



**JLAC**

JERUSALEM LEGAL AID AND HUMAN RIGHTS CENTER

# CONCEALED INTENTIONS

Israel's Human Rights Violations through the Manipulation  
of Zoning and Planning Laws in "Area C"





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**May 2011**

# Acknowledgements

JLAC would like to thank the following people for their contribution to this report

**Pauline Brucker** – Main Researcher, *JLAC Intern*

**Rayan Fay** – Researcher, *JLAC Intern*

**Rifk Ebid** – Legal Researcher and Editor, *JLAC Advocacy Officer*

**Sliman Shaheen** – Report's Legal Advisor, *JLAC Advocate*

“Only by dealing upfront with restitution can wars and conflicts come to a permanent end”.<sup>1</sup>

Theo Van Boven

“The right to housing goes further than the right not to be subjected to arbitrary or forced eviction. It also involves a duty on the State to take effective action to enable its people to meet their need for a safe and secure home where they can live with dignity. That is not achieved easily or overnight, but . . . it is now internationally recognized that States must take appropriate steps to ensure the realization of this right.”

Nelson Mandela

# ABSTRACT

The purpose of this study is to elucidate the discriminatory nature of Israel's zoning and land planning policies in "Area C" of the West Bank, and to demonstrate how such policies are in direct contravention of international law. The goal is to go beyond an examination of the presumed "legal" tools Israel uses to restrict Palestinian growth and development, and to, instead, address the legal implications of such policies and how they specifically violate international law provisions and Israel's obligations as an Occupying Power. First, we define and examine how Israel's policies in "Area C" aim at restricting Palestinian use and ownership of land through practices such as land parceling and annexation, exclusion of Palestinians from the planning process, formidable building restrictions, home demolitions, and forced eviction or displacement. Then, we identify how such policies are in direct violation of numerous critical international human rights and humanitarian law provisions, such as the right to housing, land, and property and the right to development, as well as various economic, social, and cultural rights. Finally, we illustrate what JLAC is doing on both an individual and community level to combat the adverse social, political, and economic effects of such policies. Our hope is that the information provided in this study can be used by human rights practitioners, government officials, and international organizations to put pressure on Israel to obey its obligations under international human rights and humanitarian law.

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# Executive Summary

Territorial dispute lies at the heart of the Israeli-Palestinian conflict. Forty-four years of Israeli occupation has resulted in the continuous usurpation of Palestinian land through illegal settlement building and discriminatory land zoning and planning policies. For Palestinians, these policies have meant the perpetual loss of their land through exclusion from the planning process, building and land access restrictions, and home demolitions or forced evictions. Israel's discriminatory zoning and planning policies illustrate its intent to manufacture "facts on the ground" in order to maintain permanent control over the Occupied Palestinian Territory ("oPt").

## *The Oslo Agreements and Establishment of "Area C"*

Israel's occupation of the West Bank, East Jerusalem, and the Gaza Strip in 1967 resulted in its full control and occupation of the 22% that remained of historic Palestine after the establishment of Israel, resulting in control of land zoning and planning therein. The 1995 Oslo II Interim Agreement on the West Bank and the Gaza Strip provided a temporary solution in the interim of the negotiating process, by dividing the West Bank into three classifications – Areas A, B, and C.<sup>2</sup> The Palestinian Authority ("PA") has full civil control over "Area A", comprising enclaves of Palestinian cities, and only administrative control over "Area B" (subject to Israeli security control), encompassing most Palestinian rural areas and villages. "Area C," the only contiguous land mass holding the majority of West Bank land (approximately 59%), is under full Israeli civil and security control.<sup>3</sup>

## *"Area C" Planning Challenges*

Although the original intent of the Interim Agreement was the eventual transfer of control over the entire West Bank to the PA, the failure of the peace process left responsibility for land zoning and planning in "Area C" in the hands of the Israeli Civil Administration ("ICA"). The ICA implements an outdated policy (dating back to the British Mandate in the 1940s) that neglects the current needs of the Palestinian communities located in the areas under its organizational control. Palestinians, in turn, face insurmountable difficulties because they are forced to obtain ICA approval for all private or public construction in "Area C," yet due to the ICA's intentionally restrictive and outdated policies, Palestinians have been forced to build outside the allotted areas and risk the threat of house demolition. In the meantime, the ICA maintains policies aimed at expanding and facilitating the development of illegal Jewish settlements in the area.

"Area C" is vital for Palestinian growth and development because it is the only naturally rich, sizeable, and contiguous area that provides a large percentage of water and food needs, in addition to allowing for the natural development and growth of Palestinian communities by providing land for building public infrastructures, enterprises and private institutions. As the responsible administering body, the ICA is obligated to respect and fulfill the fundamental rights to housing adequacy and water for Palestinian communities in "Area C."<sup>4</sup>

2 The Israeli-Palestinian Interim Agreement on the West Bank and Gaza Strip, Washington, D.C. (September 28, 1995), Article XI.

3 World Bank, *The Economic Effects of Restricted Access to Land in the West Bank*, 23 October 2008, p. iv.

4 Both rights derive from the Right to an Adequate Standard of Living, ICESCR, Article 11: "1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent. 2. The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific program, which are needed: (a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources; (b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need."

Failure of the peace process, and the subsequent failure to transfer control of the West Bank to the PA has allowed the ICA to implement discriminatory, restrictive, and often illegal policies that only serve to preserve Israeli occupation of the oPt and prevent Palestinians from exercising their right to self-determination and sovereignty. The current zoning and planning policies maintain an illegal military occupation over a majority of the oPt through discrimination and segregation, and empower Israel with full administrative and military control while denying the PA the ability to ensure social and economic development and security for its population.

### ***Israeli Annexation of Palestinian Land***

Since the onset of Israeli occupation in 1967, the cornerstone of Israel's planning policy has been land annexation [Chapter I, a]. First, Israel declared as "state lands" any land belonging to an enemy state on the date of June 7, 1967, a measure which caused all the land publicly owned by Jordanian authority to come under Israeli control. Israel later expanded the scope of the "state lands" definition by manipulating the 1858 Ottoman Land Code that divided land into specific categories subject to specific rules, thereby appropriating additional Palestinian land if it did not follow these rules. For example, cultivated lands formerly designated as "Miri land" (state-owned), if not cultivated for a period of three years would be declared "state lands." Additionally, under the guise of "military necessity" and security, Israel continues to annex and reduce available land for Palestinians through the establishment of military zones, Jewish settlements (including roads and public infrastructures for settlers – measures strictly forbidden under international law), and construction of the Annexation Wall.<sup>5</sup>

### ***Exclusion of Palestinians from the Planning Process***

In addition to Israel's illegal land annexation policies, Palestinians are also excluded from the land planning process [Chapter I, b]. Prior to Israeli occupation, Palestinians used to be part of the Jordanian hierarchical planning system<sup>6</sup> –based on local, regional and national division– supporting local input and participation of Palestinians. After occupation, Israel modified this system to reject Palestinian participation and to concentrate all decision-making powers into the hands of the ICA.<sup>7</sup> As such, Palestinians are excluded from the system while the ICA expands its planning and administrative powers to freely implement discriminatory housing decisions supporting Jewish settlement activity.<sup>8</sup>

### ***Building Restrictions***

On the remaining accessible land in the oPt, Israel enforces binding building restrictions aimed at further stifling Palestinian expansion and development [Chapter I, c]. Since 1967, Israel froze the process of land registration, resulting in the confiscation of approximately 67.1% of the West Bank as "state lands."<sup>9</sup> As a result, only 32.9% of the West Bank is formally registered today and, in theory, eligible for building.<sup>10</sup>

The current ICA plans prohibit construction on nearly 70% of "Area C" lands.<sup>11</sup> In the remaining 30%, the ICA imposes a broad range of restrictions that effectively preclude Palestinians from obtaining building permits, therein limiting construction to land covering less than 1% of "Area C".<sup>12</sup> Construction is then restricted to mostly private ventures, with extremely limited areas permitted to be designed for public uses.

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5 Article 49, Fourth Geneva Convention: "The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies." International Committee of the Red Cross, "International Humanitarian Law – Treaties & Documents." November 2007. <<http://www.icrc.org>>

6 This planning system was based on the Towns, Villages, and Building Planning Laws (Temporary Laws), Law No. 79 of 1966, Article 25(1).

7 Israeli Military Order 41, 1971.

8 Order Concerning Administration of Regional Councils (Judea and Samaria) (Number 783), 1979.

9 Palestinian National Authority Land Administration Project, *Land Registration Study*, Ministry of Planning, May 2007, p. 28.

10 Ibid.

11 United Nations Office for the Coordination of Humanitarian Affairs, *Restricting Space: The Planning Regime Applied by Israel in "Area C" of the West Bank*, Special Focus, 15 December 2009.

12 Ibid.

Israel also broadly construes and applies outdated planning policies and norms originating from British Mandate as well as Jordanian laws, in a way intended to significantly limit Palestinian building opportunities. The inadequate boundaries of those outdated plans confine Palestinian development and building to small and isolated areas and have not been re-evaluated in order to reflect current needs. Instead of protecting Palestinians land rights, the planning policy continues to limit expansion and development and reflects an inaccurate depiction of the area by not taking into account the natural growth and development of Palestinian communities.

### ***Violations of Fundamental Rights***

Israel's policies of home demolition, forced evictions, displacement, and severe restrictions on land use/land access directly violate Palestinians' right to an adequate standard of living, particularly the right to housing. Checkpoints, Jewish settlements, "nature reserves," the Annexation Wall, and numerous other physical obstacles in "Area C" severely restrict Palestinian movement and access to necessary services, work, and places of worship. As a predominantly agrarian population in "Area C," Palestinian agrarians and Bedouins rely heavily upon open and consistent access to the land. Thus, the consequences of the actual planning policy are a real threat to economic growth in "Area C," limited by restrictions on agricultural activities and the monopolization of water resources. On a broader level, severe movement restrictions serve as a major obstacle to the general economic, social, and physical development of the West Bank [Chapter II, c]. The ICA also makes the procedure for obtaining a building permit very costly and discriminatorily denies almost all applications by Palestinians for building permits. Governed by Israeli planning policies that intentionally do not meet their growing needs, Palestinians are left with no choice but to build and construct "illegally," a predicament subjecting them to the constant threat of demolition, forced eviction and forced displacement [Chapter I, d].<sup>13</sup>

Moreover, Israeli policies violate numerous other inalienable rights guaranteed by a multitude of international and regional human rights treaties, such as the right to access to healthcare, sufficient food and water supplies, and education. Israel's discriminatory policies negatively impact both private and public infrastructures, creating binding building restrictions that effectively prevent the PA from ensuring basic services, such as adequate water supplies, food, schools, and health infrastructures [Chapter II, b].

### ***Responsibility for Gross Violations of International Law***

An analysis of the Israeli zoning and planning policy in "Area C" reflects three main concerns: (1) Israel's deliberate misuse and strict interpretation of outdated laws governing Palestinian territories to achieve specific expansion and annexation objectives, (2) Israel's use of its administrative powers under the ICA to legally implement a "non-planning policy" for Palestinians, essentially denying them any opportunity for growth, (3) Israel's direct violations of International Human Rights Law ("IHRL") and International Humanitarian Law ("IHL") and its discriminatory, unlawful, and violent actions in the oPt intending to create "facts on the ground," isolate Palestinian communities, and prevent territorial contiguity.

Israel's zoning and planning policies in "Area C" have only served to expand the scope of Israeli control over the region, encouraging growth and construction of illegal settlements and de facto annexation of Palestinian lands, while further subjugating Palestinians to discriminatory laws that completely ignore their needs and deny their most basic human rights. Israel's obligations as an occupying power are clearly delineated in international human rights and humanitarian provisions. Application of both legal frameworks would ensure that Palestinian civilians under Israeli occupation are left with some form of humanitarian protection. As an occupying power, Israel is subject to the

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13 As defined by the Special Rapporteur on Adequate Housing in the Basic Principles and Guidelines on Development-Based Evictions and Displacement (A/HRC/4/18, Annex 1, paragraph 4), forced eviction refers to "acts and/or omissions involving the coerced or involuntary displacement of individuals, groups and communities from homes and/or lands and common property resources that were occupied or depended upon, thus eliminating or limiting the ability of an individual, group or community to reside or work in a particular dwelling, residence or location, without the provision of, and access to, appropriate forms of legal or other protection."

regulations of IHRL and IHL and cannot continue to act with impunity. The international community has an obligation to hold Israel accountable for its illegal actions and intentionally discriminatory policies.

### ***JLAC's answer***

The Jerusalem Legal Aid Center (“JLAC”) has been at the forefront of locally combating human rights violations in the West Bank, and in “Area C” in particular. Through its services, JLAC provides pro-bono legal aid and consultations to Palestinians, and undertakes a variety of cases ranging in thematic areas, including but not limited to: orders of house demolitions issued by Israeli authorities, demolition of agricultural facilities, land confiscation and forced displacement (especially regarding Bedouins communities). Additionally, JLAC is involved in public interest cases, such as reform of the existing planning policies in “Area C” or protection of farmland. JLAC's strategy aims to facilitate access to justice by adopting hundreds of dwelling and living cases and taking them before relevant courts in order to ensure, in the long run, respect for Palestinians’ fundamental human rights, blithely and daily violated by the Israeli authorities.

# List of Acronyms

**IVGC:** Fourth Geneva Convention

**CEDAW:** Convention on the Elimination of all Forms of Discrimination against Women

**CERD:** Convention on the Elimination of All Forms of Racial Discrimination

**CESCR:** Committee on Economic, Social and Cultural Rights

**CRC:** Convention on the Rights of Children

**HLP:** Housing, Land and Property

**ICA:** Israeli Civil Administration

**ICAHD:** Israeli Committee Against House Demolitions

**ICC:** International Criminal Court

**ICCPR:** International Covenant on Civil and Political Rights

**ICESCR:** International Covenant on Economic, Social and Cultural Rights

**ICJ:** International Court of Justice

**IOF:** Israeli Occupation Forces

**IHL:** International Humanitarian Law

**IHRL:** International Human Rights Law

**IL:** International Law

**IOF:** Israeli Occupation Forces

**JLAC:** Jerusalem Legal Aid Center

**NGO:** Non-Governmental Organization

**oPt:** Occupied Palestinian Territory

**PA:** Palestinian Authority

**PLO:** Palestine Liberation Organization

**SSA:** Special Security Areas

**UDHR:** Universal Declaration of Human Rights

**UN:** United Nations

**WHO:** World Health Organization

# INTRODUCTION

Control over territory, and the subsequent resources that flow therein, have marred and prolonged the Palestinian-Israeli conflict for decades. The Oslo Peace Accords signed between Israel and the Palestine Liberation Organization (“PLO”) were meant to lay the foundation for resolving the contentious territorial dispute, but instead gave Israel full administrative and security control of over 59% of the West Bank. With the apparent halt of the peace process, what was meant to be a temporary arrangement is turning into an irreversible certainty that has given Israel free reign to continue to design and implement discriminatory zoning and planning policies in “Area C.” Palestinians have acutely suffered as a result of these policies. Rather than benefiting the natural expansion and growth of Palestinian communities in all sectors, Israel’s policies, instead, consistently exclude Palestinians from the planning process, and subject them to home demolitions, forced evictions and displacement, and severe restrictions on freedom of movement. The majority of the Palestinian population in “Area C” is agrarian and heavily relies upon open and easy access to land. Israel’s restrictions on land use and access to land through the establishment of checkpoints, building of the Annexation Wall, proliferation of Jewish settlements, and the designation of lands as “state lands,” military zones, or “nature reserves” all serve as physical obstacles intended to further impede the Palestinian population in “Area C.” Such discriminatory planning and zoning policies in “Area C” are in direct defiance of the international provisions designed to protect occupied populations from such actions.

This report seeks to demonstrate how Israel’s unmonitored and overlooked administrative and military control over “Area C” allows it to design and impose a wide range of discriminatory planning and zoning measures that serve to expand the land area under Israeli control, reduce Palestinian communities’ building possibilities, stifle economic growth, and hinder Palestinians’ freedom of movement - all of which are gross violations of international human rights and humanitarian law. This report will demonstrate the direct link between Israel’s discriminatory planning policies and the slow disintegration of Palestinians’ livelihood and welfare, underscoring how Israel’s current planning and zoning policies in “Area C” severely harms the Palestinian population and has serious international legal consequences that must be redressed by local parties in conjunction with pressure and support from the international community.

# I. The Israeli Zoning and Planning Policy in “Area C”

Since the onset of Israeli occupation in 1967, rule of law in the oPt is constantly being modified through the use of Israeli military orders. Although international humanitarian law forbids an occupying power from modifying the legal system of the territory it occupies,<sup>14</sup> Israel has been broadly interpreting, amending and changing the law in force prior to its occupation with clear annexation objectives. International law permits the occupying power to issue certain regulations under two conditions: (1) if the security of the occupying forces necessitates new legislation; or (2) if new regulations are required in the interests of the civilian population.<sup>15</sup> As such, Israel attempts to justify its discriminatory planning and zoning policies under the guise of “security,” while issuing new regulations that only benefit its settler population and ignore the interests and needs of the Palestinian population.

This chapter will focus on Israeli land parceling plans and master plans that have effectively excluded Palestinians from the decision-making process, thereby allowing Israel to achieve greater control over the oPt.

## a. Land Parceling and Annexation

Israel’s early land policies in the oPt involved amending outdated legislation and enacting new policies in the form of (1) appropriating property under “military necessity,” and (2) the designation of land as “state lands.” After the Oslo Accords, the West Bank was divided into Areas A, B, and C – further fragmenting and isolating Palestinian cities from each other – while Israel maintained complete security and administrative control over “Area C” (the largest and only contiguous area of the West Bank). Thus, Israel was able to continue its deliberate policy of land annexation through zoning and planning measures serving the interests of Jewish settlers, reducing Palestinian land ownership, and denying the Palestinians their right to build and grow.

### *State Land*

At the onset of Israeli occupation, one of the main tools Israel employed to restrict Palestinian land access and ownership was through the declaration of Jordanian governmental and Palestinian owned private land to be “state lands.” Israel applies this term (derived from the Ottoman Land Law of 1858) with significant modifications made by military orders in order to exert full control over the West Bank and carry out its expansionist policies through the establishment of Jewish settlements and closed military zones. Palestinians are forbidden from building on those annexed areas, thereby highlighting the ethno-national component underlying the use of land in the oPt.<sup>16</sup>

Israeli Military Order 59 (Order Concerning Government Property)<sup>17</sup> defines “state lands” as any land belonging to an enemy state, or registered in its name, on the “determining date” of June 7th 1967.<sup>18</sup> Through this order, Israel initially appropriated at least 700,000 dunums of West Bank land that was previously under Jordanian control.<sup>19</sup> An additional land appropriation measure was taken one year later through Military Order 291, providing the basis for suspension of land registration in the West Bank.<sup>20</sup>

Following a 1979 Israeli Supreme Court Ruling in the Elon Moreh Case (see box below), prohibiting the use of military

14 Article 43, The Hague Regulations; Article 64, Fourth Geneva Convention (See note 8).

15 Jamil Rabah and Natasha Fairweather, *Israeli Military Orders in the Occupied Palestinian West Bank: 1967-1992*, Jerusalem Media and Communication Center, 1993.

16 Bimkoum, *The Prohibited Zone: Israeli Planning Policies in the Palestinian Villages in “Area C,”* June 2008, p. 25.

17 Order Concerning Government Property, (Judea and Samaria), (No. 59), 1967., Section 1.

18 The Order defines as government property property registered on its name or registered on the name of a company in which any country held any rights.

19 Bimkom, *The Prohibited Zone*, op. cit, p. 27.

20 Yvonne Schmidt, *Foundations of Civil and Political Rights in Israel and the Occupied Territories*, GRIN Verlag, 2008, p. 363.

orders to expropriate private Palestinian land,<sup>21</sup> Israel began to apply the outdated Ottoman Land Law of 1858 to allow it to continue to seize private property and ensure reserves of available land for Jewish settlements and military uses.

### ***The Elon Moreh Case***

This 1979 landmark case was based on a petition brought by seventeen Palestinian landowners whose lands were appropriated by Israel, justified on the basis of “military necessity.” (H.C. 390/79, Mustafa Dweikat et al. v. The Government of Israel et al.). The lands were located on the outskirts of the Palestinian city of Nablus. The Israeli Supreme Court was asked to rule on the legality of the subsequent establishment of the Elon Moreh Settlement on the petitioners’ privately owned lands.

The Court first stressed the importance of the principle of protecting individual property, as expressed in Article 46 of the Fourth Hague Convention Respecting the Laws and Customs of War on Land of 1907 (“Hague Regulations”), noting that “a military administration which seeks to infringe upon individual property rights must present a legal source thereto and cannot exempt itself from judicial review of its actions on the claim of non-justiciability.”<sup>22</sup>

The Court then focused its analysis on interpreting Article 52 of the Hague Regulations, which refers to the legality of land seizure on the basis of military necessity. The Court found that: (1) the experts charged with state security are divided regarding the necessity of a settlement in the area in question, and (2) political ideological reasons – not solely security – served as the dominant factor in the decision to establish the settlement. Thus, the Court concluded that, according to the evidence, the settlement did not meet the requirements of the “military necessity” test.

Although the ruling did not find all settlement activity to be illegal, the Elon Moreh win was a major advancement in the acknowledgment of Palestinian land rights. It established the principle that land confiscation and establishment of settlements on privately owned land solely for civilian purposes was an unlawful practice.<sup>23</sup> By stating so, the Israeli Supreme Court tried to comply with the international regulations aimed at protecting the rights of occupied populations and the international condemnation of settlement activity in the oPt.<sup>24</sup>

The major downfall, however, is that the Court did not rule on the legality of settlements in the oPt as a whole. Settlement activity is still in full force on “state lands,” while privately owned land continues to be appropriated through military necessity or public needs. As a result, from 1967 to 2010, about 121 new Jewish settlements were established in the West Bank, recognized by the Interior Ministry as “communities.”<sup>25</sup> Additionally, thousands of private dunums were (and continue to be) annexed for the construction of the Annexation Wall or the construction of roads serving Jewish settlements.

In 1858, the Ottomans introduced a Land Register Law known as “Tabu” in order to establish private land ownership rights. Landowners were required to inscribe their property in a deed register, which posed two problems: (1) cultivated fields were classified as “Miri” (state-owned land) and were heavily taxed, and (2) those that registered were drafted to fight in the Turkish Army.<sup>26</sup> In 1928, the Land Settlement Ordinance was introduced under British rule, requiring Palestinians to register their land individually rather than the family-based communal ownership the Palestinian community followed. This posed an additional problem for Palestinian land ownership rights because it did not allow for maintenance of communal traditions, thereby posing a threat to the village power structure.<sup>27</sup> As a result, Palestinian landowners resisted both systems, causing inaccurate documentation of Palestinian land ownership.

When Israel gained control of the oPt, it did not recognize or authorize the traditional Palestinian communal based land ownership system. Instead, it halted the Jordanian imposed land registration process and broadly interpreted

21 Shlomo Gazit, *Fools in a Trap: 30 years of Israeli Policy in the Territories*, Tel Aviv: Zmora Bitan, 1999, p. 24.

22 HCJ 390/79, 'Izzat Muhammad Mustafa Duweikat et al. v. Government of Israel, et al. Translation provided by Hamoked: Center for the Defense of the Individual.

