The following are excerpts from the original petition, translated to English. The complete petition is available in Hebrew.

The Jerusalem District Court
Acting as Court of Administrative Affairs
Administrative Petition Number: _____

Petitioners:
1. Bimkom – Planners for Planning Rights
2. Association for Civil Rights in Israel (ACRI)

v.

Respondents:
1. Chair of the Jerusalem District Planning and Building Committee, Ms. Dalit Zilber
2. Jerusalem District Planning and Building Committee
3. Jerusalem Local Planning and Building Committee
4. Minister of Interior

The honorable Court is hereby requested to instruct Respondents 1-3 to cease from relying on the documents of Outline Plan Jerusalem 2000 (hereafter: "**The Outline Plan**" or "**The Plan**"), which was not deposited nor ever approved.

Introduction

1. The basis for this petition is the de facto change of the planning situation in the city of Jerusalem, in contradiction to the law and while bypassing the statutory procedure, through the means of a plan-like document that is the Jerusalem 2000 Outline Plan.

2. The Outline Plan, which relates to the entire planning area – coinciding with the municipal zone – of the city of Jerusalem, was approved for deposition twice, in two consecutive decisions made more than four years ago, but was never deposited for public review and thus never approved and validated.

3. Alongside freezing the planning procedure for The Outline Plan (due to the intervention of the Interior Minister – see below), Respondent 2 began considering and/or applying The Plan's directives in other planning procedures. This was initially carried out while calling The Plan "the outline plan that was not yet deposited" and later on calling it from time to time "a policy document," but there is no dispute that this is the very same document.

4. In doing so, the District Committee created a *de facto* new planning state of affairs, while bypassing the statutory planning procedure, in particular the stage of depositing the plan, hearing any objections to it and paying compensation for any resulting planning damage.

5. To emphasize: This is not a case of temporary utilization of a plan that is not valid as though it were valid, but rather a permanent situation that, to the Petitioners' best knowledge, is not expected to change.

6. This stands in contradiction to the rules of good governance, the principle of legality and the obligation to be transparent and to include the public in planning procedures.

[...]

Factual Background

A. The Planning Situation

13. Currently, there is no outline plan for Jerusalem that includes the city's entire municipal area.

14. **Most of the areas of West Jerusalem** fall under Local Outline Plan 62 (hereafter: **"Plan 62"**). Plan 62 was approved for validation in 1959, and since then specific changes were made to the lands within its boundaries by thousands of detailed plans.

15. Plan 62 encompasses the entire municipal area of Jerusalem at the time of its approval for validation.

16. **In East Jerusalem** – that is, in the territories that were added to the city's municipal area and to which Israeli law was applied after 1967, areas that include both long-established Palestinian neighborhoods as well as Jewish neighborhoods that were established after 1967 – plans that were prepared for these neighborhoods (see below) apply, establishing that they are subject to the directives of Plan 62, even though they are not situated within its area.

17. Approximately one third of East Jerusalem's lands are areas without any planning, where no plan applies to or the planning procedure for them was not completed.

18. In the 1970s, there was an initiative to create the outline planning of Jerusalem's entire municipal area – east and west. This attempt was unsuccessful, and in 1999 another attempt began to promote **a local outline plan that would include the entire**

municipal area of Jerusalem. This is the Jerusalem 2000 Plan, the subject of this petition.

20. To the best knowledge of the Petitioners, from 13 September 2004 and onwards, the Local Committee held at least 12 discussions concerning the Jerusalem 2000 Outline Plan, and on 9 March 2006 recommended that it be deposited.

21. Following these discussions, the Plan was submitted to the District Committee on 30 April 2007, along with the Local Committee's recommendation to deposit it. The Plan's submission was accompanied by a festive ceremony to mark the importance of this plan, which was about to change the face of planning in Jerusalem.

22. On 8 May 2007, the Plan was discussed at the District Committee. After discussing the importance of the Plan, members of the District Committee and various departments of the Municipality were asked to study the plan and hand in their comments. Afterwards, the District Committee held a series of discussions regarding The Outline Plan. These were held on 25.3.08, 13.5.08, 27.5.08, 10.6.08, 29.7.08 12.8.08, 16.9.08, and 23.9.08. A total of eight discussions took place between March and October 2008 (not including the deposition decisions).

23. Following the discussions, on 7 October 2008, the plan was deposited for public review (hereafter: "**First Deposition Decision**"). For some unknown reason, the minutes of that discussion are not published on the website of the Interior Ministry. The Petitioners hold a copy of the meeting's summary that was presented at the time as part of the "summary of the decisions concerning deposition", from 12 October 2008, compiled by the district planning bureau in relation to the Outline Plan.

24. After this, the District Committee accepted the request made by Jerusalem Mayor Nir Barkat, who entered office a short time prior to that, to submit his comments regarding The Plan. The Mayor's comments were discussed by the District Committee on 5 May 2009. On that day, the committee also heard comments from its members regarding The Plan, after changes were made to it following the first deposition decision. In this meeting, the District Committee ordered several additional changes to The Plan's documents and again reiterated its decision to deposit it (hereafter: "**Second Deposition Decision**").
On 26 May 2009 a complementary discussion was held to discuss the Mayor's comments on the Plan (hereafter: "**The Complementary Discussion**").

25. According to the website of the Interior Ministry, on 1 June 2009 the conditions for the Plan's deposition where met.

