

**DEMOLISHING PEACE:**  
**ISRAEL'S POLICY OF MASS DEMOLITION OF**  
**PALESTINIAN HOUSES IN THE WEST BANK**

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## INTRODUCTION

This report deals with the demolition of houses built without a building permit in Area C of the West Bank<sup>1</sup>. Area C encompasses more than seventy percent of the West Bank, and includes all the Israeli West Bank settlements and military areas and the vast majority of Palestinian rural areas. In these areas, the planning, development, and construction, as well as the demolition of houses built without permit, currently lies within the sole authority of Israel.

Over the past dozens of years, Israel has created a situation in the West Bank in which thousands of Palestinians are unable to obtain a permit to build on their land. Consequently, they are compelled to build without a permit. Rather than change this situation, Israel has adopted a policy of mass demolition of Palestinian houses. In the past ten years, the authorities have demolished more than 1,800 residences, leaving more than ten thousand Palestinians homeless. This policy continues in Area C.

At the same time, 136 Israeli settlements, containing tens of thousands of Jewish Israelis, have been established in the West Bank. Establishment of permanent settlements in the Occupied Territories violates international humanitarian law, which explicitly prohibits permanent changes that are not intended to benefit the local population and the use of public property for the needs –political and other - of the occupying state.<sup>2</sup> Furthermore, the authorities established in the Israeli settlements an efficient and magnanimous system for planning and supervision of building, which refrained from demolishing houses. The authorities retroactively approved the construction of thousands of houses built without permit. This situation also continues.

The government decided, in response to the attack in Jerusalem's Mahane Yehuda market, on 30 July 1997, to increase significantly the severity of its policy of demolishing Palestinian houses. Within several weeks, the authorities demolished dozens of houses and other structures. This decision and the large number of demolitions that followed it attest to the extraneous motives motivating the planning-related pretexts for the demolitions.

This report describes this policy and analyzes it in the context of its current objectives and against the background of the situation that Israel created in the Occupied Territories during thirty years of occupation. The report provides data on "administrative" demolitions, in general, and during the period since the attack in Mahane Yehuda, in particular. The report also analyzes Israel's policy from the perspective of international law, and describes the political considerations lying at the foundation of the mass demolitions.

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<sup>1</sup> The security authorities demolish houses also pursuant to orders issued on a security basis. This report will deal only with "administrative" demolitions of houses, i.e., houses built without a building permit and demolished pursuant to order of the planning bodies.

<sup>2</sup> For a detailed discussion on this point, see B'Tselem, *Israeli Settlement in the Occupied Territories as a Violation of Human Rights: Legal and Conceptual Aspects* (Jerusalem, March 1997).

## PLANNING, DEVELOPMENT, AND BUILDING IN THE WEST BANK - PAST AND PRESENT<sup>3</sup>

### General

The authorities charged with implementing the planning and building laws determine, in the context of applicable law, where new towns and villages will be established, the size of the area allocated for them, and how the area will be divided for various purposes (residential construction, public buildings, open areas, roads, and the like). These authorities also determine whether and how much an existing town is to be expanded. Anyone wanting to build in a new or existing town must obtain, pursuant to set procedures, a building permit from those empowered by law to issue them.

Prior to the occupation, in 1966, a Jordanian law was passed to regulate planning and building - Town, Village, and Buildings Planning Law No. 79<sup>4</sup> - which replaced an earlier Jordanian law on the subject.<sup>5</sup> Law No. 79 stipulates, in part, the composition of the planning authorities and their powers and the procedure for planning and approval of development plans and for issuing building permits, and defines the procedures for appealing decisions of the planning authorities and the measures to be taken in the event of non-compliance.

The Israeli military commander issued, in 1971, an order dealing with planning and building.<sup>6</sup> This order, and its annexes and amendments, significantly changed the Jordanian law. The order enables the area's commander and the supreme planning body to totally ignore the Jordanian law:

Notwithstanding that set forth in paragraph 5 and in the Law [the Jordanian law], the Supreme Planning Council may:

- (1) Amend, cancel, or condition the validity of any plan or permit;

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<sup>3</sup> On this subject, see, e.g., Anthony Coon, *Town Planning under Military Occupation: An Examination of the Law and Practice of Town Planning in the Occupied West Bank* (Ramallah: Al-Haq, 1992) (hereafter: Coon); Meron Benvenisti and Shlomo Hayat, *The West Bank and Gaza Atlas* (Jerusalem: The West Bank Database Project, 1988). See esp., text at pp. 550-63 and maps at pp.78-98 (hereafter: Benvenisti and Hayat); Raja Shehadeh, *Occupier's Law*, Rev. Ed., (Washington, D.C.: Institute for Palestinian Studies, 1988), pp. 50-59 (hereafter: Shehadeh); B'Tselem, *Limitations on Residential Building on the West Bank* (Jerusalem, August 1990).

<sup>4</sup> For discussion of this law, see Coon, pp. 40-55.

<sup>5</sup> "Town, Village, and Buildings Planning Law No. 31," of 1955, which replaced the British mandatory law on the subject.

<sup>6</sup> "Order regarding the Towns, Villages, and Buildings Planning Law (Judea and Samaria) (No. 418), 5731-1971. (QMZM 5732 1000; 5736 1422, 1494; 5741 246; 5742 718, 872; 5743, No. 57, p. 50; 5744, No. 66, p. 30).

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- (4) Exempt any person from the obligation to obtain a permit required under the Law.<sup>7</sup>

Israel created separate planning and building systems for the Israeli settlers and the Palestinians, discriminating heavily in favor of the former. These systems, which have continuously been valid in Area C, will be described in this section of the report.

## **A. Planning and Building Authorities**

### **1. For the Palestinians**

Israeli planning and building legislation affected the Palestinians in two ways.

#### ***a. Appointing Israelis to replace Palestinians (and Jordanians) on the Supreme Planning Authorities***

Order No. 418 stipulates that the powers granted by Jordanian law to the Minister of the Interior will be transferred to a "supervisor," who will be appointed by the commander of the area.<sup>8</sup> Following the Order, Israeli army officers and officials, or persons acting on their behalf, replaced all the Jordanian and Palestinian officials.

The three subcommittees of the Supreme Planning Council, which deal with Israeli settlements, demolition of houses, and local planning (the latter handling planning and development of Palestinian towns and villages), contain a small number of Palestinians, all of whom work for the Civil Administration and are appointed to the committees as its representatives. The same is true concerning the Central Planning Office, which is the main professional-technical body. A Palestinian was selected to be deputy head of the Office, but that position lacks any significant powers.<sup>9</sup> The Israeli Settlements Subcommittee, which deals with the Israeli settlements, and the Supervision Subcommittee, which issues demolition orders, do not have any Palestinian members.

The main planning system in the West Bank is, therefore, almost totally Israeli. This system is civilian, and deals with persons who are manifestly civilians. Were the Israeli authorities acting in accordance with international law, being only interested in matters where their military needs might be prejudiced, they could act through a supervisory and coordinating body, or through military representatives among the planning authorities. Total military control and removal of Palestinians from those authorities would not necessarily be required. In any event, the military commander can veto the authorities' decisions, and such veto does not contravene international law as long as the veto is intended to meet the needs of the occupying army.

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<sup>7</sup> Paragraph 7 of Order No. 418.

<sup>8</sup> Paragraph 2(1) of the Order.

<sup>9</sup> For a detailed comparison of the structure of the planning authorities in the West Bank during the Jordanian period with the period under Israeli control, see Coon, p. 43.

***b. Revocation of Planning Powers from the Local Planning Bodies***

Under the Jordanian law, the municipal councils and village councils, whose members were generally elected, also acted as local planning committees. The planning for villages where a village council did not operate was accomplished by district planning committees, three of which operated in the West Bank. Their members included, along with representatives of the central government, a representative of the local residents.<sup>10</sup>

Prior to occupation, there were twenty-five municipal councils and eighty-six village councils.<sup>11</sup> The procedure for establishing village councils in the rest of the West Bank villages was frozen during the occupation.<sup>12</sup> Order No. 418 totally revoked the local planning powers in the rural areas and limited those of the municipalities:

- ◆ *The powers of the district committees* were transferred to the Supreme Planning Council.<sup>13</sup>
- ◆ *The powers of the village councils* were transferred to sector committees for village planning.<sup>14</sup> Seven such committees, which were subordinate to the Supreme Planning Committee, were established in the West Bank. Although their members also included Palestinians, they were appointed by the authorities and were not elected by the residents, and cannot be considered to represent the interests of the residents of each village in the sector. In any event, these committees are no more than a pipeline through which planning applications and proposals pass. The Central Planning Office and the Supreme Planning Council maintain decision-making power.<sup>15</sup>
- ◆ *Powers of the municipal councils* were not revoked, and these councils continued to function as local planning committees. However, their powers were significantly reduced. From 1976 to the time of the redeployment from Palestinian towns in 1995, the Israeli military administration did not allow elections to the Palestinian village and municipal councils. Many elected heads were dismissed, replaced by persons selected by the military commanders. This further prejudiced local representation on the planning committees.

At times, IDF officers served as town mayors. In Hebron, the municipal boundaries were

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<sup>10</sup> See Coon, p. 42.

<sup>11</sup> See Benvenisti and Hayat, p. 51.

<sup>12</sup> According to Benvenisti and Hayat, these councils were generally established in villages with more than 1,000 residents. See *Ibid.*

<sup>13</sup> Paragraph 2(2) of the Order.

<sup>14</sup> Paragraph 2(4) of the Order.

<sup>15</sup> See Coon, p. 61.

changed in May 1984 with the consent of the mayor (an army officer) in order to expand the jurisdiction of Kiryat Arba [an Israeli settlement]. Other measures taken by the military municipal government during those years, like evacuating the bus station and transferring possession of it to the Israeli settlers, enabled expansion of the Jewish settlements in the heart of Hebron.<sup>16</sup>

## **2. For the Israeli settlers**

Several sections of Order No. 418 related only to Israeli settlements, without explicit mention of them. As a result, a separate system favoring the settlers developed.

