



TRAPPED BY PLANNING

ISRAELI POLICY, PLANNING,
AND DEVELOPMENT
IN THE
PALESTINIAN
NEIGHBORHOODS
OF EAST JERUSALEM

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Bimkom – Planners for Planning Rights is an Israeli NGO that was established in 1999 by planners and architects sharing a vision of strengthening the connection between planning and human rights. Drawing on values of equality, good governance, and community participation, Bimkom assists communities that are disadvantaged by economic, social, or civil circumstances, in exercising their planning rights, and strives to advance planning policies and practices that are more just and responsive to the needs of local communities.

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ABSTRACT

Two years from now will mark a half century of Israeli rule over East Jerusalem. Over the course of almost fifty years, the Jerusalem Municipality and the Israeli national planning authorities have dealt extensively with planning in Jerusalem, including the planning of the Palestinian neighborhoods of East Jerusalem. And yet, despite the many plans that have been drawn up and approved in this period, the planning situation in these neighborhoods remains untenable. Even worse than the state of planning in the neighborhoods is their actual physical state; the neighborhoods suffer from a painful combination of a severe housing shortage, along with dilapidated infrastructure, an extreme lack of public and community institutions, and residential construction that is mostly unauthorized. How did it happen that, despite such a preoccupation with planning, the neighborhoods have declined to their present, terrible state? And how have we reached a situation in which so many homes of Palestinian residents are under threat of demolition? This study seeks to answer these and many other questions.

The document describes the state of planning, building, and development in the Palestinian neighborhoods of East Jerusalem in the light of decades of Israeli-government demographic and territorial policy. Presenting an historical review of almost fifty years of Israeli planning and development in East Jerusalem, the document includes a survey of the plans drawn up by the Israeli authorities for the Palestinian neighborhoods from 1967 to this day, and demonstrates how this planning has left the neighborhoods with extremely limited prospects for development, in terms both both public infrastructure and private residential construction. Finally, the document presents the obstacles facing the Palestinian residents of East Jerusalem as they try to attain building permits and the way in which planning laws and procedures, which ignore the unique situation of these neighborhoods, leave the residents little choice but to build without building permits and thus to place themselves under the constant threat of demolition orders and actual home demolitions.

Background

With the end of the 1967 war and the occupation of the West Bank by Israel, about 71,000 dunam of the West Bank were annexed de facto to the municipal area of Jerusalem. This area included about 6,400 dunam of the Jordanian city of Jerusalem, as well as entire villages and parts of villages from the city's agricultural periphery. This increased the geographic area of Israeli-controlled Jerusalem from 38,000 dunam before 1967 to 109,000 dunam after the war (later on, the municipal borders of the city were expanded westward as well, and today the area of the city is about 126,000 dunam). This rapid and expansive growth was done with the objective of strengthening Jerusalem's status as a major Israeli city, as the capital of Israel, and as a global center for world Jewry. Since then, planning and development policy in East Jerusalem has been dictated by two complementary principles: "demographic balance" and territorial expansion. In other words, planning and development policy in the city aims at ensuring a Jewish majority in the city by designating the vast majority of available areas in East Jerusalem for the Jewish population, thus establishing Israeli-Jewish territorial contiguity at the expense of Palestinian-Arab territorial contiguity and development in the Palestinian neighborhoods.

We should keep in mind that, while the state of Israel and the vast majority of the Israeli-Jewish public consider East Jerusalem to be an inseparable part of Israel, neither the Palestinians nor the international community recognize Israel's de facto annexation of the areas conquered in 1967. East Jerusalem is viewed as occupied territory, and the Israeli neighborhoods built there as settlements for all intents and purposes. Furthermore, despite Israel's portrayal of Jerusalem as a united city, with the rare exception, Palestinian and Jewish-Israeli populations live in completely separate neighborhoods.

The policy of "demographic balance"

The principle of "demographic balance" has guided Israeli planning policy in Jerusalem since the establishment of the state of Israel in 1948 and even more so since the end of the 1967 war. The national and municipal obsession with the Jewish/Arab ratio has become the primary criterion for any Israeli planning and development venture in Jerusalem. The first chapter of the document provides an historical overview of the demographic makeup of the city from the mid-19th century to the present and includes a survey of government decisions, plans, and policy papers dealing with the subject from 1967 onwards.

It is important to stress that the obsession with the demographic balance is not about creating an actual balance between the different population groups that make up the mosaic of the

population in Jerusalem, but explicitly for the purpose of maintaining the demographic advantage of one group – Jews. In 1967, at the end of the war, the ratio of Jews to Arabs in Jerusalem was 74:26. By the end of 2012 the ratio of Jews to Arabs was 61:39, and trends in both natural population growth and migration show a consistent rise in the proportion of Arabs in the city. The practical implication of the obsession with the demographic balance is active government intervention to change existing trends, or at least to try and restore the ratio that existed at the end of the 1967 war. The planning system in Jerusalem is mobilized for this mission, and plans drawn up for the Palestinian neighborhoods of East Jerusalem, in the past and to this day, are guided by this principle.

Planning in the Palestinian Neighborhoods of East Jerusalem

Following the application of Israeli law in East Jerusalem, Israel was legally obligated to plan the new territory within three years (this article in the Planning and Building Law was changed in 1995). Had the Israeli planning authorities acted in accordance with the law, by 1971 there would have been outline plans for all of the neighborhoods of East Jerusalem. This did not happen, however, and the planning of the Palestinian neighborhoods in East Jerusalem has dragged out over many decades. The second and central chapter of this document presents a detailed survey of Israeli planning in the Palestinian neighborhoods of East Jerusalem, as divided into five stages:

Stage 1 The first decade (1967-1977), in which only very general planning was done, exclusively in the so-called “visual basin” of the Old City, with the goal of conserving the area and restricting development therein.

Stage 2 The second decade (1978-1989), in which very restrictive plans were drawn up for the Palestinian neighborhoods surrounding the Old City and building permits began to be issued under Article 78 of the Planning and Building Law.

Stage 3 The third decade (the 1990s), in which outline plans were prepared for the northern and southern Palestinian neighborhoods, further away from the center of the city.

Stage 4 The fourth decade (2000-mid-2009), in which the last plans for the Palestinian neighborhoods were completed, and the Jerusalem 2000 Outline Plan was drawn up and approved by the planning committees for deposition for public review, though to this day it still awaits actual deposition.

Stage 5 The present stage (2009 onwards), in which the advancement of the Jerusalem 2000 Outline Plan as a statutory document has been frozen, though it continues to be referred

to widely as a binding policy document. A slow process of re-planning is underway in some of the older Palestinian neighborhoods and in some of the expansion areas proposed in the as-yet-unapproved Jerusalem 2000 Plan.

The above schematic chronology presented above might give the impression that since the 1990s the Palestinian neighborhoods in Jerusalem have enjoyed adequate planning. But this is far from the case. Despite the steady improvement in the quality of the plans prepared for these neighborhoods, in fact the vast majority of the plans do not provide any real solutions for the needs of the residents, be it in housing or in other realms. And for most Palestinians wishing to build homes, the obstacles to obtaining building permits are as palpable as ever. Alongside the elaboration of the characteristics of the plans in each of the stages described above, the second chapter of this paper includes a detailed description of the common problems in the existing plans for the Palestinian neighborhoods.

This chapter also elaborates on two developments that have had a significant influence on planning in the Palestinian neighborhoods of East Jerusalem. The first is Amendment 43 to the Israeli Planning and Building Law (passed in 1995). This amendment enabled residents and landowners, for the first time, to initiate plans on their lands, partially freeing them from dependency on the state planning authorities. One cannot overstate the importance of this amendment for the Palestinian residents of East Jerusalem, although it is important to note that its potential has been partially curbed. The second of these is the Jerusalem 2000 Outline Plan, which constituted an opportunity for change but for various reasons described in the document, has also not lived up to its potential. All in all, the planning establishment continues to perpetuate the great gaps between Palestinian and Israeli neighborhoods in the city and does virtually nothing to reduce them.

Building in the Palestinian neighborhoods of East Jerusalem

Planning is not an end in itself, but a means towards actual construction and development. The Palestinian neighborhoods of East Jerusalem face many obstacles on this front, even when valid plans ostensibly allow for development. The third and final chapter in this document describes the obstacles to the realization of the construction potential found in the plans, in particular in the realm of private residential construction.

This final chapter contains statistics about the number of building permits issued in East Jerusalem from 1967 to 2012, revealing the immense gap between the meager numbers of permits issued and the real needs of a growing population. In addition, statistics are provided for a five-year period (2005-2009), about the number of permits issued and the

number of housing units that can be built as a result, in comparison with the same statistics for the Israeli neighborhoods. The statistics expose a huge gap between the number of housing units authorized for construction in West Jerusalem and the Israeli neighborhoods in East Jerusalem, and the number of apartments allowed for construction in the Palestinian neighborhoods of East Jerusalem.

On top of the problematic planning infrastructure described in Chapter 2, which offers insufficient areas for development and places draconian restrictions on the possibilities of building on the few plots where it is allowed, are the many additional obstacles on the way to attaining a building permit. These obstacles can be divided into three categories: (1) difficulties stemming from the lack of public infrastructure development; (2) difficulties stemming from prohibitive costs (fees and levies); and (3) difficulties in opening a building-permit file stemming from issues of land registration. Chapter 3 describes these difficulties and reveals the futility of all of the Israeli planning establishment's activity so long as these fundamental issues preventing their realization are not resolved.

Summary

As a rule, an important and worthy goal of planning is to organize the living space for the people who live in it, in such a way as enables each person to live without hurting the other, and vice versa. Planning also serves, however, as an instrument of state control over space and people, through the distribution of rights to different population groups in accordance with hegemonic values. It seems that the state of Israel, through its proxies in the Jerusalem Municipality and the Ministry of the Interior, has lost sight of the worthy goals of planning and uses planning primarily as an instrument of control.

Thus, the Palestinian neighborhoods of East Jerusalem are trapped in a perpetual state of planning-without-building. The planning institutions invest great resources in drawing up master plans and outline plans in the Palestinian neighborhoods of East Jerusalem, but these plans contain myriad stipulations that render the plans unrealizable, thus alleviating neither the housing shortage nor the miserable physical condition of the neighborhoods. Municipality clerks and elected officials, as well as officers of the District Planning Bureau of the Interior Ministry, continue to boast about the many plans that are being advanced and approved for the Palestinian population in the city. But residents interested in building their homes find themselves time and time again in a tangle of red tape, realizing that they are invisible in the eyes of a system that is ostensibly responsible for their welfare.



INTRODUCTION

At the end of the June 1967 war, and with the occupation of the West Bank, the state of Israel annexed de facto an area of about 71,000 dunam to the Jerusalem municipal boundaries. This new territory included the Jordanian city of Jerusalem (about 6,400 dunam), along with entire villages or parts of villages from the city's agricultural periphery. As a result, the area of the city under Israeli control grew from 38,000 dunam before 1967, to 109,000 dunam immediately after the war¹ (see Map 1 **Borders in Jerusalem**). This huge and fast-paced expansion of the municipal boundaries was realized, not out of planning considerations per se, but according to the political strategy of achieving "maximum area with minimum [Palestinian] population."² Since 1967, this policy has been manifested in two complementary principles: "demographic balance" and territorial expansion. In other words, planning and development policy in the city aims at ensuring a Jewish majority in the city by designating the vast majority of available areas in East Jerusalem for the Jewish population, thus establishing Israeli-Jewish territorial contiguity at the expense of Palestinian-Arab territorial contiguity and development in the Palestinian neighborhoods.

This document³ describes the state of planning, building, and development in the Palestinian neighborhoods of East Jerusalem in the light of decades of Israeli-government demographic and territorial policy. Presenting an historical review of more than 45 years of Israeli planning and development in East Jerusalem, the document includes a survey of the plans drawn

¹ Later on, the municipal boundaries of Jerusalem were expanded westward as well, to date reaching an area of about 126,000 dunam.

² Elisha Efrat, **A Geography of Occupation** [in Hebrew] (Jerusalem: Carmel Publishing, 2002)

³ This document is an updated and expanded version of a 2004 document published by the NGOs Ir Shalem and Bimkom – Planners for Planning Rights: Nati Marom, **The Planning Deadlock: Planning Policy, Land Arrangements, Building Permits, and House Demolitions in East Jerusalem** [in Hebrew, with English abstract] (Jerusalem: Ir Shalem and Bimkom, 2004).

up by the Israeli authorities for the Palestinian neighborhoods from 1967 to this day, and demonstrates how, on top of the problematic and imperfect nature of these plans, their actual implementation has been only partial; the planning that has been done in most of the Palestinian neighborhoods has left these neighborhoods with extremely limited prospects for development, in terms of both public infrastructure and private residential construction. Finally, the document presents the obstacles facing the Palestinian residents of East Jerusalem as they try to attain building permits, and the way in which planning laws and procedures, which ignore the unique situation of these neighborhoods, leave the residents little choice but to build without building permits and thus to place themselves under the constant threat of demolition orders and actual home demolitions. The bulk of the research was conducted before the end of 2012; in preparation for publication, a number of essential updates were added.

We must keep in mind that, while the state of Israel and the Israeli-Jewish public on the whole consider East Jerusalem – including the Israeli neighborhoods built beyond the Green Line – to be an inseparable part of the state of Israel, neither the Palestinians nor the international community recognize Israel's de facto annexation of the areas conquered in 1967. Accordingly, East Jerusalem is viewed as occupied territory and the Israeli neighborhoods built there as settlements, thereby illegal under international law. Furthermore, despite Israel's portrayal of Jerusalem as a united city, Palestinian and Jewish-Israeli populations live, with rare exceptions, in completely separate neighborhoods and use separate systems of education, leisure, employment, transportation, etc.



1 THE ISRAELI POLICY OF “DEMOGRAPHIC BALANCE”

The principle of “demographic balance” – code for “the preservation of the Jewish majority” – has guided Israeli planning policy in Jerusalem since the establishment of the state of Israel in 1948 and even more so since the end of the 1967 war and Israel’s de facto annexation⁴ of Jordanian Jerusalem and the city’s rural periphery. In other words, from 1967 to the present, planning and development policy for East Jerusalem has been driven explicitly by the demographic goal of maintaining a Jewish majority in the city. As will be described in detail below, the national and municipal obsession with the Jewish/Arab ratio has reached grotesque proportions, becoming the primary criterion for all Israeli planning and development ventures in Jerusalem.

In the Israeli-Jewish lexicon, the term “demographic balance” does not refer benignly to the evolution of the balance between the different population groups making up the fabric of Jerusalem, but a proactive tool aimed explicitly at preserving the Jewish demographic advantage in the city. At the end of 2012, the ratio of Jews to Arabs in Jerusalem was 61% Israeli Jews and 39% Palestinian Arabs⁵ (as compared with 74.2% Jews and 25.8% Arabs in

⁴ The precise terminology for what Israel did in East Jerusalem at the end of the 1967 war is the “application of Israeli law and government to the area of East Jerusalem.” De facto, this means annexation. The laws that enabled the annexation included: The Law for the Amendment of the Ordinance for Government and Justice Arrangements (1967), Book of Laws 499, 28.6.1967, p. 74; Order for Governance and Justice Procedures (no. 1), 1967, Book of Regulations 2064, 28.6.1967, p. 2690; Law for the Amendment of Municipality Ordinances (no. 6), 1967, Book of Laws 499, 28.6.1967, p. 74; Jerusalem Declaration (expansion of the municipal borders), 1967, Book of Regulations 2065, 28.6.1967, p. 2694.

⁵ According to official statistics of the Jerusalem Municipality

1967). With no anticipated change in natural population-growth or migration patterns, the proportion of the Palestinian population in the city will continue to grow.

Thus, practically speaking, the Israeli obsession with the “demographic balance” has translated into active government intervention to change existing trends, and from the point of view of the city’s residents, all feel threatened. Jewish-Israeli residents of the city dread the very thought of losing the ruling majority, because it may undermine the legitimacy of their existence in the city. The city’s Palestinians, however, are either sentenced to a lifetime of struggle for their basic rights or literally pushed outside of the city’s boundaries by the Israeli mechanisms implemented for the preservation of the so-called demographic balance. In order to better understand this issue, we begin with a description of its evolution from the end of the 1967 war to the present.⁶

Historical Background⁷

Jerusalem’s population grew at a fast pace from the mid-nineteenth century onward. This growth stemmed in large part from inward Jewish migration; in the first half of the twentieth century, Jews became the majority in the city, with the proportionate growth of the Jewish population continuing throughout the period of the British Mandate. In 1922, Jerusalem’s population was about 62,000, with 34,000 Jews (and “others”) and 28,000 Arabs. Twenty-five years later, on November 29, 1947, upon the UN General Assembly’s adoption of the Resolution for the Partition Plan for Palestine, Jerusalem had a population of about 167,000—of them ~102,000 Jews and ~65,000 Arabs.

The Partition Plan, the 1948 War, and the subsequent division of the city dealt a blow to Jerusalem’s prestige on both sides of the border.⁸ The volatile security situation in the wake of the Partition Plan, along with the siege of Jerusalem, led to a wave of Jewish emigration from the city, such that on May 15, 1948, the day of Israel’s declaration of independence,

⁶ For a detailed examination of Israeli policy, see: Moshe Amirav, *Jerusalem Syndrome, The Palestinian-Israeli Battle for the Holy City* (Brighton: Sussex Academic Press, 2009). See also: B’Tselem, *A Policy of Discrimination: Land Expropriation, Planning and Building in East Jerusalem* (May 1995).

⁷ The following paragraphs are based on: Maya Hoshen “The Population of Jerusalem – Processes of Change” [in Hebrew], in Ora Achimeir and Yaacov Bar-Siman-Tov (eds.), *Forty Years in Jerusalem* (Jerusalem: Jerusalem Institute for Israel Studies, 2008), pp. 16-20.

⁸ Aviya Hashim’oni, Yosef Shweid, and Zion Hashim’oni, *Master Plan for Jerusalem 1968* (Jerusalem, 1972).

the city's population was a mere 110,000—of them 80,000 Jews⁹ and 30,000 Arabs.¹⁰ The war subsequently led to the displacement of about 20,000 Arabs from the neighborhoods and villages in and to the west of the city (such as Talbiyah, Baq'a, al-Malha, 'Ayn Karm, and more), and thousands of Jews from neighborhoods in the east of the city (above all from the Jewish Quarter of the Old City).

The war left Jerusalem divided: an Israeli city in the west, with virtually no remaining Palestinians, and a Jordanian city in the east, with no Jewish population whatsoever. From a single social and economic regional hub, Jerusalem became two separate cities, both marginalized. The Israeli city, jutting into the West Bank at the end of a narrow corridor, was left with a greatly reduced rural periphery, while the Jordanian city, though retaining much of its rural periphery and major tourist sites, was overshadowed by the Jordanian capital city of Amman and suffered from negative migration.

The 1949 decision to make (West) Jerusalem the capital of the state of Israel, alongside Israeli anxieties about the city's internationalization and its geographic isolation from the coastal cities, brought consecutive Israeli governments to take steps aimed at increasing the city's population and strengthening the rural corridor leading to it. Thus, between 1948 and 1967, with the encouragement of the Israeli government, the population of Israeli Jerusalem grew almost threefold, whereas in Jordanian Jerusalem and the surrounding villages, which today comprise East Jerusalem, the population didn't even double itself.¹¹

The 1967 war and the occupation of the West Bank and East Jerusalem brought about the most significant demographic changes in the city, and their influence is felt to this day. While military law was instated in most of the West Bank conquered from the Hashemite Kingdom of Jordan, 71,300 dunam of the West Bank were separated from it and annexed de facto to Israeli Jerusalem. This increased the geographic area of Jerusalem by almost three-fold and annexed a population of about 69,000 Palestinians to the city—residents of Jordanian Jerusalem and some 30 additional villages—who became subject to Israeli law and were granted permanent residency status.

The ratio of Jews to Arabs at the moment of the setting of the annexation boundaries was 74.2% Jews and 25.8% Arabs (see below). The underlying principle behind the drawing of the

⁹ More than 10,000 of these were conscripts, who came from other settlements and were not residents of Jerusalem.

¹⁰ Menahem Klein, *Doves over Jerusalem's Sky: The Peace Process and the City 1977-1999* [in Hebrew] (Jerusalem: The Jerusalem Institute of Israel Studies, 1999).

¹¹ We should recall that the population count in Jerusalem before the 1948 war did not include the 30,000 Arabs of the nearby villages that were later annexed to Jerusalem. The 69,000 Arabs counted in the 1967 census did include the residents of these villages.

annexation map¹² was to add a maximum amount of territory, including strategic ridges, with a minimum number of Palestinians. There was an understanding within the Israeli establishment that demographic factors would determine the sustainability or lack thereof of the annexation, and this understanding generated a number of anomalies in the delineation of the municipal boundaries. On the one hand, some densely populated residential Palestinian areas were left outside the new municipal border despite their contiguity to the built-up fabric, while on the other hand, some relatively distant and sparsely populated areas, such as the hills where the Israeli neighborhoods of Ramot and Gilo would eventually be built, were “annexed.”