26. Yet, after all this took place, the plan was not deposited to this day. This, followed the intervention of Respondent 4, who gave instructions to delay the submission of the Plan in his letter from 16 June 2009. In a letter dated 1 July 2009, sent by Attorney Dani Horin, the District Committee's legal adviser, to Ms. Ruth Yosef, who was at the time the regional supervisor, the legal adviser referred to these letters and said:

> "6. On 16 June 2009 the Interior Minister sent a letter to the Chairperson of the District Committee, to which was attached letters from the members of the Jerusalem Council and the head of the Maale Adumim Council.
>
> "7. In their letters […] it was argued that the plan which is presently due to be submitted, is significantly different from the plan that the local committee favorably recommended[…] the

members of the City Council claimed […] that the plan should be sent back for further discussion before the Local Committee."

[…]

"9. In light of the aforementioned letters, the Interior Minister asked to delay the public announcement on the submission of the plan, so that if it turns out that the decisions made regarding changes to the Outline Plan were not carried out with the consent of the Local Committee, the Plan will be sent back pending further deliberation by the Local Committee, after which the District Committee will discuss its submission."

27. Regarding this request by the Interior Minister, the legal adviser stated his unequivocal position that -

"13. According to the law's directives, after fulfilling the terms of the submission [...] the plan must be submitted.

"14. It should further be stated that the law does not require that the plan be returned to the Local Committee after the District Committee had decided to submit it. […] Returning a plan that had been changed for further deliberation by the Local Committee for another recommendation, does not comply with the division of authorities between the planning authorities nor does it comply with the clear instructions of the legislature.

"16. Given this state of affairs, my position is […] that the fact that changes were made to the plan […] does not justify returning the plan to the Local Committee […] In addition, it should be made clear that after a decision on the deposition of the Plan has been made, the chairperson of the District Committee does not hold the authority to instruct that the Local Committee to carry out further discussions on the Plan.

[…]

"21. Should the District Committee decide not to return the Outline Plan for a deliberation by the Local Committee, there would be no place for an additional delay in depositing the Plan, for the authority on this matter is in the hands of the District Committee alone.

"22. It shall be noted that the opinion I present here is the acceptable opinion of the legal adviser of the Interior Ministry."

28. After the clearly stated position of the legal adviser was made, a discussion on the Outline Plan was scheduled for 21 July 2009 on the official agenda of Respondent 2. In a meeting held that day, committee members were notified that "in these letters, the Interior Minister asked to delay the announcement of the plan's deposition. […] In light of the request of the Director-General of the Interior Ministry, it was decided to postpone the committee's discussion." The Plan was taken off the agenda of that day. Since then, to the best knowledge of the Petitioners and according to the website of the Ministry of Interior, the Plan has not been discussed.

29. Section 109 of the Planning and Building Law, 1965 (hereafter: "**The Law**") is the only legal framework that accords the Interior Minister authority to interfere in a planning procedure. Section 109 authorizes the minister to instruct that a plan requires his approval, to announce this, and to provide his position regarding it, all this within a fixed timeframe that in this case had already passed years ago. No one will dispute that the interference of the minister in the case of the Outline Plan was not based on this section. The Petitioners maintain that the minister's intervention was carried out without the necessary authority on the matter, and therefore unlawfully. However, this is not the subject of the petition

at hand, and therefore we will not elaborate on this matter. We will only note that according to Israel's Supreme Court ruling, and as stated in Section 20 of the legal adviser's letter, a deposition decision may only be overturned when there are serious considerations in place (APA 4374/08 **Jerusalem District Committee for Planning and Building v. Bader et al.**, Paragraph 28 of the ruling). Such considerations were never voiced by any of the Respondents, and it was never claimed that they existed.

30. Regardless, this is how the planning procedure regarding The Outline Plan was frozen. The deposition decisions were not executed, have expired and are currently no longer valid (see Section 86[A] of The Law). No other statutory decision regarding The Plan was made. Hence, the different authorities (the Minister of Interior, Jerusalem Municipality and District Committee) in effect stated their explicit position, according to which the Outline Plan Jerusalem 2000 is not deposition-worthy and, thereby, not worthy of approval and statutory validation

B. Using the Draft Plan as a "Policy Document" Instead of Completing a Statutory Planning Procedure

31. After the planning procedure was blocked and no updated alternative was suggested, Respondents 1-3 were facing a situation in which, as they understood it, a statutory outline plan for the city is needed but the deposition decision for the existing plan is not being executed.

32. Consequently - and from the point of view of the Petitioners, unlawfully - in 2008 the District Committee and the Local Committee began to apply the directives of The Outline Plan on planning procedures for new plans and even to reject from the

outset plans that did not comply with The Outline Plan for this reason alone. This was done while discussions were being held concerning the deposition of the Outline Plan, and after the decisions to deposit the plan were taken.

33. This was the District Committee's decision, for example, in a discussion dated 29 December 2009, regarding a detailed plan numbered 6664/a for the Umm Laisoon neighborhood (and not the Jabel Mukaber neighborhood as stated in the minutes of the meeting) . This plan related to approximately 19.4 dunams and offered to change their purpose from an open landscape area to a residential one and to construct 79 new housing units (emphasis added below unless otherwise mentioned):

> "4. **The plan is brought for discussion under the framework of a no-go procedure, due to the fact that it contradicts the new outline plan for Jerusalem**, which designates the area that is the subject of this plan as an open landscape area.
>
> [...]
>
> "It was decided: After reviewing the plan's documents and hearing the plan's submitters, the Committee decided to reject the plan for the following reasons:
>
> 1. The plan contradicts the planning principles proposed by the new outline plan for Jerusalem, which is on the way to being deposited [...]
>
> 2. The new outline plan for Jerusalem is indeed not binding, at this stage, however it does demonstrate the Committee's up-to-date planning policy [...]."

[...]

