

# בִּיִּזְמֵם

מרכז המידע הישראלי לזכויות האדם בשטחים

'בִּיִּזְמֵם' מרכז המעוּמָת האִסְרָאִילִי לְחֻקּוֹת הָאִנְשָׁן בְּאֶרְצֵי הַמְּחֻלָּה

B'TSELEM - The Israeli Information Center for Human Rights in the Occupied Territories

**INFORMATION SHEET: UPDATE AUGUST 1990**  
(English Version)

**LIMITATIONS ON BUILDING  
OF RESIDENCES ON THE  
WEST BANK**

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B'Tselem, the Israeli Information Center for Human Rights in the Occupied Territories, was founded in February 1989 by a group of lawyers, intellectuals, journalists, and Members of Knesset.

The objective of B'Tselem is to document and to bring to the attention of policy makers and the general public, violations of human rights in the territories.

B'Tselem's data are based on fieldwork, independent investigations, and official Israeli sources, as well as on the data of Palestinian sources, especially human rights groups such as PHRIC and al-Haq.

B'Tselem would like to thank architect Yaron Turel for his help in preparation of this report. We would also like to thank architects Alex Fishman and Rasem Khamayseh and attorneys Hussein Abu-Hussein, Salah Abu-Hussein and Lynda Brayer.

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## INTRODUCTION

According to estimates by Palestinian engineers, there are approximately 13,000 homes in the West Bank which have been built without permission. Approximately 80,000 people live with the apprehension that a demolition order, or bulldozers, will arrive at their doorstep, and that they will find themselves without a roof over their heads. This fear is based on the fact that each year, hundreds of homes are indeed demolished. Notwithstanding this risk, many Palestinians continue to build homes without permission.

This report focuses on rural areas in the West Bank where the problem is especially grave. Within city limits in the West Bank, there are local municipal planning authorities, whereas in the Gaza strip, demolitions are rare.

In most countries, building planning and authorizations are an administrative matter and of no interest to human rights organizations. B'Tselem has nevertheless chosen to examine this issue in the West Bank for three reasons:

\* Data have shown that the number of building licenses issued in the West Bank is extremely small, and falls far below the minimum housing needs. At the same time, the authorities continue to demolish premises built without permission. Thus, rural West Bank Palestinians have no proper way of exercising their natural right to build a home. The situation has worsened considerably since the beginning of the Intifada.

\* Investigations, testimonies and discussions conducted by B'Tselem, have painted a picture of secrecy, arbitrariness, disorganization and endless delays in dealing with requests for licenses. In an interview with B'Tselem on June 10, 1990, Coordinator of Activities in the West Bank Shumel Goren defined this situation in the West Bank as "improper." Israel is obliged by international conventions to maintain proper administration in the territories.

\* The planning and building system in the Israeli settlements in the West Bank is efficient, sympathetic and lenient regarding unlicensed construction, creating a clear case of discrimination.

## PROCEDURES FOR ACQUIRING BUILDING LICENSES

The West Bank village resident who requests a license to build on his land faces an extremely difficult, and in many cases impossible task:

- \* to prove ownership, although the land registration system is obsolete and defective.
- \* to present proof of having no debts or problems with the authorities, a requirement which is entirely irrelevant and does not exist in Israel.
- \* to appear before an information board which will not approve any plan which: a) is not within village boundaries (the boundaries are not shown to applicants, and usually not even to their lawyers); b) which is near an existing or proposed highway (plans of which are not given to applicants), c) which is located on government or army lands.
- \* When permission is refused, the applicant may invest a large sum of money and submit a parcellation plan for the plot. The planning bodies tend not to approve such plans.
- \* Another option is to build without a license.

## PLANNING AND CONSTRUCTION IN THE WEST BANK - THE LEGAL PERSPECTIVE

The limited area of land zoned for building from the time of the British Mandate and failure to expand it, the lack of fair and reasonable procedures for granting building licenses, the abolition of local representation and right to appeal which existed in the Jordanian law, other changes made by the planning authorities, the widely used weapon of house demolitions - all these create a clear impression that the authorities' policy is aimed at advancing goals entirely inconsistent with the needs of the population these authorities are meant to serve. The laws and orders serving this policy have no validity in international law, since they violate the local law, and cannot be justified on security grounds or as advancing the interests of the local population under prolonged occupation.

By Attorneys Hussein Abu-Hussein and Salah Abu-Hussein

The planning and construction laws in the West Bank derive from two essential normative frameworks: the local Jordanian laws which were in effect until June 5, 1967, and especially the City, Village and Buildings Planning Law (Temporary Law No. 79, 1966), and various orders of army commanders, especially the Order Concerning the City, Village and Buildings Planning Law (Judea and Samaria) (No. 418), 1971.

The norms of customary international law, especially those detailed in Article 43 of the Hague Convention (1907) assert that:

"The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and insure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country." In other words, the occupying nation may not change laws existing prior to the occupation, unless there is an "absolute deterrent" to preserving them. It should be added that the Israel High Court of Justice qualified "an absolute deterrent" in the context of the changing needs which the "long occupation" creates.