From the end of the 1967 war to the present, successive Israeli governments have consistently worked to increase the Jewish-Israeli population in Jerusalem in order to preserve the Jewish majority in the city as close as possible to the ratio that existed at the end of the war. However, migration and population-growth trends in Jerusalem indicate that it is effectively impossible to maintain this ratio.

Below is an overview of Israeli government decisions on the issue of the demographic balance in Jerusalem and references to this issue in planning and policy documents:¹³

1967, Annexation and population census After the occupation of the West Bank and the application of Israeli law to East Jerusalem, the state of Israel conducted a census. According to this census, 197,700 Jews and 68,600 Arabs were living in Jerusalem, i.e., 74.2% Jews and 25.8% Arabs. These statistics would constitute the basis for government decisions and planning policy in subsequent years.¹⁴

1973, The Gafni Commission and the subsequent government decision In late 1972, an inter-ministerial commission was convened to assess the pace of development in Jerusalem and present recommendations for the future. The commission determined that the government should strive to maintain the “ratio of Jews to Arabs that existed at the end of 1972,”¹⁵ meaning, 73.5% Jews and 26.5% Palestinian Arabs.¹⁶ In 1973, the Israeli government adopted the recommendations of the commission and since then, subsequent Israeli governments,

¹² This and the following paragraphs are based on Klein, *Doves Over Jerusalem's Sky*.

¹³ Nadav Shraga'i, *Planning, Demography and Geopolitics in Jerusalem* [in Hebrew] (The Jerusalem Center for Public and State Affairs, Jerusalem, 2010), pp.10-11.

¹⁴ After the annexation in 1967, the Israeli authorities hoped to increase the percentage of Jews in the city to 80% and even 90%, by offering incentives to Jews to move to Jerusalem and by sparking a construction boom in the city, but this ambitious scenario did not come to fruition.

¹⁵ The Inter-Ministerial Committee to Examine the Rate of Development in Jerusalem, *Recommendations for a Coordinated and Combined Rate of Development* [in Hebrew] (Jerusalem, August 1973), p. 3.

¹⁶ Benjamin Heyman and Gadi Eizereich, *The Population of Jerusalem and its Surroundings: Growth in Forecasts* [in Hebrew] (Jerusalem Municipality, Department of City Planning, Planning Policy Branch, July 1977), p. 5.

through the Ministerial Commission on Jerusalem, have reaffirmed this goal as a guideline for determining planning policy in Jerusalem.

1975, Municipal planning and national planning In 1975 the Jerusalem Municipality began drawing up a master plan for the city. During the course of the planning (which was never completed), planners were asked to address the issue of the demographic balance. In that same year, the Ministry of Interior, while preparing national master plans, also addressed the issue. Then director of the Planning Policy Division of the Ministry of Interior, Yisrael Kimhi, explained the inextricable connection between the demographic issue and its implementation in planning: “one of the cornerstones in the planning of Jerusalem is the demographic question. The growth of the city and the preservation of the demographic balance between the ethnic groups therein were a subject for decision by the government of Israel. This decision regarding the growth rate of the city today serves as one of the yardsticks for the success of the solidification of Jerusalem’s status as the capital of Israel.”¹⁷

1990, Waves of immigration from the FSU In the 1990s, forecasts of mass Jewish immigration from the Former Soviet Union (FSU) raised hopes within the Israeli government of increasing the proportion of the non-Arab population in the city and thereby tipping the demographic balance in its favor. An internal document of the Jerusalem municipality, entitled “Policy and Municipal Work Plans for the 1990 Fiscal Year” states: “the expected waves of immigration for the coming year have created a change in priorities. We have set as a main goal to increase the supply of housing in the neighborhoods. For the first time since 1967, we foresee the possibility of changing, and not just preserving, the demographic balance in the city.”¹⁸ Once the wave of immigration turned out to be less substantial than forecasted, it was decided to return to the policy of preserving the demographic balance as a central principle in Jerusalem planning policy.¹⁹

1996, Planning policy for the Arab sector In 1996, the City Planning Division of the Jerusalem Municipality produced a document summarizing the first thirty years of Israeli rule in East

¹⁷ Ibid., (introduction by Yisrael Kimhi), p. 1. See also “Forecast of Changes in the Distribution of the Population as Part of the National Master Plan” [in Hebrew] (Interior Ministry, Jerusalem, 1975); “A Preliminary Examination of the Implications of the Establishment of Settlements in the Greater Jerusalem Area” [in Hebrew] (Housing Ministry, the Authority for Rural Development, Jerusalem, 1975).

¹⁸ Jerusalem Municipality, “Municipal Policy and Work Plans for the 1990 Fiscal Year” [in Hebrew] (Jerusalem Municipality, internal working document, July 1990), p. 78.

¹⁹ The Jerusalem Municipality’s initiative, at the time, to expand the borders of the city westward and to annex Mevasseret Zion and some of the Judea Regional Council, was based on the assumption that preserving the demographic balance would require land reserves to meet the housing needs of Jews who would immigrate to Israel in the future and settle in Jerusalem. See: Shaul Amir, Rachel Alterman and Amnon Frankel, **Assessment of the Expected Influences of the Proposal to Expand the Jerusalem Municipal Borders Westward**, Part I [in Hebrew] (Haifa: The Center for Urban and Regional Research, Technion – Israel Institute of Technology, November 1990).

Jerusalem and describing the planning processes that had taken place during that time. The document includes a survey of the completed and in-progress plans for the Palestinian neighborhoods. The document also specifies the principles behind the planning, the first of which was: “maintaining the ratio of 70:30 [sic] that existed in 1967 between the Jewish and Arab population, in accordance with government policy.”²⁰

2005, National Outline Plan #35 (NOP 35) The national outline plan contains a declaration regarding the strengthening of Jerusalem as the capital of the state of Israel and of the Jewish people.²¹ Although there is no mention in the plan’s official documents that the Jewish majority must be maintained at a ratio of no less than 70% of the population in the city, this issue was raised during official discussions that took place towards the plan’s approval.

2009, The Jerusalem 2000 Local Outline Plan The local outline plan,²² which has yet to be deposited for public review and subsequently approved, states that the demographic goal of 70:30 is unattainable and that it should be updated to 60:40.²³ (See below – “The Demographic Balance at Present”).

2013, District Outline Plan #1, amendment #30 (DOP 1/30) The outline plan for the Jerusalem district was drawn up in accordance with and subordinate to NOP 35. Accordingly, DOP 1/30 stipulates a demographic goal of 70:30. The area of the district outline plan exceeds that of the municipal boundaries and suggests the strengthening of additional cities in the district (such as Beit Shemesh) as well as the rural periphery, though without detracting from Jerusalem’s status as the capital.²⁴ In addition, the authors of the district plan had newer statistics at their disposal. In discussions held towards the approval of the plan, the planners were asked to propose a more realistic and up-to-date demographic goal. Thus, the population goal for 2020 in the Jerusalem district was set at 65% Jews and 35% Arabs. Eventually, following objections, this goal was also erased from the plan’s documents.

²⁰ Ofer Aharon, *Planning in the Arab Sector in Jerusalem 1967–1996* [in Hebrew] (Jerusalem: Jerusalem Municipality, City Planning Division, Department of Planning Policy, 1996), p.19.

²¹ The State of Israel, Ministry of the Interior, Planning Authority, the National Planning and Building Council, **National Outline Plan (NOP) 35**.

²² A local outline plan is a plan that applies to all or part of the municipal area of a local authority, and which designates the general land designations and the character of construction.

²³ **Jerusalem Municipality, The Jerusalem 2000 Outline Plan, Report 4** [in Hebrew], p. 26. Report no. 4 is the last report to describe in detail the rationale behind the outline plan. The report, written by the planners, is not included in the official documents of the plan.

²⁴ Governmental incentives and development in one city almost always come at the expense of government investment in other settlements in the same area.

The Demographic Balance at Present

The final and most significant planning document to broach the issue of the city's demographic balance is the Jerusalem 2000 Outline Plan.²⁵ The plan's annexes state that: "in order to prevent such scenarios (i.e., the continued proportional growth of the Palestinian population in Jerusalem in comparison with the Jewish population) or even worse, from taking place, we will need far-reaching changes in our approach to the key variables influencing the balance of immigration and gaps in birthrate, variables that ultimately determine the demographic balance."²⁶ Otherwise, the planners warn, "the continued proportional growth of the Arab population in Jerusalem is bound to reduce the ratio of the Jewish population in the future."²⁷

As mentioned, the plan's documents state that the population goal of a 30 to 70 Arab/Jewish ratio is not attainable and that in the plan's target year of 2020, the real ratio would be 40% Arabs and 60% Jews. Report 4, appended to the plan²⁸ states, however, that even this new goal can only be attained via massive governmental intervention, namely, the increase of the supply of land for residential construction and places of employment for the Jewish population. Otherwise, trends undermining the plan's premise of preserving a significant Jewish majority in the city will only grow. The authors of the plan declare that these forecasts are not a foregone conclusion, due to the dependence of demographic variables on other variables.

Alongside such vague declarations about projected demographic trends in the city, one premise is certain: the resolve to preserve a significant Jewish majority in the city. The means necessary to attain this, so the plan states, are massive governmental intervention aimed at slowing the exodus of Jewish residents from the city and attracting Jewish residents from other parts of the country.²⁹ In conjunction, as we will see below, the plan places restrictions on development possibilities for the Arab population, and allots inadequate lands for residential construction or for the development of employment sources.

The grounding of Israeli planning policy in Jerusalem on demographic principles is not only manifested on the declarative or rhetorical level. The Jerusalem 2000 plan advances an explicit planning policy based on ethnic, national, and religious distinctions, wherein one group (Jews) is explicitly favored in all realms. The question of whether the state of Israel has

²⁵ The following paragraphs are based on a chapter written by urban planner Nili Barouch of Bimkom, on the subject of the demographic balance. See: *Comments of Bimkom – Planners for Planning Rights on the Jerusalem 2000 Outline Plan*, 2006 [in Hebrew], www.mat.co.il/nMJ, last accessed in December 2013.

²⁶ Jerusalem Municipality, *Jerusalem 2000 Outline Plan, Report 4*, p. 204.

²⁷ *Ibid.*, p. 205.

²⁸ *Ibid.*, p. 463.

²⁹ *Ibid.*, p. 205.

the right to favor the Jewish population in Jerusalem, and whether all means for attaining this goal are valid, will not be discussed in this paper. Regardless of the policy towards the Jewish population, the Jerusalem Municipality and planning institutions are required to meet the needs of the Palestinian residents in the areas of housing, employment, and public services. As we will see below, the proposed Jerusalem 2000 Outline Plan entails restrictions that preclude the satisfaction of these needs and is thus effectively a continuation of the restrictive planning policy that preceded it.



2 PLANNING IN THE PALESTINIAN NEIGHBORHOODS OF EAST JERUSALEM

The Five Stages

The application of Israeli law in East Jerusalem, including the Planning and Building Law of 1965, meant the de facto annulment of the Jordanian outline plans that were in place at the time.³⁰ Despite the legal obligation to plan the new territory within three years (until the cancellation of this stipulation in the Building and Planning Law in 1995),³¹ in the initial years after 1967, the political echelon neither completed planning procedures that were already in process, nor prepared outline or detail plans for the newly annexed Palestinian neighborhoods.³² In other words, the Israeli authorities did not plan the Palestinian neighborhoods in the timeframe required by law. Had this been done in accordance with the law, by 1971 there would have been outline plans for all of the neighborhoods of East Jerusalem. In reality, the planning of the Palestinian neighborhoods in East Jerusalem has dragged out over a long period. This

³⁰ Although no formal annulment of the Jordanian plans was effected by way of a new statutory plan, the Israeli planners functionally ignored these plans and referred to them only on the matter of compensations for loss of building rights.

³¹ Article 62(a) of the Planning and Building Law, 1965 (Israeli Book of Laws no. 467, 12.8.65), p. 307. This provision was abolished in 1995. See following: Amendment 43 to the Planning and Building Law, 1995.

³² Ofer Aharon, *Planning in the Arab Sector in Jerusalem*, p. 4.

period can be divided into five stages, coinciding roughly with five decades:

Stage 1 ■ In the first decade 1967-1977 only very general planning was done, exclusively for the areas around the Old City (the so-called “visual basin” of the Old City), with the goal of conserving the area and restricting development there.

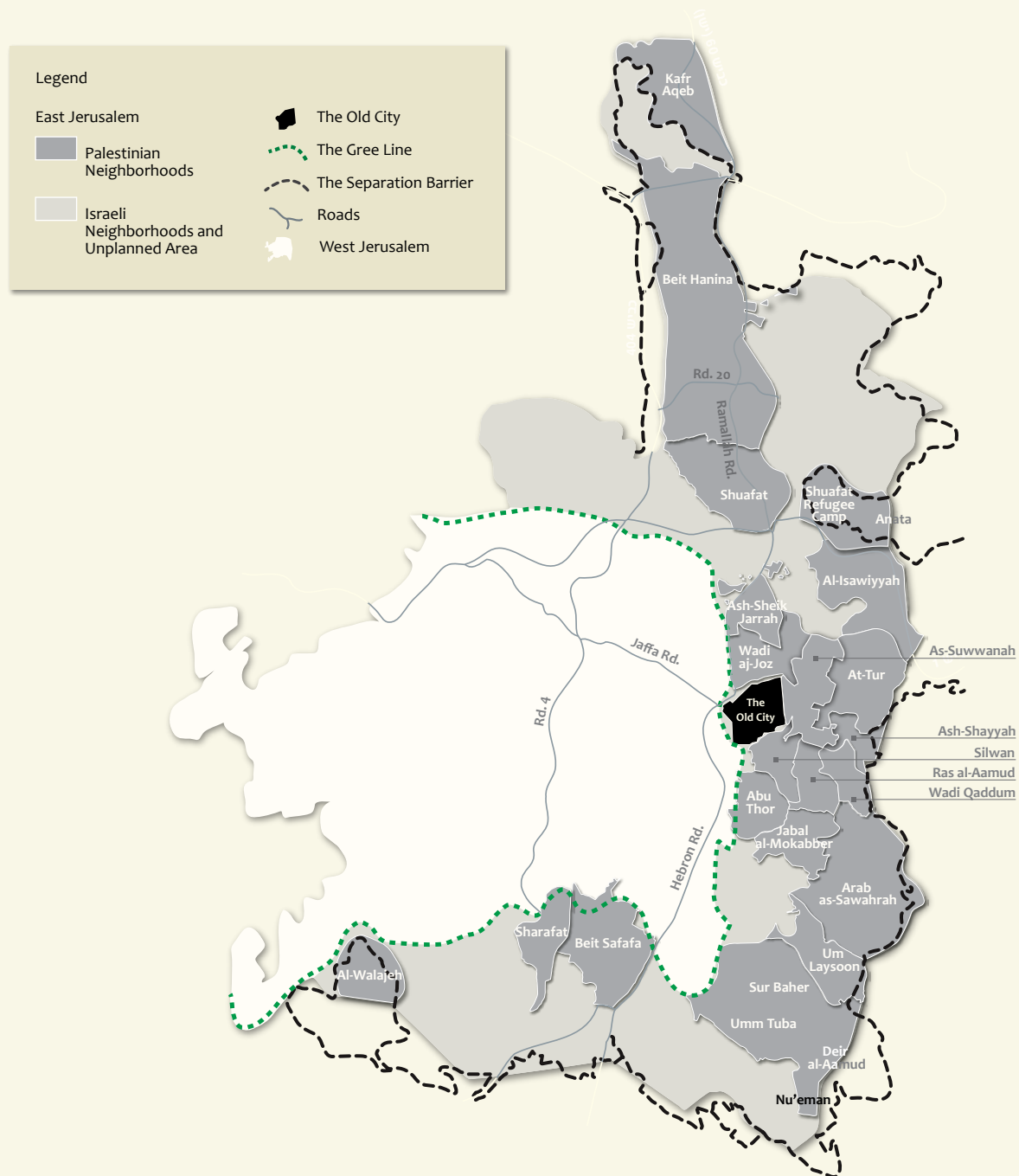
Stage 2 ■ In the second decade 1978-1989 very restrictive plans were drawn up for the Palestinian neighborhoods surrounding the Old City, and building permits began to be issued under Article 78 of the Planning and Building Law.

Stage 3 ■ In the third decade 1990-2000 plans were prepared for the northern and southern Palestinian neighborhoods, further away from the center of the city.

Stage 4 ■ In the fourth decade 2000-mid-2009 the last plans for the Palestinian neighborhoods were completed, and the Jerusalem 2000 Outline Plan was drawn up and approved by the planning committees for deposition for public review, though to this day it still awaits actual deposition.

Stage 5 ■ In the present stage (2009 and onwards) the advancement of the Jerusalem 2000 Outline Plan as a statutory document has been frozen. However, since then this document has been referred to as a binding policy document. A slow process of re-planning in some of the veteran Palestinian neighborhoods and in some of the expansion areas proposed in the as-yet-unapproved Jerusalem 2000 Plan, is underway.

This presentation might create the impression that since the 1990s the Palestinian neighborhoods in Jerusalem have enjoyed adequate planning. But this is not the case. Despite the steady improvement in the quality of the plans prepared for the Palestinian neighborhoods in East Jerusalem, the vast majority of these plans in fact provide no real solutions for the needs of the residents, in housing or in other realms, and the obstacles to obtaining building permits are still palpable for most Palestinians wishing to build homes. As will be described below, even the Jerusalem 2000 Outline Plan, which created an ostensible opportunity for change, does not effectively contribute the necessary change. The planning establishment continues to perpetuate the huge gaps between the Palestinian and Israeli neighborhoods. A certain hope for change can be seen in the increased building rights proposed in the Jerusalem 2000 Outline Plan for the built-up fabric of the neighborhoods, as well as in plans for expansion of neighborhoods being advanced by the municipality at present, and which are in initial planning stages. In the following section, we will discuss the abovementioned five stages in further detail.



Location Map of the Palestinian Neighborhoods of East Jerusalem

Based on a mapping that was done for the preparation of the Survey of Palestinian Neighborhoods in East Jerusalem, Bimkom - Planners for Planning Rights, 2013. www.mat.co.il/7Tr.

A POLICY OF NON-PLANNING

Immediately following the de-facto annexation of East Jerusalem, the Israeli government began intensive activity to cement the Israeli hold over the territory, through the establishment of Israeli-only neighborhoods in the newly annexed areas. The construction of these neighborhoods was made possible by the vast expropriation of lands, in accordance with the Land Ordinance (Acquisition for Public Purposes) of 1943 (amendment from 1946). The Land Ordinance gives the Minister of Treasury the authority to expropriate lands in order to allow the state to conduct large-scale projects “for the public benefit,” without delay. The expropriations took place in a number of waves, from 1968 and up to the last wave in the early 1990s.³³ Most of the land expropriated was Palestinian-owned, with a small portion having Jewish ownership.³⁴ All in all, over the years, some 26,300 dunam of land were expropriated in East Jerusalem, including the grounds of the former British airport in Qalandiya-Atarot and large (mostly open) areas for the establishment of the Atarot Industrial Zone, the government offices in Sheikh Jarrah, and the Israeli-Jewish neighborhoods of Ramot, Ramat Shlomo, Givat Shapira (French Hill), Ramot Eshkol, Maalot Dafna, the expansion of Sanhedriya, East Talpiyot, Homat Shmuel (Har Homa), Givat Hamatos, and Gilo (see Map 2 **Deployment of Expropriated Lands**).

In stark contrast with the development and construction boom in the new Israeli-Jewish neighborhoods built beyond the Green Line and on the expropriated lands mentioned above, planning within the Palestinian neighborhoods was characterized on the one hand by stagnation, and on the other hand by efforts to regulate development in and around the Old City. Thus, with the exception of isolated spot-plans, the first and most significant plan drawn up and validated by the end of the first decade after the annexation was Plan EJ/9³⁵ for the Visual Basin of the Old City (see Map 3 **Planned Area during the First Decade 1967-1977**).

³³ In addition to the Land Ordinance, which authorizes the Minister of Treasury to expropriate private lands, the Planning and Building Law allows the local authority to expropriate private land by force of a valid plan that designates it for public use, such as roads, public structures, or open public area. Expropriations done by force of the Planning and Building Law generally apply to relatively small areas, and they continue to this day.

³⁴ A small part of the expropriated lands was under Jewish ownership—for example, in the neighborhood of Neve Yaakov. Jewish landowners appealed against expropriations done in the Homat Shmuel (Har Homa) neighborhood, demanding higher compensation than was offered them. For more information, see the appeal [in Hebrew] to the Supreme Court (filed by Makor Hanpakot VeZkhuyot, Ltd.): http://www.psakdin.co.il/fileprint.asp?filename=/mekarkein/private/ver_ofom.htm

³⁵ The first plans for East Jerusalem were numbered separately, along with initials denoting that they were located in East Jerusalem. Later this marking was removed and the plans were numbered along with the rest of the plans made throughout the city.

One of the plans that preceded Plan EJ/9 was Plan EJ/6. The entire purpose of this plan was to set the boundaries of the so-called National Park Surrounding the Old City Walls. The Israel National Parks Authority (INPA) initiated this plan shortly after the 1967 war, and it was deposited in December 1968.³⁶ The plan is extremely general; its directives deal exclusively with the preservation of the area for the national park, and the blueprint primarily sketches the blue line that delineates the area of the national park.³⁷ Plan EJ/6 provided the basis for the declaration plan for the national park (Plan C/11/19). The declaration of the National Park Surrounding the Old City was done in 1974 by then Minister of Interior, Yosef Burg.

