

Mayor Olmert states that he is interested in providing the City's Arab population with services equal to those in the Jewish sector. Olmert believes this can be achieved when the Government of Israel furnishes the Municipality with the full amount requested, 980 million NIS,¹⁵⁹ over a five year period.¹⁶⁰ Unfortunately, from the Mayor's perspective, the various national governments have never made available the full sums requested. Apparently, they expect the Municipality to cope with this problem without much outside help.¹⁶¹

In sum, the Municipality, with limited help from successive national governments, has attempted to close the infrastructure gap between the Arab and Jewish neighborhoods. This effort has achieved only limited local success, in part due to the dispersed, low-density construction patterns common in the Arab sector.

III. Israeli Planning Law and Illegal Building

Israeli planning law differentiates between legal (licensed) and illegal (unlicensed) building. It is helpful to describe the standards and procedures applied throughout Israel, and the controversy that arises when they are applied in the Arab areas of Jerusalem. The nature and scope of illegal construction in Jerusalem is discussed in the following subsections, each of which addresses one of the four primary causes of illegal building: poverty, cultural factors, political factors, and illicit profit.

A. Israeli Planning Law

Planning in Jerusalem began during the three decades of the British Mandate. As in other historic cities, planning schemes must balance preservation against development.¹⁶² From the outset, the objective of the planners was to preserve Jerusalem's special character and flavor.¹⁶³ This is accomplished by dictating the limits of an individual's rights regarding his/her land.¹⁶⁴ Simply put, private rights have to be weighed against public needs.¹⁶⁵ This is true as well in Jewish neighborhoods, where planning is also a protracted endeavor that sometimes takes years.¹⁶⁶ Among the most misunderstood features of the Planning and Building is the requirement that every resident wishing to build (including by constructing permanent additions) must comply with certain standards and obtain a permit. In short, nobody is allowed to build in Jerusalem at will.

The requirement to secure a permit from the planning department is identical in all parts of the City, although enforcement issues vary from neighborhood to neighborhood. These enforcement difficulties, which will be examined below, are manipulated by critics

¹⁵⁹ Interview with Nissim Salomon, Deputy Director General and Head of City Administration of the Jerusalem Municipality, in Jerusalem (Dec 31, 2001).

¹⁶⁰ Interview with Ehud Olmert, Mayor of Jerusalem Municipality, in Jerusalem (Dec. 31, 2001). Elsewhere Olmert claimed that \$500,000,000 U.S. is needed from international bodies and governments to modernize the infrastructure in the Arab neighborhoods. Letter from Ehud Olmert, Mayor of Jerusalem Municipality, to Shimon Peres, Foreign Minister of Israel (Apr. 23, 2001).

¹⁶¹ In an effort to raise outside funds, the Municipality produced a brief informational video aimed at attracting infrastructure capital from foreign sources. The video made it known that the Municipality would cooperate with foreign investors, even from countries that do not have diplomatic relations with Israel. Letter from Ehud Olmert, Mayor of Jerusalem Municipality to Shimon Peres, Foreign Minister of Israel (Apr. 23, 2001). To the best of the Author's knowledge, the video did not achieve its intended objective.

¹⁶² A major consideration in Israeli planning was to provide housing and employment for new immigrants. MERON BENVENISTI, CITY OF STONE: THE HIDDEN HISTORY OF JERUSALEM 141 (1996).

¹⁶³ MERON BENVENISTI, CITY OF STONE: THE HIDDEN HISTORY OF JERUSALEM 138 (1996). Critics have objected to the political *ibid*, financial, ego and aesthetic mistakes, which have been made, none of which are easily or quickly reversible.

¹⁶⁴ MERON BENVENISTI, CITY OF STONE: THE HIDDEN HISTORY OF JERUSALEM 138-39 (1996).

¹⁶⁵ See MERON BENVENISTI, CITY OF STONE: THE HIDDEN HISTORY OF JERUSALEM 138 (1996).

¹⁶⁶ ISRAEL KIMHI, ARAB BUILDING IN JERUSALEM 32 (CAMERA Monograph Series, 1997).

who insist that the Planning and Building Law is aimed at preventing Arab construction¹⁶⁷ and/or at driving the Arabs out of Jerusalem.¹⁶⁸ Had either Mayor Kollek (or Mayor Olmert) run on a platform that endorsed forcing the Arabs out of the City, he (or they) would have deserved to be turned out of office. As Israel Kimhi, the former Municipal City Planner, noted, "paradoxically, the Arab population of Jerusalem and its environs increased more rapidly over the past 30 years¹⁶⁹ under Israeli rule than during any other period in the twentieth century."¹⁷⁰

In 1967 the urban planners were faced with an unusual challenge - how to integrate two different development plans, the Israeli plan which was enacted in 1959 and the Jordanian Plan which had been promulgated by the British prior to 1948. In the Jewish sector there was a long-standing tradition of centralized planning and the bureaucracy was in place to implement the urban plans.¹⁷¹ Meanwhile, in the Arab sector the Jordanian government deliberately hindered Jerusalem's growth and modernization, so as not to rival Amman as a political and economic center.¹⁷² Delaying factors included the absence of essential records in the Jordanian Land Registry Office and difficulty applying urban planning to the newly annexed Arab villages on the periphery of the City.¹⁷³ In the much-changed reality of the unified and expanded City, a new overall master plan was formulated in 1968.¹⁷⁴

A further dilemma grew out of the Arab reluctance to accept the norm by which, in urban areas in Israel (and in other countries as well), a municipality can expropriate up to 40 percent of an individual's private parcel to provide for essential public services such as roads, schools, cultural, and recreational facilities.¹⁷⁵ "This process involves joining together all plots of land in an area, regardless of ownership, and then dividing the aggregate, on a proportional basis vis-à-vis the size of their original holdings, after allocating the required land for public services,"¹⁷⁶ as explained by Uri Bar Shishat, Director of Policy Planning Department of the City Engineer.¹⁷⁷ This process is necessary in order to allow more space for housing units because not all areas in a neighborhood are suitable for construction. Without this process, the full capacity for building permits is not realized. Cognizant of the discomfort such substantial expropriations cause in the Arab sector, Municipal planners encourage the neighbors to reach an agreement on providing land for public infrastructure among themselves.¹⁷⁸

¹⁶⁷ See e.g. IR SHALEM, EAST JERUSALEM; THE CURRENT PLANNING SITUATION: A SURVEY OF MUNICIPAL PLANS AND PLANNING POLICY 57 (n.d.).

¹⁶⁸ See e.g. PALESTINIAN ACADEMIC SOCIETY FOR THE STUDY OF INTERNATIONAL AFFAIRS, THE STRUGGLE FOR JERUSALEM 130 (1996).

¹⁶⁹ This increase may be attributable, in part, to the economic and political instability in the areas governed by the Palestinian Authority. When Arab neighborhoods were reported to be slated for Palestinian Authority control under former Prime Minister Ehud Barak's peace plan, Zuhair Hamdan, a prominent leader of a large family in the Arab neighborhood of Sur Baher, gathered a petition with more than 10,000 signatures of Arabs from Jerusalem who preferred not to be transferred to Arafat's governance in the context of the peace negotiations. Etgar Lefkovits, *Fatah Suspected in Mukhtar's Shooting*, JERUSALEM POST, Oct. 15, 2001, p. 2. Hamdan was shot and critically wounded in September 2001, apparently by members of Arafat's Fatah faction. *Ibid.*

¹⁷⁰ ISRAEL KIMHI, ARAB BUILDING IN JERUSALEM 20 (CAMERA Monograph Series, 1997).

¹⁷¹ MERON BENVENISTI, CITY OF STONE: THE HIDDEN HISTORY OF JERUSALEM 151 (1996).