Orders by military commanders have brought about fundamental and radical changes in the make-up of planning and licensing institutions, changes which will be described and evaluated here in light of the Hague Convention.

1. Order number 418 altered the make-up and powers of the planning, building and permit council, and transferred to the commissioner all the authority which, under Jordanian law, had been vested in the minister in charge of the the planning authorities. In accordance with this change, the commissioner was given charge of planning schemes, local plans, building licenses.

expanding city boundaries or determining village borders, and establishing of planning committees as needed.

2. Article 2 of the order abolished district committees and transferred their powers to the Higher Planning Council. With this change appeal rights which were waived which, in all opinions, were an essential right bestowed on residents of the area in matters relating to decisions of the lower planning committee.

3. Article 4 of the order stipulates that the military commander will appoint the Higher Planning Council and the rural planning committee, regardless of council members' qualifications and any interests they represent. The result was that due to the new make-up of the Higher Planning Council, the municipal representative, the public prosecutor and the head of the engineering organization, who had served as representatives under Jordanian rule, lost their positions on the committees. The Council became composed solely of I.D.F. officers with no representatives for the local Arab population.

4. The changes to Jordanian law brought about by military orders were not limited to superficial changes, but included substantial changes as well. They granted the Higher Planning extensive powers. Thus, according to Article 7, the Council may approve or veto the decisions of communities under its jurisdiction (that is to grant or cancel licenses issued), and may also exempt anyone from the requirement of holding a license.

### Planning Schemes

Jordanian law established 3 types of planning schemes: state, local and private.

#### **National Scale Plans**

To this day, the only such plans which have effect in the area are those which were prepared in 1942: Plan RJ-5 for the Jerusalem region and Plan S-15 for the Nablus region. These plans, prepared as mentioned in 1942, corresponded to needs which were completely different from today's political, economic and social realities. Despite this, they remain the basis for obtaining licenses in the area.

#### **Local and Private Plans**

There are 424 villages in the West Bank, of which only 87 have village councils. Taibe is the only village with an approved detailed local plan. The fate of building plans in the remaining villages is decreed by British Mandate plans from 1942.

Most of the 25 cities run by municipalities have valid local plans dating from the Mandate period. However, reality has long since taken its toll, and the plans no longer satisfy the needs of the population.

### Building Licenses

Article 34 of the Jordanian law stipulates that granting a building license requires preparation of a detailed plan which accords with an approved allocation plan. Only one village has an approved planning scheme, and the national-scale plans from 1942 are outdated. The obvious result is the lack of a reasonable legal basis for buildings which are outside the planning boundaries for villages set by British Mandatory planning schemes in 1942. Application of planning laws, without the preparation of new building plans, and without expanding planning areas despite the large population growth in the area, has led to much unauthorized building.

### Execution of Demolition Orders Executed Through Administrative Procedures

The subcommittee for building inspection whose authority is granted by law to the Higher Planning Council, issues demolition orders and carries them out where licenses were refused, without regard to the procedures extant in the Jordanian law of 1966. Article 38(8) of the law states that building without a license is illegal, and empowers the court to either fine the transgressors, or order demolition of the structure. The planning authorities in the territories prefer taking recourse in administrative procedures to demolish homes over following criminal procedures. The legal procedures under every well-conceived legal system, including Jordanian law, grant legal and essential rights to the accused, and place the burden of proof on the prosecutor. Thus, for example, an accused person who built his house a few years ago could claim obsolescence, and this claim, if sustained, could lead to the defendant's acquittal, and prevent the demolition of his home. No such claim is valid under the administrative procedure.

The changes surveyed here are inconsistent with legal interpretations of the Hague Convention according to international law experts, and the Israel High Court decision 393/82 Jam'iyyat Iskan v. I.D.F (Ruling 37/4, page 785) since they cannot be considered as protecting the legitimate security interests of the occupier, Israel, in an occupied area. Likewise, they do not ensure the widely varied needs of the civilian population, such as economic, social, educational and health needs.

Moreover, it is very doubtful that the regional commander is exercising his authority according to the fundamental rules of Israeli administrative law, which require reasonableness and good faith and acceptable procedures. It is doubtful whether, for

example, the failure to prepare new planning schemes which accurately reflect the needs of the local population, and the failure to change the minimum requirement of 1000 square meters of land as a condition for receiving a license on agricultural land are reasonable.

It is important to note that local Jewish authorities in the territories have been given wide-ranging powers regarding planning and building, especially in granting building licenses, planning and expanding of roads, and supervision of building within allocated building areas.



## DEMOLITION OF BUILDINGS ILLEGALLY, AND AS A MEANS OF ENFORCING ISRAELI RULE

The homes of Talal Manasra from Bani Na'im and Radwan Awad from Jaba' were demolished while they and their lawyers were awaiting a legal review of the demolition order, and after they had explicitly been told that the orders were temporarily suspended. Apologies were given in both cases.

The I.D.F. carries out demolition and sealings for security reasons, and demolitions of homes in the same village built without permission, simultaneously, creating the impression, at least prima facie, of area-wide punishment.