23 Ibid.

24 UN Security Council Resolutions 446, 452, 465, 471, 467. See also, IVGC Article 49.

25 B'Tselem. *Land Expropriation and Settlements*, Viewed on 1/2/11 <<http://btselem.org/English/Settlements/>>

26 Palestinian Authority Land Administration Project, *Land Registration Study*, Ministry of Planning, May 2007.

27 Ibid.



the outdated Ottoman system regarding “Miri land.” If part of the Miri land was continuously cultivated for more than ten years, it could be registered in the property tax registry and therefore privatized. However, if the land was not cultivated for a period of three years, the land would be declared “state land.” Israel was therefore able to declare 908,000 dunums of West Bank land as “state land,” in addition to the 700,000 dunums confiscated in 1967.<sup>28</sup> Over a period of 13 years, Israel was able to confiscate 1.6 million dunums of West Bank land as “state land” (totaling at least 30% of the West Bank).<sup>29</sup>

An additional method Israel employed to achieve full control over land in the oPt is through the Military Order Regarding Abandoned Property No. 58, designating land belonging to Palestinians who were displaced from the West Bank during the 1967 war as “absentee property.” Through this order, the Israeli Custodian of Government and Abandoned Property was granted control to manage the properties until the original owner returned.<sup>30</sup> In most cases, however, owners were prevented from returning through regulations limiting freedom of movement.<sup>31</sup> The total area of this land is estimated to be 430,000 dunums.<sup>32</sup> The scope of “absentee property” allocated for settlement construction is hard to establish, although the State Comptroller has noted at least one case so far.<sup>33</sup>

## Development of Settlements

The establishment of Jewish settlements in the West Bank is a key component of Israel’s policy to establish insurmountable facts on the ground in the region. Israel has made extensive use of military orders between 1967 and 1979 to pursue its expansion policies. Key military areas such as the Jordan Valley or the Dead Sea, previously under Jordanian ownership, fell under Israeli control through the imposition of numerous military orders expropriating the land under the pretext of military necessity for the establishment of military zones and Jewish settlements. The settlements were justified as a “security necessity” as a way to “legally” implement their expansionist policies. The Israeli Supreme Court supported the establishment of settlements in three cases,<sup>34</sup> based on the security necessity argument, further legitimizing this practice.



Eli Settlement in “Area C” of the West Bank.

As a result of its unabated settlement policy, Israel continues to appropriate Palestinian land to meet the needs of the settlers. In terms of public infrastructure, the ICA adopts plans that provide settlers with private roads, gardens, public facilities, and numerous other luxuries, all forbidden to Palestinians. In terms of security, Special Security Areas (“SSA’s”) encompass the land surrounding the settlements, thereby confiscating more Palestinian land and extending settlement coverage over the area. Composed of two to three rings of various types of barriers and patrol roads,

28 Bimkom, *The Prohibited Zone*, op. cit., p. 29.

29 Ibid.

30 Order Concerning Abandoned Properties (Private Property) (Judea and Samaria), No.58, 1967.

31 Office for the Coordination of Humanitarian Affairs (OCHA), *The Impact of Israel's Separation Barrier on Affected West Bank Communities: A Follow-up Report to the Humanitarian and Emergency Policy Groups (HEPG) and the Local Aid Coordination Committee (LACC)*, 30 November 2003.

32 Bimkom, *The Prohibited Zone*, op. cit, p. 28

33 State Comptroller Annual Report, *State Comptroller's Annual Report 56A*, 2005, pp. 220-221. See also Bimkoum, *The Prohibited Zone*, op. cit, p. 28.

34 HCJ 258/79 Falah Hussien Ibrahim 'Amirah and 9 Others v. Minister of Defence. See also HCJ 302/72 Sheikh Suleiman Hussein 'Udah Abu Hilu et al. v. Government of Israel; HCJ 60678 Suleiman Tawfiq and 11 Others v. Minister of Defense.

SSA's have increased the amount of land taken for Jewish settlements by 2.5%, expropriating an additional 4,558 dunums of private Palestinian land.<sup>35</sup> Settlements benefit from this larger area of jurisdiction covering the open land surrounding them because it allows for future expansion.<sup>36</sup> Israel also gains control over additional land through the allocation of enormous land expanses for Regional Councils under which most of the settlements operate.<sup>37</sup> These areas are defined as closed military areas where no entry is allowed for Palestinians while remaining fully accessible to Jewish Israelis and foreign tourists without specific authorization.<sup>38</sup>

Thus, in addition to "state lands" and absentee land, settlement construction and growth serves to sustain the area of land under Israeli control. Although the Elon Moreh Case raised hopes in terms of modifying Israel's settlement policy and practice, construction of settlements in the West Bank never ceased, and instead continues to grow. In 2008, there were approximately 478,000 Jewish settlers living in the West Bank and East Jerusalem.<sup>39</sup> There are currently 132 Jewish settlements recognized by Israel, in addition to a similar number of unrecognized settlements that the Israeli authorities have turned a blind eye to.<sup>40</sup>

### **Annexation Wall and Physical Barriers**

In 2002, Israel began expropriating private Palestinian land under the guise of military and security necessity in order to construct the Annexation Wall.<sup>41</sup> Since Israel began building the Wall, the continuous presence of physical barriers and the checkpoints accompanying it throughout "Area C" have been a major tool in achieving further fragmentation of the West Bank. The construction of the Wall led to the encirclement of the West Bank and the de facto annexation of East Jerusalem where approximately 230,000 Palestinians currently live (around 30% of Jerusalem's total population).<sup>42</sup> The Wall is a complex aggregation of fences, concrete, barbed wire, sensors, electronic devices, roads, and towers. There is also a 30-100-m wide 'buffer zone' east of the Wall with electrified fences, trenches, sensors, and military patrol roads, with certain sections equipped with armed sniper towers. When completed, it will extend over 723 kilometers (more than twice the length of the 1949 Armistice line - hereinafter the Green Line),<sup>43</sup> leaving 86% of the Wall located in the West Bank rather than along the Green Line.<sup>44</sup> The Wall also de facto annexes an additional 8% of the West Bank by surrounding large settlement blocks such as Ariel, Ma'ale Adumim, and Efrata.<sup>45</sup>

In addition to physically isolating Palestinians from each other, the Wall severely hinders Palestinian economic development. Its route cuts through some of the most fertile parts of the West Bank and has severely harmed agricultural activity, one of the main sources of income for Palestinian villages. The Wall isolates dozens of Palestinian towns and villages from their farmland, where a permit and gate regime maintained by the Israeli military strictly limits access through imposition of specific time frames and restrictions on entry.

In 2004, the International Court of Justice ("ICJ") issued an advisory opinion on the legal consequences of the construction of a wall in the oPt where it examined the legitimacy of Israel's justification of national security.<sup>46</sup> The Court found that the construction of the Wall leads to the destruction or appropriation of properties against the requirements of international law, impedes the right of the Palestinian people to self-determination, liberty of movement, right to work, health, education and an adequate standard of living as guaranteed under principles of international law. It concluded, therefore, that Israel cannot rely on a right of self-defense or on military necessity

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35 B'tselem, *Access Denied: Israel Measures to Deny Palestinians Access to Land Around Settlements*, September 2008, p. 34.

36 B'tselem, *Land Expropriation and Settlements*. <<http://www.btselem.org/English/Settlements/>>

37 In the Jordan Valley and Dead Sea area, for instance, nearly 1.6 million dunums were allocated for two regional councils, together constituting 27.5% of the West Bank. See B'Tselem, *Land Expropriation & Settlements: The Jordan Valley and the northern Dead Sea*. Viewed on 1/2/11. <[http://www.btselem.org/english/settlements/jordan\\_valley.asp](http://www.btselem.org/english/settlements/jordan_valley.asp)>

38 B'tselem, *Access Denied*, op. cit. p. 16.

39 B'tselem, *Land expropriation and Settlements*. <<http://www.btselem.org/English/Settlements/>>

40 Ibid. p.15.

41 The Israeli government formally decided to construct the Annexation Wall in 2002, as an attempt to consolidate its policy of isolation and control, and to physically re-enforce the annexation East Jerusalem and the surrounding occupied land.

42 Elodie Guego, 'Quiet Transfer' in East Jerusalem Nears Completion, *Forced Migration Review* 26, p. 26.

43 OCHA, *The Humanitarian Impact of the Barrier – Four years after the Advisory Opinion of the ICJ on the Barrier*, July 2008, p.4. 723 kilometres is five times the length of the Berlin Wall.

44 Ibid, p.4. According to the same document, approximately 385,000 settlers in 80 settlements are located between the Annexation Wall and the Green line.

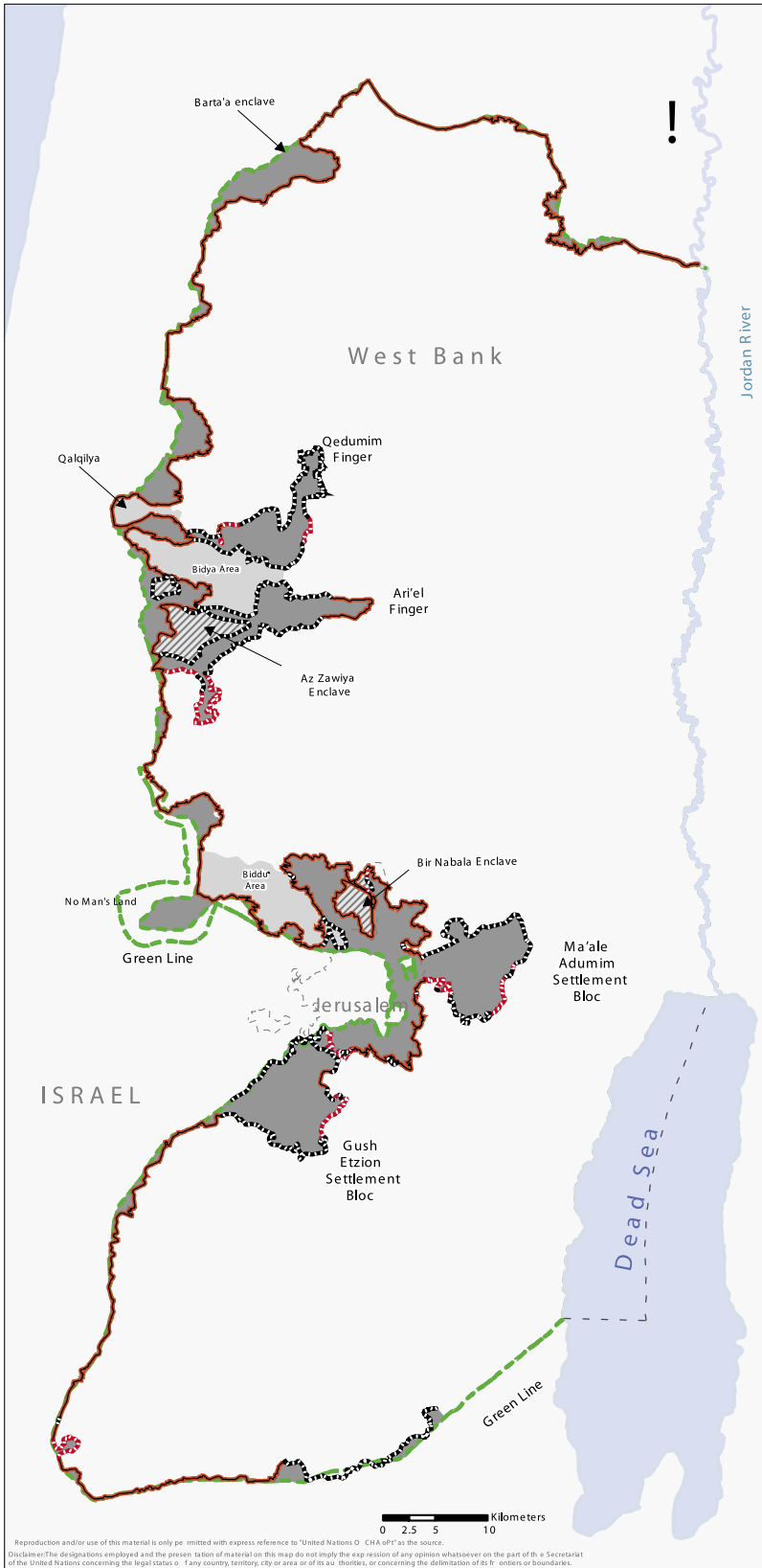
45 PLO Negotiations Affairs Department, *Barrier to Peace: Assessment of Israel's Revised Wall Route*, May 2006.

46 International Court of Justice, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, General List No. 131 (July 9, 2004).



# West Bank Barrier Route Projections

July 2010



### Area Affected

The Barrier's total length is 707 km, more than twice the length of the 1949 Armistice Line (Green Line) between the West Bank and Israel.

The total area located between the Barrier and the Green Line is 9.4% of the West Bank, including East Jerusalem and No Man's Land.

When completed, approximately 15% of the Barrier will be constructed on the Green Line or in Israel with 85% inside the West Bank.

### Populations Affected

If the Barrier is completed based on the current route:

Approximately 33,000 Palestinians holding West Bank ID cards in 36 communities will be located between the Barrier and the Green Line.

The majority of Palestinians with East Jerusalem ID cards will reside between the Barrier and the Green Line. However, Palestinian communities inside the current municipal boundary, Kafr Aqab and Shu'fat Camp, are separated from East Jerusalem by the Barrier.

Approximately 126,000 Palestinians will be surrounded by the Barrier on three sides. These comprise 31 communities; the Bidya and Biddu areas, and the city of Qalqilya.

Approximately 28,000 Palestinians in 9 communities in the Az Zawiyah and Bir Nabala Enclaves will be surrounded on four sides by the Barrier, with a tunnel or road connection to the rest of the West Bank.

### Barrier Route

- Completed (434 km or 61.4%)
- Under construction (60 km or 8.4%)
- Planned (213 km or 30.1%)

Cartography and Barrier Themes: OCHA-OPt IMU Map July 2010  
 Base data: MoPIC (2000) updates OCHA (2010)  
 Barrier data: OCHA Field work, Shaul Arieli (Council for Peace and Security), ARIJRC  
 For comments contact <a href="mailto:ochaopt@un.org">ochaopt@un.org</a>  
 Tel. +972 (02) 5829962 - <http://www.ochaopt.org>

Source: OCHA, July 2010

in order to preclude the illegality of the construction of the Wall. The Court specifically noted that the wall had little to do with security but had been constructed intentionally to include as many settlers as possible within the Closed Area: "It is apparent that the wall's sinuous route has been traced in such a way as to include within that area the great majority of the Israeli settlements in the Occupied Palestinian Territory (including East Jerusalem)."<sup>47</sup> The advisory opinion accordingly underscored Israel's abuse of the "security necessity" argument to achieve greater control over the oPt.

In addition to the Annexation Wall, a wide range of physical barriers and obstacles serve to increase land fragmentation in the oPt. Settlements and military zones, supported by civil and military components such as highways and road networks reserved solely for Israelis, or military installations, bases and training grounds are areas off limits to Palestinians.<sup>48</sup> The establishment of those areas is a core component of Israel's fragmentation policy of the oPt. Lack of a contiguous land mass dangerously reduces Palestinians' chances for economic growth, social cohesion, self-determination, and independence. Due to Israel's discriminatory zoning and land planning policies in the West Bank, rather than flourishing into a unified, thriving territory, the Palestinian state became a series of noncontiguous, isolated ghettos with severely restricted and limited opportunity for growth in all aspects of life.

### Breakdown of Land Use in "Area C" of the West Bank

| Type of Use                       | Area in Dunums |
|-----------------------------------|----------------|
| Agricultural Lands                | 1,732,614      |
| Artificial Surfaces               | 12,838         |
| Israeli Settlements               | 188,435        |
| Israeli Military Bases            | 45,822         |
| Israeli Outposts                  | 248            |
| <b>Palestinian Built-Up Areas</b> | <b>54,586</b>  |
| Other Urban Fabric                | 289,091        |
| Forests and Open Spaces           | 1,412,570      |
| Water Bodies                      | 1,161          |
| Annexation Wall                   | 8,168          |
| Total                             | 3,456,442      |

Source: ARIJ, GIS Unit, 2008

### b. Exclusion of Palestinians from the Planning Process

During Jordanian rule, Palestinians were included in the decision making process concerning planning issues in the West Bank through the system defined by the 1966 City, Village and Building Planning law,<sup>49</sup> which devised a hierarchical structure of local, district and national-level planning institutions ensuring Palestinian participation.<sup>50</sup> The problem, however, is that Israeli occupation came one year after approval of the Jordanian system, which did not give it the opportunity to have an established history, thereby leaving the Palestinian Territories lacking in terms of urban planning.<sup>51</sup>

Under the structure designed during Jordanian rule, planning policies were drafted and implemented by a District Council and coordinated on a national scale by a Higher Planning Council. Regional Plans, established by the District Council, demarcated the boundaries of cities and towns, and established new communities and infrastructures, while Local Committees or a District Council created Outline Plans to regulate land usages. A detailed plan, prepared by

47 Ibid. p. 5.

48 Bimkom, *The Prohibited Zone*, op. cit, pp. 17-19.

49 Towns, Villages, and Building Planning Laws (Temporary Laws), Law No. 79 of 1966.

50 Human Rights Watch, *Separate and Unequal: Israel's Discriminatory Treatment of Palestinians in the Occupied Palestinian Territories*, 19 December 2010. <<http://www.hrw.org/en/reports/2010/12/19/separate-and-unequal-0>>

51 Ali Abdelhamid, *Urban Development and Planning in the Occupied Palestinian Territories: Impacts on Urban Form, Presented in The Conference of Nordic and International Urban Morphology: Distinctive and Common Themes*, Stockholm, Sweden, 3-5 September 2006, p. 6.

the Local Committee or District Committees and approved by districts, defined local implementation of the Outline Plan. The Jordanian Planning Law also established mechanisms meant to update the communities on plans and to ensure public participation.<sup>52</sup> The Local Committee had the opportunity to issue building permits and carry out the developmental needs of their community. No local planning decision could be taken at the national level without local input. The planning structure envisioned by the Jordanian law would have enabled all communities to be represented and all needs to be fully considered and met.

In 1971, Israel made comprehensive changes to the Jordanian Law through the adoption of Military Order 418. This order was based on the necessity of replacing planning powers from Jordanian authorities to the Israeli Military Administration, however its scope reflects more fundamental changes.

The most significant change was the abolition of the District Councils, replaced by “Subcommittees,” while their powers were actually transferred to the Higher Planning Council. The District Council during Jordanian rule was an essential link in the chain of planning authorities, especially regarding the role it played in mediating between the national and local levels. The Subcommittees created by Israel, on the other hand, were made a part of the Higher Planning Council and do not represent any intermediate level of decision-making similar to the District Councils. The second most significant change was the abolition of the Local Committee, replaced by Village Planning Committees. The military commander appointed committee members who no longer represented the local population nor its needs.

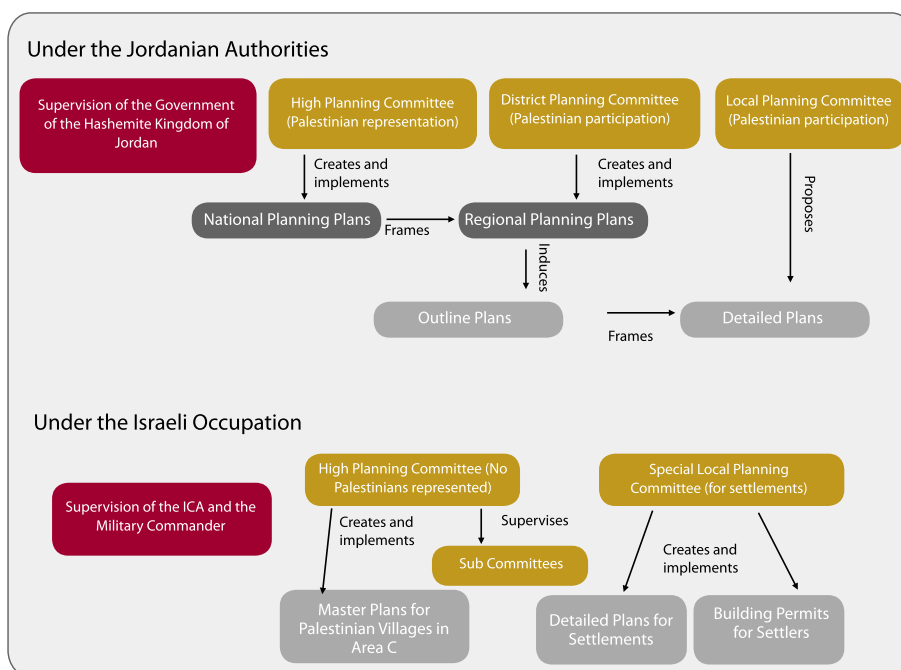
Meanwhile, Jewish settlements benefited from a separate planning framework. Special Local Planning Councils were created with vast planning powers. The Special Committees can issue building permits and approve plan details, while Palestinians are not even represented within the system.

### The Planning System

The system set up under Military Order 418 transferred planning powers to the Israeli Higher Planning Council and eliminated Palestinian presence within the system. The elimination of Palestinians from the planning and decision-making process serves as yet another Israeli attempt at achieving full and permanent control over “Area C”. Palestinians can no longer even expect to see any of their interests represented, while the Israeli authorities freely implement discriminatory housing decisions and policies in full support of the establishment and maintenance of Jewish settlements in direct contravention of IL standards.

### c. Building Restrictions

The third key element of the Israeli land control policy is the imposition of countless building restrictions on the remaining accessible land. Various legal tools, based on the British Mandate Regional Law and the Israeli Special Outline Plans, are used to limit the expansion and development of Palestinian society. The period of Jordanian rule brought no changes to the planning system established by the previous Mandatory authorities, nor did it bring any noticeable developments in planning and construction. Under subsequent Israeli



52 Towns, Villages, and Building Planning Laws (Temporary Laws), Law No. 79 of 1966, article 25(1).

occupation, until the 1980s, Israel gave little relevance to the Mandate Plan and Palestinian construction was not restricted as long as it did not interfere with existing or planned roads. After the Oslo Accords, however, the transfer of planning powers came to serve as a mechanism by which Israel could refuse issuance of building permits, reduce land reserved for industrial or economic projects, restrict Palestinian growth, thereby destroying viable opportunities for Palestinians to create a thriving economy.<sup>53</sup> During 2000-2007, for example, the ICA only approved 5.6% of 1,524 Palestinian building applications in "Area C."<sup>54</sup>

Numerous factors play a role in influencing the planning policies implemented by the ICA: political deadlock, growing international condemnation of Israel's settlement policy, and the Elon Moreh Case. In this context, Israel relied upon the British Mandate Regional Law, especially in the rural areas, interpreting it in a very restrictive manner that constrained Palestinians' building possibilities. As such, planning policies in the oPt today are based on outdated British Mandate laws in addition to discriminatory ICA Special Outlines Plans which specifically hinder Palestinian expansion in "Area C."

### **British Mandate Regional Law**

Under the Mandate Plan, Palestine was parceled into six administrative districts which each had their own regional outline plans, three of which apply today to the oPt: S/15, covering the northern part of the West Bank, RJ/5, covering Jerusalem and the south West Bank, and R/6, covering a small part of the western West Bank. Each of those districts are themselves divided into different categories of land (agricultural zones, rural development areas, nature reserves, and beaches), with each following their own planning rules. It is important to note that although the conditions for planning and the authorities in charge of the planning process varied according to the area, building during the British Mandatory period was permitted in each of them. The plans were also reviewed every five years and not strictly enforced. Instead, they provided general guidelines to foster rural development and community growth according to the needs of the population.

Constricting building space is one example of the building restrictions imposed by the ICA based on a strict interpretation of the Mandate Law provisions. Plan S/15 permits a residential building to have a "maximum building area," defined as the "maximum percentage of plot which may be built upon," of 180 square meters and one or two floors (150 square meters under Plans RJ/5 and R/6).<sup>55</sup> The ICA interprets the term "building area" as the total floor area, not the coverage. Under this interpretation, the house could be either one floor of 180 square meters, or two floors of 75-90 square meters each.<sup>56</sup> The ICA, therefore, has interpreted the Mandate provision in a way that limits the size and scope of Palestinian residential buildings. The size constraints imposed by the ICA's interpretation do not account for the large structure and composition of Palestinian families and their rural needs (room for extended family, land for livestock, gardens for cultivation, etc.). Instead, the interpretation is more akin to the lifestyle of urban dwellers and small families. This has led to overcrowding and prevention of the natural and vital expansion of Palestinian families and homes.

Proof of land ownership poses another obstacle created by the ICA's strict interpretation of Mandate law, thereby narrowing the chances for Palestinians to obtain building permits and increasing the obstacles to building "legally." Regional outline plans broadly define the term "owner" as the registered owner of the land or, in the case of co-administered land, one who received rent for the land, or would have been entitled to receive rent.<sup>57</sup> In spite of this broad definition, in cases such as joint-ownership of land inherited by heirs, the ICA requires the presence and signature of each heir for every administrative decision. No exceptions are made if some of the heirs no longer live in the West Bank.<sup>58</sup>

Israel's insistence on applying or interpreting the extremely outdated provisions of the Mandate Laws, however, is in itself problematic because it does not in any way reflect the realities of present-day society or the current needs of

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53 Ali Abdelhamid, *Urban Development and Planning*, op. cit., p. 7.