38. At some stage, the District Committee adopted a position, according to which the non-deposited Outline Plan is a "policy document" (while at the same time it is still also referred to as "the outline plan that is set to be deposited" - see below). In paragraph 4 of a letter written by the committee chairperson at the time, Ms. Ruth Yosef, dated 19 September 2010, which was sent as a reply to the Petitioners, and in a letter by the current chairperson, Mr. Dalit Zilber, dated 20 March 2013, it was stated in these very words that:

> "Since making the decision regarding the deposition of the new outline plan, the Committee is regarding it as a policy document that reflects the Committee's planning policy [...] Those submitting specific or detailed plans have the opportunity, during the discussion held in the Committee with regards to the plan they have submitted, to attempt to convince the Committee that their matter justifies a deviation from the policy established within the framework of the new outline plan."

[...]

40. **This petition is submitted against the manner in which the Respondents are using a draft plan as a plan – even if under the title "policy document" – without any time limit, and instead of preparing a statutory plan.**

C. The Outline Plan and the Palestinian Neighborhoods of East Jerusalem

41. The application of The Outline Plan carries severe ramifications on the planning situation in the Palestinian

neighborhoods of East Jerusalem and consequently on the basic rights of the residents of these neighborhoods (hereafter, for the sake of convenience: "**The Neighborhoods**" or "**The East Jerusalem Neighborhoods**"). Presenting the effect that The Outline Plan has on the planning situation in The Neighborhoods and laying out the factual reality in this context is essential for assessing the full meaning of the legal argument that will be made later.

[...]

C1. The Development of the Planning Situation in the Palestinian Neighborhoods of East Jerusalem

39. In 1967, East Jerusalem was placed under Israeli law, including the Planning and Building Law. With that, the Jordanian plans that were valid for that area were annulled with the exception of compensation for loss of building rights. In the first years after 1967 the political officials tended not to utilize planning procedures to the fullest and not to prepare outline plans and detailed plans for the Palestinian neighborhoods that were annexed to Jerusalem (Ofer Aharon (edt.), *Planning in the Arab Sector in Jerusalem 1967-1996*, Jerusalem Municipality, City Planning Section, Planning Policy Department, Jerusalem 1996, pg. 4).

40. When the Jerusalem Municipality and/or the Local Committee began preparing plans for the Palestinian neighborhoods that were included in the city's new municipal borders, they did so without promoting overarching outline planning for East Jerusalem (as stated above, in the mid-1970s there was a failed attempt to prepare a general outline plan for Jerusalem).

41. Eventually, some 20 local plans were prepared for most of the Palestinian neighborhoods in East Jerusalem (several neighborhoods that are included, if only in part, within Jerusalem's municipal borders, were not afforded planning – Walajeh, Nuaman and others). The planning of the neighborhoods lasted approximately four decades, which can be characterized as follows:

- **The first decade** (1967-1977) – During this decade, outline planning was carried out mostly in what is known as the Visual Basin of the Old City, in an attempt to preserve the historic scenery as open as possible. As a result, development was restricted to the bare minimum.

- **The second decade** (1978-1989) – In this decade, Israeli authorities began preparing partially detailed outline plans for the Palestinian neighborhoods surrounding the Old City and issuing building permits per Section 78 of the Planning and Building Law, which enables the issuing of permits based on a plan under preparation. As in the previous decade, the plans created in this decade allowed only limited and minimal development for the neighborhoods.

- **The third decade** (the 1990's) – Outline plans were prepared for the northern and southern Palestinian neighborhoods, which are far from the city center. These plans provided more opportunities for building relative to the plans for neighborhoods around the Old City, but much less than the building opportunities for Jewish neighborhoods.

- **The fourth decade** (2000 and onwards) – During these years, the last outline plans for the Palestinian neighborhoods were finished and the authorities began preparing the Local Outline Plan Jerusalem 2000.

42. **Although plans were created for the majority of the Palestinian neighborhoods in East Jerusalem, as detailed above, these plans covered only a small part of lands owned by the residents, as can be clearly demonstrated by the following figures:**

A. **The population of East Jerusalem**, which numbered some 69,000 people in 1967, has since grown fivefold. According to municipal data updated for the end of 2012, the Palestinian population numbered approximately 370,000 people, who are about 39% of Jerusalem's overall population (the Jewish population numbers approximately 580,000 people, about 61% of the overall population).

B. **The entire area of the city of Jerusalem, both East and West, is approximately 126,000 dunams.** Of this area, **17%** (21,500 dunams) were included in plans for The Neighborhoods and designated for development for Palestinian residents; **27%** (35,000 dunams) were designated for Israeli development. Of the 27% designated for development for Israelis, 40% (14,000 dunams) are located in East Jerusalem

C. **Of the municipal area of the city, about 57%** (71,300 dunams) are located in areas that were under Jordanian rule after 1948. This includes the area of Jordanian Jerusalem as well as areas of nearby villages. Following the 1967 War, they were all included in the municipal borders of Jerusalem and came under Israeli law (and in practicality were annexed, see sections 109-111 hereafter). Of those 57% (amounting to about 71,300 dunams), some **35%** (24,500 dunams) were expropriated by the State of Israel from the residents and/or the Palestinian rightful owners

for the purpose of building new Jewish neighborhoods; Roughly **30%** (21,500 dunams) underwent planning and remained within the area of the Palestinian neighborhoods and their outskirts; and the remainder **35%** (25,300 dunams) were either not planned at all, or are undergoing a planning procedure that has not yet been completed, or were planned as wide open areas.