In Taluza, in the Nablus District, the authorities promised the mukhtar that demolitions would cease if a village council was established. When no council was created, a house was demolished. In the village of Za'tara in the Bethlehem District, the governor publicly promised that no houses built before 1990 would be destroyed. The promise was not honored.

### Demolition of buildings during clarification procedures

The confusion and inefficiency of the planning system often lead to grave mistakes, including demolition while clarification procedures are taking place. Following are two examples:

#### 1) The Case of Talal Hasan Manasra from Bani Na'im

The following account of the course of events is based on Manasra's testimony before B'Tselem staff and a group of observers from Peace Now on May 5, 1990, and from a letter by Attorney Felicia Langer to the Legal Advisor for Judea and Samaria on May 24, 1989.

On February 14, 1989, Talal Manasra of Bani Na'im in Hebron District, received a final order for cessation of his work on, and destruction of the house he was building in the village, after the Inspection Committee had rejected his request for a license. Manasra, through the help of Attorney Langer, requested an additional opportunity to present his case before the committee.

The request was granted and meetings were scheduled, at first for April 18, and then May 30. Manasra and his attorney were promised as a matter of course that no steps would be taken against him before the committee's decision. On May 23, 1989 at about 12:00 noon, Manasra was surprised to see three army vehicles, a Civil Administration vehicle and a bulldozer approaching his house. Soldiers surrounded the house, forbidding anyone to come near, and even beat two of Manasra's brothers who attempted to talk to them. Manasra's attempts to explain to "Marco" from the Civil Administration that the matter was pending before the Inspection Committee were to no avail. Manasra was shown no order or

document indicating demolition of the house, and was told only to leave the premises.

#### Things can be different

The house of Nu'man and Na'ima Katush and their 5 children in the village of Batir, near Bethlehem, was demolished on July 10, 1990. B'Tselem staff arrived at the scene minutes after the demolition was completed. Nu'man Katush was at the time at work in Ein Bokek. The family claimed that the demolition team did not show them an order, and gave only a half-hour to remove their possessions from the house.

On July 15, 1990, Al Ha-Mishmar reported that the Minister of Defence, Moshe Arens "reproached the IDF authorities" regarding the demolition, and "instructed the Coordinator of Activities in the territories, Shmuel Goren to quickly find a way to compensate the family."

Within a week, Civil Administration personnel found an alternative plot, and convinced the owner to sell it to Nu'man Katush and his family. On July 19, 1990, Katush was summoned to the Civil Administration Office in Bethlehem, and there, according to Ha-aretz, from July 20, 1990 "he was given an expedited building license for his new house." Local residents verified this information.

The issuing of a license in this case took only a few days.

Manasra quickly called Attorney Langer, who contacted the Office of the Legal Advisor for the Judea and Samaria region. At the office, Captain Daniel Danilo and Major Y. Hasidim (then Assistant Legal Advisor) quickly checked the matter, after which they told Langer that Talal Manasra's home was not up for demolition and that the intention was to demolish another home. At the same time, the bulldozer demolished Talal Manasra's home.

When Langer informed Captain Danilo of the matter, he expressed regret. Since that date, Manasra, his wife and four children have been living at Manasra's parents' house in a 6x4.5 m room. Manasra's parents and his 6 brothers and sisters live in the house's second room of similar dimensions. Other than an expression of regret, no steps have been taken by the Civil Administration to compensate them for the suffering they were caused.

#### 2) The Case of Radwan Mahmud Awad from Jaba'

A demolition order was issued against Awad regarding the home he built in his village in the Nablus area. Following a request by Awad's lawyer, Salah Abu Hussein, to enable Awad to parcel the land, the order was frozen and a hearing was scheduled before the Inspection Committee for May 16, 1990. However on May 8, 1990,

Civil Administration personnel demolished Awad's house. In the following letter which Shmuel Leshem, an assistant to the Legal Advisor for Judea and Samaria, sent to Attorney Abu Hussein, Leshem admits to the "mistake" and explains:

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LETTER -- Received 25-5-90

I S R A E L D E F E N C E F O R C E S  
JUDEA AND SAMARIA REGION  
Office of the Legal Advisor

Date: May 17, 1990  
Ref: 624/1/101 01892

To: Adv. Abu Hussein  
Umm El Fahm 30010

Dear Sir,

RE: Case No. C 13'90 -- Radwan Mahmud Awad

1. We are hereby committing to writing the agreement concerning the above reached with you in discussion in the Inspection Subcommittee on May 16, 1990.
2. Recall that the subject under discussion was a structure which had been legally ordered demolished.
3. Mr. Awad subsequently submitted a request for a land parcellation which reached the offices of the inspection unit, but due to an error, this request was not forwarded, and as a result the house was demolished.
4. Under the agreement, the request for parcellation will be reviewed in the appropriate committee, that is, the local planning committee of the Higher Planning Council, which will consider the review as if the demolition had not occurred.
5. Should the request for parcellation be approved, your client will be compensated and issued a building license. Should, however, said request be rejected, the demolition which has already been carried out will be considered completely valid retroactively.

