

VANISHING EAST JERUSALEM: EU MUST USE ASSOCIATION COUNCIL TO ENSURE THAT ISRAEL RESPECTS INTERNATIONAL LAW

In view of the upcoming EU-Israel Association Council scheduled for 21 February 2011 we, the undersigned Palestinian human rights organisations committed to the promotion and protection of human rights in the Occupied Palestinian Territory (OPT), would like to express our grave concerns about the continuous deterioration of the human rights situation. In particular, we are alarmed by Israel's protracted policies aimed at entrenching the illegal annexation of East Jerusalem.

1. The Human Rights Situation in East Jerusalem

Since its *de facto* annexation of East Jerusalem in 1967, Israel has implemented various measures and policies in order to consolidate its territorial, demographic and political control over the city. This includes the systematic attempt to secure a Jewish majority while reducing any Palestinian presence in the city through a process of acquiring more land and the introduction of the centre-of-life requirement.

The **centre-of-life policy requires** Palestinian residents of East-Jerusalem (whom Israel considers as "permanent residents" rather than citizens) to consistently prove that their "centre of life" is in East Jerusalem or else they risk losing their residency rights.[1] Since this policy was adopted, in 1995, Israel has revoked the status of over 10,000 Palestinian residents of the city.[2]

Moreover, Israel prevents Palestinians who are registered - in the Israeli-controlled population registry - as residents of the West Bank (excluding East Jerusalem) or the Gaza Strip from residing in Jerusalem. If Palestinian permanent residents wish to live in East Jerusalem with their non-resident spouses and children, they need to apply for **family unification**, a process that Israel *de facto* suspended as of 2000. Moreover, in 2003, Israel adopted the "Citizenship and Entry into Israel Law," which makes it illegal for mixed residency couples to live in East Jerusalem.[3]

The **restrictive planning and zoning regime** of the Jerusalem municipality is another tool used by Israel in order to induce the transfer of the Palestinian population out of the city.[4] This regime, which allows for only very limited Palestinian construction in the city, has resulted in an acute housing shortage for Palestinians in East Jerusalem. Israel's systematic denial of the required permits to build, repair and/or maintain their homes confronts Palestinian residents with the dilemma of moving outside Jerusalem's municipal boundaries, losing therefore their residency status, or building without a permit, risking the **demolition of their homes**. In 2010 alone, Israel demolished 78 Palestinian owned structures in East Jerusalem, displacing 116 people (most of whom are children) and affecting a total of 289 Palestinians.[5] In some cases, Palestinian owners carry out **self-demolitions** of their homes in order to avoid being charged for the costs of the demolition.

Israel further undermines the Palestinian presence in East Jerusalem by preventing the opening or ordering the closure of **Palestinian institutions**[6] and NGOs. Moreover, Israel continues to carry out archaeological excavations in the old city of Jerusalem, aimed at creating a Jewish-Israeli character and subverting any Palestinian cultural or religious connotations, in a deplorable attempt to rewrite the historical narrative of the city. Meanwhile, Israel severely restricts Palestinians' access to holy sites in East Jerusalem.

East Jerusalem is severed from the rest of the West Bank by the **Annexation Wall**, which serves to physically reinforce Israel's claims over the city and to illegally annex Palestinian land. The Wall's associated regime of physical obstacles, such as checkpoints, gates, closures, and a restrictive permit system separates Palestinians from their families, places of employment and worship, educational

institutions, agricultural lands and markets and exacerbates East Jerusalem's administrative and social detachment from the rest of the West Bank.[7]

The route of the Wall cuts through the Israeli-declared **municipal boundaries** of Jerusalem, dividing Palestinian communities and in some cases cutting off whole neighbourhoods from the rest of the city. The physical separation of these neighbourhoods from Jerusalem has dangerous repercussions for the residency status of Palestinian Jerusalemites residing in municipal areas located east of the Wall. Over the last few years, many Palestinian residents of Jerusalem have moved to these areas in order to legally maintain residency in Jerusalem while enjoying cheaper living conditions, more secure housing and the ability to live with their West Bank ID holding spouses and children. The municipal areas east of the Wall are less at risk of home demolitions,[8] and are the only location where Palestinian mixed residency couples can live together with their children, without contravening Israel's centre-of life requirement.