D. Of the overall area designated for development in Palestinian neighborhoods, which covers only 17% of the area of the entire city, **only 46% - which amount to a tiny land of 9,750 dunams - are designated for housing purposes**, in accordance with detailed outline plans that are valid to date. **This planned area destined for housing for Palestinians in East Jerusalem covers only 14% of the area of East Jerusalem and only 7.8% of the entire Jerusalem area (!).**

C2. Common Problems in the Plans in Effect in the Palestinian Neighborhoods of East Jerusalem

43. The outline plans that are in effect in The Neighborhoods (hereafter: "**The Neighborhood Plans**") share several characteristic flaws, due to which these plans fail to address even the basic needs of the residents.

[...]

45. **The Neighborhood Plans are small and do not include most of the areas owned by residents of the villages and The Neighborhoods.** The area of the plans in effect is generally

restricted to the area that was de facto constructed at the time of the plan's preparation. When the plan is bigger than the constructed area, the additional territory is designated as an open space.

46. **The areas designated for planning and building are small and restricted to the area in which there is de facto construction.** This acknowledges – only partially – the situation on the ground and enables some building additions, but does not offer substantial land reserves for development. In most of the neighborhoods, construction opportunities in areas designated for this purpose in the effective plans were exhausted. In places that still include available areas designated for construction, actual construction is usually not possible, for a variety of non-planning-related reasons such as priorities and/or the landowners' ability to invest, including landowners who sometimes do not even reside in Jerusalem.

47. **Many areas are designated as open landscape area , a purpose that is disconnected from the situation on the ground and the needs of the residents.** With the completion of the overall planning of the Palestinian neighborhoods in East Jerusalem, approximately 40% (historically – see below) of the overall area of the plans was designated as an open landscape area. In the framework of changes made to the plans over the years, through specific detailed plans, the area designated as open landscape was reduced and is currently roughly 30% of the entire planned area. Either way, this is an exceptional and extreme figure for an urban residential area. The essence of designating an area as an open landscape is preserving it in its natural state and prohibiting development and building within it, whether for housing or for other public needs – such as health, welfare, leisure and more – which are desperately needed in those neighborhoods. It should also be noted that given the current conditions existing in this terrain,

these open landscape areas are not accessible and are not suitable for leisure activities.

48. Extremely limited building rights. In most of the plans, two floors were established as the maximum number allowed, except for a small area in village centers, where three floors are allowed. The maximum construction ratios are in most cases 25-50 net percent of the area of the plot. There are small areas where the plans allow a 70% ratio. In comparison, the common construction percentages in the Jewish neighborhoods of Jerusalem (prior to the application of The Outline Plan) are between 75-125% and in some cases approximately 50%. In some of the plans for the Palestinian neighborhoods there is an additional restriction, stating that the maximum number of apartments per dunam is only three. Regardless, there is no argument that this is a very low figure for construction percentages on an urban level.

49. **A sparse road network that does not reach the depth of the area intended for development.** The task of development and construction depends upon the infrastructure. This is because the construction of houses, public institutions and industrial buildings requires infrastructure systems of electricity, sewage and water, as well as access roads. Most of the aforementioned infrastructure systems reach the plots via a route that is adjacent to the roads and laid alongside them. Therefore, the lack of roads prevents laying statutory infrastructure and hence, the development of the plots.

50. **A new road layout, which does not reflect the layout of existing roads.** In plans created in the third decade (see above), there are usually road systems that are somewhat more dense than those of the second decade. However, the road systems proposed in those plans lean only partially on the road networks that already

exist on the ground. The existing road systems, which have been serving the residents for generations, exemplify a system of historic agreements among the residents. These roads are a kind of an informal allocation of land for public needs, and they are usually located at the edge of a privately owned lot at a point where it borders on a differently owned lot. For this reason, road systems that are based on existing roads are more readily accepted by the residents and are more applicable. In contrast, the road system in The Neighborhood Plans frequently ignores an existing road and offers a completely different one, penetrating deep into the private lots. This phenomenon is common mostly outside the historic core of the villages, in places where construction was sparse when the plans were prepared.

51. **Spaces for public buildings are scanty and inadequate.** In the areas designated for public buildings, the plans allow almost only use for educational purposes. Areas that are allocated for a public building and are authorized by the plan to be used for sports facilities, community centers and clubs, or baby health clinics are rare, while other important usages, such as libraries, are entirely missing. Even the areas designated by the plans for educational institutions are problematic. Many areas allocated for schools do not meet minimal standards (such as the size of the plot in relation to the number of classrooms in it), and many of them are situated in a problematic topography (a steep slope), which renders their development much more difficult and expensive and even prevents it altogether. These days, when the municipality is interested in developing the plots designated for schools – whether because the classroom shortage has become acute or because of the Supreme Court ruling on the matter (HCJ 5373/08, **Abu Libdeh v. Minister of Education**) – it encounters difficulties doing so, because of the problematic topographic location, mentioned above, which necessitates a substantial budgetary investment, and due to the lack of paved statutory roads that lead to the designated lots.

52. **Plans that are not detailed enough.** In many cases, only general outline plans were prepared, upon which a building permit cannot be issued, or there is a limitation on the size of the lot (a minimal size of lot). In such cases, the preparation of a detailed plan is required. In the past two decades, dozens of such plans were submitted to the planning committees and many of them were approved.

53. **Re-parcelization plans**. Large sites in the planned areas of East Jerusalem – mostly in the north of the city, in the neighborhoods along the Ramallah Road – are included in plans that seek to redistribute them into parcels. The purpose of these plans is an equal distribution of the burden of land expropriation between all the landowners within the plan's realm. However, until the new lots that were established by these plans are registered in the Land Registry, building permits for these sites cannot be issued and hence the right to build on them cannot be realized. Re-parcelization of land is complicated, expensive and lengthy, and during this period the ability to receive building permits for the relevant lands and to legally build on them is impaired even under regular circumstances. In East Jerusalem, these plans were proven to be un-implementable – due to existing construction, cultural difficulties to accept one plot in exchange for another and other reasons – and constituted a delaying factor,. For example, two re-parcelization plans in Shuafat - plan 7614 and plan 7617 - were rejected in the Local Committee in 2009, following nine (!) years of planning procedures. Plan 7617 was split into two plans which have yet to receive approval; a revised version of plan 7614 was approved by the Local Committee in 2012 and at present is still in discussion at the District Committee.