Respectfully yours,

( - )

Shmuel Leshem, Legal Officer  
Assistant to the Legal Advisor  
On behalf of the Legal Advisor

cc: Head, Infrastructure Department  
Director, Planning Bureau  
Director, Inspection Unit

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In a response dated May 31, 1990, Abu Hussein wrote, inter alia:

"It is my opinion that not only was the demolition carried out illegally but the demolition order (delayed at my request) was issued illegally, and the demolition was carried out based on an illegal order... in any case, the building should have been approved and a license granted." The parcellation has yet to be discussed by the Inspection Committee.

Meanwhile, Radwan Awad is living with his family in a single room in his brother's house.

### **Building Licenses and Demolition as an Instrument for Enforcing Authority**

It is not a rare occurrence for army commanders and civil administration employees to integrate housing demolitions with security and administrative pretexts, and to use threats of housing demolitions and promises to cancel demolitions, or to grant building licenses, as an instrument for achieving goals not connected with building in any way. In the two cases described below, army commanders used their authority to repeal demolition orders in an attempt to enforce or strengthen complacent local administration.

#### **1. "Linking" demolitions with pretexts of security or building violations**

\* On March 20, 1988, IDF bulldozers destroyed four houses in Silat el-Harthiyah village, on security grounds. On the same day, the same bulldozers destroyed three houses for being built without a license.

\* On November 8, 1988, dozens of structures were demolished in Tamun village because they were erected without permission, and a house was destroyed for security reasons.<sup>1</sup>

\* On July 10, 1990, a house built without permission was destroyed in Batir village. On the same day, security forces occupied another house in the village for the purpose of sealing it on security grounds.

#### **2) Taluza village, Nablus District**

At the beginning of the Intifada, the Taluza local council resigned, and the authorities are demanding that the village residents reform the council. The military governor stipulated that housing demolition orders would be abolished if the council were reconstituted.

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1. See B'Tselem, **Demolition and Sealing of Houses as Punitive Measure in the West Bank and the Gaza Strip During the Intifada**. Jerusalem 1988, p. 33.

On June 22, 1990, Bassem 'Eid, B'Tselem investigator, visited Taluza village, and took the following testimony from Ahmad Bashir and Ibrahim Fuad, residents of the village.

On May 3, 1990, Bentzi from the Nablus administration arrived, and gave each of us a summons to report to Beit-El. After approximately one week he returned, and gave an additional five homeowners [summons], and one week later, he gave [summons] to one more homeowner.

When we arrived at the administration, they gave us 15 days to destroy the houses ourselves. They told the other homeowners the same thing. The mukhtar, Salah Jum'ah, met with the Governor of Nablus in May, and the Governor demanded that an envoy from the village meet with him concerning the houses.

We arrived on May 31, 1990, in a 45 person envoy. We requested pardon regarding the houses. After we had left, the governor remained with the mukhtar for about one hour.

When he emerged, the mukhtar announced that the governor had told him that if the council were reconstituted, he would see to it that the demolition orders were repealed.

The council has not yet been restored, and on June 21, 1990, one of the houses was destroyed - the house of Ahmad al-Hindi.

### 3. Za'tarah village, Bethlehem District

At the end of 1989, demolition orders were issued for approximately 40 homes in the village. The negotiations between village dignitaries and the authorities, aimed to revoke the harsh decree, were interlaced with a dispute between the residents and the council head. At the conclusion of the negotiations, the residents were promised, publicly, that the demolitions would be cancelled. The promise was not kept.

In an affidavit taken by Attorney Dana Briskman from the Association for Civil Rights in Israel, Musa Mahmud Suliman Muhsen, one of the village mukhtars, describes the course of events.

Approximately 5,000 to 6,000 residents live in the village. There are approximately 600 houses there. The village was built from the early 1960's onwards by a Beduin tribe which settled in the area. No planning scheme was ever approved for the village. About a dozen houses in Za'tarah were built with licenses. The remaining houses in the village were built without permission.

In 1986, the head of the council raised funds from all residents of the village, in order to prepare a planning

scheme for the village. Subsequent to that date, everyone who requested to build a house was ordered to present a receipt for payment towards the plan, and to pay between 30 and 50 dinars. In exchange for presenting the receipt and for payment, the council head approved the building of the house.

On December 18, 1989, stop-building orders and summons to the Bethlehem government headquarters were sent to 40 homeowners in the villages. It should be noted that the homes in question were homes whose construction had been completed, and which were occupied; they were not houses which had just recently been built.

The sending of the summons caused an uproar in the village, since the residents thought that the payment for the planning scheme in 1986 had solved the problem of building licenses. Following this incident, many of them ceased paying taxes to the council.

As a result of these developments, the head of the council and I initiated a meeting with the Governor of Bethlehem. At the beginning of January, 1990, we met with the governor, who expressed his willingness to visit the village in order to solve the problems.

Approximately two weeks following, the governor came to the village. The entire village went out to greet him. We discussed with him, among other things, the problem of houses, whose owners were summoned to headquarters. The governor promised, in the presence of hundreds of village residents, that all the houses built before January, 1990, would not be destroyed. Along with this, he emphasized that in the future, a license must be acquired before building houses, and if not, they would be destroyed.