The language of the military orders does not expressly state that one order or another applies in principle only to Israeli settlements or settlers, and not to Palestinian settlements or residents, or vice versa. In practice, application of the orders was accomplished in accordance with an appendix or annex to the order, listing the settlements in which the order applies, and at times, only as a matter of practical policy.

Consequently, the Order Regarding Administration of Local Councils could, theoretically, herald the establishment of Palestinian local councils. Under the Order Regarding Appointment Pursuant to the Mukhtars Law, the military commander could appoint mukhtars in the Israeli village settlements. The Order Regarding Employment of Workers in Certain Places could ostensibly apply to Palestinian towns and villages just as it does in the Israeli settlements, and the special planning committees that the commander in the area is authorized to appoint could also be established in Palestinian villages.

In practice, only Jewish local councils were established, mukhtars were only appointed for Palestinian villages, the "certain places" were all Israeli settlements, and the special planning committees were only established in the Israeli settlements.

The previously mentioned Order eliminating the local planning committees in the villages authorized the military commander "to appoint, for a specific planning area, a special planning committee with the powers of a local planning committee..."<sup>17</sup> This power was granted on the condition that the "planning area does not include the domain of a municipality or village council,"<sup>18</sup> i.e., does not include a Palestinian town or village.

The Order, which transferred the powers of the district planning committees to the Supreme Planning Council, further stipulated that "the commander of the area may determine ... that the Special Planning Committee will also have the powers of the Towns, Villages, and Buildings District Planning Committee concerning the area of planning for which it was appointed."<sup>19</sup>

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<sup>16</sup> See Shehadeh, pp. 55-56.

<sup>17</sup> Paragraph 2A(a) of the Order.

<sup>18</sup> Paragraph 2A(b) of the Order.

<sup>19</sup> *Ibid.*

Pursuant to these sections of the Order, under the title "Special Planning Committees," local planning committees were established in the large local councils and in all the area councils established in the settlements. The power of the district committees lies with the Settlements Subcommittee, which deals only with Israeli settlements. No Special Planning Committee was established in a Palestinian local authority.

Paradoxically, the military authorities strictly applied the Jordanian law to the Israeli settlements. Their residents benefit from the local planning committees composed of their elected representatives (election to the Jewish local authorities occurs with regularity and without disturbance) and regional committees, which also are composed of representatives from the Israeli settlements. Israelis are the sole members of the main planning authorities, whose members also include representatives of the governing bodies, and cannot be considered to represent the Palestinians.

Consequently, Palestinians living in rural areas were denied all representation and influence provided for in the Jordanian Law, whether at the level of the local authority or at the regional council level. The municipalities still have planning powers, but these were reduced, and the municipal councils are no longer elected.

Planning, building, and granting of permits are decided in a centralized system in which the Palestinians have no meaningful representation. The wants and needs of the Palestinian population, their traditions, religions, culture, aesthetics, commercial interests, industry and agriculture, and professional preferences of Palestinian experts are not articulated in these bodies.

There is symbolic importance in the fact that the main planning bodies are located in military bases (in the offices of the Civil Administration, in Beit El), but for the Palestinians, the primary significance is practical - they have difficulty in gaining physical access to these bodies.

## **B. Planning and Development of Towns and Villages**

### **1. General**

Development plans determine the nature and character of an area, town, village, neighborhood, or plot of land. For example, the various development plans outline the roads and paths linking towns and villages, delineate their jurisdictional boundaries, allocate areas in the towns for residential dwellings, industry, commercial establishments, and "green spaces," and define the building capacity of a given lot.

Jordanian Law No. 79 visualized a system of planning schemes (i.e., development plans): regional, general, detailed, and parcellation,<sup>20</sup> i.e., levels of development plans of increasing detail. Pursuant to the Law, regional plans would be prepared first. After they are approved, the approval of local planning schemes (general) would begin, and so on.<sup>21</sup> However, the Jordanians did not complete the preparation of the new regional development plans. The Israelis also have not approved such plans.

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<sup>20</sup> Defined in paragraphs 15, 19, 23, and 28 of the Law, respectively.

<sup>21</sup> On this subject, see Coon, pp. 42-49.



Consequently, two regional planning schemes that the British had prepared in the 1940s remain, one covering the southern portion of the West Bank, including Jerusalem, and the other the northern part of the West Bank.<sup>22</sup> Since they were planned more than fifty years ago, and, according to Benvenisti and Hayat, "reflect planning conditions and criteria of the 1940s,"<sup>23</sup> the two planning schemes forecast, for example, a much smaller population than currently exists. The RS15 plan (for the northern West Bank) forecast a population of 33,500 persons in sixty-three Palestinian villages, whereas in 1995, this area contained some 156,000 persons.<sup>24</sup> In other words, over a period of fifty years, the population quadrupled, but the plans the Israeli authorities apply remain the same.

The British planning schemes remain the legal basis for all planning, development, building, and demolition in Area C in the West Bank. However, this restricts development and building in Palestinian villages only, and not in the Israeli settlements, as will be explained below.

## **2. In Palestinian Towns and Villages**

*In the towns:* The British prepared and approved planning schemes for the nine settlements in the West Bank that were recognized as towns. The Jordanians added sixteen more settlements to that number, planned and approved planning schemes for eight of them, and amended the British planning schemes of eight other towns. During the Israeli occupation, new planning schemes were approved for six towns (El-Bireh, Dura, Beit Jalla, Halhul, Salfit, and Bani Zid), five of them in the 1970s and the other in the 1980s.<sup>25</sup> Prior to implementation of the Oslo Accords, there were plans for other towns in various stages of planning and approval. In the early 1980s, Palestinian engineers prepared proposals for planning schemes for eleven towns. None of them have been approved.<sup>26</sup>

The main complaint voiced by the various town engineers is that the size of the area within the jurisdiction of the Palestinian towns is not sufficiently large to meet their growing populations. As mentioned, planning and building in the Palestinian towns is now under the control of the

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<sup>22</sup> Jerusalem District Outline Regional Planning Scheme RJ/5, approved in 1942, and Samaria Regional Planning Scheme No. RS15. According to Benvenisti and Hayat, the latter was approved in 1945. According to Coon, the planning scheme was deposited for opposition, but was never approved. See Benvenisti and Hayat, text at p. 55 and maps at pp. 85-86; Coon, pp. 65-83.

<sup>23</sup> Benvenisti and Hayat, p. 55.

<sup>24</sup> Coon, at pp. 80-83, estimated, in 1991, the population to be 138,000. Added to this number is the average increase of population in the West Bank during 1992-1994 according to the Central Bureau of Statistics, *1996 Statistical Yearbook (No. 47)* (Jerusalem: Central Bureau of Statistics, 1996) Table 27.1, p. 573.

<sup>25</sup> This is according to Coon, p. 92. According to Benvenisti and Hayat, only one planning scheme was approved during Israeli control, that of Beit Jalla. See Benvenisti and Hayat, p. 58.

<sup>26</sup> Coon, p. 92.

Palestinian Authority. However, the areas of the large towns (Area A) were delineated according to the *town's reduced jurisdictional area*, as mentioned previously. Some of the towns of Area A are smaller than the jurisdictional area of the municipalities (e.g., Nablus, Hebron, and Bethlehem). The natural increase of these towns is subject, in part, to the total control of Israel (Area C), and, therefore, to the policy described in this report.

*In the villages:* Until the end of the 1980s, a planning scheme was only approved for one village (A-Taybeh, in Ramallah District) among the some four hundred villages in the West Bank. Lacking more detailed planning schemes, the only valid development plans for the villages are the two British national planning schemes, RJ/5 and RS15, of 1942. These planning schemes do not have village borders drawn according to planning outlines - existing or planned - of the villages, but rather are drawn only in schematic circles.<sup>27</sup> At the beginning of the 1980s, the Civil Administration prepared and deposited for filing of objections close to three hundred planning schemes for Palestinian villages in the West Bank, but none of these were approved. Between 1984-1987, Palestinian engineers, funded jointly by the Jordanian government and the Central Planning Office, prepared planning schemes for more than fifty Palestinian villages. The planning schemes, which attempted to provide a comprehensive solution to the needs of the Palestinians, were discussed in the Central Planning Office, but only thirteen of them have been deposited for filing of objections. None had been approved as of the beginning of implementation of the Oslo Accords.<sup>28</sup> Funding of the planning schemes stopped in 1986.<sup>29</sup>

#### ***Planning Schemes to Limit Palestinian Building ("Demarcation Schemes")***

Beginning in 1989, planning schemes for Palestinian villages were deposited for filing of objections. These planning schemes were prepared by the Central Planning Office. Each such scheme bears the name "Partial Special Local Planning Scheme." According to figures provided to B'Tselem by city planner Dr. Ghasem Hamaisa, as of the beginning of implementation of the Oslo 2 Accords, in 1995, more than three hundred such planning schemes had been approved.

The section dealing with these plans in the minutes of the 9 December 1987 meeting of the Central Planning Office is titled "Demarcation of Villages,"<sup>30</sup> i.e., the declared objective of these planning schemes is to limit ("demarcate") the borders of the villages, and the area on which buildings may be erected, and not merely for comprehensive planning to meet the residents' needs. Ze'ev Baran, architect and city planner, who performed numerous planning works in the West Bank, described "the partial, special, local planning schemes":

Most are not planning schemes, but demarcation schemes. They took aerial photographs, saw where there is a settled area and drew a line around it. In fact, they closed them in on paper. Beyond that line, building is forbidden... Villages which should have had a

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<sup>27</sup> See Benvenisti and Hayat, text, at page 55, and maps, at pp. 85-86.

<sup>28</sup> These statistics were provided to B'Tselem by Dr. Ghasem Hamaisa.