Concurrently, the 1968 Jerusalem Master Plan was also completed.³⁸ Preparation of this general, non-statutory, master plan began before the 1967 war, and despite the planners' declarations about the equality of the city's different population groups, the plan did not propose any significant development areas for the Palestinian population.³⁹

As previously mentioned, the most significant plan in the first decade after the annexation was Plan EJ/9, which redefined the Visual Basin of the Old City and stipulated the development possibilities in the area⁴⁰ (see Map 4 **Plan EJ/9**). Most of the land included in Plan EJ/9 was zoned as open space of various kinds, all of which were subject to an almost complete prohibition on construction.⁴¹ The few development areas that do appear in the plan are located where villages or housing clusters already existed prior to the preparation of the plan.

³⁶ The Israel Nature and Parks Authority is a government body charged with initiating, planning, developing, and maintaining national parks (see the National Parks, Nature Reserves, National Heritage Sites, and Commemoration Sites Law, 1998, Article 6). According to the Israeli Planning and Building Law, in order to change land designations, a developer, landowner, local authority, or government authority must prepare a local outline plan. Outline Plan #6 for East Jerusalem (EJ/6) was drawn up accordingly, designating a zoning for a national park that enabled the declaration of the park.

³⁷ Bimkom, **From Public to National: National Parks in East Jerusalem** (Jerusalem: Bimkom – Planners for Planning Rights, 2012), p. 20, www.mat.co.il/78E - Last accessed in December 2013.

³⁸ According to the Planning and Building Law, a statutory plan is one that has gone through the process of approval and received legal validation. Concerning local and detailed outline plans, the law requires the deposition of the plan for public review and objections, before it can be approved and validated. A non-statutory plan can be any master plan, skeleton plan, or construction plan that has not been deposited for public review and subsequently approved and legally validated, and is thus no more than a guiding document. It should be noted that in recent years, wide use has been made of non-statutory plans. In **State Comptroller's Report 60a from 2010**, the State Comptroller pointed to the problematic nature of this phenomenon.

³⁹ Hashim'oni, Shweid & Hashim'oni, **Master Plan Jerusalem 1968**.

⁴⁰ Although this plan was made after the deposition of Plan #6 for East Jerusalem and was approved only after the declaration of the national park under Plan C/19/11, the National Park Surrounding the Old City Walls is not included in it, nor is there any mention of it in the sketch of the plan or in its instructions.

⁴¹ The plans include a few different types of open areas: Open Public Area, Open Private Area, Open Scenic Area, Antiquities Site, National Park, Nature Reserve, and more. The types of open areas are distinguished from one another in terms of land ownership, responsibility for development of the area, and the permitted uses on it.

In these areas, too, extremely low building ratios were stipulated.⁴² Moreover, within the residential clusters themselves, many areas were designated as preservation areas and were thereby subject to additional, special building restrictions. Surprisingly, the plan contained no reference to the previously approved plan for the national park (EJ/6). The purpose of the plan was to create a general framework for the preparation of detail plans, without which building permits could not be granted.

List of plans approved in the first decade: Plan #9 for East Jerusalem (EJ/9), the 1968 Jerusalem Master Plan (as well as a number of spot-plans: EJ/6, EJ/7, EJ/14, etc.)

⁴² Building ratio: the maximum primary area (the area of the housing units themselves, not including common stairwells, security rooms, parking, etc.) allowed in a given plot, in proportion to the area of the plot. For example, on a plot of 500 m² with a permitted building ratio of 70%, the permitted primary area for construction is 350 m². For the most part, building ratios are determined in an outline plan, including detailed instructions, or alternatively, in a detailed plan.

RESTRICTIVE PLANNING

Upon the completion of Plan EJ/9, the Jerusalem Municipality began to draw up plans for those neighborhoods surrounding the Old City whose small housing clusters had already been zoned as residential in Plan EJ/9. Effectively, these plans constitute amendments to Plan EJ/9, providing a more detailed zoning for the residential areas, though not all of these plans were detailed enough for the granting of building permits.⁴³ The neighborhoods planned in the second decade after 1967 are ash-Sheikh Jarrah, Silwan al-Wusta, Jabal al-Mokabber, ath-Thori (Abu Thor), and as-Suwwanah. Additional plans were approved for some Palestinian villages outside of the area of the Visual Basin of the Old City, and which had not been included in Plan EJ/9. These included the plans for at-Tur (1985) and for part of Beit Safafa. (See Map 5 **Planned Area during the Second Decade.**)

Neighborhood outline plans prepared by the Jerusalem Municipality in the second decade

Plan Number	Neighborhood	Plan Type	Date Published for Validation	Area of Plan (dunam)	No. of Housing Units*	Notes
2639	Ash-Sheikh Jarrah, The American Colony	not detailed	November 8, 1984	560	2,425	Includes compounds for detailed planning
2591	Ash-Sheikh Jarrah, Bab as-Sahrah	detailed outline	November 15, 1984	310		Includes a compound for detailed planning and surrounds an enclave not under the jurisdiction of the plan
2733	At-Tur	not detailed	May 18, 1985	280	770	Surrounds an enclave not under the jurisdiction of the plan
2691 2691a	Jabal al-Mokabber	detailed outline	May 5, 1987	579	300	

⁴³ An outline plan with detailed instructions is one with a sufficiently high level of detail to enable the granting of building permits directly from it. According to the law, only plans with detailed instructions about the permitted land uses, construction areas, building heights, and building lines, are sufficient to enable the issuing of building permits. In a case in which there is an approved plan that designates land designations but does not provide detailed instructions for them, it is necessary to deposit a detailed plan and only after its approval is it possible to submit a request for a building permit. The preparation of a detailed plan can be done by a public body (for example, the local committee) or it can be done by a private landowner.

Plan Number	Neighborhood	Plan Type	Date Published for Validation	Area of Plan (dunam)	No. of Housing Units*	Notes
2783a	Silwan	detailed outline	May 25, 1987	370	1,200	Most of the residential zone is designated for rehabilitation and preservation, almost without additional building possibilities
3488	Beit Safafa	detailed outline	May 25, 1987	217	Not designated	The plan defines construction compounds for approval by the district committee with no need for deposition of a new plan
1864a	At-Thori (Abu Thor)	detailed outline	June 20, 1989	670	1,500	About one third of the compounds are designated for future planning
3092	As-Suwwanah	detailed outline	September 3, 1990	500	600	The plan includes large compounds for reparcelization
2317	Beit Safafa Sharafat	not detailed	November 22, 1990	2,285	3,000	General outline plan including compounds for detailed planning
3000b	Beit Hanina Shuafat	not detailed	July 18, 1991	8,000	7,500	General outline plan including compounds for detailed planning
*This figure includes the actual number of existing housing units and the maximum additions allowed in the plan.						

The above-listed plans began to be drawn up by the Jerusalem Municipality in the late 1970s (the first decade) and were completed by the end of the second decade. Other plans initiated in the same period dragged on for many years and were approved only during the third decade. For example, the plan for Sur Baher, which began in 1976, was completed only twenty-three years later, in 1999; the plan for as-Sawahrah was completed in 1996, seventeen years after its initiation.

Even before planning in most of these neighborhoods began, the need to find an immediate solution for residential construction in the neighborhoods of East Jerusalem outside of the Visual Basin of the Old City became apparent. As a result, the Jerusalem Municipality declared a zone for planning, under Article 77 of the Planning and Building Law, thus enabling the granting

of building permits in that zone, according to Article 78⁴⁴ of the Law. For this purpose, in 1978, Special Outline Plan #2189 was drawn up, designating the planning areas in the Palestinian neighborhoods of East Jerusalem and the terms for the granting of building permits therein (see Map 6 **Areas Where Building Permits May Be Granted, before planning is complete**).

The plans prepared in the second decade have several features in common: they are small in area and do not include all of lands owned by the residents of a given village; they contain limited areas zoned for development and construction and a disproportionately large amount of land zoned as open scenic area; they contain very low building rights⁴⁵; they have sparse road networks; few areas are designated for public buildings, and these are often unsuitable for this purpose; and the plans are not sufficiently detailed.⁴⁶

⁴⁴ Article 78 of the Planning and Building Law authorizes the local committee to grant building permits or land-use permits, according to its professional discretion, during the period between the notification of preparation of the plan (under Article 77 of the law) and the moment of deposition or approval of the plan.

⁴⁵ Building rights refer to the sum total of building possibilities afforded by a plan: area on which it is permissible to build (in square meters or building ratio), number of permitted storeys, number of permitted housing units, etc.

⁴⁶ For a detailed description of the characteristics and problems of these plans, see “Interim Summary” below.

SLIGHT EASING OF RESTRICTIONS

In the 1990s, plans were drawn up for most of the outlying Palestinian neighborhoods of East Jerusalem. Some of the plans that had been initiated in previous decades were approved during this period. And some of the plans prepared during this decade were approved only later (in the fourth decade), though for our purposes they belong to this period. The plans drawn up for the northern and southern neighborhoods apply to formerly rural areas which until 1967 had not been included in the municipal area of Jerusalem: al-Isawiyyah, Beit Safafa-Sharafat, Beit Hanina, Shuafat, as-Sawahrah, Ras al-Aamud, Sur Baher, Kafr Aqeb. (See Map 7 **Planned Area during the Third Decade.**)

Neighborhood outline plans prepared by the Jerusalem Municipality in the third decade

Plan Number	Neighborhood	Plan Type	Date Published for Validation	Area of Plan (dunam)	No. of Housing Units*	Notes
2316	Al-Isawiyyah	detailed outline	December 31, 1991	666	1,400	Surrounds an enclave that is not under the jurisdiction of the plan
Detailing of 2317	3801	Beit Safafa	Detailed outline	January 7, 1993	347	Detailing of Plan #2317 and designation of compounds for detailed planning and reparcelization
	3802	Beit Safafa	Detailed outline	November 5, 1992	177	Detailing of Plan #2317 and designation of compounds for detailed planning and reparcelization
	3365	Beit Safafa	Detailed outline	April 2, 1992	182	Detailing of Plan #2317 and designation of compounds for detailed planning and reparcelization
	4552	Sharafat	Partially detailed	May 1, 2001	415	Detailing of Plan #2317 and designation of compounds for detailed planning and reparcelization

Plan Number		Neighborhood	Plan Type	Date Published for Validation	Area of Plan (dunam)	No. of Housing Units*	Notes
Detailing of 3000b	3458a	Beit Hanina North	detailed outline	January 14, 1998	1,930	7,500	Detailing of Plan 3000b and designation of compounds for reparcelization
	3457a	Beit Hanina South	detailed outline	May 3, 1999	1,247		Detailing of Plan 3000b and designation of compounds for reparcelization
	3456a	Shuafat	detailed outline	August 17, 1999	2,070		Detailing of Plan 3000b and designation of compounds for reparcelization
3085		Ash-Shayyah	detailed outline	February 5, 1993	1,100	1,350	Surrounds an enclave not under the jurisdiction of the plan
2683a		As-Sawahrah	detailed outline	March 30, 1996	4,000	2,770	Preparation of detail plans is necessary for plots of more than 6 dunam.
2302a		Sur Baher, Umm Tuba	detailed outline	September 23, 1999	3,315	3,100	A large compound for future planning
2668		Ras al-Aamud	detailed outline	February 21, 1998	1,600	2,000	The reparcelization plots were cancelled later on, in the framework of Plan #2668a.
5222a + b		Ath-Thori (Abu Thor)	detailed outline	June 17, 2004	108 + 14	200	
2521a		Kafr Aqeb	detailed outline	March 2, 2005	1,258	1,450	
*This figure includes the actual number of existing housing units and the maximum additions allowed in the plan.							

The plans made in this period are substantively different from the plans drawn up in the previous decade. They include more area for development and construction and a more balanced ratio between open spaces and areas zoned for construction, though still not

reaching the accepted ratio in the plans for the Israeli-Jewish neighborhoods.⁴⁷ The maximum building rights allowed, remaining at 50-75%, are also still significantly lower than what is accepted in Israeli neighborhoods.⁴⁸

The plans from the third decade have new features that did not appear in the plans of the second decade: they include new road systems, mostly not based on the existing road systems; and some of the plans include compounds for reparcelization.

⁴⁷ In a relatively sparse urban environment, it is customary to allocate 40% of the area of the plan for public use. The higher the housing density (number of housing units per dunam), the higher the percentage of the area customarily allocated for public use (about 50% or more). As was described above, the Palestinian neighborhoods were planned at low densities, and therefore the scope of allocations for public use is lower than usual.

⁴⁸ This is as opposed to the 90-120% building ratio that was common in the Jewish-Israeli neighborhoods during the same period.

COMMON PROBLEMS IN THE APPROVED PLANS

The Palestinian neighborhoods of East Jerusalem are diverse; there are urban neighborhoods, semi-rural neighborhood-villages, as well as neighborhoods that have undergone and continue to undergo intensive urbanization, transforming them from villages into urban neighborhoods. The population living in the neighborhoods is also varied: rural residents with an agricultural background, people with an urban lifestyle who have lived in the city for generations, people of a nomadic Bedouin background who settled on the Jerusalem periphery just two or three generations ago, as well as migrants who came from cities in the West Bank, primarily from the Hebron area, some of them generations ago and some just in the last generation. Given this great diversity, there is a glaring lack of variance in the plans drawn up for the Palestinian neighborhoods in the first three decades after 1967.

As described above, while there are differences in the plans for the various neighborhoods, these stem simply from the Israeli planning establishment's different treatment of the neighborhoods closer to the Old City, which were planned in the earlier stages, and that of the more distant neighborhoods, planned later. The differences in the plans are not the result of sensitivity to specific variations in the spatial-human fabrics of the different neighborhoods. As a result, all of the twenty-five plans featured in the tables above share common characteristics and recurring problems.

- The plans are small in size and do not include most of the lands owned by the residents of the neighborhoods. Effectively, the area included in the plans is generally limited to the de-facto built-up area of the neighborhood. In cases where the plan includes a larger area than just the built-up area, the remaining area is zoned as different types of open space (usually "open scenic area"). The overall area of all of the plans approved for the Palestinian neighborhoods in East Jerusalem (including neighborhood open public areas), with the amendments to the plans made over the years (but not including plans currently pending approval in the planning committees) comes to about 23,000 dunam—in other words, roughly one third of East Jerusalem, and about 18% of the total municipal area of Jerusalem.
- The areas zoned for development and construction are restricted and limited to already built-up areas.⁴⁹ These designated development zones acknowledge to a certain extent

⁴⁹ It should be noted that providing the possibility for residential construction is a central component of urban planning, and generally speaking, residential zoning is the most common and largest land designation in urban plans.

the situation on the ground, including the allowance of some building additions in already built-up areas, but they do not offer any meaningful land reserves for future development. In most of the neighborhoods, construction potential has been exhausted in the areas zoned in the approved plans for development. In places where there are still vacant areas zoned for construction, construction is generally not possible, either because the landowner does not live in Jerusalem, or because the landowner owns a large amount of land in these designated development areas and his family does not need to build at this time. The overall area zoned for residential construction in the currently approved outline and detail plans is about 9,800 dunam, i.e., 46% of the overall area of the plans listed above. This area covers only 14% of the area of East Jerusalem and just 8% of the entire municipal area of Jerusalem.

- There is too much land zoned as open scenic area, and these areas were zoned without consideration of the intrinsic qualities of the landscape or the needs of the population. In the context of the Palestinian neighborhoods of East Jerusalem, the designation of land as open scenic area is tantamount to non-planning. The essence of the “open scenic area” land designation is the preservation of the landscape in its natural state and the prohibition of development and construction on it. Land designated as such is thus not intended for public use. The meaning of this is that the local authority is not obligated to develop the land and it cannot be expropriated for public use from its owners. When the general planning of the Palestinian neighborhoods in East Jerusalem was completed, about 40% of the area included in the plans was zoned as open scenic area. Changes to the plans made over the years, through small-scale detail plans, have reduced this total area, which currently stands at about 30% of the entire area in the plans.
- Very limited building rights. The maximum height approved in the plans for the Palestinian neighborhoods in East Jerusalem is two storeys, with the exception of small areas in the historical village cores, where up to three storeys are permitted. Maximum building ratios are generally 25-50% of the area of the plot, with the exception of the village cores, where plans permit up to a 70% building ratio, or where no limitation on building ratio is stipulated. In some of the plans, there is an additional stipulation limiting density to three housing units per dunam.⁵⁰

⁵⁰ For the sake of comparison, according to NOP 35, local/detailed outline plans in Jerusalem will not be deposited unless their density is no less than 12 housing units per net dunam (i.e., the net area of the plot, after allocations for public use) and no more than 24 housing units per net dunam, with some exceptions listed in the instructions for the plan. A density of three housing units per net dunam is one quarter of the minimum density stipulated in NOP 35.

- Sparse road networks that do not extend deep enough into the area zoned for development. In normative planning, infrastructure systems are planned and laid out according to the road system. Correspondingly, development and construction of residential buildings, public institutions, and industrial structures follow the laying of electricity, sewerage, and water networks along access roads. Thus, the lack of access roads prevents the effective development even of plots zoned for development.
- Road networks appearing in the plans are not based on existing roads. The plans from the third decade generally feature a slightly denser road system than that which appeared in the plans from the second decade. However the road networks proposed in the plans are based only partially on the existing road networks that have served the residents for decades. Existing roads are the result of generations of historical agreements between the residents and constitute an informal yet recognized allocation of private land for public use in which the streets generally run along the border between two privately owned plots. Thus, new road systems that are based on the routes of existing roads, while expanding them and inserting specific corrections, are more readily accepted by the residents and easier to implement. The routes of the roads drawn in the municipality's plans, however, often disregard existing roads while proposing a completely different route that cuts deep into private plots. This phenomenon is prevalent primarily outside of the historical village cores, in places where construction was sparse at the time the plans were drawn up.
- Insufficient and inadequate land for public buildings. The lands designated for public structures in the approved plans from the first three decades after 1967 are designated almost exclusively for educational institutions. Only rarely do we find areas zoned for public buildings where the function proposed in the plans is a sports facility, community center, or well-baby center. Other functions, such as libraries, are completely nonexistent. Even the areas zoned in the plans for educational institutions often prove problematic. Many plots zoned for schools do not meet the minimal standards accepted in the state of Israel, and many are located on such steep inclines that their development would be prohibitively expensive even if technically possible.⁵¹ At present, even when the municipality expresses interest in developing plots zoned for schools—whether because the shortage of classrooms has become so acute, or because of the threat of a court

⁵¹ This fact raises the question of whether the planners visited the sites in question while preparing these plans so as to verify if the plots they designated for these uses were at all suitable for them.

decision⁵²—it has difficulty doing so. There are two main reasons for this: the first is the unsuitability of the plots and their location on very steep slopes, and the second is the lack of paved access roads to the designated plots. In both cases, the responsibility lies with the municipality, which designated plots for schools without checking that they meet basic standards and criteria.

- Insufficiently detailed plans. In many cases, the approved outline plans are not sufficiently detailed for the issuance of building permits. In other cases, approved plans stipulate a limitation on the size of the area for which it is possible to directly receive a building permit. In both cases, building permits can be issued only after the approval of a detailed spot-plan. In the last two decades, many dozens of such detailed spot-plans were submitted to the planning committees, and many of them were approved. However, this momentum (largely due to Amendment 43 to the Planning and Building Law, see below) came to a halt in the late 2000s once the (as yet unapproved) Jerusalem 2000 Outline Plan became the policy document according to which plans are approved or rejected throughout the city. As a result, only landowners whose land is included within the existing urban areas marked on the Jerusalem 2000 Plan can have their spot-plans approved.
- Reparcelsation plans. Large areas of the approved plans for the Palestinian neighborhoods of East Jerusalem have been marked as areas for reparcelsation, for which special “reparcelsation plans” must be drawn up. The goal of reparcelsation, is the egalitarian allocation of plots designated for expropriation for public use, in which the burden of expropriation is divided evenly between all of the landowners whose lands are included in the area of the plan. Since reparcelsation plans in East Jerusalem are often drawn up without the consent or inclusion of the landowners involved, intractable situations are often reached. Without the agreement of the landowners, the new plots cannot be registered with the Lands Registrar, and as a result, it is not possible to actualize the approved building rights in these areas, not to mention apply for a building permit

As in other areas of planning, here, too, a more optimal approach would be to propose creative, community-sensitive planning solutions. Local planning initiatives being carried out at present by groups of Palestinian residents in East Jerusalem are evidence of the

⁵² In February 2011 the Association for Civil Rights in Israel (ACRI) submitted a petition demanding that the Jerusalem Municipality and the Ministry of Education enable all children in East Jerusalem to enroll in an official school in their area, or, alternatively to fund the tuition at the “recognized but unofficial” school where they have no choice but to enroll. HCJ 08/5373 Abu Labda et al v. Minister of Education et al. In the ruling given on Feb. 6, 2011, the HCJ ruled that within five years the Jerusalem Municipality must close the gaps on this matter between the different neighborhoods in the city, and to provide enough classrooms for all of the children in the city. <http://elyon1.court.gov.il/files/08/730/053/r07/08053730.r07.htm>

willingness of residents to dedicate lands for public use; however, they wish to cede the land of their own will and not to have it forcefully taken from them under the guise of apparently arbitrary laws.⁵³

Summary of common problems

The existing planning infrastructure in the Palestinian neighborhoods of East Jerusalem is inadequate and restrictive. The plans are so restrictive that, in many cases, even at the time of their preparation, they did not meet the immediate development needs of the population living in their area, let alone taking into account future development. Plans for the various neighborhoods were prepared over the course of many years, and while they vary in their levels of inadequacy, not one of them comes close to the planning standards accepted in the Jewish-Israeli neighborhoods of the city. The Jerusalem Municipality and the District Planning Committee must begin to understand that the planning logic that guides their work in the rest of the city must be significantly adapted to meet the unique needs and characteristics of the Palestinian neighborhoods of East Jerusalem.