54 Human Rights Watch, *Separate and Unequal*, op. cit.

55 According to the Regional Outline Plans, the height of the principal building in agricultural zone (under plans RJ/5, R/6, or S/15) cannot exceed two floors.

56 Bimkom, *The Prohibited Zone*, op. cit., p. 79.

57 Ibid. p. 83.

58 See for instance: Minutes of the Inspection Subcommittee No. 8/06 dated February 2006 (File R169/05) on a Bill'in case.

the population. The Mandate Plans are, in fact, supposed to be reviewed every five years. Similarly, the Jordanian Planning Law states that planning institutions must “review every approved outline plan in order to introduce the required changes or additions, if any, at least once in every ten years.”<sup>59</sup> While this statement refers to local plans only, because the Mandate Plans have been defined by the Israeli Supreme Court as local outline plan in essence,<sup>60</sup> the ICA is obligated to uphold the requirement of frequent reviews.

The ICA’s reliance upon, and strict interpretation or intentional misinterpretation of the Mandate Plans concerning all aspects of building illustrates how the ICA implements provisions in a way that serve only Israeli interests and prevent the development and welfare of Palestinians.

### ***Israeli Special Outline Plans***

Israel’s policy shifted in the 1980s, ushering in an era of full Israeli control over the land planning bodies and consistent denial of the vast majority of Palestinian building applications. In the 1990s, the ICA devised Special Partial Outline Plans for nearly 400 villages in the West Bank, most of which are located in Areas A and B.<sup>61</sup> In “Area C,” only around 10% of the 130 Palestinian villages were issued special partial outline plans, with the rest of the land classified as an agricultural or nature reserves where Palestinian construction is prohibited.<sup>62</sup> The demarcation lines constituting the boundaries of the plans are drawn from aerial photographs and do not include any outlying buildings. The result of these plans is the demarcation of boundaries that do not take into consideration such issues as land ownership and whether the physical nature of the land allows for building upon. Instead, the demarcated boundaries reduce Palestinians to enclaves of land that do not accommodate a growing Palestinian population or allow for expansion.

In theory, the special outline plans were supposed to provide appropriate detailed planning schemes for villages in “Area C” by defining building areas, expanding areas for building and development, and providing more building permits.<sup>63</sup> In practice, however, the plans are designed to further restrict the zoning and planning rights of Palestinians, a goal illustrated by the language of the Settlement Division of the World Zionist Organization, prepared for the Samaria Regional Council: “in all the areas defined as extremely vital [...], immediate action on the subject of planning Arab dispersion is essential both within and outside the area.”<sup>64</sup>

The special outline plans do not account for a detailed assessment of each village’s situation and needs. Expansion and enjoyment of public services, in particular, are limited as no areas are zoned for public uses, such as public gardens, commercial buildings, schools or hospitals. Instead, open landscape areas have been established in some of the plans, further prohibiting Palestinians from building within the plans’ boundaries. Population growth and the needs of Palestinian communities are arbitrarily calculated without the input or consultation of the local population. These perfunctory calculations underestimated the amount of buildings permits needed. Obtaining permits, therefore, remains virtually impossible and inexorably leads to building “illegally.”

The current implementation of the special outline plans explicitly authorizes the build-up of high-density neighborhoods. The population density in these areas are much higher than any other rural areas within Israel, as well as many major Israeli metropolises. While the ICA pretends to root its plans on formerly established legal mechanisms, their interpretation and implementation of various zoning laws is not only illegal, but also contrary to the original purpose of the original laws and zoning policies. Zoning and planning laws should be based on utilitarian principles, with the goal of creating sustainable, healthy, and logically planned communities. They should be designed to help and encourage, not stunt community growth and expansion.<sup>65</sup> Instead, Israel continues to enforce plans whose provisions serve as “standards orders,”<sup>66</sup> completely disconnected and having no relation to the needs of the Palestinian population. In fact, the ICA’s intent to delineate physical boundaries constricting growth is evidenced by an expert report commissioned by the ICA itself in 1990, which stated: “The delineations were actually intended to

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59 Article 25(1) of the Jordanian Planning Law. This a specific provision applying solely to local outline plans.

60 HCJ 38/76 Tamra Local Council v the Appeals Subcommittees.

61 The World Bank, *The Economic Effects of Restricted Access*, op. cit. p. 9.

62 Ibid.

63 Bimkom, *The Prohibited Zone*, op. cit. p. 104

64 World Zionist Organization – Settlement division, Master Plan for the Samaria Regional Council (As part of the Master Plan for the Development of Settlement in Samaria and Judea), 1983.

65 E.R. Alexander, *Planning Rights and Their Implications*, University of Wisconsin, Milwaukee, USA/APD-Tele-Aviv, Israel. pp. 112-113 (2007).

66 Bimkom, *The Prohibited Zone*, op. cit., p. 106.

define permitted and prohibited areas for construction.”<sup>67</sup> The ease with which the ICA allows Palestinian building within the demarcated lines without building permits highlights the final goal of the plan, which is to implement uniform policies that dangerously increase the density of Palestinian towns and villages, threatening the balance of rural Palestinian areas and confining Palestinians to overpopulated ghettos through which Israel can achieve easier and greater territorial control.

#### **d. Home Demolitions and Displacement**

Following the Oslo Accords, Israel retained authority over planning and building in “Area C.” In the majority of all cases, Israel’s complex administrative planning and zoning system has discriminatorily denied Palestinians essential permits to build new homes, forcing thousands of Palestinians to build “illegally” and be subject to the threat of evictions or demolitions. More than 2,200 Palestinian homes have been demolished in the past ten years, while, at the same time, more than 155 Israeli settlements (containing thousands of houses constructed without permits) were established in the oPt.<sup>68</sup>

#### **Registration and Building Permits**

Land registration is one of the main challenges Palestinians face in starting the legal building process. In 1967, Israel froze registration through the Military Order 291. Consequently, only 32.9% of the West Bank is today formally and legally registered.<sup>69</sup> Building applications are rejected without legal proof of ownership, a procedure that is long, costly and risky. To prove ownership, the ICA requires three types of maps of different sizes and three copies of different documents.<sup>70</sup> The landowner must also open a file, hire private surveyors recognized by the ICA, and pay a registration fee, which should be 1% of the estimated value of the land to be registered if it is inherited or 5% if it is sold or to be sold. Most cannot afford the cost of the procedure, especially in light of the strong possibility that the application will be rejected.

If the land is officially registered, Palestinians can submit a demand for a building permit to the Israeli Military Planning Committee located in Beit El. This process, however, is also very long and costly, and faces a low chance of success. It requires Palestinians to submit numerous documents that are very difficult or almost impossible to acquire: land registration certificates, ownership evidence, land survey, constructions plans, etc. In addition to the difficulty in obtaining the necessary documents, most Palestinians face certain rejection of their application because they live in areas where building is strictly forbidden.

Statistics on the amount of building permits approved illustrate the ICA’s almost blanket rejection of most applications. For example, from 2001-2007, the rejection rate for Palestinian building permit applications was about 94.5%.<sup>71</sup> Palestinians are distinctly aware of the discriminatory policy and have lost faith in the planning system.<sup>72</sup> As a result, the numbers of applications submitted has drastically dropped.

#### **Demolition Orders**

Palestinians are forced to build “illegally” due to the ICA’s unwillingness to grant building permits and its insistence on strictly applying outdated plans that do not reflect current population needs. By building illegally, Palestinians face the constant threat of receiving a demolition order, which can be issued for building “illegally” or even in cases of renovation without authorization. If a demolition order is issued, the landowner can either agree to demolition

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67 Moshe Ravid, Hovav Talpaz, Danny Friedman, Yifrah Zilberman and Avraham Shvut, *The Judea and Samaria Area Through 2005, Beit El: The Civil Administration*, December 1990, note 153, p.83.

68 B’Tselem, *Planning & Building*, website viewed on 14/2/2011. <[http://www.btselem.org/english/Planning\\_and\\_Building/Index.asp](http://www.btselem.org/english/Planning_and_Building/Index.asp)>

69 Palestinian National Authority Land Administration Project, *Land Registration Study*, Ministry of Planning, 2007.

70 The World Bank, *The Economic Effects of Restricted Access to Land in the West Bank. Social and Economic Development Group, Finance and Private Sector Development*, Middle East and North Africa Region, 2008, p. 17.

71 ARIJ, *The Israeli Policies in “Area C”: Silent Transfer of the Palestinian Population*, 12 October 2008. <[http://www.poica.org/editor/case\\_studies/view.php?recordID=1592](http://www.poica.org/editor/case_studies/view.php?recordID=1592)>

72 Bimkom, *The Prohibited Zone*, op. cit., pp. 8-10.

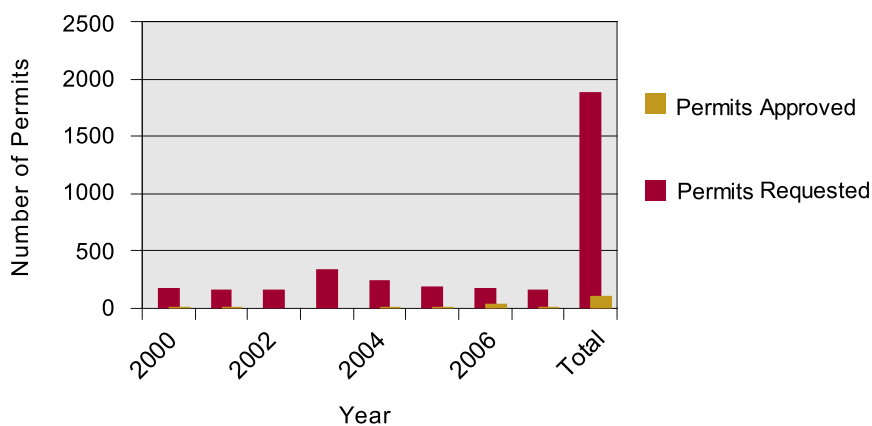


or apply for a building permit within thirty days. If no objection is submitted, the home can be demolished anytime after the thirty-day period.

If the application for a building permit is denied, Palestinians may make administrative appeals or objections to the Israeli Military Planning Committee in Beit El. In the majority of cases, however, the appeals are denied. When all administrative procedures are exhausted, Palestinians may appeal to the Israeli Supreme Court. Such appeals, however, are difficult for Palestinians to pursue due to a lack of due process as a result of limitations on freedom of movement, insufficient knowledge of Hebrew or Israeli laws and procedures, and lack of physical access to Israeli courts and administrative buildings. Notices are also often not received by Palestinians due to the lack of home mail deliveries or locations where such notices can be posted or hung.<sup>73</sup> The high cost of the appeals procedure (fees, survey plans, etc.) is another obstacle that most Palestinians face, which can involve several hearings at the Israeli Military Planning Committee in Beit El and can take from three to five months. In addition to previously accumulated fines and the cost of retaining an attorney, Palestinians can be charged between \$100 to \$1,000 USD in fees for matters such as notification period extensions, document preparations, and hearing sessions at the Military Planning Committee. Palestinians find it hard to justify such expenditures involved in disputing a case when their resources are already limited and the chance of winning is slight.<sup>74</sup>

The example of the al-Aqaba village, located near the Jordan Valley and in "Area C," highlights the continuous injustices Palestinians face from the Israeli planning system, supported by the Higher Court of Justice. In 1983, the Israeli Army started using the village for their military training exercises. In 2002, the villagers petitioned this practice to the Israeli Supreme Court. The Court held that the Israeli Army must remove one of three military training camps. In spite of this, in 2004, the ICA issued a demolition order on the entire village. Its residents petitioned once again to the Israeli Supreme Court. However, on April 17, 2008, in spite of the fact that building permits are unattainable, the Court ruled that "under no circumstances will buildings be allowed to stand without a valid building permit."<sup>75</sup>

Requested and Approved Building Permits in Area C



Source: ARIJ, "Silent Transfer of the Palestinian Population," 12 October 2008

### Home Demolitions and Displacement

According to ICAHD, from 1967-2010, approximately 24,813 Palestinian homes were demolished in the oPt.<sup>76</sup> Israel's policy of home demolitions is generally carried out under three circumstances: (1) as a punitive measure; (2) on the pretext of lack of permits; and (3) as a result of large-scale Israeli military operations.

Punitive home demolitions were conducted until 2005, under the British Regulation 199(1) of Defense (Emergency) Regulations (1945). Use of this regulation was illegal for various reasons. First, the British Authorities repealed the Regulations prior to the end of their mandate. As such, Israel cannot rely upon the regulations because they were not in force when it gained control over the oPt in 1967.<sup>77</sup> Second, the regulations were established under

73 According to the Jordanian Law, these warnings/notifications can be hung on the walls of establishments if personal reception is not possible.

74 2008 JLAC Annual Report.

75 Peace Work Magazine – <<http://www.peaceworkmagazine.org/peace-and-permits-al-aqaba-palestinian-village-seeks-security-area-c>> Viewed on 9/11/2009.

76 ICAHD (Israeli Committee Against House Demolitions), Statistics on House Demolitions, (1967-2010). <[http://www.icahd.org/?page\\_id=5508](http://www.icahd.org/?page_id=5508)>

77 Al Haq, *Israel's Punitive House Demolition Policy: Collective Punishment in Violation of International Law*, Shane Darcy, 2003, p.12.

a specific context, in response to several uprisings that occurred in Palestine from 1936-1939, among which is the well-known "Great Revolt." British authorities responded by implementing a series of measures, such as punitive house demolitions, operating against Palestinian political and civil rights,<sup>78</sup> The current situation in the oPt does not justify such practices, however, which are instead used as a form of collective punishment, and therefore illegal under international law.<sup>79</sup> No orders are required for punitive demolitions, which often cause numerous civilian casualties.<sup>80</sup> In 2005, the IDF generally stopped the use of punitive house demolitions, which at the time accounted for 8.5% of all demolition orders.<sup>81</sup>

Military operation demolitions account for 65.5% of all demolitions<sup>82</sup> and usually occur during IOF military operations or for the building of military infrastructures requiring clearing Palestinians from their land. Israel often tries to legitimize home demolitions under military necessity by arguing that the house sheltered a wanted person. During house demolitions that take place during military incursions, the Israeli army fails to give adequate warning to inhabitants that their home is about to be destroyed, often as little as fifteen minutes, or without prior warning at all.<sup>83</sup> Between 2004 and 2010, 118 houses were demolished in the West Bank for military purposes.<sup>84</sup>

Administrative demolitions account for 26% of home demolitions and are carried out in response to improper documentation, lack of a building permit, or in some cases, a single infraction.<sup>85</sup> Most of these types of demolitions take place in "Area C" and East Jerusalem. As previously discussed, Palestinians have had no choice but to build "illegally" due to the ICA's discriminatory denial of essential permits to build new homes. From 1987 until 2010, at least 5,156 Palestinian homes in the West Bank were demolished because they were built without permits.<sup>86</sup> The average household in the surveyed population has 7.4 people,<sup>87</sup> leaving the population affected by home demolitions significantly higher than one would imagine. The demolitions that took place from 2006-2010 due to lack of building permits, for example, made at least 2,483 Palestinians homeless (from 275 homes destroyed).<sup>88</sup>

### ***Evictions and Forced Displacement of Herders and Bedouin Communities***

"Area C" is populated by herding communities and Bedouins who live on "state lands" or military zones and are subject to the constant threat of eviction and forced displacement. The terms "eviction" or "forced displacement" are used for these communities, rather than home demolition, because they live a semi-nomadic lifestyle and their villages or camps are often made of weak structures that do not qualify as the type of homes relevant in the case of "illegal" building on private land. Evictions, however, are usually followed by destruction of the camp and of all water and agricultural facilities.

Due to their fluid relation to the land, Bedouins and herders are more easily evicted by the ICA than any other Palestinian community. Most do not formally own the land they live on. Some have a "kushan," or ownership papers given by the Jordanian Authorities, but the majority use the land based on custom or adhoc agreements.<sup>89</sup> The ICA refuses to recognize these informal types of ownership and accuses those communities of being illegally settled.<sup>90</sup>

All Bedouins in "Area C" have received eviction orders at some point in time.<sup>91</sup> Bedouin tribes living between Jerusalem and Jericho, along the Jordan Valley, or close to Jewish settlements, are particularly targeted by the ICA and the

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78 Badil, *The British Mandate*, <<http://www.badil.org/en/al-majdal/item/1372-british-mandate-1922-1947>>

79 IV Geneva Convention, Article 33 "No protected person may be punished for an offence he or she has not personally committed. Collective penalties and likewise all measures of intimidation or of terrorism are prohibited."

80 Jeff Halper, *Obstacles to Peace: A Reframing of the Palestinian-Israeli Conflict*, 2005, pp. 62.

81 ICAHD, *Statistics on House Demolitions 1967-2010*, op. cit.

82 Ibid.

83 Deputy Military Commander Colonel Shuki Rinsky claimed that "if there will continue to be a danger to soldiers, we will continue to destroy houses without giving prior warning" Al-Haq, "Waiting for Justice," Annual Report 2004, p. 124. Taken from "Court Rejects Petition to Prevent Further Rafah Demolitions," in Haaretz, 16 May 2004.

84 B'tselem, *Statistics on Houses Demolished for Alleged Military Purposes*, viewed on 15/2/2011 <<http://www.btselem.org/english/Razing/Statistics.asp>>

85 ICAHD, *Statistics on House Demolitions 1967-2010*, op. cit.

86 ICAHD, *Statistics on House Demolitions 1967-2010*, op. cit.

87 Joint UNRWA – UNICEF – WFP Household Survey, Food Security and Nutrition Survey of Herding Communities In "Area C," April 2010, p. 13.

88 B'Tselem, *Statistics on Demolition of Houses Built Without Permits in the West Bank*, op. cit.

89 Rosemary Sayigh, *The West Bank Bedouins: The new refugees?* Badil 2000. <<http://www.badil.org/en/al-majdal/item/1058-the-west-bank-bedouinthe-new-refugees>>

90 Ibid.

91 Ibid.

IDF. The orders are not usually carried out immediately, posing a looming threat to the families. Most are enforced within a short period of time, however, if no legal intervention is undertaken. When evictions are carried out, they are usually accompanied by violence through the destruction of shelters, beating, or confiscation of livestock and equipment.<sup>92</sup> In the Bedouin village of al-Farsiya (which faced two waves of demolition orders in July and August 2010), for example, 80 structures were destroyed, displacing more than 110 persons and children.<sup>93</sup>

In the village of Khirbet Samra, water pumps were confiscated, and in Khirbet Ein al-Hilweh, two sheep enclosures were destroyed. The Center for Economic and Social Rights (“CESR”) warned in 2003 against the current treatment of Bedouin communities:

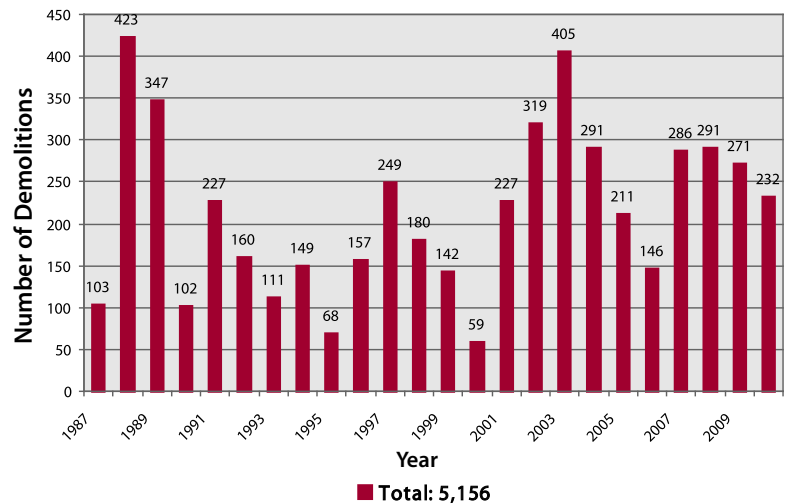
*“The Committee further urges the State party to recognize all existing Bedouins villages, their property rights and their right to basic services, in particular water, and to desist from the destruction and damaging of agricultural crops and fields, including in unrecognized villages. The Committee further encourages the State party to adopt and adequate compensation scheme that is open to redress for Bedouin who have agreed to resettle in ‘townships’ [...]”<sup>94</sup>*

Israel’s targeting of the Jahalin tribe, in particular, reveals its interest in gaining control of the land surrounding Jerusalem in order to disconnect the city with the rest of the oPt. The tribe had been established for decades in the area Israel appropriated to create the settlement of Ma’ale Adumim, and has continuously been displaced since. The tribe fought for four years to preserve its land, however in 1996 the Israeli Supreme Court authorized the eviction of 3,000 members of the tribe. As a result, the Jahalin tribe lost its land and the Ma’ala Adumim settlement grew to become one of the largest Jewish settlements in the West Bank.<sup>95</sup> In a strong statement made regarding its concern over the forced eviction of the Jahalin Tribe, the UN Committee on Economic, Social and Cultural Rights (“CESCR”) said:

*“The Committee notes with deep concern the situation of the Jahalin Bedouin families who were forcibly evicted from their ancestral lands to make way for the expansion of the Ma’aleh Adumim and Keidar settlements. The Committee deplores the manner in which the Government of Israel has housed these families - in steel container vans in a garbage dump in Abu Dis in subhuman living conditions. The Committee regrets that instead of providing assurances that this matter will be resolved, the State party has insisted that it can only be solved through litigation.”<sup>96</sup>*

The social and economic ramifications of forced eviction and displacement of Bedouin communities are quite serious. Anthropologist and oral historian Rosemary Sayigh even raised the question of whether these communities should be considered the “new refugees” because they face the most vulnerability due to their locations in “Area C” and kind of relationship with the land.<sup>97</sup> Nearly 90% of West Bank Bedouins are already registered as refugees (first evicted from the Negev in 1948), but few receive UNRWA assistance because they live far from distribution centers.<sup>98</sup> Now these

## Administrative Demolitions (1987-2010)



Source: ICAHD, Statistics on House Demolitions 1967-2010.

92 Ibid.

93 Human Right Watch, *Israel: New Peak in Arbitrary Razing of Palestinian Homes*, August 19, 2010. Viewed on 7/12/2010 <<http://www.hrw.org/en/news/2010/08/19/israel-new-peak-arbitrary-razing-palestinian-homes>>; B’Tselem, *Civil Administration Demolishes Bedouin Village of al-Farsiya, in the Jordan Valley*, 12 August 2010. Viewed on 7/12/2010 <[http://www.btselem.org/English/Planning\\_and\\_Building/20100812\\_Whole\\_village\\_demolished\\_in\\_Jordan\\_Valley.asp](http://www.btselem.org/English/Planning_and_Building/20100812_Whole_village_demolished_in_Jordan_Valley.asp)>

94 CESR Concluding Observations on Israel, Second Periodic Report, 2003.

95 Badil, *Israel Continues to Evict Jahalin Bedouin from West Bank “Area C.”* 1999. <<http://www.badil.org/ar/article74/item/1219-israel-continues-to-evict-jahalin-bedouin-from-west-bank-%5C>>; Geoff Lumetta, *Israeli High Court Votes to Evict Jahalin Bedouins*, Washington Report on Middle East Affairs, Special Report, July 1996, p. 65. <<http://www.wrmea.com/backissues/0796/9607065.htm>> Viewed on 6/12/2010.

96 UN Committee on Economic, Social and Cultural Rights (CESCR), *Concluding Observations: Israel, 4 December 1998*, E/C.12/1/Add.27, <<http://www.unhcr.org/refworld/docid/3f6cb4367.html>> Viewed on 20/2//2011.

97 Rosemary Sayigh, *The West Bank Bedouins*, op. cit.

98 Ibid.

communities face a second or third displacement, which raises serious issues of humanitarian needs and assistance. Through continuous evictions, Bedouin communities are not just displaced but face a threat to their way of life.

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For forty-four years, Israel has consistently and systematically violated its obligations as an occupying power under international law. Among the list of violations is Israel's discriminatory planning and zoning laws that only serve to deny Palestinians their most basic and fundamental human rights.