[…]

55. In response to the State Comptroller's report regarding the King's Garden Project at the heart of the Silwan neighborhood, dated 13 October 2010, Jerusalem Mayor Nir Barkat sent – on the very same day – a letter to Prime Minister Binyamin Netanyahu, in which he announces a new planning policy for the neighborhoods of East Jerusalem. Among other things stated in that letter is the following:

> "Re-planning – The chosen alternative that includes leading a process of renewed planning. This alternative emphasizes a systemic perspective in order to regulate permits in East Jerusalem, while on the one hand encouraging legal construction and on the other hand taking more severe measures against illegal construction that violates the new zoning plan. It is clear that **this alternative constitutes the solution to the longtime neglect and to the planning void in the realm of planning in the city's east, which has led to the intensification of illegal construction and prevented the residents of East Jerusalem from following planning paths that were anchored in legal outline plans, due to the lack thereof**" (emphasis added).

56. We have shown, then, that The Neighborhood Plans are flawed in several basic aspects that constituted a real obstacle to their application. Indeed, today no one contradicts the very existence of yearlong neglect in planning for the neighborhoods of East Jerusalem, which seems to raise deep concerns regarding discrimination and has led to a severe housing problem and forced the residents of East Jerusalem to build illegally, causing chaos on the ground, chaos that is increasing over time and makes adequate planning even more difficult. Moreover, it is worth noting that

building without a permit entails severe sanctions against the residents and puts the responsible persons at constant fear that the structure will be demolished, with all that it entails.

C3. Initiatives and Planning in East Jerusalem

57. Against the backdrop of the deficient planning infrastructure that was described above, Amendment 43 to the Planning and Building Law from 1995 (hereafter: "**The Amendment**") was no less than revolutionary (also) for The Neighborhoods' residents. This amendment recognized the right of a stakeholder in the land to initiate a plan for the real estate. As stated in Section 61A(b) of the law:

> "A government office, a local committee, or a local council, each one in its realm, **as well as a stakeholder in the land or an interested party**, are authorized to prepare a local outline plan or detail plan and submit it to the Local Committee; should the plan be under the authority of the District Committee, the party preparing the plan shall submit a copy to the District Committee."

58. Prior to The Amendment, the authority to initiate plans was granted solely to public authorities: government offices, local councils and local committees. In actuality, in many cases private entrepreneurs were those who initiated the planning, but they themselves were not authorized to submit plans. In order to initiate plans, private stakeholders were dependent upon the good will of the local council and/or the local committee. The Palestinian residents of East Jerusalem neighborhoods did not always enjoy this kind of good will, which constituted a real and substantial obstacle for them.

[...]

60. The influence of The Amendment on planning patterns in East Jerusalem can be clearly demonstrated by the following figures (updated to 2008; between the years 2008-2012, to the best knowledge of the Petitioners, additional specific plans were approved):

> A. Since the application of Israeli law to the territories of East Jerusalem in 1967, and until the approval for deposition of the Local Outline Plan Jerusalem 2000 in 2008, that is **over the course of 41 years, some 480 outline plans were made and validated for East Jerusalem** (both detailed and non-detailed).
>
> [...]
>
> C. **Of those, some 360 plans (approximately 75%) were validated during one decade, the last one, 1999-2008**. These plans mostly deal with housing, including changing designation from open spaces of any kind to residential areas. The majority of the plans were prepared as private initiatives of land stakeholders. **Only about 40 (11%) of those 360 plans were initiated by the municipality** and dealt with complementary matters such as completing the overall planning of neighborhoods, re-parcelization of plots, schools, infrastructure of routes, and so on.

61. **These figures clearly show that since The Amendment, many stakeholders have realized their right to submit plans for the relevant lands. In the decade following this important amendment, there is an unprecedented planning momentum in The Neighborhoods. This was a decade of hope for improvement, during which the residents were granted the ability to improve their planning situation on their own**

initiative and to reduce their great dependence upon the authorities, which existed prior to that.

62. The wave of plans submitted as private initiatives damaged the overarching planning outlook and greatly burdened the planning system. As a result, the District Planning Bureau started setting regulations intended to diminish the private planning momentum. This led to the creation of the "10 Dunam Regulation," according to which the minimal area of a plan that seeks to change land designation from an open space (of any kind) is 10 dunam. (This requirement was later made even more severe in the Outline Plan, which conditions the approval of specified planning to an overall planning without setting the limits on the size of the area. See hereafter.) In this manner the regulation concerning an "abutting area" was set. According to it, changes of the designation of an area from an open area of any kind to a residential area, cannot be approved, unless the relevant area abuts areas that are already intended for building according to approved plans.

63. These regulations blocked the path of specific detailed planning for many of the landowners in The Neighborhoods. Most of them did not have a plot of land larger than 10 donams, and naturally the land they owned could not always abide by the demands of abutting an area already intended for building.. Despite that, there were those who managed to surmount these demands and to submit plans for specific detailed planning that were then approved.

64. **Thus, against this backdrop stemmed the practice guiding the planning system, to approve specific plans that change designation from an area without planning and/or an "open landscape area" to residential purposes or that increase construction rights in an area designated for housing. This practice helped to overcome, in a practical way – though not**

an optimal way - the flaws in the existing plans and particularly the severe shortage in land areas for housing.