<sup>29</sup> See Coon, p. 88.

<sup>30</sup> This section of the minutes was submitted as Appendix Respondent no. 1 to the responsive affidavit of the State Attorney's Office in *Bodrus*.

few thousand dunams in their planning schemes were allocated a few hundred.<sup>31</sup>

#### *Standard Plans that do not Consider the Unique Needs of Each Town and Village*

Although each planning scheme is defined as "special," all of them are drafted according to a standard formulation of nine pages. The only thing that differs is the name of the village and the names of the areas to which the planning scheme applies, the map of the scheme, its number and area. The schemes define the area in which residential building is allowed, at various levels of population density.

#### *Restriction of Building to Village Land and Private Land*

As a rule, the planning schemes demarcate the future building allowed for an already built-up area, and do not include private land elsewhere. Public Palestinian land, i.e., land that was in fact or had been proclaimed "state lands," are outside the boundaries of the planning schemes.

#### *Disregarding the Character of Palestinian Village Society*

The problem of population growth will likely be solved by infill, i.e., allowing building of higher density, and in higher percentages (building up) in the demarcated area. In doing this, the planning schemes disregard the Palestinian-village character, and the social structure and norms of the villages' residents. City planner Dr. Ghasem Hamaisa, in an opinion he submitted to the High Court (in *Bodrus*)<sup>32</sup> explains that few among the rural population are willing to build in the high density customary in urban areas. The planning scheme left some of the residents without land of their own within the proposed demarcated area. In addition, not all of the residents were ready to allocate their land for their relatives' residential use.<sup>33</sup> The situation is the same in each Palestinian village in the West Bank.

#### *Lack of Consultation with Palestinians*

The planning schemes were made without consulting with village residents, or even with their representatives, such as village councils and mukhtars.

#### *Discrimination*

The demarcation plans contrast sharply with the comprehensive plans prepared for the settlers. The contrast is evident from the following chart.

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<sup>31</sup> See Malki Drori, "Catastrophe: *Mivnim* research on residential building for Palestinians in Judea and Samaria," *Mivnim*, 1993, pp. 24-38.

<sup>32</sup> Appendix Q/13 of the petition.

<sup>33</sup> At pp. 3-4 of his opinion.

*Comparison of Planning Schemes for a Palestinian village (Bodrus) and an Israeli settlement (Tekoah)*

	<b>Bodrus</b>	<b>Tekoah</b>
<b>Planning Scheme Promoter</b>	The Central Planning Office, West Bank	The Local Planning and Building Committee, Gush Etzion
<b>Execution of Planning Scheme</b>	Central Planning Office	Building and Housing Ministry, Rural Building Department (Israeli government ministry)
<b>Owner of the Land</b>	Only privately held (state lands are not included within the planning scheme)	Only state lands
<b>Type of Planning Scheme</b>	Partial, Special, Local Planning Scheme.	Standard Planning Scheme.
<b>Population in 1990, the statistics upon which the planning schemes were based</b>	Some 900 persons	Some 400 persons
<b>Building Area for Residential Housing</b>	185 dunams	1016 dunams
<b>Allocation of Land for Public Purposes</b>	"The planners assumed ... that some thirty percent [of the area designated for building] for public purposes was involved" for "future planning" (answer of the State in <i>Bodrus</i> , sec. 15). However, the planning scheme set building rights for residential dwellings on <i>all</i> the land.	Included delineation and marking of land for roads, workshops, engineering facilities, sports facilities, a cemetery, and more

*Plans Contrary to Law*

The residents of Bodrus opposed the demarcation plan intended for their village and petitioned the High Court. In the State's answer, attorney Michael Blass describes one of the demarcation plans as follows:

The plan involved is a partial, general planning scheme according to sections 19-20 of the Jordanian law regarding towns, villages, and buildings...

The Jordanian Law, including the sections mentioned above, does not mention "a partial, general planning scheme," a "partial, special, local planning scheme," or a demarcation scheme under any other name. Section 19 of the Law sets forth the planning requirements concerning a general plan, and the demarcation plans do not meet these requirements. The authorities conducted no detailed surveys on the topographic and geologic conditions of each area or the social structure of the village and composition of its residents, and did not set the areas and

places designated for public needs, like schools, medical clinics, and public parks.

In its answer, the State admitted these facts:

The Respondents recognize that the planning scheme does not include all the components of the general purposes mentioned in paragraph 19 of the Law. Their position is that there is no legal obstacle to including, in the general plan's first stage, some of the land uses in order to solve the housing shortage resulting from the lack of planning over dozens of years, and to enable the granting of building permits.<sup>34</sup>

The State subsequently argued that had it been required to meet all the requirements of the Jordanian Law, "the result would be an increase of several years in preparing each planning scheme and total cessation of any preparation of planning schemes for the villages."<sup>35</sup>

In making that statement, the State admitted it had neglected planning in Palestinian villages for many years. However, the answer ignores the refusal of the planning authorities, as previously mentioned, to approve dozens of planning schemes planned by Palestinian engineers that met the Law's requirements. The "partial, special, local" planning schemes were approved also for some villages and were then ignored.

In the State's response to the petitioners' argument that the Palestinians did not participate in preparation of the planning scheme, attorney Blass argued:

Publication of the planning scheme for public review and the discussion of the objections filed by residents constitutes involvement of the public in the planning process.<sup>36</sup>

These defective planning schemes, whose objectives were, as mentioned above, to restrict building in Palestinian villages to a minimum, continue to serve the Israeli authorities in implementing its policy of demolition of houses in Area C.<sup>37</sup>

### **3. In the Israeli settlements**

The planning authorities' failure to prepare planning schemes in accordance with the requirements of the Law differs totally from the comprehensive, detailed, and modern planning initiatives in the settlements. This planning takes into account the needs of the settlers, among them their long-term needs, generously allocating public Palestinian lands for that purpose, and

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<sup>34</sup> Paragraph 20(a) of the State's answer in *Bodrus*.

<sup>35</sup> Paragraph 20(b) of the answer.

<sup>36</sup> Answer of the State in *Bodrus*, at p. 9.

<sup>37</sup> See, e.g., *Notice on behalf of the State Attorney's Office*, in HCJ 1030/97, *Muhammad Rashid al-Mator et al v. Building Supervision Subcommittee of the Supreme Planning Council in Judea and Samaria et al* (hereafter: *al-Mator*).

ensures the full participation of the settlers in the planning process.

### *Building on Public Palestinian Land*

Some Israeli settlements were established on private land requisitioned for "military purposes" or "public purposes," and a small amount on land purchased from Palestinians or on "absentee-owned" land. However, the large majority of settlements were established on public Palestinian land ("state lands"). In 1985, the head of the civil department of the State Attorney's Office stated that, "among the Jewish settlements established [in the Occupied Territories], some ninety percent were established on state lands..."<sup>38</sup>

### *Detailed Planning*

In the late 1960s and the 1970s, settlements were established in trifling numbers, without planning, at times in temporary structures and without infrastructure. Such was the case in Hebron (1968), Sabastia (1975), and Rojieb (1979). However, most settlements were established following professional, stringent, and comprehensive planning, whose objective was to meet all the needs of the prospective residents.<sup>39</sup> Even settlements unplanned at first were subsequently established in permanent locations based on detailed planning. The plans included a developed infrastructure, open areas, areas for public facilities, commercial and industrial areas, cemeteries, and the like.

### *Allocation of Broad Expanses of Land for Present and Future Construction*

The planners acted on the basis of long-term and comprehensive projections in allocating land for the settlements. The physical area of jurisdiction of some of the settlements planned to become towns was geographically larger than the most populated Palestinian cities. The area within the jurisdictional boundaries of Ma'ale Adumim, an Israeli settlement containing some 25,000 residents, spreads over some 55,000 dunams.<sup>40</sup> In Emmanuel, some seven hundred families live within the Emmanuel jurisdictional boundaries containing some seventeen thousand dunams.<sup>41</sup> In comparison, the area within the jurisdiction of Nablus, a city of 145,000 residents, is 26,800 dunams.<sup>42</sup> In Tulkarm, a city with 65,000 residents, the city's jurisdictional

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<sup>38</sup> See Pliyah Albeck, "Lands in Judea and Samaria," Tel Aviv-Jaffa District Committee of the Israel Bar Assoc. Seminars Project, transcript of lecture given on 28 May 1985 at Beit Hapraklit, p. 3.

<sup>39</sup> On the development plans for Israeli settlements, see, e.g., Benvenisti and Hayat, text at pp. 54-55, 58-60, and maps at pages 78-84, 87, 95.

<sup>40</sup> The Information Center of the Ma'ale Adumim Municipality provided the population figures to B'Tselem on 18 September 1997. The land-area figures, of the Information and Economic Analysis Center of the Housing and Construction Ministry, were reported in *Ha'aretz*, 22 January 1995.

<sup>41</sup> On 18 September 1997, the Emmanuel Local Council informed B'Tselem of the number of families living in the settlement. B'Tselem was unable to obtain a precise number of the residents living there. The source for the figure on the land area of Emmanuel is State Comptroller, *Annual Report 44 (1993)*, p. 1124.

<sup>42</sup> The figures were provided by the city engineer. In 1967, Nablus had some 61,000 residents, and it encompassed an area of eighteen thousand dunams. Only eighteen thousand

area contains ten thousand dunams.<sup>43</sup>

#### *Involvement of Settlers and Israeli Civilians in the Planning Process*

Most of the Israeli settlements in the Occupied Territories were established following a decision of the Ministerial Committee for Settlement Matters, a joint body of the Israeli government and the World Zionist Organization. The IDF, the ostensible governing body in the Occupied Territories, is represented on this committee only as one of a long list of "professional representatives" participating in meetings, "depending on the subject under discussion."<sup>44</sup> In practice, the functions of the IDF have been reduced in the area of planning and building to extremely narrowly-defined matters, and most of their functions have been taken over by government ministries and other public agencies.