Towards the end of the 1990s, and concurrent with the top-down planning being done during this decade, seeds were planted for private planning initiatives. This happened following Amendment 43 to the Planning and Building Law (passed in 1995), which allowed any interested party in a certain plot of land to submit a local/detailed outline plan to the planning institutions for that plot. Palestinian landowners in East Jerusalem, whose land had not been included in the areas zoned for residential construction according to approved neighborhood plans, began to act independently in order to change the zoning of their land.

⁵³ Efrat Cohen-Bar and Ayala Ronel, “Resident-Initiated Dynamic Planning: Implementable Plans in East Jerusalem, a Proposal for the Housing Shortage.” (Jerusalem: Bimkom – Planners for Planning Rights, 2013). http://bimkom.org/eng/wp-content/uploads/implementable-planning-translation_FINAL.pdf

A POTENTIAL REVOLUTION

Amendment 43 to the Planning and Building Law, passed in 1995,⁵⁴ constituted a veritable revolution, among others for the residents of the Palestinian neighborhoods of East Jerusalem. The amendment grants an interested party the right to initiate a local/detailed plan for the land under his ownership. According to Article 61a(b) of the law:

Any government office, local committee, or local authority, each in its own domain, as well as any party with vested interest or any other interested party in the land, is entitled to prepare a local or detailed outline plan and to submit it to the Local Committee; if the plan comes under the jurisdiction of the District Committee, the applicant will present a copy of the plan to the District Committee.

Before Amendment 43, only public bodies (government ministries, local authorities, local committees, or district committees) were entitled to initiate local/detailed plans. In practice, it was often local entrepreneurs or interested parties who stood behind the planning, however since they were not entitled to submit plans by themselves, they were dependent upon the good will of the local authority and/or the local planning committee, which were not always forthcoming.

After the passing of Amendment 43, there was a sharp rise in the number of private plans submitted around the country, in particular in the Palestinian neighborhoods of East Jerusalem. The nexus between private land ownership, inadequate top-down planning infrastructure, and lack of investment and development in East Jerusalem, was fertile ground for residents to act independently. The amendment to the Planning and Building Law facilitated this phenomenon.

The influence of the amendment upon planning patterns in the Palestinian neighborhoods of East Jerusalem can be seen clearly in the following statistics:⁵⁵

- Over the course of the nearly five decades from the application of Israeli law to East Jerusalem in 1967 and up until the end of 2012, about 800 local (detailed and not detailed) outline plans were drawn up and approved in East Jerusalem.
- Out of these, about 120 (15%) of the plans were validated during the three first decades after the de facto annexation of East Jerusalem (between 1967 and 1998). All of the

⁵⁴ Book of Laws 1544, 24.8.94, p. 450.

⁵⁵ An investigation conducted by Bimkom – Planners for Planning Rights, compiled from records about validation of different plans (unpublished, 2012).

plans approved during this period were initiated by public authorities, in particular by the Jerusalem Municipality. The overwhelming majority of these plans are neighborhood outline plans and/or detailed plans for public uses such as schools or roads. A number of plans are for development around church compounds, and a few of the plans are for the construction of hotels. Only 14 of these 120 plans are detailed plans for residential buildings.

- Of the 800 approved plans, about 360 (45%) were validated in the fourth decade, between 1999 and 2008. Most of these plans are for residential construction, including changes of land designations from open space to residential; and most of these plans were done at the private initiative of land owners. Only about 40 (11%) out of these 360 plans were initiated by the municipality, and they dealt primarily with non-residential issues: completion of general planning of the neighborhoods, reparcelization plans, schools, road infrastructure, etc.
- Of the 800 plans approved since 1967, about 320 (40%) were approved between 2009 and 2012. The majority of these plans stipulate additions to residential building rights and corrections to building lines; only a small number of these plans include actual zoning changes. With the exception of two, all of the plans apply to areas defined in the Jerusalem 2000 Outline Plan as existing residential urban areas.

The above statistics clearly demonstrate that, since the ratification of Amendment 43 of the Planning and Building Law, many landowners have realized their right to submit plans for approval to the planning authorities. In the decade following the validation of the Amendment, there was an unprecedented planning boom in the Palestinian neighborhoods of East Jerusalem.⁵⁶ This was a decade of hope for improvement, in which residents were given the possibility of improving their planning situation at their own initiative and reducing the almost absolute dependence on the authorities that previously characterized their planning situation. Thus, a situation was created in which the planning establishment approved detail plans that changed land designations from unplanned or open areas to residential areas, or increased building rights in land already zoned as residential. This gave the residents a practical, even if not optimal, way to overcome the inadequacies of the approved neighborhood plans, in particular the acute shortage of lands for residential construction.

⁵⁶ This planning boom does not reflect comparable progress in the field of construction with building permits, as will be described below in the chapter about building permits.

In the period following the approval of Amendment 43, dozens of small-scale plans aimed at changing land designations from open area to residential and other uses, were submitted to the planning committees. These plans were often drawn up in response to demolition orders, in the attempt to retroactively legalize houses that were built without permits, and to save them from demolition.

The wave of submissions of privately initiated plans obstructed any possibility of an overall planning perspective and placed a bureaucratic burden on the planning establishment. At the beginning of the 2000s, in order to deal with this situation, the District Planning Bureau introduced two regulations aimed at slowing down the pace of private planning: the “10-dunam regulation” and the “contiguity regulation.” The “10-dunam regulation” set the minimum area necessary for changing a land designation from any kind of open space to development area at 10 dunam (this stipulation became even stricter in the Jerusalem 2000 Outline Plan; see below). The “contiguity regulation,” which stated that plans that change land designations from open to residential would be approved only if they cover an area adjacent to an area that was already designated for construction in an approved plan.⁵⁷

These regulations precluded small-scale detailed planning for many landowners in the Palestinian neighborhoods in East Jerusalem, since most did not have a plot that surpassed 10 dunam in size, and, naturally, the plots did not always meet the criterion of contiguity with an area already designated for construction. Despite this, there were those who did manage to fulfill these requirements and to get their detail spot-plans for residential construction approved.

⁵⁷ “Plans in East Jerusalem” – an internal regulation of the District Planning Bureau, a copy of which was brought to the attention of Bimkom – Planners for Planning Rights on Oct. 19, 2006.

A CHANGE IN DIRECTION?

The first decade of the 21st century coincides with the fourth planning period after 1967. The beginning of this period was marked by the completion of the municipality's final plans for the Palestinian neighborhoods in East Jerusalem. The neighborhoods for which plans had not been drafted by the end of this decade are Ras Khamis, Ras Shehadeh and New Anata, and the neighborhoods that have never been recognized by the Israeli planning establishment, al-Walajeh and Nu'eman.

Parallel to the completion of the neighborhood plans, the phenomenon of private planning was at its height. Meanwhile, the Local Planning Committee began to draw up a comprehensive outline plan for the city, which came to be known as the Jerusalem 2000 Outline Plan.⁵⁸ This was the first time that a single outline plan was drawn up for both East and West Jerusalem.⁵⁹

Planning in the fourth decade differed from that of the decades that preceded it in that it offered, at least ostensibly, broader possibilities for development. As will be elaborated below, the Jerusalem 2000 Outline Plan, drafted during this decade, proposes new areas for development. Some of these are on lands that have already been built-up spontaneously and some are on areas free of spontaneous construction and thus embody real development potential. Moreover, in comparison with the plans detailed above, the Jerusalem 2000 Outline Plan proposes higher building rights within the existing neighborhoods. However, even with all of the potential embodied in the framework of the Jerusalem 2000 Outline Plan, a number of limitations are stipulated, which render much of this potential unrealizable.

Towards the end of the fourth decade, the Jerusalem 2000 Outline Plan was approved for public review (the deposition process was never completed; see below).⁶⁰ It is important to note that, due to the restrictions stipulated on private planning in new development areas and the stipulations in the plan requiring planning on large and contiguous plots (in line with the regulations previously set in place), it was in fact the municipality that initiated a number of large plans during the fourth decade. In addition, the municipality accompanied some private initiatives by groups of landowners trying to draft mid-scale plans on their own.

⁵⁸ See the section below on the Jerusalem 2000 Outline Plan.

⁵⁹ The abovementioned 1968 Master Plan is a non-statutory master plan, while the Jerusalem 2000 Master Plan is an outline plan that is meant to become statutory after its approval via the legal channels.

⁶⁰ Deposition is a process that enables the public to submit objections to new plans and to propose changes to them. According to the law, an official announcement about the deposition must be made, and anyone is allowed to submit an objection. Only after the deposition process is completed, objections are heard and addressed, and a final decision is made, is it possible to approve and validate the plan.

Although several years have passed since then, not a single one of these plans has advanced in any significant way along the long and complicated approval process. Over the years, the list of in-process plans has changed several times, with some plans that were stuck on the planning track being canceled and other plans taking their place, though these have also not advanced at a reasonable pace. Because of the significance of the Jerusalem 2000 Outline Plan, a separate chapter in this report is dedicated to it.

Plans that were initiated in the fourth decade

Neighborhood	Area of Plan (dunam)	Initiator	Type of Plan	Notes
Tal Adasa	780	Municipality	Skeleton plan	Open scenic area according to the existing plans. The area is mostly vacant.
Khallet al-Ein, at-Tur	760	Residents	Outline plan	Open scenic area according to the existing plans. The area is mostly vacant.
Al-Isawiyyah	1,350	Residents and Bimkom	Detailed outline plan	Existing urban area with an addition of open area according to approved plans. The area is mostly built-up.
Wadi Yasool	360	Residents	Detailed outline plan	Open scenic area according to existing plans. The area is partially built-up.
As-Sawahrah	1,500	Municipality	Skeleton plan	Open scenic area according to the existing plans. The area is partially built up.
Deir al- Aamud	400	Municipality	Outline plan	Area with no prior planning, partially built-up.
Wadi aj-Joz and Bab as-Sahrah (East Jerusalem CBD)	1,000	Municipality	Master plan	The area of the existing neighborhood and the expansions proposed to it.
Ein al-Lawza	200	Residents	Master plan	Expansion area proposed in the outline plan.

From the above table we can see that while resident-initiated planning generally results in outline plans with detailed instructions from which it is possible to produce building permits directly, the large plans initiated by the municipality are skeleton/master/outline plans that, even when approved, require the preparation and approval of detailed outline plans before

even beginning to move toward the building-permits stage. Nonetheless the general plans do have a certain value, primarily with regard to public services (roads, open public spaces, public buildings), and because they create a framework for the preparation of detailed outline plans (publically or privately initiated).⁶¹

⁶¹ Master plans and skeleton plans (as shown in the above table) are done outside of the statutory planning track.

ONE PLAN FOR EAST AND WEST

Background for the preparation of the Plan

In 1999, the Jerusalem Municipality began preparing a new outline plan for the city, which, for the first time, would include both East and West Jerusalem in a single plan; the new plan was supposed to replace the existing, out of date, outline plan, which applies only to West Jerusalem.⁶² A decade later, the outline plan was approved for deposition for public review, but due to political intervention, the deposition of the plan was never carried out and therefore never validated. Nonetheless, the planning authorities refer to the plan as a binding policy document.

There were additional reasons behind the preparation of the new outline plan. First, the multiplicity of small, private outline plans proposing small-scale corrections (both to the old outline plan for West Jerusalem and to approved neighborhood plans in East Jerusalem) placed a burden upon the planning bureaucracy. Moreover, the many small-scale changes that had been approved over the years created a chaotic situation in which any overall planning perspective on the city was lost. And finally, Amendment 76 (2006) of the Planning and Building Law stated that the approval of an updated outline plan for the city was a prerequisite for the expansion of the Local Planning Committee's powers to authorize plans, which until then were under the sole authority of the District Planning Committee.⁶³

The new outline plan, therefore, had the goal both of restoring the overall planning perspective in the city and of strengthening the Local Planning Committee (i.e. the City Council). The plan was meant, among other things, to set a new policy regarding desired building densities in

⁶² Local Outline Plan #62 was approved in 1959, before the 1967 War and before the area of East Jerusalem and additional areas to the west of the city were added to the municipal area of the city.

⁶³ According to Article 62a of the Israeli Planning and Building Law from 1965, the interior minister is entitled to empower a local committee whose jurisdiction area has an updated and approved outline plan, and which has proven a high professional level, and to give them additional powers which are today only granted to district committees. This was meant to decentralize power from the central government (the district committees) to the local government (the local committee), which is meant to better represent the local interests of the residents. In East Jerusalem, however, this basic assumption is problematic. We should recall that, in contrast to the district committee, which is filled primarily by professionals, the local committee is comprised of elected city-council members who generally have no expertise in the field of planning and construction. Since the vast majority of Palestinian residents of East Jerusalem do not vote in the municipal elections, they have no representation in the local committee, and this committee often works against their interests. Palestinians enjoy slightly better treatment at the District Planning Committee.

the city,⁶⁴ the location of new areas for development and construction, and the relationship between built-up areas and open areas.⁶⁵ Likewise, the plan was meant to increase the construction and residential capacity of the city.

For Palestinian East Jerusalem, the Jerusalem 2000 Outline Plan came about on the backdrop of deficient urban planning, as we have seen from the presentation in the previous chapters. The plan also appeared in the context of a severe housing shortage and the widespread phenomenon of construction without permits, and was meant to solve these problems as well. But the plan sends two simultaneous and contradictory messages: on the one hand, on the declarative level it states that the city belongs to all its residents, including those of the Palestinian neighborhoods, and on the other hand it is explicitly committed to the principle of the demographic balance⁶⁶ and relates to the Palestinian residents of Jerusalem as a threat to the Israeli character of the city and to the city's status as the capital of the state.

The Outline Plan defines new areas for development and establishes planning principles for old as well as new areas throughout the city. However, the Outline Plan is not a detailed plan, and therefore cannot be used directly to produce building permits. In order to develop the new areas designated in the plan for development, it is necessary to draw up detailed outline plans that designate specific land usages and building rights, as well as specific construction requirements that must be met in order to receive a building permit. According to the Jerusalem 2000 Outline Plan, the plans drawn up for new development areas will be local, general outline plans and they must include entire expansion areas, corresponding with the polygons marked on the plan.

Chronology of the plan

First stages

In 2004, the first version of the plan was made accessible to the public for review. In this version, an overall area of about 11,800 dunam was proposed as new development areas for the city's various neighborhoods. Of this area, only approximately 2,300 dunam (less than

⁶⁴ Density: the number of housing units that can be built on a given area. Density is generally expressed in housing units per dunam. On a plot with an area of 500 m² and on which it is permitted to build 5 apartments, the density is 10 housing units per dunam.

⁶⁵ The building pattern set forth in the Jerusalem 2000 Outline Plan primarily designates the building height in the various neighborhoods and characterizes the seam-line of the built-up area with the open area.

⁶⁶ For a detailed account of the issue of the demographic balance, see part 1 of this report.

20% of the total area) were proposed in the Palestinian neighborhoods, as opposed to 9,500 dunam for the Israeli neighborhoods. The 2004 version of the plan was harshly criticized, on the one hand by the Palestinians and NGOs, who demanded more development areas, and on the other hand, by environmental organizations, which demanded to put a stop to the westward expansion of the city. The version that was ultimately submitted to the Local Planning Committee in 2006 included provisions neither for expanding the city westward, nor for any additional expansion areas for the Palestinian neighborhoods of East Jerusalem.

On the brink of revisions

In April 2007, the Local Planning Committee recommended that the District Planning Committee deposit the Jerusalem 2000 Outline Plan for public review, subject to certain conditions. From mid-2007 until May 2008, the District Planning Committee held many discussions about the plan before approving it for deposition for public review. The decision to deposit the plan included a proviso regarding significant modifications in the plan's annexes. During these district-level deliberations, there was an attempt to correct, however partially, the plan's shortcomings with regard to the Palestinian residents of East Jerusalem. For example, the District Planning Committee demanded the addition of expansion areas for the Palestinian neighborhoods. Once the plan was approved for deposition for public review, the planners were supposed to insert the requested modifications into the plan's documents and to deposit it for public review, but this never happened.

A new mayor

In the municipal elections of November 2008, Nir Barkat was elected mayor of Jerusalem. One of his first acts after taking office was to ask the district supervisor in the Interior Ministry to delay the deposition of the plan for public review by three months, so that he and his new City Council could study and understand the details of the plan. His request was heeded. As the new City Council studied the plan, the changes dictated by the District Planning Committee were incorporated. In May 2009, during a special discussion of the District Committee, the mayor presented a revised plan, with some new emphases and comments. At this same meeting, the committee approved the deposition of the Mayor's revisions. Following this decision, the planners were again supposed to incorporate the changes and to deposit the plan for public review and objections. The changes were inserted but the deposition did not take place.

A new interior minister

After the election of a new national government in the parliamentary elections of February 2009, MK Eli Yishai (Shas) was appointed interior minister. A short time after his appointment, Yishai received a document signed by several Jerusalem City Council members, alerting him that the new Jerusalem 2000 Outline Plan discriminated in favor of the Palestinian population of the city.⁶⁷ The minister, whose position includes responsibility for the entire planning bureaucracy, subsequently ordered the supervisor of the District Planning Office to delay the deposition of the plan. Despite the legal opinion of the legal advisor to the District Planning Committee that such an intervention on the part of the minister was in contravention of the law⁶⁸ and in excess of his authority, the head of the District Planning Office has yet to deposit the plan.

A petition against the use of the invalid plan

Regardless of the fact that the Jerusalem 2000 Outline Plan was never deposited for public review, and thus never validated, the planning committees relate to it as if it were a valid plan,⁶⁹ approving and rejecting local and detailed outline plans according to it. Among the rejected plans are privately initiated small-scale plans that propose to change land designations from open to residential when the area they include is not zoned for development in the Jerusalem 2000 Outline Plan. In April 2013, Bimkom – Planners for Planning Rights, and the Association for Civil Rights in Israel, petitioned the Administrative Court against this use of the Jerusalem 2000 Outline Plan.⁷⁰ The judge ruled in favor of the Jerusalem Municipality and the Interior Ministry and rejected the petition, stating that it was too general and that the issue could only be discussed as part of a petition regarding a specific case. Thus the petition was rejected without holding a fundamental debate about the planning establishment's problematic use

⁶⁷ An undated and unsigned document presented in person to members of the Jerusalem City Council in May 2009, under the title "Changes Made to the Plan without the Knowledge of the Local Committee (upon initial verification)."

⁶⁸ Letter from then then District Committee Legal Advisor Daniel Horin, to then District Commissioner, Ruth Yosef, July 1, 2009.

⁶⁹ According to the Planning and Building Law, after the District Committee decides as such, the outline/detailed plan is deposited for public review and objections. After a period (usually of 60 days) during which objections can be submitted, the District Committee discusses the objections, if any, and makes a final decision whether to approve the plan as-is, to insert changes, or to reject it. Although the law allows the District Committee to reject the plan after deposition, such a scenario is very rare: only in exceptional cases does the District Committee decide to reject a plan whose deposition it had previously approved. After the approval of the plan and implementation of the necessary changes instructed by the District Committee, the plan is published for validation in the newspapers and in the registries, and becomes valid 15 days after publication.

⁷⁰ Administrative petition 13-04-36572 Bimkom – Planners for Planning Rights et al v. Chairman of the Jerusalem District Planning and Building Committee et al. A first discussion of the petition was held in July 2013. The text of the petition (in Hebrew) can be found at www.mat.co.il/nxm (last accessed in December 2013).

of an invalid plan as a policy document. Outline plans are legal, binding, and fundamentally inflexible documents (when and if they are validated), while policy documents by definition are supposed to be flexible, leaving room for decision-makers' discretion.

Content of the plan

The Jerusalem 2000 Outline Plan deals with a wide variety of subjects, some of which are dealt with only superficially and perfunctorily (employment, economy, environment, and others). Two subjects that are dealt with more in depth are the issue of housing, with a focus on the demographic balance, and that of tourism, with an emphasis on the Old City basin. (See Map 8 **The Jerusalem 2000 Local Outline Plan.**)

Housing

Overview. The new outline plan was prepared on the backdrop of the problematic neighborhood plans for the Palestinian neighborhoods of East Jerusalem, spontaneous construction in these neighborhoods, and the government policy of preserving the demographic balance in the city. Although the plan ostensibly proposes an improvement over the existing plans, in particular with regard to the increase in building potential (in certain areas), the benefits that the Palestinian residents will derive from the plan are largely theoretical. Thus, while the plan embodies new potential for residential development, it simultaneously introduces a number of caveats that make it virtually impossible for residents to actualize this new potential. With regard to other planning issues, the plan offers very little to the residents of the Palestinian neighborhoods; it does not address the extreme shortage of schools and classrooms, nor does it enable the development and improvement of roads or public transportation. Furthermore, the plan proposes no new commercial and industrial areas, thereby sentencing the economy of East Jerusalem to continued dependency on that of West Jerusalem.