65. **Applying the Outline Plan Jerusalem 2000 put an end to this practice, which was a last resort for the development of The Neighborhoods.** It is precisely the Plan that supposedly brings good tidings in planning for the Palestinian residents of East Jerusalem and offers a great development potential like never before in The Neighborhood Plans, which brought with it – without a statutory procedure, objections, or lawful public inclusion – a series of restrictions that not only prevent the realization of its innovations but also thwart the construction opportunities that the residents had throughout the decade prior to this plan, or at least significantly impair such opportunities.

[...]

C4. Thwarting the Opportunity for Specific Planning by Applying a Directive of the Outline Plan

67. Article 4.6 of The Outline Plan regulates the authorized uses for a "proposed urban residential area."

[…]

70. The Outline Plan further establishes a condition for depositing detailed plans for a proposed urban residential area. Article 4.6.2 of The Outline Plan's directives states:

> **"4.6.2 In a site designated as a "proposed urban residential area," a detailed plan may not be deposited unless a general local**

<u>outline plan has been approved for the entire site</u>, to which will be added documents and appendixes as decided by the District Planner, and it will include, among other things, references or instructions regarding the following issues:"

[...]

The article later on presents a list of issues that must be included in a general local outline plan for the site, such as building rights, the density and mix of housing units, public buildings and open landscape areas in the site, reference to roads, environmental reviews, passage rights and more.

[...]

75. Thus, for example – one example of many – in a discussion held by Respondent 2 on 29 November 2011, regarding Plan 13100 to change the designation of approximately 91.6 dunams from open landscape to housing and public buildings and the construction of 422 housing units in 65 structures in Al-Sawahre (and not in Jabel Mukaber as was stated in the minutes of that meeting), it was decided that:

[...]

"After reviewing the documents of the plan and the arguments made by the parties, the committee decided to reject the plan for the following reasons:

1. **The plan's area is designated by the New Outline Plan for Jerusalem, which is towards deposition, as a proposed urban residential area. Following the directives of**

> **the outline plan, such a designation requires the approval of a general outline plan for the site before approving detailed plans. Therefore, and considering the fact that the general outline plan for this site has not yet been completed, the committee believes that the plan in question must be rejected at this stage**, while reserving the right of the plan's submitters to submit a new plan after a general plan for the site is approved."

76. At the same time, the Respondents are not devoting enough effort to prepare general planning, and the approval of general planning for the sites in question will not happen in the foreseeable future.

[...]

81 Under these circumstances, approving general planning for the site is a condition for deposition that cannot be fulfilled. The aforementioned circumstances render this an overall freeze of the development momentum in The Neighborhoods, a momentum that was led by private landowners as a solution for the severe planning problem, which is becoming increasingly worse.

[...]

83. And note: **The Petitioners are not arguing against the very notion of preceding the general planning to the detailed planning. This is a professional-planning approach, which could be legitimate in a place where authorities are diligently working to prepare a reasonable and fitting plan. The Petitioners' argument is not against this approach itself, but**

rather against placing an impossible requirement, which blocks the only solution to a severe planning crisis, and all by the power of an outline plan that is not valid and without providing an opportunity to object.

C5. Violation of the Basic Rights of the Residents as a Result of Freezing Specific Planning in East Jerusalem

84. Placing the condition of approving general planning on one hand, while on the other hand completely failing to promote such planning, has a total or nearly-all debilitating effect on the ability to change the designation of land for housing, to determine building rights and to promote solutions – if only specific – to the housing problem in The Neighborhoods. **Those whose plan was rejected in anticipation of the general planning will keep waiting for many years in complete uncertainty, without the ability to provide an adequate housing solution for their families and without an opportunity to fully realize their property rights to their land in a different way and/or to regulate construction on this land.**

[...]

86. The Palestinian population of Jerusalem is characterized by a demographic growth of 2.9% annually (Statistical Yearbook 2012, table showing average demographic growth in Jerusalem by time periods and sub-groups, The Jerusalem Institute for Israel Studies. Hereafter: "**Yearbook**"). Hence, the need for additional land for housing, employment and public needs is constantly rising every year. Under these circumstances, the fact that a planning solution to the residents' needs is not being provided negatively affects every aspect of life. Thus, the inability to build housing units creates a severe deficiency, resulting in residents being forced to live in

structures that are inadequate and not suitable for housing, such as basements, warehouses, parking lots and stores; young couples giving up on the possibility of finding a reasonable housing solution, while every year, according to the Yearbook, some 2000 young couples join the search; and severe overcrowding in existing housing units.

87. In such a reality, it is no surprise that many have no choice but to turn to building without a permit, with all the safety hazards and threats of enforcement and demolition that it entails. Every year, structures – including houses – are demolished all across East Jerusalem, and thousands of residents live for years under the fear of their house being demolished, while paying exaggerated sums of money each year in the form of fines for illegal construction. It should be mentioned that the connection between the lack of planning infrastructure and building without permits was acknowledged by the Jerusalem Mayor in his letter, quoted above.

88. Other than the fear of house demolitions, building without permits affects the residents' conduct in many other areas. The fear of confronting the Jerusalem Municipality, a confrontation that could create an incentive to execute demolition orders, and leads them to avoid insisting on receiving different rights and services from the Municipality, such as garbage disposal, street lighting, education, welfare and more. This phenomenon further weakens this population, which is already poor and disadvantaged as it were.

