aviv University (2011) Volume 34, pages 192-193.

[47] Nati Marom, The Planning Deadlock: Planning Policy, Land Regulation, Building Permits and House Demolitions in East Jerusalem, December 2004. It is important to note that in the western part of the city and in areas that were expropriated in order to establish Israeli neighborhoods in East Jerusalem, most of the land is regulated and accordingly the issues specified here below are unique to the Palestinian neighborhoods.

land is registered in the Land Registry as belonging to a certain landowner. Such registration is definitive proof of his rights to the plot of land.[48]

According to the Planning and Building Regulations,[49] in order to submit an application for a building permit at the Municipality it is necessary to have the signature of the rights holder in the land. In the event of more than one owner, the agreement of all the rights holders is required. If the land is registered, the registered owner is the one who must sign the application. Over the years practical arrangements were found in East Jerusalem to enable obtaining building permits even without full registration of ownership. For example, if the land is not registered, the person who paid property tax[50] for the land is the person whose consent is required and/or the person who can submit the application. However, several practices[51] determined by the District Planning and Building Board in the early 2000s tightened the requirements for proof of land ownership and registration of ownership. These practices have led to a significant decline in the ability of Palestinian residents to submit applications for building permits.

Recently, the Ministry of Justice began to take action with regard to land registration in Jerusalem by virtue of Government Resolution No. 3790 (above). This Resolution set up a professional committee for this matter and placed the following objectives: "At least 50% of the land in East Jerusalem will be registered no later than by the fourth quarter of 2021 and 100% of land registration in East Jerusalem will be regulated by the end of 2025. In order to implement this section, 50 million New Israeli shekels will be allocated and equally distributed during the years 2018 to 2023."[52] The support of right-wing organizations for this course of action raises concerns that the motivation for this is not to make way for improving the conditions of life for Palestinian residents and for exercising their right to a home and a suitable living environment, but rather expanding the appropriation of land by the State and settler organizations. From a partial inquiry we conducted with interested parties (residents, planners, attorneys who act on the ground), it appears that many refrain from cooperating with the regulation of land registration due to this concern. The inquiry we conducted is preliminary and absolute conclusions cannot be based on it. In any event, the procedure for land registration is lengthy and complex and will not succeed without basic relations of trust between residents and the State of Israel.

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[48] Section 7(a) of the Land Law, 5729-1969.

[49] Up to 2016, the Planning and Building Regulations (Application for a Permit, Conditions and Fees) 5730-1970; beginning in 2016, the Planning and Building Regulations (Building Licensing) 5776-2016.

[50] See Footnote 14 above.

[51] The requirement to specify the names of all the landowners included within the proposed plan and their signatures and the requirement to prove ownership of all the landowners within the area of the plan.

[52] See Footnote 3, paragraph 6 of the Resolution.

Regulated land: Requirement that a landowner listed in the Land Registry sign building permit applications – In the past, the Building Licensing Department at the Jerusalem Municipality was satisfied with the signature of registered landowners, their heirs or anyone who purchased the land along with proof of affiliation between the registered landowner and the signatory as the lawful landowner, for example by way of the presentation of inheritance orders or sales agreements. However, in 2000 this practice was halted and it was determined that only a landowner registered in the Land Registry could submit an application for a building permit. As a result, heirs cannot initiate proceedings without submitting an inheritance order and thereafter registering the land in their names, which is not always feasible (for example, when some of the heirs are not in Israel and fear registering the land in the name of the General Custodian of Absentee Property).[53]

Lands in the process of regulation: requirement that landowners sign building permit applications – In October 2001, the Municipal Building Licensing Department began to require that the rights holder registered in the claims ledger or in the rights ledger as claiming ownership of the land and the applicant submitting a permit application be the same. Thus a similar problem to that mentioned above regarding regulated land was created.

Unregulated and unregistered land – Beginning in 2004, as part of the application for a building permit, the Jerusalem Local Planning and Building Board was satisfied with an ordinary survey map that matched the plan and was signed by the district surveyor, the village *Mukhtar* and the landowners of adjacent plots to the land subject of the permit application. This practice concurs with the spirit of the Planning and Building Law, which allows for issuing building permits even for unregulated land. The procedure known as "the Land Litigant Procedure" or "the Mukhtar Procedure" allows landowners of unregulated land to submit a permit application. The use of the "Mukhtar Procedure" was authorized by the courts as "a facilitating procedure" that recognizes evidence administratively without determining a proprietary right.[54]

In 2018, at the end of Nir Barkat's term as mayor of Jerusalem, following complaints of the falsification of documents as part of the process according to the Mukhtar Procedure, the list of Mukhtars permitted to sign authorization of connection to the land as part of planning and licensing procedures was updated

[53] The Absentee Property Law of 1950 states that the property of any person, who was not within the borders of the State of Israel during the census of 1948 and was living in an enemy country, will be transferred to the General Custodian of Absentee Property without compensation and without the need to notify the property owner. Following the annexation of East Jerusalem in 1967, this law was applied to the annexed area as were the other laws of the State but under various limitations.