The governor's words were received with applause. Following the meeting, the residents resumed paying their taxes to the village council. Despite the governor's promise, on May 2, 1990, three of the homeowners were summoned to Beit-El, and informed there that their houses were designated to be demolished. The homeowners explained to representatives of the authorities in Beit-El that the governor had abrogated all demolition orders; they were told that the matter would be investigated.

On June 19, 1990, bulldozers appeared, accompanied by soldiers, headed by inspection officer Rami Akra'i, and they destroyed the three homes, the owners of which had been summoned to Beit-El.

The right of villagers in the West Bank to a fair clarification of their matters, free of pressures, is therefore not upheld, and the matter of building licenses and demolition of houses built without permission, is often linked to unrelated matters.

## Planning and construction in the West Bank Jewish Settlements

For Palestinian villages in the West Bank, state lands are forbidden for housing construction, there are no planning schemes, planning committees were disbanded, and unauthorized buildings are often demolished. In Israeli settlements, state lands are designated for use by settlers, and planning schemes have been drawn up and approved for their use. Local councils have been authorized as building committees, and ways have been found to address the common phenomenon of illegal construction, without resorting to demolition. In other words, there is clear, blatant discrimination between the two populations.

Israeli settlements in the West Bank are not the subject of this report. However, since these settlements are in the same territory, are under the jurisdiction of the same planning authority, and are subject to the same laws and orders as the Arab villages, a comparison of the status of planning and construction between the two categories is valid. The comparison reveals these essential differences:

**A. Land use** - Very large tracts of land which had been state lands, or were converted to state lands by army orders, and even areas which the army acquired for "its needs," (as in Kiryat Arba) have been transferred for the almost exclusive use of Israeli settlers, while reason would have it that these lands be used for the good of all local inhabitants.

**B. Preparation of planning schemes** - Only 1 out of over 400 Palestinian villages in the West Bank has an authorized planning scheme (from the days of Jordanian rule). In comparison, planning schemes were prepared, inventoried and authorized for the majority of Israeli settlements, rural and urban alike. Thus, a settler who wants to build does not have to deal with most of the problems set before his Palestinian neighbor. The settler's path to obtaining permission is incomparably clearer, quicker, more ordered, and less expensive.

**C. Local building committee** - Order 418 has dissolved local building committees in West Bank rural areas. Despite this, other orders were issued which authorized local and regional councils in the settlements to act as local planning and building committees. Anyone requesting to build in a settlement may therefore approach fellow residents who are well acquainted with the settlement, and are interested in its prosperity. He is not forced to go to unknown places, and to do business with unfamiliar outsiders for whom his good and the good of his village are not a priority.

**D. Sanctions against un-authorized building** - Following are a number of examples of non-authorized construction of buildings in settlements, taken from the state comptroller's reports.

\* Jordan Valley Regional Council: "According to the documents, building additions were constructed within areas under the council's jurisdiction, without obtaining licenses from the building committee."<sup>1</sup>

\* Mateh Binyamin, Samaria and Etzion Regional Councils: "Construction in all settlements [but one] have taken place without proper licenses from the planning and building council."<sup>2</sup>

\* Alfei Menashe Local Council: "Until the conclusion of the review at the end of November 1983, the plans have not been legally valid according to the law of Judea and Samaria, also effective for Jewish settlements. Construction and development projects were thus carried out without permission."<sup>3</sup>

\* Kiryat Arba, Emanuel and Ma'aleh Adumim: In each of these areas, the Ministry of Housing was directly involved in the construction and sales promotions of hundreds of homes built without permission.<sup>4</sup>

What singles out the above occurrences and differentiates them from parallel cases in Palestinian villages (in addition to the involvement of official actors in building violations) is that the various authorities were resourceful enough to find solutions which precluded the need to destroy houses. In Kiryat Arba, for example, the council engineer, acting under authority granted him by the military commander, issued demolition orders for structures built without permission. Following this, his authority was revoked.<sup>5</sup> In subsequent years, in Kiryat Arba, Ma'aleh Adumim, and most other settlements, planning schemes were approved which took into consideration and retroactively approved hundreds of thousands of apartments built without licenses. The need to destroy homes was automatically obviated.

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### Notes

1. Report No. 32, 1980/81 p. 713.
2. Report No. 30, 1979/80 pp. 802-3.
3. Report No. 34, 1982/83 p. 107
4. Report no. 36, 1984/85 pp. 1257-8; Report No. 37, 1985/86, p. 200; Report No. 38, 1987/88, pp. 915-7.
5. See Report no. 36, p. 1258.



## DATA

Palestinians are forbidden to build on over 2/3 of the land in the West Bank. Rural population growth creates the need for 2,300 to 2,800 new houses each year. The number of building licenses issued, however, has fallen from about 2,000 in 1979-1980 to some 1,600 in 1985-1986, and around 400 in 1988-1989. In contrast, the number of houses demolished by the authorities for building without permission has risen from a few dozen each year through the mid-1980's, to over 200 each year in both 1988 and 1989. In the first half of 1990, 115 houses were demolished in the West Bank for illegal construction.