Israel's discriminatory land planning policies are in no way designed to protect or promote the interests of the Palestinian civilian population, as required by international law. Instead of meeting its international obligations, Israel confiscated vast amounts of land as "state lands," and continues to base its planning policy decisions on outdated laws in force prior to the occupation, intentionally interpreting them in a way that restricts almost all potential for building or community growth. As a result, Palestinian construction is prohibited in almost 70% of "Area C," with the remaining 30% facing a range of restrictions that make it virtually impossible for Palestinians to obtain a building permit.<sup>99</sup>

Israel has used its zoning and planning powers as a tool of discrimination over the occupied Palestinian population. Rather than the fulfillment of community needs, the result of Israel's discriminatory planning policies has only been the further confiscation and fragmentation of land in the West Bank, full control of the planning institutions, and the implementation of planning policies that prevent the achievement of any kind of Palestinian development and growth as a viable society. Israel's establishment of a discriminatory planning and zoning system is one small piece of the occupation puzzle that vividly highlights the larger issues at hand: Israel's creation of "facts on the ground" intending to isolate Palestinian communities and prevent territorial contiguity – flagrant violations of international law and abuse of power.



Even this "shelter" is not permitted to them, Bedouin children in the outskirts of Salfeet

99 OCHA, *Restricting Space: The Planning Regime Applied by Israel in "Area C" of the West Bank*, Special Focus, December 2009, p. 13.

## II. Violations of Human Rights and International Humanitarian Law

Israel's obligations as the Occupying Power in the oPt are set out in two provisions of international humanitarian law ("IHL"): the Regulations Annexed to the Fourth Hague Convention Respecting the Laws and Customs of War on Land of 1907 ("Hague Regulations"), and the Fourth Geneva Convention Concerning the Protection of Civilian Persons in Time of War of 1949 ("IVGC"). Israel has a duty to respect and apply these international humanitarian provisions and ensure the welfare of the occupied Palestinian population. The IVGC imposes very precise obligations on an occupying power's duties vis-à-vis the population it occupies, such as respecting the welfare of the occupied population, prohibiting collective punishment and population transfer, respect of private property, freedom of religion, and facilitating institutions devoted to education of children.<sup>100</sup> These provisions were reaffirmed by the United Nations ("UN") in UN Security Council Resolution 799: "[The General Assembly] reaffirms the applicability of the Fourth Geneva Convention of 12 August 1949 to all the Palestinian territories occupied by Israel since 1967, including Jerusalem, and affirms that deportation of civilians constitutes a contravention of its obligations under the Convention."<sup>101</sup> As a signatory to the IVGC, and having accepted the applicability of the Hague Regulations, Israel has a duty to abide by the provisions set out in both bodies of law and cannot continue to act with impunity in the oPt.

In addition to IHL, Israel is also bound by the provisions outlined in international human rights law ("IHRL"). Human rights are understood to be "those minimal rights that individuals need to have against the state or other public authority by virtue of being members of the human family, irrespective of any other consideration."<sup>102</sup> Israel denies the applicability of IHRL in the oPt on the basis that the conventions only apply to a government and its people.<sup>103</sup> Most of the Universal Declaration of Human Rights ("UDHR"), however, in addition to provisions in other international human rights conventions such as the International Covenant on Civil and Political Rights ("ICCPR") and the International Covenant on Economic, Social and Cultural Rights ("ICESCR"), reflect customary international law, and are therefore applicable to Israel.<sup>104</sup> The applicability of international human rights standards in the OPT was also upheld in the 2004 ICJ Advisory Opinion on the Annexation Wall, wherein the Court observed that Israel is bound by the provisions of the ICCPR and the ICESCR inasmuch as the oPt have been subject to Israel's territorial jurisdiction for over thirty-seven years.<sup>105</sup>

This chapter will explore Israel's gross violations of IHRL and IHL through its discriminatory zoning and planning policies.

### a. Violation of Housing, Land and Property Rights

Various UN human rights treaties consistently highlight the issue of land rights.<sup>106</sup> Through its practice of home demolitions, evictions, forced displacement and land appropriation, Israel directly violates the right to adequate housing and the right of property. Theoretically, land-planning policies must respect housing, land and property

100 Convention (IV) Relative to the Protection of Civilian Persons in Time of War. Part III. Status and Treatment of Protected Persons. Geneva, 12 August 1949. Viewed 16/2/2011. <<http://www.icrc.org>> See for instance Article 27: "Protected persons are entitled, in all circumstances, to respect for their persons, their honor, their family rights, their religious convictions and practices, and their manners and customs. They shall at all times be humanely treated, and shall be protected especially against all acts of violence or threats thereof and against insults and public curiosity. [...]"

101 United Nations Security Council Resolution 799, 1992. The Avalon Project at Yale Law School. <<http://www.yale.edu/lawweb/avalon/un/un799.htm>>

102 Sanjay K. Roy, *Refugees and Human Rights: The Case of Refugees in Eastern and North-Eastern States of India*, pp. 17-62 (New Delhi: Rawat Publications, 2001), p. 42.

103 Report of the UN Secretary-General prepared pursuant to General Assembly Resolution ES-10/13, November 2003.

104 Al-Haq, *Waiting for Justice*, Annual Report 2004, p. 43.

105 Advisory Opinion of the International Court of Justice, op. cit, para. 102-113.

106 Six of the UN treaty monitoring bodies have addressed land issues in their General Comments/ Recommendations, and review of State Party reports. Additionally, land issues have been addressed by Special Rapporteurs, especially the Special Rapporteur on the Right to Food, the Special Rapporteur on Adequate Housing, the Special Rapporteur on the on the Human Rights of Internally Displaced Persons, and the Special Rapporteur on the Situation in the oPt.

rights (“HLP”) and protect the population subject to the planning process. These rights must be protected through due process, equality, and the right to appeal a harmful planning decision.<sup>107</sup>

### **Housing, Land and Property Rights<sup>108</sup>**

**“HLP law constitutes a composite of the following rights found within international human rights law:**

- *The rights to adequate housing and rights in housing*
- *The right to security of tenure*
- *The right not to be arbitrarily evicted*
- *The right to land and rights in land*
- *The right to property and the peaceful enjoyment of possessions*
- *The right to privacy and respect for the home*
- *The right to HLP restitution/compensation following forced displacement*
- *The right to freedom of movement and to choose one’s residence*
- *The right to political participation*
- *The right to information*
- *The right to be free from discrimination*
- *The right to equal treatment and access*
- *The right to water*
- *The right to energy”*

### **The Right to Adequate Housing and Prohibition of Forced Evictions**

The right to adequate housing is enshrined in numerous international instruments. According to the UDHR, “Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services...”<sup>109</sup> The ICESCR also ensures the “right of everyone to an adequate standard of living for himself and his family” including “adequate housing.”<sup>110</sup> The Committee on the Elimination of Racial Discrimination (“CERD”),<sup>111</sup> the Committee on the Elimination of Discrimination Against Women (“CEDAW”),<sup>112</sup> and the Convention on the Rights of the Child (“CRC”)<sup>113</sup> also reaffirm the right to adequate housing. Israel ratified these conventions without reservations on those particular articles relating to adequate housing,<sup>114</sup> which means that they must be applied and respected unconditionally.

Seven core criteria must be met in order to constitute adequate housing: (1) legal security of tenure, (2) availability

107 E.R Alexander, *Planning Rights and their Implications*, Planning Theory, July 2007, vol. 6 no. 2, pp. 112-126.

108 Displacement Solutions, *Climate Change Displaced Persons and Housing, Land and Property Rights: Preliminary Strategies for Rights-Based Planning and Programming to Resolve Climate-Induced Displacement*, p. 11.

109 Universal Declaration of Human Rights, Article 25, 25+ Human Rights Documents, Center for the Study of Human Rights, Columbia University, 2001.

110 ICESCR, adopted by the UN General Assembly resolution 2200A (XXI), December 16, 1966, entered into force on March, 23, 1976, ratified by Israel on October, 3, 1991, article 11.

111 CERD, adopted by UN General Assembly resolution 2106A (XX), December 21, 1965, entered into force on January 4, 1969, ratified by Israel, 3 January 1979, article 5.

112 CEDAW, adopted by UN General Assembly resolution 34/180, December 18, 1979, entered into force on September 3, 1981, ratified by Israel, 3 October, 1991, article 14(2)(h).

113 Convention on the Right of the Child, adopted by UN General Assembly Resolution 44/25, 20 November 1989, entered into force September 2, 1990, ratified by Israel, 3 October, 1991

114 Israel has ratified the main human rights conventions; however, it is not a party to any additional protocols except the Optional Protocol on Children in Armed Conflicts. It has also not accepted the jurisdiction of any of the treaty body committees; thus, individual communications cannot be considered.

of services, materials, facilities and infrastructure, (3) affordability, (4) habitability, (5) accessibility, (6) location, and (7) cultural adequacy. The current planning policies Israel implements in "Area C," along with forced evictions and extensive use of demolition orders, systematically violates each of those components – especially "security of tenure" as reinforced by the CESR:

*"Notwithstanding the type of tenure, all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats. States parties should consequently take immediate measures aimed at conferring legal security of tenure upon those persons and households currently lacking such protection, in genuine consultation with affected persons and groups."<sup>115</sup>*

In 1997, the CESCR further expanded the scope of the right to adequate housing by addressing the role states must play in preventing evictions.<sup>116</sup> The Committee also stressed that states must "ensure that legislative and other measures are adequate to prevent and, if appropriate, punish forced evictions carried out."<sup>117</sup> The Committee's findings make a significant contribution in requiring states to ensure legislative domestic protection against displacement and evictions. A series of resolutions adopted by the United Nations,<sup>118</sup> such as the Pinheiro Principles, have reaffirmed the illegality of forced evictions and the inviolability of the right to adequate housing.<sup>119</sup>

### **The Pinheiro Principles**

#### **UN Principles on Housing and Property Restitution for Refugees and Displaced Persons, August 2005.**

*The Pinheiro Principles were adopted in August 2005 by the UN Sub-Commission on the Promotion and Protection of Human Rights in an effort to consolidate international housing standards. Named after the Special Rapporteur on Housing and Property Restitution for Refugees, these principles hold that "everyone has the right to be protected against being arbitrarily displaced from his or her home, land or place of residence" (Principle 5), as well as "the right to adequate housing" (Principle 8).*

### **The Right to Choose One's Place of Residence and the Right to Property**

Article 12 of the ICCPR states that "everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence." Israel's discriminatory land zoning and planning policies in "Area C" are in direct contravention of this provision because not only does it illegally appropriate Palestinian lands and limit movement, it also completely restricts and limits Palestinians from developing, moving, or building homes where they own property.

The obstacles created by Israel's policies in regards to land registration, along with house demolitions and the unilateral appropriation of Palestinian lands, also infringe on the right to private property as guaranteed by Article 46 of the Hague Regulations.<sup>120</sup> In 2007, The World Bank noted that "obtaining permits for "Area C," whether for private, humanitarian or developmental purposes is time consuming if not unattainable."<sup>121</sup> The occupying power may only interfere with the right to property under very limited exceptions (military necessity or public interest), and adequate compensation must be given if such exceptions arise. In the case of requisition for public interest, the occupying power's actions must be for the exclusive benefit of the occupied population. Destruction of property is prohibited

115 The right to adequate housing, Article 11(1): Committee on Economic, Social and Cultural Rights General Comments 4, 1991, pp. 8.

116 "The state itself must refrain from forced evictions and ensure that the law is enforced against its agents or third parties who carry out forced evictions." Committee on Economic, Social and Cultural Rights, General Comment 7, Forced evictions, and the right to adequate housing (Sixteenth session, 1997), U.N. Doc. E/1998/22, annex IV at 113 (1997), reprinted in Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.6 at 45 (2003).

117 Ibid.

118 UN Global Shelter Strategy for the year 2000 stated that all states should "accept the fundamental obligation to protect and improve houses and neighborhoods, rather than damage or destroy them." UN Doc.A/43/8/Add.1 and General Assembly Res. 42/192 (annex); UN Commission on Human Rights clearly affirmed that "the practice of forced evictions constitutes a gross violation of human rights, in particular the right to adequate housing." UN Commission on Human Rights, Resolution on Forced Eviction 1993/77, adopted unanimously on 10 March 1993 during the 49th Session of the UN Commission on Human Rights.

119 See box on the Pinheiro Principles.

120 Hague Convention 1907, Article 46: Family honor and rights, the lives of persons, and private property, as well as religious convictions and practice, must be respected; Private property cannot be confiscated.

121 The World Bank, *The Economic Effects of Restricted Access*, op. cit.

unless it is “absolutely necessary” for military operations.<sup>122</sup> Even in such cases, the destruction must be in accordance with the principles of necessity and proportionality. According to the IVGC, extensive destruction and appropriation of property not justified by military necessity and for civilian uses only constitutes a war crime.<sup>123</sup>

Palestinians do not receive compensation for demolitions or evictions; they do not benefit from lands appropriated as “state lands”; and they do not have the luxury of an occupying power that abides by the principles of necessity and proportionality. While Israel denies Palestinians their right to adequate housing, it simultaneously allows Jewish settlers to build and expand their settlements in the West Bank although strictly forbidden under international law.<sup>124</sup>

## **b. Violations of Economic, Social and Cultural Rights**

The ICESCR, as well as other international and regional human rights treaties, guarantees all human beings certain inalienable rights, including: right to work; the right to education; cultural rights of minorities and indigenous populations, the right to the highest attainable standard of physical and mental health, the right to adequate housing, the right to food, and the right to water.<sup>125</sup> The right to housing, for example, is of particular significance because of the dismal effects home demolitions can cause on a family – resulting in economic, social, and psychological trauma. As described by one study, “Housing is more than four walls and a roof. Its function is to provide safety, dignity and, in most cultures, privacy. [...] Destruction of housing therefore threatens the whole fabric of a society.”<sup>126</sup>

A large part of the security and welfare of a society also depends on the provision of services such as access to healthcare, sufficient food and water supplies, and to a greater extent, education. Providing such services to the Palestinian population is a challenge for the PA because Israeli zoning and planning policies negatively impact both private and public infrastructures. The PA is completely dependent upon the will of the ICA to allow them access to the land and to build legally.

The applicability of these standards in the oPt was upheld in the 2004 ICJ Advisory Opinion on the Annexation Wall, wherein the Court observed that Israel is bound by the provisions of the ICESCR inasmuch as the oPt have been subject to Israel’s territorial jurisdiction for decades.

### ***The Right to Water and Adequate Food***

The ongoing water shortages and inequitable distribution of water resources that Palestinians face raises a major humanitarian concerns. Through Military Order No. 158, created November 19, 1967, Palestinians were forbidden from constructing new water supplies without a permit from the Israeli army. Any supply built without a permit faced the threat of confiscation or destruction. After the Oslo Accords, the Palestinian Water Authority (“PWA”) was established in order to yield power and authority to the PA over the use and distribution of water. In practice, however, the scope of Israeli control did not significantly change and the situation remains the same.<sup>127</sup>

The daily per capita water consumption for Palestinians is currently below the minimum rate required by the World Health Organization (“WHO”). According to the WHO, the minimum standard is 100 liters, yet Palestinians consume only 60 liters per day for domestic, urban, rural, industrial use.<sup>128</sup> In contrast, Israelis are permitted 280 liters per day for domestic, urban, and rural use, and 330 liters for industrial use.<sup>129</sup> According to Amnesty International, “Israel’s policy has been, and remains, to limit the overall amount of water (and land) available to the Palestinian population, while preserving for itself privileged access to most of the water and land in the oPt.”<sup>130</sup>

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122 IV GC Relative to the Protection of Civilian Persons in Time of War, Section III, Article 53.

123 IV GC Relative to the Protection of Civilian Persons in Time of War, Section III, Article 127.

124 IV GC Relative to the Protection of Civilian Persons in Time of War, Section III, Article 49(1).

125 Amnesty International, *What Are Economic, Social and Cultural Rights?*

<<http://www.amnesty.org/en/economic-social-and-cultural-rights>> Viewed on 17/2/2011

<<http://www.amnesty.org/en/economic-and-social-cultural-rights/what-are-escr>>

126 Eva Herzer and Losang Rabgey, *Housing Right Violations in Occupied Tibet*, International Committee of Lawyers for Tibet, May 1996, p.1.

127 Amnesty International, *Troubled Waters- Palestinians Denied Fair Access to Water*, 2009, p. 17.

128 Stephen Lendman, *Drought and Israeli Policy Threaten West Bank Water Security*, Countercurrents.org, 18 July 2008 <<http://www.globalpolicy.org/component/content/article/198/40391.html>>

129 Ibid.

130 Amnesty International, *Troubled Waters*, op. cit. p.15.



Land confiscation, and the consequent lack of access to water, has had a significant impact on the agricultural sector in the West Bank. Water restrictions also prevent Palestinians from access to drinking water, raising many health and sanitary concerns. Through its discriminatory zoning and planning policies and construction of the Annexation Wall, Israel managed to annex some of the best water sources, especially the western aquifer and the Jordan Valley. Moreover, in 2000, Israel stopped issuing the permits necessary for Palestinians in “Area C” to be able to construct any water structures.<sup>131</sup> Through the claim that the structures are built “illegally,” the Israeli army frequently destroys Palestinian water tanks and water agricultural facilities, leaving hundreds of villagers without any access to water for domestic or agricultural use. As a result, the Palestinian agricultural sector dropped drastically low in its productivity rate. According to the Palestinian Central Bureau of Statistics, between 2001 and 2005, the daily agricultural wage fell by 10.3% in the West Bank. Hafez Hereni, a community activist from the village of Tuwani in the Southern Hebron Hills, expressed the relationship between land confiscation and access to water: “This area is dry, but we used to have more water, enough for our needs; but the more the Israeli settlements have expanded the more difficult it has become for us to get water. And in recent years, with all the main roads closed to us, getting water has become a huge problem.”<sup>132</sup>

In addition to water scarcity, “Area C” also faces major food insecurity, directly attributable to Israeli imposed physical and economic restraints on Palestinians’ use of the land.<sup>133</sup> This has ushered in a sharp increase in dependency on humanitarian and development related aid.<sup>134</sup> Seventy-nine percent of Palestinians living in “Area C” are food-insecure, living on less than \$4.70 USD per adult, per day.<sup>135</sup> By contrast, twenty-five percent of Palestinians are food-insecure in the whole West Bank.<sup>136</sup> An increased number of malnutrition cases have also been registered.<sup>137</sup> The lack of adequate health infrastructures, due to the strict building restrictions imposed on Palestinians in “Area C,” further exacerbates an already critical humanitarian situation.

By preventing Palestinians sufficient access to water and food, Israel is, once again, in derogation of its obligations under IHRL and IHL. The rights to adequate food and housing are ensured by the ICESCR as part of an adequate standard of living. The CESCR emphasizes the necessity of providing access to sufficient water resources in order to fulfill the right to adequate food.<sup>138</sup> In a 2010 report of the Special Rapporteur on the right to food, Olivier De Schutter, access to resources was directly linked with the right to adequate food. De Schutter called for States to refrain from taking any measures that would prevent a population from accessing productive resources, to protect access to such resources, and to strengthen a population’s access to such resources.<sup>139</sup> Violating the rights to food and water is a violation of the Palestinians’ right to sovereignty over their natural resources,<sup>140</sup> a right also recalled in the ICESCR: “All peoples may, for their own ends, freely dispose of their natural wealth and resources [...]. In no case may a people be deprived of its own means of subsistence.”<sup>141</sup>

## ***Freedom of Movement***

By the end of 2009, there were a total of 578 road closures in the West Bank, including 69 permanently staffed checkpoints, 21 “partial checkpoints,” and 488 physical obstacles (roadblocks, earth mounds, earth walls, road barriers, road gates and trenches).<sup>142</sup> Palestinians also face additional movement restrictions due to the network of settler roads created by the ICA. The ICA uses Plan 50, a Partial Regional Outline Plan for Roads approved in 1991, to illegally expand the network of roads available for Jewish settlers – an option forbidden for Palestinians. By October 2010,

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131 Saed Bannoura, *UN Condemns Israeli Destruction of Palestinian Water Systems*, International Middle East Media Center, 5 February 2011. Viewed 2/2/11. <<http://www.imemc.org/article/60580>>

132 Ibid. p. 36.

133 Joint UNRWA – UNICEF – WFP Household Survey, op. cit.

134 FAO/WFP, December 2009 – Food Security and Vulnerability Analysis Report in the oPt.

135 Joint UNRWA – UNICEF – WFP Household Survey, op. cit., p. 18.

136 Ibid.

137 Ibid., p.24.

138 UN Committee on Economic, Social and Cultural Rights, General Comment No. 15, paragraph 1.

139 Report of the Special Rapporteur on the Right to Food, A/65/281, (2010), paragraph 2.

140 UN General Assembly Resolution 1803 (XVII) of 1962: “The right of people and nations to permanent sovereignty over their natural resources must be exercised in the interest of their national development and of the well-being of the people of the state concerned’ and that violation of this right is contrary to the spirit and principles of the Charter of the United Nations and hinders the development of international cooperation and the maintenance of peace.”

141 ICESCR Article 1.2.

142 OCHA West Bank Movement and Access Update, November 2009.

there were 232 kilometers of roads in the West Bank that Israel classified for the sole use of Jewish settlers.<sup>143</sup> The ICA's road planning policies are clearly used as a mean to reduce Palestinian freedom of movement while facilitating Jewish settlers' access to their settlements and to Israel proper.<sup>144</sup> In addition to appropriation of land to facilitate settler activity, the construction of the Annexation Wall has also drastically increased the difficulties for Palestinians to move freely throughout the West Bank.<sup>145</sup>

Aside from restrictions on freedom of movement, actual access to the land itself has been seriously reduced. Approximately 10% of the West Bank is a designated nature reserve,<sup>146</sup> prohibiting herders and farmers from access to the fertile land necessary for grazing and agricultural production. Nearly 18% of the West Bank was also designated as closed military zones for use as military training ground or "firing" zones.<sup>147</sup> In 2010, around 65% of "Area C" demolitions were carried out in these "firing zones."<sup>148</sup> The village of Khirbet Tana, for example, consists of residents who have lived in the area for decades, but was declared as a "firing zone" by the Israeli military. After the Israeli Supreme Court denied the village's 2008 petition for the preparation of an adequate planning scheme, the village has faced repeated cases of demolition. On March 15, 2011, all structures in the village were destroyed, making it the sixth time the ICA has demolished structures in the village since 2005, and the fourth in the last four months.<sup>149</sup>



Annexation Wall in the West Bank city of Qalqilya

The roads network exclusive for use by Israelis or Jewish settlers, along with the Jewish settlements, nature reserves, firing zones, and the Annexation wall – all created or permitted by the ICA's zoning and planning policies – are a small sample of the obstacles that deny Palestinians their right to freedom of movement,<sup>150</sup> serving to further isolate them from each other, separate them from fertile land, and impose on them excruciating delays and higher transportation costs. In response to the obstacles Palestinians face, the World Bank even concluded, "Freedom of movement and access for Palestinians within the West Bank is the exception rather than the norm."<sup>151</sup>

143 B'Tselem, *Restrictions on Movement: Checkpoints, Physical Obstructions, and Forbidden Roads*. Viewed on 17/2/2011. <[http://www.btselem.org/english/Freedom\\_of\\_Movement/Checkpoints\\_and\\_Forbidden\\_Roads.asp](http://www.btselem.org/english/Freedom_of_Movement/Checkpoints_and_Forbidden_Roads.asp)>

144 Bimkom, *The Prohibited Zone*, op. cit, p. 138.

145 OCHA, *Five years after the Advisory Opinion of the International Court of Justice: A Summary of the Humanitarian Impact of the Barrier*, July 2009.

146 OCHA, *Restricting Space*, op. cit.

147 Ibid.

148 OCHA, *Khirbet Tana: Large-Scale Demolitions for the Third Time in Just Over a Year*, February 2011, p. 1.

149 B'tselem, *Planning and Building*, 15 March 2011: Civil Administration demolishes Jordan Valley village Khirbet Tana. Viewed on 14/4/2011. <[http://www.btselem.org/english/planning\\_and\\_building/20110315\\_kh\\_tana\\_demolitions.asp](http://www.btselem.org/english/planning_and_building/20110315_kh_tana_demolitions.asp)>

150 International Covenant on Civil and Political rights: Article 12.1. "Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence;" Universal Declaration of Human Rights Article 13: "Everyone has the right to freedom of movement and residence within the borders of each state."

151 World Bank Technical Team, *Movement and Access Restrictions in the West Bank: Uncertainty and Inefficiency in the Palestinian Economy*, 9 May 2007, p.1.