[54] Administrative Petition 316/05 **Degal Investments and Holdings Ltd. vs. the Jerusalem District Planning and Building Board**; Administrative Petition Appeal 3435/11 **Avidat vs. the Jerusalem District Planning and Building Board et al**., June 19, 2013, published in *Nevo.*

and publicized to public objections. However, in March 2019, a short time after Moshe Lion entered office as head of the Municipality, under the influence of right-wing entities, the use of this procedure was halted, which led to detailed plans being rejected by the Local Planning and Building Board. A month after the cancelation of the Mukhtar Procedure, in April 2019, the procedure came into force again. It appears that the mayor was informed that its cancelation was like disconnecting the oxygen flow to a terminally ill patient. This affair illustrates the sensitivity of Planning and Licensing in Jerusalem and the deep involvement of political interests.

Since early 2002, the Licensing Department requires that city residents who submit building permit applications for unregulated and unregistered land take measures to advance the regulation of the land under their ownership by preparing a plan for registration purposes (PRP) and obtaining approval of the Survey of Israel Center that the PRP is "suitable for registration," as a prerequisite to opening a building permit licensing file. At the same time, the District Planning Office began adding a directive to every new plan that requires the preparation of a PRP as a prerequisite to granting a building permit. This requirement raised the planning cost for many Palestinian residents in East Jerusalem. According to data received from the Jerusalem Municipality, in the five years between 2005 and 2009, 483 building permit applications were blocked even before opening a building permit application file, during a period in which only 662 building permits were granted.[55]

Approval of consolidation and parcellation plans as a prerequisite for granting building permits – As stated above, large areas in northern East Jerusalem that were defined in approved outline plans as areas for consolidation and parcellation "became stuck" in the approval process for many years. In these areas, a building permit could not be received until the approval of consolidation and parcellation plans and the registration of the new plots of land. Fifty-one such areas in the neighborhoods of Beit Hanina and Shuafat were frozen in this manner for over a decade, and only after 2005 did the Municipality slowly begin to complete the approval of these plans (to date two plans still have not been approved). However, according to the new procedures, approval of consolidation and parcellation plans also does not enable the issue of building permits since the plots must be registered in the Land Registry Bureaus, which does not occur for reasons not clear to the Municipality, as well. Thus, every time a resident who wishes to build lawfully manages to overcome one obstacle, it seems that another obstacle immediately pops up to thwart his efforts. It can be assumed that this state of affairs also affects the motivation to attempt to build lawfully from the outset (see for example Administrative Petition 31034-03-13 **Sualhi et**

[55] Trapped by Planning – Policy, Planning and Development in Palestinian Neighborhoods in East Jerusalem, 2014, page 64 http://zik.co.il/z7a4

al. vs. the Jerusalem District Planning and Building Board et al., June 4, 2013, published in *Nevo*).

Problematic requirement for opening a registration file – A letter sent by the deputy director of the Municipal Planning Department in February 2009 to inspectors of planning information at the Municipality stated: "Since it has become clear that in some cases citizens who undertook to register a plan for registration purposes (PRP) have not fulfilled the requirements, the city engineer and the legal advisor to the Municipality have decided on a new format for marking building lines in cases of plans for registration purposes. These directives are valid from this time forth."[56] The letter specifies the new requirements for an applicant who submits a request to mark new building lines and has prepared a plan for registration purposes to present to the inspectors of information approval of the PRP being "suitable for registration" and has opened a registration file with the Land Registrar. Then, only after the provision of these approvals will building lines be marked for the applicant.[57] The letter later states, "Conditions for granting a building permit are the approval of the National Information and Surveying Department that in the opinion of the Land Registrar there is no impediment in principle to registering the PRP." These directives remained in effect for only six months until the Jerusalem District Planning and Building Appeals Committee studied and rejected this requirement. Following this same decision, the clerks in the Municipality took measures to clarify possibilities for land registration with the Land Registrar.[58] This unofficial activity contravenes the spirit of matters that arose in the Appeals Committee. The temporary procedure became established; and at present landowners who wish to open an application for a building permit file in the Licensing

[56] Letter of Menachem Gershoni, Reference 2009-0310-14, February 1, 2009.

[57] The requirement for opening an actual registration file is not included in the requirements of the law and thus constitutes a stricter policy than what is included in the law and prior practice.