Among these agencies are the Rural Building Administration and the urban building departments of the Housing Ministry, the Settlement Division of the World Zionist Organization, and the Israel Lands Administration.

Professional committees draw up the plans. These committees contain permanent representatives of the local or regional council where the settlement is planned. The residents of the settlements are entitled to object to the plans.

Upon approval of the planning scheme for an Israeli settlement, the local or regional council, as the local "special planning committee," is empowered to initiate and approve changes in the plan, provide more detailed planning, and grant building permits to settlers.

#### *Lack of Involvement of Palestinian Residents or Agencies in the Planning Process*

None of the bodies promoting, planning, or approving the building plans for the Israeli settlements contain Palestinian representation. Palestinian residents may object to the plan when it is deposited for filing of objections. No Palestinians sit on the bodies hearing the objections.

Over the years, the authorities have approved hundreds of planning schemes and comprehensive plans covering all the Israeli settlements<sup>45</sup> The planning schemes prepared and approved for the Israeli settlements were not "partial, special, local planning schemes," but rather were comprehensive.

### **C. Handling of Violations of Planning and Building Laws in Area C**

Breaches by Palestinians and Israelis of the building laws, primarily building without a permit, are widespread in the Occupied Territories. Jordanian law stipulates the procedures for handling

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dunams of the jurisdictional area of the municipality are located in Area A.

<sup>43</sup> The figures were provided by the city engineer. In 1967, the population of Tulkarm was 42,000. The city's area has not changed since then.

<sup>44</sup> State Comptroller, *Annual Report 34 (1983)*, p. 81.

<sup>45</sup> See Coon, at p. 200, fn. 130.

such violations, but allows the authorities to consider the situation of those building the structure. For example, the authorities may allow continued residence for up to ten years in a house built without a permit, thus enabling application for a retroactive building permit.<sup>46</sup> The authorities also are entitled to decide whether to handle a violation administratively or by court action. The Israeli authorities discriminate in their use of this freedom of latitude.

Because the Palestinian Authority is now responsible for planning and building in Area B, the building permit problem exists only in Area C. However, Area C covers some seventy percent of the West Bank, and many Area B villages are adjacent to the areas covered by the "demarcation plans" set by the Israeli authorities.

An attempt to obtain a building permit in the Palestinian villages in Area C of the West Bank is extremely difficult and complex for the following reasons:

1. The Jordanian law forbids granting of a building permit where no approved planning scheme exists.<sup>47</sup> As mentioned above, almost no Palestinian village had such a plan until the "partial, special, local planning schemes" were approved. Beyond the locations where those plans apply, only the British nationwide planning schemes are valid, and they, as mentioned previously, are woefully insufficient to meet current needs.
2. Palestinians lost millions of dunams to meet Israel's "military needs," through the procedure of "proclaiming land to be state lands," and in other ways.
3. State lands were not allocated for building for the Palestinian residents.
4. A building permit on private land is granted following proof of ownership of the land. The Jordanian Law defines "owner of land" for planning purposes broadly, including within the definition a "partner, trustee, person who receives rent, resident...."<sup>48</sup> However, under Israeli control, Palestinians are required to prove full ownership. Registration of land in the West Bank is antiquated and lacks numerous records, and many of the landowners left the West Bank in 1967 or thereafter.

Furthermore, as early as 1968, the military commander in the West Bank froze ("suspended," in the language of the Order), the procedure of land-settlement arrangements, i.e., registration of ownership, that the Jordanian government had begun.<sup>49</sup> The freeze continues. In the past three years, Palestinian landowners in the West Bank have been prevented from arranging their ownership, a necessary step in obtaining a building permit.

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<sup>46</sup> Paragraph 32 of Jordanian Law No. 79.

<sup>47</sup> Paragraph 34 of Law No. 79.

<sup>48</sup> Paragraph 2(26) of Law No. 79.

<sup>49</sup> Order regarding Arrangement of Land and Water (Judea and Samaria) (No. 291), 5729-1968 (QMST 5729, 591).



5. Under the Jordanian Law, parcellation, i.e., redivision of land, between heirs for example, for building requires an approved plan.<sup>50</sup> Preparing an application for parcellation is lengthy and expensive, and most applications are not approved, whether because of the failure to provide sufficient proof of ownership of the land or because the land lies outside the area covered by the plans - approved or not approved - of the planning authorities.
6. As mentioned above, the military commander revoked the powers of the village councils to act as local planning committees, under which authority they had issued building permits. This revocation of powers remains in effect in Area C, where building permits are granted by the Local Planning Committee, which is subordinate to the Supreme Planning Council. Consequently, village residents are not represented on the committees that grant building permits.
7. The building permit application procedure includes a review by an "Information Committee."<sup>51</sup> This committee rejects any application dealing with land outside the boundaries of the demarcation plans, or land close to an existing or planned road (the road plans are not provided to persons on request), or an application for building on "state lands," military areas, and the like.
8. The military orders empowered, as mentioned previously, the planning authorities to grant building permits, or to refuse to grant such permits, regardless of whether the applicant met the requirements set forth in the Law.<sup>52</sup>

In such conditions, the granting of building permits turned from an organized, bureaucratic procedure into one dictated by considerations of the Israeli authorities - substantive or not - and subject totally to their arbitrary decisions.

As a result of the difficulties mentioned above, and because the authorities denied most applications for building permits, and with the need for housing for Palestinians growing, building without a permit has been and remains widespread in West Bank Palestinian villages. In 1990, Palestinian engineers estimated that Palestinians in the West Bank built without permit some thirteen thousand houses.<sup>53</sup>

The policy of the Israeli authorities toward building without a permit changed over the years. Until the middle of the 1980s, the authorities chose to file actions in the local courts to obtain orders for demolition, and refrained from demolishing houses that had been inhabited for a long time.<sup>54</sup> The policy started to change in 1986. The authorities began to demolish houses by order

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<sup>50</sup> Paragraph 28 of the Law. See Coon, pp. 112-114, 117-118.

<sup>51</sup> For a detailed description of the building permit procedure, see Coon, pp. 121-126.

<sup>52</sup> See above, pp. 5-6.

<sup>53</sup> See B'Tselem, *Limitations on Residential Building on the West Bank*, p. 4.

<sup>54</sup> See, e.g., State Comptroller, *Annual Report 33 (1982)*, p. 500.

of the Building Supervision Subcommittee, which is subordinate to the Supreme Planning Council. This policy is still implemented in Area C.

A demolition order is issued where, for example, the house was built on agricultural land in violation of one of the British planning schemes; there is insufficient proof of ownership of the land; the area of the lot is illegal; no parcellation has been made; or the house lies near an existing or planned road.

The property owner may appeal to the Local Planning Subcommittee within a specific period of time ranging from seven to thirty days. Where the subcommittee rejects the appeal, no further legal action is available, except for petition to the High Court. In practice, Palestinians apply to the head of the Civil Administration or to the plenum of the Central Planning Council with a type of "request for pardon."

If the request is denied, Civil Administration personnel demolish the house, usually by bulldozers, without further warning.

## DATA

### A. Demolition of Houses in the West Bank in the Past Ten Years

The following are data, taken from human rights organizations and official Israeli agencies, on the demolition of Palestinian houses over the past ten years for building without a permit:

Year	Number of Houses Demolished	Source
1987	103 <sup>55</sup>	Palestinian sources
1988	423 <sup>56</sup>	Palestinian Human Rights Information Center (PHRIC) <sup>57</sup>
1989	347 <sup>58</sup>	PHRIC
1990	102	PHRIC
1991	227	PHRIC
1992	160 <sup>59</sup>	PHRIC
1993	111 <sup>60</sup>	PHRIC
1994	120 <sup>61</sup>	Attorney General <sup>62</sup>

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<sup>55</sup> According to Dr. Ghasem Hamaisa, *Demolition of Houses Built without Permit in the West Bank during the Intifada* (in Arabic) (Nazareth, 1990), p. 21. According to the Defense Minister at the time, the late Yitzhak Rabin (in comments made in the Knesset on 13 July 1989), in 1987, one hundred and ninety-six structures built without permit were demolished. The data include the Gaza Strip, but the number of "administrative" demolitions there was extremely low.

<sup>56</sup> According to the Defense Minister (in his 13 July 1989 comments to the Knesset), in 1988, five hundred and five structures built without permit were demolished. According to Civil Administration data provided to B'Tselem, the authorities demolished 305 structures in 1988. See B'Tselem, *Human Rights Violations in the Occupied Territories 1990/1991* (Jerusalem, 1992), p. 157

<sup>57</sup> The PHRIC data include East Jerusalem, and relates only to residential dwellings.

<sup>58</sup> According to the Civil Administration - 431.

<sup>59</sup> According to data compiled by IrShalem from official documents of the Ministry of Interior and the Jerusalem Municipality, the municipality implemented that year twelve administrative demolition orders. IrShalem informed B'Tselem, on 10 September 1997, that prior to 1992, only the municipality dealt with demolition of structures built without permit, and that IrShalem does not have data for those years.

<sup>60</sup> According to official statistics compiled by IrShalem, the Jerusalem Municipality and the Ministry of Interior demolished forty-eight structures in East Jerusalem in 1993.

<sup>61</sup> According to official statistics compiled by IrShalem, the Jerusalem Municipality and the Ministry of Interior demolished twenty-nine structures in East Jerusalem in 1994.

<sup>62</sup> In a letter to MK Ron Nachman. See *Ha'aretz*, 22 January 1995. The letter refers to "structures," and the figure does not include East Jerusalem.