¹⁷² MERON BENVENISTI, CITY OF STONE: THE HIDDEN HISTORY OF JERUSALEM 152 (1996).

¹⁷³ ISRAEL KIMHI, ARAB BUILDING IN JERUSALEM 28 (CAMERA Monograph Series, 1997).

¹⁷⁴ ISRAEL KIMHI, ARAB BUILDING IN JERUSALEM 28-29 (CAMERA Monograph Series, 1997).

¹⁷⁵ Planning and Building Law (1965), 19 Laws of the State of Israel 330, art. 188-198, as amended. This Israeli law was based on the British Mandatory law on expropriations. Order for Land Expropriation (For Public Needs), British Mandatory Government in Palestine, 1943.

¹⁷⁶ Interview with Uri Bar Shishat, Director of Policy Planning Department of City Engineer of Jerusalem Municipality of the Jerusalem Municipality, in Jerusalem (Nov. 25, 2001).

¹⁷⁷ Interview with Uri Bar Shishat, Director of the Policy Planning Department of City Engineer of the Jerusalem Municipality, in Jerusalem (Nov. 25, 2001).

¹⁷⁸ Interview with Uri Bar Shishat, Director of Policy Planning Department of City Engineer of Jerusalem Municipality, in Jerusalem (Nov. 25, 2001).

One frequently cited reason for illegal building is the reluctance of landowners to agree to the process of unification and reparceling.¹⁷⁹ NGOs¹⁸⁰ have frequently complained that the Arab sector does not have an adequate number of housing units. They blame, *inter alia*, the complications of applying urban planning measures to the Arab neighborhoods. According to Hasib Nashashibi, Project Coordinator at the Palestinian Society for the Protection of Human Rights and the Environment, a Palestinian rights organization,¹⁸¹ most of the plots are owned by individuals that inherited their land. This problem arises from the fact that these owners are extremely reluctant to trade away their specific plots.¹⁸² In order to complete the process of unification and reparceling the land has to be re-divided. It is extremely difficult to achieve general agreement among the landowners, and the process is often delayed when objections are raised. The effect of this problem is most evident in the detailed planning schemes for the Arab neighborhoods of Beit Hanina and Shoafat.¹⁸³ Together these schemes have a capacity to issue 13,600 permits for living units. Currently though, it is only possible to extract approximately 7,100 living units from them due to the need, in some areas, for unification and reparceling.¹⁸⁴ Upon completing the unification and reparceling process it will be possible to approve another approximately 6,500 units. Currently, the Municipality is making an enormous effort to settle the conflicting claims of landowners and complete this process.¹⁸⁵ Bar Shishat recently informed this author that an additional 2,400 housing units have been available for licensing in these two areas.¹⁸⁶ His colleague Charles Kohn has further informed this author that an across-the-board increase of approximately 25-30 percent in the building percentages (the percentage of interior floor space relative to the size of the plot) has begun to be applied in most of the Arab neighborhoods.¹⁸⁷ This will enable thousands of additional units to be built legally.

According to Shaul Ben Shaul, Director of City Planning Department, the law does not require the Jerusalem Municipality to carry out the process of unification and reparceling. Nusseibeh acknowledged this point.¹⁸⁸ Ben Shaul further stated that no other municipal authority in Israel has taken upon itself this difficult task. Nevertheless, the Jerusalem Municipality undertook the challenge of overcoming this bottleneck building permit applications.

An added element that stymies land development derives from Arab attitudes toward real property. In Jewish neighborhoods land is thought of as an asset that can be sold to someone who will develop it. By contrast, Arab culture is more connected to the land, and landowners are very reluctant to part with their land, even if the City needs it for the neighborhood's infrastructure.¹⁸⁹

¹⁷⁹ Interview with Adv. Daniel Seidemann, Director of the Pro-Jerusalem Society (In the Name of Sir Ronald Storrs), in Jerusalem (Dec. 3, 2001). The Pro-Jerusalem Society describes itself as working to create a status quo between the Jewish and Arab sectors in Jerusalem. It is not clear what this means. Normally, when referring to a "status quo," the effort is aimed at preserving it, not creating it.

¹⁸⁰ See, e.g., IR SHALEM, EAST JERUSALEM THE CURRENT PLANNING SITUATION 9-16 (1997).

¹⁸¹ Telephone interview with Hasib Nashashibi, Project Coordinator for LAW (A Palestinian Human Rights Organization), in Jerusalem (Dec 12, 2001).

¹⁸² See ABRAHAM RABINOVICH, JERUSALEM ON EARTH 122 (1988).

¹⁸³ See plans numbered 3456a and 3458a and 3457a.

¹⁸⁴ Telephone interview with Shaul Ben Shaul, Director of City Planning Department of Jerusalem Municipality, in Jerusalem, (Dec. 27, 2001). When questioned regarding the delays resulting from the process of unification and reparceling, which are a consequence of intra-Palestinian bickering, Nusseibeh nodded in acknowledgement that the delays were not the fault of the Municipality. Interview with Dr. Sari Nusseibeh, President of Al Quds University and Palestinian Authority Political Commissioner for Jerusalem Affairs, in Jerusalem (Jan. 30, 2002).

¹⁸⁵ Telephone interview with Shaul Ben Shaul, Director of City Planning Department of Jerusalem Municipality, in Jerusalem, (Dec. 27, 2001).

¹⁸⁶ Interviews with Uri Bar Shishat, Director of the Policy Planning Department of City Engineer of the Jerusalem Municipality, in Jerusalem (May, 23, 2001; June 3, 2002). These additional units are too new to have been reflected on Appendices 1 and 2.

¹⁸⁷ Interview with Charles Kohn, Principal Planner in Policy Planning Department of Jerusalem Municipality, in Jerusalem (June 3, 2002). Different zones exist in which varying density construction is permitted, ranging from approximately 30 to 120 percent. The lower density zones are typically those where the planners seek to preserve the historic character of a neighborhood. *Ibid.*

¹⁸⁸ Interview with Dr. Sari Nusseibeh, President of Al Quds University and Palestinian Authority Political Commissioner for Jerusalem Affairs, in Jerusalem (Jan. 30, 2002).

¹⁸⁹ See ABRAHAM RABINOVICH, JERUSALEM ON EARTH 122-23 (1988).

To further complicate matters, land ownership was highly fragmented and even chaotic in the Arab villages that were annexed to Jerusalem. It was difficult to make sense of competing ownership claims. For example, many grandsons of a deceased landowner (some of whom may be abroad or otherwise unreachable) might have rival claims against some (or all) of the others. In such circumstances the City had no choice but to initiate the process of unification and reparceling.¹⁹⁰ This process can be quite difficult and protracted, given the reluctance of many Arab landowners to exchange their particular parcels of land for others that belong to their neighbors.¹⁹¹ This aversion exists even where the result would, from a planning perspective, be for the perceived benefit of all.

Promulgating urban plans hinged on these and other factors, such as the need to prepare detailed plans for the Arab sector, a task which the City was initially unequipped to do in the post-1967 era. Simultaneously the pace of Arab construction accelerated, often by builders without permits.¹⁹² The City, in recognition of their predicament, modified its procedures for dealing with illegal construction, to avoid making them law-breakers.¹⁹³ Relying on obscure sections in the Planning and Building Law, the City granted building permits piecemeal while the plans were still being formulated, in those areas where the proposed building would not harm the overall planning.¹⁹⁴ The City has even, at various times, ignored unlicensed, random Arab building, despite its highly problematic impact on constructing an infrastructure and providing Municipal services.¹⁹⁵ The planners knew, as a Catch 22, that the more time that passed before each urban plan was approved, the greater the risk that haphazard, illegal structures would be erected in the meantime, thereby mortgaging the usefulness of a plan even before it was finalized.