Facts on the ground and official statements indicate Israel's intention to make the Wall the new Israeli municipal boundary of Jerusalem. Should Israel **unilaterally re-draw the city's municipal boundaries** along the route of the Wall, and thus exclude the areas of the current Jerusalem municipality located east of the Wall, the illegal annexation of East Jerusalem would become irreversible. Palestinians who live in the areas east of the Wall would no longer be able to fulfil the centre of life requirement, losing therefore their Jerusalem residency status.[9]

In addition to minimising the number of Palestinian residents in Jerusalem, Israel is encouraging the migration of Jewish-Israeli settlers to **settlements** built on lands illegally appropriated from Palestinians in the West Bank, including in and around East Jerusalem. The settlement infrastructure, including the Annexation Wall, and Israeli-only bypass roads, checkpoints and roadblocks fragments the OPT into isolated, non-contiguous enclaves. This **fragmentation** not only hinders the Palestinian people's ability to use their land and natural resources, but establishes facts on the ground, which essentially prevent the Palestinian people from exercising their right to self-determination, prejudge the outcome of any final status negotiations and threaten to make the two-state solution impossible.

2. EU Position on East Jerusalem and Relations with Israel

The EU has "has never recognised the annexation of East Jerusalem" and has repeatedly asserted that it "will not recognise any changes to the pre-1967 borders including with regard to Jerusalem, other than those agreed by the parties." [10] The EU "remains committed to a comprehensive settlement of the Arab-Israeli conflict" [11] and acknowledges that "if there is to be a genuine peace, a way must be found through negotiations to resolve the status of **Jerusalem** as the future capital of two states." [12] The EU holds that "the two-state solution with an independent, democratic, contiguous and viable Palestinian state (...) constitutes a fundamental European interest. It is an indispensable and urgent step towards a more stable and peaceful Middle East." [13] The EU maintains that its bilateral relations with Israel will help influence Israeli practices in this regard.

Freezing the Upgrade of EU-Israel Relations

At the 8th meeting of the EU-Israel Association Council in June 2008, the EU expressed its determination to "develop a closer partnership with Israel" and to formulate the content and scope of a new Action Plan. [14] The decision to "upgrade the level and intensity of its bilateral relations with Israel," [15] however, was "put on hold" the following year. In the aftermath of Israel's 2008/2009 military offensive on the Gaza Strip, and with the Netanyahu government's refusal to commit to a two state solution, the EU declared at its 9th Association Council in June 2009 that it would not adopt a new Action Plan with Israel, thus allegedly "freezing" the upgrading process.

The EU argued that

"[the] upgrade must be based on the shared values of both parties, and particularly on democracy and respect for human rights, the rule of law and fundamental freedoms, good governance and international humanitarian law." [16]

The EU further affirmed that the EU-Israel upgrade needs to be viewed “in the context of the broad range of our common interests and objectives,” including “the resolution of the Israel-Palestinian conflict through the implementation of the two-state solution, the promotion of peace, prosperity and stability in the Middle East.” To this end, the 27 member states called “on the government of Israel to commit unequivocally to the two-state solution,”[17] “to improve the daily life of the Palestinian population,”[18] “to ensure the protection and unimpeded access of all religious groups to religious sites, notably in Jerusalem,”[19] and to immediately suspend the practice of home demolitions and evictions, which “threaten the viability of a two-state solution.”[20]

Furthermore, the Council has urged “the government of Israel to immediately end settlement activities, including in East Jerusalem,”[21] to cease all discriminatory treatment of Palestinians in East Jerusalem” and to reopen Palestinian institutions in Jerusalem.[22]

“Business as Usual”

Despite the declared suspension of the upgrading process, which formally would entail the adoption of a new EU-Israel Action Plan, and despite the EU’s condemnation (in words) of Israel’s illegal practices in the OPT, including East Jerusalem, the EU continues, in practice, to **strengthen its relations** with Israel.

The **technical and economic cooperation** between the EU and Israel continues undisrupted, with the parties consistently signing new agreements allowing for additional forms of cooperation. Since the “freezing” of the upgrading process, the EU and Israel have, for example, concluded agreements in the areas of civil aviation, agriculture and pharmaceutical products and are currently negotiating a cooperation agreement between Europol and Israel; thus *de facto* upgrading their relations.

This “**business as usual**” approach disregards Israel’s systematic violations of international law, renders the EU’s condemnation of such practices meaningless and seriously undermines the Union’s credibility as an authentic peace broker. While Israel continues to create facts on the ground, which seriously threaten the EU’s vision of a two-state solution and “peace in the Middle East,” the EU fails to use the crucial leverage of its bilateral relations with Israel to influence the latter’s behaviour.

3. Legal Analysis

Israel’s above mentioned policies are in blatant violation of international human rights and humanitarian law. Israel’s *de facto* annexation of East Jerusalem violates the international humanitarian law prohibition of the annexation of occupied territory,[23] which forbids the Occupying Power from claiming sovereignty over occupied land and from unilaterally creating facts that would change the status of that area.[24] Moreover, Article 2(4) of the UN Charter, reflective of customary international law, prohibits the annexation of territory by force or threat of use of force.[25]

Israel’s policy of undermining the Palestinian presence in East Jerusalem by demolishing Palestinian homes, prohibiting Palestinian residents of East Jerusalem from living with their non-resident spouses and children in the city and the revocation of their ID cards if they fail to fulfil the centre-of-life requirement all result in the forcible displacement of Palestinians from the city, in blatant violation of international humanitarian law. The **forcible transfer** of persons from occupied territory is prohibited[26] and constitutes a grave breach of the Fourth Geneva Convention,[27] entailing the individual criminal responsibility of the perpetrators.