[58] The appeal was made as follows: Those officers in charge of providing planning information in the preliminary procedure for opening a building permit file unofficially contacted clerks at the Land Registrar with the question whether there is likely to be a problem with registration of the land in the applicant's name. The unofficial response from the Land Registrar reported possibilities that the landowners might include absentees. This reply indicating that the applicant or one of his siblings are considered absentees caused the application to be rejected and the landowner to be unable to request a building permit. A report by Mr. Gershoni to the city engineer, in charge of licensing and the director of the City Planning Department on September 7, 2009 states: "Regarding the above-referenced plot, a building plan was submitted …. And the developer submitted a request for marking building lines …. We contacted Mr. Ronen Baruch, the General Custodian of Absentee Property, to have the ownership of this parcel verified. His examination discloses that the owners were not in Israel since the application of Israeli law and the property is defined as absentee property. The applicant must be referred to the Ministry of Finance – the Absentee Property Division in order to verify his status … In light of the above, do not mark any building lines or issue any building permits as long as ownership of the property has not been proved with the authorization of the Custodian of Absentee Property." It should be noted that this correspondence occurred following the determination of the aforementioned Appeals Committee. For additional information, see Bimkom, **Trapped by Planning – Policy, Planning and Development in the Palestinian Neighborhoods in East Jerusalem**, 2014, page 64 http://zik.co.il/z7a4

Department are required to attach to the building permit documents approval of the legal department at the Municipality for opening the file. The legal department maintains contact with the Land Registrar and the office of the General Custodian of Absentee Property for clarifying ownership and authorizes or rejects opening the file in accordance with the results of this clarification.

The Obstacles Have Remained Unchanged While Enforcement Is Tightened: Impressions from the Field

In the course of preparing this document, we talked with several attorneys who specialize in planning and building and represent many residents contending with enforcement procedures in East Jerusalem.

The picture that arose from these discussions is of clear tightened enforcement. All the attorneys with whom we spoke noted that the number of clients requesting legal assistance regarding demolition orders and fines has significantly increased after the Amendment to the Law and the amounts of the fines have risen drastically. All of them also indicated that at the same time their ability to assist clients has significantly dropped due to the structuring of the courts' discretion in enforcing demolition orders and fines. Where in the past a resident by means of his attorney could request and obtain from the court a delay of at least a year in the implementation of demolition orders and payment of fines, at present a delay of 6 months at most and payment of twice the fine can be obtained. In this state of affairs, many decide to waive costly legal assistance. Indeed, all the attorneys with whom we spoke indicated that to date they have not managed to have a demolition order canceled that was given after the Amendment to the Law – and some underscored that in many cases they refrain from the outset from undertaking representation in such files due to the zero chance of succeeding. In this reality, many residents of East Jerusalem opt to demolish the structure subject of the enforcement of their own accord in a course of action that is significantly less costly than paying attorneys who are unable in any event to provide assistance.

Information collected by Ir Amim demonstrates that house demolitions in East Jerusalem increased during the first half of the current year (January to June 2019). Israeli authorities demolished 20% more buildings and in them more residential apartments when compared with the same period last year. In particular, the data regarding self-demolitions stands out – in the first half of 2019, five times the number of self-demolitions were carried out when compared with the first half of 2018.

One of the attorneys with whom we spoke also stated that due to the increase in building without a permit there is concern among residents that legal

confrontation with the Local Board will lead the Board to cling to every building violation both of the same resident and of members of his family (for example, a brother who received a building permit for one story and built another story on top) – and then all will suffer from the tightened enforcement. This concern also existed prior to this but it appears that it is much more powerful at present, *inter alia*, due to the increasing difficulty to arrange construction and meet the payment of fines that can now reach hundreds of thousands of shekels[59]).

In terms of the State, these testimonies will ostensibly reinforce the validity of the approach that the Amendment to the Law will improve enforcement. In place of battling the system in court, residents waive the struggle and demolish the building that is the subject of enforcement themselves. In fact, this is a severe infringement of the right of access to the courts and the right of a person to conduct a defense against governmental infringement of a basic right – the right to suitable housing and proper living conditions, which are not duly provided to him because of omissions on the part of the State.

Conclusion

This document reviewed the tightened enforcement in planning and building by the amendment of the Planning and Building Law and the background that preceded it. We analyzed the obstacles to obtaining a building permit in the Palestinian neighborhoods of East Jerusalem and presented the gap between the State's position, as if planning budgeting gives legitimacy to tightened enforcement, and the planning reality of these neighborhoods, which has not changed and for which no budgets have been allocated to change it. We believe that the disparity between the alarmingly slow pace of completing updated planning and the policy of tightened enforcement, as though all planning obstacles have been removed, will be evident all the more forcefully in the neighborhoods of East Jerusalem. This is the case due to the features of the population and the highly political sensitivity of everything pertaining to city land. In talks we held and from the figures presented, it appears that this is indeed the situation. While there is no progress in planning and licensing in East Jerusalem and the State has not even seen fit to allocate budgets for this, enforcement is being implemented all the more forcefully, penalties have become more severe and the ability of a resident to conduct a defense has declined.

Further to the preparation of this document, we are examining additional ways of evaluating the effects of the Amendment to the Law on East Jerusalem. Then, based on the data that will be collected, we hope to create a dialogue with a variety of government entities to change their perspective regarding the necessity and logic in tightened enforcement as long as the obstacles that we

[59] The Administrative Offenses Regulations.

described remain unchanged since, ultimately, all residents of East Jerusalem will need a home to live in – with a building permit or without one.