89. The shortage of relevant outline plans creates not only a severe shortage of residential buildings, but also a shortage of public buildings, which is particularly apparent in the severe shortage of schools in East Jerusalem. Moreover, the shortage of buildings that are suitable for public needs and have building permits leads to an

inability of the authorities to rent buildings for public use as an alternative to building new public buildings.

90. These reasons, in addition to others, are at the root of the severe shortage of social welfare offices, medical centers for family health care ("baby health clinics"), post offices, public kindergartens, child development centers, mental health centers, and a variety of other services that the residents are entitled to receive from the city and the state.

[...]

The Legal Argument

E. The Legal System in East Jerusalem

109. In 1967 Israel conquered East Jerusalem, the rest of the West Bank and the Gaza Strip. Although Israel argued that it never intended to annex the lands of the West Bank and Gaza Strip, the Israeli government decided to add to the municipal zone of Jerusalem some 70 square kilometers of the occupied area to the north, east and south of Jerusalem, and applied there the "law, jurisdiction and administration" of the State of Israel. This area is known today as East Jerusalem. Expanding the borders of the city and applying Israeli law in East Jerusalem were carried out through a series of legislative amendments, decrees and declarations. Residents of East Jerusalem were given permanent residency permits in accordance with the Entry into Israel Law of 1952.

110. According to the internal law of Israel, the results of the annexation of East Jerusalem to Israel was the implementation of Israeli law in that area. However, "the question of annexation of any place on earth is of course not dependent on the arbitrary will of any state. […] International law has the authority to determine when a state can annex a territory, and a legal annexation is only one that is done in accordance with the law" (Yoram Dinstein, "Zion will be Redeemed through International Law", HaPraklit 27, 1971, 5, 7). And, "the area of the state, or the area of its sovereignty, are issues to be determined by international law" and not according to the internal laws of a given state (Amnon Rubenstien and Barak Madina, "The Constitutional Law of the State of Israel", 6th edition, 2005, V. 2, p. 924).

111. Nevertheless, since the State of Israel wishes to see East Jerusalem and its residents as part of Israel, it bears the responsibility to provide East Jerusalem and its residents the normative protection of human rights as outlined in Israeli law. Israeli law includes both constitutional protections and the commitments made by the state in accordance with the international law of human rights.

F. Using a "Policy Document" in Place of a Statutory Plan

112. It must first be emphasized, that the Planning and Building Law does now acknowledge policy documents, guiding plans, or master plans (which are all alternative names for the same purpose, which is not a statutory plan). All those are created by daily reality and stem from attempts by the planning systems to bypass the need

for lengthy planning procedures, or to find interim-solutions until planning procedures are completed. And indeed, the overall planning of The Neighborhoods – whether as a "residential urban area" or as "proposed residential urban area" – is usually promoted by master plans and not by statutory plans. (These master plans do not rid of the necessity to create an outline plan for "a significant portion of the entire area" – see section 22 of the letter by Respondent 1 abovementioned.)

113. The State Comptroller's Report number 60a from 2010 included a chapter on the subject of "Aspects of General Local Outline Planning," in which the State Comptroller addressed the phenomenon of using master plans and stated, among other things (p. 386-387):

> **"Due to the complexity and length of the procedures to prepare and approve general local outline plans, the phenomenon of creating general master plans has become more common. Promoting local outline planning in this manner enables the establishment of a local outline framework without dealing with objections from landowners, being exposed to lawsuits demanding compensation for those harmed, requiring the authorities to act towards building infrastructure and to carry out mandatory regulations, and at times even without having to receive authorization from different government authorities."**

[...]

115. The Petitioners will argue that using a draft outline plan as a "policy document" instead of preparing a statutory plan and without any time-limit contradicts the principle of legality; violates the requirement for public inclusion and the principle of transparency; constitutes an avoidance of administrative and judicial review; and carries severe and far-reaching consequences for the Palestinian population of East Jerusalem.

G. Violating the Principle of Administrative Legality

[...]

117. It should be emphasized that the only authority granted by law to act by virtue of a plan in preparation stages, which has not yet been deposited, is anchored in Articles 77-78 of the Law. According to these articles, a plan that has not yet been deposited can serve as a source of authority only for restrictions at the stage of issuing a permit, and this only for a limited period of time, subject to administrative and judicial review and under the prerequisite of publishing an announcement in the State Records (*Reshumot*) regarding the preparation of a plan.

[...]

119. Respondents 2-3, as administrative authorities, are not authorized to rely on the instructions of a plan not yet deposited as grounds for rejecting other plans from the outset or at all, when there is no legal directive allowing this. For, were this permitted, then planning authorities would never need the statutory procedure and could bring every plan to the stage of the deposition decision – and then cease from promoting it and begin using it as a "policy document." Needless to say, this is an absurd situation.

[...]

H. The Legal Consequences of Using an Invalid Outline Plan as a "Policy Document"

H1. Severe Violation of the Principle of Transparency and the Right to Object

121. The Petitioners will argue that the de facto implementation of The Outline Plan, without a statutory process of public inclusion, bypasses the requirement for public inclusion and contravenes the principle of transparency, which has been acknowledged as a basic principle by the planning laws.

122. For, as The Outline Plan was never deposited, obviously no objections to it were submitted nor reviewed.

[...]

134. The de facto implementation of The Outline Plan, without an organized hearing process for the public, is a blatant violation of these basic principles. This violation has two essential bearings: **first**, the application of a new planning situation to the population of the city residents, which affects some 952,000 people, without giving those who might be harmed by it the right to a prior hearing (HCJ 288/00 Adam Teva V'Din – Israel Union for Environmental Defense v. Minister of Interior, Ruling 55(5), 673). Hence, **this is a substantial violation of a basic right of hundreds of thousands of people**; **second**, damaging the quality of the planning product – under whatever title it is given – since the planning institution was not presented with a variety of opinions regarding the plan; the plan did not undergo the process of amendment and improvement it would have presumably gone through had the objections been

heard. This last point is all the more essential in the matter at hand, for during the debate concerning the decision to submit it a second time, on 5 May 2009, the Respondents stated in several instances that certain matters which were raised will not be debated, and it will be possible to raise them during the public review stage.