1995	43 <sup>63</sup>	PHRIC
1996	140 <sup>64</sup>	Minister of Defense <sup>65</sup>
1997 <sup>66</sup>	109	Minister of Defense <sup>67</sup> , newspaper reports, and B'Tselem research

### *Comment concerning the Data*

The data provided by the sources vary, both on the scope of the data (residential structures\other structures, including\excluding East Jerusalem) and on the numbers themselves. For this reason, the data should be used cautiously, even though the estimates given here are conservative.

Based on figures from various sources, it is estimated that, since 1987, the Israeli authorities have "administratively" demolished at least 1,800 Palestinian houses in the West Bank, and hundreds of other structures. Assuming that the average number of residents per house over this period is similar to average occupancy throughout the West Bank,<sup>68</sup> it is estimated that more than 10,000 Palestinians lost their home over the past ten years as a result of "administrative" demolition.

### **Other Demolition Orders**

According to the Minister of Defense, at the end of March 1997, there were orders for the demolition of an additional 850 houses. The subcommittee of the Supreme Planning Committee continues to issue demolition orders.<sup>69</sup>

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<sup>63</sup> According to official statistics compiled by IrShalem, the Jerusalem Municipality and the Ministry of Interior demolished twenty-five structures in East Jerusalem in 1995.

<sup>64</sup> According to official statistics compiled by IrShalem, the Jerusalem Municipality and the Ministry of Interior demolished seventeen structures in East Jerusalem in 1996.

<sup>65</sup> In a response to interpellation 617 of MK Naomi Hazan, by letter of 22 May 1997. The response refers to "structures," and the figure does not include East Jerusalem.

<sup>66</sup> Until 21 September 1997.

<sup>67</sup> In a response to an interpellation of MK Naomi Hazan, the Minister of Defense indicated that, as of 31 March 1997, the authorities had demolished fifty-six structures built without permit in the West Bank.

<sup>68</sup> In the past ten years, the average number has fluctuated around 6.0. See the *1996 Israel Statistical Yearbook*, Table 27.14, p. 585.

<sup>69</sup> See the detailed list of stop-work orders and orders for demolition, compiled by the Palestinian research organization Al-Arij, on its web site, <http://www.arij.org>.

**B. Demolition of Houses since 30 July 1997**

The data in the following table were compiled from research conducted by B'Tselem fieldworkers.

*Homes Demolished for an Administrative Cause, from 30 July 1997*

<b>No.</b>	<b>Date of Demolition</b>	<b>Head of Family*</b>	<b>Village/ District</b>	<b>State of the House at time of Demolition</b>	<b>No. of Occupants**</b>	<b>Present Living Arrangements</b>	<b>No. of Rooms</b>	<b>Investment in the House in NIS***</b>
1	31 July	Ahmad Isma'il Shamasneh	Qatana/ Ramallah	Ready and vacant	4	One room in his parents' home	2	30,000
2	31 July	'Abd al-Jaber Dhib Nasra	Bir Naballeh/ Ramallah	One apartment ready and inhabited, and one under construction	4	One room in his parents' home	6	295,000
3	3 August	Mustafa Abu Sneineh	a-Ram/ Ramallah	Ready and vacant			3	
4	3 August	'Abd al-Qader Muhammad 'Ali	'Anatah/ Ramallah	Frame only				
5	4 August	Nabil 'Awdh 'Abd al-Qader 'Awdh	al-'Izariyeh/ Bethlehem	Frame only	8		4	75,000
6	4 August	Muhammad 'Awdh 'Abd al-Qader 'Awdh	al-'Izariyeh/ Bethlehem	Frame Only	6		10	360,000
7	5 August	Hassan Gheith	Sa'ir/ Hebron	Frame Only	8		4	70,000

8	5 August	Fayed Shaker Jaradat	Sa'ir/ Hebron	Ready and inhabited	7	Jaradat, his wife, and 3 children live in one room in his brother's home in Sa'ir; his parents live in another room there	10	244,000
9	7 August	Bashir Mahmud Sabeih	Tayasir/ Jenin	Frame Only	6	In one room of a 54m <sup>2</sup> house, Sabeih lives with his wife and 2 children; his mother and sister live in another room of the house	2	17,000
10	7 August	Dhiab A'bd Dihad 'Alayan	Qatana/ Ramallah	Ready and inhabited	9	In two rooms	2	100,000
11	13 August	Muhammad 'Eid Barakat	Nebi Samuel/ Ramallah	Ready and inhabited	4	In a room of 49m <sup>2</sup>	1 room & kitchen	7,000
12	13.8.97	'Eid Muhammad Barakat	Nebi Samuel/ Ramallah	Ready and inhabited	5	In the kitchen, which had not been demolished	2 rooms& kitchen	7,000
13	13 August	'A'eid Muhammad Barakat	Nebi Samuel/ Ramallah	Frame only, but inhabited	5	In a room of 20m <sup>2</sup>	2	10,000
14	13 August	Ra'id Muhammad Barakat	Nebi Samuel/Ramallah	Unfinished but inhabited	4	In one room of his parents' home	2	13,000
15	13 August	Ibrahim Hashem Ibrahim Abu Mahamid	Freidis/ Bethlehem	Ready and empty	4	In one room of his parents' home	4	33,000
16	17 August	Ahmad Muhammad Shamasneh	Qatana/ Ramallah	Ready and empty	8	In one room of his parents' home	2	70,000
17	18 August	Nu'aman 'Amran Shabaneh	Bani Na'im/ Hebron	Ready and empty	1	In jail	5	123,000

18	25 August	Muhammad Ahmad Shakarna	Nahalin/ Bethlehem	Frame	4	In one room of an old, hazardous structure	5	90,000
19	25 August	Hamza Mahmud Faoun	Nahalin/ Bethlehem	Frame	4	In one room of his parents' home, in Nahalin	10	80,000
20	25 August	Muhamad Abu Hawa	a-Za'im/ Bethlehem	Frame	9			
21	25 August	Sherif Shweiqi	a-Za'im/ Bethlehem	Frame	11			
22	26 August	'Amer Mahmud 'Oda	Qusra/ Nablus	Frame	6			
23	26 August	Marmar Mahmud 'Oda	Qusra/Nablus	Frame	4			
24	28 August	Kn'an Muhammad Kn'an	Frush Beit Dajan/ Jordan Valley#	Ready and inhabited	10	Outdoors	3	7,000
25	28 August	Ribhi Ramadan Abu al-Kbash	Frush Beit Dajan/ Jordan Valley	Ready and inhabited	7	Outdoors	6	4,000
26	28 August	Yusef Abu 'Awad	Frush Beit Dajan/ Jordan Valley	Ready and inhabited	9	Outdoors	2	2,000
27	28 August	Sleiman Abu al-Kbash	Frush Beit Dajan/ Jordan Valley	Ready and inhabited	7	Outdoors	4	3,500
28	28 August	Walid Abu al-Kbash	Frush Beit Dajan/ Jordan Valley	Ready and inhabited	2	Outdoors	2	1,500
29	28 August	Ra'ul Lutfi 'Issa	Hawara/ Nablus		7		3	79,000
<b>Total</b>					<b>163</b>			<b>1,721,000</b>

- \* As indicated to B'Tselem. This column refers to the family that was living, or was about to live, in the house that was demolished.
- \*\* This column refers to the number of persons who were living, or were about to live, in the house that was demolished.
- \*\*\* The estimates of family members who gave testimonies to B'Tselem.



# In Frush Beit Dajan, the houses demolished were mainly light structures serving as the permanent residence of Palestinian Bedouins. Since these structures are their permanent and sole housing, B'Tselem considers them residential dwellings for every purpose.

### *Aggregate Figures*

Twenty-nine Palestinian houses have been demolished in Area C in the West Bank since 30 July 1997. At least 163 persons, among them at least seventy children, lost their homes. In addition, the demolitions resulted in a waste of some NIS 1.7 million that the owners had invested in building their homes.

Private individuals suffered this financial loss. The owners had built these homes to house them and their families, and none of them for investment, rental, or any other purpose.

## ILLEGITIMATE REASONS FOR "ADMINISTRATIVE" DEMOLITION OF PALESTINIAN HOUSES

Demolition of houses in Area C of the West Bank is ostensibly a purely administrative measure, resulting solely from planning considerations.

However, examination of the location of the demolitions, their timing, and comparison with planning policy in the Israeli settlements indicate that the policy of large numbers of demolitions is unrelated to planning factors.

### A. Demolition of Houses as a Political Act

Palestinian homes are demolished in the context of a declared policy of strengthening and expanding Israeli settlement in the West Bank, and of creating permanent facts affecting implementation of the Oslo Accords and negotiations over the final-status arrangements. Consequently, Palestinian houses are demolished to meet the following needs:

*Construction of Bypass Roads* Bypass roads are intended to enable movement of settlers and of military forces protecting the settlements. When building these roads, the Israeli authorities do not take into account the interests of the Palestinians, which are directly prejudiced as a result, particularly when the authorities demolish their houses.<sup>70</sup> The explanation that the house designated to be demolished lies alongside an existing or planned road is very common.<sup>71</sup> According to al-Arij, construction of the bypass roads, existing and planned, will result in a total expropriation of more than 100,000 dunams.<sup>72</sup>

*Removal of Palestinians from Areas Adjoining the Israeli Settlements* The Israeli authorities consistently demolish Palestinian structures that are perceived as hindrances to the establishment and expansion of Israeli settlement. A prime example of this phenomenon is the removal, in 1994-1997, of hundreds of members of the Jahalin Bedouin tribe from the area of the Ma'ale Adumim settlement. Among the houses demolished in August of this year were those of the Awadeh brothers, Amar and Marmar, of Qusra village, Nablus District. Their homes were located some four hundred meters from the settlement Migdalim.<sup>73</sup> The houses that were demolished in Frush Beit Dajan were about

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<sup>70</sup> On the bypass roads, see B'Tselem, *Israeli Settlement in the Occupied Territories*, pp. 39-41.