To understand how urban plans are created in Jerusalem, it is necessary to look at the overall tiered structure that is formulated in the Planning and Building Law, as amended. There are four levels of plans. The overall plan is known as the 'national outline scheme.' Its function is to lay down the planning for the whole of the area of the State.¹⁹⁶ The next level of planning is known as the 'district outline scheme.' Its object is to determine details necessary for the implementation of the national outline scheme in each district and any matters of general importance to the district.¹⁹⁷ The third level of planning is known as the 'local outline scheme.' Its purpose is to monitor the development of land within the local planning area, while safeguarding the assignment of agricultural purposes to suitable lands. This scheme is also intended "to ensure appropriate conditions from the viewpoint of health, sanitation, cleanliness, safety, security, transport, and convenience, and to abate nuisances, including the setting aside zones for residential, industrial, and commercial purposes."¹⁹⁸ The fourth level of planning - and the one of interest for this Study - is known as the 'detailed scheme.' The detailed scheme specifies which land can be used for residential construction and what is set aside for other uses. It also details the maximum height, setbacks, and building percentages in residential construction.¹⁹⁹ When

¹⁹⁰ 'Reparceling' is also known as 'repartition.' ISRAEL KIMHI, ARAB BUILDING IN JERUSALEM 28-29 (CAMERA Monograph Series, 1997).

¹⁹¹ See ABRAHAM RABINOVICH, JERUSALEM ON EARTH 122-23 (1988).

¹⁹² ISRAEL KIMHI, ARAB BUILDING IN JERUSALEM 29 (CAMERA Monograph Series, 1997). Between 1971 and 1994 permits for 1.1 million square-meters of residential construction were issued to Arab residents by the municipality. During the same period, the ultra-Orthodox Jewish population, roughly the same in number, received permits for only 954,000 square-meters of construction. ISRAEL KIMHI, ARAB BUILDING IN JERUSALEM 32 (CAMERA Monograph Series, 1997).

¹⁹³ ISRAEL KIMHI, ARAB BUILDING IN JERUSALEM 29 (CAMERA Monograph Series, 1997).

¹⁹⁴ ISRAEL KIMHI, ARAB BUILDING IN JERUSALEM 29-30 (CAMERA Monograph Series, 1997).

¹⁹⁵ ISRAEL KIMHI, ARAB BUILDING IN JERUSALEM 31 (CAMERA Monograph Series, 1997).

¹⁹⁶ Planning and Building Law (1965), 19 Laws of the State of Israel 330, 342-43 art. 49, as amended.

¹⁹⁷ Planning and Building Law (1965), 19 Laws of the State of Israel 330, 344, art. 57, as amended.

¹⁹⁸ Planning and Building Law (1965), 19 Laws of the State of Israel 330 345-47, art. 61 (1), (2), as amended.

¹⁹⁹ Interview with Uri Bar Shishat, Director of Policy Planning Department of City Engineer of Jerusalem Municipality, in Jerusalem (Dec. 17, 2001).

the local outline scheme does not have appropriate provisions, a detailed scheme may specify provisions as to the following matters:

- 1) the division of land into plots or building sites, the shape of such building sites and the length of the frontage thereof;
- 2) the assignment of land for roads, open spaces, gardens, schools, places for religious, welfare, health, cultural, assembly, recreational and sports purposes, public parking areas, public air raid shelters and refuges, or other public purposes; ...
- 5) the protection of places, structures, and other things of national, religious, historical, archeological, scientific, or aesthetic importance;
- 6) the demolition or rehabilitation of dilapidated buildings which constitute a danger to life or are unfit for habitation for health reasons;
- 7) the rehabilitation of buildings in overpopulated areas or in areas where any additional building may, in the opinion of the Local Commission, lead to excessive population density or building density, and the attachment of special conditions to building permits for such areas; and
- 8) the allocation of land to the owner of any land, or a person having a right in any land, whose rights have been adversely affected by the implementation of the scheme.²⁰⁰

Planning is done in accordance with an area's zoning designation (residential, agricultural, commercial, historic, etc.), its current infrastructure, and projected requirements in light of expected population growth. Planning also allocates land for roads and highways, open spaces, health care facilities, educational institutions, water supply, drainage, sewage, recreation, culture, and its integration into the surrounding region. Municipal planners pride themselves on taking into consideration the interests of all sectors of the population in drawing up urban plans. They advertise their draft plans in the Arabic and Hebrew press, thereby enabling members of the public to raise objections in a timely fashion.²⁰¹ They initiate negotiations, which are often protracted, in an attempt to respect the preferences of the residents (Arab or Jewish) of the relevant neighborhood.²⁰²

Before a permit to construct a building can be issued by the Municipality, Israeli law requires approval of a statutory plan by the Jerusalem District Authority.²⁰³ A statutory plan includes the third and fourth levels of planning mentioned above. An 'urban plan' refers specifically to the third tier of planning (local outline scheme). The colloquial term 'urban planning' refers generally to the collective impact of the various levels of planning within a particular area.²⁰⁴

The above mentioned four tiers of planning were enacted by the Knesset. The planners in Israel, and in Jerusalem in particular, have adopted the thesis of Dutch Professor Andreas Faludi,²⁰⁵ relating to the importance of preserving open space. This planning

²⁰⁰ Planning and Building Law (1965), 19 Laws of the State of Israel 330 347-48, art. 69 (1), (2), (5), (6), (7), (8), as amended.

²⁰¹ Planning and Building Law (1965), 19 Laws of the State of Israel 330, art. 100-08 as amended.

²⁰² Interview with Uri Bar Shishat, Director of Policy Planning Department of City Engineer of Jerusalem Municipality, in Jerusalem (Nov. 25, 2001).

²⁰³ Interview with Uri Bar Shishat, Director of Policy Planning Department of City Engineer of Jerusalem Municipality, in Jerusalem (Oct. 28, 2002).

²⁰⁴ Interview with Uri Bar Shishat, Director of Policy Planning Department of City Engineer of Jerusalem Municipality, in Jerusalem (Oct. 28, 2002).

²⁰⁵ See A READER IN PLANNING THEORY (Andreas Faludi, ed., 1973); Interview with Uri Bar Shishat, Director of the Policy Planning Department of City Engineer of the Jerusalem Municipality, in Jerusalem (Nov. 25, 2001).

doctrine is acutely sensitive to the scarcity of land,²⁰⁶ and seeks to contain urban sprawl.²⁰⁷ The impact of Faludi's doctrine can be seen in the most recent national outline scheme, which states that "89 percent of the country's land shall be defined as...set aside for preservation."²⁰⁸ Significantly, Faludi's views are shared by leading town planners in other countries as well.²⁰⁹ Higher density development in the country's urban areas, including Jerusalem, is the inevitable consequence, and planning is the vehicle by which it can be achieved.²¹⁰ Planning, however, becomes meaningless if the standards are not enforced.

B. The Character of Illegal Building in Jerusalem's Jewish Neighborhoods

At the outset it must be stated that there is a widespread disrespect for the building laws, among both the Jewish and Arab populations. Those who build illegally are frequently up-front as to their intention to violate the law. Israelis often view people who request a building permit, or who abide by building limitations (e.g., as to the number of square-meters they may build) as fools who are incapable of looking out for their own interests. It has become, in this author's opinion, virtually a societal norm to cheat on these matters.