### Difficulty in obtaining official figures

As part of its standard procedure in preparing reports like this, B'Tselem asked the IDF Spokesperson for both information and answers to principal questions about the policy of the planning and building authorities in the occupied territories. The request was made on May 16, 1990, more than two and a half months before this Information Sheet went to press. As no reply was forthcoming, we made several inquiries by telephone. On July 25 we were informed that the answer would be available "soon." On July 29, 1990, near the completion of this report, we were informed that the civil administration, and not the IDF, has authority over these matters, and our questions should therefore be presented to the former. We find it difficult to believe that the Spokesperson's office required 75 days to come to this realization.

Until now, B'Tselem has, in agreement with the IDF Spokesperson's office, approached the office even on matters not explicitly IDF related. Thus, for example, the IDF Spokesperson provided us with a response to our report on taxation in the occupied territories, a matter clearly the responsibility of the Civil Administration. The response was published as an appendix to the report.

Over the course of two months, the Office of the Coordinator of Activities in the occupied territories was also unable to arrange a meeting for us with architect Shlomo Moshkowitz, Director of the West Bank Central Planning Bureau.

A draft of this Information Sheet was sent to the Coordinator's office, and on August 12, 1990, the following reply was received:

1. Until today, there have been numerous cases in the Judea and Samaria Region of houses built for which request for a building license had not been submitted, had been rejected, or had not yet been replied to.
2. We are currently unable to provide you with a detailed response, but we should like to point out that we are in the process of making revisions in this area which aim at simplifying the granting of building licenses, both in terms

of the scope of possibilities, and in terms of making the approval procedures more efficient.

In view of the unwillingness of IDF and Civil Administration authorities to provide information on this topic beyond the laconic answer above, it is difficult to avoid the impression that a purposeful attempt is being made to avoid passing on any information, characteristic of the West Bank planning and building authorities' policy towards other interested parties as well.

#### A. Background: land, population, housing needs

##### Restrictions on land use

Palestinians cannot build on 3,730,000 of the total area of 5,500,000 dunams or about 68% of the total land area in the West Bank, according to the following breakdown:<sup>1</sup>

**Table No. 1: LAND USE RESTRICTIONS**

Reason for Restriction	Land Area (in Dunams)
- Land adjacent to Jewish settlements and planned roadways	580,000
- Firing ranges and closed areas	1,000,000
- Nature reserves	250,000
- State lands from Jordanian rule*	527,000
- State lands declared under Israeli rule*	1,273,000
- Land appropriated for public use	50,000
- Land appropriated for "military needs"*	50,000
<b>total</b>	<b>3,730,000</b>

\*Some of these lands have been used for the establishment of Jewish settlements

1. Data based on Meiron Benvenisti and Shlomo Khayat, The West Bank and Gaza Atlas. Jerusalem, WBDP, 1988 p.28 (henceforth Atlas), For a similar general estimate, see: Rasem Khamayseh, Israeli Planning and House Demolishing Policy in the West Bank. Jerusalem: PASSIA 1988, p.38. (henceforth Khamayseh, (English)).

## Population and Housing Needs

The Palestinian population in the West Bank, not including East Jerusalem, numbers more than 1,100,000. Approximately 631,000 Palestinians (59.1%) live in rural areas.<sup>2</sup>

By a rough estimate of the rural population growth,<sup>3</sup> a minimum of 2,300 to 2,800 new homes<sup>4</sup> or 7,040-8,570 rooms,<sup>5</sup> are required each year merely to meet the requirements of the increase in this population.

### **B. Building Licenses**

#### **Before the Intifada**

The State Comptroller's report for the years 1979-1980 states that "in 1979-1980, the [Judea and Samaria Central Planning] Bureau issued 4,400 building licenses, most of them in the villages."<sup>6</sup> According to Khamayseh, between April 1, 1985, and March 31, 1986, 5,500 license applications were submitted, and 1,607 licenses granted.<sup>7</sup> Between November 15, 1986 and September 28, 1987, no licenses whatsoever were issued due to police investigation of charges of bribery of local planning bureaus.<sup>8</sup>

2. Atlas, p.28 According to the Central Office of Statistics Yearbook 1989, p. 700 (henceforth, Statistics) the number at the end of 1988 is 895,000.
3. Given an average annual growth rate of 2.9% in the years 1984 - 1987. See Statistics, p. 700. There is no categorization of urban and rural populations there, but it is accepted that due to the process of urbanization, the population increase in urban areas is slightly higher than that in rural areas.
4. According to the current average rate of 6.41 persons per house; ibid, p. 712.
5. Given an average of 3.06 rooms per house in 1987. See: Simha Bahiri, Construction and Housing in the West Bank and Gaza. Jerusalem: WBDP, 1989, p.49.
6. State Comptroller's Report No. 31 (1979/80), p.711, [B'Tselem's emphases].
7. Rasem Khamayseh, Hadm al-Buyut qayr al-Murakhasah fi al-Daffah al-Garbiyyah fi dhill al-Intifada. Nazareth: 1990, pp. 15-16 (henceforth Khamayseh, (Arabic)), relying on data from the planning office in Ramallah.
8. Khamayseh (English), pp. 43-44.