Israel’s policy of home demolitions as well as **land confiscation and appropriation** to build and expand settlements, the Wall, Israeli only roads, and other illegal infrastructure for the benefit of Jewish Israeli citizens violates the prohibition under law of occupation of confiscation[28] and/or destruction of private property unless imperatively required by military necessity.[29]

Israel’s practice also violates **international human rights law**, including Palestinians’ right to freedom of movement,[30] the right to work,[31] the right to the highest attainable standard of health,[32] the right to education[33] and to a family life.[34] The deprivation of the ability of the Palestinian people to fully achieve these rights, to make use of their land and to dispose freely of their resources undermines their ability to live

in **dignity** and ultimately to meaningfully exercise their right to **self-determination**, in violation of Article 1 of the UN Charter, reflective of customary international law.

4. Conclusions

The EU has publically rejected Israel's annexation of East Jerusalem and considers the two-state solution as well as the creation of a viable and independent Palestinian state with East Jerusalem as its capital as "a fundamental European interest" and a precondition for peace in the Middle East. The Union has repeatedly called on Israel to stop settlement activities, discriminatory treatment of Palestinians, house demolitions and evictions in Jerusalem, and to allow Palestinians access to holy sites, affirming that it would not recognise any changes to the pre-1967 borders.

In the meantime, Israel continues to entrench its *de facto* annexation of East Jerusalem and undermines any Palestinian presence in the city through a deliberate, aggressive and illegal policy of land annexation and population transfer. Israel's prolonged violations of international law have changed the socio-demographic nature of city, redrawn its municipal boundaries and isolated East Jerusalem from the rest of the OPT. This practice not only seriously undermines the right of the Palestinian people to self-determination, but precludes the outcome of any final status negotiations, threatening to make the two state-solution and a peaceful resolution to the conflict impossible.

While Israel's policies directly undermine the EU's positions and its objectives regarding the OPT, including East Jerusalem, and the Middle East as a whole, the EU has so far failed to use the significant leverage of its bilateral relations with Israel in order to pressure the latter to refrain from its illegal practices. Contrary to the EU's intention to link the upgrading of its relations with Israel to human rights and international humanitarian law, and despite its decision not to proceed with the formal upgrading process, the EU continues, in practice, to strengthen its relations with Israel. The EU's "business as usual" approach amounts to tacit acquiescence of Israel's systematic violations of international law.

The EU's current policy of "empty words" challenges the Union's ability to positively impact the human rights situation in the OPT and to contribute to a "comprehensive settlement of the Arab-Israeli conflict." The upcoming EU-Israel Association Council provides an important opportunity to adopt a crucial new EU policy relating to the OPT, in particular on East Jerusalem, and to condition the upgrading of EU-Israel relations on international human rights and humanitarian law.

5. Recommendations

At the upcoming EU-Israel Association Council, the EU must send a strong message to Israel, confirming that the upgrade of EU-Israel relations will remain on hold, both formally and in practice, until there is tangible progress regarding the human rights situation in the OPT, including East Jerusalem. To this end, the EU should request Israel to immediately:

- Freeze all settlement activity, including in and around East Jerusalem
- Refrain from implementing discriminatory zoning and planning policies
- Stop all forms of house demolitions and evictions
- Stop the construction of the Annexation Wall and dismantle the parts already built (in accordance with the ICJ Advisory Opinion)
- Refrain from banning family unification.

In addition, the EU must:

- Ensure that goods produced in Israel's illegal settlements in East Jerusalem and in the rest of the West Bank do not enter the EU market under the EU-Israel Association Agreement
- Ensure EU intervention whenever Palestinians are arrested or harassed by Israeli occupying forces for participating in peaceful political, social and/or cultural activities in East Jerusalem
- Ensure EU presence at courts where cases are discussed that involve the demolition of Palestinian homes and/or the eviction of Palestinian families
- Systematically bring high-level visitors to sites of human rights violations in East Jerusalem (including but not limited to demonstrations, home demolitions and evictions and the Annexation Wall).