**Extracts of Concluding Observations on Israel adopted by the  
Committee on Economic, Social and Cultural Rights<sup>152</sup>  
(2 December 1998)**

234. The Committee notes with concern that the Government's written and oral reports included statistics indicating the enjoyment of the rights enshrined in the Covenant by Israeli settlers in the occupied territories but that the Palestinian population within the same jurisdictional areas were excluded from both the report and the protection of the Covenant. The Committee is of the view that the State's obligations under the Covenant apply to all territories and populations under its effective control.

248. The Committee deplores the continuing practices of the Government of Israel of home demolitions, land confiscations and restrictions on family reunification and residency rights, and its adoption of policies which result in substandard housing and living conditions, including extreme overcrowding and lack of services, of Palestinians in East Jerusalem, in particular in the old city.

250. The Committee notes that despite State party's obligation under article 11 of the Covenant, the Government of Israel continues to expropriate Palestinian lands and resources for the expansion of Israeli settlements. Thousands of dunams (1 dunam equals 1,000 square metres) of land in the West Bank have recently been confiscated to build 20 new bypass roads which cut West Bank towns off from outlying villages and farmlands. The consequence - if not the motivation - is the fragmentation and isolation of the Palestinian communities and facilitation of the expansion of illegal settlements. The Committee also notes with concern that while the Government annually diverts millions of cubic metres of water from the West Bank's Eastern Aquifer Basin, the annual per capita consumption allocation for Palestinians is only 125 cubic metres while settlers are allocated 1,000 cubic metres per capita.

252. The Committee notes with deep concern that a significant proportion of Palestinian Arab citizens of Israel continue to live in unrecognized villages without access to water, electricity, sanitation and roads. Such an existence has caused extreme difficulties for the villagers in regard to their access to health care, education and employment opportunities. In addition, these villagers are continuously threatened with demolition of their home and confiscation of their land. The Committee regrets the inordinate delay in the provision of essential services to even the few villages that have been recognized. In this connection, the Committee takes note that while Jewish settlements are constructed on a regular basis, no new Arab villages have been built in the Galilee.

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152 Leif Holmstrom, *Concluding Observations of the UN Committee on Economic, Social and Cultural Rights: Eighth to Twenty-Seventh Sessions (1993-2001)*, 2003, pp. 307-316.

## c. Violations of the Right to Development

The right to development is “an integral part of fundamental rights”<sup>153</sup> and represents a core component of the international human rights framework.<sup>154</sup> The UN General Assembly adopted the Declaration on the Right to Development through Resolution 41/128, and now references to the right are found in all major UN documents.<sup>155</sup> The right to development is defined as:

*“...an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized.”<sup>156</sup>*

The right to development is not yet legally binding, however, and from a legal perspective is defined as “soft law.”<sup>157</sup> Therefore, the legal foundation for the right to development is drawn from international covenants – such as the ICCPR and ICESCR – and can be applied through the implementation of those two international binding conventions.<sup>158</sup>

Israeli zoning and planning policies in “Area C” violate numerous rights protected by the ICESCR, which are principles underpinning the Right to Development. By not allowing farmers and investors to use the land in a profitable way, Israel contravenes the Right to Work, which is a core component of the development framework.<sup>159</sup> The Special Rapporteur on the Right to Food recently concluded that access to land



Bedouin man and son from the Rashaydeh tribe in the Nwe'meh community

and security of tenure are essential factors necessary to ensure the enjoyment of a number of human rights, including the right to work.<sup>160</sup> Palestinians living in “Area C” are primarily an agrarian community and rely heavily upon the land. Israel’s actions in “Area C,” through land appropriation or restricting access to the land, gravely impede Palestinians’ ability to work and earn a living.

According to the UN Declaration on the Right to Development, the right to development includes the right to self-determination and the exercise of a people’s inalienable right to sovereignty over their resources. In the oPt, and “Area C” in particular, land access restrictions and the demolition of water and agricultural facilities cripples Palestinian

153 1993 Vienna Declaration, para. 10: “The World Conference on Human Rights reaffirms the right to development, as established in the Declaration on the right to development, as a universal and inalienable right and an integral part of fundamental rights.” (A/CONF.157/23).

154 Defined by the Declaration on the Right to Development, Adopted by General Assembly Resolution 41/128 of 4 December 1986.

155 Felix Kirchmeier, *The Right to Development: Where Do We Stand? State of the debate on the Right to Development*, Friedrich Ebert Stiftung, Dialogue on Globalization, No. 23, July 2006, p. 9.

156 UN General Assembly Resolution 41/128. 4 December 1986. <<http://www.un.org/documents/ga/res/41/a41r128.htm>>

157 According to the Art. 38(1) of the Statute of the International Court of Justice, the sources of international law are international conventions or treaties, international customs recognized and accepted by States, General principles of law and Judicial decisions and the teachings of the most highly qualified publicists of the various nations. In that perspective, the right to development is not yet a binding principle under international law. See Felix Kirchmeier, *The Right to Development: Where Do We Stand? State of the debate on the Right to Development*, Friedrich Ebert Stiftung, Dialogue on Globalization, No. 23, July 2006, p. 10.

158 Ibid.

159 The right to work is ensured by different international texts, among them the Universal Declaration of Human Rights, Article 23: “Everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment;”, and the International Covenant on Economic, Social and Cultural Rights, Article 6.1: “The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.”

160 Report of the Special Rapporteur on the Right to Food, A/65/281, 2010, paragraph 4.

communities and precludes the use and control of their natural resources. The right to self-determination and sovereignty are also key provisions of the ICESCR:<sup>161</sup>

1. 1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

1. 2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence. [...]

2. 1. Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measure.<sup>162</sup>

#### d. Establishment of a Discriminatory System

As an occupied population, Palestinians consistently endure xenophobia and discrimination,<sup>163</sup> characterized by forced evictions, dispossession, home demolitions, and the establishment of Jewish only settlements on appropriated Palestinian land.<sup>164</sup> Israeli appropriation of land under the guise of military or civilian purposes in reality occurs for the sole benefit of facilitating and expanding Israel's control over the area and in favor of only Jewish-Israelis. Land where Palestinians can build, expand, and develop as a society is shrinking daily and has resulted in the creation of densely populated Palestinians ghettos. The clear ties between Israel, the ICA and various Jewish organizations in planning and land administration are of major concern. In 1998, the CESR was already denouncing Israel's appropriation of Palestinian lands:



Palestinian man in Qalqilya expressing his frustrations over discriminatory Israeli policies affecting his livelihood

*"Large-scale and systematic confiscation of Palestinian land and property by the State and the transfer of that property to these agencies [the World Zionist Organization/Jewish Agency and its subsidiaries] constitute an institutionalized form of discrimination because these agencies by definition would deny the use of these properties to non-Jews. Thus, these practices constitute a breach of Israel's obligations under the Covenant."<sup>165</sup>*

The quality of life for Palestinians as a result of Israel's discriminatory zoning and planning policies is also a cause for concern. Access to medical care, education, or necessary goods such as water or food is dangerously low. The protection that Israel, as the occupying power, is obligated to provide for Palestinians is non-existent.<sup>166</sup> Even more disturbing is that the discriminatory policies in place in the West Bank (especially "Area C") appear to intentionally seek the achievement of such a dismal situation so as to force the Palestinian population to leave. The planning policies in "Area C" embody a blatant double standard implemented by Israel between its population and the Palestinians population in terms of housing, access to land and general welfare.

161 International Covenant on Economic, Social and Cultural Rights. 3 January 1976. <<http://www2.ohchr.org/english/law/cescr.htm>>

162 ICESCR, 1966, Article 1 and 2.

163 International Convention of Elimination of all Forms of Racial Discrimination, 1966, Article 1: the CERD prohibits "any distinction, exclusion, restriction preference based on race, color, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life."

164 Habitat International Coalition – Habitat and Land Right Network. *Discrimination Everywhere: Housing and Land Right Violations in 2007-09*, October 2009.

165 UN Committee on Economic, Social and Cultural Rights, Concluding Observations, op. cit.

166 Under the IVGC, Israel is required to protect the population of the occupied territory. Furthermore, the Charter of the United Nations, in Article 73, defines a priority the interest of the population of a non-sovereign state

Parallels can be drawn between the current situation in the oPt and other occupied areas around the world. In many cases of occupation, the housing and planning policies are used as a tool to discriminate against and marginalize the occupied population. In Tibet, for example, housing policies became a mechanism of social control: “By limiting Tibetans’ freedom of movement, restricting their right to choose where to live and depriving Tibetans of meaningful participation in planning and development decisions, China maintains effective control over the Tibetan population.”<sup>167</sup> This highlights the ability of an occupying power to use planning policies as an additional means to achieve control and superiority over the occupied population. It, in turn, has a strong impact in terms of sovereignty and self-determination for the occupied population because control over housing and access to essential resources impede possibilities for the occupied population to achieve independence and self-sufficiency.

Israel’s discriminatory practices in the oPt has become so widespread and alarming that the term “apartheid” has been used to describe it. Apartheid is considered a “crime against humanity,”<sup>168</sup> and is defined as “inhuman acts committed for the purpose of establishing and maintaining domination by one racial group of persons over any other racial group of persons and systematically oppressing them.”<sup>169</sup> What constitutes a “racial group” is essential in addressing whether a situation can be classified as apartheid. In the case of the oPt, the Human Science Research Council, based on the International Convention against all Forms of Racial Discrimination and the jurisprudence of the International Criminal Tribunals for Rwanda and former Yugoslavia, concluded, “Israeli Jews and Palestinian Arabs can be considered as a racial group for the purposes of the definition of apartheid in international law.”<sup>170</sup> Thus, in theory, the concept of apartheid can be applied to Israel’s actions in the oPt.

In practice, applying the notion of apartheid vis-à-vis the situation in the oPt is controversial. Elements of apartheid do currently exist, however, in the way Israel administers the oPt and the occupied Palestinian population. In 2007, John Dugard, former UN Special Rapporteur for Palestine, reported that elements of the Israeli occupation – the road networks and demolitions among others – constituted forms of colonialism and apartheid.<sup>171</sup> He recalled the previous apartheid system in South Africa, highlighting three core prevailing characteristics of apartheid: (1) the population must be demarcated into racial groups, (2) the population must be segregated into different geographical areas, and (3) the oppressive power must use security laws and policies to suppress any opposition to the regime.<sup>172</sup>

Israel’s current planning policies isolate Palestinians not only from one another, but also from the Jewish settlements which it facilitates the growth of in the West Bank. These policies are a core component of a broader discriminatory system that demarcates the population into racial groups. For example, the Arab-Israeli NGO Adalah, has documented how the ICA prevents the inclusion of Palestinians who hold Israeli citizenship within the West Bank settlements.<sup>173</sup> Thus, by creating special institutions only for Jewish settlers and encouraging Jewish settlement development rather than the development of Palestinian communities, the planning system in “Area C” clearly demarcates Jewish-Israeli and Palestinian groups, highlighting the ethno-religious aspect of Israel’s policies. Land annexation, Jewish settlements and the expansion of their scope of jurisdiction, and obstacles to Palestinian development all serve to create effective geographical segregation between Palestinians and Jewish-Israelis.

The ICA’s policies aim at containing the Palestinians in isolated areas, encircled by Jewish settlements.<sup>174</sup> The Human Sciences Research Council stated that “the appropriation and construction policies serving to carve up the West

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167 Eva Herzer and Losang Rabgey, *Housing Rights Violations*, op. cit. p.2.

168 Rome Statute of the International Criminal Court, Article 5. “Crimes against humanity” are defined as serious violations of human rights when committed as part of a widespread or systematic attack directed against any civilian population.

169 International Convention on the Suppression and Punishment of the Crime of Apartheid, Article 2. Israel has not signed and ratified the International Convention on the Suppression and Punishment of the Crime of Apartheid, and is in theory not bound to respect its provisions. However, suppression and punishment of discrimination and apartheid, because they enshrine fundamental values of the international public order (*erga omnes*), became peremptory norms which binds the entire community of states (*jus cogens*). Thus, they are part of custom, accepted, recognized and respected by the whole international community. Israel is therefore not exempted of applying the convention within its own territory and the ones it occupies.

170 Human Sciences Research Council, *Occupation, Colonialism, Apartheid? A Re-assessment of Israel's Practices in the Occupied Palestinian Territory under International Law*, Democracy and Governance Program, Middle East Project, May 2009, Cape Town, South Africa.

171 UN Human Rights Council, *Human Rights Situation in Palestine and other Occupied Arab Territories*, report of the Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied since 1967, John Dugard, 21 January 2008, A/HRC/7/17, Viewed on 10/12/2010. <<http://www.unhcr.org/refworld/docid/47baaa262.html>>

172 Ibid.

173 The ICA requires that people willing to integrate into a settlement must be suited to social life in a small community. Because of their different language, national and cultural identity, the Arab-Israeli candidates “will not be able to meet the criteria required for social cohesion or social suitability. [...] The data show that the ethnic origin of a Jewish Candidate is a decisive consideration in the deliberations of the Selection Committee of community settlements.” Suhad Bishara On Class and Nationality in Housing Rights, Adalah’s Newsletter, Volume 11, March 2005, p.2.

174 Terry Rempel, Housing and Property Restitution: The Palestinian Case, “*Returning Home: Housing and Property Restitution Rights of Refugees and Displaced Persons*,” Edited by Scott Leckie, 2003, p. 288.

Bank into an intricate and well-serviced network of connected settlements for Jewish-Israelis and an archipelago of besieged and non-contiguous enclaves for Palestinians” reflects “the Israeli policy to fragment the oPt for the purposes of segregation and domination.”<sup>175</sup> Finally, the extensive use of military orders to appropriate Palestinian land, the ongoing home demolitions, establishment of the Annexation Wall, and the closure of numerous areas, all based on security purposes are arguably a way for Israel to use the law under the pretext of “security necessity” to suppress any opposition to the occupying regime.



Ma'ale Levona Settlement in “Area C” of the West Bank

If not apartheid, Israel’s discriminatory planning and zoning policies can be categorized as a tool of a larger ethnic cleansing policy.<sup>176</sup> This term is usually

used in reference to the 1948 massacres, destruction of hundreds of Palestinian villages, and massive expulsion of Palestinians from their land.<sup>177</sup> Use of the term “ethnic cleansing” unfortunately still remains applicable in the context of Israel’s planning and zoning policies in East Jerusalem and “Area C”. The discriminatory policies create a series of perpetual obstacles aimed at stifling Palestinian economic and social development and, a significant deterioration of quality of life, results that can be understood as an attempt at forcing or encouraging Palestinians to leave their homes and land. Israel’s systematic and consistent violations of human rights in the oPt are characteristic of an ethnic cleansing and apartheid policy.<sup>178</sup>

While the purpose of this study is not to answer whether an apartheid system currently exists in the oPt, it is important to note how the facts lend to the argument that the situation meets the requirements of the legal definition of apartheid and is comparable to the implementation of apartheid in South Africa. The situation on the ground raises important questions regarding Israel’s responsibility as the occupying power and its consistent violations of internationally recognized human rights and humanitarian law.

## e. Israel's Responsibility for Violations of International Law

An analysis of Israel’s discriminatory zoning and planning policies in “Area C” demonstrates how Israel’s behavior vis-à-vis the Palestinian population in the oPt (especially in “Area C”) is in direct contravention of major principles of international law and fundamental human rights provisions. While Israel denies the applicability of international human rights conventions to the oPt, many of the conventions it is a party to stipulate that the obligations apply to all persons brought under the jurisdiction or effective control of that state.<sup>179</sup> The occupied Palestinian population, therefore, is entitled to the protections afforded by such human rights treaties. Thus, in spite of Israel’s arguments, Israel must be held accountable for the wrongful acts it perpetrates in direct defiance of IHRL and IHL.<sup>180</sup>

175 Human Sciences Research Council, *Occupation, Colonialism, Apartheid*, op. cit.

176 Ethnic cleansing is a term that describes all forms of ethnically-motivated violence, ranging from murder, rape, and torture to the forcible removal of populations. Cathie Carmichael, *Ethnic Cleansing in the Balkans, Nationalism and Destruction of Tradition*, Routledge, 2002. A 1993 UN Commission defined it more specifically as, “the planned deliberate removal from a specific territory, persons of a particular ethnic group, by force or intimidation, in order to render that area ethnically homogenous.”

177 Ilan Pappé, *The Ethnic Cleansing of Palestine*, Oneworld Publications, 2006.

178 Terry Rempel, *Housing and Property Restitution*, op. cit. p. 282.

179 Al-Haq, *Waiting for Justice*, Annual Report 2004, p. 43.

180 International Law Commission, *Responsibility of States for Internationally Wrongful Acts*, 2005. Article 1: “Every internationally wrongful act of a State entails the international responsibility of the state.” Article 2: “There is an internationally wrongful act of a state when conduct consisting of an action or omission: a) is attributable to a state under international law and; b) constitutes a breach of an international obligation of the State.”

Circumstances permitting nonobservance of the protections afforded by human rights treaties are self-defense, proportionality, force majeure, distress, or necessity.<sup>181</sup> Israel's discriminatory and harmful zoning and planning policy, however, does not fall under any of these circumstances. From the analysis above, it is evident that Israel's policies are created and implemented for the sole purpose of furthering Israel's territorial control in the oPt. Furthermore, the gross discrimination resulting from such policies does not comply with the concept of proportionality.

Israel's wrongful acts, resulting from the implementation of its discriminatory land policies, make it subject to the legal consequences set out in the draft articles on the Responsibility of State for Internationally Wrongful Acts, adopted through UN General Assembly Resolution 56/83.<sup>182</sup> Most importantly, Israel is under an obligation to cease the wrongful acts, guarantee that it won't repeat them, and make reparations or compensation for any injury caused.<sup>183</sup> In 1990, one of Israel's own Supreme Court judges expressed concern over the injustices occurring in reference to evictions and forced displacement. In the Jahalin Case [Chapter I, d], Judge Dalia Dorner in her dissenting opinion criticized the majority opinion that the Jahalin residents have no legal right to the property they had inhabited for decades:

*"An administrative authority that acts with fairness and reasonableness may not evict human beings who reside for years on land without offering them an alternative fair site and even compensation. We are not talking about an act of mercy to be done outside of the law, but rather a legal obligation which provides an enforceable legal right. The authorities of this government are obligated to guarantee the reasonable well-being of the population in the occupied territories."*<sup>184</sup>

Similarly, John Dugard, former UN Special Rapporteur on the situation of human rights in the oPt, recalled in a 2008 report that the unique length of occupation over the oPt does not exempt Israel from protecting Palestinians under IHL, but instead increased Israel's responsibility in failing to ensure those rights.<sup>185</sup>

In addition to Israel ceasing its wrongful acts, the international community of states must invoke Israel's responsibility to cease. States other than an injured state are entitled to invoke responsibility if the wrongful act breaches an obligation owed to the international community as a whole.<sup>186</sup> As an occupying power bound by the rules of international law, and as a signatory to a number of international human rights conventions,<sup>187</sup> Israel's breach of these obligations should be considered a breach to the international community as a whole. The role of the international community is therefore crucial, because they are the indirect victims of Israel's violations of international norms. As indirectly injured states,<sup>188</sup> they can adopt (within the limits of proportionality) countermeasures to cease Israel's violations.<sup>189</sup>

By controlling the planning and zoning system, Israel maintains control over the Palestinian social infrastructure, the roads network, and access to land, and thereby indirectly controls the production and provision of food and water, access to health care, movement and socio-economic development. The scope of the planning policies' consequences is wider than it appears on the surface. As expressed by the Office of the High Commissioner for Human Rights ("OHCHR"), "Forced evictions might not initially be viewed as an issue of human rights [...]. However, to be persistently threatened or actually victimized by the act of forced eviction from one's home or land is surely one of the most supreme injustices any individual, family, household, or community can face."<sup>190</sup> The daily life of Palestinians living in "Area C" is indeed saturated with demolitions orders, food and water scarcity, threats of eviction and displacement, movement restrictions, and arbitrary closures of land.

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181 The concept of proportionality is defined in the Article 51 of the Responsibility of States for Internationally Wrongful Acts. The circumstances precluding wrongfulness are defined under the Chapter V of the Responsibility of States for Internationally Wrongful Acts, and are consent, self-defense, countermeasures in respect of an internationally wrongful act, force majeure, distress, and necessity.

182 Responsibility of States for Internationally Wrongful Acts, Article 28: "The international responsibility of a State which is entailed by an internationally wrongful act in accordance with the provisions of part one involves legal consequences as set out in this part."

183 Responsibility of States for Internationally Wrongful Acts, Articles 30, 34-38.

184 Geoff Lumetta, *Israeli High Court Votes to Evict Jahalin Bedouins*, op. cit.

185 UN Human Rights Council, *Human rights Situation in Palestine*, op. cit., p. 7. For more information see: Adam Roberts, *Prolonged Military Occupation: the Israeli Occupied Territories since 1967*, *American Journal of International Law*, Vol. 84 (1990), pp. 55-57 and 95; O. Ben-Naftali, A.M Gross and K. Michaeli, *Illegal Occupation: Framing the Occupied Palestinian Territory*, *Berkeley Journal of International Law*, Vol. 23, No. 3, 2005, pp. 551-614.

186 Responsibility of States for Internationally Wrongful Acts, Article 48.

187 Israel Ministry of Foreign Affairs, *International Conventions on Human Rights*, 14 January 1999. Viewed on 18/2/2011. <[http://www.mfa.gov.il/mfa/mfaarchive/1990\\_1999/1999/1/international%20conventions%20on%20human%20rights](http://www.mfa.gov.il/mfa/mfaarchive/1990_1999/1999/1/international%20conventions%20on%20human%20rights)>

188 The injured states means here the entire community of states, injured by the consequence of any violation of IL

189 Responsibility of States for Internationally Wrongful Acts, Articles 49 to 54.

190 UN Human Rights Fact Sheet No. 25 on Forced Evictions, 1996.



The violations committed through Israel's use of discriminatory planning and zoning policies, to be viewed as part of the broader framework of violations occurring through Israeli occupation, raise two main concerns: (1) whether Israel is implementing an apartheid system in the oPt, and (2) how the violation of Palestinian's human rights threatens their ultimate right to self-determination. The fundamental rights violated in essence have one common theme: human dignity. Denying those rights not only threatens Palestinians' existence, but more importantly the dignity and humanity of the occupied Palestinian population that has been forced to endure such discriminatory practices for forty-four years and counting.

According to B'Tselem, an Israeli human rights NGO, "What renders Israel's abuses unique throughout the world, is the relentless efforts to justify what cannot be justified."<sup>191</sup> It is time Israel acknowledge its illegal behavior and take serious measures to put an end to it. It is also time for the international community to hold Israel accountable, not just by adopting Resolutions, but also by seeking the necessary and available means or pressure to put an end to such violations.

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191 Norman Finkelstein, *Beyond Chutzpah: On the Misuse of Anti-Semitism and the Abuse of History*, University of California Press, 2005, p. 221.

## III. JLAC's Answer to an Internationally Illegal Situation

### a. Introduction

The Jerusalem Legal Aid and Human Rights Center ("JLAC") is one of the pioneering human rights organizations in Palestine. Originally established in 1974 by the American Friends Service Committee, JLAC was formerly known as the Quaker Service Information and Legal Aid Center. In 1993, a local Board of Directors was appointed as a preliminary step towards JLAC's independence, with the Center officially becoming a Palestinian non-governmental and non-profit organization in 1997. Since its founding over 35 years ago, JLAC has played an important role in the oPt by providing pro-bono legal aid and consultations to Palestinians, helping them confront the persistent violations of their human rights by Israel. JLAC also carries out a public interest program aimed at defending human rights violations carried out by the PA.

The cases and consultancies provided by JLAC range in thematic area (from house demolition orders issued by Israeli authorities to political arrests undertaken by the PA), but all fundamentally seek to empower poor and marginalized individuals and communities with the necessary legal aid in order to help them combat and overcome breaches of their human rights – regardless of whom the violator is and regardless of what right is being violated. Moreover, JLAC wages efforts to eliminate the environment of legislative and regulatory deficiencies that enables the occurrence and perpetuation of human rights violations in the oPt. Such efforts entail (1) the creation of a culture of legal and human rights awareness among local communities and stakeholders, (2) building strategic alliances and coalitions with sector players, and (3) advocating for the reform of existing legislation and regulations, among other efforts.