<sup>71</sup> See, e.g., orders 34/95h (house of Nasser Muhammad Ka'od); 19/95h (house of Samir Muhammad Ka'ajeh); 33/95h (house of Sha'adeh Ali Marav); In each of these instances, a final demolition order was issued on 26 June 1996, the pretext being that they lie in an area of Road No. 60, which bypasses Hebron from the east, where construction is forbidden. LAW filed a petition on behalf of the homeowners in these cases, which have not yet been decided. See also, *Notice on behalf of the State Attorney's Office*, in *al-Mator*, paragraph 19, which concerns the area along planned Road No. 35, which bypasses Hebron from the north, where construction is prohibited. One of the three houses mentioned in the notice was demolished, and the other two await destruction, the petition having been denied.

<sup>72</sup> According to the organization, Israel has already constructed 276 km of road, and an additional 452 km of road are planned. The result will be, in the security areas on the two sides of the road, "the expropriation and demolition of some 10,920 hectares of Palestinian land, most of it agricultural." See al-Arij's web site, <http://www.arij.org>.

<sup>73</sup> See Nos. 22 and 23 in the Table.

one kilometer from Hamra, a settlement in the Jordan Valley.<sup>74</sup> The house of the Alyan family, in a small village in Ramallah District, was extremely close to an area where work was being done to expand the Har Adar settlement.<sup>75</sup> The proximity of the houses to the settlements obviously was not raised as an official reason for the demolition in these cases.

*Refusal to Transfer Area to Palestinians during the Peace Process* A conspicuous example, linked to the objectives mentioned above, is the attempt of the authorities to demolish a neighborhood in Qalil, Nablus District.<sup>76</sup> The neighborhood contains seven completed houses housing seventy persons, some of whom have lived there for three and even four years, and two unfinished houses, in which sixteen persons intend to live. The neighborhood lies only some one hundred meters from the municipal borders of Nablus, i.e., Area A, and a kilometer from Area B. It is located, therefore, in a small island of Area C between areas in which the Palestinian Authority is responsible for planning. This neighborhood is "a natural candidate" for transfer to the Palestinian Authority if and when further redeployment occurs. The rigidity of the authorities in ordering demolition of the neighborhood, leaving scores of Palestinians in the heart of a residential Palestinian area without housing, can only be understood as an attempt by the authorities to prevent such development. The demolitions have been stayed for the time being following LAW's petition to the High Court.

## **B. Demolition of Houses as an Act of Reprisal**

According to B'Tselem's data, the IDF demolished, in the month following the attack in Mahane Yehuda, twenty-nine houses. In comparison, the IDF demolished seven houses in July, two in June, and sixteen in May.<sup>77</sup> A political decision taken by the Israeli government led to this drastic increase.

Following that attack, the media reported that the government's Political-Security Cabinet had decided to implement several measures in reprisal, among them demolition of houses in the West Bank, in general, and in East Jerusalem, in particular.<sup>78</sup> As mentioned previously, Israeli authorities contend that the "administrative" demolition of houses is not a security measure, but rather the conclusion of a purely administrative process.

The decision of the Political-Security Cabinet and its subsequent implementation indicate that the planning considerations that were the basis for the large number of demolitions of Palestinian houses in the Occupied Territories were of secondary importance to considerations totally unrelated to building supervision and control. In this instance, the Israeli government preferred to let out its justifiable anger against those who perpetrated the murderous attack by punishing Palestinians who clearly were not involved in the attack. Punishing these innocent persons is totally unjustified.

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<sup>74</sup> See Nos. 24-28 in the Table.

<sup>75</sup> See No. 10 in the Table.

<sup>76</sup> See the *Petition to Grant an Order Nisi and Interim Injunction*, HCJ 2215/97, *Mansur Ra'ad et al vs. Minister of Defense et al*.

<sup>77</sup> According to Palestinian press reports.

<sup>78</sup> *Mabat* [Israeli Channel One's evening news program], 30 July 1997; *Ha'aretz*, 31 July 1997.

### C. Demolition of Houses as a Policy of Discrimination

On 6 May 1997, the IDF demolished three structures built by settlers near the Yizhar, an Israeli settlement. According to the settlers, this was the first time that the Israeli government demolished illegally constructed structures of Israeli settlers.<sup>79</sup> However, this was not the first time that settlers had built houses in settlements without first obtaining a building permit.

As mentioned above, comprehensive surveys and detailed planning preceded establishment of most of the settlements. However, the settlement agencies - primarily the Ministry of Housing - did not present the planning schemes to the relevant institutions for their approval before commencement of land preparation or construction, as the law requires. Most of the first settlements were built in violation of the Jordanian planning and building laws and the Israeli military orders. In 1979, when there were more than forty settlements in the West Bank, the State Comptroller wrote:

Except for the planning schemes of one settlement, the planning schemes of the settlements were not presented for hearing and decision of the Supreme Planning Council, and construction was done without receiving permits from the planning and building committees.<sup>80</sup>

That same year, apparently following the findings of the State Comptroller's report, the planning schemes of twenty-one settlements were approved retroactively.<sup>81</sup> The first seven Israeli settlements in the Gaza Strip also were established without approved planning schemes.<sup>82</sup>

Building without a permit and in violation of the law continues, as the State Comptroller's reports show. In 1983, the State Comptroller wrote about the legality of building in urban settlements:

As of the conclusion of the audit in November 1983, the planning schemes for [these] urban Jewish settlements in Judea and Samaria had not been validated: Alfe Menashe, Ariel, Ma'ale Ephraim, Efrata, Kiryat Arba, and Givat Ze'ev. Only the planning schemes of Ma'ale Adumim and Karney Shomron had been validated.... Absent appropriate valid planning schemes, building is executed pursuant to local detailed planning: for most of the urban settlements, the Ministry prepared master plans for its needs, which, as mentioned, had not been granted legal sanction... The findings indicate that the establishment of settlements in Judea and Samaria was accomplished without compliance with the applicable planning regulations.<sup>83</sup>

Quotations from the State Comptroller's reports concerning specific local authorities follow. They represent only some of the many similar criticisms raised by State Comptrollers over the years.

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<sup>79</sup> See *Ha'aretz*, 9 May 1997.

<sup>80</sup> State Comptroller, *Annual Report 30 (1979)*, pp. 802-803.

<sup>81</sup> State Comptroller, *Annual Report 31 (1980)*, p. 778.

<sup>82</sup> State Comptroller, *Annual Report 33 (1982)*, p. 495.

<sup>83</sup> State Comptroller, *Annual Report 34 (1983)*, p. 778.

### ***Ariel***

*Until March 1982, hundreds of housing units, public facilities, and numerous industrial structures, many of them built by the Ministry of Housing and Construction, were constructed without approval of the Supreme Planning Council of the regional command, which has the supreme authority over planning and building in the region... In early 1984, construction companies began to erect Phase 2 of the town, without a lawfully- approved planning scheme and without building permits... Independent construction of residential homes in the town was executed on the basis of approval in principle, given to most of the settlers in accordance with a plan submitted to the committee, without a proper building permit... Many of the residents made additions and changes to their property without having received a building permit.<sup>84</sup>*

### ***Emmanuel***

*A principal argument of the Ministry [Ministry of Housing] in approving the company, at the beginning of 1982, as a Housing Company to establish the town of Emmanuel was that the company owned private land on the site, and at that time had already built hundred of housing units there.*

*The audit performed by the Registrar of Lands in Judea and Samaria indicates that, as of December 1986, some five years after the company had been approved as a Housing Company, the relevant officials had not registered the property on anyone's name, and certainly not on the name of the company.<sup>85</sup>*

### ***Givat Ze'ev Local Council***

*Despite the lack of registration [of state ownership of the land], as mentioned previously, and no issuance of additional building permits, there was broad-scale construction of residential buildings on the Moreshet Binyamin 1 site. The construction violated the planning laws and the planning schemes applying to the area and the plot - and even violated the Council's plans and the deposited plans.*

*The documents also showed that a construction company built on the Moreshet Binyamin 2 site in 1988 and even subsequently without having received a proper building permit. Also, residents erected houses in the Moreshet Binyamin 3 neighborhood, for which there are no plans (deposited or in preparation), and which even lies outside the jurisdiction of the Givat Ze'ev Local Council. On construction sites where the owners received warnings to stop work, the illegal construction continued, with even greater intensity.<sup>86</sup>*

The matter of the illegal construction in Givat Ze'ev reached the High Court of Justice, and ultimately a joint staff of the Ministry of Justice and the security establishment was formed. The staff empowered, retroactively, the Local Council to grant building permits for the Moreshet Binyamin 2 site, and effectively approved retroactively all the illegal

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<sup>84</sup> State Comptroller, *Annual Report 35 (1984)*, pp. 1178-1180.

<sup>85</sup> State Comptroller, *Annual Report 37 (1986)*, Part I, p. 202.

<sup>86</sup> State Comptroller, *Annual Report 43 (1992)*, p. 912.

construction in the settlement.<sup>87</sup> The State Comptroller observed in her concluding comments on the matter:

*The course of events involving Moreshet Binyamin, as detailed above, indicates the helplessness of officials in Judea and Samaria who have the task of supervising compliance with the rule of law in the region, despite the warnings of various persons during the many years that the law had been breached.*<sup>88</sup>

### **Elkana**

*In August 1991, the head of the Council requested the Supreme Planning Council to approve the planning scheme for Kiryat Hahinuch. The Supreme Planning Council discussed the plan several times. By 1991, the SPC had determined that a lease agreement should be made between the Supervisor of Government Property and the Council as one of the conditions for the approval of the planning scheme. Only in June 1994, after the buildings had already been erected and inhabited, was the aforementioned agreement signed. As of the completion of the audit, the detailed planning scheme had not yet been approved.*<sup>89</sup>

In none of the above-mentioned reports did the authorities demolish a structure that had been built without a permit in an Israeli settlement. The State Comptroller describes only one such attempt, in Kiryat Arba:

*In December 1983, the official authorized by the Order empowered the Council engineer to take action against illegal construction in the military-requisitioned areas [most of Kiryat Arba had been, at the time, requisitioned for "military purposes"]. Pursuant to this power, the Council engineer issued demolition orders and orders to evacuate a large number of persons. In August 1984, the engineer's authority was revoked, and it was determined that Council supervisors would act to locate building violations, and report to the area command's supervision unit, which would issue warnings and take other actions necessitated by the report. As of the termination of the audit, no demolition orders for illegal building had been issued in Kiryat Arba.*<sup>90</sup>

Broad-scale building without permits occurs in Palestinian villages and in Israeli settlements. In the Palestinian villages, the building is executed by private individuals, who are desperate because of the absence of planning schemes to meet their needs, the lack of permits to build on their land, or the refusal of the authorities to grant them building permits. When they build, the authorities have responded aggressively, demolishing thousands of houses over the years of occupation, without offering a meaningful solution to the housing shortage.