Illegal construction is widespread in the Jewish neighborhoods of Jerusalem.²¹¹ However, it typically involves making minor improvements or additions to existing, legal structures by the owner of the apartment. Examples of what might be called 'routine' illegal building include constructing a pergola, turning a parking space into a storeroom, affixing an air conditioner to the outside of a building, enclosing a balcony to make an additional bedroom, digging underground to create an extra room or building a room under the eaves of the roof. If done without a permit, all of these permanent modifications violate the law and legally speaking, constitute the basis for commencing enforcement measures, up to and including demolitions.²¹² That said, they differ in character from the distinctive types of illegal building in the Arab neighborhoods.

C. Identified Causes of Illegal Building in Jerusalem's Arab Neighborhoods

Illegal building in the Arab neighborhoods of Jerusalem differs in quality from that discussed in subsection B above. It often takes the form of complete buildings, frequently constructed on the land that is not owned by the builder,²¹³ such as land that is classified as

²⁰⁶ Principles of Planning Doctrine Since 1992, National Outline Plan, para. 2.8, p. 474.

²⁰⁷ Principles of Planning Doctrine Since 1992, National Outline Plan, para. 2.8, p. 474.

²⁰⁸ Shamai Assif, Arie Shachar, et. al., *Combined National Outline Plan for Building*, PLANNING AND PRESERVATION 35, Feb. 2002, p. 8.

²⁰⁹ See e.g., Final Report of the Urban Task Force Chaired by Lord Rodgers of Riverside, TOWARDS AN URBAN RENAISSANCE 7 (1999). For example, a leading English authority addressed the dilemma of how to build 4 million residential units in England over the next 25 years without creating urban sprawl. He stated:

Building more than 40 percent of new housing on greenfield sites [green areas] is both unsustainable and unacceptable. It will lead to further erosion of the countryside. It will also increase traffic congestion and air pollution, accelerate the depletion of natural resources, damage biodiversity, and increase social deprivation within our towns and cities.

Final Report of the Urban Task Force Chaired by Lord Rodgers of Riverside, TOWARDS AN URBAN RENAISSANCE 7 (1999).

²¹⁰ Arie Shachar, *Reshaping the Map of Israel: A New National Planning Doctrine*, THE ANNALS OF THE AMERICAN ACADEMY, Jan. 1998, pp. 209, 213.

²¹¹ Some Jewish ethnic minorities have also claimed that the Planning and Building Law (1965) is enforced in a discriminatory fashion against them. See Avigail Gutman, *Where Black, They're White*, JERUSALEM POST, July 20, 1990; Planning Policy, the Jerusalem Municipality Department for Planning Policy, Inter-Ministerial Committee on Illegal Building, Background, Summary, p. 4 (2000).

²¹² Among the recently demolished structures in Jewish neighborhoods were a 35-square-meter add-on to a top floor apartment in Har Homa and a 53-square-meter addition to a restaurant in Malcha. Maya Jaffe, *Four Houses Destroyed in Negev*, JERUSALEM POST, July 3, 2002 at 3. The author observed the demolition of a foundation built on land designated for a road (Appendix 3, image 65) and of illegally built stairs and cement platform (Appendix 3, image 60), both in Jewish neighborhoods. In addition, in Pisgat Ze'ev the Municipality demolished an illegal extension to a synagogue. Appendix 3, image 63.

²¹³ By contrast, considerably more than 50 percent of the new housing built by the Jewish sector from 1967 to 1985 consisted of government-sponsored and subsidized large-scale public housing projects. MICHAEL ROMANN & ALEX WEINGROD, LIVING TOGETHER SEPARATELY: ARABS AND JEWS IN CONTEMPORARY JERUSALEM 59 (1991).

'brown,' or 'red' areas on the planning schemes.²¹⁴ 'Brown areas' are those designated for public services of all kinds. This includes social services, community centers, schools, public parks, religious buildings, etc.²¹⁵ Streets, roadbeds, highways, and parking places are designated as 'red areas' on planners' maps.²¹⁶ In the Arab sector the imbroglio of illegal building even extends to illegal structures erected on the roadbed of the Eastern Ring Road.²¹⁷

'Green' areas are those designated on planning schemes as open space and distinct from areas which are intended for residential use. They are designated for trees, footpaths, plants, crops, etc. They can also be completely empty.²¹⁸ Either way, land is preserved for use by future generations, should they see fit to re-categorize it in a new or amended plan.²¹⁹

Not infrequently the illegal structures in Arab areas are designed without the input of a licensed architect or engineer. Such buildings likely fail to meet the standard safety codes, thereby presenting a danger to the inhabitants, visitors, and neighbors. Buildings that do not meet code present an ongoing risk. The tragic consequences that may ensue from apparently sub-standard construction techniques vary, but include the collapse of the Versailles Banquet Hall, in a commercial/industrial zone of Jerusalem, in which 23 wedding guests were killed and 356 were injured. This disaster offers a suggestion of what is at stake.²²⁰ Death and injury on an even larger scale could result should the predicted earthquake strike,²²¹ or in the event of shellfire or bombing. In addition, such illegal structures typically lack the required parking spaces. They may not be set back from the road or from buildings on the neighboring plots.²²² Nor are they connected to sewage lines (where they exist.)²²³ None of the customary taxes and fees, that are ordinarily charged by the Municipality when it grants a building permit, have been paid.²²⁴ Thus, by cutting many corners, the builder can still turn a profit, even if he/she rents or sells the unit for a small percentage of what the landlord or owner of a licensed structure would charge.²²⁵

²¹⁴ This is *not* to say that the Arab residents of Jerusalem are any more predisposed to illegal acts than the Jews, but rather that in the circumstances, the *nature* of illegal construction typically differs in their respective neighborhoods. This fact, however one may seek to explain or excuse it, was repeated time and time again by persons interviewed for this Study, regardless of their ethnicity and political viewpoint.

²¹⁵ Interview with Uri Bar Shishat, Director of Policy Planning Department of City Engineer of Jerusalem Municipality, in Jerusalem (Nov. 25, 2001).

²¹⁶ Interview with Shalom Goldstein, Advisor to Mayor of Jerusalem Municipality for East Jerusalem Affairs, in Jerusalem (Dec. 6, 2001).

²¹⁷ Thus far, such illegal structures have been demolished. Concerns exist that builders might encroach on the byway for the light rail system that the Municipality has begun to build. Can the City afford to look the other way if its mass-transit system is blocked by illegal construction?

²¹⁸ Previously, permits to build on 'open view' land (i.e., green belt, protected valleys) were seldom granted. The City Engineer's Department has begun a process aimed at liberalizing the rules on this matter that will, *inter alia*, make it easier to get building permits in certain Arab neighborhoods. The parameters will enable the Municipality to grant building permits on open view land. Interviews with Uri Bar Shishat, Director of Policy Planning Department of City Engineer of Jerusalem Municipality, in Jerusalem (Apr. 21, 2002; June 3, 2002).

As regards a request to build on open view land areas, Bar Shishat proposes that a number of factors be considered as regards the proposed structure: a) it must be located close to an area where legal housing exists; b) it must not interfere with the view of the Old City; c) the area proposed for construction must have enough land suitable for building on; d) public services should be available (or potential) for the proposed construction site; e) attention will be given to the number of living units in the proposed plan; f) consideration will be given to whether it comports with the open space system in Jerusalem; g) attention will be given to its location in relative to the urban and national infrastructure; h) consideration will be given to the local topography of the site as regards its depth; i) whether access is available within the plan will be examined; and j) a request for constructing a new building will be regarded differently from requests to add to already existing structures. Jerusalem Municipality, The Department of Policy Planning, Policy Document, Residential Building in the Eastern Part of the City First Stage (Mar. 4, 2002).

²¹⁹ See MERON BENVENISTI, *CITY OF STONE: THE HIDDEN HISTORY OF JERUSALEM* 165 (1996).