Theoretical increase of housing units. The Jerusalem 2000 Outline Plan suggests two ways of increasing housing units. The first is the densification of the built-up fabric within the neighborhoods by increasing building rights (i.e., building ratios and permitted building heights). The second is the expansion of neighborhoods through the addition of new development areas. As a rule, the planning authorities favor the densification of existing neighborhoods over their expansion. To this end, the plan proposes excessive densification and a fast transition from sparse rural-type densities to dense urban construction, even in neighborhoods with the most run-down road systems. In effect, both of these methods are

virtually unimplementable, and thus the ostensible increase in housing units proposed by the plan for the Palestinian neighborhoods in Jerusalem is largely theoretical:

- **Densification of the existing neighborhoods.** In neighborhoods in which the plan proposes a transition from two- to four-storey buildings, there is a stipulation limiting the number of storeys that can be added on top of an existing building to only two.⁷¹ This stipulation prevents landowners from fully exhausting the new building rights in certain situations. For example, when there is only a one-storey building on an existing plot, landowners can only achieve a three-storey building (after adding the permitted two additional storeys), unless they tear down the existing structure and build a new one in its place. In neighborhoods in which the plan increases building heights to six storeys, the stipulation for the allowance of only two storeys to an existing building still stands,⁷² and four additional requirements are presented, of which two are particularly relevant for the present discussion:⁷³ the first is a stipulation that any detail plan enabling construction of six storeys must be adjacent to a statutory road of at least 12 meters width (even if in practice the existing road is not that wide); the second is that the detail plans cover an area of at least 10 dunam. Since in the Palestinian neighborhoods of East Jerusalem there are virtually no roads of 12 or more meters in width, or single-ownership plots or vacant areas of more than 10 dunam, these stipulations render the proposed housing additions within the built-up areas of the neighborhoods virtually unrealizable.
- **Expansion of neighborhoods.** Most of the expansion areas proposed for the Palestinian neighborhoods in the Jerusalem 2000 Outline Plan are located in areas that were marked in the approved plans as open areas. In reality, these areas are already built up with unpermitted spontaneous construction.⁷⁴ The main benefit of the plan for residents in these areas is that it grants the possibility of retroactive legalization of houses built without a permit. However, the proposed expansion areas cannot be considered significant land reserves for future development. Furthermore, the Outline Plan conditions development in the expansion areas on the overall planning of the entire expansion area or most of it.⁷⁵ This new restriction effectively freezes in-progress grassroots plans that have been advanced in recent years by landowners (since most of the land in the Palestinian

⁷¹ Jerusalem 2000 Outline Plan (pending deposition), Plan Directives, article 4.5.2 (F).

⁷² This limitation has a structural and financial logic, since the addition of more than two storeys to an existing structure requires comprehensive strengthening of the construction, which can become financially inexpedient.

⁷³ Ibid., Article 4.5.2 (C)

⁷⁴ Jerusalem 2000 Outline Plan, blueprint (of the version pending deposition).

⁷⁵ Jerusalem 2000 Outline Plan, Plan Directives, article 4.6.2 (A)

neighborhoods of East Jerusalem is privately owned) and requires the residents to organize in large groups (a difficult task by any measure), or to wait until the municipality undertakes the planning of the expansion areas.

The Old City Basin

In the original version of the Jerusalem 2000 Outline Plan, there was no separate chapter devoted to the visual basin of the Old City. However, when Nir Barkat began as mayor at the end of 2008 and placed tourism at the top of his priorities in the city, the area was given special treatment. The Old City and the surrounding visual basin were designated as a national tourist anchor that would bring millions of tourists to Jerusalem.

The heavy price of the transformation of the Old City into a national project is paid by the Palestinian residents of the neighborhoods in the area. The new outline plan allows virtually no development for these neighborhoods, and moreover, the plan ignores existing construction and continues to zone densely built-up areas as open areas. Among all of the Palestinian neighborhoods in East Jerusalem, those in the visual basin of the Old City contain the highest proportion of houses built without permits on land zoned as open space. The outline plan proposes no solution for these neighborhoods, and it is there that the danger of home demolitions looms largest. This is also the area with the highest concentration of Israeli tourist development initiatives, by and in cooperation with settler organizations seeking to Judaize the Palestinian neighborhoods. The unprecedented development boom in tourist sites, along with landscape development and expansion of Israeli settlements, stands out sorely against the insurmountable obstacles placed on Palestinian development in the visual basin of the Old City.

Additional subjects

In addition to the two subjects described above (housing and tourism), the Jerusalem 2000 Outline Plan deals superficially with a variety of planning subjects, which we will discuss briefly:

Public buildings. The Palestinian neighborhoods of East Jerusalem suffer from a severe shortage of public buildings and lands zoned for this purpose. In almost all of the cases, the land zoned for public buildings in the approved plans is designated exclusively for educational institutions; other public functions (such as cultural or community institutions) are offered no planning solutions. The Jerusalem 2000 Outline Plan proposes two primary paths to deal with this problem: so-called “centers of life,” and new neighborhood plans.

“Center of life” refers to a proposed district-wide cluster of public buildings to be used by several adjacent neighborhoods.⁷⁶ In principle, even within the complex reality of East Jerusalem, the allotment of areas for public use outside of the built-up fabric of the distinct neighborhoods is a possible solution. There are, however, two apparent disadvantages to concentrating public functions outside of the neighborhoods: first, the placement of public facilities outside of the neighborhood fabric will result in severe limitations upon their use by women, who, notwithstanding changes in Palestinian society in East Jerusalem in recent years, are still limited in their mobility outside of their neighborhoods. Secondly, these centers of life, which are generally located in the valleys, would have problems of accessibility: they cannot be reached by foot and are only accessible by private car or by public transportation. Given that only some of the residents have private cars, and in light of the inadequacy of public transportation in East Jerusalem, the proposed district-level centers of life are not suitable as a primary planning alternative.

Open spaces. The Palestinian neighborhoods of East Jerusalem contain a disproportionately large area designated as “open scenic area” (which cannot be developed for public use) and insufficient open public areas that can be developed for the public’s benefit, such as neighborhood parks. Similar to the solutions it proposes for public buildings, the Jerusalem 2000 Outline Plan proposes two methods of coping with the lack of open public spaces. The first is to identify suitable such spaces within the neighborhoods during their re-planning process, and the second is to designate land as district parks.⁷⁷ The proposed district parks are placed alongside the above-described centers of life, outside of the neighborhoods themselves, and, as such, they suffer from similar disadvantages: lack of accessibility by foot and constraints on use by women due to cultural issues of mobility.⁷⁸ It should be noted that the Jerusalem 2000 Outline Plan proposes the solution of centers of life and district parks in West Jerusalem neighborhoods as well. In those neighborhoods, however, where neighborhood playgrounds already exist, district parks may be a worthy addition, but they are not an adequate option for the Palestinian neighborhoods of East Jerusalem, where there are virtually no neighborhood parks or playgrounds to speak of.

⁷⁶ Ibid., article 6.10 (5)

⁷⁷ Jerusalem 2000 Outline Plan, Plan Directives (awaiting deposition), article 4.26.

⁷⁸ Information collected from Palestinian residents of East Jerusalem in a study conducted by Bimkom in 2006 indicates that preference should be given to small public parks distributed throughout the neighborhoods over large parks in a single area. Women and children do not tend to go large distances to public places that include many secluded sections. Furthermore, many Palestinian women in Jerusalem do not drive, and therefore they need public parks to be at walking distance.

Environmental issues. The Jerusalem 2000 Outline Plan does not deal in any comprehensive fashion with the environmental problems and challenges faced by the city of Jerusalem. Although the plan does dedicate a chapter to the issue of the environment,⁷⁹ it does not provide adequate responses to the specific environmental problems faced by the different parts of the city. This is particularly salient with regard to East Jerusalem. As of today, the residents of the Palestinian neighborhoods of East Jerusalem pay a high environmental cost, both in absolute terms and in comparison with the Israeli neighborhoods of the city. In most of the Palestinian neighborhoods, the sewerage system is incomplete, and there are homes that drain their sewage into cesspits (for which they are even sometimes served demolition orders). The Qidron Valley, which runs through a number of Palestinian neighborhoods, is the repository for sewage from other neighborhoods, resulting in bad odor and mosquitos. Finally, many neighborhoods contain unauthorized sites for the dumping of construction waste and landfill.

Employment and economy. The economy of the Palestinian neighborhoods of East Jerusalem is dependent to a large extent on employment opportunities with Jewish-Israeli employers.⁸⁰ An exception to this is the vibrant commercial life in the Palestinian neighborhoods of East Jerusalem. The average wage in the Palestinian neighborhoods is significantly lower than in the Israeli neighborhoods, unemployment rates are higher, and economic development possibilities are limited. The Jerusalem 2000 Outline Plan perpetuates this bleak state of affairs.

The Separation Barrier. The Jerusalem 2000 Outline Plan does not deal at all with the Separation Barrier, despite the fact that this is an important subject that clearly demands planning attention. The route of the barrier was not marked at all in the version of the plan that was discussed in the planning committees. In the version of the plan that was approved for deposition—and later became a de-facto policy document—the route of the barrier does appear on the survey map in the background of the blueprint, though it can barely be identified and is not labeled in any way. What's more, the plan's directives do not address the Separation Barrier or its major planning repercussions.

East Jerusalem is not an isolated urban unit. The residents of Jerusalem have always conducted intimate reciprocal relations with the urban and rural centers of the West Bank in all walks of life: religion, employment, economy, family relations, and more. The Separation Barrier largely cut off these connections and subjected them to the checkpoint regime.

⁷⁹ Jerusalem 2000 Outline Plan, Plan Instructions (awaiting deposition), article 6.17.

⁸⁰ Jerusalem Institute of Israel Studies, Annual Statistical Report for Jerusalem [in Hebrew], table 26/F (2008).

The Separation Barrier has had a dramatic influence on the borders of the city, excluding certain neighborhoods and annexing others, though without leading to a change in the official municipal borders. Kafr Aqab and the Shuafat refugee camp, along with the surrounding neighborhoods (New Anata, Ras Khamis, Ras Shehadeh) in the north, as well as the village of al-Walajeh in the south, are all disconnected from the urban fabric of Jerusalem though still officially within the municipal boundary. Conversely, Dakhyat al-Bareed, most of Deir al-Aamud, and a small section of ash-Shayyah are Palestinian enclaves on the Israeli side of the barrier. Caught between the barrier and the municipal boundary, the Palestinian Authority ID-holders who live in these enclaves are completely cut off from their centers of life in the West Bank while not even being able to travel freely within Jerusalem, let alone enjoy its municipal services.

Tens of thousands of people live in the Palestinian neighborhoods of East Jerusalem on the West-Bank side of the barrier.⁸¹ The neighborhoods are severely neglected by the Jerusalem Municipality, and public services there are inadequate even in comparison with other Palestinian neighborhoods in East Jerusalem. Due to this neglect, the northern enclaves have become a major site for spontaneous residential construction, providing a degree of relief for the Palestinian housing crisis.

To sum up, the Jerusalem 2000 Outline Plan does not deal with the urban and functional implications of population exchange; the annexation or exclusion of entire villages, neighborhoods, and populations within and beyond the physical borders of the city; or the cutting off of the Palestinian population of the city from its economic, social, and cultural environs in the West Bank.

⁸¹ There are varying estimates regarding the number of residents in these areas – from as low as 60,000 up to 100,000 and even more.

THE CURRENT PLANNING SITUATION

The private planning boom in East Jerusalem, which was enabled by Amendment 43 to the Planning and Building Law (see above), and which characterized the first decade of the 21st century, came largely to a halt following the suspension of the approval process of the Jerusalem 2000 Outline Plan and its transition to becoming a policy document. Since 2009, the entire planning establishment has subordinated itself to the outline plan—in disregard of the fact that the residents of the city were never given the chance to submit objections or to present their opinion about the plan, as is required by law.

According to the logic that new local/detailed plans must correspond with the instructions of the as-yet-unapproved Jerusalem 2000 Outline Plan, the District Planning Committee lay down a special procedure by which plans submitted to it must be considered at a preliminary discussion, unofficially entitled “Go No Go,” during which the committee examines the conformity or lack thereof of a given plan with the new outline plan. The two most common reasons for plans to receive rejections at this preliminary stage are: because they are drawn on only part of a new development areas (marked on the plan as “proposed urban residential area”) or because they are drawn on areas designated in the outline plan as “open area,” which is not designated for development at all. Only plans that propose densification of the already built-up fabric of the neighborhoods and are located within areas zoned as “[existing] urban residential area,” are brought for concrete discussion and advanced along the track towards approval. Between 2009 and 2012, an unprecedented number of plans of this type were approved, as noted above.

It is important to emphasize that the large number of small-scale plans approved in this period testifies above all to an inadequate planning infrastructure and to the limited possibilities afforded by the approved neighborhood plans. The 320 plans validated in this period, along with the 360 plans that were validated in the previous decade, propose for the Palestinian neighborhoods what should have been proposed to them in the past, namely, construction at acceptable urban densities. These hundreds of plans are a small, albeit significant, step for the Palestinian neighborhoods of East Jerusalem toward reducing the gaps between them and the Israeli neighborhoods in both West and East Jerusalem, although they do not come close to bridging these gaps.

In truth, all of the Palestinian neighborhoods of East Jerusalem are in need of new, updated outline plans. Formally speaking, the preparation of detail plans (which are the only kind of plans from which building permits can be produced directly) is dependent on the preparation of new outline plans, both for areas that were planned in the past (i.e. within the boundaries

of the approved neighborhood plans), and for the new proposed expansion areas as they appear in the Jerusalem 2000 Outline Plan. It is imperative that these plans be prepared quickly, so as not to delay detailed private planning. And yet, as we have shown above, these plans (master plans, skeleton plans, municipality-initiated undetailed outline plans) have not been advanced at an acceptable pace, and as a result, instead of encouraging planning and development in East Jerusalem, they largely hinder these processes.

Added to the plans the municipality began to advance in the previous decade are a number of new neighborhood plans:

Plans initiated during the present stage

Neighborhood	Area of Plan (dunam)	Initiator	Type of Plan	Notes
Beit Safafa	3,000	Jerusalem Municipality	Master Plan	The existing area of the neighborhood and part of the expansion areas proposed to it in the Jerusalem 2000 Outline Plan
Sur Baher	4,000	Jerusalem Municipality	Master Plan	The existing area of the neighborhood and part of the expansion areas proposed to it in the Jerusalem 2000 Outline Plan
Beit Hanina and Shuafat	8,000	Jerusalem Municipality	Master Plan	The existing area of the neighborhood and part of the expansion areas proposed to it in the Jerusalem 2000 Outline Plan

The future benefit of these master plans is unclear. In Beit Safafa, for example, the new master plan will not cancel a major road even though it constitutes a severe environmental hazard that will bisect the village and destroy its social fabric. Although the route of the road was marked on the neighborhood plans more than 20 years ago, it is currently being constructed as a wide (6-lane) highway without having undergone detailed planning or been deposited for objections.⁸² In Sur Baher, the municipality began drawing up a master plan following attempts to advance a few other general plans, all of which froze local planning initiatives. It is apparent that the promotion of general neighborhood plans is not an indicator for future development, and in many cases actually causes a regression due to the shelving of small-scale private plans until the completion of top-down general planning.

⁸² The residents of Beit Safafa submitted a petition to the administrative court against the paving of Road 4 South (Begin South) through the heart of their neighborhood (Administrative Petition 17409-12-12). The petition was rejected and the residents appealed to the Israeli Supreme Court (Appeal 1508/13 and Appeal 1489/13). Bimkom – Planners for Planning Rights joined the appeals process as a “friend of the court” and submitted two comprehensive planning opinions to the Supreme Court [in Hebrew], See: www.mat.co.il/nxn (last accessed in December 2013).

As we will see in the following chapter, the promotion of plans (either top-down or grassroots) in the Palestinian neighborhoods of East Jerusalem is not necessarily a solution to the difficulty in attaining building permits. These hundreds of plans will not create change on the ground unless the obstacles standing in the way of attaining building permits are removed. Approved outline/detail plans are a necessary, though not sufficient, condition for receiving building permits and, thereby, building legally.



3 CONSTRUCTION IN THE PALESTINIAN NEIGHBORHOODS OF EAST JERUSALEM⁸³

Planning is not an end in itself, but rather a means towards actual construction and development. The Palestinian neighborhoods of East Jerusalem face many obstacles on this front, in particular in the realm of private residential construction, even when valid plans ostensibly allow for it.

The Housing Crisis in the Palestinian Neighborhoods

According to annual statistical data, of Jerusalem's over 200,000 housing units, less than one quarter are located in the Palestinian neighborhoods.⁸⁴ In other words, the 370,000 Palestinian residents of East Jerusalem (nearly 39% of the city's population) have to make do with about 50,000 housing units (roughly 25% of the total number of units). According to statistics, housing densities in the Palestinian neighborhoods of East Jerusalem are close to 8 people per housing unit. About 50% of the Palestinian households in East Jerusalem have six or more people, and more than 30% of the households have 7 or more people (in comparison with 15% and 10%, respectively, in the Jewish-Israeli neighborhoods). The average family size in the Palestinian neighborhoods in East Jerusalem is about 5.1 people.⁸⁵ According to this

⁸³ This chapter is based on a similar chapter that was included in Marom, *The Planning Deadlock*. The present chapter is an update of the findings described therein.

⁸⁴ The Jerusalem Institute for Israel Studies, Jerusalem Annual Statistical Report, Table J/16 – Dwellings in Jerusalem, by Area, Quarter and Sub-Quarter 2012.

⁸⁵ According to the Jerusalem Municipality website. "Facts and Figures about Jerusalem: Family Size" (Hebrew) http://www.jerusalem.muni.il/jer_sys/publish?HtmlFiles/226/results_pub_id=3607.html (last accessed on 30.6.2013).

statistic, for every nuclear family to have its own apartment, the Palestinian neighborhoods would need about 72,500 housing units, such that there is a gap of about 24,350 housing units between the actual and the required number of housing units. We know that in actuality there are many additional apartments in these neighborhoods that are not reported and that were built without building permits. The estimates regarding the number of units built without building permits is between 15,000⁸⁶ and 20,000. Either way, there is still a shortage of 5,000 to 10,000 housing units in the Palestinian neighborhoods of East Jerusalem for the families already living there. This shortage results in excessive densities in existing apartments, where families in need of housing solutions live crowded in small apartments, sometimes with more than one family per apartment. Other families, having no other choice, live in structures and spaces that are not meant for housing (warehouses, basement, stores, etc.)

Building without permits places the residents at risk of demolition orders, court cases, fines, etc. The threat of home demolition looms large, and the danger of becoming homeless, if and when one's home is destroyed, is palpable.

Without a dramatic change in policy and practical initiatives for providing housing solutions to the Palestinian families in East Jerusalem, the housing shortage will only deteriorate in the coming years. Every year more than 2,000 young Palestinian couples marry and enter the circle of housing seekers.⁸⁷ Without a radical, far-reaching, and decisive move on the part of the municipality to update regulations concerning planning and permit-granting, the housing shortage will grow even worse.

The Granting of Building Permits

Facts and figures

From 1967 until the end of 2012, a total of 4,300 building permits was granted in the Palestinian neighborhoods of East Jerusalem. A single building permit may be for a building addition, for a single apartment, or for a number of apartments. On average, the building permits granted in the Palestinian neighborhoods of East Jerusalem have been for four units per permit.

⁸⁶ This estimates appears in Report 4 of the Jerusalem 2000 Outline Plan, from 2004.

⁸⁷ This analysis was done according to data from the Jerusalem Institute for Israel Studies, Jerusalem Annual Statistical Report, Table III/14 – Population of Jerusalem, According to Age, District, Sub-District and Statistical Area 2011. According to this table, the 20-30 demographic in the Palestinian neighborhoods numbers about 6,000 (3,000 couples) annually. On the assumption that not all potential couples get married during this period and not all stay in Jerusalem, we estimate that at least 2,000 couples join the circle of housing-seekers in the city.