### *JLAC's Approach to Israel's Human Rights Violations*

Israel's discriminatory zoning and planning policies in "Area C" (under full Israeli administrative and military control) are among the most significant measures that have been taken against the occupied Palestinian population. The evidence suggests that Israel employs a deliberate policy aimed at severely confining and restricting Palestinians in various aspects of their lives. The current reality of Palestinian villages, towns, and residential clusters in "Area C" is characterized by fixed and confined master plans, resulting in overwhelmingly high population densities in the few areas allotted for building (and in the remainder of the West Bank in extension). Israel's restrictive plans have made it virtually impossible for Palestinians to obtain the required building permits, as such permits are more often than not refused – thereby forcing Palestinians to build without and making them vulnerable to the threat of demolition. The existing zoning and planning regulations also enable Israel to inflict additional human rights abuses against Palestinians, such as the confiscation of land and the forced displacement of communities (as in the case of Bedouin communities in the West Bank).

The occupied Palestinian population, particularly the poor and marginalized, unfortunately lacks the ability to attain the necessary legal support towards combating such human rights violations. In this regard, JLAC employs a two pronged approach: (1) immediate assistance in the form of legal aid and consultation (towards freezing demolition/displacement orders and securing the families' presence in their homes/lands until the court orders otherwise), and (2) a long-term approach involving efforts to reform public policies and laws (i.e. developing new master plans as an alternative way to legalize Palestinian construction by expanding 'planned' boundaries, adopting test cases aimed at challenging unfair Israeli planning policies and procedures, and issuing legal memorandums requesting Israeli authorities to cease discriminatory practices, etc.).

## **b. JLAC's Short-Term Strategy**

### ***Legal Aid***

Among JLAC's core mandates is to facilitate access to justice for poor and marginalized individuals and communities who are otherwise unable to combat and overcome violations of their human dignity. Through its team of qualified lawyers (possessing Palestinian and Israeli Bar licenses), JLAC annually adopts hundreds of dwelling and living cases and takes them before relevant courts. Among these cases are those that tackle home demolition orders issued by the ICA against structures built in "Area C" and East Jerusalem. Such cases entail applying for building permits and requesting necessary time extensions to achieve permit approval; attending related Israeli Higher Planning Council meetings; aiding beneficiaries' efforts to obtain/collect necessary documents (i.e. proof of ownership certifications); appealing decisions in case of denial of permits (a common practice); and eventually taking cases before the Israeli Supreme Court to obtain temporary freeze orders. Cases taken against forced evictions of Palestinian communities (particularly Bedouin and herder communities residing in the Jordan Valley region) involve corresponding with the Israeli Higher Planning Council's Inspection Committee to attain the necessary time extensions and appealing orders before the Israeli Supreme Court. To a lesser extent, JLAC also adopts cases involving land confiscation, where such cases are taken before the Military Objections Committees (in Ofar), the Legal Advisor (in Beit El), the Reconciliations Courts (in Jerusalem), and/or the Israeli High Court, depending upon the circumstances of the case in question.

Recently, Israeli pro-settlement organizations have been putting pressure on the ICA to carry out more home demolitions, a measure that particularly affects Bedouin communities. Regavim, a non-governmental Israeli housing organization (supported by a number of Israeli politicians, some of whom hold senior government positions), has raised several petitions to the Israeli Supreme Court against the ICA for its failure to demolish 'illegal' Palestinian homes. This is the same Civil Administration whom at present is already demolishing (or threatening to demolish) hundreds of Palestinian homes in its quest to rid "Area C" of its Palestinian population while allowing for Jewish settlement expansion. In spite of this, the Israeli Supreme Court still ruled in favor of Regavim's petitions and ordered the ICA to respond to its demands.

In early 2010, the ICA gave its reply to the charges brought against it by Regavim, pledging to continue its practice of home demolitions, while identifying the following order of priority:

1. Houses or agricultural facilities built on lands classified as "state lands."
2. Houses or agricultural facilities in proximity to settlements, the Annexation Wall, or security zones as classified by the ICA.
3. Houses or agricultural facilities within Palestinian communities located in "Area C".

The abovementioned priorities serve to affect Bedouin communities proportionally the most in terms of eventual demolition and displacement because the Bedouins in "Area C" predominantly reside upon lands classified as "state lands." The ICA's Inspection Committees heightened their activity in 2010, with hundreds of new notifications issued and tens of demolitions carried out. Bedouin communities were particularly brutalized, as dozens of tents, livestock facilities, and water storage tanks needed in maintaining the Bedouin social and economic life were destroyed.

In 2010, JLAC took before Israeli Courts 580 house demolition cases, 90 agricultural facilities demolition cases, 99 forced displacement cases, and 28 land confiscation cases. These figures include new cases adopted in 2010 in addition to others pending from previous years. Each case served to secure the represented families in their homes and/or lands. Collectively, 797 families/communities were secured from displacement, 99 of which are Bedouin families/communities.

JLAC undertook cases for the following Bedouin communities in 2010:

**Nwe'meh Community near the city of Jericho.** The community is comprised of tens of families who were displaced from Ein Gedi when it was occupied in 1948. Since then, the community has been forced to resettle in different regions within the West Bank. In 1998, it resettled in the Nwe'meh area near the city of Jericho so as to have access to basic services. The Nwe'meh area is disputed territory, in which the PA claims it falls within "Area B" and Israeli Authorities argue that it is "Area A" and classified as "state lands" under Israeli jurisdiction. As a result, both the PA

and ICA have issued stop-work/demolition orders to the community (targeting many of their homes and livestock facilities). JLAC has on several occasions provided legal aid to the Nwe'meh community, taking its cases before the Israeli Supreme Court and obtaining temporary injunctions (in effect freezing the demolition orders) on their behalf. In November and December of 2010 alone, the ICA issued 17 stop-work orders to the community, for which JLAC obtained temporary injunctions for all.

**Bedouin communities extending from the intersection of Route No. 60 with Route No. 1 of the Khan Al-Ahmar area, through the intersection of the Dead Sea before the city of Jericho.** This stretch is home to approximately 12 small communities, with a total of 1,645 individuals living in 454 structures for them and their livestock, and a small school. Proceedings against the communities commenced in 2009, with a decision to demolish the school and a collective decision to demolish the houses/facilities of the surrounding communities (i.e. Jahalin community). More orders were issued in mid-2010, with notifications delivered to all the communities by late September. More recently, the expansion of Route No. 1 indicates that Bedouin communities on both sides of the street will soon be banned from its use (as no entrance points have been created in the street to the sites of the communities); eventually resulting in an additional barrier to their presence on the land. After taking on the cases for this community previously started by a private attorney, JLAC has since provided further legal aid and (more recently) conducted a legal survey in their regard. JLAC has taken its adopted cases before the Israeli Supreme Court so as to obtain an interim ruling to freeze the stop-work/demolition orders. The Court issued an injunction temporarily halting demolition, but JLAC is still awaiting the final decision of the court regarding the community's cases.

**Al-Ka'abneh Community along the Al-Mu'arajat Road.** This community did not receive notifications of stop-work/demolition for its houses/facilities on account of an agreement with the ICA, relocating them to this site following a prior displacement. The community was issued demolition orders, however, in regards to their school, health facility, and mosque. JLAC adopted the cases of the public facilities and obtained temporary injunctions against their demolition. The cases continue to be followed-up by the Center.

**Bedouin communities located along bypass Road No. 60 and bypass Road Alon (which connect the Israeli settlements East of Ramallah, so-called "Trans-Samaria").** More than 30 demolition orders were issued for this area (along both sides of the road), threatening all groups and individuals with displacement, including 5 communities, their tents, livestock facilities, and water storage tanks. Community members are unable to obtain permits to legally reside on the land, as most of the facilities in question are situated upon "state lands," and to a lesser extent upon private property. JLAC adopted the majority of the communities' cases and raised them before the Israeli Supreme Court. JLAC succeeded in freezing the demolition and relocation orders until a final ruling is reached. Such was the case of the Ka'abneh community near Ein Samia, the largest Bedouin cluster in the area. Other strategies involved JLAC obtaining time extensions for the ongoing cases, thereby providing the communities with the needed time to relocate to adjacent locations without being subjected to the destruction of their property and the trauma resulting from such an ordeal.

**Al-Ka'abneh Community in Ain Al'oja.** Demolition/stop-work orders were issued to the community's mosque and a number of its other public facilities. JLAC adopted the cases and raised petitions to the Israeli Supreme Court in their regard. JLAC was successful in obtaining a temporary injunction for all the demolition orders.

**Rashaida Community near the village of Fasayel- Jericho.** A number of the community's tents and facilities received demolition/stop-work orders in 2009, with more following in 2010. In total, 25 families have fallen under threat of eviction during this short period. JLAC adopted their cases and obtained temporary injunctions from the Israeli Supreme Court in their regard. The Center continues to follow-up the cases and has also succeeded in attaining an order preventing the demolition of the Bedouin School in Fasayel al-Fawqa.

**Al-Malihah Community West of the city of Jericho.** JLAC legally intervened on the community's behalf in early 2008 by adopting demolition cases involving 25 families. JLAC succeeded in obtaining a decision to freeze the demolitions and has since been following-up the cases.

## ***Legal Consultation***

In addition to legal representation, JLAC's lawyers and paralegals annually render thousands of beneficiaries with qualified legal consultations and guidance. These consultations are facilitated through in-house visits to one of JLAC's three branch offices (Ramallah, Jerusalem, or Salfit) and mobile legal clinics throughout the northern West Bank. In this regard, JLAC's lawyers weekly and in rotation operate (for one day) out of different local government councils in the northern West Bank. The lawyers' presence within these relatively impoverished and marginalized communities brings JLAC closer to its beneficiaries and eases efforts on their part to seek legal consultation/aid and follow-up their cases. JLAC's lawyers also serve to answer any related legal questions and empower the local communities by providing them knowledge of their legal rights.

## ***Legal Awareness***

In an effort to empower the local community's ability to combat human rights violations, JLAC trains local government institutions and raises legal awareness. Tens of local government councils are trained each year regarding the legal steps and procedures to undertake vis-à-vis home demolitions or forced displacement and land confiscation, with the aim of empowering local institutions to combat human rights violations. Once trained, the local governments become an essential linchpin between JLAC and the victims of such violations by serving as a referral system directing persons to JLAC, as well as aiding the Center in attaining relevant information in supporting victims' cases. Additionally, through its partnership with local government councils, JLAC is able to implement community awareness sessions that raise the local community's basic knowledge of relevant Israeli zoning and planning policies applied within "Area C" and the appropriate legal actions to undertake if faced with threat of home demolition, land confiscation, and forced displacement. Establishing partnerships with local government councils also serves JLAC's programming capacity because council meetings aid JLAC in identifying the local legal needs and organizing prospective legal capacity building interventions. In 2010, JLAC forged partnerships with 35 local government councils.

## **c. JLAC's Long-Term Strategy: New Master Plans & Legal Reform**

Palestinians residing in "Area C" of the West Bank face an uphill battle in ascertaining their dwelling and living rights, as the law itself is manipulated to impose a discriminatory system that harms Palestinians in all aspects of life. For years, JLAC has coupled its legal efforts to combat human rights violations with reform and advocacy so as to alleviate (and ideally eliminate) Israel's discriminatory policies. JLAC's legal reform efforts pertaining to living and dwelling rights include the following:

### ***Test Cases***

In 2010, JLAC collaborated with several Israeli human rights organizations and adopted a test case aimed at challenging the unfair Israeli planning policies and procedures applied in "Area C" of the West Bank. The case involved several legal correspondences addressed to Ehud Barak – Israel's Minister of Defense, Yehuda Weinstein – Israel's Attorney General, and Yoel Poli Mordechai – The Head of the ICA. Our demands included: (1) the repeal or amendment of military orders which pertain to planning, specifically military order 418, and (2) the transferring of planning authority over "Area C" to the local populous, including the development of master plans and the issuance of building permits. The Israeli authorities' reply to the first correspondence stated that the ICA works to develop specifications for community planning and that a survey will soon commence of community clusters in "Area C" built without needed permits. We responded in a second correspondence that such steps are not an adequate fulfillment of our demands. The latest development involves the cooperation of renowned international law expert Professor Marco Sasoli, who agreed to provide an expert opinion supporting our demands, to be used in our preliminary petition to be submitted to the Israeli Supreme Court. JLAC is optimistic that this case will come to serve as a reference to base prospective right of dwelling and living cases upon.

## ***Legal Memorandums***

JLAC (in conjunction with other human rights organizations) often issues legal memorandums to Israeli authorities, requesting the relevant parties to cease discriminatory practices that impact the rights and welfare of Palestinians. One such example involved a legal memorandum issued by JLAC, along with two other human rights organizations (Rabbis for Human Rights and ICAHD), to the Higher Planning Council of the ICA in November of 2009. The memorandum demanded the Israeli Higher Planning Council of the ICA to cease its policy of neglecting urban planning of Palestinian communities located in the areas under its organizational control and to cease its practice of home demolitions. The memorandum also requested the planning committees to reform their existing planning policies in "Area C." [See Annex 1].

## ***Master Plans***

The ICA has persistently refused to expand its antiquated master plans (some dating back over 70 years) of villages and towns in "Area C" so as to accommodate the natural growth of rural Palestinian areas. In addition to the issue of adequate housing, such limitations also have bearings on the villages' and towns' ability to secure their developmental and infrastructure needs (i.e. construction of necessary schools, roads, industrial zones, etc.). Providing new master plans (which in effect expand the plans' boundaries) for the ICA is an alternative way to legalize Palestinian construction and is the foundation upon which many of JLAC's current dwelling and living cases are based. In an effort to update existing master plans, JLAC develops new master plans (taking into consideration new population changes and services needed) through qualified engineers and raises them for adoption by the Israel Higher Planning Council. One such master plan was developed for the Village of al-Aqaba that is situated in the southernmost part of the Jenin governorate. Israel refuses to acknowledge al-Aqaba as a "village" on security grounds because a military zone is situated in close proximity to the village. As a result of this "status," all facilities/infrastructure in al-Aqaba (i.e. homes, schools, roads, etc.) are at risk for demolition.

Another example of JLAC's efforts involves its intervention to improve the Israeli master plan for the village of Bruqin (situated within the district of Salfit). The Israeli developed master plan demonstrates Israel's negligence and unsound planning, as the plan failed to meet the needs of the village on various levels. For example, the plan was not compatible with the number of village residences nor did it afford them with the opportunity for natural growth and expansion. It also failed to maintain cohesion between the neighborhoods of the village (i.e. East and West), instead creating a rift between the two portions. Moreover, as further evidence of the sloppy nature of the ICA's plan, the limited areas allotted for expansion were not equitably divided among the village's families and left a number of families' lands situated beyond the plan's boundaries. JLAC has since generated recommendations for revising the master plan towards better meeting the village's needs and has raised them to the Israeli Higher Planning Council.

Since 2008, JLAC has worked to develop 4 master plans, of which two are extensions to existing plans in al-Sawya and Bruqin, while two were newly created for Khirbit Jbara and al-Aqaba (communities who did not have a master plan at all to begin with, as they are classified as unrecognized villages).

The following section serves to discuss, in more detail, JLAC's interventions in the villages of Bruqin and al-Aqaba:

## ***The Village of Bruqin***

The Village of Bruqin is located on the northern part of the West Bank, near Salfit. It is situated on a hilly mountain of low elevation. The village consists of 12,800 dunums, among which 1,500 dunums are constructed, and is entirely located in "Area C," bordered by "Area B," Israeli settlements, and industrial zones. The inhabitants belong to 12 main families: Barakat, Bakr, al-Haj, al-Khatib, Sbitan, Samara, Salama, Sheikh Umar, Sabra, Amer, Abd Allah, and Abd al-Rahman.

Historically, the population was located around the main water source. In the 1970's, a number of families started building to the north of Bruqin, an extension that notably increased in the 1990's. In 1994, however, the ICA issued Outline Plan 1214 for the village, which did not take into account the northern extension. The ICA considered these buildings to be illegal and part of a random and unnatural extension of the village. Tens of demolition orders were

issued, as the extension was considered a “threat” to Israeli infrastructure projects, such as new settler roads and the Annexation Wall. The ICA’s disregard for the village’s extension was also motivated by the fact that the village was considered a “security threat” because of its proximity to various Jewish colonies (Ariel, Brukhin, and Barkan). In 2006, a second plan was drafted, known as the “Bruqin North Plan” 06/1207. The characteristics of the plan are as follows:

- *The 2006 Plan presents a typical system of what is called “private partial plans.” JLAC and other organizations working in the field of advocacy regarding planning issues in “Area C,” however, have changed the terminology used to define these plans as “delimitation plans” because they do not fulfill the minimum requirements of land zoning and planning as outlined in the Jordanian Law of Planning Cities, Villages and Buildings No. 79 (1966). Moreover, and most importantly, these plans violate the purpose of modern planning because they aim at controlling Palestinian expansion and denying Palestinians the right to build.*
- *Surveys and questionnaires were not conducted prior to the creation of the plan, as required by Article 14 of Jordanian Law No. 79 (1966). No studies were conducted in relation to land ownership and its distribution between families. The arbitrary manner in which the plan was developed left nearly 40 to 50 constructions omitted – resulting in benefits for only two families in the village. The plan did not take into consideration factors such as land use, land ownership within and among families, value of the land, civic infrastructure, natural resources, age of buildings, and the fact that many of the buildings not recognized in the plan actually form a contiguous family ownership with other buildings included in the plan. Their non-integration is, in theory, due to their location next to prohibited construction. In reality, however, the majority of these buildings are not situated near prohibited construction zones.*
- *The 2006 Plan treats the extension as separate from the village of Bruqin and does not consider it to be part of the village’s natural expansion, leaving the 2006 plan disconnected from the original 1994 Outline Plan issued by the ICA.*
- *The proposed roads have dead ends and no connections to local and regional roads.*
- *Village residents were not consulted regarding elaboration of the Plan.*

JLAC filed an objection to the delimitation plan in response to the negative consequences that it would have for the village’s residents. During the first hearing, JLAC managed to postpone the case in order to gather more information and to provide the necessary legal assistance for residents facing demolition orders. JLAC argued that the correct way of planning North Bruqin, in accordance with the organizational law, is to adjust the existing 1214 plan by creating an expansion plan, which would recognize Bruqin North as a natural expansion of Bruqin. Another option would be to create a “detailed structural plan,” a type of plan normally used for small residential areas similar to Bruqin and North Bruqin.

Several factors illustrate how the North Bruqin Plan is discriminatory and politically motivated, created to hinder a healthy, sustainable, and logically planned Palestinian community, as required by any urban planning norm. If the plan is accepted as is, entire sections of the village will be demolished even though they are necessary for the natural growth of the village. In addition to the homes that will be destroyed, homes outside the Plan will not receive building permits and will consequently be demolished. The entire village would be under the restraints of a generic, arbitrary, and discriminatory plan that was created without local input or representation.

### ***The Village of al-Aqaba***

The Village of al-Aqaba is located on the northern part of the West Bank to the edge of the Jordan Valley, next to the town of Tubas. Al-Aqaba is one of the 130 villages in the West Bank that are not recognized by the ICA, and is therefore excluded from Israeli master plans. Israel does not recognize the village for security reasons, as it was surrounded by military bases in 1967 and the entire area declared a closed military zone. The village and herder families connected to it are confined to less than 0.1 percent of their original lands, making their life impossible, and prohibiting their livestock from grazing outside of the 20 dunums they reside on. 39 demolition orders have been issued in the village,

further disrupting residents' lives. These actions obstruct agricultural production and the rearing of livestock, and hinder the provision of public services such as healthcare and education. Throughout the village, the Israeli army raided homes and conducted training exercises using live ammunition. They also placed mines in the village's fields and regularly harassed villagers. These practices resulted in the death of 8, and injuries to more than 50 residents. Current Israeli policies concerning the village of al-Aqaba seek to destroy the entire village.

In 2002, as a result of the village council petitioning the Israeli Supreme Court, a decision was handed down to remove one of the three military bases surrounding the village. The Israeli Army was also ordered to stop using the village for training exercises. By June 2003, the military base was finally removed and the residents of al-Aqaba hoped to resume normal, dignified lives. They asked for assistance from the Rebuilding Alliance, an American non-profit organization, to help them build a kindergarten and women's center to help encourage displaced families to return to their homes and land. The military position at the entrance of the village was also removed, tanks could no longer enter the village, and soldiers could no longer raid and enter residents' homes for training and harassment purposes. A different struggle and threat quickly emerged, however, as Israel created a new map for the route of the Annexation Wall. According to this map, the Wall would pass in front of the village entrance, isolating it from neighboring villages and urban centers. The army also responded to the court's decision (restricting the army's actions in the village) by issuing 11 more demolition orders.

In 2004, hope for the future of the villages was further diminished when the ICA issued demolition orders that would effectively raze the entire village. The demolition orders included the mosque, medical center, kindergarten, and most of the homes in the village. The village council petitioned the Israeli Supreme Court to overturn the demolition orders. The Court responded by stating that, "Under no circumstances will buildings be allowed to stand without valid building permits."

On May 8th, 2007, Military Order No. 143/04 was issued, calling for the demolition of the entire village. The Israeli Supreme Court heard an appeal from the village council to revoke the order, however the Court issued a decision validating the order, calling for the confiscation of 80% of the village land and permitting the demolition of any structure on that land. Nine additional demolition orders were issued between 2007 and 2008. In the meantime, new buildings are forbidden, and the village council has been denied permits to build its own office and a school. Since 2003, 22 buildings have been demolished in the village.

JLAC intervened on the al-Aqaba case through the undertaking of individual cases of demolitions orders, as well as developing a master plan for the village with the hope that approval will prevent the demolition orders. The Higher Planning Council did not approve the initial master plan submitted, contending that the expanse of land outlined for the plan was too large in relation to the number of residents in the village. As a result, JLAC conducted a comprehensive survey to establish the exact number of residents in the village in order to redefine the master plan's boundaries to fit within the Council's requirements. Establishment of a new master plan would allow for lawful and adequate building and development, in addition to allowing for current homes and buildings to legally remain, and for the village residents to live without the daily threat of demolition.

#### **d. A Case In Point: The Village of al-Sawya vs. the Eli Settlement**

Israel's discriminatory planning policies banning Palestinian natural growth while promoting illegal Israeli settlement expansion can be seen by looking at the example of the village of al-Sawya versus the adjacent Eli settlement:

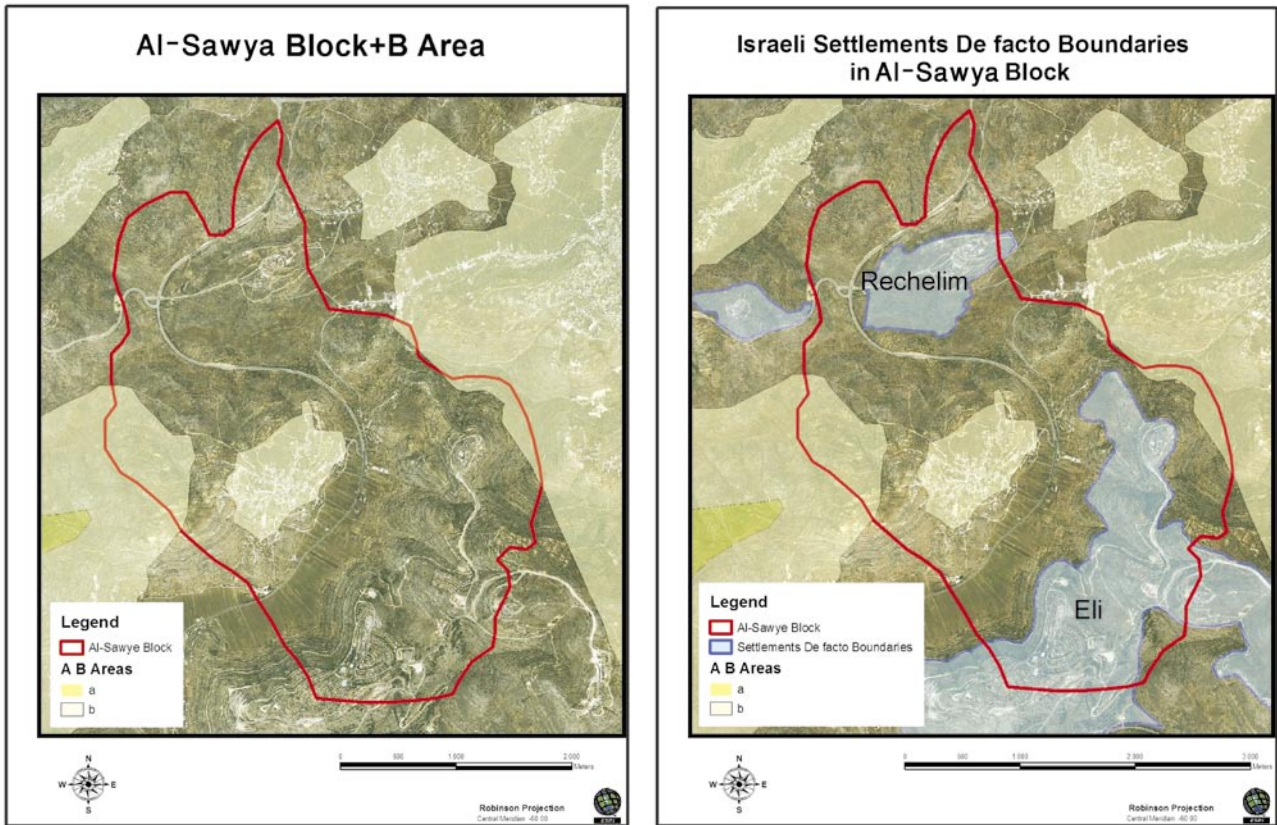
##### ***The Village of al-Sawya***

The village of al-Sawya is situated in the southernmost part of the Nablus District, approximately 18 km from the city of Nablus. Home to 3,000 people, the village spans 11,000 dunums (as per its British Mandate Boundaries). Following the Oslo Accords, and its resulting land classifications, a mere 670 of the village's dunums fell under the "Area B" classification while thousands of dunums fell within the "Area C" classification. This caused 2,400 dunums to be overtaken by the adjacent Israeli settlement of Eli, with the land either built upon or fenced in and no longer freely accessible by al-Sawya's residents. These thousands of dunums are in addition to the areas of land used by Israel as a



sort of training base and the land overtaken by the settlement of Rahalim (approximately 738 dunums, more than the land allotted for al-Sawya's development).