²²⁰ Dan Izenberg, *Pal-Kal Inventor Eli Ron Denies Responsibility at Versailles Hall Trail*, JERUSALEM POST, Oct. 10, 2002 at 4.

²²¹ Seismologists have warned that Israel may be overdue for a major earthquake. Shmuel Marco of the Israeli Geographical Institute stated that every city in Israel has been struck by 3 to 5 major earthquakes in the last 2000 years. He further noted that Israel is located along a major earthquake fault line called the Dead Sea Rift. No byline, ARTIFAX, available at the Internet Website of the Archaeology News Digest, Autumn 1999 (visited Oct. 12, 2002) <<http://www.msn.fullfeed.com/~scribe/digest19994.htm>>.

²²² See ABRAHAM RABINOVICH, *JERUSALEM ON EARTH* 122 (1988).

²²³ Telephone interview with Israel Ben-Ari, Deputy Manager of Licensing and Inspection Department of Jerusalem Municipality, in Jerusalem (Dec. 6, 2001).

²²⁴ Interview with Adrian Goldstein, Deputy Manager of Licensing Department of Jerusalem Municipality, in Jerusalem (Dec. 6, 2001).

²²⁵ Interview with Shalom Goldstein, Advisor to Mayor of Jerusalem Municipality for East Jerusalem Affairs, in Jerusalem (Jan. 10, 2002).

The two following subsections address the commonly recognized causes for illegal building: poverty and cultural factors.

1. Poverty

Poverty is often identified as the (or at least a) leading cause of illegal building in the Arab sector. This understanding is not *per se* false, although the role of poverty as a cause for illegal construction is often exaggerated. In actuality, economic distress is more of a factor in some of the poorer southern Arab neighborhoods of Jerusalem than in the more affluent north. In fact, in driving around the Arab neighborhoods of northern Jerusalem, principally Beit Hanina, Shoafat, and Isawiya, this author was impressed by the hundreds of nearly completed, yet uninhabited, upscale apartments that dot the landscape.²²⁶ These apartments were never intended to house the homeless or indigent. Many of these vacant apartments have remained uninhabited for years, a curious phenomenon if, as the NGOs frequently complain, there is a chronic shortage of housing in the Arab sector.²²⁷ Thus, a better understanding of the forces in play is that many of these structures, particularly the upscale ones, were built to sell or rent.

Mixed motives frequently underlie the expansive illegal construction in Arab neighborhoods. Thus, a builder might simultaneously hope to improve his standing in society by furthering the Palestinian struggle for control of Jerusalem while, in parallel, increasing his own holdings. In addition, he could receive subsidies from (or through) the Palestinian Authority while simultaneously blocking Jewish expansion, and encroaching on Israeli-built roads or structures. Some or all of these motives, as well as the expectation of compensated via the Palestinian Authority in the event their structure(s) are demolished, serve as an engine for illegal building in the Arab sector of Jerusalem.

A 1997 study prepared by Israel Kimhi, the former Municipal City Planner of Jerusalem, revealed that since 1967 Arab building in Jerusalem has outpaced Jewish construction.²²⁸ This conclusion was based on an examination of Municipal tax records and corroborated by aerial photographs.²²⁹ According to Uri Bar Shishat, the Director of Policy Planning Department of the City Engineer, this remains true in 2002.²³⁰ Since the Oslo peace process began in 1993, despite the economic problems of the City's Arab residents, the pace of Arab construction in Jerusalem has not been markedly reduced. This can be readily observed by comparing the aerial photographs of various neighborhoods from 1992 with those of 2000 in Appendix 4. Thus, despite the fact that many Arab Jerusalemites are struggling financially, their plight has not kept other Arabs from building at a rapid pace. In the opinion of this author, economic hardship is not one of the two major reasons many Arabs of means build illegally.

²²⁶ See e.g. Appendix 3 images 6, 7, 10, 14, 15, 45, 47 and 58.

²²⁷ ISRAEL KIMHI, ARAB BUILDING IN JERUSALEM 17 (CAMERA Monograph Series, 1997).

²²⁸ ISRAEL KIMHI, ARAB BUILDING IN JERUSALEM (CAMERA Monograph Series, 1997) p. 7.

²²⁹ Aerial photographs demonstrate the dramatic expansion of Arab housing since 1967. See Appendix 4. Moreover, during the period 1974-1995 permits have been issued to Arabs at a rate similar to that for a demographically similar Jewish sector - the Ultra-Orthodox. ISRAEL KIMHI, ARAB BUILDING IN JERUSALEM (CAMERA Monograph Series, 1997) p. 7. The ultra-Orthodox Jews, like the Arabs, tend to have large families and a below-average family income. Interview with Uri Bar Shishat, Director of Policy Planning Department of City Engineer of Jerusalem Municipality, in Jerusalem (Nov. 25, 2001).

²³⁰ Interview with Uri Bar Shishat, Director of Policy Planning Department of City Engineer of Jerusalem Municipality, in Jerusalem (Nov. 25, 2001). Ir Shalem reaches the opposite conclusion by citing statistics from the Statistical Yearbook of Jerusalem. Ir Shalem report, East Jerusalem - The Current Planning Situation: A Survey of Municipal Plans and Planning Policy, n.d. Although superficially convincing, the editor of the Yearbook believes that there is no accurate way to measure the living units (or interior space thereof) in areas where no *amona* statistics exist, i.e., the refugee camps of Shoafat and (the relevant part of) Kalandia. Telephone interview with Maya Choshen, editor of STATISTICAL YEARBOOK OF JERUSALEM: 2000, in Jerusalem (June 24, 2002). The population of the Shoafat Refugee Camp has variously been estimated at 30,000 (see. e.g., Al Haq, *Al-Haq Condemns Israel's Demolition of 14 Homes in Shu'afat Refugee Camp*, July 9, 2001, available at Internet Website of Alternative Information Center (visited May 23, 2002) <<http://www.alternativenews.org>>) and 10,000 (interview with Shalom Goldstein, Advisor to Mayor of Jerusalem Municipality for East Jerusalem Affairs, in Jerusalem (Apr. 15, 2002)). It would therefore appear that if the population is estimated, but not the interior space in their living units, the result for the Arab sector as a whole are likely to be skewed in a manner that suggests greater crowding than actually exists.

2. Cultural Factors

Cultural factors are frequently cited as objective difficulties that impede legal building in Jerusalem's Arab sector. These cultural factors include:

- the market for land is not fully governed by the law of supply and demand; i.e., much Arab-owned land is not for sale (at any realistic price);²³¹
- Arab culture encourages handing land down to one's son(s), rather than developing its economic potential by building on it;²³²
- Arab culture generally prefers holding on to the particular plot that has been in the family for generations, even if it is not accessible or suitable for building, rather than exchanging it for nearby land via unification and reparceling;²³³
- Arab culture frequently resists compliance with unification and reparceling because it means turning over 40 percent of the family plot for the infrastructure needs of the entire neighborhood (i.e., schools, hospitals, roads, clinics, sewage, drainage, water treatment, etc.);²³⁴
- many absentee land owners are difficult if not impossible to locate,²³⁵ making it more difficult to legally acquire significant parcels of land for large scale development, which, in turn, encourages criminal elements to seize land and build on it illegally;
- Arab society has traditionally preferred village-style housing (low-density with few multi-story buildings), however, in recent years the attitudes of Arabs residing in Jerusalem have begun to evolve as more and more families move to taller buildings containing a number of apartments;²³⁶ and
- Arab culture (seen in various Arab countries as well) prefers to live with, or near to, the extended family, which causes them to spread out on land to enable members of an extended family to live proximate to each other.²³⁷

Without dismissing the cumulative effect of these cultural factors, it is worth noting that Arab norms of land use are changing. For example, in recent years building in Jerusalem has evolved from low-density, village-style construction (single or two-family homes) to taller buildings containing several or even dozens of apartments.²³⁸ In the opinion

²³¹ MERON BENVENISTI, *CITY OF STONE: THE HIDDEN HISTORY OF JERUSALEM* 166 (1996).