- Ends -

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Endnotes

[1] For more in depth reading on this issue, kindly see Al-Haq, *The Jerusalem Trap: The Looming Threat Posed by Israel's Annexationist Policies in Occupied East Jerusalem* - 2 October 2010, available at <http://www.alhaq.org/etemplate.php?id=549>; The Civic Coalition for Defending Palestinians' Rights in East Jerusalem, *42 Years of Occupation – Jerusalem File*, December 2009, available at <http://www.civiccoalition-jerusalem.org/ccdprj.ps/new/pdfs/Welfare%20J%20Book.pdf>.

[2] B'tselem, "East Jerusalem: Revocation of Residency in East Jerusalem – Statistics on Revocation of Residency", available at http://www.btselem.org/English/Jerusalem/Revocation_Statistics.asp.

[3] Adalah, *Special Report – Family Unification*, available at <http://www.adalah.org/eng/famunif.php>.

[4] For further reading, see The Civic Coalition for Defending Palestinians' Rights in East Jerusalem, *Aggressive Urbanism*, December 2009, available at

<http://www.civicoalition-jerusalem.org/ccdpri.ps/new/pdfs/Aggressive%20Urbanism%20Report.pdf>

[5] United Nations Office for the Coordination of Humanitarian Affairs (OCHA), occupied Palestinian territory, *The Humanitarian Monitor, December 2010*, available at <http://www.ochaopt.org/reports.aspx?id=118>.

[6] Such as the Orient House (the PLO headquarters in East Jerusalem).

[7] For more information about the Annexation Wall, kindly see Al-Haq, *The Annexation Wall and its Associated Regime*, June 2009, available at <http://www.alhaq.org/pdfs/Annexation+Wall+-english.pdf>.

[8] For more in depth reading on this issue, kindly see Al-Haq, *supra* note 1.

[9] *Ibid.*

[10] Council of the European Union, *Council conclusions on the Middle East Peace Process*, Brussels, 8 December 2009 (Foreign Affairs Council), para. 2, available at

http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/foraff/111829.pdf.

[11] Council of the European Union, *Council Conclusions on the Middle East Peace Process*, Brussels, 15 June 2009 (Foreign Affairs Council), para. 1, available at http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/gena/108500.pdf.

[12] *Supra* note 10, para. 8.

[13] Ninth Meeting of the EU-Israel Association Council, Luxembourg, 15 June 2009 (EU statement), para. 4, available at

http://register.consilium.europa.eu/servlet/driver?page=Result&lang=EN&typ=Advanced&cmsid=639&ff_COTE_DOCUMENT=&ff_COTE_DOSSIER_INST=&ff_TITRE=+association+council+israel&ff_FT_TEXT=&ff_SOUS_COTE_MATIERE=&dd_DATE_DOCUMENT=&dd_DATE_REUNION=&dd_FT_DATE=&fc=REGAISEN&srm=25&md=100&ssf=.

[14] Eighth Meeting of the EU-Israel Association Council, Luxembourg, 16 June 2008 (EU statement), para. 6, available at http://register.consilium.europa.eu/servlet/driver?page=Result&lang=EN&typ=Advanced&cmsid=639&ff_COTE_DOCUMENT=&ff_COTE_DOSSIER_INST=&ff_TITRE=+association+council+israel+2008&ff_FT_TEXT=&ff_SOUS_COTE_MATIERE=&dd_DATE_DOCUMENT=&dd_DATE_REUNION=&dd_FT_DATE=&fc=REGAISEN&srm=25&md=100&ssf=.

[15] Council of the European Union, *Strengthening of the European Union's bilateral relations with its Mediterranean partners*, 8 & 9 December 2008 (Council Conclusions, External Relations), para. 9, available at http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/en/gena/104571.pdf.

[16] *Supra* note 13, para. 2.

[17] *Ibid*, para. 6.

[18] *Ibid*, para. 3.

[19] *Ibid*, para. 31.

[20] *Ibid*, para. 30.

[21] *Ibid*, para. 7.

[22] *Supra* note 10, para. 8.

[23] Fourth Geneva Convention, Article. 47 and 1907 Hague regulations, Article. 43 and 55.

[24] Jean Pictet (ed), *The Geneva Conventions of 12 August 1949, Commentary – Fourth Geneva Convention Relative to the Protection of Civilian Persons in the Time of War*, (International Committee of the Red Cross, 2005), 275.

[25] For a more detailed legal analysis kindly see Al-Haq, *supra* note 7.

[26] Fourth Geneva Convention, Article. 49.

[27] *Ibid*, Article. 147.

[28] Hague Regulations, Article. 46.

[29] Fourth Geneva Convention, Article. 53.

[30] International Covenant on Civil and Political Rights (ICCPR), Article. 12 (1).

[31] International Covenant on Economic, Social and Cultural Rights (ICESCR), Article. 6.

[32] *Ibid*, Article. 12.

[33] *Ibid*, Article. 13.

[34] *Ibid*, Article. 10.