Changes in municipal policy have led to sharp fluctuations in the annual number of building permits issued: from just a few in the years after 1967, through the relatively good years in which more than 200 permits were granted per year (from the early 80s through the early 2000s), to a drop in the first decade of the 21st century, with a slowing down to an average of about 130 building permits alone per year, and up to a moderate rise in the annual number of permits granted in recent years.⁸⁸

In the six years following the de-facto annexation of East Jerusalem, between 1967 and 1972, a total of eight building permits for homes in the Palestinian neighborhoods was granted. In the subsequent years there was a significant rise to about 200 permits per year, up to a record year in 1983, when 280 building permits were granted. This rise is an indication of the gradual adjustment by Palestinian Jerusalemites to the Israeli planning bureaucracy and establishment, as well as a growing use of Article 78 to the Planning and Building Law in order to obtain building permits.⁸⁹

The beginning of the 1990s saw a drastic decline in building permits granted, down to an average of about 50 permits per year. This can be attributed to the advancement of plans in East Jerusalem and the fact that many of them reached the deposition stage, during which it is not possible to issue building permits by force of Article 78 of the Planning and Building Law.⁹⁰ Beginning in 1992, there was a consistent rise in the number of permits granted annually (with the exception of 1995, which saw a significant drop), up to about 280 permits in 2000. This was the decade in which many of the plans for the Palestinian neighborhoods of East Jerusalem were approved, for the first time allowing building permits to be granted on the basis of an approved plan, and not based on the special provisions of Article 78 of the Planning and Building Law.⁹¹

⁸⁸ All of the figures about the number of building permits were received from the Jerusalem Municipality: the figures up until 2003 are taken from Marom “**The Planning Deadlock**,” pp. 38-39. The figures for 2000-2004 were received through publications of the Jerusalem Municipality spokesperson; the figures for 2005-2009 were obtained in a detailed response to a request filed under the Freedom of Information Act, and the figures for 2009-2012 were received as un-detailed public information.

⁸⁹ For a more detailed discussion of Article 78 of the Planning and Building Law from 1965, see above.

⁹⁰ Article 78 of the Planning and Building Law (1965) is valid in the period between the declaration of a planning area and up to the deposition of plans for the given area. Since the planning procedures for East Jerusalem often drag out even after the deposition stage, it is not possible to take advantage of this article for extended periods. Notwithstanding, there were cases in which building permits were granted illegally in the period after deposition of the plan. See: Ofer Aharon, **Planning in the Arab Sector in Jerusalem 1967-1996** [in Hebrew], Jerusalem Municipality, City Planning Branch, Planning Policy Department, Jerusalem, 1996.

⁹¹ All of the statistics are from “**Policy Paper on Residential Construction in East Jerusalem – Stage 1, 2002**” [in Hebrew], Jerusalem Municipality, City Planning Branch, Planning Policy Department.

The year 2001 saw another drop in the number of building permits issued in the Palestinian neighborhoods of East Jerusalem, to about 180. This decline continued in subsequent years.⁹² According to detailed statistics received from the Jerusalem Municipality under the Freedom of Information Act, in the five years between 2005 and 2009, 662 building permits in total were granted in the Palestinian neighborhoods of East Jerusalem, in other words, an average of about 130 permits per year. According to municipality sources, since then there has been some improvement in the situation, with an average of about 140 permits issued annually between 2010 and 2012. This is still only about half the number of permits issued in the record years at the beginning of the 80s, and at the beginning of the 2000s.⁹³

The decline in the number of building permits granted in the Palestinian neighborhoods in the first decade of the 21st century occurred, paradoxically, during a period of apparent improvement in the arena of planning in East Jerusalem, belying the ostensible building potential proposed in the Jerusalem 2000 Outline Plan. This slow-down stemmed from stricter demands instituted by the municipality with regard to proof of land ownership and land-registration procedures, which obviated the implementation of the new outline plans that were approved in those same years. The last five years have seen another slight rise in the number of building permits issued per year. This improvement is felt primarily in the northern and southern Palestinian neighborhoods (those far from the center of East Jerusalem and the vicinity of the Old City). Special committees were established in these neighborhoods, at the initiative of the municipality and community centers, to verify the issue of land ownership and to remove obstacles standing in the way of opening a building-permit request file. For the residents, it makes little practical difference if construction is prevented by the absence of a plan or due to the non-issuance of building permits.

Comparison with the Jewish-Israeli neighborhoods in the city

Between 2005 and 2009, the Permitting Department of the Jerusalem Municipality issued 3,197 building permits for residential construction throughout the city. Of these, 603 (about 18.9%) were issued for construction in the Palestinian neighborhoods of East Jerusalem. For the sake of comparison, 1,932 permits (about 60.4% of the total) were issued for construction in West Jerusalem, and 662 permits (about 20.7%) were issued for construction in Israeli neighborhoods in East Jerusalem. The 3,197 permits issued throughout the city enable

⁹² Statistics of the Permitting and Supervision Departments of the Jerusalem Municipality (letter from the responsible for building permits, Ruth Bickson, to the responsible for the implementation of the Freedom of Information law, Shmuel Angel, 2.12.2003).

⁹³ The data for 2005-2009, received from the Jerusalem Municipality in response to a Freedom of Information request, are in the format of detailed raw Excel spreadsheets.

the construction of 17,175 housing units. Of these, only 2,350 units (about 13.2%) are in the Palestinian neighborhoods of East Jerusalem, while the rest (15,365 housing units) are in Israeli neighborhoods in both West and East Jerusalem.

Residential construction permits issued in Jerusalem, by neighborhood classification, 2005-2009⁹⁴

Year	Palestinian neighborhoods		Israeli neighborhoods						Total	
			Israeli neighborhoods in East Jerusalem		Israeli neighborhoods in West Jerusalem		Total Israeli neighborhoods			
	# of permits	# of housing units	# of permits	# of housing units	# of permits	# of housing units	# of permits	# of housing units	# of permits	# of housing units
2005	111	442	122	988	429	3,651	551	4,639	662	5,081
2006	131	665	139	839	464	3,508	603	4,347	734	5,012
2007	119	420	119	691	392	1,921	511	2,612	630	3,032
2008	121	447	142	727	323	1,356	465	2,083	586	2,530
2009	121	376	140	703	324	981	464	1,684	585	2,060
Total	603	2,350	662	3,948	1,932	11,417	2,594	15,365	3,197	17,715

An analysis of the number of building permits issued against the number of request for building permits submitted in the same years reveals large gaps between the two figures. In the five years between 2005 and 2009, 4,128 requests for building permits were submitted throughout Jerusalem. (Regarding 20 of these requests, the location was not mentioned, and therefore these were not included in the analysis below.) Of the 4,108 requests classified by location, 1,087 were submitted by residents of the Palestinian neighborhoods of East Jerusalem.

The data received from the Jerusalem Municipality for the years 2005-2009 does not allow us to precisely cross-reference requests submitted with permits issued, since many of the building permits issued in these years were for requests submitted in previous years. Nonetheless, in

⁹⁴ Data processed by Bimkom – Planners for Planning Rights – from the raw data in the building permits tables received from the Jerusalem Municipality under the Freedom of Information Act.

a strict statistical comparison of the number of building-permit requests submitted with the number of permits granted, we can understand the scope and nature of the activity: In the years under discussion, 1,087 requests were submitted for building permits in the Palestinian neighborhoods of East Jerusalem, and 603 were granted, in other words, for about 55.5% of the requests. On the other hand, in the neighborhoods of West Jerusalem, 2,242 requests were submitted and 1,932 building permits were issued, i.e., for about 86% of the requests. In the Israeli settlements in East Jerusalem, 779 building-permit requests were submitted and 662 (about 85%) were granted.

Rejection of applications in the preliminary stage

Not only are a large portion of the requests for building permits in the Palestinian neighborhoods of East Jerusalem rejected, but in many cases the applications to open a permit-request file are turned down before they are even submitted. The Jerusalem Municipality requires a preliminary procedure for opening a permit file, wherein applicants submit a request to the Planning Department to obtain planning information about their property, including the extent of permitted construction on the plot. This procedure is known unofficially as “building lines.” In truth, the information given in this preliminary stage encompasses much more, including detailed planning information about zoning, building rights, permitted building heights, building lines, and more. Based on the information received, many application files for Palestinian residents of East Jerusalem are in fact closed before they are opened, and thus they are not included in the above analyses. Below are statistics regarding the rejection of requests to open permit files at this preliminary stage:⁹⁵

Rejected requests to open building permit files in the Palestinian neighborhoods, 2005-2009

Year	Number of requests rejected
2005	31
2006	126
2007	157
2008	101
2009	68
Total	483

⁹⁵ Response by Mr. Shmuel Angel, responsible for the implementation of the Freedom of Information Act at the Jerusalem Municipality, to a request by Bimkom, 8.7.2010.

A letter attached to the data received from the Jerusalem Municipality states that “most of the rejections stem from the lack of a formalized land arrangement. This is more common in East Jerusalem. All of our requests to the Justice Department to formalize the area of the city have been rejected.”⁹⁶ Thus, another factor behind the housing shortage in the Palestinian neighborhoods of East Jerusalem and the phenomenon of construction without permits is the difficulty in receiving permits for the construction of new residential buildings or building additions, caused by the fact that the land registration for the most part was never formalized and lands were never registered in the Israel Lands Registry.

Challenges and Obstacles in the Way of Obtaining a Building Permit

Attaining building permits, even in areas zoned for residential construction in the approved plans of the Palestinian neighborhoods of East Jerusalem, is no simple task. One would think that the obstacles to obtaining building permits would be primarily in the areas where construction is forbidden, and thus that the re-planning of these areas would remove the obstacles in the way of receiving permits. However, re-planning is not sufficient for solving this problem. Palestinian landowners, even when their plot is zoned for construction in the approved plans, are faced with additional obstacles. These can be divided into three groups:

- Difficulties stemming from the lack of public infrastructure development
- Difficulties stemming from prohibitive costs (fees and levies)
- Difficulties in opening a building-permit file stemming from issues of land registration

⁹⁶ Ibid. In the land-registration process, lands are registered systematically in the Lands Registry, precise borders are determined between plots, and ownership is registered by plot. Registration of land provides proof of ownership of the registered parcel. Because of the policy of the Israeli government, the land-registration processes in East Jerusalem have been frozen as a rule of thumb since 1967. It should be noted that in 2004, the Jerusalem District Court deemed unlawful a decision of the Jerusalem Municipality to refuse to open a building-permit-request file for a land parcel that was included in a land-registration process that began in the Jordanian period but was not completed and awaits registration by the Israeli registrar. Nor does the municipality’s demand conform with Regulation 2a of the Planning and Building Regulations (request for a permit, terms and fees), of 1970, which states explicitly that even unregistered land can be issued a building permit. See the ruling on Administrative Petition (Jerusalem) 333/04 Besisu v. The Local Planning and Construction Committee Jerusalem, from 10.10.2004, published in the Nevo database).

Difficulties stemming from the lack of public infrastructure

Access roads

One of the conditions for issuing building permits is the existence of an access road leading to the construction area. The access road must be statutory and marked on the approved plan in order to enable the structure's connection to infrastructure lines (electricity, water, etc.). In reality, there is often little or no correspondence between the roads that appear on the approved plans for the Palestinian neighborhoods in East Jerusalem and the actual roads there. Thus, in effect, the receipt of a building permit for a new structure or for a building addition requires a preliminary planning stage—the preparation of a detailed outline plan that includes a road that runs adjacent to the building and connects to a statutory road. After the approval of the detailed plan (if the planning institutions can be convinced to approve it), the applicant must actually implement the road as a prerequisite for the approval of his request to build for residential purposes. These can sometimes be rather long stretches of road. In the rest of the city, it is customary for the local authority to take responsibility for implementing works such as laying roads when necessary, after which it levies the cost on the residents. In East Jerusalem, the entire process—planning, approval, and implementation, with the high costs involved—falls upon the private citizen, a fact that naturally poses additional obstacles on the way toward the yearned-for building permit.

Sewerage infrastructure

According to the stipulations of the Environmental Protection Agency and the Health Ministry, the District Planning Bureau of the Interior Ministry determined that all plans approved in East Jerusalem must contain a stipulation conditioning the granting of building permits for large projects⁹⁷ on the existence of a waste purification facility (otherwise known as an “end solution”). For many neighborhoods in East Jerusalem no such facility exists, and therefore it is not possible to obtain permits for large residential projects in these neighborhoods. Most of the Palestinian neighborhoods in East Jerusalem (with the exception of Beit Safafa and Sharafat and the western slopes of Beit Hanina and Shuafat) are located in the drainage basins of the valleys that flow eastward and drain into the Dead Sea. These eastern neighborhoods have a single waste purification facility, located next to the channel of the Og Valley, in the area of Nebi Musa in the West Bank. The waste of the northern neighborhoods (both Israeli and Palestinian) of East Jerusalem drains into this waste distillation facility. Recently, a plan was approved for another waste distillation facility, which will provide an end solution for

⁹⁷ In one period it was determined that a project of 100 housing units and more was considered large, and in other periods this definition included 50 housing units.

the southeastern neighborhoods of Jerusalem in the drainage basin of the Darga Valley (Har Homa, East Talpiot, and Sur Baher).

For the rest of the Palestinian neighborhoods, those located in central East Jerusalem, there is no end solution, and their sewage flows into the channel of the Qidron Valley. A waste purification facility for the Qidron Valley has been on the planning track for several years, but due to the need for comprehensive cooperation between the Israeli authorities and the Palestinian Authority, its planning has not advanced. Private landowners have no influence on the development of waste purification facilities, nor certainly on international cooperation. And yet, in the preparation of large private plans, the planners are required to report to the District Planning Committee about the progress of the planning of the waste purification facility in the Qidron Valley.

In addition to the fact that many of the Palestinian neighborhoods have no end solution, East Jerusalem lacks some 65 kilometers of main sewerage lines,⁹⁸ and in many of the neighborhoods, residents use private cesspits that do not meet the standards of the Environment Ministry and the Health Ministry. Normally, when a public sewerage line exists, residents connect to it, for a cost. But the actual installation of a main sewerage pipe is a project that no private individual can undertake, and without such a system, building permits are issued only for small projects.

Parking requirements

Plan #5166 for the regularization of parking standards in Jerusalem stipulates at least one parking spot per housing unit, according to area and location of the building in the city, as a prerequisite for issuing building permits. Due to the high density in the built-up fabrics in the Palestinian neighborhoods of East Jerusalem, there is not enough available land for adequate parking solutions for new housing units built as additions to existing structures. In new construction, the solution is simpler but expensive—building an underground parking lot or planning a building with a raised pillar level, with parking spots underneath. Many requests for building permits in the Palestinian neighborhoods of East Jerusalem are rejected in the preliminary stage for this reason. It should be noted that the lack of parking solutions is an obstacle not only when it comes to requesting building permits, but already in the planning

⁹⁸ Since 2009 there has been a slow improvement in this field, since the Gihon Municipal Water Company began to lay main sewerage lines in some of the Palestinian neighborhoods of East Jerusalem. That being said, only a very concerted effort on the part of the authorities over the course of several years will be able to close the gap in the sewerage infrastructure between East and West Jerusalem.

stage. The local and district planning committees reject plans that do not present reasonable parking solutions.⁹⁹

Difficulties stemming from prohibitive costs

In order to get a building permit, residents must pay various fees and levies. These include a permit fee,¹⁰⁰ development tax,¹⁰¹ betterment levy¹⁰² and, up until a few years ago, also property tax.¹⁰³ According to a calculation done a few years ago by the Israeli Committee Against House Demolitions (ICAHD), a person who wants to build a 200-m² home has to pay about 110,000 NIS just in fees and levies, not including fees for connecting to the sewerage system or lawyer and architect fees.¹⁰⁴ Today, we can only assume, these costs must be even higher.

The permit fees meted on residents of the city applying for a building permit are identical in the Israeli and the Palestinian neighborhoods of the city. However, the per capita income in the Palestinian neighborhoods is only about one third of the per capita income in the Israeli neighborhoods.¹⁰⁵ The height of the fees in Jerusalem is determined according to the standard in the Jewish sector, and they are prohibitively high for many Palestinian residents of the city.

The basic development tax for connecting to the water and sewerage systems is also the same on both sides of the Green Line, though in reality the burden on the Palestinian residents is higher. First, the traditional familial building style in Palestinian society places all of the cost of the infrastructures on a single family (even if an extended one) instead of dividing it

⁹⁹ On September 8, 2011 the Jerusalem District Planning Committee rejected Plan #13002 for an addition of housing units in Ras al-Aamud, among other things on the claim that “it is not possible to approve the addition of housing units without a parking solution.”

¹⁰⁰ Permit fee: according to the planning and construction regulations, local committees must exact a fee for granting building permits. The payment is meant to cover the municipality’s and the local committee’s administrative expenses.

¹⁰¹ Development tax: a municipal tax demanded of landowners or long-term tenants during the laying of municipal infrastructure and/or before the granting of a building permit. The development fees are meant to fund infrastructures such as roads and sidewalks, rainwater channels and drains, water pipes, and sewerage pipes.

¹⁰² Betterment levy: a payment levied by the local council for the increase in value of the land/property as a result of the approval of a new plan that increases the building rights. The betterment levy is calculated at half of the difference between the value of the lot before the approval of the bettering plan, and its value after the approval.

¹⁰³ Property tax: a tax levied in the past for non-agricultural undeveloped land, even if no plan yet exists that enables development on it. The property tax was canceled on 1.1.2000. In the absence of land registration in the Land Registration Authority, being listed on the property-tax documents and the payment of property tax provided proof that the owner of the property had at least some connection to the land.

¹⁰⁴ Meir Margalit, *Discrimination in the Heart of the Holy City*, (The International Peace and Cooperation Center, Jerusalem 2006), p. 50.

¹⁰⁵ Jerusalem Institute for Israel Studies, The Jerusalem Annual Statistical Report, Table VI/26 – “Socio-Economic characteristics of Statistical Areas” (2008).

between a number of apartment-owners in an apartment building, as happens in the Israeli neighborhoods. Second, the lack of proper infrastructure in the Palestinian neighborhoods makes the cost of connecting to the water and sewerage systems very expensive, due to the distance from the house to the closest meeting point with the municipal system. This added cost often renders attaining a building permit financially unfeasible.

In the Israeli neighborhoods, on the other hand, the state participates in the development costs and subsidizes them in various ways. The very fact that laying infrastructure is done for dozens or even hundreds of housing units at a time, significantly reduces the cost per housing unit. In addition, the Housing Ministry subsidizes contractors in such a way that significantly reduces the development costs. Grants have also been given directly to Jewish apartment-purchasers in the Israeli neighborhoods of East Jerusalem.

Difficulties in opening a building-permit file stemming from issues of land registration

One of the primary obstacles to attaining building permits in the Palestinian neighborhoods of East Jerusalem, in particular since the early 2000s, is the issue of land ownership and the fact that most of the land in these neighborhoods is not registered with the Lands Registrar. In areas where land registration is complete, whether inside or outside the municipal boundary, each plot is registered under the owner's name, and there is a precise mapping of its location and borders. Land registration constitutes proof of the registered landowner's rights over the property registered under his name. As the result of an Israeli government policy, which was never advertised as an official decision, the land registration process in East Jerusalem, which had begun during the British Mandate period and continued through the Jordanian period, was frozen in 1967.¹⁰⁶ This policy has helped create the present situation, in which those lands in East Jerusalem that were not expropriated by the state, are divided into three types: registered lands whose registration was completed before 1967; land whose registration was in progress before the 1967 war but was never completed; and unregistered lands.¹⁰⁷ Unregistered lands are listed only in the property tax ledgers, which do not include mappings that show precise plot locations. According to court rulings, these listings constitute only alleged proof of land ownership.

According to Israeli planning and construction ordinances, it is the landowners who must sign requests for building permits. When the land is registered, the application must be signed by

¹⁰⁶ Ronit Levine-Schnur, "Privatization, Separation, and Discrimination: The Cessation of Land Settlement in East Jerusalem," [in Hebrew], *Iyunei Mishpat*, Tel Aviv University, 34 (2011): 192-193.

¹⁰⁷ Marom, *Planning Deadlock*. It is important to note that in West Jerusalem and in lands that were expropriated for the establishment of the Israeli neighborhoods in East Jerusalem, most of the land is registered. Thus, the problems described here are unique to the Palestinian neighborhoods.

the registered landowner or an official proxy. When the land is not registered, the person listed in the property tax ledgers is supposed to sign the building-permit request.¹⁰⁸ Over the years, some practical arrangements have been made, enabling the receipt of a building permit even without full registration of ownership. However, procedures instituted at the beginning of the 2000s tightened the requirements for proof of land ownership and registration. These procedures brought about a drastic drop in the ability of Palestinian residents of East Jerusalem to submit requests for building permits. The apparent rise in the number of building permits in recent years indicates a possible loosening of these requirements.

Registered lands

Requirement that landowners (listed in the Land Registry) sign building-permit requests.

In the past, the Permitting Department of the Jerusalem Municipality was satisfied with the signatures of either the registered landowners, their heirs, or purchasers, along with proof of affiliation between the registered landowner and the signatory as the lawful owner of the land, for example, through inheritance orders or contracts of sale. However, in 2000, the municipality's Legal Department issued new instructions to the Permitting Department, by which only the landowner who is listed in the Lands Registration Bureau, and not his heirs or purchasers, can initiate a process of requesting a building permit. As a result, heirs cannot submit requests for building permits without first attaining an inheritance order from the Shari'a court and completing the registration of the land in their name at the Lands Registry prior to submitting the request for a building permit. On top of the difficulties and costs this entails, it is not always possible to complete the registration at the Lands Registration Bureau – for example, if some of the heirs are not in the country and the landowners fear that the state will register the land under the General Custodian of Absentee Property.¹⁰⁹

Lands in the process of registration

Requirement that landowners sign building-permit requests. In October 2001, the Legal Department of the Jerusalem Municipality issued instructions to the Permitting Department, by which building-permit requests on land for which the registration process had begun but was not completed must be signed by the rights holder who is listed on the claims ledger or

¹⁰⁸ Planning and Building Ordinance 2a. (5), (request for permit, conditions and fees), 1970.