[...]

H2. Instability and Uncertainty

[...]

140. There is also constant uncertainty with regards to the very use of the document, because the Respondents can clearly continue to use it for years more, or cease from doing so as they see fit, without any warning or publication, which is not the case with a statutory plan.

141. The State Comptroller report Annex 23 mentioned above included quotes from a letter sent in June 2006 by the director of the planning administration to the legal advisor of the Ministry of Interior, which refers to the parts of the plan that are not statutory. It stated that these plans,

> "If they do not turn immediately into outline plans, they are in fact circumventing the planning procedure, and eventually lead to great chaos: They are not transparent enough, can't be understood easily, are not necessarily familiar to the decision makers, and often become the facade behind which a chaotic situation and unbalanced interests continue."

142. It is clear that this state of affair causes harm to all residents of the city, and in particular the residents of East Jerusalem who have been weakened by such policies for years. If the legislature believed that there is no need for statutory plans, as a solid tool that ensures transparency and clear legal validation, then the legislature would not have demanded that these plans be created and legally validated.

H3. Flexibility Mechanism Lacking - Contrary to the Lawmaker's Intention

143. Article 149 of the Law establishes an organized mechanism to bridge gaps between planning and reality at the permit stage, in the form of nonconforming use and concession. Both of those are under administrative discretion, the right to object and administrative and judicial review. On the importance of the tools that allow flexibility in planning see CA 6291/95 **Ben Yakar Gat Engineering and Construction Company LTD v. Modi'in Special Committee for Planning and Building** (p. 864). These essential tools do not exist in a policy document.

[...]

H4. Avoiding the Obligation to Pay Compensations

145. A "policy document" enables the authority to avoid paying compensation due to planning damage, since those damaged were not hurt by "a plan" and supposedly do not meet the prerequisite to be included among those eligible for such compensation (see Article 197[a] of The Law). This outcome contradicts the intention of the lawmaker, who viewed the damage caused by planning as eligible for compensation. In its ruling on HCJ 192/64 **Shem Tov Argaz v. Jerusalem District Planning and Building Committee et al.** (ruling 19[1], 95), the Israeli Supreme Court addressed this matter and stated:

"The damage caused to a citizen, a property owner in an area to which applies a plan whose approval was delayed beyond reasonable extent, is apparent: freezing his property for many years prevents him from any opportunity to utilize it for construction or to sell it at the price of land that is designated for construction [...] Moreover [...] Before the the plan is granted final approval, the landowner cannot even try his luck in filing a lawsuit for compensation due to the damage caused to him by the plan."

146. The Respondents ceased from promoting the planning procedure for The Plan, but they are effectively implementing it. Hence, damage caused by The Plan – such as from land designations established in it – is certainly possible, but does not establish eligibility for compensation.

147. This creates a violation of the right to property of Jerusalem residents, a violation which is sweeping and has no time limit.

[...]

I. Deviating from the Realm of Reasonability

149. The use of the unapproved Outline Plan as a policy document – the result of which is a freeze to planning and building in the neighborhoods of East Jerusalem - deviates from the realm of reasonability due to the violation of the authorities' obligation to provide adequate planning solutions within a reasonable time frame.

[...]

151 And it should be emphasized: **This is not a case of a "bridging use" until the completion of planning procedures, but rather, so it seems, a permanent solution and a practical way out from the problematic situation created by the Interior Minister's intervention to prevent the plan's deposition.** However, this practical way out leads to an outcome that is extremely unreasonable, i.e., conditioning detailed planning on the existence of an overall plan which does not seem will be approved any time soon, all this based on a plan that was never approved. As a result, a de facto freeze of planning for residential purposes and for various public services exists in the Palestinian neighborhoods of East Jerusalem, and will continue to exist for an unknown period of time. This state of affairs outright contradicts Supreme Court rulings on the responsibility of the authorities to enable a person to put his property to use, let alone a person's right to adequate housing and to basic public services. The population should not be deprived of these by means of freezing all planning procedures for an unreasonable period of time.

[…]

156. Therefore, the Honorable Court is asked to determine that the authorities' reliance on the Jerusalem 2000 Outline Plan, in light of the circumstances described above, is being carried out unlawfully.

[…]

K. The Intervention of the Court

164. **In this petition, the Honorable Court is not asked to intervene in professional considerations concerning planning and building.**

165. The requirement of overall planning as a precondition to specific planning, and the outcomes of this impossible demand, were presented here as an example of the harsh outcome of the implementation of the Outline Plan: A freeze of the planning in the Palestinian neighborhoods of East Jerusalem, contrary to case law, and the denial of both the right of the residents to object and the possibility of demanding compensation for harm caused.

166. The assistance this court is asked to provide is in preventing the unlawful reliance of Respondents 1-3 on a "policy document", which in actuality is an outline plan lacking any validity, in opposition to the intention of the lawmakers, to the rules of good governance, and which creates harsh results as described above.

167. For all of the abovementioned reasons, the Honorable Court is asked to accept this petition.

168. The Honorable Court will also be requested to charge the Respondents with paying the Petitioners legal costs.

Attorney Sharon Karni-Kohn

Bimkom – Planners for Planning Rights

Attorney Keren Tzafrir

The Association for Civil Rights in Israel

Date: 21 April 2013