Israeli settlers built thousand of housing units, public facilities, and industrial structures without permits. Government ministries, primarily the Ministry of Housing, erected a high percentage of these structures. Private construction companies and settlers also built without permits in most

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<sup>87</sup> *Ibid.*, pp. 912-913.

<sup>88</sup> *Ibid.*, p. 914.

<sup>89</sup> *Ibid.*, p. 1030.

<sup>90</sup> State Comptroller, *Annual Report 36 (1985)*, Part II, p. 1258.

of the settlements. The authorities take a forgiving attitude toward building without a permit in the settlements, and have refrained - except for one case, as far as we know - from demolishing houses built without a permit. Instead, the authorities approve retroactively plans validating such construction.



## **TWO SAMPLE CASES**

The following cases illustrate the situation of families forced into building without a permit. Some families live in constant fear their homes will be demolished, and some have indeed suffered that fate.

### **WAITING IN FEAR OF DEMOLITION – THE HASSAN FAMILY**

**Testimony of Kamal Abd al-Hamid Harash Hassan, 29, married with two children, resident of Qusra village, Nablus District**

*The testimony was given to Najib Abu Rokaya at Hassan's home on 12 October 1997*

In April 1995, I began to build a house for my family and me. I built it on my private land in Qusra village. My father had bought the land some fifty years ago.

I built the house brick by brick. I brought the bricks, some seven thousand of them, from the factory by a tractor-drawn cart. In this same way I also brought forty-five tons of cement in nine hundred sacks, which I unloaded all by myself. I dug the foundations by myself. I worked with the builder, working as his assistant. I handed him the bricks, bent and welded the steel, and did everything that did not require a builder's expertise. I wanted to save as much money as possible, as I do not have much money.

My wife Dalal and our two children, nine-year-old Hiba and six-year-old Usama, and I lived in part of the house, and the other part was used as a metal-working shop, where I work. My wife is now seven-months pregnant.

The house does not lie adjacent to the road and does not bother anyone. I invested NIS 100,000 in building it. In March of this year, I received an order to stop construction. At first, I went to the committee at Beit-El [Civil Administration offices] without a lawyer, and then with one, but nothing helped. In May, I received a final order to stop construction and for demolition. I also lost on appeal. So now they can come at any time, any minute, to demolish the house. If they do that, my wife, children, and I will have nowhere to live, and I will have no way to make a living.

### **HOUSE DEMOLITION – THE ALYAN FAMILY**

**Testimony of Di'ab Abd Di'ab Alyan, 44, married with seven children, resident of Qatana village**

*The testimony was given to Fuad Abu-Hamed on 14 August 1997*

I married Khalimah, who is thirty-eight, about twenty-one years ago. After we got married, we lived in one room of my parent's house in Qatana village. It became more and more crowded as each child was born, and we moved to live with my brother, near Bido village. He let us use two rooms in the storage area of the house. We lived there until 1993. We had additional children while we lived here, and we now have seven.

The storage rooms were small and unventilated. One of them does not even have a window. We used these two rooms as a kitchen, living room, dining room, and bedroom. My wife and I and some of the children lived in one room, and the other children slept in the second room. The bathroom was outside. At night, I used a bucket for the children to go to the toilet because they were afraid to go out at night.

I am a construction worker. I saved money from my wages over the years, and my father gave me a plot of land in Qatana village, which he had received from his father, so that I could build a house for my family and me. My brothers also helped.

In 1989, I applied for a building permit, but it was denied, and in late 1993, I decided to build despite the denial. I couldn't stand the daily suffering my family and I underwent in the storage rooms we were living in.

I started to build in October of 1993. I built the house quickly, finishing it in two months. It cost me more than NIS 100,000, and I had to borrow money from friends to complete the construction.

The house contained 150 m<sup>2</sup> of space. We had two bedrooms, a guest room, living room, large patio, kitchen, and conveniences. We moved in as soon as it had been completed. A short time later, officials from the Civil Administration handed me a stop-construction order. I retained a lawyer from Ramallah, who managed to suspend the order. He later told me that he would petition the High Court.

On 7 August of this year, without any warning and after we had lived in the house for three and a half years, a large number of soldiers appeared with representatives from the Civil Administration. One of the Civil Administration officials informed me they were going to demolish the house. It was a big surprise. My lawyer had not told me it was to be demolished, and I received no further order.

They gave us only a half an hour to remove our personal property from the house. We did not have time to remove everything. Lots of our children's items remained in the house. Then they demolished the house.

My family and I returned to my brother's storage rooms.

## **THE LEGAL ASPECT - INTERNATIONAL LAW, ISRAEL'S WEST BANK POLICY, AND POSITION OF THE HIGH COURT OF JUSTICE**

The Oslo Agreements have led to almost no change in the status of Area C, and it is agreed that the IDF's control of the area is that of occupier, or "belligerent occupation," which is subject to international humanitarian law.

The failure to prepare town planning schemes in the Occupied Territories and the policy to demolish homes in the West Bank on the basis of the lack of a building permit contravene international law. These violations relate to human rights and the laws of war, which apply to the Occupied Territories, in general, and Area C, in particular. The High Court, consistent with its long-held policy in matters related to the violation of human rights in the Occupied Territories, has approved these policies.

### **A. Human Rights - The Right to Housing**

It is universally agreed that everyone is entitled to proper housing. Israel is a party to the International Covenant on Economic, Social and Cultural Rights,<sup>91</sup> one of the cornerstones of international law on human rights. Article 11(1) of the Covenant stipulates:

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*... [our emphasis]

In Article 10(f), the Declaration on Social Progress and Development<sup>92</sup> defines as one of its objectives:

The provision for all, particularly persons in low-income groups and large families, of *adequate housing* and community services. [our emphasis]

It is clear, therefore, that demolition of a person's home violates his basic right to housing, and that the authorities are prohibited from taking such measures, except as a last resort - where the house endangers vital public interests, and no other way exists to protect those interests. B'Tselem thinks that the destruction of residential structures must not be allowed, certainly where they are inhabited, except by court order and subject to limiting legislation.<sup>93</sup>

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<sup>91</sup> U.N. General Assembly Resolution 2200 (XXI) A, 16 December 1996. Israel became a State Party to the Covenant in 1991.

<sup>92</sup> U.N. General Assembly Resolution 2542 (XXIV), 11 December 1969.

<sup>93</sup> Israeli law, like Jordanian law, enables "administrative" demolition of a structure as well as demolition pursuant to court order. However, the Israeli law does not allow "administrative" demolition of a building populated for more than thirty days. See sec. 238A(a)(3) of the Planning and Building Law, 5726-1966.

## **B. Laws of War - Protection of Property**

Article 46 of the Hague Regulations of 1907, which deals with occupied territory, stipulates:

Family honor and rights, the lives of persons, and private property, as well as religious convictions and practice, must be respected.<sup>94</sup>

Article 53 of the Fourth Geneva Convention of 1949, to which Israel is a signatory, stipulates:

Any destruction by the Occupying Power of real or personal property belonging individually or collectively to private persons, or to the State, or to other public authorities, or to social or co-operative organizations, is prohibited, except where such destruction is rendered absolutely necessary by military operations.

Even during war and occupation, armies may not act indiscriminately with private or public property. The laws stipulate a total prohibition against destroying such property where a clear military purpose is not involved.

Consequently, the IDF's involvement in destroying houses for clearly civil reasons - the absence of a permit and the like - is, on the face of it, illegal. The IDF should have performed its fundamental duty as an occupying army - "ensuring public order and security"<sup>95</sup> - by ensuring the proper functioning of the local planning and building authorities, and not by replacing them with entities and persons operating on its behalf.

## **C. The Prohibition on Discrimination**

As mentioned previously, the permanent settlements in the Occupied Territories violate international humanitarian law. Even according to the Israeli governments' line of reasoning, which holds that the settlers are legitimate residents of the Occupied Territories, the Israeli policy violates the prohibition on discrimination provided for in international law.

Equality is a basic right of individuals. Article 1 of the Universal Declaration of Human Rights stipulates:

All human beings are born free and equal in dignity and rights.

Article 2 of the Declaration stipulates:

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, *whether it be independent, trust, non-self-governing or under any other limitation of sovereignty*. [our emphasis]

Israel is a State Party of the principal conventions prohibiting discrimination between persons,

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<sup>94</sup> Compare Article 27 of the Fourth Geneva Convention.

<sup>95</sup> Article 43 of the Hague Regulations.

among them the International Covenant on Civil and Political Rights,<sup>96</sup> the Covenant on Economic, Social and Cultural Rights, mentioned above, and the International Convention on the Elimination of All Forms of Racial Discrimination.<sup>97</sup> Article 5 of the latter convention delineates the principal areas in which the State Parties must undertake "to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, color, or national or ethnic origin, to equality before the law..." Among the areas specifically mentioned is the right to housing (Article 5(e)(iii)).