²³² In Arab areas there is less of an attitude of entrepreneurship vis-à-vis land assets - they are less interested in developing what they own, often preferring to live in a one-story villa surrounded by large expanses of open land on all sides. Often wealthy Arab landowners do not exploit their empty land, except when they need to build a residence for a family member. This causes enormous problems for the planning authorities, as the land market (almost) does not work according to the law of supply and demand. Likewise institutions, such as the Waqf, will ordinarily not sell the land they hold. Interview with Z. Uri Ullmann, Director of Division for Strategic Planning and Research of Jerusalem Municipality, in Jerusalem (Oct. 31, 2001).

²³³ Getting the various owners to agree on unification and reparceling is difficult even in Jerusalem's Jewish neighborhoods. Owners who are dissatisfied with the land they are offered often lodge objections, which delays the entire process. Interview with Z. Uri Ullmann, Director of Division for Strategic Planning and Research of Jerusalem Municipality, in Jerusalem (Oct. 31, 2001); See ABRAHAM RABINOVICH, *JERUSALEM ON EARTH* 123 (1988).

²³⁴ MICHAEL ROMANN & ALEX WEINGROD, *LIVING TOGETHER SEPARATELY: ARABS AND JEWS IN CONTEMPORARY JERUSALEM* 47 (1991).

²³⁵ If the Municipality does not know to whom land belongs, it complicates efforts to proceed with the process of unification and reparceling. Interview with Z. Uri Ullmann, Director of Division for Strategic Planning and Research of Jerusalem Municipality, in Jerusalem (Nov. 25, 2001).

²³⁶ Interview with Yossi Cohen, Mayor's Advisor for Neighborhoods of Jerusalem Municipality, in Jerusalem (Nov. 26, 2001).

²³⁷ Interview with Nissim Salomon, Deputy Director General and Head of City Administration of Jerusalem Municipality, in Jerusalem (Dec 31, 2001).

²³⁸ ISRAEL KIMHI, *ARAB BUILDING IN JERUSALEM* 16 (CAMERA Monograph Series, 1997).

of this author, while some of the above-mentioned cultural factors remain significant, their weight, relative to other causes of illegal building in the Arab sector of Jerusalem, is tertiary. By contrast, the two dominant, but less known, causes for illegal building in Arab neighborhoods will be discussed in Section V. C and D of this Study below. They are the effort of the Palestinian Authority to create facts on the ground to gain political leverage, and simple criminal avarice.

D. Discrimination in Enforcement

When an Arab resident of the City builds a home illegally in a 'green area' (on land that is designated as agricultural or open land), it might be argued something along the line, "The land belongs to him. Their culture has traditionally favored dispersed, low-density housing. Why not just issue him a permit retroactively?" The problem with this approach is that it ignores two important considerations. First, the preservation of green areas serves the interests of future generations of Jerusalemites by preserving open land to meet their needs.²³⁹ Second, repeated on a large scale, building individual structures illegally on green areas dramatically increases Municipal expenditures bringing electricity, water, roads, sidewalks, parking, etc. to the dispersed entrances of these living units. Yet, if the City does not connect such a living unit to public services, the resident who built or purchased it, can claim that he is being discriminated against. The delivery of public services is more affordable if the newly constructed living units comply with the density built into today's urban plans.²⁴⁰

It is frequently alleged that Municipality's enforcement of the Planning and Building Law is discriminatory because, although there are thousands of violations in the Jewish areas, demolition is used more frequently in the Arab neighborhoods. These allegations are based on a disingenuous manipulation of statistical data. Such assertions ignore the critical difference, which typifies the types of violations in the two sectors. In the Jewish sector the violations are generally minor, such as enclosing a balcony without a permit.²⁴¹ In the Arab sector, many of the violations are major, like constructing a multi-story building on public property. Such severe violations cannot be retroactively rectified by payment of a fine and are likely to end up as a demolition cases. Fifty percent of the building violations in the Arab neighborhoods come to the City's attention when neighbors, who have been adversely affected by the illegal building, lodge complaints.²⁴² These law-abiding residents deserve to have their rights protected by the Municipality.

The Municipality convincingly asserts that it has no interest in turning this into a political issue. When, for example, extra rooms are added onto Arab-owned houses in

²³⁹ An interesting topic for further research and analysis is the relevance of the environmental ethics to unregulated, illegal construction in the Arab areas of Jerusalem. Garrett Hardin's famous essay, "The Tragedy of the Commons," reasons:

Picture a pasture open to all. It is to be expected that each herdsman will try to keep as many cattle as possible on the commons. Such an arrangement may work reasonably satisfactorily for centuries because tribal wars, poaching, and disease keep the numbers of both man and beast well below the carrying capacity of the land. Finally, however, comes the day of reckoning, that is, the day when the long-desired goal of social stability becomes a reality. At this point, the inherent logic of the commons remorselessly generates a tragedy. ... The rational herdsman concludes that the only sensible course for him is to pursue is to add another animal to his herd. And another.... But this is the conclusion reached by each and every rational herdsman sharing a commons. Therein is the tragedy. Each man is locked into a system that compels him to increase his herd without limit - in a world that is limited. Ruin is the destination toward which all men rush, each pursuing his own best interest in a society that believes in the freedom of the commons. Freedom in a commons brings ruin to all.

GARRETT HARDIN & SCIPIO GARLING, *THE IMMIGRATION DILEMMA: AVOIDING THE TRAGEDY OF THE COMMONS* (1995). The norm, massive illegal building in the Arab areas, presents a similar environmental catastrophe in the making, as the finite resource of land is being exhausted.

²⁴⁰ See Appendix 5; Interview of Uri Lupolianski, Senior Deputy Mayor and Acting Mayor of Jerusalem Municipality, in Jerusalem (Jan. 31, 2002).

²⁴¹ One noteworthy exception was the recent indictment of nine people on charges of manslaughter and negligence arising out of the deadly collapse of the Versailles banquet hall. Etgar Lefkowitz, *Victims' Families Unhappy with Versailles Indictments*, JERUSALEM POST, Aug. 14, 2002, p. 2.

²⁴² Interview of Uri Lupolianski, Senior Deputy Mayor and Acting Mayor of Jerusalem Municipality, in Jerusalem (Jan. 31, 2002). *Ibid.*

Silwan, to accommodate for family growth, the City tends to look the other way.²⁴³ Furthermore, according to Senior Deputy Mayor Uri Lupolianski, the City is keenly aware of the way in which demolitions of structures (in the Arab sector) is viewed internationally. In addition, the City incurs expenses that average 50,000 to 60,000 NIS (approximately \$10,000 to \$12,000 U.S.) in demolishing a structure in the Arab neighborhoods of Jerusalem. Unusually difficult demolitions, requiring hundreds of soldiers or policemen to provide security, can cost the City as much as 500,000 NIS.²⁴⁴ These sums are absorbed by the City, and not charged to the illegal builder.²⁴⁵ For these reasons every effort is made to avoid the necessity of demolition, but, in the words of Lupolianski, "we must, for professional planning reasons alone, prevent the City from becoming a jungle."²⁴⁶