¹⁰⁹ 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. After the de-facto annexation of East Jerusalem in 1967, this law was applied to the annexed area, but under various limitations. This controversial use of the law is repeatedly challenged in court.

on the rights ledger.¹¹⁰ Thus a similar problem as the one described above (for registered lands) exists: heirs or those who purchased the land from the original owners listed on the claims ledger from when the registration process began, are no longer entitled to submit a request for a building permit.

Unregistered lands

For years, the Surveying Department of the Jerusalem Municipality was satisfied with the submission of a simple survey map, signed by the relevant village Mukhtar (we recall that most of the Palestinian neighborhoods in East Jerusalem are parts of villages that were annexed to the municipal area of the city in 1967) and the landowners of adjacent plots. This procedure, which was applied in the spirit of the Planning and Building Law (which allows the issuance of a building permit even for unregistered land), allowed the owners of unregistered lands to open a file at the municipality Permitting Department, without being required to advance the registration of their plots at the Lands Registry Bureau.

In early 2002, the Permitting Department began to require residents of the city submitting building-permit requests in unregistered areas to initiate the process of registering their plot at the Lands Registry Bureau, by preparing a Plan for Registration Purposes (PRP) and getting the approval of the Survey of Israel that the plan is “suitable for registration.” This process is a prerequisite for opening a building-permit-request file. At the same time, the District Planning Bureau of the Interior Ministry began adding a clause to the directives of every new plan, requiring the preparation of a PRP as a prerequisite for receiving a building permit. This requirement raised the planning cost and duration for many Palestinian residents of East Jerusalem.

The demand for a PRP was accompanied by a demand to actually begin the land-registration process as a prerequisite for submitting a building-permit request. According to the procedure, lawyers representing applicants for a building permit were obligated to register the plots in the Lands Registration Bureau within five years. It became clear rather quickly, however, that the lawyers could not fulfill this obligation, due to the refusal on the part of the Lands Registrar to register unregistered lands in Jerusalem. This stopped the permits process in many cases at the very beginning. According to data received from the Jerusalem Municipality, in the five years between 2005 and 2009, 483 building-permit requests were blocked even before a file for the building-permit request was opened, and this, we recall, in a period in which a total of only 662 building permits were issued in the Palestinian neighborhoods of East Jerusalem.

¹¹⁰ The claims ledger and rights ledger represented interim stages in the registration process.

Beyond all of the concrete obstacles, this requirement, regarding land registration with the Lands Registrar, requires the landowners to undertake independently and bear the cost of a process that is by any measure the responsibility of the public authorities. The latter have shirked this responsibility over close to fifty years, among other things due to the legal and political complexity of the situation in East Jerusalem.¹¹¹

Reparcelization plans

In some of the large areas in northern East Jerusalem that have been designated for reparcelization, for many years it was impossible to obtain building permits because this was conditioned upon the approval of reparcelization plans in the planning committees and the registration of the new plots with the Lands Registrar. Thus, construction and development in 51 such areas—in the neighborhoods of Beit Hanina and Shuafat—were frozen for more than a decade. Only after 2005 did the municipality begin to slowly complete the process of approving their reparcelization plans (as of late 2012, about 44 reparcelization plans have been approved by the Local Planning Committee, out of 51 reparcelization plans that were awaiting approval in these neighborhoods). However, even under the new procedures, the approval of reparcelization plans does not enable the granting of a building permit, since the new plots resulting from the reparcelization must be registered in the Lands Registration Bureau.

The current situation

A memorandum from the deputy director of the Municipal Planning Department to those in the municipality in charge of providing planning information, from February 2009, states: “Since it has become clear that some of the civil applications requiring the submission of a plan for registration purposes have not filled the requirements, the city engineer and the legal advisor to the municipality have decided upon a new framework for marking building lines in cases of plans for registration purposes. These instructions are valid from this time forth.”¹¹² The memo enumerates the new prerequisites by which applicants who submit a request to mark building lines (as explained above), must provide documentation proving that the PRP is “suitable for registration,” and provide proof of the opening of a registration file in the Lands Registrar. Only after the provision of these documents will building lines be marked for the applicant.¹¹³ Later the memo states: “conditions for granting a building

¹¹¹ Marom, *Planning Deadlock*, p. 60.

¹¹² Letter from Menahem Gershoni, director of Planning Information Department, Jerusalem Municipality, Reference number: 14-0310-2009, 1.2.2009.

¹¹³ The requirement for opening a 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 in prior practice.

permit – approval of the National Information and Surveying Department that there is no impediment in principle for registering the PRP.” These instructions were in effect for only six months, until the District Planning and Building Appeals Committee, which was asked to examine the issue, stated that the municipality cannot legally make such a demand. After the appeals committee submitted its decision, the municipal officers continued to act independently towards verifying possibilities of registering land with the Lands Registrar.¹¹⁴ This unofficial activity is in contravention of the spirit of the decision of the Appeals Committee. The temporary procedure became common practice, and today landowners who apply to the Permitting Department to open a file for a building-permit request are required to attach to the application an approval from the Legal Department of the municipality for opening the file. The Legal Department is in contact with the Lands Registrar and with the office of the General Custodian for Absentee Property in order to verify the question of land ownership, and the results of this verification determine the approval or rejection of the application to open a file.

Summary of the obstacles to obtaining building permits

The path for a Palestinian resident of East Jerusalem toward attaining a residential building permit is a long, expensive, and harrowing one, and with no guaranteed results – whether as a result of the many problems in the approved plans (which are the basis for the granting of permits), or due to procedural obstacles. Of all the problems described above, perhaps the most severe is that of land registration.

If the state of Israel is not interested in or capable of completing the land registration process in East Jerusalem, it must at least separate the issue of registration from that of building permits. As the Planning and Building Law allows, and as was commonly practiced in the past, the planning establishment must be satisfied with the applicant’s proof of a connection

¹¹⁴ The appeal was made as follows: the officers in the municipality who were responsible for providing planning information in the preliminary procedure for opening a permit-request file, turned unofficially to the Custodian for Absentee Property, asking whether there could be a problem in registering land under the name of the applicant. In the unofficial response it was said that the landowners might also include absentees. An answer that notes that the applicant or one of his siblings is considered an absentee causes the rejection of the request. An additional repercussion is that the landowner will not be able to request a building permit in the future. A report of Mr. Gershoni to the city engineer, who is responsible for permits, and the director of the city Planning Department on Sept. 7, 2009: “In the above-referenced plot [...] the applicant submitted a request for marking the building lines [...] we turned to Mr. Ronen Baruch, the General Custodian of Absentee Property, in order to have the ownership of this plot verified. His examination reveals that the owners have not been in Israel since the application of Israeli law and the property is defined as absentee property. The applicant should be referred to the Treasury (Absentee Property Division) in order to verify his status [...] In the light of the above, building lines should not be marked and permits should not be issued before ownership of the property has been proven with the approval of the responsible for absentee property.” It should be noted that this correspondence occurred after the above-mentioned decision of the Appeals Committee.

to the land on which he wishes to build, without requiring the proof of actual registration with the Lands Registrar. If there were flaws in this previous procedure, these should be corrected, but not by blocking the track altogether. The slow improvements being made today in the realm of planning, which are aimed at putting a stop to the phenomenon of building without permits and improving the living environment of the Palestinian residents of East Jerusalem, will be thwarted if the residents are not able to build on unregistered lands. Having no other choice, residents will continue to seek other housing solutions, including building without permits.



SUMMARY

Since 1967, planning in the Palestinian neighborhoods of East Jerusalem has served as a tool for achieving the Israeli goal of preserving a Jewish majority in Jerusalem. This preoccupation with the so-called demographic balance is manifested in the Jerusalem 2000 Outline Plan and in policy documents on both the municipal and national levels. The problematic and restrictive plans drawn up for the Palestinian neighborhoods in East Jerusalem, in particular those done in the first two decades after 1967, but also those drawn up later, must be understood in this context. This remains the case even today, despite the planning committees' annual declarations about how they have approved many plans for the Palestinian population of the city. It is therefore not surprising that the approved plans do not sufficiently satisfy the needs of the Palestinian population in East Jerusalem or even begin to close the gaps between the Palestinian and the Israeli neighborhoods. As has been described above in great detail, planning in the Palestinian neighborhoods of East Jerusalem is still extremely inadequate: the areas covered in the approved plans are very limited, areas designated for development and housing do not meet the basic needs of the residents, building rights are few and far between, and there is an acute shortage of land for public buildings.

The Jerusalem 2000 Outline Plan (which will most likely not be deposited for public review in the near future) adheres to the same policy—of maintaining the Jewish majority—and brings no new vision for the city. The potential embodied in the plan for expanded construction in the Palestinian neighborhoods of East Jerusalem is actually quite limited, because there is no attempt to deal with the challenges related to its realization.

One might expect, as we approach the sixth decade of Israeli control over East Jerusalem, and after the approval of many outline plans in the Palestinian neighborhoods of East Jerusalem, that it would be easier for Palestinian residents of the city to obtain building permits. But this is

not the case. The number of building permits issued every year in the Palestinian neighborhoods of East Jerusalem and the number of housing units approved remains very small, and this is a direct result of Israeli policy in East Jerusalem. In many ways, the requirements placed by the Jerusalem Municipality before Palestinian residents trying to build their homes are fair and sensible. It is only natural for a municipal authority to expect applicants to verify and prove that they are indeed the holder of rights over a plot of land in question. It is only logical for the municipality to want to ensure that houses are built only according to the accepted regulations and that housing units be connected to municipal infrastructures.

However, in the light of the unique situation that exists in the Palestinian neighborhoods of East Jerusalem these requirements are completely disingenuous, since the current situation in neighborhoods was caused by the same state authorities. The lack of adequate infrastructure, the decision to freeze land registration processes after 1967, the decision to apply the 1950 Absentee Property Law to East Jerusalem – all of these things have prevented the residents of the Palestinian neighborhoods of East Jerusalem from receiving the necessary building permits.

In such a state of affairs, wherein people interested in building homes see only a slim chance that at the end of the prolonged and expensive process they will even get a building permit, it is no wonder that many choose to build their houses on their land without the required building permits. Furthermore, those who do choose to act in accordance with the law's requirements and apply to the municipality to request a building permit, expose themselves to the risk that during verification of the issue of land ownership, they may be dispossessed, partially or completely, of their land.

The challenges faced by Palestinians requesting to build homes on their land are well known to the municipal and national authorities, but they are less known to the general public. It is the obligation of the state and the municipality to plan the Palestinian neighborhoods of East Jerusalem in a satisfactory manner or to enable the residents to do so on their own. Likewise, it is their obligation to issue building permits that meet the actual needs of the residents and to remove the obstacles in the path to receiving permits—such as removing the correlation between land registration and the receipt of building permits. Without drastic action in this direction, the phenomenon of unpermitted construction and subsequent demolition orders and actual home demolitions will only continue. The municipality will continue to be perceived as discriminatory and negligent of its obligation to fulfill the basic planning needs of the city's residents, and the tension between Jews and Arabs in Jerusalem will continue to grow.



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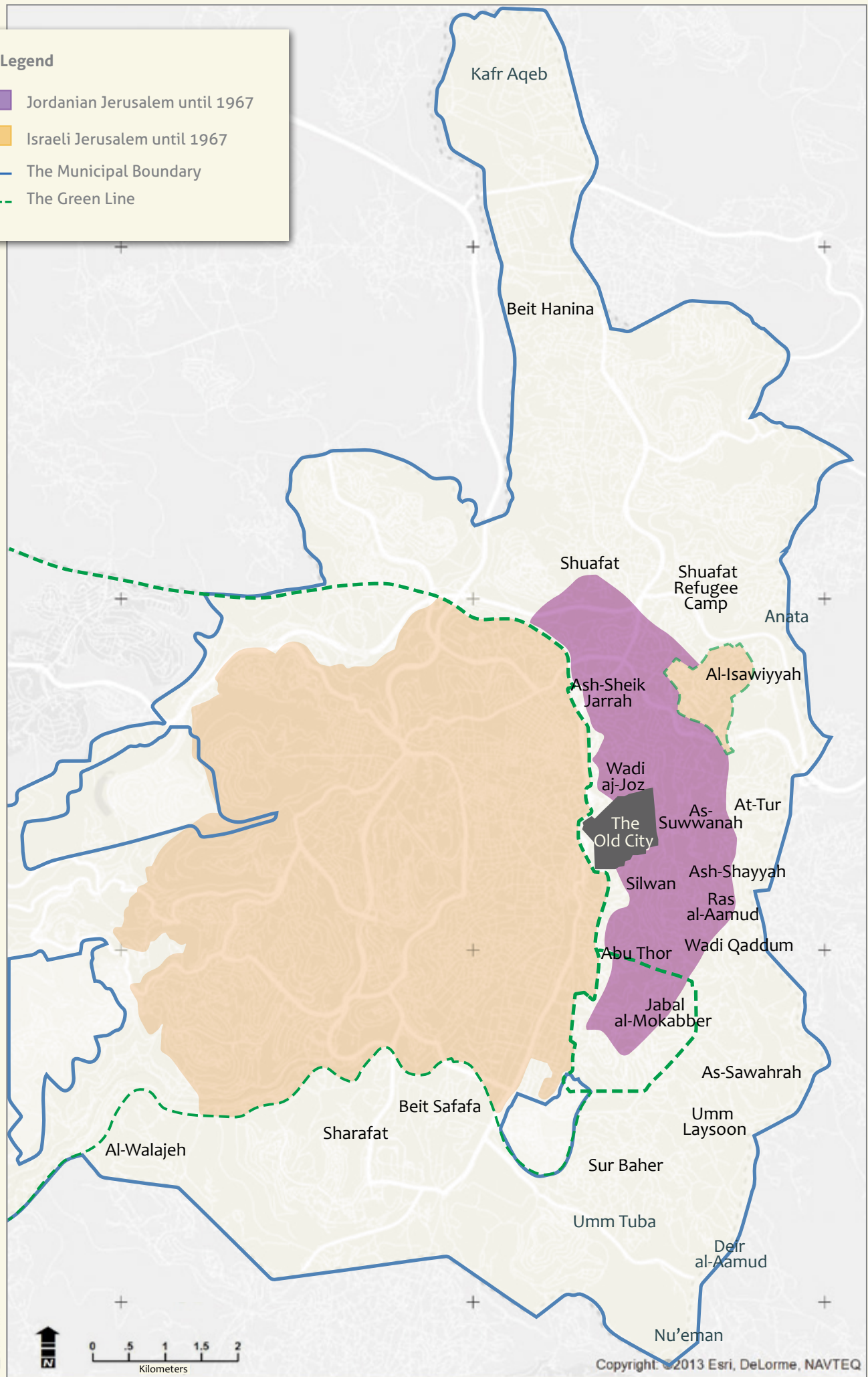
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Map Legend

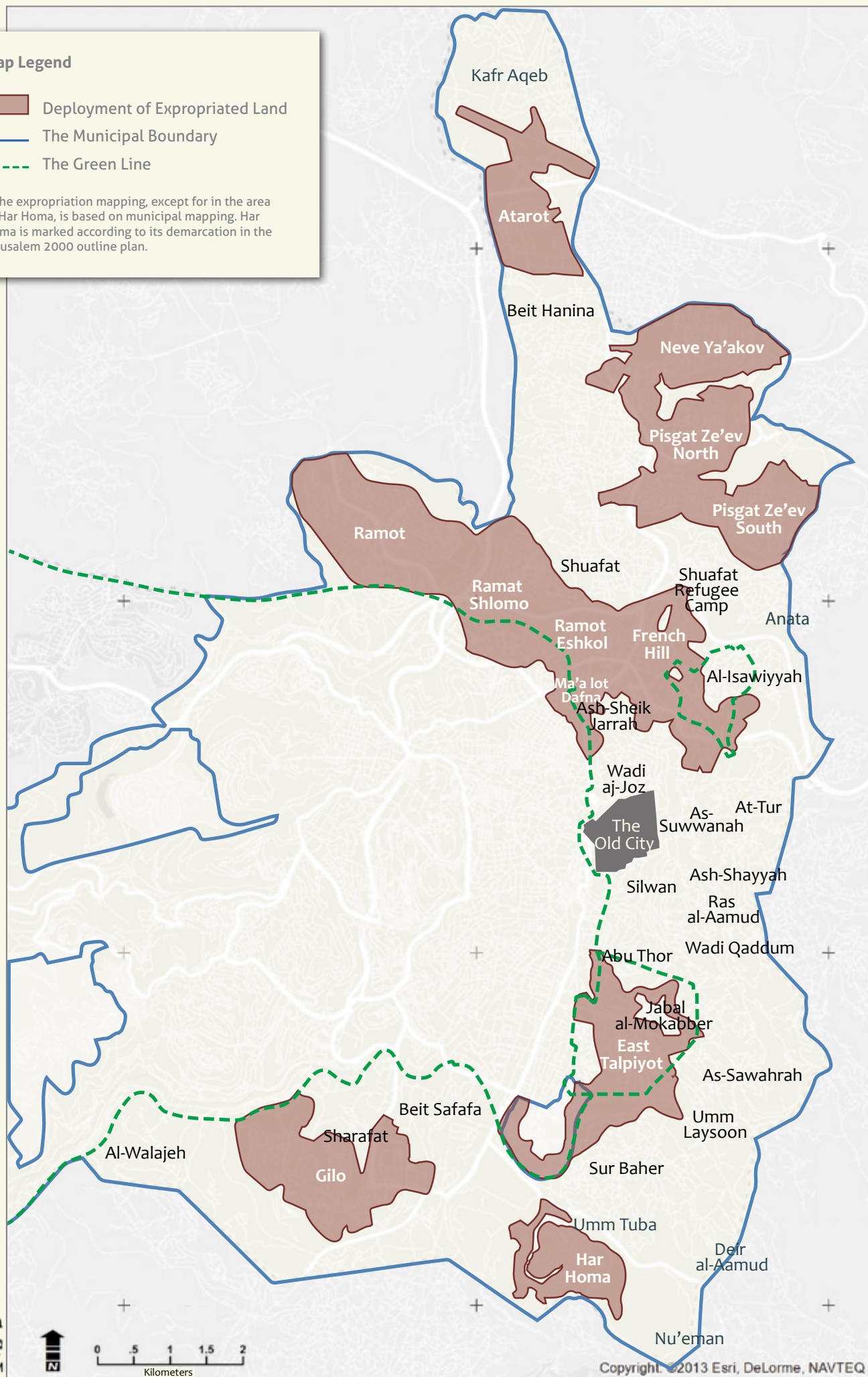
- Jordanian Jerusalem until 1967
- Israeli Jerusalem until 1967
- The Municipal Boundary
- The Green Line






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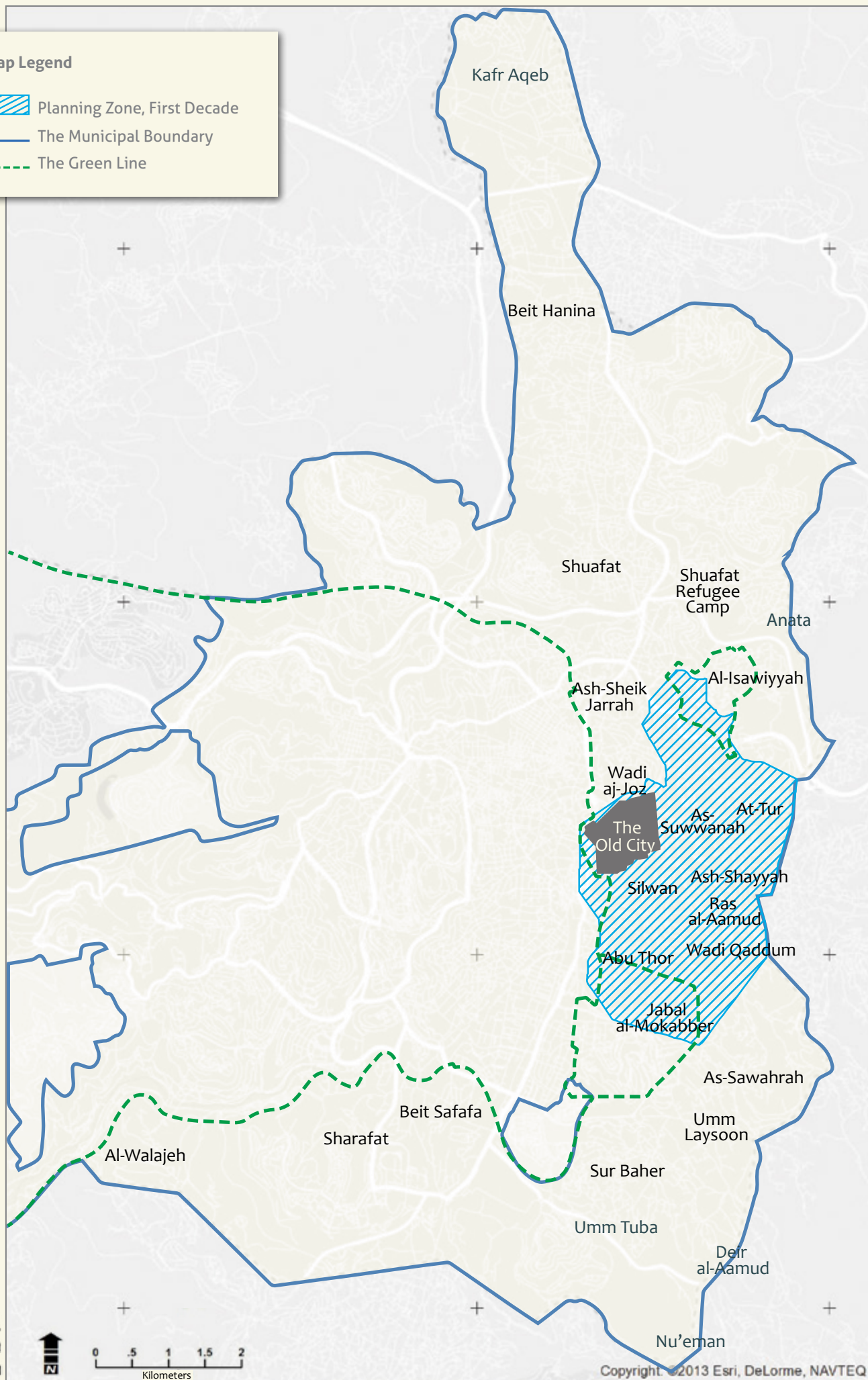
- Deployment of Expropriated Land
- The Municipal Boundary
- The Green Line

* The expropriation mapping, except for in the area of Har Homa, is based on municipal mapping. Har Homa is marked according to its demarcation in the Jerusalem 2000 outline plan.