## During the Intifada

Following is a breakdown of construction license applications received and licenses granted in West Bank rural areas during the Intifada. For comparison, we present data from urban areas which comprise 40.1% of the West Bank's population, and have local planning systems.<sup>9</sup>

**Table No. 2: BUILDING LICENSES GRANTED**

	1988	1989	1990*
Rural area licenses requested	1,830	1,363	616
Rural area licenses granted	370	421	-
Urban area licenses granted	1,291	1,445	177

\*Until February 14 only.

### **C. Demolition of unauthorized buildings**

Data in this category are difficult to obtain and are often contradictory, even in the case of two responses by the Minister of Defence to interpellations in the Knesset. There are also less significant differences between numbers given by the various Palestinian sources. Because it is beyond our capabilities to conduct a thorough investigation into every demolition, the data given below is from these sources.

### **Before the Intifada**

The State Comptroller has established that in 1979 and 1980, 1,700 warnings were issued for illegal construction. Between October and December 1980, 20 structures were demolished by court order (and not by administrative procedure).<sup>10</sup>

Following are the figures given in the Knesset by the then Minister of Defence Yitzhak Rabin regarding the two years preceding the Intifada:

In 1986, 197 unauthorized structures demolished.

In 1987, 196 unauthorized structures demolished.<sup>11</sup>

9. These data were supplied to B'Tselem by Palestinians close to the planning authorities.
10. State Comptroller's Report No. 31 (1979/80), p.777.
11. On July 13, 1989, in a response to an interpellation posed by Knesset Member Haim Ramon. The statistics include the Gaza Strip, but, as mentioned earlier, demolitions there are rare. Khamayseh (Arabic) counts 103 homes in the West Bank during that year, based on the Palestinian press. See *ibid.*, p. 21.

## During the Intifada

### a. 1988 - Data from the Minister of Defence:

On January 30, 1989, Yitzhak Rabin announced in the Knesset that "during 1988, more than 300 illegal structures were demolished in Judea, Samaria, and the Gaza area."<sup>12</sup> On July 13, 1989, Rabin announced that in the same year, (1988), 505 such structures were demolished (B'Tselem's emphasis).<sup>13</sup>

### b. Data from Palestinian Sources

According to data of The Palestinian Human Rights Information Center (PHRIC), the Israeli authorities in the West Bank demolished 231 homes in 1988 for lack of building licenses.<sup>14</sup> Sha'ban's book mentions 223 such demolitions,<sup>15</sup> while Khamayseh counts 230 houses.<sup>16</sup>

### c. 1988- Data from Palestinian Sources

PHRIC reports that 270 structures were demolished due to lack of license in the West Bank in 1989.<sup>17</sup> The Palestinian media reported 249.<sup>18</sup>

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12. In an answer to an interpellation posed by Knesset Member Yitzhak Levi.

13. See note 11.

14. PHRIC and EAFORD, The Demolition of Houses and Other Structures by the Israeli Authorities. Chicago: 1989.

15. Ibrahim Abu Sha'ban, Al-Intifadah al-Falastiniyah fi 'Amha al-Awal. Jerusalem: 1989, pp. 331-338.

16. Khamayseh (Arabic), p. 21.

17. See note 14.

18. Based on Khamayseh (Arabic), p. 21, and on a summary of Palestinian press articles from the JMCC.

#### D. 1990 - Data from Palestinian Media Sources

In 1990, up until July, the Palestinian media has recorded 115 demolitions for lack of building licenses.<sup>19</sup>

Table No. 3: SUMMARY OF STATISTICS

Year	Licenses granted for West Bank Villages	Demolitions	
		Official Statistics	Statistics from Palestinian sources
1979/80	4,400	approx. 80?	n/a*
1984/85	1,607	n/a	n/a
1987	in the dozens	196	103
1988	370	300+/505	223-231
1989	421	n/a	249-270
1990	n/a	n/a	155**

\* n/a - data not available

\*\*until July 14

19. Based on JMCC publications. According to PHRIC, authorities demolished 63 homes in the West Bank from January to March, 1990, for lack of a license.

## CONCLUSION

The planning and building authorities in the West Bank are abusing their mandate. They have not approved rural planning schemes, they do not supply essential information to applicants, and they refuse most requests for building licenses. The extreme shortage of housing pushes many to build without permission. The authorities have responded to this by massive demolitions of homes, without offering a solution to the problem.

The authorities could improve the situation considerably by applying the same policies toward the Palestinians as are directed toward Israeli settlements in the West Bank, namely making land available, comprehensive and detailed planning, efficient and fair handling of license requests, and an attempt to solve the problem of illegal construction without resorting to demolitions.

The tasks of the planning and building authorities are preparing plans which would make orderly construction possible; providing applicants with guidelines for legal building; reviewing building plans submitted in light of both the law and housing needs, and supervising construction in order to verify that it proceeds according to the law.