In order to prevent the carrying out of the administrative demolition order, which by statute is not permitted if someone is residing in the structure for more than thirty days, sometimes a woman and her children who have never lived there will be quickly moved in. They provide emotional impact for the media during the demolition.²⁴⁷ This constitutes a transparent effort by the NGOs to piggyback on the supposed suffering of children. This author is referring to the final paragraph of the "Sample Letter" of protest that the Israeli Committee on Home Demolitions urged its followers to send to the Israeli Defense Minister and the Israeli Ambassador to the United Nations.²⁴⁸ It reads:

...the terrible suffering which your policy of house demolitions creates - how many Palestinian infants and children will be forced to live in tents this winter? How many will be ill, might die for lack of proper shelter?²⁴⁹

The specter of the City forcing children out of their demolished home and into a tent is cheap political propaganda. According to the City official responsible for carrying demolitions, if the residents of a structure that is demolished by court order choose to move to a tent they are likely doing so for political reasons, i.e., as a form of street theatre.²⁵⁰ It merits repetition to remind the reader that administrative demolitions are, by City policy, carried out before anyone moves into the structure.²⁵¹ Even if someone does manage to move in before the demolition can be carried out, the City cannot proceed to an administrative demolition if they have occupied the residence for more than 30 days.²⁵²

Lupolianski insists that the Municipality's general approach to its Arab residents is not to interfere with their existing lifestyle preferences. As a consequence, many of the

²⁴³ Interview of Uri Lupolianski, Senior Deputy Mayor and Acting Mayor of Jerusalem Municipality, in Jerusalem (Jan. 31, 2002).

²⁴⁴ Interview with Micha Bin-Nun, Director of Licensing and Inspection Department of Jerusalem Municipality, in Jerusalem (Dec. 31, 2001). The estimate of 500,000 NIS was given for the Kawasme case, which was appealed four times all the way to the Supreme Court of Israel. Each time the heavy equipment and scores of security personnel were sent out to demolish the illegal structure. *Ibid.*

²⁴⁵ Interview with Israel Ben-Ari, Deputy Manager of Licensing and Inspection Department of Jerusalem Municipality, in Jerusalem (June 9, 2002).

²⁴⁶ Interview of Uri Lupolianski, Senior Deputy Mayor and Acting Mayor of Jerusalem Municipality, in Jerusalem (Jan. 31, 2002). According to Lupolianski, when looking at aerial photographs it is clear that there are outside players that stimulate building violations in the Arab neighborhoods. *Ibid.*

²⁴⁷ Interview of Uri Lupolianski, Senior Deputy Mayor and Acting Mayor of Jerusalem Municipality, in Jerusalem (Jan. 31, 2002).

²⁴⁸ Their choice of addressees was quite peculiar. The letter writing campaign should have been directed to the Mayor of Jerusalem and the Minister of Interior, and perhaps the Prime Minister.

²⁴⁹ Jeff Halper, *Israeli Committee Against Home Demolitions Calls for International Letter Writing Campaign*, Salam Review Internet Website (visited May 23, 2002) <http://www.salam.org/activism/home_demolitions.html>.

²⁵⁰ Interview with Israel Ben-Ari, Deputy Manager of Licensing and Inspection Department of Jerusalem Municipality, in Jerusalem (June 9, 2002).

²⁵¹ If, in the case of a judicial demolition at the conclusion of a legal action brought by the City, a person or persons are evicted from a structure that the Judge orders demolished, the City's Welfare Department may assist any dislocated individuals in finding an interim housing solution. This assistance could take the form of a hotel room, paid for by the Municipality, for as long as a month. Interview with Israel Ben-Ari, Deputy Manager of Licensing and Inspection Department of Jerusalem Municipality, in Jerusalem (June 9, 2002).

²⁵² Interview with Israel Ben-Ari, Deputy Manager of Licensing and Inspection Department of Jerusalem Municipality, in Jerusalem (June 9, 2002).

aspects of the planning law that are strictly enforced against the Jewish population in Jerusalem are ignored as regards the Arab population. For example, while Jews are routinely charged for improvements to their streets (sewage lines, drainage, sidewalks, road paving), Arab Jerusalemites are not billed for these expenditures.²⁵³ Lupolianski points out that virtually every minor violation committed in the Jewish neighborhoods renders the builder liable to enforcement action, including for relatively minor offences such as enclosing a balcony. By contrast the City, ignores much more substantive building violations committed, on a daily basis in the Arab neighborhoods. As a consequence, Arab residents who make minor structural changes in their apartments without first obtaining a license are usually not cited by a Municipal inspector unless their neighbors complain to the City.²⁵⁴

Another example of discrimination in favor of the Arabs is the free professional services that are extended to them. Thus, a Jewish builder must hire at his own expense, an architect and other professionals to prepare the documents submitted for a building permit. According to Lupolianski, however, applicants from Arab neighborhoods, receive free professional advice from City employees.²⁵⁵ Moreover, the City has invested 7 million NIS to prepare plans for the Arab neighborhoods, thereby facilitating the issuance of building permits and infrastructure projects. This investment attempts to overcome the undeveloped, even chaotic land ownership patterns that Israel inherited from the Jordanians in 1967.²⁵⁶

Notwithstanding the frequent allegation that the Municipality of Jerusalem enforces the Planning and Building Law in a discriminatory manner against Arab residents. The reality is that, in a number of respects, the City actually discriminates in their favor.

E. Arab Complaints to the City Regarding Illegal Arab Building

The official Palestinian antipathy towards demolition, in all circumstances, is not shared by many of the Arab residents of Jerusalem, particularly those who suffer directly from illegal construction. Their complaints, listed below, are representative of many aggrieved Arab residents that have put aside concern for their personal safety by complaining to the City about illegal building in Arab neighborhoods. Deputy Mayor Lupolianski claims that, were it not for the residents' complaints, many building offences would never have come to the attention of the Municipality. The following examples illustrate the nature of the problem:

- In one case, Nagi Musah Farage and Muhamad Musah Farage complained that Khaled El Natshe was building on land belonging to their father's estate, in the neighborhood of El Ashkeriah in Beit Hanina. When confronted by the Farage brothers, El Natshe ignored the substance of the complaint and threatened to murder them. Only then did the brothers turn to the Municipality for assistance in stopping the illegal construction on their land by El Natshe.²⁵⁷
- Abdul Aziz Bukhari, a Sheikh of the Naqshabandian Religious Method and Head of the Uzbeke Community in Jerusalem, wrote to Mayor Olmert to complain about

²⁵³ Interview of Uri Lupolianski, Senior Deputy Mayor and Acting Mayor of Jerusalem Municipality, in Jerusalem (Jan. 31, 2002). According to the Planning and Building Law (1965), the Municipality had a right to collect fees from the residents of a neighborhood if it improves their road, sidewalk, sewage, drainage, etc. In Jewish neighborhoods these sums are collected from the residents, who, incidentally, are not polled as to whether they even want the improvements. In Arab areas these sums are not charged, and as a result, it becomes more costly for the City to improve roads, sidewalks, etc. in those neighborhoods. *Ibid*; Stuart Winer, *Irate Over City Rates*, IN JERUSALEM, Oct. 11, 2002, p. 1.

²⁵⁴ Interview of Uri Lupolianski, Senior Deputy Mayor and Acting Mayor of Jerusalem Municipality, in Jerusalem (Jan. 31, 2002).

²⁵⁵ Interview of Uri Lupolianski, Senior Deputy Mayor and Acting Mayor of Jerusalem Municipality, in Jerusalem (Jan. 31, 2002).

²⁵⁶ Interview of Uri Lupolianski, Senior Deputy Mayor and Acting Mayor of Jerusalem Municipality, in Jerusalem (Jan. 31, 2002).