Further compounding the situation is the fact that the temporary nature of the Oslo land classifications has, instead, extended into a prolonged reality due to political stagnation, effectively leaving a vast majority of West Bank lands out of Palestinian control. Today, nearly 18 years since the effect of the classifications imposed by the Oslo Accords, no changes have been made to the limited area allotted for urban expansion. This has resulted in a dire situation given the village's high rate of population growth.



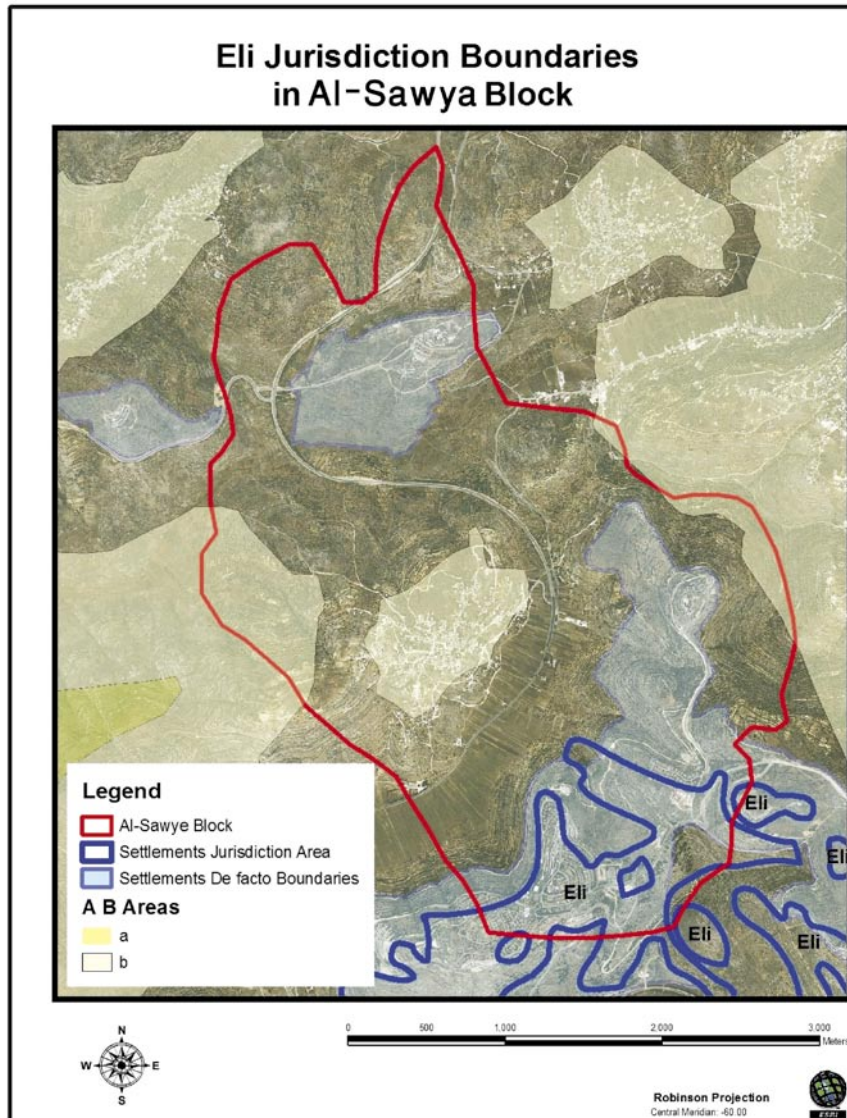
### ***Al-Sawya v. Eli Settlement***

The Eli Settlement was created in 1984, initially through a series of “state land” declarations, but later spread to and appropriated private Palestinian land. It has a population of around 2,800 Jewish settlers (similar to the population of al-Sawya). Its area of expanse does not consist of one segment, but instead is a conglomerate of five different areas, with a total area of 2,261 dunums divided into five clusters and hundreds of additional dunums in between: (1) the biggest part is spread over 1,753 dunums and contains two different private Palestinian property enclaves; (2) the second is 390 dunums and part of Ha-yovel Settlement is erected on it; (3) the third part is erected on the private property of Qaryut villagers; (4) the third and the fourth section's size are 85 dunums each, (5) and the fifth is 33 dunums. Thus, all together, Eli's official judicial areas spread over nearly 2,300 dunums. The Eli Settlement, however, actually de facto spreads on much more land than that officially allocated to it. It spans an area that is actually about 4,358 dunums (around 2,100 dunums more than what was allocated to the settlement).<sup>192</sup> Of the 4,358 dunums which Eli de facto spreads on, about 60% is private Palestinian property.

<sup>192</sup> This is a very conservative estimate since it refers only to areas that are surrounded by the Ring Road system. The real numbers though are probably much higher.

The Settlement today has no single approved master plan. This means that the entire Eli construction is actually illegal. According to the Shpigel database, there is no way to promote the main master plan (number 237/1), which approves the construction of 2,500 housing units, since some of the de facto construction was done on private Palestinian land and this construction will have to first be demolished.<sup>193</sup>

It is clear from the statistics on al-Sawya and the Eli Settlement that a vast majority of al-Sawya's initial lands were intentionally put under the "Area C" classification, rendering them inaccessible by Palestinians. Israel has full civil and administrative control over "Area C" lands and the rapid growth of the Eli Settlement is a strong example of how Israel uses its zoning and land planning policies to benefit Jewish settlers and its colonialist agenda.



193 In order to read more about the Shpigel report go to: [www.haaretz.com/hasen/spages/1060043.html](http://www.haaretz.com/hasen/spages/1060043.html)

# Conclusion

Israel's discriminatory land planning and zoning policies in "Area C" gravely impact Palestinian society on a social, political, and economic level. The analysis above demonstrates that Israel consistently and systematically violates its obligations as an occupying power under international law through its implementation of such policies. Throughout the forty-four years of a seemingly endless Israeli military occupation of Palestinian lands, the occupied Palestinian population has been forced to endure the gradual, yet steady, loss of their land and the subsequent deterioration or prohibition of their natural growth as a flourishing society.

The Oslo Accords designed what was meant to be a temporary division of the oPt, whose end goal was to effect territorial sovereignty and allow the Palestinian people to exercise their right to self-determination. One of the most important criteria of forming a viable independent state is territorial sovereignty and adequate definition of the territory. Israel's planning and zoning policies intentionally continue to fragment the oPt into isolated ghettos, destroying any chance for Palestinians to achieve independent statehood. Instead, their policies only serve to increase Israel's control and authority in the oPt, protecting the interests of its illegally implanted population and furthering its territorial aspirations.



The village of Qarawet Bani Hassan in the district of Salfit, which faces many demolition orders

While on its face, the ICA implements plans on the basis of previously instituted laws, the impact of its interpretation and modification of these laws is discriminatory, at times violent, and colonialist in nature. Its actions are part of a larger practice of containing Palestinian land ownership and land use, a key feature of Israel's occupation since 1967.<sup>194</sup> Israeli planning and zoning policies in "Area C" severely limit Palestinian growth and livelihood through its exclusion of Palestinians from the planning process, severe building restrictions, house demolitions and forced eviction, and land parceling and annexation that in no way addresses the needs of Palestinian communities.

The ability to utilize "Area C" is significant and key for Palestinians' natural growth and development as it contains valuable grazing and agricultural land, water resources, and land reserves for population expansion. Israel prohibits the use of a majority of "Area C," however, through its categorization of most of the land as: "state land," military zones, nature reserves, or buffer zones.<sup>195</sup> The constant threat of demolition that Palestinians subsequently face when they are forced to build in "Area C" puts pressure on them to leave these areas. The measures Israel takes to effectively deny Palestinians access to their land raises concern about forced population transfer.<sup>196</sup> While Israel's questionable policies against the Palestinian communities are enforced, the ICA simultaneously adopts plans that

194 OCHA Special Focus, *Restricting Space: The Planning Regime Applied by Israel in "Area C" of the West Bank*, 15 December 2009. <<http://unispal.un.org/UNISPAL.NSF/0/B136572E8EE41FBA8525768D00514356>>

195 Ibid.

196 OCHA, *Khirbet Tana: Large-Scale Demolitions for the Third Time in Just Over a Year*, February 2011, p. 2.

facilitate the establishment and growth of Jewish settlements, all of which are located in “Area C” (excluding those in East Jerusalem). As such, Jewish settlements and the ICA categorized lands off-limits to Palestinians comprise more than 38% of the West Bank.<sup>197</sup>

In addition to land categorization and the establishment of Jewish settlements, the ICA’s discriminatory planning policies in “Area C” are also manifested through its use of mandatory regional outline plans and special outline plans. Various political factors played a role in steering Israel to operate under the guise of “legality” by relying upon British Mandate Regional Law and developing its own Special Outline Plans. The regional plans now serve primarily as a mechanism by which Israel can refuse to issue building permits, thereby forcing Palestinians to either live in dismal conditions or to build “illegally.” Israeli Special Outline Plans drew unreasonable, trivial, and restrictive land demarcation lines without the consultation or participation of the local Palestinian population. They also limit the expansion and enjoyment of public services necessary for a growing population, as no areas are zoned for such uses. Israel’s interpretation and implementation of these plans effectively allow it to constrain Palestinian building and hinder Palestinian growth.

JLAC has employed both short-term and long-term strategies in order repair the destructive impact Israel’s discriminatory land planning and zoning policies have had on the Palestinian population. However, while JLAC strives to combat the immediate situation at hand, help is needed in terms of resources and support to create and promote the reforms needed to cease Israel’s discriminatory practices. The international community has an obligation to hold Israel accountable for its direct violations of IHRL and IHL. Ten years have passed since the UNCESCR underscored the gravity of the situation occurring in the oPt. Just recently, on February 18, 2011, the PA submitted a proposal to the United Nations to condemn Jewish settlement construction by Israel in the oPt. Fourteen Council members voted in favor of the draft resolution, however the United States used its veto power and struck it down.<sup>198</sup> The US Ambassador to the United Nations, Susan Rice, told Council members, however, not to mistake the veto as support for settlements and that the US views settlements as illegitimate.<sup>199</sup> Two important issues emerge from the U.S.’s veto and subsequent statement: (1) the United States’ use of its veto power to block any attempt by the international community to hold Israel accountable is hypocritical and clearly politically motivated, and (2) the international community recognizes and condemns Israel’s illegal activities in the oPt.

As recently noted by Navi Pillay, the UN High Commissioner for Human Rights, international human rights and humanitarian law are not negotiable. The international community must make more concrete efforts to put pressure on Israel to put an end to its flagrant disregard for the rules of international law. Such efforts can take the form of sanctions, independent investigations of violations, pressuring key officials, or sending strong messages publicly and privately decrying Israel’s discriminatory practices.

Israel can no longer act with impunity while slowly and gradually creating “facts on the ground” intending to destroy any chance for a future viable Palestinian state. As the occupying power, it is responsible under IHL for ensuring that the needs of the occupied population are met and that it does not transfer its own population into the occupied territories. Under IHRL, Israel is responsible for ensuring that the population under its control enjoys its fundamental human rights, including the right to housing, development, water, and land. As such, Israel must cease demolitions, include Palestinians in the land planning process, open up “closed” areas, suspend policies that confiscate Palestinian land, and freeze all settlement activity.

The facts and statistics provided in this analysis illustrate how Israel’s authority over planning and zoning in “Area C” is used to employ calculated methods against the growth of the Palestinian civilian population by constraining them within limited areas so as to gain physical and territorial control and stifle Palestinians’ right to self-determination and freedom from military occupation. This is the exact behavior that rules of international human rights and humanitarian law were established to prevent. The international community has a moral and legal obligation to tackle Israel’s continued defiance of the very principles designed to protect occupied populations from such discriminatory and illegal actions.

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197 OCHA Special Focus, “Lack of Permit” Demolitions and Resultant Displacement in “Area C,” May 2008. [www.ochaopt.org/.../ocha\\_opt\\_special\\_focus\\_demolition\\_area\\_c.pdf](http://www.ochaopt.org/.../ocha_opt_special_focus_demolition_area_c.pdf)

198 Ynet News, *US Vetoes Anti-Settlement Resolution*, viewed 19/2/2011. <<http://www.ynetnews.com/articles/0,7340,L-4030639,00.html>>

199 Ibid.

# Annexes

## Annex 1: Memorandum submitted to ICA by JLAC, Rabbis for Human Rights, and ICAHD

27 July 2010

Mr. Ehud Barak  
Minister of Defense  
By fax: 03-6976218

Mr. Yehuda Weinstein  
Attorney-general  
By fax: 03-6467001

Mr. Yoel Poli Mordechai  
Head, Civil Administration  
By fax: 02-9977341

Dear Sirs,

**Re: The House Demolition Policy in Area C in the West Bank – Further Letter**

**Ref.: Our letter dated 8 November 2009**

Further to our letter as above, to which we have not yet received a reply, we are writing to you to ask you to reply to the letter above, and to present a further letter in the said matter, and, in particular, a request to shift the balance of responsibility and authority in the field of planning building, so that both the responsibility and the authority shall be transferred to the representatives of the local Palestinian population in Area C, as shall be detailed below.

Pending the receipt of a reply to our correspondence, we request that the execution of all administrative demolitions be discontinued immediately in Area C, and in particular in all sections of the village of Deirat – Ar-Rif'iyā, including the residents' homes that are currently adjacent to and outside the plan boundaries.

The present situation is that the Israeli military authorities, through the Civil Administration, are responsible for the sphere of planning and building, and hold complete authority, without any formal representation of the local residents. The outcome of this situation is, firstly, a planning failing, as detailed in our above-mentioned letter; and, secondly, the imposition of full responsibility for planning and development through various local initiatives. This model has proved inadequate and constitutes a violation of the obligations incumbent on the occupying power in accordance with international humanitarian law, human rights law, and Israeli public law.

Accordingly, three alternatives are now open to the Civil Administration in order to meet the legal obligations of the occupying power. The first is to promote the solution proposed in the Oslo model, which focuses essentially on the transfer of planning and building powers to the formal representatives of the local Palestinian residents. The second is to reinstate, in broad terms, the model of the local and district planning committees in accordance with the Jordanian Planning and Building Law of 1966, which essentially implies the continuation of central control of the sphere of planning and building by the occupying power, together with the delegation of certain authorities to local Palestinian representatives. A third alternative is to retain the current planning model while issuing tenders to Palestinian planners or to planners who are acceptable to the communities that are the subject of the planning.

The result of the current division of planning responsibilities between the Civil Administrative and the Palestinian Authority in the area of the West Bank as a whole is the grave violation of the basic rights of the protected Palestinian residents. Further to our above-mentioned letter, we shall ask that the first two alternatives be considered a primary demand, while the demands raised in our above-mentioned letter should be considered demands for the interim

period pending the transfer of authorities as requested, or the latter alternative.

Moreover, this letter includes a request relating to the village of Deirat – Ar-Rif'iyā, which is situated in Area C, and for which there is a partial special plan. The request is to extend the boundaries of the plan. Pending the requested updating, we request that you refrain from executing demolition orders in the area of the village, including the residents' homes that are currently adjacent to and outside the plan boundaries.

### ***Demand to transfer the planning authorities from the Civil Administration to an official representative body of the Palestinian population***

The obligation to reinstate planning authorities to the official representatives of the protected residents

In our first letter, as above, we detailed the planning failure of the Civil Administration in Area C. The total absence of planning, and/or the absence of due planning as detailed in our above-mentioned letter, have direct ramifications not only for the development of residential areas, but also for the development of infrastructures such as electricity, water, and sewage, and for the maintenance of social, economic, educational, health, and religious frameworks. The sphere of planning and building is fundamental for the realization of diverse human rights in different fields of life. Accordingly, the failure of the current model has led, as noted, to underdevelopment in Area C in planning, social, and economic terms and to the violation of the rights of the Palestinian residents, who are protected residents in accordance with the Fourth Geneva Convention.

In accordance with Article 43 of the Hague Convention, the occupying power may assume authorities solely for the purpose of maintaining public order. The planning failure for which the Civil Administration is responsible in Area C does not merely violate the obligation incumbent on the military commander to attend to public order; it obviates the basis for the retention of these powers by the Civil Administration, when a formal representative body of the protected residents exists and is ready to assume these authorities.

In accordance with Article 64 of the Fourth Geneva Convention, the occupying power may assume civil authorities solely for a temporary period, in order to maintain the provisions of the convention or due to security needs. The sphere of planning and building is essentially a civilian one; even if it touches on security needs at certain points, this cannot justify the taking of these civilian authorities on a sweeping basis from the protected population itself, insofar as the latter is capable of reassuming these authorities. Any change made to the structure of the original local planning system and to its underlying legislation must be justifiable on the grounds of restoring public order on the cessation of hostilities and restoring proper government management in the occupied territory. Over the past 15 years at least, if not during the entire period of the occupation, the Civil Administration has failed to maintain proper government in the sphere of planning and building in Area C, and hence has also failed to maintain the provision of international customary humanitarian law. Accordingly, in the practical test of the outcome, there is no justification for the continued assumption of planning and building authorities in Area C by the Civil Administration, and the latter should reinstate or transfer the planning authorities to the official Palestinian representative body in the West Bank.

Even if disagreement exists regarding the reasons that led to the demolition of numerous Palestinian homes in Area C, it is apparent that there is a discrepancy between the ability of the Civil Administration to maintain public law and order in the sphere of planning and building and the current situation on the ground. It would seem beyond doubt that a local Palestinian planning body has a much greater chance of coping with the planning needs of the Palestinian villages in the West Bank in general, and Area C in particular. Accordingly, it is hereby demanded that the planning authorities in Area C be transferred to an official Palestinian body.

### ***The Oslo Agreements model***

In 1995, the Oslo Agreements were signed, and civil and security authorities were transferred to the Palestinian Authority. Regarding planning and building laws in Areas B and C, it was determined in accordance with Appendix III to the Second Oslo Agreement of 1995, Protocol on Civilian Affairs, Addendum I, section 27(1): "Authorities and responsibility in the sphere of planning and building in the West Bank and the Gaza Strip shall be transferred from the military government and its Civil Administration to the Palestinian side. This includes the initiation, preparation, amendment, and nullification of outline plans, and other legislation relating to the matters regulated by the outline plans... The issuing of building plans, and the inspection and monitoring of building activities." Part 2 – Realignment

and Security Arrangements, Section XI, Sub-section 2(b), further establishes that “all the civilian authorities and responsibilities, including planning and building in Areas A and B as these are determined in Appendix III, shall be transferred to the Council and shall be assumed thereby in the first stage of the realignment.”

Section 27(2) establishes that “in Area C, the powers and responsibilities relating to the sphere of planning and building shall be transferred gradually to the Palestinian sphere of authority, which shall cover the area of the West Bank and the Gaza Strip, with the exception of matters to be discussed in the negotiations on the final status during the stages of the realignment...” Thus, in accordance with the Oslo Agreement itself, the authorities in the sphere of planning and building were supposed to be transferred to the Palestinian Authority. As of now, this has not yet been implemented, and the powers and authorities relating to the sphere of planning and building in Area C are still under the absolute responsibility of the Civil Administration.

### ***The non-implementation of the Oslo model on political grounds violates the obligation to maintain public order in accordance with international humanitarian law***

It emerges from the above that the State of Israel itself paved the path to the cessation of the systematic violation of human rights in the West Bank in the sphere of planning and building, in the form of the transfer of authorities to the Palestinian Authority in accordance with the Oslo Agreement. However, this path was not implemented due to political considerations. Such considerations are illegitimate insofar as they delay the implementation of the legal obligation incumbent on the occupying power in accordance with international humanitarian law to maintain public order in an occupied territory. The Oslo model was based on the assumption that the two planning entities of the two political entities – the State of Israel, through the Civil Administration, on the one hand, and the Palestinian Authority, on the other – cannot in either principled or practical terms plan a common area, namely the West Bank, in the medium term, let alone the long term. The second assumption is that the occupying authority cannot, in either principled or practical terms, engage in sustainable planning for the local population. These assumptions have been proved, at least in terms of practical implementation, during the 15 years from 1995 through 2010.

The West Bank constitutes a single physical and planning space that maintains social, economic, and demographic contiguity. In legal terms, too, this is a single territorial unit – an area subject to belligerent seizure. In this respect, the division into Areas A, B, and C is a purely technical and administrative one that is not supposed to halt the normal pursuit of life in these areas. It is certainly evident to all that the division of a single physical space, which continues to maintain contiguity between its constituent parts, between bureaucratic bodies that have a different national identity, but which are identical in their authorities (planning and building) is problematic on the principled level. Rival interests such as those manifested in the project of the Israeli settlements in the West Bank, which emerge due to the different identity of these bodies, are frequently manifested in and impair the planning process. This influences the inherent ability of this model to protect the interests of the population.

**In terms of practical implementation, this assumption has been contradicted and the model has failed. Thus, for example, the division of the area between the two political entities is incompatible with the dispersion of the population. While many villages lie completely or partly within Area C, and are subject to the Israeli planning regime, their municipal functioning and other spheres of life, such as health and so forth, are subject to the administrative authority of the Palestinian Authority. In many cases, a village may be found some of whose homes fall under the Israeli planning regime of the Civil Administration, while others fall under the Palestinian planning regime. It should be emphasized that this situation applies despite the fact that the entire area is subject to Israeli belligerent seizure and complete Israeli control over the division of planning and building authorities.**

Moreover, the current lack of cooperation between the two planning entities, at least since 2000, has paralyzed the possibility for the Palestinian population to develop in a reasonable manner in Area C. The reason for this is that for so long as planning authorities have not been transferred to the official Palestinian representative body, in accordance with the Oslo Agreement, no planning authority applies in those parts of Area C inhabited by a Palestinian population. This, it should be recalled, is exacerbated by the absence of any realistic possibility of including official Palestinian representatives in the planning and decision-making bodies in the Civil Administration.

We turn now to the second assumption. On the principled level, an occupying power, as a coercive military regime, is alien to the local population and meets with a significant level of mistrust. Planning is an essentially civilian sphere

relating to the heart and soul of the population, and to such aspects as its beliefs, culture, natural development, and behavior in relevant fields such as land mobility, inheritance, and so forth. It is certainly evident to all that planning by a foreign body perceived as hostile by the local population will be seen as planning that is neither willing nor able to service that population, since it is divorced from the relevant factual and social sources of information and from the vital discourse between the planning body and the planned population. Even if the occupying power were to consult in an open spirit, it cannot evade the inherently problematic nature of the military regime, particularly in the context of a long-term occupation.