Map Legend

-  Planning Zone, First Decade
-  The Municipal Boundary
-  The Green Line



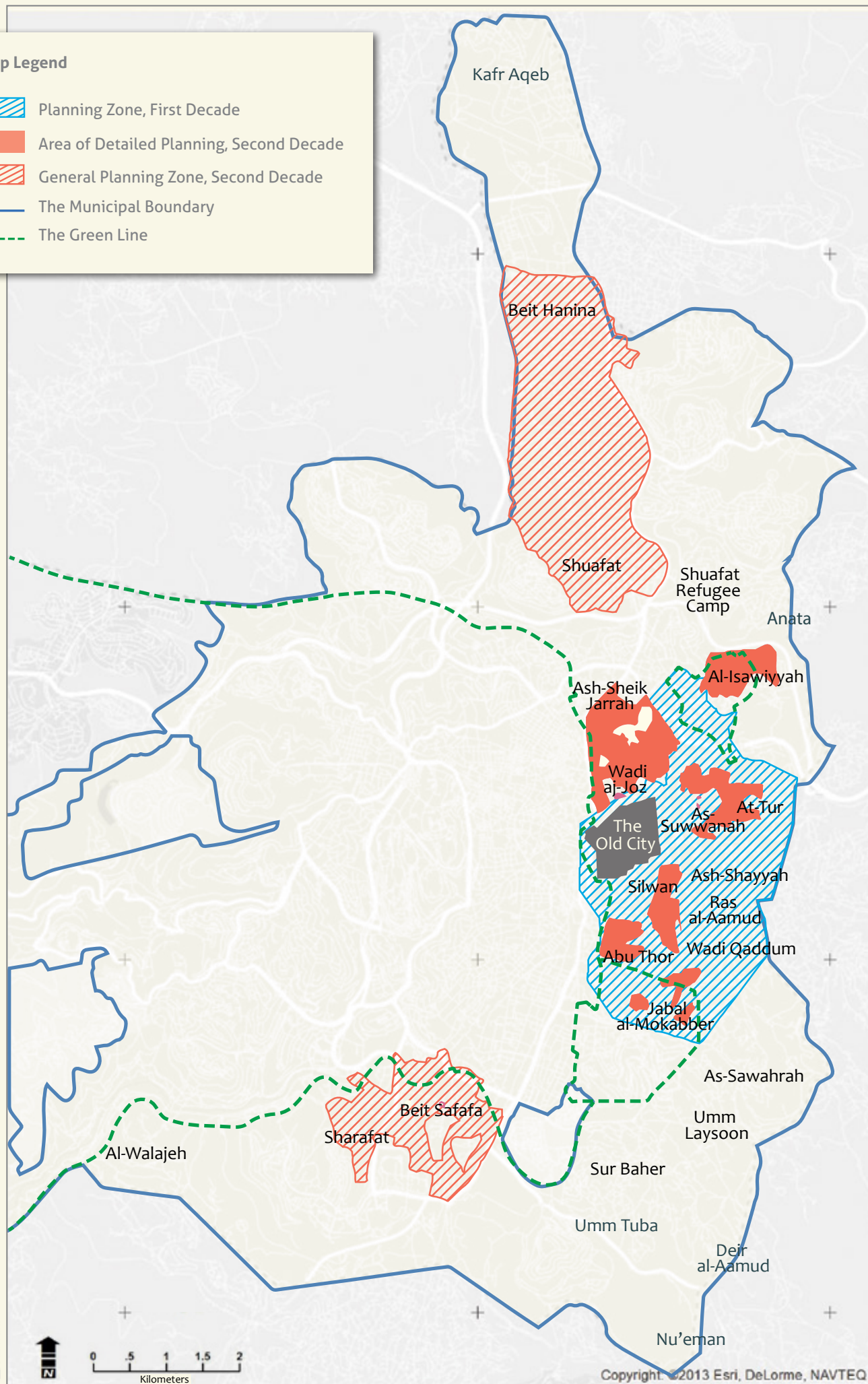
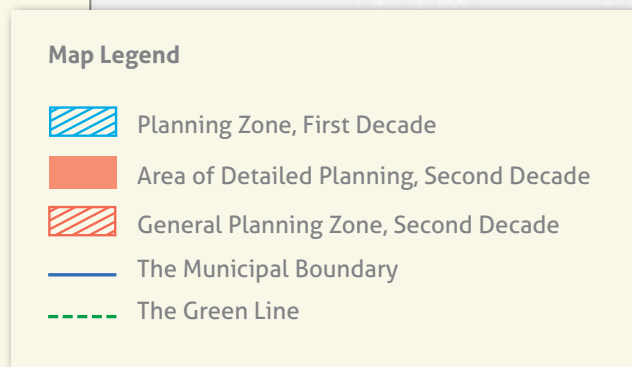


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ISRAELI POLICY PLANNING
AND DEVELOPMENT IN THE
PALESTINIAN NEIGHBORHOODS
OF EAST JERUSALEM

5

PLANNED AREA DURING THE SECOND DECADE
1978-1989



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**ISRAELI POLICY PLANNING
AND DEVELOPMENT IN THE
PALESTINIAN NEIGHBORHOODS
OF EAST JERUSALEM**

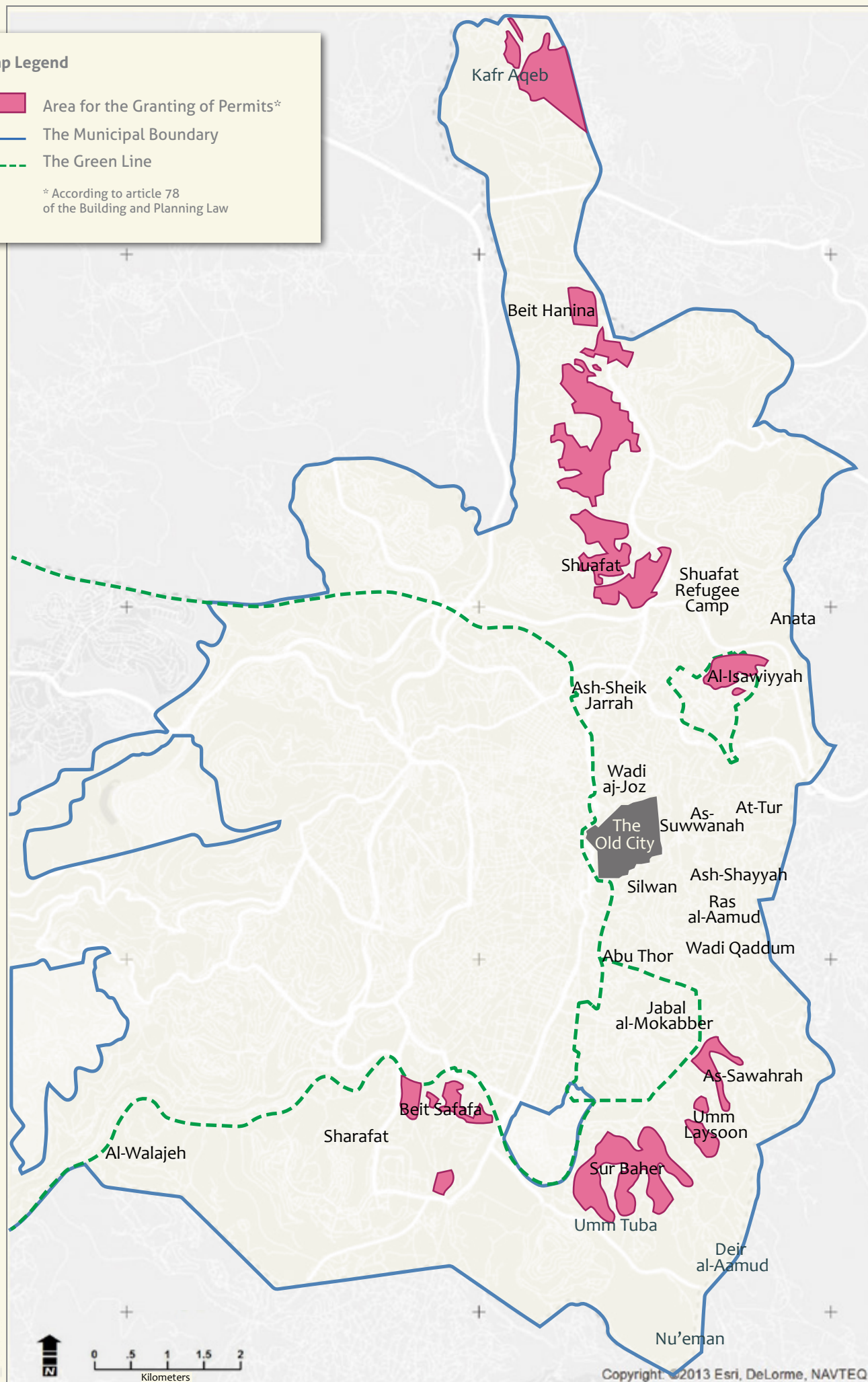
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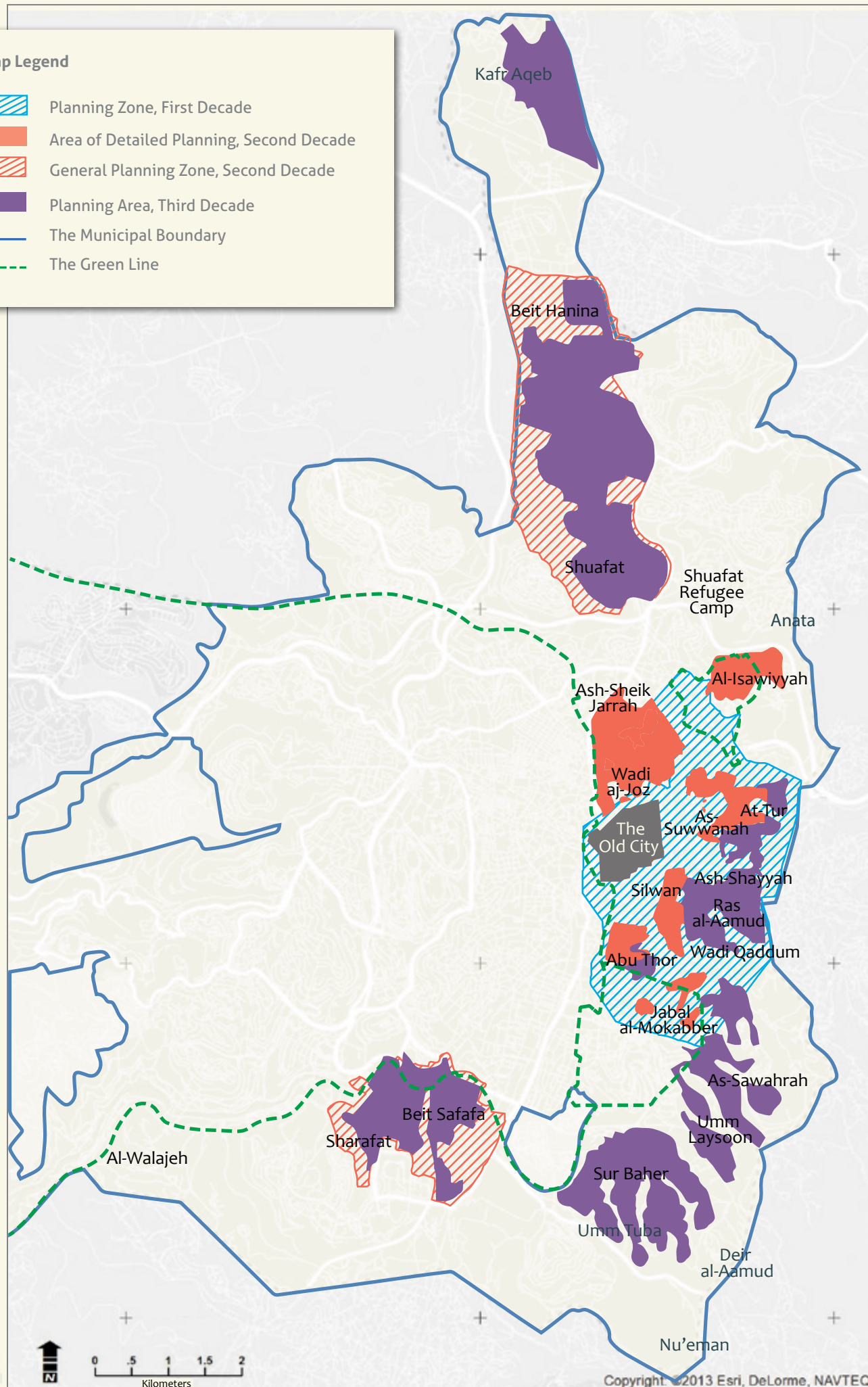
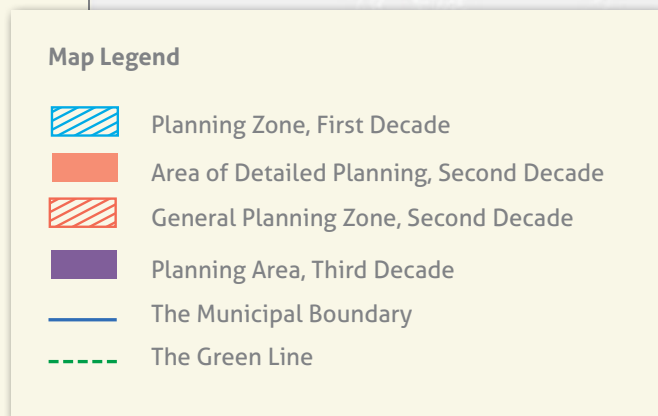
**AREAS WHERE BUILDING PERMITS MAY BE
GRANTED, BEFORE PLANNING IS COMPLETE**

Map Legend

- Area for the Granting of Permits*
- The Municipal Boundary
- The Green Line

* According to article 78
of the Building and Planning Law



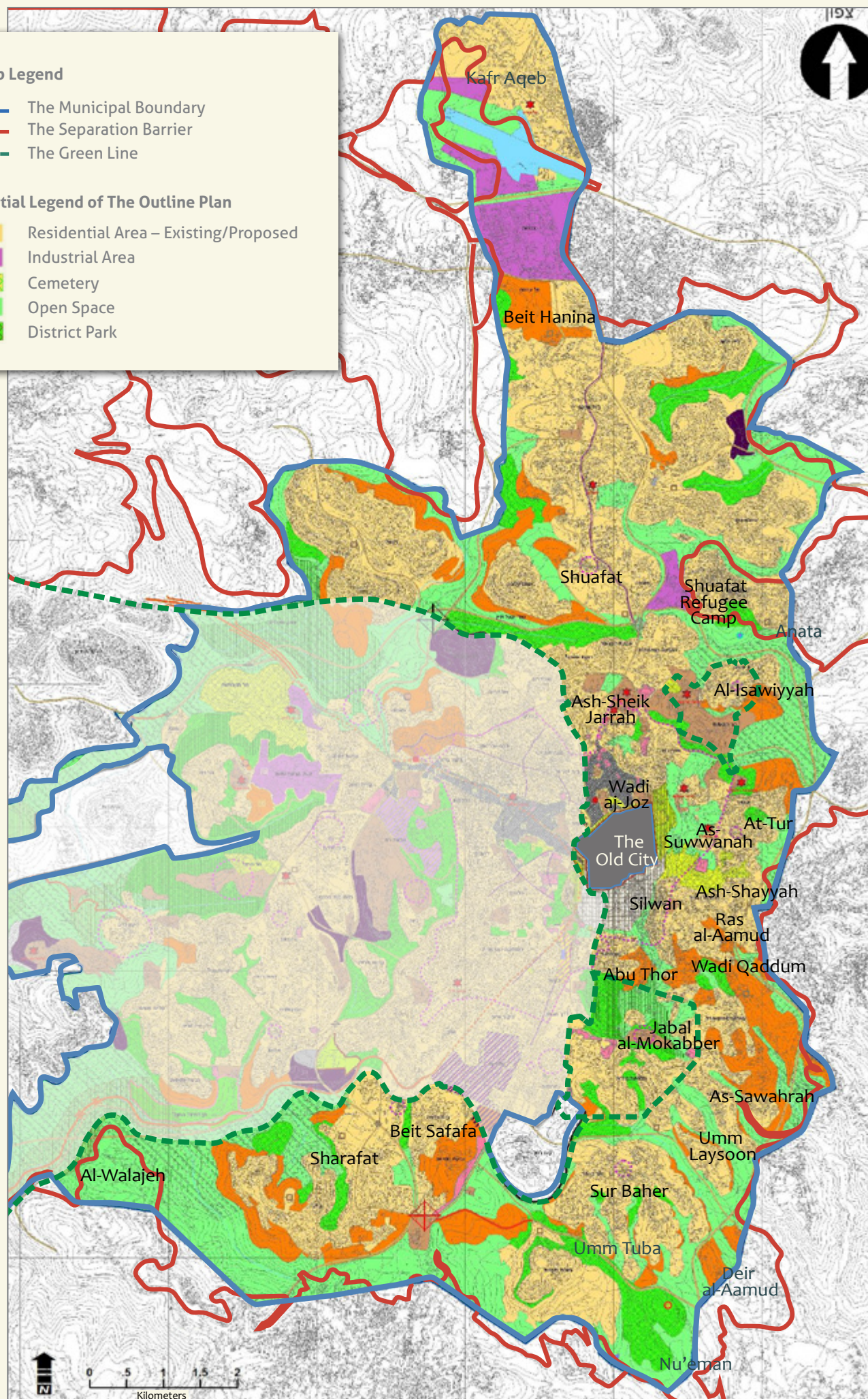


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ISRAELI POLICY PLANNING
AND DEVELOPMENT IN THE
PALESTINIAN NEIGHBORHOODS
OF EAST JERUSALEM

8

THE JERUSALEM 2000 LOCAL OUTLINE PLAN
(WEST JERUSALEM)



Map Legend

- The Municipal Boundary
- The Separation Barrier
- - - The Green Line

Partial Legend of The Outline Plan

- Residential Area – Existing/Proposed
- Industrial Area
- Cemetery
- Open Space
- District Park

Two years from now will mark a half century of Israeli rule over East Jerusalem. Over the course of almost fifty years, the Jerusalem Municipality and the Israeli national planning authorities have dealt extensively with planning in Jerusalem, including the planning of the Palestinian neighborhoods of East Jerusalem. And yet, despite the many plans that have been drawn up and approved in this period, the planning situation in these neighborhoods remains untenable. Even worse than the state of planning in the neighborhoods is their actual physical state; the neighborhoods suffer from a painful combination of a severe housing shortage, along with dilapidated infrastructure, an extreme lack of public and community institutions, and residential construction that is mostly unauthorized. How did it happen that, despite such a preoccupation with planning, the neighborhoods have declined to their present, terrible state? And how have we reached a situation in which so many homes of Palestinian residents are under threat of demolition? This study seeks to answer these and many other questions.

The document describes the state of planning, building, and development in the Palestinian neighborhoods of East Jerusalem in the light of decades of Israeli-government demographic and territorial policy. Presenting an historical review of almost fifty years of Israeli planning and development in East Jerusalem, the document includes a survey of the plans drawn up by the Israeli authorities for the Palestinian neighborhoods from 1967 to this day, and demonstrates how this planning has left the neighborhoods with extremely limited prospects for development, in terms both both public infrastructure and private residential construction. Finally, the document presents the obstacles facing the Palestinian residents of East Jerusalem as they try to attain building permits and the way in which planning laws and procedures, which ignore the unique situation of these neighborhoods, leave the residents little choice but to build without building permits and thus to place themselves under the constant threat of demolition orders and actual home demolitions.