²⁵⁷ Letter from Nagi Musah Farage and Muhamad Musah Farage, to Micha Bin-Nun, Director of the Jerusalem Municipality Department of Licensing and Inspection (May 9, 2001.)

illegal building on the property of the Uzbek community in the Old City. Bukhari's letter claims that Aiman Al-Jabari began to build a house on the roof of the Uzbek Cultural Center. According to Bukhari's letter, there was a two-month pause in the illegal construction work after Bukhari requested the Municipality to protect his property rights. However, thereafter construction was resumed and Sheikh Bukhari again appealed to Olmert to appoint a Municipal official to restore the property rights of the Uzbek community. Bukhari's appeal mentions that the Ambassador of the Republic of Uzbekistan supports Bukhari's letter.²⁵⁸

- Muhamad Issah Abu Ois, a resident of Isawiya, wrote a complaint letter to the Minister of Interior and to the Mayor of Jerusalem. This letter asserts that the complainant's brother, Mahmud Abu Ois, who is described as "not a legal resident of Jerusalem," illegally added an extra floor to the existing house that Muhamad Issah Abu Ois inherited from his father and grandfather. The letter also claims that Mahmud Abu Ois constructed an additional building on the complainant's land without applying for a construction permit. The letter further states that the Municipality demolished the additional (illegal) building, but Mahmud Abu Ois subsequently rebuilt it without requesting a building permit. Muhamad Issah Abu Ois requests: A) that the recipients of Muhamad Issah Abu Ois' complaint stop his brother, Mahmud Abu Ois' ongoing illegal construction and demolish what has already been erected on property that belongs to the complainant, his father, and grandfather; B) that the Minister of Interior and the Mayor preserve Muhamad Issah Abu Ois' property whole, as it was inherited from his father and grandfather; and C) that the recipients not allow Mahmud Abu Ois to build on the same plot of land, or on other plots of land that were bought by third parties from Muhamad Issah Abu Ois' brothers.²⁵⁹
- In one case the Maronite Church complained to the Municipality regarding an illegal structure in the Old City. Unaware of the events that led to the ensuing demolition, U.S. Secretary of State Colin Powell issued a condemnation.²⁶⁰

Some Jerusalem Arabs, angered by illegal construction, but apprehensive at offending Palestinian militants by appealing to the Israeli authorities, have lodged their objections indirectly. For example:

- A letter concerning illegal building in the Arab sector of Beit Hanina was written to the Director of the Building Inspection Department of the Municipality of Jerusalem. The author wrote on behalf of others who are afraid to protest out of fear that they could be targeted with violence. The letter states that it is possible to obtain a permit in the area in which the illegal construction was carried out.²⁶¹ The same private citizen lodged a second complaint in another matter, this one regarding an illegal building erected in the vicinity of a building he had planned in Beit Hanina. In

²⁵⁸ Letter from Sheikh Abdul Aziz Bukhari, Head of the Uzbek Community in Jerusalem, to Ehud Olmert, Mayor of Jerusalem Municipality (June 19, 2001.)

²⁵⁹ Muhamad Issah Abu Ois, a resident of Isawiya, to the Interior Minister and Mayor of Jerusalem Municipality, Aug. 9, 2001.

²⁶⁰ Powell did not address the point that, had it been left standing, this illegal structure impinged on the historical beauty of Jerusalem's skyline. Thereafter the Secretary of State renewed his appeal to Sharon to halt the demolition of Palestinian homes. Barry Schweid, *Mideast Peace Formula May be Shelved*, ASSOCIATED PRESS, July 13, 2001. The political importance of this issue is readily demonstrated. Prime Minister Sharon wrote a letter defending house demolitions to Powell. Sharon explained that demolitions in the Jerusalem area "fall under the category of law enforcement by the municipal authorities." Sharon noted that "the homes of Jewish and Arab residents alike have been demolished in the past." Powell, apparently for political reasons, said that he understood why Palestinians would respond violently to Israeli provocations, such as house demolitions. Janine Zacharia, *Sharon Defends Home Demolitions*, JERUSALEM POST, July 18, 2001, p. 2. U.S. State Department Spokesman Richard Boucher called for Israel to halt its policy of demolition. Press Release, *A Law Unto Itself: The Israeli Government Orders Further Destruction*, THE PALESTINE MONITOR, July 12, 2001, available at Palestine Monitor Internet Website <http://www.palestinemonitor.org/updates/a_law_onto_itself.htm>.

²⁶¹ Letter from Zeev Bern to Director of the Planning Inspection Department of the Jerusalem Municipality, Jan. 20, 1998.

this case, the author states that not only did the illegal builder exceed the limitations in width and height, he also built on land owned by the Municipality. The writer also complained that the illegal structure would interfere with the construction of roads in accordance with Detailed Plan 3457a.²⁶²

- This author has been shown a letter addressed to the United States Consul in Jerusalem,²⁶³ from the law office of Advocate Yitzhak Mina. Mina's letter lodges a complaint on behalf of his client, a company by the name of "Azhar." It states that a person by the name of Ibrahim Izhak Abu Chder has illegally erected a three-story building on land in Beit Hanina, which is owned by the Azhar Company. The complaint asks the Municipality to demolish this illegal structure.²⁶⁴

Other aggrieved Arab residents of Jerusalem instruct their lawyers to pursue a different approach to protecting their land. Thus, on February 4, 2002, a warning to the public concerning land in Beit Hanina appeared in the newspaper *Al Quds*. The warning, signed by Advocate Hani Tannous on behalf of his client Muhamad Musah Farage, states that forged powers of attorney exist as regards land owned by Farage, which he inherited from his father. Tannous warns against purchasing his client's land without first contacting the true owner.²⁶⁵ On the same day a similar warning appeared in the same newspaper, this one placed by Riad Azami Shaker. Shaker states that he has non-revocable power of attorney for two parcels of land in Beit Hanina and warns that anyone purchasing these properties from someone else faces "legal and clan investigation."²⁶⁶

IV. Claims that Jerusalem is Being 'Judaized'

A. Demographic History and Projections

Jerusalem's rapid growth and demographic evolution can be traced back approximately 150 years. In the words of the late Professor U. O. Schmetz:

In the early part of the 19th century Palestine was a remote and rather unimportant corner of the vast but decaying Ottoman Empire. Population size was at a low ebb; destitution, ignorance, neglect, misgovernment and discrimination of religious minorities prevailed. Calamities such as droughts, consequent famines, and outbreaks of epidemics were frequent; but even in ordinary years endemic diseases were rife and insecurity widespread. ... At the time, Jerusalem was not the main city of Palestine, politically or economically. Despite its historical fame and religious significance, Jerusalem was in fact small, an island town of a backward provincial region, off major trade routes. ... [I]t was accessible only by riding or on foot and goods had to be transported by beasts of burden, since the first carriageable road, connecting Jerusalem with the port of Jaffa, was not

²⁶² Letter from Zeev Bern to Director of the Planning Inspection Department of the Jerusalem Municipality, Jan. 20, 1998. (Interview with Shalom Goldstein, Advisor to Mayor of Jerusalem Municipality for East Jerusalem Affairs, in Jerusalem (Apr. 8, 2002).

²⁶³ Letter from Advocate Yitzhak Mina to the U.S. Consul in Jerusalem, July 29, 2001.

²⁶⁴ Hagai Hoberman, *In the Heat of the Palestinian Real Estate Battle in East Jerusalem*, HA'TSOFEH, Jan. 11, 2002, pp. 9, 10.

²⁶⁵ Adv. Hani Tannous representing Muhamad Musah Farage, a land owner in Beit Hanina, Public Warning, AL QUDS, Feb. 4, 2002; Appendix 8B.

²⁶⁶ Riad Azami Shaker, a land owner in Beit Hanina, Public Warning, AL QUDS, Feb. 4, 2002; Appendix 8B.