Repeated discrepancies can be seen in terms of the basic data and sociocultural factors in areas relevant to planning, particularly with regard to the boundaries of the plans, between the position of the Civil Administration and that of the local population. These discrepancies are manifested in the decisions of the Subcommittee for Objections (see, for example, the decision of the Subcommittee for Objections regarding the village that is the subject of this correspondence). The following are some examples of these discrepancies:

- *The number of residents of Palestinian villages.*
- *High estimates by the Civil Administration regarding the realistic capacity of the plan within the determined boundaries.*
- *Failure to allocate open areas for future development.*
- *Failure to plan areas for public needs within the boundaries of the plan.*
- *Failure to undertake surveys prior to proactive planning or prior to the updating of an existing plan by the Civil Administration.*
- *Failure to include agricultural land in the plan boundaries on the principled level.*
- *Failure to address relevant cultural aspects, such as: The difficulty in high-rise construction in rural areas, the lack of land mobility, the need for adjacent construction by families, polygamy, and so forth.*

The failure of the divided planning model is also manifested in the total absence of enforcement within the boundaries of the special plans, whether this is due to a lack of interest or desire on the part of the residents themselves or to the inability of the Civil Administration. Alien considerations are reflected in the attention paid to the planning, social, and economic needs of adjacent settlements at the expense of the land resources that are supposed to be enjoyed by the protected population.

In practice, we see that the level of proactive planning by the Civil Administration in Area C is limited. In part, as noted by a senior source in the Central Planning Office, this is due to budgetary limitations. Only a few dozen Palestinian villages are planned, while over one hundred villages in Area C are unplanned. As noted in our first letter, as above, the number of building permits is relatively low, while the number of cessation of work and demolition orders is high. The transfer of planning authorities will remove the budgetary restriction, among other outcomes.

### ***Demand to nullify the Order 418 model and to reinstate the local and district planning committees***

The Order concerning the Village, Town and Building Planning Law was enacted in 1971, effectively eliminating the district planning committees and preventing the possibility that local Palestinian councils could serve as local planning committees. Thus official Palestinian representation in the planning structure in the West Bank was removed, so that all the planning authorities rest with the Supreme Planning Council in Beit El. Reinstating the situation in terms of formal local representation, with the necessary changes in view of the fact that the central government is a military administration of a territory subject to belligerent seizure, will certainly facilitate the delegation and returning of some of the powers of central government to local hands.

As noted above, international humanitarian law permits the amendment of legislation in the occupied territory in a restricted manner. Article 43 of the Hague Convention prohibits the military administration from changing the laws in the occupied territory "while respecting, unless absolutely prevented, the laws in force in the country." Article 64 of the Fourth Geneva Convention also permits the occupying power to amend local legislation, for example in order to maintain the "orderly government" of the territory. Moreover, in the spirit of the common Article 1 that appears in all the Geneva Conventions and whose provisions are binding on states that have signed the convention, the occupying



power is obliged to amend local legislation when this contradicts or prevents the observance of its obligations in accordance with the Fourth Geneva Convention. Accordingly, even if we assume – purely for argument's sake – that it was necessary to change the planning structure in the occupied Palestinian territory in 1971 and to transfer all the authorities of the district committees and the village councils to the Supreme Planning Council, today, in 2010, not only is there no such need, but the perpetuation of the status quo is tantamount to the violation of the basic obligations incumbent on the occupying power to ensure public order in the occupied territory. This is particularly true given the discrimination in the current planning structure between the settlers, who have special planning committees with local representation, in contrast to the absence of local representation for Palestinians. Accordingly, in the current situation in which the planning failure has a profound impact on the social condition of the civilian population, the prerogative to amend laws, viz. Order 418, becomes an obligation.

### ***Demand to update and extend the boundaries of the special plan for the village of Deirat – Ar-Rif'iyā 1725/05***

#### ***Background***

The village of Deirat – Ar-Rif'iyā in the southern Hebron Mountain was founded prior to 1948. Since the Oslo Agreements, the entire village is situated in Area C. Its residents originally lived in caves. From the early 1960s, residents began to build stone houses, and over time the caves were used solely for housing sheep, goats, and foodstuff. There are currently some 20 such caves in the village. The vast majority of the residents of the village make a livelihood from raising sheep and goats and from agriculture (mainly wheat, grapes, almonds, and olives).

**Number of residents** – According to the head of the village, the number of residents in 2009 was approximately 1,250. According to the Palestinian Central Bureau of Statistics (CBS), the number of residents of Deirat alone was 836 as of the same year; this figure does not include the residents of the neighborhood of Ar-Rif'iyā. According to the head of the village, the Palestinian CBS removed some of the residents of Deirat – Ar-Rif'iyā from the count for the village, and instead included them in the numbers of residents for adjacent villages. This explains the discrepancy between the number of residents according to the head of the village and the number according to the Palestinian CBS. According to the minutes of the Subcommittee for Objections, at a hearing in the objection filed by the residents of the village against the above-mentioned plan in 2007, the number of residents of Deirat – Ar-Rif'iyā was 290 persons; it was forecast that the number of residents would increase to 580 by 2005. Thus, there is a substantial discrepancy between the Civil Administration and the residents and the Palestinian CBS in terms of the number of residents of the village, even if we accept the partial figure as determined by the Palestinian CBS. Accordingly, the entire plan was calculated on the basis of an incorrect number of residents that is low by any standards. As a result, all the calculations made on the basis of the number of residents, such as calculations of the nominal and actual capacity, are erroneous, and the plan cannot meet the real needs of the residents.

**Number of buildings** – According to the head of the village, on the date the plan was approved there were approximately 130 buildings in the village, including residential homes and ancillary buildings. The minutes of the Subcommittee for Objections states that there are some 48 residential homes. From the data summary sheets for villages for which special plans are planned, it emerges that the Civil Administration counts homes on the basis of an aerial photograph and does not undertake visits to the villages – despite the frequent visits and close acquaintance of the inspectors from the Inspection Unit to examine construction in the villages in Area C. It is unclear why the committee fails to note the ancillary buildings, but this reflects a disregard for the customary character of construction in the village, and influences the committee's calculations of density.

**Land mobility** – the village includes nine residential clusters, divided between the two neighborhoods – Deirat and Ar-Rif'iyā. Of these nine clusters, only one is included in the plan in its entirety – Ar-Rif'iyā a-Tahta. Three additional residential clusters were partially included in the boundaries of the special plan – Al-Khirba al-Foqa, Al-Khirba a-Tahta, and Sha'ab Badran. The five remaining clusters were left outside the plan – Ar-Rif'iyā al-Foqa, Khalat Jabur, Khalat Yusuf, Khalat Amira, and Hawara. The residential neighborhoods are divided on the basis of private family ownership. As is customary in all Palestinian villages, each family concentrates on building homes on lands under its ownership. There is almost no buying or selling of land among the residents of the village. Between Deirat and Ar-Rif'iyā there is a vacant area owned by residents of Yata who do not live in Deirat – Ar-Rif'iyā. Accordingly, the extension of the plan to this area will not add residential areas for the residents of the village.

## ***Infrastructures***

**Water system** – there is no water system in the village. The villagers use wells to store water which they build by themselves. According to the head of the village, an application was submitted to the Civil Administration through the Palestinian Water Authority to connect the village to the water system, but it appears that the application was rejected.

**Sewage system** – there is no sewage system in the village. The Civil Administration has not taken any initiative to connect the village to the sewage system.

**Road system** – the village is situated along and to both sides of Road 3269, a primary local road, according to the Subcommittee for Objections. Accordingly, construction is prohibited within 70 meters on either side of the road. Within the neighborhood of Deirat, there is a single dirt road. In addition, the diagram shows two proposed roads whose location within two vacant plots will exhaust the only reserves for residential construction in the neighborhood. In Rif'iya the diagram in the plan does not show any roads, although in practice a dirt road connects the homes. Nevertheless, many of the villagers do not have access roads to their homes.

**Electricity** – in 2009, on the initiative of the Palestinian Authority, the residents of the village installed pylons and connected the village to the electricity grid in the village of Um Lasfa, some three kilometers from the village. In September 2009, a cessation of work order was delivered to the villagers. After the order was delivered, the villagers prepared a plan to secure permission for the electricity lines and submitted building applications to this end. The process is still pending.

## ***Public services***

**Cemetery** – the Al-Adra family in the village maintains a private cemetery; this family accounts for approximately half the residents of Deirat. The other villagers bury their dead in Yata due to the lack of burial space in the village; sometimes they bury their dead in the private cemetery of the Al-Adra family. The residents of the village have earmarked the area between the two villages for a school and a cemetery, with the agreement of the Palestinian Authority. However, the Subcommittee for Objections rejected their application, arguing that these two public uses can be met in the framework of the proposed plan.

**Health system** – a clinic was established in the village in 1998 without a building permit. The clinic is situated on private land belonging to the villagers, within the existing boundaries of the plan in the Deirat neighborhood. A nurse works at the clinic three days a week, and a physician comes two or three times a week for three or four hours each time. In emergencies, residents of the village attend the clinics in the nearby city of Yata. It should be emphasized that a demolition order has been issued against the clinic, although it has not been executed.

**Education system** – The village has an elementary school for students from the 1st to 6th grades, with a total of some 153 students (boys and girls). The school was established in a private building in the neighborhood of Deirat which was converted into a school and divided into classrooms in 2006. Since the school is some three kilometers from the neighborhood of Ar-Rif'iya, it serves only students from the neighborhood of Deirat. This school is outside the plan boundaries. Students from the Ar-Rif'iya neighborhood study at the school in the village of Khalat Almi, which is closer to their homes. Prior to the establishment of this school, all the students from the village attended the school in Khalat Almi. After completing elementary school, the students attend schools in Yata, each traveling in their family's private vehicle. There is no taxi or public transportation service between the village and Yata. This school has received an order to halt its operations, but the order has not yet been executed.

Another new school is currently under construction in the vacant area between the neighborhoods of Deirat and Ar-Rif'iya on privately-owned land given to the Palestinian Authority by way of a donation. An order for cessation of works and a final demolition order have been issued against this school, but have not yet been executed. According to the head of the village, the residents prepared a plan and submitted an application for a building permit for this school, but have not yet received the decision of the Civil Administration on the matter.

The new school was situated between the neighborhoods of Deirat and Ar-Rif'iya so that all the students in the village can study in the village rather than travel to Khalat Almi. This school will function as an elementary school for all the children in the village – some of the classrooms will be in the new school building and others in the existing building in Deirat, which is small and cannot accommodate all the children from the village.

**Mosque** – there are two mosques in the village, both situated on the boundary of the existing plan, and both built on private land.

### ***The special plan***

On November 15-17, 2006, Special Plan No. 1725/05 for the village of Deirat – Ar-Rif'iya was published for deposition. The plan was published for validation on December 28, 2007. The total area of the plan is 140 dunams (approximately 35 acres).

**Capacity:** According to the minutes of the Subcommittee for Objections, the plan has a capacity for a population of at least 1,400, and therefore provides a surplus of 140 percent of required capacity for the forecast population of the village in 2025, when the plan authors claim that the population of the village will be no more than 580. Even assuming that the capacity of the plan is indeed 1,400, something that is denied, on the basis of three percent annual natural growth, which is a particularly low rate, the plan will be sufficient for just one year, i.e. until 2009 (the growth rate according to the Palestinian CBS is 3.3 percent, while the growth rate according to the Civil Administration was 4 percent for 2007 and 3.6 percent for 2005). According to the same calculation for annual natural growth, without taking into consideration factors such as positive migration following the improvement of infrastructures, in 2025 the population of Deirat – Ar-Rif'iya will be at least 2,260. Accordingly, there can be no doubt that the plan does not meet its objective of permitting capacity through 2025.

**Housing density:** The area of the plan is 140 dunams (approximately 35 acres). The planners divided the area into several zones: Building zone A (87 dunams), residential area B (30 dunams), and an existing/planned road (23 dunams), according to the plan constitution. In area A, the residents of the village are permitted to build 3.3 housing units per dunam, while in residential area B up to 10 housing units may be built. According to the standard constitution, up to two floors may be constructed in residential area A and up to 3 floors in residential area B. Accordingly, in order to exhaust the building rights, the residents will be required to build the maximum number of permitted floors. However, the planning authorities failed to take into account three relevant factors. Firstly, in many cases existing construction was undertaken rapidly and cannot necessarily support several floors on top; this requires a safety report. Secondly, in traditional and cultural terms, Palestinian rural construction is not high-rise. Thirdly, polygamy is current in the village, and the average number of wives is 3-4 to each husband. This social phenomenon requires a greater number of residential homes for each head of family, since each wife and her children require a separate home as far removed as possible from the others. Accordingly, the plan theoretically permits dense construction, but in practice the chance that this will be realized is very low. In real terms, therefore, the capacity of the plan is lower than that calculated on the basis of the existing data.

**Ownership of vacant land within the plan boundaries:** Approximately 80 percent of the residents of the village do not own any land, or do not own vacant land for future construction within the plan boundaries. Accordingly, due to the lack of land mobility, most of the residents of the village have no practical possibility for future development within the plan boundaries.

**Lack of consultation:** The Civil Administration did not consult the head of the village or the residents before or during the preparation of the plan. This resulted in decisions that will have fateful consequences for the existence and development of the village. The objections submitted were rejected due to a misunderstanding of the reality in the village in demographic, social, cultural, and economic terms, as illustrated in this example.

**Buildings left outside the plan boundaries:** On the date of approval of the plan, over half the buildings in the village remained outside the plan boundaries. Farmed areas were also left outside the plan boundaries. The Subcommittee for Objections recognized this fact, but argued that there was no justification for including these buildings in the plan, since only a small number of residential homes were involved, while most of the buildings are agricultural outhouses constructed outside the contiguous built-up area of the plan. According to the subcommittee, some of the houses were built within the prohibited construction zone along Road 3269, and there is no justification for permitting such deviations. Regarding buildings in the area between the two neighborhoods, and in response to the residents' request to use this land for public needs (a school and cemetery), the committee argued that this is farming land, and that the plan was intended to protect the land reserves of the local population and prevent the waste of land reserves suitable for agriculture for development that lacks any justification in planning terms.

It is unclear how the committee was able to ignore such a large number of residential homes outside the plan

boundaries, and how it sees the existence of agricultural buildings as of lesser importance in terms of inclusion within the boundaries. Moreover, since the area between the two neighborhoods belongs to residents of Yata, had the committee taken the effort of acquiring this basic information, the land reserves for the neighborhood of Deirat actually lie to the south of the road, so that it would have been justified to apply an exception to the prohibition of construction along Road 3269. As for the area between the two neighborhoods, given the absence of any consultation with the residents of the village and the lack of familiarity with the needs of the population, including the failure to detail areas for public needs, it is unclear how the planning authorities can claim to be taking on the role of defending land resources. This claim is paternalistic, given the absence of any cooperation and/or support for this position on the part of the local population. It is unacceptable that, on the one hand, the plan is minimalistic in intervening to meet the needs of the population, yet when it comes to areas outside the plan it suddenly switches to over-intervention in the name of the population it does not represent, and whose needs it does not recognize.

Since the approval of the plan, the residents of the village have constructed 10 more buildings outside the plan boundaries, most of which have received final demolition orders. These buildings include nine residential homes and the new school building mentioned above, situated between the two neighborhoods. The threat of demolition prevents development and construction by the residents.

**Public areas:** According to the minutes of the Subcommittee for Objections, the planners calculated the capacity of the plan after deducting 30 percent of the plan area. In item 28, the committee determines that there are two empty plots that may be used for public needs, with a size of 20 and 8 dunams, respectively. In practice, however, these are the only two vacant plots within the plan area. Moreover, according to the plan itself, the plots are not empty, but include two planned roads. The Civil Administration's proposal is unreasonable. The larger of the two plots is owned by a man who has 7 children, and the plot is intended for their future homes. The smaller plot is privately owned by residents of Yata and used for agriculture. Accordingly, it is impossible to determine in an arbitrary manner that private land is to be used for public purposes, particularly since the residents of the village have public areas that were deliberately left outside the boundary plans, such as the two schools and the planned cemetery. This in addition to the existing public areas – the clinic and two mosques. Only by calculating all these areas is it possible to reach a figure of 30 percent public areas.

**Preventing development:** As noted above, the villagers have development relating to both infrastructures and public services, in addition to development for residential needs. The committee's claims are inconsistent with the residents' desires, completely ignore these, and cause damage to the development of the village. Since the plan was approved, some five residential buildings have been demolished by the Civil Administration, one of which had been in existence for 20 years and another for 12 years. According to the villagers' plan, each neighborhood has desirable directions of development on the basis of the land ownership patterns. Thus, in Ar-Rif'iya, the desirable directions of development are to the south and west of the road, and in Deirat – to the north and east of the plan area. The villagers wish to construct a cemetery and school between the two areas.

**Negative migration:** Due to the shortage of housing, there is negative migration of villagers to Areas A and B in Hebron and Yata. This situation is the direct result of the planning failure of the Civil Administration in Area C in general, and in Deirat – Ar-Rif'iya in particular.

### ***Our demand is to update the plan boundaries in the following manner:***

On the basis of the above, it is clear that the basic data used by the Civil Administration in planning the village of Deirat – Ar-Rif'iya are incorrect and/or incomplete; the guiding considerations failed to address the social, demographic, property, and cultural profile of the residents of the village; as a result, the decisions were arbitrary, injurious, and have no connection with the development of the village. The result is a plan that failed to meet minimum standards for proper planning from the day it was prepared, and all the more so today. Accordingly, the plan must be changed and its boundaries extended on the basis of the above details in order to meet the residents' needs and address the planning problems created by the special plan, as detailed above.

To this end, we reiterate our alternative demands to transfer the planning authorities to the representatives of the local Palestinian population in Area C, whether by way of the implementation of the Oslo Agreement or by the nullification of Order 418 (with the necessary changes), insofar as this relates to the reinstatement of the authorities of the district committees and village councils as described above. Pending the above-mentioned changes, or alternatively, we

reiterate our demands as detailed in our first letter as above:

1. *To prepare an updated survey in Area C in accordance with Article 7(1) of the Jordanian Planning Law, to serve as a basis for detailed planning in Area C in which the Mandatory plans apply. The proper planning policy shall be re-examined on the basis of this survey, in the area in general and in Deirat – Ar-Rif'iya in particular.*
2. *To publish immediately the mapping of villages undertaken in Area C, including the names of the villages*
3. *To publish immediately the full and detailed list of criteria according to which the possibility is examined of proactive planning by the Civil Administration regarding selected villages in Area C, including specific reference to the village of Deirat – Ar-Rif'iya.*
4. *To establish clear planning policy regarding the villages and homes that are expected to remain under the scope of the Mandatory plans in Area C in the short and long term, with the ultimate goal of promoting proactive and detailed planning by the Civil Administration; or, at the very least, to refrain from executing house demolitions within the areas of the villages, including the homes outside the plan for the village of Deirat – Ar-Rif'iya.*
5. A. *To halt the use of the special plans and to prepare instead detailed outline plans as required in accordance with the Jordanian Planning Law, with the involvement of and in consultation with the local population, by local planners or by planners agreeable to the relevant local population selected by tender.*

*Or, alternatively,*

*B. To change the policy for determining the boundaries of the special plans, with the cooperation and consultation as stated above, so that the boundaries of the plans shall leave a reasonable area for future development, and specifically – including with regard to the village of Deirat – Ar-Rif'iya:*

1. *To update the boundaries of the existing special plans at least once every 10 years. Regarding the village of Deirat – Ar-Rif'iya, in light of the specific and exceptional problems reflecting the disregard for any relevant planning element, immediate updating shall be demanded.*
2. *To prepare detailed plans on the initiative of the Civil Administration as a complementary stage for all the special plans approved for validity.*
3. *To prepare a planning survey, including a costs survey, at least on the level of the extended family, and to expand the desired zonings prior to the preparation of any new plan, and as the basis for updating the boundaries of the existing plans.*
4. *To reduce the real capacity of existing and new plans in order to ensure that this is consistent with the character and desirable development of the village, after consultation with its residents, including changes in the definitions of density in the constitution and in the formula for calculating real capacity in accordance with the needs of the local population.*
6. *To issue instructions as necessary and to act to change the planning policies in the field of interpretation, and to prevent the exercising of discretion by the Planning Committee in the areas detailed in this correspondence: Building area, one home per plot, one home on a minimum plot without division, building lines, approval of detailed plans including the division of the land, proof of ownership for the entire original size of the plot / signing all heirs to confirm their waiver of rights in the plot in favor of the applicant for a building permit.*

***Pending receipt of a reply to our correspondence, we ask you to delay immediately the execution of any administrative demolition in Area C, and in the village of Deirat – Ar-Rif’iya in particular, in the entire area of the village, including the residents’ homes currently situated adjacent to or outside the boundaries of the plan.***

We shall be grateful for your prompt reply before we are obliged to turn to the courts.

Sincerely,

Arik Asherman, Executive Director  
Rabbis for Human Rights

Suleiman Shahin, Adv.  
Jerusalem Legal Aid Center

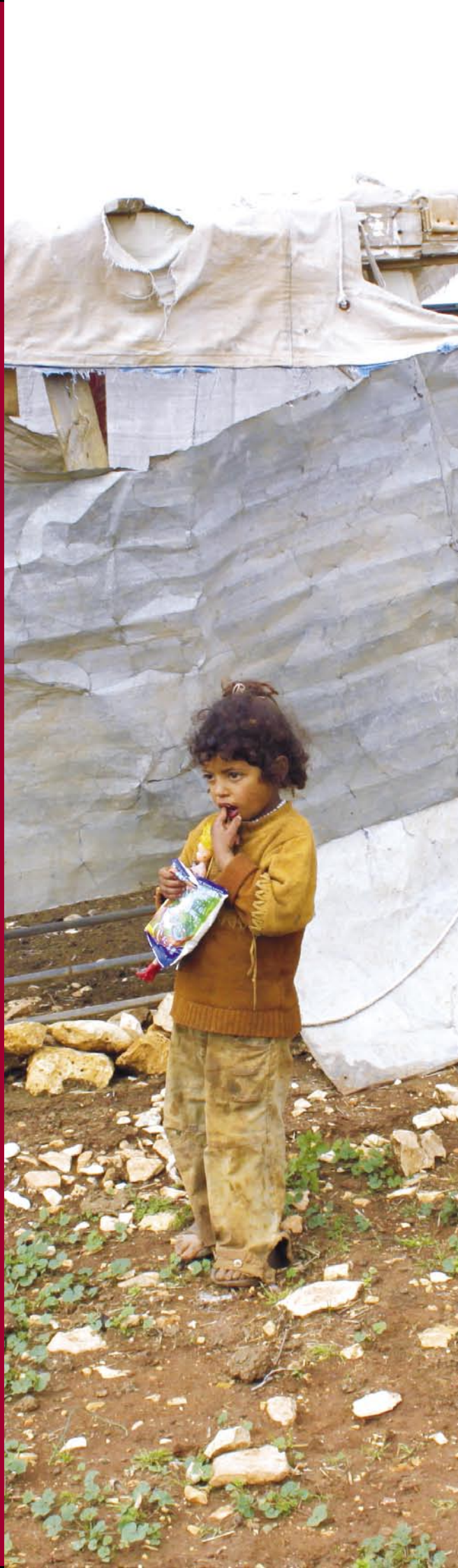
Jeff Halper, Executive Director  
Israel Committee Against House Demolitions

CC:

Colonel Sharon Afek, Legal Advisor for Judea and Samaria, by fax: 02-9977326

Shlomo Moskowitz, Architect, Director of the Judea and Samaria Planning Office, Chairperson of the Supreme Planning Council, by fax: 02-9977356

Judge (ret.) Micha Lindenstrauss, State Comptroller, by fax: 02-6665204



## How to Contact Us

### **Ramallah Office**

Melinium Building, 6th Floor

Al Irsal Street

Tel: +970 2 2987981

Fax: +970 2 2987982

### **Jerusalem Office**

kamal Building, 1st floor

14 Ibn Batoota Street

Jerusalem

Tel: +972 2 6272982

Fax: +972 2 6264770

### **Salfeet Office**

Salfeet, 17 Street

Tel: +970 9 2517101

Fax: +970 9 2511701

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