#### **D. The High Court of Justice – “Liberal” Declarations and Arbitrary Decisions**

The High Court has not denied the obligations of the Israeli authorities in the Occupied Territories to act in accordance with the principles of international law described above. Indeed, the High Court went even further in a series of decisions,<sup>98</sup> describing the limitations on the IDF operating in the Occupied Territories, its duty to operate on behalf of the local population, and the prohibition on discriminating between Palestinians and Israeli settlers.

In *Teachers' Society*, Justice Aharon Barak wrote:

The military commander may not weigh national, economic, or social interests of his country insofar as they have no ramifications on his security interest in the area, or on the interest of the local population. Even military needs are his [the military commander's] needs and not national security needs.<sup>99</sup>

concerning the Hague Regulations, Barak stated, in the same judgment:

This court operates in accordance with the Hague Regulations as long as they are not changed by new customs or by an international agreement applying in Israel. However, in the framework of those Regulations, we should relate to the powers and functions of proper administration, not according to social attitudes of a hundred and more years ago, but rather according to that which is customary between civilized peoples in our times. Therefore, the actual contents given to the provision of Article 43 of the Hague Regulations concerning ensuring public order and safety will not be according to public order and safety at the end of the nineteenth century, but according to public order and safety of a modern and civilized state at the end of the twentieth century.<sup>100</sup>

The High Court even explicitly prohibited discrimination between Palestinians and Israeli settlers when, just before the Gulf War, the IDF distributed gas masks to the settlers but not to

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<sup>96</sup> Resolution of the U.N. General Assembly 2200 (XXI)A, 16 December 1966. See, particularly, Article 2(2). Israel ratified the Convention in 1991.

<sup>97</sup> Resolution of the U.N. General Assembly 2106 (XX)A, 21 December 1965.

<sup>98</sup> See, in particular, H CJ 68/81, *Abu Ita et al v. Military Commander of Judea and Samaria*, Piskei Din 37(2) 494; H CJ 393/82, *Jamit Askan Almalmon et al v. Commander of IDF Forces in Judea and Samaria et al*, Piskei Din 37(4) 785 (hereafter: *Teachers' Society*). We shall consider in particular the latter, mainly because Justice Aharon Barak, presently Chief Justice, wrote the decision of the Court.

<sup>99</sup> *Teachers' Society*, pp. 794-795.

<sup>100</sup> *Ibid.*, p. 800.

Palestinians in the Occupied Territories. In responding to a petition to change this policy, Barak held unequivocally:

Indeed, the military commander must exercise equality in the area. He may not discriminate between residents.<sup>101</sup>

However, other than the specific case of the distribution of gas masks, the declarations had no effect on the High Court's position concerning the IDF's policy in the Occupied Territories, in general, and concerning the "administrative" demolition of houses, in particular.

The High Court occasionally delays the "administrative" demolition of houses in the Occupied Territories by granting interim orders, and at times has also issued orders *nisi*. The High Court took these measures, too, *within the parameters of the Israeli authorities' policy concerning planning and building in the Occupied Territories, and in accepting these parameters as justified, even obvious*. The High Court maintained this position even though the policy of large-scale demolition of Palestinian houses clearly contravenes international law as the High Court itself interpreted it.

This surprising and inconsistent position is set forth in summary form in a short and typical judgment written by Justice Barak in *al-Mator*,<sup>102</sup> which dealt with orders to demolish the houses of two residents of Sa'ir village, Hebron District. The entire judgment is as follows:

The construction by the petitioners contravenes the planning and building laws. Demolition orders were issued. The petition before the court is directed against these orders. The petitioner's attorney argues that the buildings have been standing for more than two years, and that the area should be changed from an agricultural area. In addition, a road is to be paved there. These arguments are insufficient to warrant our intervention in the decision taken by the respondents. The political considerations raised before us are insufficient pretext for our involvement. The political considerations should be directed to the political echelon.

The petition is denied.

The petitioners' attorneys, Allegra Pacheco and Haytim Al-Khadi, of LAW, raised most of the main points mentioned here concerning Israel's obligation under international law.<sup>103</sup> Barak totally ignored them.

Justice Barak even totally ignores his own determinations, like those mentioned in *Teachers' Society*. It is difficult to understand how Justice Barak can hold the need for "public order and safety of a modern, civilized state at the end of the twentieth century" while allowing the demolition of houses based on the contention that they are built "in violation of the articles of plan RJ/5 [the British Mandate planning scheme]."<sup>104</sup>

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<sup>101</sup> HCJ 168/91, *Morkus.v. Minister of Defense*, Piskei Din 45(1) 467, 471.

<sup>102</sup> The Court's decision was given on 20 March 1997.

<sup>103</sup> *Urgent petition for an Order Nisi and Interim Injunction, Al-Mator*, 13 February 1997.

<sup>104</sup> *Notice on behalf of the State Attorney's Office, Al-Mator*, par. 19a-d (concerning Petitioner no. 1), and par. 21a-b, d-e (concerning Petitioner no. 2).

It is also difficult to understand how Justice Barak reconciles "the powers and functions of proper administration... according to that which is customary between civilized peoples in our times" with demolition of a house on the basis that "there is no proof of ownership,"<sup>105</sup> where for some thirty years the military commander has frozen land registration.

Furthermore, in a "modern and civilized state," representatives of the residents are those responsible for planning and building, who should ensure that the decisions take into account the residents' interests. This was the situation in the West Bank under Jordanian rule. Transfer of planning and building to the Israeli authorities and continuation of such control in Area C even today is unbefitting the "end of the twentieth century." This situation is recognizable in countries that have not undergone modernization, or are subject to military dictatorships. The matters involved are purely civilian in nature, and the military interests of the IDF as an occupying army would be met without instituting a sweeping denial of human rights of the Palestinians.

It is also difficult to understand how Justice Barak reconciles his holding that "[the military commander] may not discriminate between residents" with his total disregard for the same argument in *Beit El*<sup>106</sup> (and, in the alternative, its definition as "political considerations"). Barak disregards the fact that, during the total freeze on planning for Palestinian agricultural lands and the increase in demolitions of Palestinian houses, scores of detailed planning schemes appropriate for a "modern and civilized state at the end of the twentieth century" have been prepared, but this was done only for the Israeli settlers. The authorities allocated for the settlers, and for them alone, all the public lands allocated for building in the West Bank,<sup>107</sup> and in those numerous cases where buildings were erected without permit in the settlements, the authorities refrained from demolishing them, and approved them retroactively.

The reader will search in vain for all these considerations in Justice Barak's opinions, or in other judgments of the High Court where it dealt with planning and building in the Occupied Territories. The High Court, which drafted so well the duties of the occupier as long as theoretical and general principles were involved, failed in meeting its real obligation - implementation of those principles to protect ordinary people from the arbitrary will of those in power.

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<sup>105</sup> *Ibid.*, paragraph 19e (concerning Petitioner no. 1), and 21c (concerning Petitioner no. 2).

<sup>106</sup> In the petition, paragraph 2 (7-10). See also the petitioners reference to the prohibition on discrimination in international law, in paragraph 4 (6-8).

<sup>107</sup> As in the case of privately-held land that was proclaimed "state lands." See B'Tselem, *Israeli Settlement in the Occupied Territories*, pp. 26-30.

## CONCLUSION AND RECOMMENDATIONS

Israel employs a policy of mass demolition of Palestinian houses in Area C. This policy is consistent with its development, planning, and building policy, which is based on two essential, related principles:

- ◆ Limitation of Palestinian construction, particularly the physical scope of construction, to a minimum; and
- ◆ Allocation of the largest possible areas for Israeli settlements and their expansion.

The first principle was implemented, first, by freezing planning in Palestinian towns and villages. Planning schemes fifty-years-old and more are the basis for approval - rejection in most cases - of applications for building permits. For thirty years, land registration has been frozen, and landowners are unable to provide proof of ownership, making it easy to deny applications for a building permit. The building authorities are administered by Israel, and the Palestinians are not represented. Palestinians who want to build with a permit on their land in Area C must undergo a lengthy, complex, and expensive process, whose end is usually rejection.

Facing such a situation, and without any other option, many Palestinians are compelled to build without a permit. Their act is not intended as a political statement or as opposition to Israeli control in the area, but rather to meet a need for housing for themselves and their families that Israel's policy does not allow them to realize.

Israel exploits its absolute power and demolishes tens and hundreds of houses each year, the number of demolitions rising or falling depending on the political leanings of the government. In August of this year, "administrative" demolitions of houses were openly used as a reprisal and punitive action. The Israeli authorities demolished the homes of dozens of Palestinians in response to terrorist acts, although no one contends the residents of the demolished houses had been involved.

Mass demolition of houses also ensures that Palestinians do not build near Israel settlements, bypass roads, or areas over which Israel wants to maintain control in the future. The demolitions, therefore, also realize the second principle.

In the settlements, the authorities employ a dynamic and modern system of planning and granting of building permits. Comprehensive planning schemes are arranged for all settlements. Nevertheless, thousands of buildings have been built there without permit. But the authorities are wise enough to refrain from demolishing those houses. Instead, they grant retroactive approval to illegal construction.

The solution is not to institute a more considerate policy to be implemented by the Israeli planning authorities, or by the Israeli authorities in general. Israel must disband the planning authorities it established and transfer to the Palestinians the handling of planning and building in Area C. Planning and building should be conducted in accordance with the Jordanian Law that was intended to apply in Area C, which Israel has distorted over the past thirty years.

Planning and building is a purely civilian matter. The military authorities have the right to intervene in planning and building where patently military matters are involved. On the other hand, individuals have a basic right to be involved in determining the future of their surroundings, including the right to elect and direct the planning and building authorities, and occupation cannot justify denial of this right.



As a first step, Israel must comply with the provisions of Article 27 of the Protocol Concerning Civil Affairs, of Oslo 2, according to which Israel must gradually transfer powers in these areas to the Palestinians, with certain limitations.