From the investigation conducted here of the authorities' activities in the West Bank's rural sector, an entirely different picture emerges:

- \* The Central Planning Bureau has not approved even one village plan in the West Bank.
- \* Secrecy surrounds planning considerations of the bureau, and of the bodies under its jurisdiction. Applicants do not receive essential information about construction regulations. This unexplained secrecy also took expression when the IDF authorities responded to B'Tselem's requests, uncharacteristically, with apologies and mutterings instead of information.
- \* The process of acquiring a building license is long, awkward, and in most cases, frustrating, since over two-thirds of requests for licenses are denied, for reasons which are, at least in part, secret.
- \* According to some of the official data, authorities demolished more homes in 1987 and 1988 than granted building licenses. Even more conservative estimates show that if one weighs the number of licenses granted against the number of demolitions carried out, it would appear that had building taken place according to the authorities allowances and prohibitions, no more than 150 new homes would have been added annually in the last three years. Population growth alone creates an annual need of more than 2,000 new homes.

The Planning and Building Authorities in the West Bank are thus abusing their mandate. They are taking advantage of the wide authority conferred upon them by the military orders which did away with, among other things, local resident representation in bodies appointed for construction planning, and the appeal process, both of which existed under Jordanian law. This situation cannot be justified under international law.

For many rural residents, the authorities have presented a difficult choice: to live without a roof over one's head or in insufferable conditions, or to build without permission and risk having their homes demolished. This situation is intolerable. At best it is gross neglect, and at worst, a determined policy.

The solution to this situation is not complicated. The authorities need only apply the same policy which has been and continues to be in effect for Israeli settlements in the West Bank, toward the rural sector there. This entails the allotment of land, including state land, for the villages; the establishment of local planning authorities; comprehensive planning at all levels; the dissemination of accurate and updated information to those who request it; efficient handling of requests for building licenses; and finally, a serious attempt to solve the problem of construction without permission, through an understanding of the population's needs, and limiting the use of the drastic measure of demolition. This should take place in recognition that illegal construction in the rural Palestinian sector results directly from the failure of the present system.



## FATALITIES IN JULY - DATA ANALYSIS

In the month of July, 1990, according to B'Tselem's data, 3 Palestinians were killed by security forces' gunfire, all of them in the West Bank. In addition, a young woman from the Gaza Strip died of her wounds.

According to the Associated Press, 15 Palestinians suspected of collaborating with the authorities were killed in the month of July. In addition, one Arab Israeli citizen was killed, also on suspicion of collaborating.

Since January, 1990, we have witnessed a trend of decreasing numbers of fatalities in the territories (see graph below). During the week following the murder in Rishon L'Tsion (May 20-27) the number of fatalities rose significantly, but in the past two months it fell again.

It must be noted that in the Gaza Strip not a single person was killed by security forces for over two months (a seventeen year-old female resident of the strip died from her wounds this month after being hospitalized for over one year). According to senior army officers in the Gaza Strip, in the past months a restrained policy has been implemented, as part of which directives were issued which severely limit shooting at Palestinian residents. Likewise, according to media reports, a directive was issued not to circulate in small foot patrols in refugee camps, in order to not to become trapped in a life-endangering situation.

In contrast, on the West Bank, 3 residents were killed, two of whom were wounded in the head, according to reports, from single shots fired at them.

Opening fire as part of the Apprehension of Suspects Procedure requires, according to IDF regulations, three stages:

- A. Calling out in Arabic to the suspect: "Halt or I'll shoot."
- B. A warning shot at a 60 degree upward angle.
- C. Shooting to hit the legs only.

The fact that two people were killed by shots in the head, fired without a warning shot in the air, or shots at the legs, raises suspicion that those firing did not stand by the Rules of Engagement, and requires the IDF to draw conclusions and bring them to justice.

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\* Fatality statistics were updated and corrected this month according to the most recent information. For this reason, there are slight differences between last month's and this month's data.

## INTIFADA FATALITIES – TOTALS

From the beginning of the Intifada through the end of July 1990, 676 Palestinian residents of the occupied territories have been killed by Israeli security forces." Of these:

- \* Shooting deaths (including plastic and "rubber" bullets) 642
- \* Non-shooting deaths (beatings, burns and other) 34
- \* Children: 158, including
  - Aged 12 and younger 45
  - Aged 13 to 16 113

At least 83 additional people, including more than 30 infants, died a short time after exposure to tear gas. From a medical standpoint it is difficult to pinpoint exposure to tear gas as a direct and sole cause of death.

An additional 31 Palestinians have been killed, apparently by Israeli civilians, and 8 were apparently killed by collaborators.

During this period, 10 IDF soldiers and 9 Israeli civilians, including 3 infants, were killed in the occupied territories by Palestinian residents. An additional Israeli citizen was murdered on suspicion that he was a collaborator.

According to the Associated Press, 243 Palestinians suspected of collaborating with the Israeli authorities have been killed in the occupied territories since the beginning of the Intifada.

According to the IDF spokesperson, during the same period, 23 Israeli civilians, 3 female tourists, and 5 soldiers were killed within the Green Line by Palestinian residents of the occupied territories.

At least 12 Palestinians from the territories have been killed within the Green Line by Israeli civilians.

Number of fatalities during 1990





